

Bill No. CS for SB 1922

Amendment No.      Barcode 861714

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Geller moved the following amendment:

**Senate Amendment (with title amendment)**

On page 43, between lines 26 and 27,

insert:

Section 46. Subsection (8) of section 400.925, Florida Statutes, is amended to read:

400.925 Definitions.--As used in this part, the term:

(8) "Home medical equipment" includes any product as defined by the Federal Drug Administration's Drugs, Devices and Cosmetics Act, any products reimbursed under the Medicare Part B Durable Medical Equipment benefits, or any products reimbursed under the Florida Medicaid durable medical equipment program. Home medical equipment includes, but is not limited to, oxygen and related respiratory equipment. Home medical equipment includes customized wheelchairs and related seating and positioning, but does not include prosthetics or orthotics or any splints, braces, or aids custom fabricated by a licensed health care practitioner. Home medical equipment includes assistive technology devices, including: manual

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1 wheelchairs, motorized wheelchairs, motorized scooters,  
2 voice-synthesized computer modules, optical scanners, talking  
3 software, braille printers, environmental control devices for  
4 use by person with quadriplegia, motor vehicle adaptive  
5 transportation aids, devices that enable persons with severe  
6 speech disabilities to in effect speak, personal transfer  
7 systems and specialty beds, including a demonstrator, for use  
8 by a person with a medical need.

9           Section 47. Paragraph (a) of subsection (5) of section  
10 400.93, Florida Statutes, is amended to read:

11           400.93 Home medical equipment providers to be  
12 licensed; expiration of license; exemptions; unlawful acts;  
13 penalties.--

14           (5) The following are exempt from home medical  
15 equipment provider licensure, unless they have a separate  
16 company, corporation, or division that is in the business of  
17 providing home medical equipment and services for sale or rent  
18 to consumers at their regular or temporary place of residence  
19 pursuant to the provisions of this part:

20           (a) Providers operated by the Department of Health or  
21 Federal Government.

22           Section 48. Section 427.802, Florida Statutes, is  
23 amended to read:

24           427.802 Definitions.--As used in this part:

25           (1) "Assistive technology devices" means manual  
26 wheelchairs, motorized wheelchairs, motorized scooters,  
27 voice-synthesized computer modules, optical scanners, talking  
28 software, braille printers, environmental control devices for  
29 use by a person with quadriplegia, motor vehicle adaptive  
30 transportation aids, devices that enable persons with severe  
31 speech disabilities to in effect speak, personal transfer

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1 systems, and specialty beds, including a demonstrator, that a  
2 consumer purchases or accepts transfer of in this state for  
3 use by a person with a disability.

4 ~~(2) "Assistive Technology Device Warranty Act rights~~  
5 ~~period" means the period ending 1 year after first delivery of~~  
6 ~~the assistive technology device to the consumer or the~~  
7 ~~manufacturer's express written warranty, whichever is longer.~~

8 (2)~~(3)~~ "Person with a disability" means any person who  
9 has one or more permanent physical or mental limitations that  
10 restrict his or her ability to perform the normal activities  
11 of daily living and impede his or her capacity to live  
12 independently.

13 (3)~~(4)~~ "Assistive technology device dealer" means a  
14 person who is business entity that is primarily engaged in the  
15 business of selling or leasing of assistive technology  
16 devices. ~~As used in this subsection, the term "primarily"~~  
17 ~~means no less than 30 percent of the business entity's gross~~  
18 ~~sales in the previous fiscal year.~~

19 (4)~~(5)~~ "Assistive technology device lessor" means a  
20 person who leases an assistive technology device to a  
21 consumer, or holds the lessor's rights, under a written lease.

22 (5)~~(6)~~ "Collateral costs" means expenses incurred by a  
23 consumer in connection with the repair of a nonconformity,  
24 including the costs of obtaining an alternative assistive  
25 technology device.

26 (6)~~(7)~~ "Consumer" means any of the following:

27 (a) The purchaser of an assistive technology device,  
28 if the assistive technology device was purchased from an  
29 assistive technology device dealer or manufacturer for  
30 purposes other than resale.

31 (b) A person to whom the assistive technology device

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1 is transferred for purposes other than resale, if the transfer  
2 occurs before the expiration of an express warranty applicable  
3 to the assistive technology device.

4 (c) A person who may enforce the warranty.

5 (d) A person who leases an assistive technology device  
6 from an assistive technology device lessor under a written  
7 lease.

8 (7)~~(8)~~ "Demonstrator" means an assistive technology  
9 device used primarily for the purpose of demonstration to the  
10 public.

11 ~~(9) "Department" means the Department of Agriculture  
12 and Consumer Services.~~

13 (8)~~(10)~~ "Early termination cost" means any expense or  
14 obligation that an assistive technology device lessor incurs  
15 as a result of both the termination of a written lease before  
16 the termination date set forth in that lease and the return of  
17 an assistive technology device to a manufacturer pursuant to  
18 this section. The term includes a penalty for prepayment  
19 under a financial arrangement.

20 (9)~~(11)~~ "Early termination saving" means any expense  
21 or obligation that an assistive technology device lessor  
22 avoids as a result of both the termination of a written lease  
23 before the termination date set forth in the lease and the  
24 return of an assistive technology device to a manufacturer  
25 pursuant to this section. The term includes an interest  
26 charge that the assistive technology device lessor would have  
27 paid to finance the assistive technology device or, if the  
28 assistive technology device lessor does not finance the  
29 assistive technology device, the difference between the total  
30 amount for which the lease obligates the consumer during the  
31 period of the lease term remaining after the early termination

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1 and the present value of that amount at the date of the early  
2 termination.

3 (10)~~(12)~~ "Manufacturer" means a business entity that  
4 manufactures or produces assistive technology devices for sale  
5 and agents of that business entity, including an importer, a  
6 distributor, a factory branch, a distributor branch, and any  
7 warrantors of the manufacturer's assistive technology device,  
8 but not including an assistive technology device dealer.

9 (11)~~(13)~~ "Nonconformity" means a condition or defect  
10 of an assistive technology device which substantially impairs  
11 the use, value, or safety of the device and which is covered  
12 by an express warranty applicable to the assistive technology  
13 device, but does not include a condition or defect that is the  
14 result of abuse, neglect, excessive wear, or unauthorized  
15 modification or alteration of the assistive technology device  
16 by a consumer.

17 (12)~~(14)~~ "Reasonable attempt to repair" means, within  
18 the terms of an express warranty applicable to a new assistive  
19 technology device:

20 (a) A maximum of three efforts by the manufacturer,  
21 the assistive technology device lessor, or any of the  
22 manufacturer's authorized assistive technology device dealers  
23 to repair a nonconformity that is subject to repair under the  
24 warranty; or

25 (b) The passage of at least 30 cumulative days during  
26 which the assistive technology device is out of service  
27 because of a nonconformity that is covered by the warranty.

28 Section 49. Section 427.803, Florida Statutes, is  
29 amended to read:

30 427.803 Express Duty of manufacturer and an assistive  
31 technology device dealer to conform an assistive technology

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1 ~~device to the warranty.--~~

2       (1) A manufacturer who sells a new assistive  
3 technology device to a consumer, either directly or through an  
4 assistive technology device dealer, shall furnish the consumer  
5 with an express warranty for the assistive technology device.  
6 The duration of the express warranty must be at least 1 year  
7 after first delivery of the assistive technology device to the  
8 consumer. In the absence of an express warranty from the  
9 manufacturer, the manufacturer is considered to have expressly  
10 warranted to the consumer of an assistive technology device  
11 that, for a period of 1 year after the date of first delivery  
12 to the consumer, the assistive technology device will be free  
13 from any condition or defect that substantially impairs the  
14 value of the assistive technology device to the consumer.

15       ~~(2) If an assistive technology device does not conform~~  
16 ~~to the warranty and the consumer first reports the problem to~~  
17 ~~the manufacturer during the Assistive Technology Device~~  
18 ~~Warranty Act rights period, the manufacturer shall make such~~  
19 ~~repairs as are necessary to conform the device to the~~  
20 ~~warranty, irrespective of whether such repairs are made after~~  
21 ~~the expiration of the Assistive Technology Device Warranty Act~~  
22 ~~rights period. Such repairs shall be at no cost to the~~  
23 ~~consumer if reported to the manufacturer or assistive~~  
24 ~~technology device dealer during the Assistive Technology~~  
25 ~~Device Warranty Act rights period. Nothing in this subsection~~  
26 ~~shall be construed to grant an extension of the Assistive~~  
27 ~~Technology Device Warranty Act rights period or to expand the~~  
28 ~~time within which a consumer must file a complaint under this~~  
29 ~~chapter.~~

30       ~~(3) Each manufacturer or assistive technology device~~  
31 ~~dealer shall provide to its consumers conspicuous notice of~~

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1 ~~the address and phone number for its zone, district, or~~  
2 ~~regional office for this state in the written warranty or~~  
3 ~~owner's manual. Within 10 days after the department's written~~  
4 ~~request, a manufacturer shall forward to the department a copy~~  
5 ~~of the owner's manual and any written warranty for each make~~  
6 ~~and model of assistive technology device that it sells in this~~  
7 ~~state.~~

8 ~~(4) The manufacturer shall provide to the assistive~~  
9 ~~technology device dealer and, at the time of acquisition, the~~  
10 ~~assistive technology device dealer shall provide to the~~  
11 ~~consumer a written statement that explains the consumer's~~  
12 ~~rights under this chapter. The written statement shall be~~  
13 ~~prepared by the department and shall contain a toll-free~~  
14 ~~number for the department that the consumer can contact to~~  
15 ~~obtain information regarding the consumer's rights and~~  
16 ~~obligations under this chapter or to commence arbitration. The~~  
17 ~~consumer's signed acknowledgment of receipt of materials~~  
18 ~~required under this subsection shall constitute prima facie~~  
19 ~~evidence of compliance by the manufacturer and assistive~~  
20 ~~technology device dealer. The form of the acknowledgments~~  
21 ~~shall be approved by the department, and the assistive~~  
22 ~~technology device dealer shall maintain the consumer's signed~~  
23 ~~acknowledgment for 3 years.~~

24 ~~(5) A manufacturer or an assistive technology device~~  
25 ~~dealer shall provide to the consumer, each time the consumer's~~  
26 ~~assistive technology device is returned after being examined~~  
27 ~~or repaired under the warranty, a fully itemized, legible~~  
28 ~~statement of any diagnosis made and all work performed on the~~  
29 ~~assistive technology device, including, but not limited to, a~~  
30 ~~general description of the problem reported by the consumer or~~  
31 ~~an identification of the defect or condition, parts and labor,~~

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1 ~~the date on which the assistive technology device was~~  
2 ~~submitted for examination or repair, and the date when the~~  
3 ~~repair or examination was completed.~~

4 Section 50. Section 427.804, Florida Statutes, is  
5 amended to read:

6 427.804 Repair of nonconforming assistive technology  
7 devices; refund or replacement of devices after attempt to  
8 repair; sale or lease of returned device; arbitration;  
9 ~~investigation~~ limitation of rights.--

10 (1) If a new assistive technology device does not  
11 conform to an applicable express warranty and the consumer  
12 reports the nonconformity to the manufacturer, the assistive  
13 technology device lessor, or any of the manufacturer's  
14 authorized assistive technology device dealers and makes the  
15 assistive technology device available for repair within 1 year  
16 after first delivery or return of the assistive technology  
17 device to the consumer, the nonconformity must be repaired at  
18 no charge to the consumer.

19 (2) If, after a reasonable attempt to repair, the  
20 nonconformity is not repaired, the manufacturer, at the  
21 direction of a consumer as defined in s. 427.802(6)(7)(a)-(c),  
22 must do one of the following:

23 (a) Accept return of the assistive technology device  
24 and replace the assistive technology device with a comparable  
25 new assistive technology device and refund any collateral  
26 costs.

27 (b) Accept return of the assistive technology device  
28 and refund to the consumer and to any holder of a perfected  
29 security interest in the consumer's assistive technology  
30 device, as the interest may appear, the full purchase price  
31 plus any finance charge amount paid by the consumer at the



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1 point of sale, and collateral costs.

2 (c) With respect to a consumer as defined in s.  
3 427.802~~(6)(7)~~(d), accept return of the assistive technology  
4 device, refund to the assistive technology device lessor and  
5 to any holder of a perfected security interest in the  
6 assistive technology device, as the interest may appear, the  
7 current value of the written lease, and refund to the consumer  
8 the amount that the consumer paid under the written lease plus  
9 any collateral costs.

10 (3) The current value of the written lease equals the  
11 total amount for which the lease obligates the consumer during  
12 the period of the lease remaining after its early termination  
13 plus the assistive technology device dealer's early  
14 termination costs and the value of the assistive technology  
15 device at the lease expiration date if the lease sets forth  
16 the value, less the assistive technology device lessor's early  
17 termination savings.

18 (4) To receive a comparable new assistive technology  
19 device or a refund due under paragraph (2)(a), a consumer must  
20 offer to the manufacturer of the assistive technology device  
21 having the nonconformity to transfer possession of the  
22 assistive technology device to the manufacturer. No later  
23 than 30 days after the offer, the manufacturer shall provide  
24 the consumer with the comparable assistive technology device  
25 or refund. When the manufacturer provides the comparable  
26 assistive technology device or refund, the consumer shall  
27 return the assistive technology device having the  
28 nonconformity to the manufacturer, along with any endorsements  
29 necessary to transfer real possession to the manufacturer.

30 (5) To receive a refund due under paragraph (2)(b), a  
31 consumer must offer to return the assistive technology device

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1 having the nonconformity to its manufacturer. No later than  
2 30 days after the offer, the manufacturer shall provide the  
3 refund to the consumer who paid for or the provider who billed  
4 a third party payor source for the assistive technology  
5 device. The provider shall return the manufacturer's refund  
6 to the third party payor source, unless the provider was not  
7 reimbursed by the third party payor. When the manufacturer  
8 provides the refund, the consumer shall return to the  
9 manufacturer the assistive technology device having the  
10 nonconformity.

11 (6) To receive a refund due under paragraph (2)(c), an  
12 assistive technology device lessor must offer to transfer  
13 possession of the assistive technology device having the  
14 nonconformity to its manufacturer. No later than 30 days  
15 after the offer, the manufacturer shall provide the refund to  
16 the assistive technology device lessor. When the manufacturer  
17 provides the refund, the assistive technology device lessor  
18 shall provide to the manufacturer any endorsements necessary  
19 to transfer legal possession to the manufacturer.

20 (7) A person may not enforce the lease against the  
21 consumer after the consumer receives a refund due under  
22 paragraph (2)(c).

23 (8) An assistive technology device that is returned by  
24 a consumer or assistive technology device lessor in this  
25 state, or by a consumer or assistive technology device lessor  
26 in another state under a similar law of that state, may not be  
27 sold or leased again in this state, unless full disclosure of  
28 the reasons for return is made to any prospective buyer or  
29 lessee.

30 ~~(9) Each consumer may submit any dispute arising under~~  
31 ~~this part to the department by completing a complaint form.~~

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1 ~~The department may investigate the complaint on behalf of the~~  
 2 ~~consumer if reasonable evidence warrants such an action.~~

3 ~~(10) The department shall process consumer complaints~~  
 4 ~~pursuant to s. 570.544.~~

5 (9)~~(11)~~ Each consumer may submit any dispute arising  
 6 under this part to an alternative arbitration mechanism  
 7 established pursuant to chapter 682. Upon notice by the  
 8 consumer, all manufacturers must submit to such alternative  
 9 arbitration.

10 (10)~~(12)~~ Such alternative arbitration must be  
 11 conducted by a professional arbitrator or arbitration firm  
 12 appointed under chapter 682 and any applicable rules. These  
 13 procedures must provide for the personal objectivity of the  
 14 arbitrators and for the right of each party to present its  
 15 case, to be in attendance during any presentation made by the  
 16 other party, and to rebut or refute such a presentation.

17 (11)~~(13)~~ This part does not limit rights or remedies  
 18 available to a consumer under any other law.

19 Section 51. Section 427.8041, Florida Statutes, is  
 20 repealed.

21 Section 52. Subsection (6) is added to section  
 22 496.411, Florida Statutes, to read:

23 496.411 Disclosure requirements and duties of  
 24 charitable organizations and sponsors.--

25 (6) Each charitable organization or sponsor that is  
 26 required to register under s. 496.405 shall conspicuously  
 27 display the following information on every printed  
 28 solicitation, written confirmation, receipt, or reminder of a  
 29 contribution:

30 (a) The organization's or sponsor's registration  
 31 number issued by the department under this chapter.

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1           (b) The percentage, if any, of each contribution that  
2 is retained by any professional solicitor that has contracted  
3 with the organization or sponsor.

4           (c) The percentage of each contribution that is  
5 received by the organization or sponsor.

6  
7 If the solicitation consists of more than a single item, the  
8 statement shall be displayed prominently in the solicitation  
9 materials.

10           Section 53. Paragraphs (b) and (d) of subsection (1)  
11 of section 501.017, Florida Statutes, are amended to read:

12           501.017 Health studios; contracts.--

13           (1) Every contract for the sale of future health  
14 studio services which is paid for in advance or which the  
15 buyer agrees to pay for in future installment payments shall  
16 be in writing and shall contain, contractual provisions to the  
17 contrary notwithstanding, in immediate proximity to the space  
18 reserved in the contract for the signature of the buyer, and  
19 in 10-point boldfaced type, language substantially equivalent  
20 to the following:

21           (b)1. A provision for the cancellation and refund of  
22 the contract if the contracting business location of the  
23 health studio goes out of business, or moves its facilities  
24 more than 5 driving miles from the business location  
25 designated in such contract and fails to provide, within 30  
26 days, a facility of equal quality located within 5 driving  
27 miles of the business location designated in such contract at  
28 no additional cost to the buyer.

29           2. A provision that notice of intent to cancel by the  
30 buyer shall be given in writing to the health studio. Such a  
31 notice of cancellation from the consumer shall also terminate

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1 automatically the consumer's obligation to any entity to whom  
2 the health studio has subrogated or assigned the consumer's  
3 contract. If the health studio wishes to enforce such contract  
4 after receipt of such showing, it may request the department  
5 to determine the sufficiency of the showing.

6           3. A provision that if the department determines that  
7 a refund is due the buyer, the refund shall be an amount  
8 computed by dividing the contract price by the number of weeks  
9 in the contract term and multiplying the result by the number  
10 of weeks remaining in the contract term. The business  
11 location of a health studio shall not be deemed out of  
12 business when temporarily closed for repair and renovation of  
13 the premises:

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

16           b. During ownership, for not more than 7 consecutive  
17 days and not more than two periods of 7 consecutive days in  
18 any calendar year.

19

20 A refund shall be issued within 30 days after receipt of the  
21 notice of cancellation made pursuant to this paragraph.

22           (d) A provision for the cancellation of the contract  
23 if the buyer dies or becomes physically unable to avail  
24 himself or herself of a substantial portion of those services  
25 which he or she used from the commencement of the contract  
26 until the time of disability, with refund of funds paid or  
27 accepted in payment of the contract in an amount computed by  
28 dividing the contract price by the number of weeks in the  
29 contract term and multiplying the result by the number of  
30 weeks remaining in the contract term. The contract may  
31 require a buyer or the buyer's estate seeking relief under

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1 this paragraph to provide proof of disability or death. A  
 2 physical disability sufficient to warrant cancellation of the  
 3 contract by the buyer shall be established if the buyer  
 4 furnishes to the health studio a certification of such  
 5 disability by a physician licensed under chapter 458, chapter  
 6 459, chapter 460, or chapter 461 to the extent the diagnosis  
 7 or treatment of the disability is within the physician's scope  
 8 of practice. A refund shall be issued within 30 days after  
 9 receipt of the notice of cancellation made pursuant to this  
 10 paragraph.

11 Section 54. Subsection (2) of section 501.019, Florida  
 12 Statutes, is amended to read:

13 501.019 Health studios; penalties.--

14 (2) Any person ~~health studio owner or, in the case of~~  
 15 ~~corporate ownership, any officer of the corporation, or any~~  
 16 ~~manager of a health studio or health studio's business~~  
 17 ~~location,~~ who knowingly makes a false representation to the  
 18 department with the intent to obtain an exemption of any kind  
 19 from the requirements of s. 501.016 commits a felony of the  
 20 third degree, punishable as provided in s. 775.082, s.  
 21 775.083, or s. 775.084.

22 Section 55. Paragraph (a) of subsection (2), paragraph  
 23 (b) of subsection (4), and paragraph (c) of subsection (5) of  
 24 section 539.001, Florida Statutes, are amended, paragraph (n)  
 25 is added to subsection (12) of that section, and subsection  
 26 (21) of that section is amended, to read:

27 539.001 The Florida Pawnbroking Act.--

28 (2) DEFINITIONS.--As used in this section, the term:

29 (a) "Agency" means ~~the Division of Consumer Services~~  
 30 ~~of~~ the Department of Agriculture and Consumer Services.

31 (4) ELIGIBILITY FOR LICENSE.--

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1 (b) Any applicant claiming to have a net worth of  
2 \$50,000 or more shall file with the agency department, at the  
3 time of applying for a license, the following documentation:

4 1. A current financial statement prepared by a Florida  
5 certified public accountant; or

6 2. An affidavit stating the applicant's net worth is  
7 at least \$50,000, accompanied by supporting documentation; or

8 3. If the applicant is a corporation, a copy of the  
9 applicant's most recently filed federal tax return.

10

11 If the agency cannot verify that the applicant meets the net  
12 worth requirement for a license, the agency may require a  
13 finding, including the presentation of a current balance  
14 sheet, by an accounting firm or individual holding a permit to  
15 practice public accounting in this state, that the accountant  
16 has reviewed the books and records of the applicant and that  
17 the applicant meets the net worth requirement.

18 (5) APPLICATION FOR LICENSE.--

19 (c) Each initial application for a license must be  
20 accompanied by a complete set of fingerprints taken by an  
21 authorized law enforcement officer, \$300 for the first year's  
22 license fee, and the actual cost to the agency department for  
23 fingerprint analysis for each person subject to the  
24 eligibility requirements. The agency shall submit the  
25 fingerprints to the Department of Law Enforcement for state  
26 processing, and the Department of Law Enforcement shall  
27 forward the fingerprints to the Federal Bureau of  
28 Investigation for a national criminal history check. These  
29 fees and costs are not refundable.

30 (12) PROHIBITED ACTS.--A pawnbroker, or an employee or  
31 agent of a pawnbroker, may not:

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1           (n) Knowingly accept or receive misappropriated  
2 property from a conveying customer in a pawn or purchase  
3 transaction.

4           (21) RULEMAKING AUTHORITY.--The agency ~~department~~ has  
5 authority to adopt rules pursuant to chapter 120 to implement  
6 the provisions of this section.

7           Section 56. Paragraph (a) of subsection (1) of section  
8 559.801, Florida Statutes, is amended to read:

9           559.801 Definitions.--For the purpose of ss.  
10 559.80-559.815, the term:

11           (1)(a) "Business opportunity" means the sale or lease  
12 of any products, equipment, supplies, or services which are  
13 sold or leased to a purchaser to enable the purchaser to start  
14 a business for which the purchaser is required to pay an  
15 initial fee or sum of money which exceeds \$500 to the seller,  
16 and in which the seller represents:

17           1. That the seller or person or entity affiliated with  
18 or referred by the seller will provide locations or assist the  
19 purchaser in finding locations for the use or operation of  
20 vending machines, racks, display cases, currency or card  
21 operated equipment, or other similar devices or  
22 currency-operated amusement machines or devices on premises  
23 neither owned nor leased by the purchaser or seller;

24           2. That the seller will purchase any or all products  
25 made, produced, fabricated, grown, bred, or modified by the  
26 purchaser using in whole or in part the supplies, services, or  
27 chattels sold to the purchaser;

28           3. That the seller guarantees ~~in writing~~ that the  
29 purchaser will derive income from the business opportunity  
30 which exceeds the price paid or rent charged for the business  
31 opportunity or that the seller will refund all or part of the



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1 price paid or rent charged for the business opportunity, or  
2 will repurchase any of the products, equipment, supplies, or  
3 chattels supplied by the seller, if the purchaser is  
4 unsatisfied with the business opportunity; or

5           4. That the seller will provide a sales program or  
6 marketing program that will enable the purchaser to derive  
7 income from the business opportunity, except that this  
8 paragraph does not apply to the sale of a sales program or  
9 marketing program made in conjunction with the licensing of a  
10 trademark or service mark that is registered under the laws of  
11 any state or of the United States if the seller requires use  
12 of the trademark or service mark in the sales agreement.

13  
14 For the purpose of subparagraph 1., the term "assist the  
15 purchaser in finding locations" means, but is not limited to,  
16 supplying the purchaser with names of locator companies,  
17 contracting with the purchaser to provide assistance or supply  
18 names, or collecting a fee on behalf of or for a locator  
19 company.

20           Section 57. Subsection (8) of section 559.803, Florida  
21 Statutes, is amended, present subsections (11), (12), and (13)  
22 of that section are renumbered as subsections (12), (13), and  
23 (14), respectively, and a new subsection (11) is added to that  
24 section, to read:

25           559.803 Disclosure statement.--At least 3 working days  
26 prior to the time the purchaser signs a business opportunity  
27 contract, or at least 3 working days prior to the receipt of  
28 any consideration by the seller, whichever occurs first, the  
29 seller must provide the prospective purchaser a written  
30 document, the cover sheet of which is entitled in at least  
31 12-point boldfaced capital letters "DISCLOSURES REQUIRED BY

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1 FLORIDA LAW." Under this title shall appear the following  
2 statement in at least 10-point type: "The State of Florida  
3 has not reviewed and does not approve, recommend, endorse, or  
4 sponsor any business opportunity. The information contained  
5 in this disclosure has not been verified by the state. If you  
6 have any questions about this investment, see an attorney  
7 before you sign a contract or agreement." Nothing except the  
8 title and required statement shall appear on the cover sheet.  
9 Immediately following the cover sheet, the seller must provide  
10 an index page that briefly lists the contents of the  
11 disclosure document as required in this section and any pages  
12 on which the prospective purchaser can find each required  
13 disclosure. At the top of the index page, the following  
14 statement must appear in at least 10-point type: "The State of  
15 Florida requires sellers of business opportunities to disclose  
16 certain information to prospective purchasers. This index is  
17 provided to help you locate this information." If the index  
18 contains other information not required by this section, the  
19 seller shall place a designation beside each of the  
20 disclosures required by this section and provide an  
21 explanation of the designation at the end of the statement at  
22 the top of the index page. The disclosure document shall  
23 contain the following information:

24 (8) If the business opportunity seller is required to  
25 secure a bond, guaranteed letter of credit, or certificate of  
26 deposit ~~or establish a trust deposit~~ pursuant to s. 559.807,  
27 either of the following statements:

28 (a) "As required by Florida law, the seller has  
29 secured a bond issued by . . . ., a surety company authorized to  
30 do business in this state. Before signing a contract to  
31 purchase this business opportunity, you should confirm the

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1 bond's status with the surety company."; or

2 (b) "As required by Florida law, the seller has  
3 established a ~~trust account~~ or guaranteed letter of credit or  
4 certificate of deposit ...(number of account)... with ...(name  
5 and address of bank or savings institution).... Before  
6 signing a contract to purchase this business opportunity, you  
7 should confirm with the bank or savings institution the  
8 current status of the ~~trust account~~ or guaranteed letter of  
9 credit or certificate of deposit."

10 (11)(a) The total number of persons who purchased the  
11 business opportunity being offered by the seller within the  
12 past 3 years.

13 (b) The names, addresses, and telephone numbers of the  
14 10 persons who previously purchased the business opportunity  
15 from the seller and who are geographically closest to the  
16 potential purchaser.

17  
18 Should any seller of business opportunities prepare a  
19 disclosure statement pursuant to 16 C.F.R. ss. 436.1 et seq.,  
20 a Trade Regulation Rule of the Federal Trade Commission  
21 regarding Disclosure Requirements and Prohibitions Concerning  
22 Franchising and Business Opportunity Ventures, the seller may  
23 file that disclosure statement in lieu of the document  
24 required pursuant to this section. Should the seller be  
25 required pursuant to 16 C.F.R. to prepare any other documents  
26 to be presented to the prospective purchaser, those documents  
27 shall also be filed with the department.

28 Section 58. Section 559.807, Florida Statutes, is  
29 amended to read:

30 559.807 Bond or other security ~~trust account~~  
31 required.--

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

10           (2) The bond, certificate of deposit, or guaranteed  
11 letter of credit ~~trust account~~ shall be in the favor of the  
12 department for the use and benefit of any person who is  
13 injured by the fraud, misrepresentation, ~~damaged by any~~  
14 violation of ~~ss. 559.80-559.815~~, or by the seller's breach of  
15 the contract, financial failure, or violation of any provision  
16 of this part by the seller. Such liability may be enforced by  
17 filing an action at law in a court of competent jurisdiction  
18 without precluding enforcement in an administrative action  
19 pursuant to chapter 120. However, the bond, certificate of  
20 deposit, or guaranteed letter of credit shall be amenable and  
21 enforceable only by and through administrative proceedings  
22 before the department. A money judgment resulting from an  
23 action at law, less any award for costs and attorney's fees,  
24 shall be prima facie evidence sufficient to establish the  
25 value of the claim in an administrative action. It is the  
26 intent of the Legislature that such bond, certificate of  
27 deposit, or guaranteed letter of credit shall be applicable  
28 and liable only for payment of claims duly adjudicated by  
29 order of the department. The bond, certificate of deposit, or  
30 guaranteed letter of credit shall be open to successive claims  
31 but ~~for the business opportunity sale or of any obligation~~

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1 ~~arising therefrom, may bring an action against the bond, trust~~  
 2 ~~account, or guaranteed letter of credit to recover damages~~  
 3 ~~suffered; however, the aggregate amount may not liability of~~  
 4 ~~the surety or trustee shall be only for actual damages and in~~  
 5 ~~no event shall exceed the amount of the bond, certificate of~~  
 6 ~~deposit trust account, or guaranteed letter of credit.~~

7 Section 59. Subsection (14) is added to section  
 8 559.809, Florida Statutes, to read:

9 559.809 Prohibited acts.--Business opportunity sellers  
 10 shall not:

11 (14) Fail to provide or deliver the products,  
 12 equipment, supplies, or services as specified in the written  
 13 contract required under s. 559.811.

14 Section 60. For the purpose of incorporating the  
 15 amendment to section 559.809, Florida Statutes, in a reference  
 16 thereto, section 559.815, Florida Statutes, is reenacted to  
 17 read:

18 559.815 Penalties.--Any person who fails to file with  
 19 the department as required by s. 559.805 or who commits an act  
 20 described in s. 559.809 is guilty of a felony of the third  
 21 degree, punishable as provided in s. 775.082, s. 775.083, or  
 22 s. 775.084.

23 Section 61. Subsection (5) is added to section  
 24 559.902, Florida Statutes, to read:

25 559.902 Scope and application.--This act shall apply  
 26 to all motor vehicle repair shops in Florida, except:

27 (5) Those located in public schools as defined in s.  
 28 228.041 or charter technical career centers as defined in s.  
 29 228.505.

30  
 31 However, such person may voluntarily register under this act.

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1           Section 62. Subsections (3), (4), (5), (6), and (10)  
2 of section 559.904, Florida Statutes, are amended to read:

3           559.904 Motor vehicle repair shop registration;  
4 application; exemption.--

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

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

9           (a)~~(b)~~ If the place of business has 1 to 5 employees:  
10 \$50.

11           (b)~~(c)~~ If the place of business has 6 to 10 employees:  
12 \$150.

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

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

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

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

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1 and address of the motor vehicle repair shop and the  
2 registration number for that place of business. In the case of  
3 a mobile motor vehicle repair shop, the certificate must show  
4 the home address of the owner, if different from the business  
5 address.

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

10 (10) The department may deny, revoke, or refuse to  
11 renew the registration of a motor vehicle repair shop based  
12 upon a determination that the motor vehicle repair shop, or  
13 any of its directors, officers, owners, or general partners:

14 (a) Have failed to meet the requirements for  
15 registration as provided in this part;

16 (b) Have not satisfied a civil fine, administrative  
17 fine, or other penalty arising out of any administrative or  
18 enforcement action brought by any governmental agency based  
19 upon conduct involving fraud, dishonest dealing, or any  
20 violation of this part;

21 (c) Have had against them any civil, criminal, or  
22 administrative adjudication in any jurisdiction, based upon  
23 conduct involving fraud, dishonest dealing, or any violation  
24 of this part; or

25 (d) Have had a judgment entered against them in any  
26 action brought by the department or the state attorney  
27 pursuant to ss. 501.201-501.213 or this part.

28 Section 63. Paragraph (h) of subsection (1) of section  
29 559.905, Florida Statutes, is amended to read:

30 559.905 Written motor vehicle repair estimate and  
31 disclosure statement required.--

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1           (1) When any customer requests a motor vehicle repair  
 2 shop to perform repair work on a motor vehicle, the cost of  
 3 which repair work will exceed \$100 to the customer, the shop  
 4 shall prepare a written repair estimate, which is a form  
 5 setting forth the estimated cost of repair work, including  
 6 diagnostic work, before effecting any diagnostic work or  
 7 repair. The written repair estimate shall also include the  
 8 following items:

9           (h) The estimated cost of repair which shall include  
 10 any charge for shop supplies or for hazardous or other waste  
 11 removal and, if a charge is included, the estimate shall  
 12 include the following statement:

13           "This charge represents costs and profits to  
 14 the motor vehicle repair facility for  
 15 miscellaneous shop supplies or waste disposal."  
 16 If a charge is mandated by state or federal law, the estimate  
 17 shall contain a statement identifying the law and the specific  
 18 amount charged under the law.

19           Section 64. Subsection (1) of section 559.9221,  
 20 Florida Statutes, is amended to read:

21           559.9221 Motor Vehicle Repair Advisory Council.--The  
 22 Motor Vehicle Repair Advisory Council is created to advise and  
 23 assist the department in carrying out this part.

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

26           (a) Eight industry members of the council must be  
 27 chosen from individuals already engaged in the motor vehicle  
 28 repair business who are eligible to be registered under this  
 29 part. ~~Such members must become registered by October 1, 1993.~~  
 30 ~~Thereafter,~~The professional members of this council must be  
 31 licensed under this part. The commissioner shall select one



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1 industry member from each of the following categories:

- 2 1. Independent automotive mechanics shops.
- 3 2. Franchise or company-owned automotive mechanics
- 4 shops.
- 5 3. Independent automotive collision shops.
- 6 4. Franchise or company-owned automotive collision
- 7 shops.
- 8 5. Independent tire dealer.
- 9 6. Franchise or company-owned tire dealer.
- 10 7. Independent motor vehicle dealer licensed under s.
- 11 320.27.
- 12 8. Franchise motor vehicle dealer licensed under s.
- 13 320.27.

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

17 (c) Two consumer members of the council must be  
18 residents of this state and must not be connected with the  
19 motor vehicle repair business.

20 (d) ~~Within 30 days after July 1, 1993, the~~  
21 ~~commissioner shall appoint one consumer member and four~~  
22 ~~industry members for terms of 2 years and one consumer member,~~  
23 ~~one minor repair shop member, and four industry members for~~  
24 ~~terms of 4 years.~~ As terms of the members expire, the  
25 commissioner shall appoint successors for terms of 4 years.  
26 Members shall serve from the time of their appointment until  
27 their successors are appointed.

28 Section 65. Subsection (5) of section 559.903, Florida  
29 Statutes, is repealed.

30 Section 66. Subsection (1) of section 413.407,  
31 Florida Statutes, is amended to read:



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1 of such persons.

2 (d) The members of the council shall select a  
3 chairperson and a co-chairperson ~~two co-chairs~~ from ~~among~~ the  
4 membership of the council.

5 1. One chairperson ~~co-chair~~ may be selected from the  
6 group described in paragraph (c) and one chairperson ~~co-chair~~  
7 shall be selected from the other council members.

8 2. No chairperson ~~co-chair~~ may be an elected member or  
9 an employee of a state agency or of any political subdivision  
10 of the state.

11 3. The co-chairperson shall administer the council in  
12 the absence of the chairperson.

13 4. The co-chairperson shall assume the role of the  
14 chairperson after a 1 year term.

15 5. A new co-chairperson shall be selected by the  
16 membership of the council.

17 (e)1. Each member of the council shall serve for a  
18 term of not more than 3 years, except that:

19 a. A member appointed to fill a vacancy occurring  
20 prior to the expiration of the term for which a predecessor  
21 was appointed shall be appointed for the remainder of such  
22 term.

23 b. The terms of service of the members shall be  
24 staggered through initial appointments of 3 years for  
25 one-third, 2 years for one-third, and 1 year for one-third.  
26 Each eligible group described in paragraph (a) shall reflect  
27 this distribution.

28 2. No member of the council may serve more than two  
29 consecutive terms; however, any appointment under  
30 sub-subparagraph 1.a., if for less than 18 months, shall not  
31 be considered a term for the purposes of this section.

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1 (f) Any vacancy occurring in the membership of the  
2 council shall be filled in the same manner as the original  
3 appointment. A vacancy does not affect the power of the  
4 remaining members to execute the duties of the council.

5  
6 (Redesignate subsequent sections.)

7  
8  
9 ===== T I T L E A M E N D M E N T =====

10 And the title is amended as follows:

11 On page 4, line 21, after the semicolon

12  
13 insert:

14 amending s. 400.925, F.S.; revising  
15 definitions; amending s. 427.802, F.S.;  
16 revising definitions; amending s. 400.93, F.S.;  
17 exempting providers of home medical equipment  
18 operated by the Department of Health from  
19 certain licensure requirements; amending s.  
20 427.803, F.S.; revising warranty requirements;  
21 amending s. 427.804, F.S.; conforming  
22 references; deleting investigation and  
23 complaint processing requirements of the  
24 Department of Agriculture and Consumer  
25 Services; repealing s. 427.8041, F.S., relating  
26 to the registration of assistive technology  
27 device dealers; amending s. 496.411, F.S.;  
28 requiring charitable organizations or sponsors  
29 to display certain information on certain  
30 solicitation materials; amending s. 501.017,  
31 F.S.; requiring certain health studio contract

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1 refunds to be issued within a time certain;  
2 amending s. 501.019, F.S.; expanding  
3 application of felony penalties for knowingly  
4 making false representations for certain  
5 purposes; amending s. 539.001, F.S.; redefining  
6 the term "agency"; prohibiting pawnbrokers from  
7 knowingly accepting stolen property; correcting  
8 terminology; amending s. 559.801, F.S.;  
9 revising a definition; amending s. 559.803,  
10 F.S.; revising statements that must be placed  
11 in disclosure documents; specifying additional  
12 information required in certain business  
13 opportunity contract disclosure statements;  
14 amending s. 559.807, F.S.; revising application  
15 of requirements for certain securities relating  
16 to selling business opportunities; amending s.  
17 559.809, F.S.; specifying an additional  
18 prohibited act by business opportunity sellers;  
19 reenacting s. 559.815, F.S., relating to  
20 penalties for violations of s. 559.809, F.S.;  
21 amending s. 559.902, F.S.; providing an  
22 additional exception for certain schools to  
23 application of certain motor vehicle repair  
24 shop provisions; amending s. 559.904, F.S.;  
25 revising certain requirements for motor vehicle  
26 repair shop registrations; amending s. 559.905,  
27 F.S.; providing additional estimated cost of  
28 repair requirements for written repair  
29 estimates; amending s. 559.9221, F.S.; revising  
30 Motor Vehicle Repair Advisory Council  
31 membership requirements; repealing s.

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1           559.903(5), F.S., relating to a definition of  
2           minor repair service; amending s. 413.407,  
3           F.S.; revising membership of the Assistive  
4           Technology Advisory Council; providing an  
5           effective date.  
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