

By Senator Bronson

18-1131A-00

See HB

1                                   A bill to be entitled  
2           An act relating to consumer protection;  
3           amending s. 501.017, F.S.; requiring certain  
4           health studio contract refunds to be issued  
5           within a time certain; amending s. 559.803,  
6           F.S.; specifying additional information  
7           required in certain business opportunity  
8           contract disclosure statements; amending s.  
9           559.807, F.S.; revising application of  
10          requirements for certain securities relating to  
11          selling business opportunities; amending s.  
12          559.904, F.S.; revising certain requirements  
13          for motor vehicle repair shop registrations;  
14          amending s. 559.905, F.S.; providing additional  
15          estimated cost of repair requirements for  
16          written repair estimates; amending s. 559.9221,  
17          F.S.; revising Motor Vehicle Repair Advisory  
18          Council membership requirements; amending ss.  
19          325.202, 325.212, F.S., to conform; repealing  
20          s. 559.903(5), F.S., relating to a definition  
21          of minor repair service; providing an effective  
22          date.

23  
24 Be It Enacted by the Legislature of the State of Florida:  
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26           Section 1. Paragraphs (b) and (d) of subsection (1) of  
27 section 501.017, Florida Statutes, is amended to read:

28           501.017 Health studios; contracts.--

29           (1) Every contract for the sale of future health  
30 studio services which is paid for in advance or which the  
31 buyer agrees to pay for in future installment payments shall

1 be in writing and shall contain, contractual provisions to the  
2 contrary notwithstanding, in immediate proximity to the space  
3 reserved in the contract for the signature of the buyer, and  
4 in 10-point boldfaced type, language substantially equivalent  
5 to the following:

6 (b)1. A provision for the cancellation and refund of  
7 the contract if the contracting business location of the  
8 health studio goes out of business, or moves its facilities  
9 more than 5 driving miles from the business location  
10 designated in such contract and fails to provide, within 30  
11 days, a facility of equal quality located within 5 driving  
12 miles of the business location designated in such contract at  
13 no additional cost to the buyer.

14 2. A provision that notice of intent to cancel by the  
15 buyer shall be given in writing to the health studio. Such a  
16 notice of cancellation from the consumer shall also terminate  
17 automatically the consumer's obligation to any entity to whom  
18 the health studio has subrogated or assigned the consumer's  
19 contract. If the health studio wishes to enforce such contract  
20 after receipt of such showing, it may request the department  
21 to determine the sufficiency of the showing.

22 3. A provision that if the department determines that  
23 a refund is due the buyer, the refund shall be an amount  
24 computed by dividing the contract price by the number of weeks  
25 in the contract term and multiplying the result by the number  
26 of weeks remaining in the contract term. The business  
27 location of a health studio shall not be deemed out of  
28 business when temporarily closed for repair and renovation of  
29 the premises:

30 a. Upon sale, for not more than 14 consecutive days;  
31 or

1           b. During ownership, for not more than 7 consecutive  
2 days and not more than two periods of 7 consecutive days in  
3 any calendar year.

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5 A refund shall be issued within 30 days after receipt of the  
6 notice of cancellation made pursuant to this subsection.

7           (d) A provision for the cancellation of the contract  
8 if the buyer dies or becomes physically unable to avail  
9 himself or herself of a substantial portion of those services  
10 which he or she used from the commencement of the contract  
11 until the time of disability, with refund of funds paid or  
12 accepted in payment of the contract in an amount computed by  
13 dividing the contract price by the number of weeks in the  
14 contract term and multiplying the result by the number of  
15 weeks remaining in the contract term. The contract may  
16 require a buyer or the buyer's estate seeking relief under  
17 this paragraph to provide proof of disability or death. A  
18 physical disability sufficient to warrant cancellation of the  
19 contract by the buyer shall be established if the buyer  
20 furnishes to the health studio a certification of such  
21 disability by a physician licensed under chapter 458, chapter  
22 459, chapter 460, or chapter 461 to the extent the diagnosis  
23 or treatment of the disability is within the physician's scope  
24 of practice. A refund shall be issued within 30 days after  
25 receipt of the notice of cancellation made pursuant to this  
26 subsection.

27           Section 2. Present subsections (11), (12), and (13) of  
28 section 559.803, Florida Statutes, are renumbered as  
29 subsections (12), (13), and (14), respectively, and new  
30 subsection (11) is added to that section, to read:

1           559.803 Disclosure statement.--At least 3 working days  
2 prior to the time the purchaser signs a business opportunity  
3 contract, or at least 3 working days prior to the receipt of  
4 any consideration by the seller, whichever occurs first, the  
5 seller must provide the prospective purchaser a written  
6 document, the cover sheet of which is entitled in at least  
7 12-point boldfaced capital letters "DISCLOSURES REQUIRED BY  
8 FLORIDA LAW." Under this title shall appear the following  
9 statement in at least 10-point type: "The State of Florida  
10 has not reviewed and does not approve, recommend, endorse, or  
11 sponsor any business opportunity. The information contained  
12 in this disclosure has not been verified by the state. If you  
13 have any questions about this investment, see an attorney  
14 before you sign a contract or agreement." Nothing except the  
15 title and required statement shall appear on the cover sheet.  
16 Immediately following the cover sheet, the seller must provide  
17 an index page that briefly lists the contents of the  
18 disclosure document as required in this section and any pages  
19 on which the prospective purchaser can find each required  
20 disclosure. At the top of the index page, the following  
21 statement must appear in at least 10-point type: "The State of  
22 Florida requires sellers of business opportunities to disclose  
23 certain information to prospective purchasers. This index is  
24 provided to help you locate this information." If the index  
25 contains other information not required by this section, the  
26 seller shall place a designation beside each of the  
27 disclosures required by this section and provide an  
28 explanation of the designation at the end of the statement at  
29 the top of the index page. The disclosure document shall  
30 contain the following information:  
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1           (11)(a) The total number of persons who purchased the  
2 business opportunity being offered by the seller within the  
3 past 3 years.

4           (b) The names, addresses, and telephone numbers of the  
5 10 persons who previously purchased the business opportunity  
6 from the seller and who are the most geographically close to  
7 the potential purchaser.

8  
9           Should any seller of business opportunities prepare a  
10 disclosure statement pursuant to 16 C.F.R. ss. 436.1 et seq.,  
11 a Trade Regulation Rule of the Federal Trade Commission  
12 regarding Disclosure Requirements and Prohibitions Concerning  
13 Franchising and Business Opportunity Ventures, the seller may  
14 file that disclosure statement in lieu of the document  
15 required pursuant to this section. Should the seller be  
16 required pursuant to 16 C.F.R. to prepare any other documents  
17 to be presented to the prospective purchaser, those documents  
18 shall also be filed with the department.

19           Section 3. Section 559.807, Florida Statutes, is  
20 amended to read:

21           559.807 Bond or trust account required.--

22           (1) If the business opportunity seller makes any  
23 representations set forth in s. 559.801(1)(a)3., the seller  
24 must either have obtained a surety bond issued by a surety  
25 company authorized to do business in this state or have  
26 established a certificate of deposit ~~trust account~~ or a  
27 guaranteed letter of credit with a licensed and insured bank  
28 or savings institution located in the state. The amount of  
29 the bond, certificate of deposit ~~trust account~~, or guaranteed  
30 letter of credit shall be an amount not less than \$50,000.

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1           (2) The bond, certificate of deposit, or guaranteed  
2 letter of credit trust account shall be in the favor of the  
3 department for the use and benefit of any person who is  
4 injured by the fraud, misrepresentation, damaged by any  
5 violation of ss. 559.80-559.815, or by the seller's breach of  
6 the contract, financial failure, or violation of any provision  
7 of this part by the seller. Such liability may be enforced by  
8 filing an action at law in a court of competent jurisdiction  
9 without precluding enforcement in an administrative action  
10 pursuant to chapter 120. However, the bond, certificate of  
11 deposit, or guaranteed letter of credit shall be amenable and  
12 enforceable only by and through administrative proceedings  
13 before the department. A money judgment resulting from an  
14 action at law, less any award for costs and attorney's fees,  
15 shall be prima facie evidence sufficient to establish the  
16 value of the claim in an administrative action. It is the  
17 intent of the Legislature that such bond, certificate of  
18 deposit, or guaranteed letter of credit shall be applicable  
19 and liable only for payment of claims duly adjudicated by  
20 order of the department. The bond, certificate of deposit, or  
21 guaranteed letter of credit shall be open to successive claims  
22 but for the business opportunity sale or of any obligation  
23 arising therefrom, may bring an action against the bond, trust  
24 account, or guaranteed letter of credit to recover damages  
25 suffered; however, the aggregate amount may not liability of  
26 the surety or trustee shall be only for actual damages and in  
27 no event shall exceed the amount of the bond, certificate of  
28 deposit trust account, or guaranteed letter of credit.

29           Section 4. Subsections (3), (4), (5), and (6) of  
30 section 559.904, Florida Statutes, are amended to read:

31

1           559.904 Motor vehicle repair shop registration;  
2 application; exemption.--

3           (3) Each application for registration must be  
4 accompanied by a registration fee set forth as follows:

5           ~~(a) If the place of business only performed "minor~~  
6 ~~repair service": \$25.~~

7           (a)~~(b)~~ If the place of business has 1 to 5 employees:  
8 \$50.

9           (b)~~(c)~~ If the place of business has 6 to 10 employees:  
10 \$150.

11           (c)~~(d)~~ If the place of business has 11 or more  
12 employees: \$300.

13           (4) Each application for registration must be  
14 accompanied by copies of the applicant's estimate and invoice  
15 forms. Such forms must comply with applicable provisions of  
16 this act before a registration may be issued.

17           (5)~~(4)~~ No annual registration fee is required for any  
18 motor vehicle repair shop which has a local municipal or  
19 county license issued pursuant to an ordinance containing  
20 standards which the department determines are at least equal  
21 to the requirements of this part, or for any motor vehicle  
22 dealer licensed pursuant to chapter 320.

23           (6)~~(5)~~ The department shall issue to each applicant a  
24 registration certificate in the form and size as prescribed by  
25 the department in accordance with s. 120.60. In the case of  
26 an applicant with more than one place of business, the  
27 department shall issue a registration certificate for each  
28 place of business. The certificate must show at least the name  
29 and address of the motor vehicle repair shop and the  
30 registration number for that place of business. In the case of  
31 a mobile motor vehicle repair shop, the certificate must show

1 the home address of the owner, if different from the business  
2 address.

3 ~~(6) Any affidavit of exemption proof of filing~~  
4 ~~certificate, issued by the department prior to July 1, 1997,~~  
5 ~~to a motor vehicle repair shop conducting only minor repair~~  
6 ~~services shall be valid until its expiration.~~

7 Section 5. Paragraph (h) of subsection (1) of section  
8 559.905, Florida Statutes, is amended to read:

9 559.905 Written motor vehicle repair estimate and  
10 disclosure statement required.--

11 (1) When any customer requests a motor vehicle repair  
12 shop to perform repair work on a motor vehicle, the cost of  
13 which repair work will exceed \$100 to the customer, the shop  
14 shall prepare a written repair estimate, which is a form  
15 setting forth the estimated cost of repair work, including  
16 diagnostic work, before effecting any diagnostic work or  
17 repair. The written repair estimate shall also include the  
18 following items:

19 (h) The estimated cost of repair which shall include  
20 any charge for shop supply or for hazardous or other waste  
21 removal and if a charge is included, the estimate shall  
22 include the following statement: "This charge represents  
23 costs and profits to the motor vehicle repair facility for  
24 miscellaneous shop supplies or waste disposal." If a charge is  
25 mandated by state or federal law, the estimate shall contain a  
26 statement identifying the law and the specific amount charged  
27 under the law.

28 Section 6. Subsection (1) of section 559.9221, Florida  
29 Statutes, is amended to read:

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1           559.9221 Motor Vehicle Repair Advisory Council.--The  
2 Motor Vehicle Repair Advisory Council is created to advise and  
3 assist the department in carrying out this part.

4           (1) The membership of the council may not exceed 11  
5 members appointed by the Commissioner of Agriculture.

6           (a) Eight industry members of the council must be  
7 chosen from individuals already engaged in the motor vehicle  
8 repair business who are eligible to be registered under this  
9 part. ~~Such members must become registered by October 1, 1993.~~

10 ~~Thereafter,~~The professional members of this council must be  
11 licensed under this part. The commissioner shall select one  
12 industry member from each of the following categories:

- 13           1. Independent automotive mechanics shops.
- 14           2. Franchise or company-owned automotive mechanics  
15 shops.
- 16           3. Independent automotive collision shops.
- 17           4. Franchise or company-owned automotive collision  
18 shops.
- 19           5. Independent tire dealer.
- 20           6. Franchise or company-owned tire dealer.
- 21           7. Independent motor vehicle dealer licensed under s.  
22 320.27.
- 23           8. Franchise motor vehicle dealer licensed under s.  
24 320.27.

25           (b) One member of the council may ~~must~~ be chosen from  
26 persons already engaged ~~solely~~ in motor vehicle ~~minor~~ repair  
27 service.

28           (c) Two consumer members of the council must be  
29 residents of this state and must not be connected with the  
30 motor vehicle repair business.

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1           ~~(d) Within 30 days after July 1, 1993, the~~  
2 ~~commissioner shall appoint one consumer member and four~~  
3 ~~industry members for terms of 2 years and one consumer member,~~  
4 ~~one minor repair shop member, and four industry members for~~  
5 ~~terms of 4 years.~~ As terms of the members expire, the  
6 commissioner shall appoint successors for terms of 4 years.  
7 Members shall serve from the time of their appointment until  
8 their successors are appointed.

9           Section 7. Subsection (12) of section 325.202, Florida  
10 Statutes, is amended to read:

11           325.202 Definitions.--As used in this act, the term:

12           (12) "Reinspection facility" means any motor vehicle  
13 repair shop as defined in s. 559.903~~(7)~~which has been  
14 licensed by the department pursuant to the provisions of s.  
15 325.212.

16           Section 8. Subsection (2) of section 325.212, Florida  
17 Statutes, is amended to read:

18           325.212 Reinspections; reinspection facilities; rules;  
19 minority business participation.--

20           (2) Any motor vehicle repair shop, as defined in s.  
21 559.903~~(7)~~, may apply to the department, on a form approved by  
22 the department, to be licensed as a reinspection facility to  
23 reinspect motor vehicles which fail to pass inspections  
24 required by this act.

25           Section 9. Subsection (5) of section 559.903, Florida  
26 Statutes, is repealed.

27           Section 10. This act shall take effect October 1,  
28 2000.

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LEGISLATIVE SUMMARY

Revises various consumer protection provisions relating to health studio contracts, sales of business opportunities, motor vehicle repair shop registrations and repair estimates, and Motor Vehicle Repair Advisory Council membership requirements. (See bill for details.)