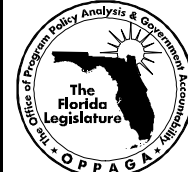




Office of Program Policy Analysis And Government Accountability



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Follow-Up Report on Selected Consumer Protection Programs Administered by the Department of Agriculture and Consumer Services

Abstract

The Department has taken some steps to improve its complaint and claims processes, which has resulted in a higher percentage of complaints being resolved. The Legislature passed laws during the past two sessions that increased the regulatory requirements for sellers of vacation certificates and telemarketing. These steps have reduced the number of complaints filed against these industries.

Purpose

In accordance with s. 11.45(7)(f), F.S., this follow-up report informs the Legislature of actions taken by the Department of Agriculture and Consumer Services in response to Report No. 94-28, issued January 11, 1995. This report presents our assessment of the extent to which the Department has addressed our findings and recommendations.

Background

The Department of Agriculture and Consumer Services is the official state clearinghouse for consumer complaints, protection, and information for Florida. The Department's Bureau of Consumer Protection administers programs that regulate ballroom dance studios, business opportunities, health studios, home solicitation, sellers of travel, and telemarketing. These programs are established by Chs. 501 and 559, F.S., and are intended to protect consumers from unlawful, unethical, and unsafe professional and business practices. Although their specific regulatory provisions vary, the programs share several requirements. Regulated businesses must register with the Department and must disclose certain information to their customers. The businesses must also obtain surety bonds that are used to satisfy consumer claims should a business fail to provide contracted goods or services. The Department also mediates and resolves complaints filed by consumers against businesses. The Department also processes claims that consumers file against regulated businesses' surety bonds.

Prior Findings

In our prior report, we noted that the Department was unable to mediate the majority of the consumer complaints it received. This occurred because many businesses were closed or the matter was within the jurisdiction of another state agency when the Department began its mediation efforts. However, the Department was generally successful in resolving to consumers' satisfaction those cases that it had an opportunity to mediate. The Department also did not routinely track complaints it referred to other state agencies to determine if citizen's problems had been resolved. This reduced the state's ability to determine whether current regulatory requirements were successfully protecting consumers and resolving their problems.

The Department's ability to administer its claims process was hindered because some surety companies paid claims directly to consumers without notifying the Department. This reduced the Department's ability to equitably disburse bond proceeds if the total claims filed against a business exceeded its surety bonds.

We concluded that eliminating most of the programs we examined would not be beneficial and could increase the risk of consumer losses. However, eliminating the Department's role with the Home Solicitation Program appeared to be justified given that the program is voluntary and had a very low activity level. Only 16 persons registered as home solicitors with the Department in 1993-94, and only 2 persons were registered as of December 31, 1996. Finally, we reported that the Department's objectives and performance measures did not assess program outcomes, making it difficult for the Legislature to evaluate program performance.

Current Status

The Department and the Legislature have taken some steps we recommended, which improved the complaint process.

Actions Taken

Complaint Tracking. As we recommended, the Department has begun using its computer complaint database to track complaints that it refers to other state agencies for resolution. This has increased the Department's ability to monitor the disposition and resolution of consumer complaints that are not under its jurisdiction (e.g., Department of Business and Professional Regulation which is responsible for handling complaints made about medical doctors).

Claims Processing. As we recommended, the Legislature amended the Sellers of Travel law during the 1995 Session to require consumers to file claims with the Department, rather than surety companies, in order to be eligible for a refund. This appears to have resolved the earlier problem with the claims process, and the Department reports that no claims have been filed by consumers directly with security companies.

Vacation Certificates. As we recommended, the Florida Legislature, during the 1995 Session, amended the law to reform state regulation of sellers of vacation certificates. This action appeared to be successful in reducing the number of complaints filed against these businesses from 5,377 in 1993 to 2,624 in 1995. However, the number of complaints filed by consumers increased to 4,129 in 1996. According to staff, the Department is more proactive in educating citizens about their rights against sellers of vacation certificates and this has resulted in more complaints being filed. Also the 1995 Legislature eliminated some exemptions, thus increasing the number of sellers of vacation certificates who may have complaints filed against them. The Department submitted proposed legislation to the 1997 Legislature and Senate Bill 976 is currently being considered concerning this area.

Telemarketing Fraud. As we recommended, the 1996 Legislature amended statutory requirements which address telemarketing fraud. These changes revised the definition of commercial telephone solicitation and consumer goods or services; clarified exemptions for religious, charitable, political, or education purposes; and included crime relating to telemarketing within the definition of criminal activity and racketeering activity. Since these changes were enacted, the number of complaints received by the Department dropped by almost 36%, from 2,250 in 1993 to 1,433 in 1996. Department staff attribute this decline to the changes in the law and their aggressive educational efforts to make citizens aware of telemarketing fraud.

Monitoring Revenues and Expenditures. As we recommended, the programs' fee levels are currently covering their costs. The Department needs to continue to

monitor the revenues received and expenditures incurred by these programs to ensure that they are self-supporting.

Performance Objectives and Measures. While the Department has improved its performance objectives and outcome measures relating to these programs since our prior report, further improvements are needed. The Department has four outcome measures relating to consumer protection in its 1996-97 Legislative Budget Request. However, these measures do not assess program outcomes and they do not reflect all program activities. The Department should continue to develop measures that will allow the Legislature to assess its performance and funding needs. The Department is scheduled to submit its performance-based budgeting programs by September 1998.

Actions Not Taken

Eliminating the Department's Role With the Home Solicitation Program. Legislation was introduced, but not passed, during the 1996 Legislative Session to eliminate the Department's role with the Home Solicitation Program.¹ The Department submitted proposed legislation to the 1997 Legislature and Senate Bill 976 is currently being considered concerning this program. Given this program's voluntary nature and low activity level, we continue to believe that this action is warranted.

Centralizing Consumer Protection Functions. Our report recommended that the Legislature consider whether state consumer protection activities should be centralized. These functions are currently decentralized, with other agencies performing consumer protection functions. Notably, the Department of Business and Professional Regulation and the Department of Legal Affairs have major consumer protection responsibilities in addition to the Department of Agriculture and Consumer Services. This fragmentation can be confusing to citizens seeking state help to address problems they encounter with regulated businesses.

In 1993, the Legislature partially consolidated some consumer protection programs by merging the Departments of Business Regulation and Professional Regulation into the Department of Business and Professional Regulation. Totally centralizing all consumer protection activities within a single state agency may not be feasible, but some steps in this direction may be beneficial. Potential advantages of such action would include lowering operating and overhead costs and establishing a central location for consumers to make inquiries, submit complaints, and obtain general information regarding consumer protection. We continue to believe that the Legislature should consider this issue.

¹ Home Solicitation is the sale, lease, or rental of consumer goods or services in excess of \$25 when the transaction is a personal solicitation by the seller at a place other than the seller's fixed business location.