

By the Committee on Commerce and Economic Opportunities; and
Senator Geller

310-1637-01

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; amending s. 539.001, F.S.;
12 prohibiting pawnbrokers from knowingly
13 accepting stolen property; correcting
14 terminology; amending s. 559.801, F.S.;
15 revising a definition; amending s. 559.803,
16 F.S.; specifying additional information
17 required in certain business opportunity
18 contract disclosure statements; amending s.
19 559.807, F.S.; revising application of
20 requirements for certain securities relating to
21 selling business opportunities; amending s.
22 559.809, F.S.; specifying an additional
23 prohibited act by business opportunity sellers;
24 amending s. 559.902, F.S.; providing an
25 additional exception for certain schools to
26 application of certain motor vehicle repair
27 shop provisions; amending s. 559.904, F.S.;
28 revising certain requirements for motor vehicle
29 repair shop registrations; amending s. 559.905,
30 F.S.; providing additional estimated cost of
31 repair requirements for written repair

1 estimates; amending s. 559.9221, F.S.; revising
2 Motor Vehicle Repair Advisory Council
3 membership requirements; repealing s.
4 559.903(5), F.S., relating to a definition of
5 minor repair service; providing an effective
6 date.

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

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

12 496.411 Disclosure requirements and duties of
13 charitable organizations and sponsors.--

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

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

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

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

26
27 If the solicitation consists of more than a single item, the
28 statement shall be displayed prominently in the solicitation
29 materials.

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

1 501.017 Health studios; contracts.--

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

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

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

26 3. A provision that if the department determines that
27 a refund is due the buyer, the refund shall be an amount
28 computed by dividing the contract price by the number of weeks
29 in the contract term and multiplying the result by the number
30 of weeks remaining in the contract term. The business
31 location of a health studio shall not be deemed out of

1 business when temporarily closed for repair and renovation of
2 the premises:

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

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

8
9 A refund shall be issued within 30 days after receipt of the
10 notice of cancellation made pursuant to this paragraph.

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

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

3 501.019 Health studios; penalties.--

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

12 Section 4. Paragraph (n) is added to subsection (12)
13 of section 539.001, Florida Statutes, and subsection (21) of
14 that section is amended, to read:

15 539.001 The Florida Pawnbroking Act.--

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

18 (n) Knowingly accept or receive misappropriated
19 property from a conveying customer in a pawn or purchase
20 transaction.

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

24 Section 5. Paragraph (a) of subsection (1) of section
25 559.801, Florida Statutes, is amended to read:

26 559.801 Definitions.--For the purpose of ss.
27 559.80-559.815, the term:

28 (1)(a) "Business opportunity" means the sale or lease
29 of any products, equipment, supplies, or services which are
30 sold or leased to a purchaser to enable the purchaser to start
31 a business for which the purchaser is required to pay an

1 initial fee or sum of money which exceeds \$500 to the seller,
2 and in which the seller represents:

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

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

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

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

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1 For the purpose of subparagraph 1., the term "assist the
2 purchaser in finding locations" means, but is not limited to,
3 supplying the purchaser with names of locator companies,
4 contracting with the purchaser to provide assistance or supply
5 names, or collecting a fee on behalf of or for a locator
6 company.

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

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

1 Florida requires sellers of business opportunities to disclose
2 certain information to prospective purchasers. This index is
3 provided to help you locate this information." If the index
4 contains other information not required by this section, the
5 seller shall place a designation beside each of the
6 disclosures required by this section and provide an
7 explanation of the designation at the end of the statement at
8 the top of the index page. The disclosure document shall
9 contain the following information:

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

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

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

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 8. 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 9. Subsection (5) is added to section 559.902,
15 Florida Statutes, to read:

16 559.902 Scope and application.--This act shall apply
17 to all motor vehicle repair shops in Florida, except:

18 (5) Those located in public schools as defined in s.
19 228.041 or charter technical career centers as defined in s.
20 228.505.

21
22 However, such person may voluntarily register under this act.

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

25 559.904 Motor vehicle repair shop registration;
26 application; exemption.--

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

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

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1 (a)~~(b)~~ If the place of business has 1 to 5 employees:
2 \$50.

3 (b)~~(c)~~ If the place of business has 6 to 10 employees:
4 \$150.

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

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

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

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

29 ~~(6) Any affidavit of exemption proof of filing~~
30 ~~certificate, issued by the department prior to July 1, 1997,~~
31

1 ~~to a motor vehicle repair shop conducting only minor repair~~
2 ~~services shall be valid until its expiration.~~

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

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

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

14 (c) Have had against them any civil, criminal, or
15 administrative adjudication in any jurisdiction, based upon
16 conduct involving fraud, dishonest dealing, or any violation
17 of this part; or

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

21 Section 11. Paragraph (h) of subsection (1) of section
22 559.905, Florida Statutes, is amended to read:

23 559.905 Written motor vehicle repair estimate and
24 disclosure statement required.--

25 (1) When any customer requests a motor vehicle repair
26 shop to perform repair work on a motor vehicle, the cost of
27 which repair work will exceed \$100 to the customer, the shop
28 shall prepare a written repair estimate, which is a form
29 setting forth the estimated cost of repair work, including
30 diagnostic work, before effecting any diagnostic work or
31

1 repair. The written repair estimate shall also include the
2 following items:

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

7 "This charge represents costs and profits to
8 the motor vehicle repair facility for
9 miscellaneous shop supplies or waste disposal."

10 If a charge is mandated by state or federal law, the estimate
11 shall contain a statement identifying the law and the specific
12 amount charged under the law.

13 Section 12. Subsection (1) of section 559.9221,
14 Florida Statutes, is amended to read:

15 559.9221 Motor Vehicle Repair Advisory Council.--The
16 Motor Vehicle Repair Advisory Council is created to advise and
17 assist the department in carrying out this part.

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

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

- 27 1. Independent automotive mechanics shops.
28 2. Franchise or company-owned automotive mechanics
29 shops.
30 3. Independent automotive collision shops.
31

1 4. Franchise or company-owned automotive collision
2 shops.

3 5. Independent tire dealer.

4 6. Franchise or company-owned tire dealer.

5 7. Independent motor vehicle dealer licensed under s.
6 320.27.

7 8. Franchise motor vehicle dealer licensed under s.
8 320.27.

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

12 (c) Two consumer members of the council must be
13 residents of this state and must not be connected with the
14 motor vehicle repair business.

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

23 Section 13. Subsection (5) of section 559.903, Florida
24 Statutes, is repealed.

25 Section 14. This act shall take effect October 1,
26 2001.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
SB 784

The committee substitute removes provisions from the original bill which would have required consumer reporting agencies to provide a consumer with one free copy of his or her consumer report each calendar year.