

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 1788

INTRODUCER: Senator Hutson

SUBJECT: Department of Agriculture and Consumer Services

DATE: March 22, 2019 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Pre-meeting
2.			AEG	
3.			AP	

I. Summary:

SB 1788 modifies provisions in several areas regulated by the Department of Agriculture and Consumer Services' (Department) Division of Consumer Services, including:

- Providing a civil cause of action available to consumers who receive two or more unsolicited phone calls within a year's span;
- Clarifying the licensure requirements and regulations applicable to substance abuse marketing service providers as distinct from commercial telephone sellers;
- Removing an exemption from licensure for certain classes of telemarketers;
- Requiring telemarketing licensees to provide to the Department all of the phone numbers from which they will make sales calls;
- Expanding the definition of a mover and moving broker to include the entity's owner, manager, operator, officers, directors, partners, or other individuals engaged in the business' management activities;
- Excluding from regulation by the Department a laborer hired directly by a shipper to assist with the loading and unloading of household goods during a move;
- Requiring a mover or moving broker to register each name under which they operate;
- Clarifying timelines for a mover's submission of proof of insurance and removing the requirement that a moving broker carry any such insurance;
- Expanding the bases upon which the Department may deny a mover or moving broker's registration;
- Providing for a process to immediately suspend a mover or moving broker's application for registration if the Department receives notice that the applicant is involved in certain criminal proceedings;
- Updating a mover and moving broker's record keeping requirements;
- Clarifying the administrative process by which a shipper who has been injured by a mover's acts may receive payment on the performance bond held in lieu of liability insurance by the mover;

- Adding violations that subject a mover to administrative penalty, including the improper storage of a shipper's goods, the increase of required payment for a move above that quoted in the estimate, and the requirement of payment for a move in cash;
- Requiring the Department to create a shipper's bill of rights with specific notices to shippers and requiring movers to provide this document to each shipper prior to executing a contract for a move;
- Permitting an individual who seeks certification as a master qualifier at a liquefied petroleum installer or liquefied petroleum dealer location to become qualified for the role by certification by a liquefied petroleum manufacturer;
- Providing a separate permitting process for temporary amusement rides;
- Requiring certain operational documents related to each amusement ride to be submitted to the Department in electronic format;
- Broadening the Department's ability to exempt rides from permitting;
- Requiring a ride operator to post the Department's contact information for ride patrons' benefit;
- Creating the position of a registered safety technician, providing minimum qualifications and associated duties at each operational amusement ride;
- Instituting additional procedures and documentation of their implementation to ensure the appropriate maintenance and safety of amusement rides;
- Conforming maintenance program guidelines to international standards; and
- Creating Departmental subpoena and investigative powers relating to amusement ride investigations.

II. Present Situation:

The Department has numerous responsibilities, including safeguarding the public from unsafe or defective products and deceptive business practices, supporting Florida's agricultural economy, and administering the state's firearms licensing scheme. These responsibilities are spread among the Department's 12 divisions and 6 offices.¹

The Division of Consumer Services (Division) within the Department serves as a clearinghouse for consumer complaints and information, and regulates 18 industry sectors, including household telemarketing, moving services, liquefied petroleum gas, and fair rides.²

Telephone Solicitation

Florida's Do Not Call Act

The Department administers the Do Not Call Act, which prohibits unsolicited phone calls, text messages, direct-to-voicemail transmissions, and calls made by an automated dialer that play a

¹ Florida Department of Agriculture and Consumer Services, *Divisions & Offices*, <https://www.freshfromflorida.com/Divisions-Offices/> (last visited Mar. 22, 2019).

² The Bureau of Fair Rides Inspection regulates fair rides. *See*, Florida Department of Agriculture and Consumer Services, *Fair Rides Inspection*, <https://www.freshfromflorida.com/Business-Services/Fairs/Fair-Rides-Inspection> (last visited Mar. 15, 2019).

recorded message.³ A call is unsolicited if made to a consumer whose phone number is included on the Do Not Call List, or to a consumer who has previously requested that the solicitor cease future contact.⁴ A solicitor who violates this provision is subject to a civil prosecution by the Florida Department of Legal Affairs with a maximum penalty of a \$10,000 fine per violation, or a \$1,000 administrative fine per violation, in addition to attorney's fees and costs.⁵

Florida Telemarketing Act

The Department licenses and regulates, pursuant to the Florida Telemarketing Act, (the Act) ss. 501.601-501.626, F.S., substance abuse marketing providers and commercial telephone sellers ("telemarketers") who make unsolicited sales calls from a Florida location or to a Florida consumer. The Act generally requires businesses that solicit the sale of consumer goods or services to be licensed, post a form of security,⁶ license all of their salespeople,⁷ and provide the Department with a list of all telephone numbers used by the business to make sales calls.⁸

An application for licensure as a telemarketer must include the applicant's: identifying information; prior experience in the field; criminal and administrative history, especially relating to fraud, theft, or unfair and deceptive trade practices; phone numbers from which the telemarketer will make sales calls; and parent or affiliate entity under which it will transact business, if applicable.

Additionally, a telemarketer applicant must submit with its application: a script that will be used by its salespersons during calls, or other related literature; the identity, address, date of birth, and alias of each of the applicant's principal officers, directors, trustees, shareholders, owners, partners, office managers, and salespersons who are employed by or affiliated with the applicant; and a \$1,500 licensing fee.

Section 501.604, F.S., provides exemptions from licensure as a telemarketer for specific entities. However, these entities must file a notarized affidavit of exemption with the Department. The Department may also request these exempt entities to provide their sales scripts, contracts, or other documentation, but there is no fee for filing this affidavit.

Intrastate Household Movers

Chapter 507, F.S., regulates movers and moving brokers engaged in intrastate transportation or shipment of household goods. These regulations co-exist with federal law, which governs interstate moving of household goods.

³ Section 501.059, F.S. Florida Department of Agriculture and Consumer Services, *Florida Do Not Call*, <https://www.freshfromflorida.com/Consumer-Resources/Florida-Do-Not-Call> (last visited Mar. 22, 2019).

⁴ Section 501.059(3)-(5), F.S.

⁵ Section 501.059(9)-(10), F.S.

⁶ Section 501.611, F.S., requires a \$50,000 bond, irrevocable letter of credit issued for the applicant, or a certificate of deposit in favor of the Department for payment on findings of fraud, misrepresentation, breach of contract, or other violation by the applicant.

⁷ Section 501.607, F.S.

⁸ Section 501.605(2)(k), F.S.

Registration

Section 507.01(9), F.S., defines a “mover” as a person who, for compensation, contracts for or engages in the loading, transportation, shipment, or unloading of household goods as part of a household move. A “moving broker” arranges for another person to load, transport, ship, or unload household goods as part of a household move, or refers a shipper to a mover by telephone, postal or electronic mail, website, or other means.⁹ Movers and moving brokers must register annually with the Department. In order to obtain a registration certificate, a mover or moving broker must file an application, pay a \$300 annual registration fee, provide proof of insurance, and meet certain statutory qualifications.

Insurance Coverage and Liability Limitations

Movers and moving brokers must maintain liability and motor vehicle insurance. A mover who operates more than two vehicles is required to maintain liability insurance of at least \$10,000 per shipment, and not less than 60 cents per pound, per article.¹⁰ Movers who operate fewer than two vehicles are required only to carry either a \$25,000 performance bond or a \$25,000 certificate of deposit in lieu of liability insurance.¹¹

Violations and Penalties

An intrastate mover must provide an estimate and contract to the shipper before the move commences. Should a dispute over payment or costs arise, s. 507.06, F.S., provides that the mover may place the shipper’s goods in a storage unit until payment is tendered. Sometimes, moving fraud manifests as a “hostage load” situation, where an increased fee is assessed by the mover, who then refuses to relinquish the shipper’s goods until the inflated price has been paid in full.¹² While administrative, civil, and criminal penalties exist in ch. 507, F.S., for such fraudulent moving practices and other violations, the aggrieved shipper is not guaranteed the return of his or her goods until after such remedies have been finalized.

Liquefied Petroleum Gas

The Department licenses individuals and businesses that sell, transport, dispense, or store liquefied petroleum (LP) gas. Every licensed business must employ a full-time employee who has received a qualifier certificate from the Department, based on his or her passage of a Departmental examination on topics relating to LP gas.¹³ Every Category I LP gas dealer (gas dealer) and Category V LP gas installer (gas installer) licensee must have a manager, owner, or employee with similar responsibility who has a current master qualifier certificate from the Department. An applicant for a master qualifier certificate must:¹⁴

⁹ Section 507.01(10), F.S.

¹⁰ Section 507.04, F.S.

¹¹ Section 507.04(1)(b), F.S.

¹² United States Department of Transportation, *Protect Your Move*,

<https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/consumer-protection/protect-your-move/407701/fmcsapyminfographic2018.pdf> (last visited Mar. 22, 2019).

¹³ 527.0201(1)-(4), F.S. *See also*, Florida Department of Agriculture and Consumer Services, *LP Gas Training*, <https://www.freshfromflorida.com/Business-Services/LP-Gas-Inspection/LP-Gas-Training> (last visited Mar. 22, 2019).

¹⁴ Section 527.0201(5), F.S. *See also*, Florida Department of Agriculture and Consumer Services, *LP Gas Training*, <https://www.freshfromflorida.com/Business-Services/LP-Gas-Inspection/LP-Gas-Training> (last visited Mar. 22, 2019).

- Be employed by a licensed LP gas dealer or installer;
- Have a qualifier certificate for at least 3 years; and
- Pass a master qualifier competency examination, which assesses the applicant's knowledge of Florida's laws and regulations regarding LP gas safety, general industry safety standards, and administrative procedures.

Amusement Rides

Florida amusement parks and traveling amusement companies are subject to inspection by the Department.¹⁵ These parks include carnivals, water parks, go-kart courses, and bungee-jumping parks, but exclude parks with more than 1,000 employees that have full-time ride inspectors on staff.¹⁶ A temporary amusement ride must be inspected by the Department each time it is moved or set up in a new location; permanent rides are inspected semi-annually. Additionally, parks subject to the Department's regulations must show proof of sufficient employee training and insurance.¹⁷

III. Effect of Proposed Changes:

Do Not Call Act

Section 1 amends s. 501.059, F.S., to create a private civil cause of action that allows a consumer who receives two or more phone calls that are prohibited under s. 501.059, F.S., within a year to sue the solicitor who made or caused the calls to be made. A court may award a prevailing consumer actual damages and a fine of up to \$500 per violation. The court may increase the fine to up to \$1,500 per violation if it finds that the solicitor willfully and knowingly violated the law, and it may enjoin the solicitor from further violations of s. 501.059, F.S.

Florida Telemarketing Act

Section 2 amends s. 501.603, F.S., to define a substance abuse marketing service provider as an entity that provides substance abuse advertising or marketing to a Florida service provider or recovery residence operator.¹⁸ Although current law provides for the licensure of substance abuse marketing service providers, the type of entity is not defined.

Section 5 moves licensing requirements for substance abuse marketing service providers to s. 501.6055, F.S. The licensing requirements remain the same. This section also clarifies that those who provide substance abuse marketing services to entities that are located in Florida must be licensed under Florida law to provide substance abuse marketing services. **Section 4** deletes provisions relating to substance abuse marketing service providers from s. 501.605, F.S., pursuant to which they were previously licensed along with commercial telephone sellers.

¹⁵ Section 616.242, F.S. See also, Department of Agriculture and Consumer Services, *Fair Rides Inspection*, <https://www.freshfromflorida.com/Business-Services/Fairs/Fair-Rides-Inspection> (last visited Mar. 22, 2019).

¹⁶ Section 616.242(2) and (3), F.S.

¹⁷ Florida Department of Agriculture and Consumer Services, *Fair Rides Inspection*, <https://www.freshfromflorida.com/Business-Services/Fairs/Fair-Rides-Inspection> (last visited Mar. 22, 2019).

¹⁸ Section 397.55, F.S., describes service providers and recovery residence operators as those that treat consumers with disabling conditions. Section 397.55, F.S., also prohibits deceptive practices by individuals and entities that market substance abuse services.

Section 3 explicitly provides that substance abuse marketing service providers may not receive an exemption from licensure under s. 501.604, F.S.

Section 3 also subjects the following classes of commercial telephone sellers to regulation under the Florida Telemarketing Act by deleting their licensure exemption from s. 501.604, F.S.:

- Those who do not make their major sales presentation or intentionally make a sale during a call, but rather use a follow-up home solicitation to sell a product;
- Solicitors who offer a book, video, or record club or contractual plan;
- Persons who initiate sales through circulation of at least 150,000 catalogs annually;
- Telephone answering services solicitors, if the business that will perform the answering services also solicits the service itself;
- Retail businesses that exhibit their products and make a majority of their sales at their business location, and that telemarket under their business' name;
- Telemarketers who derive at least 75 percent of their income from contracts with persons otherwise exempt from licensure as a telemarketer, who have also provided telemarketing services for at least 5 years; and
- Publishers of a periodical or magazine who use telemarketing to garner new subscriptions.

Section 7 amends s. 501.608, F.S., to allow exemptions from licensure as a commercial telephone seller or substance abuse marketing provider to be submitted on a claim form prescribed by the Department, rather than as an affidavit, as previously required. Additionally, this section requires claims of exemptions to include all of the telephone numbers that the solicitor or its employees will use to make outgoing telephone sales calls.

Sections 6, 8-11 make clarifying and conforming changes to ss. 501.606, 501.609, 501.612, 501.616, and 501.618, F.S.

Intrastate Household Movers

Section 12 amends s. 507.01, F.S., to clarify that a mover or moving broker, for purposes of licensure and regulation, includes owners, operators, officers, directors, partners, or other individuals engaged in the business' management activities. Additionally, this section explicitly excludes from the definition of a mover laborers who are hired by a shipper to assist only in the loading and unloading of the shipper's household goods.

Section 13 extensively amends household mover registration requirements provided in s. 507.03, F.S.

Section 13 requires a mover or moving broker to file a separate registration for each business, trade, or fictitious name under which it advertises or provides services, but allows a mover who also acts as a moving broker under the same name to do so under one registration. This section also deletes language that permits a mover or moving broker to change its registered name by notification to the Department—this ultimately permits a name change only at the time of the

mover's renewal of its registration. The Department states that these changes will allow for more effective investigation and regulation of movers' activities in Florida.¹⁹

Section 13 requires a mover to provide proof of insurance or other coverage at the time of its registration, and within 10 days after each renewal or change of its registration. This section also deletes a requirement that a moving broker maintain liability insurance or other coverages, "because these entities merely coordinate or arrange the move and do not handle the shipper's household goods...".²⁰

Section 13 expands the bases for denial of a mover or moving broker's registration to include an applicant's conviction or pending allegation of crimes of theft, larceny, fraudulent conversion, misappropriation of property, dishonest dealing, or any other act of moral turpitude, or any crime arising from conduct during a move of household goods. Additionally, this section permits the Department to deny an application based on the applicant's position as a director, officer, owner, or general partner of an entity that is the subject of an action based on an allegation of specific financial crimes or a violation of the Florida Unfair and Deceptive Trade Practices Act.

Section 13 allows the Department to immediately suspend a mover's application for registration if the applicant is arrested for, or formally charged with a crime involving fraud, theft, larceny, fraudulent conversion, misappropriation of property, dishonest dealing, an act of moral turpitude, or any crime arising from conduct during a move of household goods. This immediate suspension would remain in effect until the final disposition of the registrant's underlying criminal case. Immediate suspensions are not subject to administrative review.

Section 13 requires each registrant to maintain signed estimates and contracts for 3 years, and to provide those documents to the Department for inspection within 10 days of its request.

Section 14 establishes with greater detail the processes required in s. 507.05, F.S., to receive payment on a performance bond held in lieu of liability insurance by a household mover registered in Florida. To collect on the bond, the injured party must submit an affidavit to the Department within 120 days of the injury, discovery thereof, or entry of a judgment regarding the injury. Additionally, this section clarifies that the administrative proceedings required to determine the liability and claim payable for injury must be conducted in accordance with ch. 120, F.S.

Sections 15 and 17 make technical, clarifying changes to ss. 507.06 and 507.11, F.S., respectively.

Section 16 amends s. 507.07, F.S., to add as violations punishable by Department action:

- The storage of a shipper's goods in a unit that is owned by anyone other than the mover, or the shipper, if the shipper contracted directly with the storage unit;
- The increase of the cost of a move above the amount provided in the written estimate, unless the shipper requests additional services that are not listed on the written estimate; and

¹⁹ Florida Department of Agriculture and Consumer Services, *SB 1788 Agency Analysis*, p. 3 (Mar. 5, 2019)(on file with the Committee on Commerce and Tourism).

²⁰ *Id.*

- The requirement of a cash payment from the shipper.

Section 18 creates s. 507.15, F.S., which institutes the shipper's bill of rights. The Department must prepare and make available on its website a shipper's bill of rights, which must include notice that a mover is subject to the following criminal penalties:

- A third-degree felony for his or her failure to relinquish household goods in accordance with ch. 507, F.S.;²¹
- A first-degree misdemeanor for any other violation of ch. 507, F.S.;²² and
- Any applicable penalty provided for in the Florida Deceptive and Unfair Trade Practices Act, Part II of ch. 501, F.S., for a violation of that chapter.²³

The shipper's bill of rights must also state the risks of shipping sentimental items or heirlooms; the required provision of valuation coverage by a mover, and the process for filing a complaint with the Department.

Lastly, section 18 requires a mover to provide a copy of the shipper's bill of rights to a shipper before the parties execute a contract for a move, and to obtain the shipper's acknowledged receipt of the publication in the contract.

Liquefied Petroleum Gas

Section 19 amends the master qualifier qualifications outlined in s. 527.0201, F.S., to require 3 years of verifiable experience as an employee with a qualifier certificate, or current certification by an LP gas equipment manufacturer as adopted by Department rule. This will allow individuals who have not been employed in a position with a qualifier certificate for the 3 years immediately prior to application for a master qualifier certificate to obtain the certificate.

Amusement Rides

Section 20 makes several amendments to s. 616.242, F.S.

Definitions

This section defines an "amusement ride event" as a ride operated at a specific location and date as listed on an annual permit application or temporary amusement ride permit application.

Inspection and Permitting Processes

This section deletes the inspection certificate process, which requires duplicative information otherwise submitted in the permitting process, but preserves the overall requirement that a ride be inspected by the Department prior to the issuance of a permit for operation. Additionally, this

²¹ A third-degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. Sections 775.082(3)(e) and 775.083(1)(c), F.S.

²² A first-degree misdemeanor is punishable by no more than 1-year imprisonment and a \$1,000 fine. Sections 775.082(4)(a) and 775.083(1)(d), F.S.

²³ A violation of the Florida Deceptive and Unfair Trade Practices Act is subject to a civil penalty of not more than \$10,000 per willful violation. Section 501.2075, F.S.

section adds an exemption from Departmental inspection for temporary rides that prove they were inspected and certified by an accredited trade organization.

Section 20 separates the permitting process for permanent amusement rides (permanent ride) from temporary amusement rides (temporary ride), and distinguishes the two by:

- Establishing that a permanent ride permit is valid for 1 year, and a temporary ride permit is valid for 6 months, or until the temporary ride is moved; and
- Requiring permanent ride and temporary ride applications for permit to be submitted 15 and 14 days prior to their opening dates, respectively.²⁴

The permitting requirements for permanent and temporary rides are otherwise identical.

The bill requires a ride's operating instructions, fact sheet, and any bulletins concerning the ride to be submitted to the Department in electronic format as part of the permitting process. Similarly, a ride's owner must provide the Department, upon its request, a copy of certification performed by a professional engineer after the ride undergoes a major modification.

Operational Requirements

Section 20 requires ride owners and operators to display the Department's contact information for ride patrons' benefit.

The bill requires each ride operator to employ a registered safety technician who must certify the safety of each ride and be present during the hours of operation of a ride. This section also provides the minimum qualifications required to be registered as a registered safety technician.

The bill adds required procedures and documentation thereof for the daily inspection of rides and for the unscheduled cessation of a ride's operation to be performed by the ride's owner, manager, or registered safety technician. The bill further requires, in conformance with international standards,²⁵ a ride's owner or manager to implement and document:

- employee training;
- a comprehensive program of ride maintenance, testing, and inspection; and
- processes relating to recordkeeping of the ride's assembly and disassembly, maintenance, and repair.

Departmental Authority

Section 20 broadens the Department's authority to exempt types of rides from permitting by rule, but removes a blanket exemption of museums and similar institutions from law.

The bill increases the applicable administrative fine for a violation of this section from \$2,500 to \$10,000 per violation. The bill adds as a violation the presentment of a ride for inspection by the Department that has a defect that is known, or should be known. This specific violation carries

²⁴ However, the Department permits late-filed applications to proceed with the assessment of a late fee.

²⁵ Department of Agriculture and Consumer Services, *1788 Agency Bill Analysis*, p. 6 (Mar. 5, 2019) (on file with the Committee on Commerce and Tourism).

an additional penalty of an administrative fine of \$10,000, or more, if the violation resulted in serious injury or death to a patron.

Additionally, section 20 creates broad Departmental investigative and subpoena power for application in its investigations performed under this section of law. A person's refusal or failure to testify pursuant to such subpoena is guilty of a second-degree misdemeanor under this provision.²⁶

Effective Date

Section 21 provides that the bill will take effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

²⁶ A second-degree misdemeanor is punishable by imprisonment for a period of no more than 60 days and a fine of up to \$500. Sections 775.082-775.083, F.S.

VI. Technical Deficiencies:

Line 637 refers to a “marketing service provider.” For consistency, this term should be changed to “substance abuse marketing provider.”

Section 9 of the bill deletes a telemarketing “salesperson” from the parties subject to departmental action for specific violations of law. There are no other bases for discipline of a telemarketing salesperson’s license.

Lines 893-896 refer to a “Florida agent” and corporate “charter number.” Both of these terms are undefined in Florida law.

Lines 905-907 require certain movers to submit multiple registrations, but lines 920-922 prohibit a mover or moving broker from providing services under more than one name. These provisions appear to conflict.

Lines 908-915 require a \$300 annual registration fee “per mover or moving broker.” It is unclear whether a mover or moving broker who must file multiple registrations will be subject to only one \$300 fee, or one \$300 fee per registration.

Lines 912-915 include a provision that permits a mover to act as both a mover and moving broker under one registration within language relating to registration fees. The language may be clearer if included in its own paragraph.

991-995, regarding a mover or moving broker’s record keeping requirements, are placed under s. 507.03, F.S., “Registration.” This paragraph may be more appropriate if placed in s. 507.07, F.S., “Violations.”

VII. Related Issues:

The scope of the Department’s investigative authority provided for in s. 616.242(22), F.S., beginning on line 1927 of the bill could be clarified to state that the authority is limited to s. 616.242, F.S..

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 501.059, 501.603, 501.604, 501.605, 501.606, 501.608, 501.609, 501.612, 501.616, 501.618, 507.01, 507.03, 507.04, 507.06, 507.07, 507.11, 527.0201, and 616.242.

This bill creates sections 501.6055 and 507.15 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
