

By Senator Geller

29-714-01

See HB

1 A bill to be entitled
2 An act relating to consumer protection;
3 amending s. 496.411, F.S.; requiring charitable
4 organizations or sponsors to display certain
5 information on certain solicitation materials;
6 amending s. 501.017, F.S.; requiring certain
7 health studio contract refunds to be issued
8 within a time certain; amending s. 501.019,
9 F.S.; expanding application of felony penalties
10 for knowingly making false representations for
11 certain purposes; creating s. 501.171, F.S.;
12 providing definitions; requiring certain credit
13 reporting agencies to provide reports to
14 consumers; amending s. 539.001, F.S.;
15 prohibiting pawnbrokers from knowingly
16 accepting stolen property; correcting
17 terminology; amending s. 559.801, F.S.;
18 revising a definition; amending s. 559.803,
19 F.S.; specifying additional information
20 required in certain business opportunity
21 contract disclosure statements; amending s.
22 559.807, F.S.; revising application of
23 requirements for certain securities relating to
24 selling business opportunities; amending s.
25 559.809, F.S.; specifying an additional
26 prohibited act by business opportunity sellers;
27 amending s. 559.902, F.S.; providing an
28 additional exception for certain schools to
29 application of certain motor vehicle repair
30 shop provisions; amending s. 559.904, F.S.;
31 revising certain requirements for motor vehicle

1 repair shop registrations; amending s. 559.905,
2 F.S.; providing additional estimated cost of
3 repair requirements for written repair
4 estimates; amending s. 559.9221, F.S.; revising
5 Motor Vehicle Repair Advisory Council
6 membership requirements; repealing s.
7 559.903(5), F.S., relating to a definition of
8 minor repair service; providing an effective
9 date.

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11 Be It Enacted by the Legislature of the State of Florida:

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13 Section 1. Subsection (6) is added to section 496.411,
14 Florida Statutes, to read:

15 496.411 Disclosure requirements and duties of
16 charitable organizations and sponsors.--

17 (6) Each charitable organization or sponsor that is
18 required to register under s. 496.405 shall conspicuously
19 display the following information on every printed
20 solicitation, written confirmation, receipt, or reminder of a
21 contribution:

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

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

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

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1 If the solicitation consists of more than a single item, the
2 statement shall be displayed prominently in the solicitation
3 materials.

4 Section 2. Paragraphs (b) and (d) of subsection (1) of
5 section 501.017, Florida Statutes, are amended to read:

6 501.017 Health studios; contracts.--

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

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

23 2. A provision that notice of intent to cancel by the
24 buyer shall be given in writing to the health studio. Such a
25 notice of cancellation from the consumer shall also terminate
26 automatically the consumer's obligation to any entity to whom
27 the health studio has subrogated or assigned the consumer's
28 contract. If the health studio wishes to enforce such contract
29 after receipt of such showing, it may request the department
30 to determine the sufficiency of the showing.

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

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

11 b. During ownership, for not more than 7 consecutive
12 days and not more than two periods of 7 consecutive days in
13 any calendar year.

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

17 (d) A provision for the cancellation of the contract
18 if the buyer dies or becomes physically unable to avail
19 himself or herself of a substantial portion of those services
20 which he or she used from the commencement of the contract
21 until the time of disability, with refund of funds paid or
22 accepted in payment of the contract in an amount computed by
23 dividing the contract price by the number of weeks in the
24 contract term and multiplying the result by the number of
25 weeks remaining in the contract term. The contract may
26 require a buyer or the buyer's estate seeking relief under
27 this paragraph to provide proof of disability or death. A
28 physical disability sufficient to warrant cancellation of the
29 contract by the buyer shall be established if the buyer
30 furnishes to the health studio a certification of such
31 disability by a physician licensed under chapter 458, chapter

1 459, chapter 460, or chapter 461 to the extent the diagnosis
2 or treatment of the disability is within the physician's scope
3 of practice. A refund shall be issued within 30 days after
4 receipt of the notice of cancellation made pursuant to this
5 paragraph.

6 Section 3. Subsection (2) of section 501.019, Florida
7 Statutes, is amended to read:

8 501.019 Health studios; penalties.--

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

17 Section 4. Section 501.171, Florida Statutes, is
18 created to read:

19 501.171 Consumer reporting agency consumer reports.--

20 (1) For purposes of this section:

21 (a) "Consumer report" means any written or other
22 communication of any information by a consumer reporting
23 agency bearing on a consumer's creditworthiness, credit
24 standing, or credit capacity which is used or intended to be
25 used or collected in whole or in part for the purpose of
26 serving as a factor in establishing the consumer's eligibility
27 for employment purposes or for credit or insurance to be used
28 primarily for personal, family, or household purposes.

29 (b) "Consumer reporting agency" means any person who,
30 for monetary fees or dues or on a cooperative nonprofit basis,
31 regularly engages in whole or in part in the practice of

1 assembling or evaluating consumer credit information or other
2 information relating to consumers for the purpose of
3 furnishing consumer reports to third parties.

4 (2) Each consumer reporting agency that compiles and
5 maintains files on consumers on a nationwide basis shall
6 furnish to any consumer who has provided appropriate
7 verification of his or her identity a single complete consumer
8 report per calendar year, upon request and without charge.

9 Section 5. Paragraph (n) is added to subsection (12)
10 of section 539.001, Florida Statutes, and subsection (21) of
11 that section is amended, to read:

12 539.001 The Florida Pawnbroking Act.--

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

15 (n) Knowingly accept or receive misappropriated
16 property from a conveying customer in a pawn or purchase
17 transaction.

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

21 Section 6. Paragraph (a) of subsection (1) of section
22 559.801, Florida Statutes, is amended to read:

23 559.801 Definitions.--For the purpose of ss.
24 559.80-559.815, the term:

25 (1)(a) "Business opportunity" means the sale or lease
26 of any products, equipment, supplies, or services which are
27 sold or leased to a purchaser to enable the purchaser to start
28 a business for which the purchaser is required to pay an
29 initial fee or sum of money which exceeds \$500 to the seller,
30 and in which the seller represents:

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1 1. That the seller or person or entity affiliated with
2 or referred by the seller will provide locations or assist the
3 purchaser in finding locations for the use or operation of
4 vending machines, racks, display cases, currency or card
5 operated equipment, or other similar devices or
6 currency-operated amusement machines or devices on premises
7 neither owned nor leased by the purchaser or seller;

8 2. That the seller will purchase any or all products
9 made, produced, fabricated, grown, bred, or modified by the
10 purchaser using in whole or in part the supplies, services, or
11 chattels sold to the purchaser;

12 3. That the seller guarantees ~~in writing~~ that the
13 purchaser will derive income from the business opportunity
14 which exceeds the price paid or rent charged for the business
15 opportunity or that the seller will refund all or part of the
16 price paid or rent charged for the business opportunity, or
17 will repurchase any of the products, equipment, supplies, or
18 chattels supplied by the seller, if the purchaser is
19 unsatisfied with the business opportunity; or

20 4. That the seller will provide a sales program or
21 marketing program that will enable the purchaser to derive
22 income from the business opportunity, except that this
23 paragraph does not apply to the sale of a sales program or
24 marketing program made in conjunction with the licensing of a
25 trademark or service mark that is registered under the laws of
26 any state or of the United States if the seller requires use
27 of the trademark or service mark in the sales agreement.

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29 For the purpose of subparagraph 1., the term "assist the
30 purchaser in finding locations" means, but is not limited to,
31 supplying the purchaser with names of locator companies,

1 contracting with the purchaser to provide assistance or supply
2 names, or collecting a fee on behalf of or for a locator
3 company.

4 Section 7. Present subsections (11), (12), and (13) of
5 section 559.803, Florida Statutes, are renumbered as
6 subsections (12), (13), and (14), respectively, and a new
7 subsection (11) is added to that section to read:

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

1 contains other information not required by this section, the
2 seller shall place a designation beside each of the
3 disclosures required by this section and provide an
4 explanation of the designation at the end of the statement at
5 the top of the index page. The disclosure document shall
6 contain the following information:

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

10 (b) The names, addresses, and telephone numbers of the
11 10 persons who previously purchased the business opportunity
12 from the seller and who are geographically closest to the
13 potential purchaser.

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

25 Section 8. Section 559.807, Florida Statutes, is
26 amended to read:

27 559.807 Bond or other security ~~trust account~~
28 required.--

29 (1) If the business opportunity seller makes any
30 representations set forth in s. 559.801(1)(a)3., the seller
31 must either have obtained a surety bond issued by a surety

1 company authorized to do business in this state or have
2 established a certificate of deposit ~~trust account~~ or a
3 guaranteed letter of credit with a licensed and insured bank
4 or savings institution located in the state. The amount of
5 the bond, certificate of deposit ~~trust account~~, or guaranteed
6 letter of credit shall be an amount not less than \$50,000.
7 (2) The bond, certificate of deposit, or guaranteed
8 letter of credit ~~trust account~~ shall be in the favor of the
9 department for the use and benefit of ~~any~~ person who is
10 injured by the fraud, misrepresentation, ~~damaged by any~~
11 violation of ss. 559.80-559.815, or by the seller's breach of
12 the contract, financial failure, or violation of any provision
13 of this part by the seller. Such liability may be enforced by
14 filing an action at law in a court of competent jurisdiction
15 without precluding enforcement in an administrative action
16 pursuant to chapter 120. However, the bond, certificate of
17 deposit, or guaranteed letter of credit shall be amenable and
18 enforceable only by and through administrative proceedings
19 before the department. A money judgment resulting from an
20 action at law, less any award for costs and attorney's fees,
21 shall be prima facie evidence sufficient to establish the
22 value of the claim in an administrative action. It is the
23 intent of the Legislature that such bond, certificate of
24 deposit, or guaranteed letter of credit shall be applicable
25 and liable only for payment of claims duly adjudicated by
26 order of the department. The bond, certificate of deposit, or
27 guaranteed letter of credit shall be open to successive claims
28 but for the business opportunity sale or of any obligation
29 arising therefrom, may bring an action against the bond, trust
30 account, or guaranteed letter of credit to recover damages
31 suffered; however, the aggregate amount may not liability of

1 ~~the surety or trustee shall be only for actual damages and in~~
2 ~~no event shall~~ exceed the amount of the bond, certificate of
3 deposit trust account, or guaranteed letter of credit.

4 Section 9. Subsection (14) is added to section
5 559.809, Florida Statutes, to read:

6 559.809 Prohibited acts.--Business opportunity sellers
7 shall not:

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

11 Section 10. Subsection (5) is added to section
12 559.902, Florida Statutes, to read:

13 559.902 Scope and application.--This act shall apply
14 to all motor vehicle repair shops in Florida, except:

15 (5) Those located in public schools as defined in s.
16 228.041 or charter technical career centers as defined in s.
17 228.505.

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19 However, such person may voluntarily register under this act.

20 Section 11. Subsections (3), (4), (5), (6), and (10)
21 of section 559.904, Florida Statutes, are amended to read:

22 559.904 Motor vehicle repair shop registration;
23 application; exemption.--

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

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

28 (a)(b) If the place of business has 1 to 5 employees:
29 \$50.

30 (b)(c) If the place of business has 6 to 10 employees:
31 \$150.

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

3 (4) Each initial and renewal application for
4 registration must be accompanied by copies of the applicant's
5 estimate and invoice forms. Such forms must comply with the
6 applicable provisions of this act before a registration may be
7 issued.

8 (5)~~(4)~~ No annual registration fee is required for any
9 motor vehicle repair shop which has a local municipal or
10 county license issued pursuant to an ordinance containing
11 standards which the department determines are at least equal
12 to the requirements of this part, or for any motor vehicle
13 dealer licensed pursuant to chapter 320.

14 (6)~~(5)~~ The department shall issue to each applicant a
15 registration certificate in the form and size as prescribed by
16 the department in accordance with s. 120.60. In the case of
17 an applicant with more than one place of business, the
18 department shall issue a registration certificate for each
19 place of business. The certificate must show at least the name
20 and address of the motor vehicle repair shop and the
21 registration number for that place of business. In the case of
22 a mobile motor vehicle repair shop, the certificate must show
23 the home address of the owner, if different from the business
24 address.

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

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

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

5 (b) Have not satisfied a civil fine, administrative
6 fine, or other penalty arising out of any administrative or
7 enforcement action brought by any governmental agency based
8 upon conduct involving fraud, dishonest dealing, or any
9 violation of this part;

10 (c) Have had against them any civil, criminal, or
11 administrative adjudication in any jurisdiction, based upon
12 conduct involving fraud, dishonest dealing, or any violation
13 of this part; or

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

17 Section 12. Paragraph (h) of subsection (1) of section
18 559.905, Florida Statutes, is amended to read:

19 559.905 Written motor vehicle repair estimate and
20 disclosure statement required.--

21 (1) When any customer requests a motor vehicle repair
22 shop to perform repair work on a motor vehicle, the cost of
23 which repair work will exceed \$100 to the customer, the shop
24 shall prepare a written repair estimate, which is a form
25 setting forth the estimated cost of repair work, including
26 diagnostic work, before effecting any diagnostic work or
27 repair. The written repair estimate shall also include the
28 following items:

29 (h) The estimated cost of repair which shall include
30 any charge for shop supplies or for hazardous or other waste

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1 removal and, if a charge is included, the estimate shall
2 include the following statement:

3 "This charge represents costs and profits to
4 the motor vehicle repair facility for
5 miscellaneous shop supplies or waste disposal."

6 If a charge is mandated by state or federal law, the estimate
7 shall contain a statement identifying the law and the specific
8 amount charged under the law.

9 Section 13. Subsection (1) of section 559.9221,
10 Florida Statutes, is amended to read:

11 559.9221 Motor Vehicle Repair Advisory Council.--The
12 Motor Vehicle Repair Advisory Council is created to advise and
13 assist the department in carrying out this part.

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

16 (a) Eight industry members of the council must be
17 chosen from individuals already engaged in the motor vehicle
18 repair business who are eligible to be registered under this
19 part. ~~Such members must become registered by October 1, 1993.~~
20 ~~Thereafter,~~The professional members of this council must be
21 licensed under this part. The commissioner shall select one
22 industry member from each of the following categories:

- 23 1. Independent automotive mechanics shops.
- 24 2. Franchise or company-owned automotive mechanics
25 shops.
- 26 3. Independent automotive collision shops.
- 27 4. Franchise or company-owned automotive collision
28 shops.
- 29 5. Independent tire dealer.
- 30 6. Franchise or company-owned tire dealer.

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1 7. Independent motor vehicle dealer licensed under s.
2 320.27.

3 8. Franchise motor vehicle dealer licensed under s.
4 320.27.

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

8 (c) Two consumer members of the council must be
9 residents of this state and must not be connected with the
10 motor vehicle repair business.

11 (d) ~~Within 30 days after July 1, 1993, the~~
12 ~~commissioner shall appoint one consumer member and four~~
13 ~~industry members for terms of 2 years and one consumer member,~~
14 ~~one minor repair shop member, and four industry members for~~
15 ~~terms of 4 years. As terms of the members expire, the~~
16 commissioner shall appoint successors for terms of 4 years.
17 Members shall serve from the time of their appointment until
18 their successors are appointed.

19 Section 14. Subsection (5) of section 559.903, Florida
20 Statutes, is repealed.

21 Section 15. This act shall take effect October 1,
22 2001.

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25 LEGISLATURE SUMMARY

26 Revises various consumer protection provisions relating
27 to charitable organization disclosure requirements,
28 consumer credit reporting agencies, health studio
contracts, pawnbrokers, sales of business opportunities,
29 motor vehicle repair shop registrations and repair
estimates, and Motor Vehicle Repair Advisory Council
membership requirements. Repeals a definition. (See bill
30 for details.)
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