

By the Committees on Agriculture and Consumer Services;
Commerce and Economic Opportunities; and Senators Geller and
Crist

303-1767-01

1 A bill to be entitled

2 An act relating to consumer protection;

3 amending s. 400.925, F.S.; revising

4 definitions; amending s. 427.802, F.S.;

5 revising definitions; amending s. 427.803,

6 F.S.; revising warranty requirements; amending

7 s. 427.804, F.S.; conforming references;

8 deleting investigation and complaint processing

9 requirements of the Department of Agriculture

10 and Consumer Services; repealing s. 427.8041,

11 F.S., relating to the registration of assistive

12 technology device dealers; amending s. 496.411,

13 F.S.; requiring charitable organizations or

14 sponsors to display certain information on

15 certain solicitation materials; amending s.

16 501.017, F.S.; requiring certain health studio

17 contract refunds to be issued within a time

18 certain; amending s. 501.019, F.S.; expanding

19 application of felony penalties for knowingly

20 making false representations for certain

21 purposes; amending s. 539.001, F.S.; redefining

22 the term "agency"; prohibiting pawnbrokers from

23 knowingly accepting stolen property; correcting

24 terminology; amending s. 559.801, F.S.;

25 revising a definition; amending s. 559.803,

26 F.S.; revising statements that must be placed

27 in disclosure documents; specifying additional

28 information required in certain business

29 opportunity contract disclosure statements;

30 amending s. 559.807, F.S.; revising application

31 of requirements for certain securities relating

1 to selling business opportunities; amending s.
2 559.809, F.S.; specifying an additional
3 prohibited act by business opportunity sellers;
4 reenacting s. 559.815, F.S., relating to
5 penalties for violations of s. 559.809, F.S.;
6 amending s. 559.902, F.S.; providing an
7 additional exception for certain schools to
8 application of certain motor vehicle repair
9 shop provisions; amending s. 559.904, F.S.;
10 revising certain requirements for motor vehicle
11 repair shop registrations; amending s. 559.905,
12 F.S.; providing additional estimated cost of
13 repair requirements for written repair
14 estimates; amending s. 559.9221, F.S.; revising
15 Motor Vehicle Repair Advisory Council
16 membership requirements; repealing s.
17 559.903(5), F.S., relating to a definition of
18 minor repair service; providing an effective
19 date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Subsection (8) of section 400.925, Florida
24 Statutes, is amended to read:

25 400.925 Definitions.--As used in this part, the term:

26 (8) "Home medical equipment" includes any product as
27 defined by the Federal Drug Administration's Drugs, Devices
28 and Cosmetics Act, any products reimbursed under the Medicare
29 Part B Durable Medical Equipment benefits, or any products
30 reimbursed under the Florida Medicaid durable medical
31 equipment program. Home medical equipment includes, but is not

1 limited to, oxygen and related respiratory equipment. Home
2 medical equipment includes customized wheelchairs and related
3 seating and positioning, but does not include prosthetics or
4 orthotics or any splints, braces, or aids custom fabricated by
5 a licensed health care practitioner. Home medical equipment
6 includes assistive technology devices, including: manual
7 wheelchairs, motorized wheelchairs, motorized scooters,
8 voice-synthesized computer modules, optical scanners, talking
9 software, braille printers, environmental control devices for
10 use by person with quadriplegia, motor vehicle adaptive
11 transportation aids, devices that enable persons with severe
12 speech disabilities to in effect speak, personal transfer
13 systems and specialty beds, including demonstrator, that a
14 consumer purchases or accepts transfer of in the state for use
15 by a person with a disability.

16 Section 2. Section 427.802, Florida Statutes, is
17 amended to read:

18 427.802 Definitions.--As used in this part:

19 (1) "Assistive technology devices" means manual
20 wheelchairs, motorized wheelchairs, motorized scooters,
21 voice-synthesized computer modules, optical scanners, talking
22 software, braille printers, environmental control devices for
23 use by a person with quadriplegia, motor vehicle adaptive
24 transportation aids, devices that enable persons with severe
25 speech disabilities to in effect speak, personal transfer
26 systems, and specialty beds, including a demonstrator, that a
27 consumer purchases or accepts transfer of in this state for
28 use by a person with a disability.

29 ~~(2) "Assistive Technology Device Warranty Act rights~~
30 ~~period" means the period ending 1 year after first delivery of~~
31

1 ~~the assistive technology device to the consumer or the~~
2 ~~manufacturer's express written warranty, whichever is longer.~~

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

8 (3)~~(4)~~ "Assistive technology device dealer" means a
9 person who is business entity that is primarily engaged in the
10 business of selling or leasing of assistive technology
11 devices. ~~As used in this subsection, the term "primarily"~~
12 ~~means no less than 30 percent of the business entity's gross~~
13 ~~sales in the previous fiscal year.~~

14 (4)~~(5)~~ "Assistive technology device lessor" means a
15 person who leases an assistive technology device to a
16 consumer, or holds the lessor's rights, under a written lease.

17 (5)~~(6)~~ "Collateral costs" means expenses incurred by a
18 consumer in connection with the repair of a nonconformity,
19 including the costs of obtaining an alternative assistive
20 technology device.

21 (6)~~(7)~~ "Consumer" means any of the following:

22 (a) The purchaser of an assistive technology device,
23 if the assistive technology device was purchased from an
24 assistive technology device dealer or manufacturer for
25 purposes other than resale.

26 (b) A person to whom the assistive technology device
27 is transferred for purposes other than resale, if the transfer
28 occurs before the expiration of an express warranty applicable
29 to the assistive technology device.

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

31

1 (d) A person who leases an assistive technology device
2 from an assistive technology device lessor under a written
3 lease.

4 (7)~~(8)~~ "Demonstrator" means an assistive technology
5 device used primarily for the purpose of demonstration to the
6 public.

7 ~~(9) "Department" means the Department of Agriculture
8 and Consumer Services.~~

9 (8)~~(10)~~ "Early termination cost" means any expense or
10 obligation that an assistive technology device lessor incurs
11 as a result of both the termination of a written lease before
12 the termination date set forth in that lease and the return of
13 an assistive technology device to a manufacturer pursuant to
14 this section. The term includes a penalty for prepayment
15 under a financial arrangement.

16 (9)~~(11)~~ "Early termination saving" means any expense
17 or obligation that an assistive technology device lessor
18 avoids as a result of both the termination of a written lease
19 before the termination date set forth in the lease and the
20 return of an assistive technology device to a manufacturer
21 pursuant to this section. The term includes an interest
22 charge that the assistive technology device lessor would have
23 paid to finance the assistive technology device or, if the
24 assistive technology device lessor does not finance the
25 assistive technology device, the difference between the total
26 amount for which the lease obligates the consumer during the
27 period of the lease term remaining after the early termination
28 and the present value of that amount at the date of the early
29 termination.

30 (10)~~(12)~~ "Manufacturer" means a business entity that
31 manufactures or produces assistive technology devices for sale

1 and agents of that business entity, including an importer, a
2 distributor, a factory branch, a distributor branch, and any
3 warrantors of the manufacturer's assistive technology device,
4 but not including an assistive technology device dealer.

5 (11)~~(13)~~ "Nonconformity" means a condition or defect
6 of an assistive technology device which substantially impairs
7 the use, value, or safety of the device and which is covered
8 by an express warranty applicable to the assistive technology
9 device, but does not include a condition or defect that is the
10 result of abuse, neglect, excessive wear, or unauthorized
11 modification or alteration of the assistive technology device
12 by a consumer.

13 (12)~~(14)~~ "Reasonable attempt to repair" means, within
14 the terms of an express warranty applicable to a new assistive
15 technology device:

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

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

24 Section 3. Section 427.803, Florida Statutes, is
25 amended to read:

26 427.803 Express Duty of manufacturer and an assistive
27 technology device dealer to conform an assistive technology
28 device to the warranty.--

29 ~~(1)~~ A manufacturer who sells a new assistive
30 technology device to a consumer, either directly or through an
31 assistive technology device dealer, shall furnish the consumer

1 with an express warranty for the assistive technology device.
2 The duration of the express warranty must be at least 1 year
3 after first delivery of the assistive technology device to the
4 consumer. In the absence of an express warranty from the
5 manufacturer, the manufacturer is considered to have expressly
6 warranted to the consumer of an assistive technology device
7 that, for a period of 1 year after the date of first delivery
8 to the consumer, the assistive technology device will be free
9 from any condition or defect that substantially impairs the
10 value of the assistive technology device to the consumer.

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

26 ~~(3) Each manufacturer or assistive technology device~~
27 ~~dealer shall provide to its consumers conspicuous notice of~~
28 ~~the address and phone number for its zone, district, or~~
29 ~~regional office for this state in the written warranty or~~
30 ~~owner's manual. Within 10 days after the department's written~~
31 ~~request, a manufacturer shall forward to the department a copy~~

1 ~~of the owner's manual and any written warranty for each make~~
2 ~~and model of assistive technology device that it sells in this~~
3 ~~state.~~

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

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

31

1 Section 4. Section 427.804, Florida Statutes, is
2 amended to read:

3 427.804 Repair of nonconforming assistive technology
4 devices; refund or replacement of devices after attempt to
5 repair; sale or lease of returned device; arbitration;
6 ~~investigation~~ limitation of rights.--

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

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

20 (a) Accept return of the assistive technology device
21 and replace the assistive technology device with a comparable
22 new assistive technology device and refund any collateral
23 costs.

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

30 (c) With respect to a consumer as defined in s.
31 427.802(6)~~(7)~~(d), accept return of the assistive technology

1 device, refund to the assistive technology device lessor and
2 to any holder of a perfected security interest in the
3 assistive technology device, as the interest may appear, the
4 current value of the written lease, and refund to the consumer
5 the amount that the consumer paid under the written lease plus
6 any collateral costs.

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

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

27 (5) To receive a refund due under paragraph (2)(b), a
28 consumer must offer to return the assistive technology device
29 having the nonconformity to its manufacturer. No later than
30 30 days after the offer, the manufacturer shall provide the
31 refund to the consumer who paid for or the provider who billed

1 a third party payor source for the assistive technology
2 device. When the manufacturer provides the refund, the
3 consumer shall return to the manufacturer the assistive
4 technology device having the nonconformity.

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

14 (7) A person may not enforce the lease against the
15 consumer after the consumer receives a refund due under
16 paragraph (2)(c).

17 (8) An assistive technology device that is returned by
18 a consumer or assistive technology device lessor in this
19 state, or by a consumer or assistive technology device lessor
20 in another state under a similar law of that state, may not be
21 sold or leased again in this state, unless full disclosure of
22 the reasons for return is made to any prospective buyer or
23 lessee.

24 ~~(9) Each consumer may submit any dispute arising under~~
25 ~~this part to the department by completing a complaint form.~~
26 ~~The department may investigate the complaint on behalf of the~~
27 ~~consumer if reasonable evidence warrants such an action.~~

28 ~~(10) The department shall process consumer complaints~~
29 ~~pursuant to s. 570.544.~~

30 (9)(11) Each consumer may submit any dispute arising
31 under this part to an alternative arbitration mechanism

1 established pursuant to chapter 682. Upon notice by the
2 consumer, all manufacturers must submit to such alternative
3 arbitration.

4 (10)~~(12)~~ Such alternative arbitration must be
5 conducted by a professional arbitrator or arbitration firm
6 appointed under chapter 682 and any applicable rules. These
7 procedures must provide for the personal objectivity of the
8 arbitrators and for the right of each party to present its
9 case, to be in attendance during any presentation made by the
10 other party, and to rebut or refute such a presentation.

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

13 Section 5. Section 427.8041, Florida Statutes, is
14 repealed.

15 Section 6. Subsection (6) is added to section 496.411,
16 Florida Statutes, to read:

17 496.411 Disclosure requirements and duties of
18 charitable organizations and sponsors.--

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

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

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

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

31

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 7. 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.

31

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.

14
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 8. 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 9. Paragraph (a) of subsection (2), paragraph
18 (b) of subsection (4), and paragraph (c) of subsection (5) of
19 section 539.001, Florida Statutes, are amended, paragraph (n)
20 is added to subsection (12) of that section, and subsection
21 (21) of that section is amended, to read:

22 539.001 The Florida Pawnbroking Act.--

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

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

26 (4) ELIGIBILITY FOR LICENSE.--

27 (b) Any applicant claiming to have a net worth of
28 \$50,000 or more shall file with the agency ~~department,~~ at the
29 time of applying for a license, the following documentation:

30 1. A current financial statement prepared by a Florida
31 certified public accountant; or

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

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

5
6 If the agency cannot verify that the applicant meets the net
7 worth requirement for a license, the agency may require a
8 finding, including the presentation of a current balance
9 sheet, by an accounting firm or individual holding a permit to
10 practice public accounting in this state, that the accountant
11 has reviewed the books and records of the applicant and that
12 the applicant meets the net worth requirement.

13 (5) APPLICATION FOR LICENSE.--

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

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

27 (n) Knowingly accept or receive misappropriated
28 property from a conveying customer in a pawn or purchase
29 transaction.

30
31

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

4 Section 10. Paragraph (a) of subsection (1) of section
5 559.801, Florida Statutes, is amended to read:

6 559.801 Definitions.--For the purpose of ss.
7 559.80-559.815, the term:

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

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

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

25 3. That the seller guarantees ~~in writing~~ that the
26 purchaser will derive income from the business opportunity
27 which exceeds the price paid or rent charged for the business
28 opportunity or that the seller will refund all or part of the
29 price paid or rent charged for the business opportunity, or
30 will repurchase any of the products, equipment, supplies, or
31

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

11 |
12 | For the purpose of subparagraph 1., the term "assist the
13 | purchaser in finding locations" means, but is not limited to,
14 | supplying the purchaser with names of locator companies,
15 | contracting with the purchaser to provide assistance or supply
16 | names, or collecting a fee on behalf of or for a locator
17 | company.

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

23 | 559.803 Disclosure statement.--At least 3 working days
24 | prior to the time the purchaser signs a business opportunity
25 | contract, or at least 3 working days prior to the receipt of
26 | any consideration by the seller, whichever occurs first, the
27 | seller must provide the prospective purchaser a written
28 | document, the cover sheet of which is entitled in at least
29 | 12-point boldfaced capital letters "DISCLOSURES REQUIRED BY
30 | FLORIDA LAW." Under this title shall appear the following
31 | statement in at least 10-point type: "The State of Florida

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

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

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

31

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

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

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

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

27 Section 12. Section 559.807, Florida Statutes, is
28 amended to read:

29 559.807 Bond or other security ~~trust account~~
30 required.--

31

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 13. 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 14. 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 15. 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.

1 Section 16. 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

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 17. 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.--

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 18. 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

1 licensed under this part. The commissioner shall select one
2 industry member from each of the following categories:

- 3 1. Independent automotive mechanics shops.
- 4 2. Franchise or company-owned automotive mechanics
5 shops.
- 6 3. Independent automotive collision shops.
- 7 4. Franchise or company-owned automotive collision
8 shops.
- 9 5. Independent tire dealer.
- 10 6. Franchise or company-owned tire dealer.
- 11 7. Independent motor vehicle dealer licensed under s.
12 320.27.
- 13 8. Franchise motor vehicle dealer licensed under s.
14 320.27.

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

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

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

29 Section 19. Subsection (5) of section 559.903, Florida
30 Statutes, is repealed.

31

1 Section 20. This act shall take effect October 1,
2 2001.

3

4 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
5 COMMITTEE SUBSTITUTE FOR
6 CS for SB 784

6

7 Committee Substitute for Committee Substitute for Senate Bill
8 784 is different from Committee Substitute for Senate Bill 784
9 in that it:

10 Makes technical changes, adds a section which repeals the
11 Assistive Technology Device Warranty Act, and revises the
12 definition of "home medical equipment."

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