

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. 400.93, F.S.;  
5           exempting providers of home medical equipment  
6           operated by the Department of Health from  
7           certain licensure requirements; amending s.  
8           427.802, F.S.; revising definitions; amending  
9           s. 427.803, F.S.; revising warranty  
10          requirements; amending s. 427.804, F.S.;  
11          conforming references; deleting investigation  
12          and complaint processing requirements of the  
13          Department of Agriculture and Consumer  
14          Services; repealing s. 427.8041, F.S., relating  
15          to the registration of assistive technology  
16          device dealers; amending s. 496.411, F.S.;  
17          requiring charitable organizations or sponsors  
18          to display certain information on certain  
19          solicitation materials; amending s. 501.017,  
20          F.S.; requiring certain health studio contract  
21          refunds to be issued within a time certain;  
22          amending s. 501.019, F.S.; expanding  
23          application of felony penalties for knowingly  
24          making false representations for certain  
25          purposes; amending s. 539.001, F.S.; redefining  
26          the term "agency"; prohibiting pawnbrokers from  
27          knowingly accepting stolen property; correcting  
28          terminology; amending s. 559.801, F.S.;  
29          revising a definition; amending s. 559.803,  
30          F.S.; revising statements that must be placed  
31          in disclosure documents; specifying additional

1 information required in certain business  
2 opportunity contract disclosure statements;  
3 amending s. 559.807, F.S.; revising application  
4 of requirements for certain securities relating  
5 to selling business opportunities; amending s.  
6 559.809, F.S.; specifying an additional  
7 prohibited act by business opportunity sellers;  
8 reenacting s. 559.815, F.S., relating to  
9 penalties for violations of s. 559.809, F.S.;  
10 amending s. 559.902, F.S.; providing an  
11 additional exception for certain schools to  
12 application of certain motor vehicle repair  
13 shop provisions; amending s. 559.904, F.S.;  
14 revising certain requirements for motor vehicle  
15 repair shop registrations; amending s. 559.905,  
16 F.S.; providing additional estimated cost of  
17 repair requirements for written repair  
18 estimates; amending s. 559.9221, F.S.; revising  
19 Motor Vehicle Repair Advisory Council  
20 membership requirements; repealing s.  
21 559.903(5), F.S., relating to a definition of  
22 minor repair service; providing for  
23 severability; creating s. 501.144, F.S., the  
24 Florida Infant Crib Safety Act; providing  
25 definitions; prohibiting commercial users from  
26 manufacturing, remanufacturing, retrofitting,  
27 selling, contracting to sell or resell,  
28 leasing, or subletting specified cribs  
29 determined to be unsafe for use by infants;  
30 prohibiting transient public lodging  
31 establishments from offering or providing for

1 use specified cribs determined to be unsafe for  
2 use by infants; providing criteria for  
3 determining safety of infant cribs; providing  
4 exemptions; providing specified immunity from  
5 civil liability; providing penalties; providing  
6 that violation of the act constitutes an unfair  
7 and deceptive trade practice; authorizing the  
8 Department of Agriculture and Consumer  
9 Services, the Department of Business and  
10 Professional Regulation, and the Department of  
11 Children and Family Services to collaborate  
12 with public agencies and private sector  
13 entities to prepare specified public education  
14 materials and programs; authorizing the  
15 Department of Agriculture and Consumer Services  
16 to adopt rules and prescribe forms; amending s.  
17 509.221, F.S.; prohibiting the use of certain  
18 cribs in public lodging establishments;  
19 reenacting s. 509.032, F.S.; providing for  
20 regulation and rulemaking by the Division of  
21 Hotels and Restaurants of the Department of  
22 Business and Professional Regulation; creating  
23 s. 402.3031, F.S.; prohibiting unsafe cribs in  
24 certain facilities; providing for enforcement  
25 and rulemaking powers of the Department of  
26 Children and Family Services; amending s.  
27 501.203, F.S.; including business or commercial  
28 entity within the definition of the term  
29 "consumer" for purposes of ch. 501, F.S.;  
30 incorporating revisions to applicable  
31 regulations; amending s. 501.204, F.S.;

1 incorporating interpretations relating to the  
2 Federal Trade Commission Act; amending s.  
3 501.207, F.S.; authorizing an action on behalf  
4 of a governmental entity for damages caused by  
5 a violation of part II of ch. 501, F.S.;  
6 amending s. 501.2075, F.S.; providing for  
7 waiver of civil penalties if restitution is  
8 made for actual damages to a governmental  
9 entity; repealing s. 501.2091, F.S., relating  
10 to an authorization for a stay of proceedings  
11 pending trial by a party to an action under  
12 part II of ch. 501, F.S.; amending s. 501.211,  
13 F.S.; providing for the recovery of actual  
14 damages on the part of a person who suffers a  
15 loss as a result of a violation of part II of  
16 ch. 501, F.S.; amending s. 501.212, F.S.;  
17 providing that an exemption from regulation  
18 under part II of ch. 501, F.S., applies to  
19 activities regulated under laws administered by  
20 the Public Service Commission; providing  
21 effective dates.

22  
23 Be It Enacted by the Legislature of the State of Florida:

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

27 400.925 Definitions.--As used in this part, the term:

28 (8) "Home medical equipment" includes any product as  
29 defined by the Federal Drug Administration's Drugs, Devices  
30 and Cosmetics Act, any products reimbursed under the Medicare  
31 Part B Durable Medical Equipment benefits, or any products

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

17 Section 2. Paragraph (a) of subsection (5) of section  
18 400.93, Florida Statutes, is amended to read:

19 400.93 Home medical equipment providers to be  
20 licensed; expiration of license; exemptions; unlawful acts;  
21 penalties.--

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

28 (a) Providers operated by the Department of Health or  
29 Federal Government.

30 Section 3. Section 427.802, Florida Statutes, is  
31 amended to read:

1           427.802 Definitions.--As used in this part:

2           (1) "Assistive technology devices" means manual  
3 wheelchairs, motorized wheelchairs, motorized scooters,  
4 voice-synthesized computer modules, optical scanners, talking  
5 software, braille printers, environmental control devices for  
6 use by a person with quadriplegia, motor vehicle adaptive  
7 transportation aids, devices that enable persons with severe  
8 speech disabilities to in effect speak, personal transfer  
9 systems, and specialty beds, including a demonstrator, that a  
10 consumer purchases or accepts transfer of in this state for  
11 use by a person with a disability.

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

16           (2)~~(3)~~ "Person with a disability" means any person who  
17 has one or more permanent physical or mental limitations that  
18 restrict his or her ability to perform the normal activities  
19 of daily living and impede his or her capacity to live  
20 independently.

21           (3)~~(4)~~ "Assistive technology device dealer" means a  
22 person who is ~~business entity that is primarily~~ engaged in the  
23 business of ~~selling or leasing of~~ assistive technology  
24 devices. ~~As used in this subsection, the term "primarily"~~  
25 ~~means no less than 30 percent of the business entity's gross~~  
26 ~~sales in the previous fiscal year.~~

27           (4)~~(5)~~ "Assistive technology device lessor" means a  
28 person who leases an assistive technology device to a  
29 consumer, or holds the lessor's rights, under a written lease.

30           (5)~~(6)~~ "Collateral costs" means expenses incurred by a  
31 consumer in connection with the repair of a nonconformity,

1 including the costs of obtaining an alternative assistive  
2 technology device.

3 (6)~~(7)~~ "Consumer" means any of the following:

4 (a) The purchaser of an assistive technology device,  
5 if the assistive technology device was purchased from an  
6 assistive technology device dealer or manufacturer for  
7 purposes other than resale.

8 (b) A person to whom the assistive technology device  
9 is transferred for purposes other than resale, if the transfer  
10 occurs before the expiration of an express warranty applicable  
11 to the assistive technology device.

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

13 (d) A person who leases an assistive technology device  
14 from an assistive technology device lessor under a written  
15 lease.

16 (7)~~(8)~~ "Demonstrator" means an assistive technology  
17 device used primarily for the purpose of demonstration to the  
18 public.

19 ~~(9) "Department" means the Department of Agriculture  
20 and Consumer Services.~~

21 (8)~~(10)~~ "Early termination cost" means any expense or  
22 obligation that an assistive technology device lessor incurs  
23 as a result of both the termination of a written lease before  
24 the termination date set forth in that lease and the return of  
25 an assistive technology device to a manufacturer pursuant to  
26 this section. The term includes a penalty for prepayment  
27 under a financial arrangement.

28 (9)~~(11)~~ "Early termination saving" means any expense  
29 or obligation that an assistive technology device lessor  
30 avoids as a result of both the termination of a written lease  
31 before the termination date set forth in the lease and the

1 return of an assistive technology device to a manufacturer  
2 pursuant to this section. The term includes an interest  
3 charge that the assistive technology device lessor would have  
4 paid to finance the assistive technology device or, if the  
5 assistive technology device lessor does not finance the  
6 assistive technology device, the difference between the total  
7 amount for which the lease obligates the consumer during the  
8 period of the lease term remaining after the early termination  
9 and the present value of that amount at the date of the early  
10 termination.

11 (10)~~(12)~~ "Manufacturer" means a business entity that  
12 manufactures or produces assistive technology devices for sale  
13 and agents of that business entity, including an importer, a  
14 distributor, a factory branch, a distributor branch, and any  
15 warrantors of the manufacturer's assistive technology device,  
16 but not including an assistive technology device dealer.

17 (11)~~(13)~~ "Nonconformity" means a condition or defect  
18 of an assistive technology device which substantially impairs  
19 the use, value, or safety of the device and which is covered  
20 by an express warranty applicable to the assistive technology  
21 device, but does not include a condition or defect that is the  
22 result of abuse, neglect, excessive wear, or unauthorized  
23 modification or alteration of the assistive technology device  
24 by a consumer.

25 (12)~~(14)~~ "Reasonable attempt to repair" means, within  
26 the terms of an express warranty applicable to a new assistive  
27 technology device:

28 (a) A maximum of three efforts by the manufacturer,  
29 the assistive technology device lessor, or any of the  
30 manufacturer's authorized assistive technology device dealers  
31



1 to repair a nonconformity that is subject to repair under the  
2 warranty; or

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

6 Section 4. Section 427.803, Florida Statutes, is  
7 amended to read:

8 427.803 Express Duty of manufacturer and an assistive  
9 ~~technology device dealer to conform an assistive technology~~  
10 ~~device to the warranty.--~~

11 (1) A manufacturer who sells a new assistive  
12 technology device to a consumer, either directly or through an  
13 assistive technology device dealer, shall furnish the consumer  
14 with an express warranty for the assistive technology device.  
15 The duration of the express warranty must be at least 1 year  
16 after first delivery of the assistive technology device to the  
17 consumer. In the absence of an express warranty from the  
18 manufacturer, the manufacturer is considered to have expressly  
19 warranted to the consumer of an assistive technology device  
20 that, for a period of 1 year after the date of first delivery  
21 to the consumer, the assistive technology device will be free  
22 from any condition or defect that substantially impairs the  
23 value of the assistive technology device to the consumer.

24 (2) ~~If an assistive technology device does not conform~~  
25 ~~to the warranty and the consumer first reports the problem to~~  
26 ~~the manufacturer during the Assistive Technology Device~~  
27 ~~Warranty Act rights period, the manufacturer shall make such~~  
28 ~~repairs as are necessary to conform the device to the~~  
29 ~~warranty, irrespective of whether such repairs are made after~~  
30 ~~the expiration of the Assistive Technology Device Warranty Act~~  
31 ~~rights period. Such repairs shall be at no cost to the~~

1 ~~consumer if reported to the manufacturer or assistive~~  
2 ~~technology device dealer during the Assistive Technology~~  
3 ~~Device Warranty Act rights period. Nothing in this subsection~~  
4 ~~shall be construed to grant an extension of the Assistive~~  
5 ~~Technology Device Warranty Act rights period or to expand the~~  
6 ~~time within which a consumer must file a complaint under this~~  
7 ~~chapter.~~

8 ~~(3) Each manufacturer or assistive technology device~~  
9 ~~dealer shall provide to its consumers conspicuous notice of~~  
10 ~~the address and phone number for its zone, district, or~~  
11 ~~regional office for this state in the written warranty or~~  
12 ~~owner's manual. Within 10 days after the department's written~~  
13 ~~request, a manufacturer shall forward to the department a copy~~  
14 ~~of the owner's manual and any written warranty for each make~~  
15 ~~and model of assistive technology device that it sells in this~~  
16 ~~state.~~

17 ~~(4) The manufacturer shall provide to the assistive~~  
18 ~~technology device dealer and, at the time of acquisition, the~~  
19 ~~assistive technology device dealer shall provide to the~~  
20 ~~consumer a written statement that explains the consumer's~~  
21 ~~rights under this chapter. The written statement shall be~~  
22 ~~prepared by the department and shall contain a toll-free~~  
23 ~~number for the department that the consumer can contact to~~  
24 ~~obtain information regarding the consumer's rights and~~  
25 ~~obligations under this chapter or to commence arbitration. The~~  
26 ~~consumer's signed acknowledgment of receipt of materials~~  
27 ~~required under this subsection shall constitute prima facie~~  
28 ~~evidence of compliance by the manufacturer and assistive~~  
29 ~~technology device dealer. The form of the acknowledgments~~  
30 ~~shall be approved by the department, and the assistive~~

31

1 ~~technology device dealer shall maintain the consumer's signed~~  
2 ~~acknowledgment for 3 years.~~

3 ~~(5) A manufacturer or an assistive technology device~~  
4 ~~dealer shall provide to the consumer, each time the consumer's~~  
5 ~~assistive technology device is returned after being examined~~  
6 ~~or repaired under the warranty, a fully itemized, legible~~  
7 ~~statement of any diagnosis made and all work performed on the~~  
8 ~~assistive technology device, including, but not limited to, a~~  
9 ~~general description of the problem reported by the consumer or~~  
10 ~~an identification of the defect or condition, parts and labor,~~  
11 ~~the date on which the assistive technology device was~~  
12 ~~submitted for examination or repair, and the date when the~~  
13 ~~repair or examination was completed.~~

14 Section 5. Section 427.804, Florida Statutes, is  
15 amended to read:

16 427.804 Repair of nonconforming assistive technology  
17 devices; refund or replacement of devices after attempt to  
18 repair; sale or lease of returned device; arbitration;  
19 ~~investigation~~ limitation of rights.--

20 (1) If a new assistive technology device does not  
21 conform to an applicable express warranty and the consumer  
22 reports the nonconformity to the manufacturer, the assistive  
23 technology device lessor, or any of the manufacturer's  
24 authorized assistive technology device dealers and makes the  
25 assistive technology device available for repair within 1 year  
26 after first delivery or return of the assistive technology  
27 device to the consumer, the nonconformity must be repaired at  
28 no charge to the consumer.

29 (2) If, after a reasonable attempt to repair, the  
30 nonconformity is not repaired, the manufacturer, at the  
31

1 direction of a consumer as defined in s. 427.802~~(6)(7)~~(a)-(c),  
2 must do one of the following:

3 (a) Accept return of the assistive technology device  
4 and replace the assistive technology device with a comparable  
5 new assistive technology device and refund any collateral  
6 costs.

7 (b) Accept return of the assistive technology device  
8 and refund to the consumer and to any holder of a perfected  
9 security interest in the consumer's assistive technology  
10 device, as the interest may appear, the full purchase price  
11 plus any finance charge amount paid by the consumer at the  
12 point of sale, and collateral costs.

13 (c) With respect to a consumer as defined in s.  
14 427.802~~(6)(7)~~(d), accept return of the assistive technology  
15 device, refund to the assistive technology device lessor and  
16 to any holder of a perfected security interest in the  
17 assistive technology device, as the interest may appear, the  
18 current value of the written lease, and refund to the consumer  
19 the amount that the consumer paid under the written lease plus  
20 any collateral costs.

21 (3) The current value of the written lease equals the  
22 total amount for which the lease obligates the consumer during  
23 the period of the lease remaining after its early termination  
24 plus the assistive technology device dealer's early  
25 termination costs and the value of the assistive technology  
26 device at the lease expiration date if the lease sets forth  
27 the value, less the assistive technology device lessor's early  
28 termination savings.

29 (4) To receive a comparable new assistive technology  
30 device or a refund due under paragraph (2)(a), a consumer must  
31 offer to the manufacturer of the assistive technology device

1 having the nonconformity to transfer possession of the  
2 assistive technology device to the manufacturer. No later  
3 than 30 days after the offer, the manufacturer shall provide  
4 the consumer with the comparable assistive technology device  
5 or refund. When the manufacturer provides the comparable  
6 assistive technology device or refund, the consumer shall  
7 return the assistive technology device having the  
8 nonconformity to the manufacturer, along with any endorsements  
9 necessary to transfer real possession to the manufacturer.

10 (5) To receive a refund due under paragraph (2)(b), a  
11 consumer must offer to return the assistive technology device  
12 having the nonconformity to its manufacturer. No later than  
13 30 days after the offer, the manufacturer shall provide the  
14 refund to the consumer who paid for or the provider who billed  
15 a third party payor source for the assistive technology  
16 device. The provider shall return the manufacturer's refund  
17 to the third party payor source, unless the provider was not  
18 reimbursed by the third party payor.When the manufacturer  
19 provides the refund, the consumer shall return to the  
20 manufacturer the assistive technology device having the  
21 nonconformity.

22 (6) To receive a refund due under paragraph (2)(c), an  
23 assistive technology device lessor must offer to transfer  
24 possession of the assistive technology device having the  
25 nonconformity to its manufacturer. No later than 30 days  
26 after the offer, the manufacturer shall provide the refund to  
27 the assistive technology device lessor. When the manufacturer  
28 provides the refund, the assistive technology device lessor  
29 shall provide to the manufacturer any endorsements necessary  
30 to transfer legal possession to the manufacturer.

31

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

4           (8) An assistive technology device that is returned by  
5 a consumer or assistive technology device lessor in this  
6 state, or by a consumer or assistive technology device lessor  
7 in another state under a similar law of that state, may not be  
8 sold or leased again in this state, unless full disclosure of  
9 the reasons for return is made to any prospective buyer or  
10 lessee.

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

15           ~~(10) The department shall process consumer complaints~~  
16 ~~pursuant to s. 570.544.~~

17           (9)~~(11)~~ Each consumer may submit any dispute arising  
18 under this part to an alternative arbitration mechanism  
19 established pursuant to chapter 682. Upon notice by the  
20 consumer, all manufacturers must submit to such alternative  
21 arbitration.

22           (10)~~(12)~~ Such alternative arbitration must be  
23 conducted by a professional arbitrator or arbitration firm  
24 appointed under chapter 682 and any applicable rules. These  
25 procedures must provide for the personal objectivity of the  
26 arbitrators and for the right of each party to present its  
27 case, to be in attendance during any presentation made by the  
28 other party, and to rebut or refute such a presentation.

29           (11)~~(13)~~ This part does not limit rights or remedies  
30 available to a consumer under any other law.

31

1           Section 6. Section 427.8041, Florida Statutes, is  
2 repealed.

3           Section 7. Subsection (6) is added to section 496.411,  
4 Florida Statutes, to read:

5           496.411 Disclosure requirements and duties of  
6 charitable organizations and sponsors.--

7           (6) Each charitable organization or sponsor that is  
8 required to register under s. 496.405 shall conspicuously  
9 display the following information on every printed  
10 solicitation, written confirmation, receipt, or reminder of a  
11 contribution:

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

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

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

19  
20 If the solicitation consists of more than a single item, the  
21 statement shall be displayed prominently in the solicitation  
22 materials.

23           Section 8. Paragraphs (b) and (d) of subsection (1) of  
24 section 501.017, Florida Statutes, are amended to read:

25           501.017 Health studios; contracts.--

26           (1) Every contract for the sale of future health  
27 studio services which is paid for in advance or which the  
28 buyer agrees to pay for in future installment payments shall  
29 be in writing and shall contain, contractual provisions to the  
30 contrary notwithstanding, in immediate proximity to the space  
31 reserved in the contract for the signature of the buyer, and

1 in 10-point boldfaced type, language substantially equivalent  
2 to the following:

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

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

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

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

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



1  
2 A refund shall be issued within 30 days after receipt of the  
3 notice of cancellation made pursuant to this paragraph.

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

24 Section 9. Subsection (2) of section 501.019, Florida  
25 Statutes, is amended to read:

26 501.019 Health studios; penalties.--

27 (2) Any person ~~health studio owner or, in the case of~~  
28 ~~corporate ownership, any officer of the corporation, or any~~  
29 ~~manager of a health studio or health studio's business~~  
30 ~~location,~~ who knowingly makes a false representation to the  
31 department with the intent to obtain an exemption of any kind

1 from the requirements of s. 501.016 commits a felony of the  
2 third degree, punishable as provided in s. 775.082, s.  
3 775.083, or s. 775.084.

4 Section 10. Paragraph (a) of subsection (2), paragraph  
5 (b) of subsection (4), and paragraph (c) of subsection (5) of  
6 section 539.001, Florida Statutes, are amended, paragraph (n)  
7 is added to subsection (12) of that section, and subsection  
8 (21) of that section is amended, to read:

9 539.001 The Florida Pawnbroking Act.--

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

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

13 (4) ELIGIBILITY FOR LICENSE.--

14 (b) Any applicant claiming to have a net worth of  
15 \$50,000 or more shall file with the agency department, at the  
16 time of applying for a license, the following documentation:

17 1. A current financial statement prepared by a Florida  
18 certified public accountant; or

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

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

23  
24 If the agency cannot verify that the applicant meets the net  
25 worth requirement for a license, the agency may require a  
26 finding, including the presentation of a current balance  
27 sheet, by an accounting firm or individual holding a permit to  
28 practice public accounting in this state, that the accountant  
29 has reviewed the books and records of the applicant and that  
30 the applicant meets the net worth requirement.

31 (5) APPLICATION FOR LICENSE.--

1 (c) Each initial application for a license must be  
2 accompanied by a complete set of fingerprints taken by an  
3 authorized law enforcement officer, \$300 for the first year's  
4 license fee, and the actual cost to the agency ~~department~~ for  
5 fingerprint analysis for each person subject to the  
6 eligibility requirements. The agency shall submit the  
7 fingerprints to the Department of Law Enforcement for state  
8 processing, and the Department of Law Enforcement shall  
9 forward the fingerprints to the Federal Bureau of  
10 Investigation for a national criminal history check. These  
11 fees and costs are not refundable.

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

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

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

20 Section 11. Paragraph (a) of subsection (1) of section  
21 559.801, Florida Statutes, is amended to read:

22 559.801 Definitions.--For the purpose of ss.  
23 559.80-559.815, the term:

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

30 1. That the seller or person or entity affiliated with  
31 or referred by the seller will provide locations or assist the

1 purchaser in finding locations for the use or operation of  
2 vending machines, racks, display cases, currency or card  
3 operated equipment, or other similar devices or  
4 currency-operated amusement machines or devices on premises  
5 neither owned nor leased by the purchaser or seller;

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

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

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

26  
27 For the purpose of subparagraph 1., the term "assist the  
28 purchaser in finding locations" means, but is not limited to,  
29 supplying the purchaser with names of locator companies,  
30 contracting with the purchaser to provide assistance or supply  
31

1 names, or collecting a fee on behalf of or for a locator  
2 company.

3 Section 12. Subsection (8) of section 559.803, Florida  
4 Statutes, is amended, present subsections (11), (12), and (13)  
5 of that section are renumbered as subsections (12), (13), and  
6 (14), respectively, and a new subsection (11) is added to that  
7 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 (8) If the business opportunity seller is required to  
8 secure a bond, guaranteed letter of credit, or certificate of  
9 deposit ~~or establish a trust deposit~~ pursuant to s. 559.807,  
10 either of the following statements:

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

16 (b) "As required by Florida law, the seller has  
17 established a ~~trust account~~ or guaranteed letter of credit or  
18 certificate of deposit . . . (number of account) . . . with . . . (name  
19 and address of bank or savings institution) . . . . Before  
20 signing a contract to purchase this business opportunity, you  
21 should confirm with the bank or savings institution the  
22 current status of the ~~trust account~~ or guaranteed letter of  
23 credit or certificate of deposit."

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

27 (b) The names, addresses, and telephone numbers of the  
28 10 persons who previously purchased the business opportunity  
29 from the seller and who are geographically closest to the  
30 potential purchaser.

31

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

11 Section 13. Section 559.807, Florida Statutes, is  
12 amended to read:

13 559.807 Bond or other security ~~trust account~~  
14 required.--

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

24 (2) The bond, certificate of deposit, or guaranteed  
25 letter of credit ~~trust account~~ shall be in the favor of the  
26 department for the use and benefit of ~~any~~ person who is  
27 injured by the fraud, misrepresentation, ~~damaged by any~~  
28 violation of ss. 559.80-559.815, or by the seller's breach of  
29 the contract, financial failure, or violation of any provision  
30 of this part by the seller. Such liability may be enforced by  
31 filing an action at law in a court of competent jurisdiction

1 without precluding enforcement in an administrative action  
2 pursuant to chapter 120. However, the bond, certificate of  
3 deposit, or guaranteed letter of credit shall be amenable and  
4 enforceable only by and through administrative proceedings  
5 before the department. A money judgment resulting from an  
6 action at law, less any award for costs and attorney's fees,  
7 shall be prima facie evidence sufficient to establish the  
8 value of the claim in an administrative action. It is the  
9 intent of the Legislature that such bond, certificate of  
10 deposit, or guaranteed letter of credit shall be applicable  
11 and liable only for payment of claims duly adjudicated by  
12 order of the department. The bond, certificate of deposit, or  
13 guaranteed letter of credit shall be open to successive claims  
14 ~~but for the business opportunity sale or of any obligation~~  
15 ~~arising therefrom, may bring an action against the bond, trust~~  
16 ~~account, or guaranteed letter of credit to recover damages~~  
17 ~~suffered; however, the aggregate amount may not liability of~~  
18 ~~the surety or trustee shall be only for actual damages and in~~  
19 ~~no event shall~~ exceed the amount of the bond, certificate of  
20 deposit trust account, or guaranteed letter of credit.

21 Section 14. Subsection (14) is added to section  
22 559.809, Florida Statutes, to read:

23 559.809 Prohibited acts.--Business opportunity sellers  
24 shall not:

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

28 Section 15. For the purpose of incorporating the  
29 amendment to section 559.809, Florida Statutes, in a reference  
30 thereto, section 559.815, Florida Statutes, is reenacted to  
31 read:



1           559.815 Penalties.--Any person who fails to file with  
2 the department as required by s. 559.805 or who commits an act  
3 described in s. 559.809 is guilty of a felony of the third  
4 degree, punishable as provided in s. 775.082, s. 775.083, or  
5 s. 775.084.

6           Section 16. Subsection (5) is added to section  
7 559.902, Florida Statutes, to read:

8           559.902 Scope and application.--This act shall apply  
9 to all motor vehicle repair shops in Florida, except:

10           (5) Those located in public schools as defined in s.  
11 228.041 or charter technical career centers as defined in s.  
12 228.505.

13  
14 However, such person may voluntarily register under this act.

15           Section 17. Subsections (3), (4), (5), (6), and (10)  
16 of section 559.904, Florida Statutes, are amended to read:

17           559.904 Motor vehicle repair shop registration;  
18 application; exemption.--

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

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

23           (a)~~(b)~~ If the place of business has 1 to 5 employees:  
24 \$50.

25           (b)~~(c)~~ If the place of business has 6 to 10 employees:  
26 \$150.

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

29           (4) Each initial and renewal application for  
30 registration must be accompanied by copies of the applicant's  
31 estimate and invoice forms. Such forms must comply with the

1 applicable provisions of this act before a registration may be  
2 issued.

3 (5)~~(4)~~ No annual registration fee is required for any  
4 motor vehicle repair shop which has a local municipal or  
5 county license issued pursuant to an ordinance containing  
6 standards which the department determines are at least equal  
7 to the requirements of this part, or for any motor vehicle  
8 dealer licensed pursuant to chapter 320.

9 (6)~~(5)~~ The department shall issue to each applicant a  
10 registration certificate in the form and size as prescribed by  
11 the department in accordance with s. 120.60. In the case of  
12 an applicant with more than one place of business, the  
13 department shall issue a registration certificate for each  
14 place of business. The certificate must show at least the name  
15 and address of the motor vehicle repair shop and the  
16 registration number for that place of business. In the case of  
17 a mobile motor vehicle repair shop, the certificate must show  
18 the home address of the owner, if different from the business  
19 address.

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

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

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

30 (b) Have not satisfied a civil fine, administrative  
31 fine, or other penalty arising out of any administrative or

1 enforcement action brought by any governmental agency based  
2 upon conduct involving fraud, dishonest dealing, or any  
3 violation of this part;

4 (c) Have had against them any civil, criminal, or  
5 administrative adjudication in any jurisdiction, based upon  
6 conduct involving fraud, dishonest dealing, or any violation  
7 of this part; or

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

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

13 559.905 Written motor vehicle repair estimate and  
14 disclosure statement required.--

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

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

27 "This charge represents costs and profits to  
28 the motor vehicle repair facility for  
29 miscellaneous shop supplies or waste disposal."  
30  
31

1 If a charge is mandated by state or federal law, the estimate  
2 shall contain a statement identifying the law and the specific  
3 amount charged under the law.

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

6 559.9221 Motor Vehicle Repair Advisory Council.--The  
7 Motor Vehicle Repair Advisory Council is created to advise and  
8 assist the department in carrying out this part.

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

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

- 18 1. Independent automotive mechanics shops.
- 19 2. Franchise or company-owned automotive mechanics  
20 shops.
- 21 3. Independent automotive collision shops.
- 22 4. Franchise or company-owned automotive collision  
23 shops.
- 24 5. Independent tire dealer.
- 25 6. Franchise or company-owned tire dealer.
- 26 7. Independent motor vehicle dealer licensed under s.  
27 320.27.
- 28 8. Franchise motor vehicle dealer licensed under s.  
29 320.27.

30  
31

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

4 (c) Two consumer members of the council must be  
5 residents of this state and must not be connected with the  
6 motor vehicle repair business.

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

15 Section 20. Subsection (5) of section 559.903, Florida  
16 Statutes, is repealed.

17 Section 21. If any clause, section, or provision of  
18 this act shall be declared unconstitutional or invalid for any  
19 reason, it shall be eliminated from this act, and the  
20 remaining portion of the act shall be in full force and effect  
21 and be as valid as if such invalid portion thereof had not  
22 been incorporated therein.

23 Section 22. Section 501.144, Florida Statutes, is  
24 created to read:

25 501.144 Florida Infant Crib Safety Act.--

26 (1) SHORT TITLE.--This section may be cited as the  
27 "Florida Infant Crib Safety Act."

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

29 (a) "Commercial user" means a dealer pursuant to s.  
30 212.06(2), or any person who is in the business of  
31 manufacturing, remanufacturing, retrofitting, selling,

1 leasing, or subletting full-size or non-full-size cribs. The  
2 term includes a child care facility, family day care home,  
3 large family child care home, and specialized child care  
4 facility for the care of mildly ill children, licensed by the  
5 Department of Children and Family Services or local licensing  
6 agencies.

7 (b) "Crib" means a bed or containment designed to  
8 accommodate an infant.

9 (c) "Department" means the Department of Agriculture  
10 and Consumer Services.

11 (d) "Full-size crib" means a full-size baby crib as  
12 defined in 16 C.F.R. part 1508, relating to requirements for  
13 full-size baby cribs.

14 (e) "Infant" means a person less than 35 inches tall  
15 and less than 3 years of age.

16 (f) "Non-full-size crib" means a non-full-size baby  
17 crib as defined in 16 C.F.R. part 1509, relating to  
18 requirements for non-full-size baby cribs.

19 (g) "Transient public lodging establishment" means any  
20 hotel, motel, resort condominium, transient apartment,  
21 roominghouse, bed and breakfast inn, or resort dwelling, as  
22 defined in s. 509.242.

23 (3) PROHIBITED PRACTICES.--

24 (a) A commercial user may not manufacture,  
25 remanufacture, retrofit, sell, contract to sell or resell,  
26 lease, or sublet a full-size or non-full-size crib that is  
27 unsafe for any infant using the crib because the crib does not  
28 conform to the standards set forth in paragraph (4)(a) or  
29 because the crib has any of the dangerous features or  
30 characteristics set forth in paragraph (4)(b).

31

1           (b) No transient public lodging establishment shall  
2 offer or provide for use a full-size or non-full-size crib  
3 that is unsafe for any infant using the crib because the crib  
4 does not conform to the standards set forth in paragraph  
5 (4)(a) or because the crib has any of the dangerous features  
6 or characteristics set forth in paragraph (4)(b). Further,  
7 violation of this section by a transient public lodging  
8 establishment is a violation of chapter 509 and is subject to  
9 the penalties set forth in s. 509.261.

10           (c) A violation of this section is a deceptive and  
11 unfair trade practice and constitutes a violation of part II  
12 of chapter 501, the Florida Deceptive and Unfair Trade  
13 Practices Act.

14           (4) PRESUMPTION AS UNSAFE; CRITERIA.--

15           (a) A crib is presumed to be unsafe under this section  
16 if it does not conform to all of the following:

17           1. 16 C.F.R. part 1303, relating to ban of  
18 lead-containing paint and certain consumer products bearing  
19 lead-containing paint; 16 C.F.R. part 1508, relating to  
20 requirements for full-size baby cribs; and 16 C.F.R. part  
21 1509, relating to requirements for non-full-size baby cribs.

22           2. American Society for Testing and Materials  
23 Voluntary Standards F966-96, F1169-99, and F1822-97.

24           3. Rules adopted by the department which implement the  
25 provisions of this subsection.

26           (b) Cribs are unsafe which have any of the following  
27 dangerous features or characteristics:

28           1. Corner posts that extend more than 1/16 of an inch.

29           2. Spaces between side slats more than 2 3/8 inches.

30           3. A mattress support that can be easily dislodged  
31 from any point of the crib. A mattress segment can be easily

1 dislodged if it cannot withstand at least a 25-pound upward  
2 force from underneath the crib. For portable folding cribs,  
3 this subparagraph shall not apply to mattress supports or  
4 mattress segments that are designed to allow the crib to be  
5 folded, provided that the crib is equipped with latches that  
6 work automatically to prevent the unintentional collapse of  
7 the crib.

8 4. Cutout designs on the end panels.

9 5. Rail-height dimensions that do not conform to the  
10 following:

11 a. The height of the rail and end panel as measured  
12 from the top of the rail or panel in its lowest position to  
13 the top of the mattress support in its highest position is at  
14 least 9 inches.

15 b. The height of the rail and end panel as measured  
16 from the top of the rail or panel in its highest position to  
17 the top of the mattress support in its lowest position is at  
18 least 26 inches.

19 6. Upon completion of assembly, any screw, bolt, or  
20 hardware that is loose and not secured.

21 7. Any sharp edge, point, or rough surface or any wood  
22 surface that is not smooth and free from splinters, splits, or  
23 cracks.

24 8. A tear in mesh or fabric sides for a non-full-size  
25 crib.

26 9. With respect to portable folding cribs, latches  
27 that do not work automatically to prevent the unintentional  
28 collapse of the crib.

29 10. Crib sheets used on mattresses must be sized to  
30 match the mattress size.

31 (5) EXEMPTIONS; CIVIL IMMUNITY.--



1           (a) A crib that is clearly not intended for use by an  
2 infant, including, but not limited to, a toy or display item,  
3 is exempt from this section if the crib is accompanied, at the  
4 time of manufacturing, remanufacturing, retrofitting, selling,  
5 leasing, or subletting by a notice to be furnished by the  
6 commercial user on forms prescribed by the department  
7 declaring that the crib is not intended to be used for an  
8 infant and is dangerous to use for an infant.

9           (b) A commercial user, other than a child care  
10 facility, family day care home, large family child care home,  
11 or specialized child care facility for the care of mildly ill  
12 children, that has complied with the notice requirements set  
13 forth under paragraph (a) is immune from civil liability  
14 resulting from the use of a crib, notwithstanding the  
15 provisions of this section.

16           (6) PENALTY.--

17           (a) A commercial user, other than a commercial user  
18 subject to the penalties provided in paragraph (b) or  
19 paragraph (c), that willfully and knowingly violates  
20 subsection (3) commits a misdemeanor of the first degree,  
21 punishable by a fine of not more than \$10,000 and imprisonment  
22 for a term of not more than 1 year.

23           (b) A transient public lodging establishment that  
24 violates subsection (3) shall be subject to the penalties set  
25 forth in s. 509.261.

26           (c) A child care facility, family day care home, large  
27 family child care home, or specialized child care facility for  
28 the care of mildly ill children that violates subsection (3)  
29 shall be subject to the penalties set forth in ss.  
30 402.301-402.319.

31

1           (7) PUBLIC EDUCATION MATERIALS AND PROGRAMS.--The  
2 Department of Agriculture and Consumer Services, the  
3 Department of Business and Professional Regulation, and the  
4 Department of Children and Family Services may collaborate  
5 with any public agency or private sector entity to prepare  
6 public education materials or programs designed to inform  
7 parents, child care providers, commercial users, and any other  
8 person or entity that is likely to place unsafe cribs in the  
9 stream of commerce of the dangers posed by secondhand,  
10 hand-me-down, or heirloom cribs that do not conform to the  
11 standards set forth in this section or that have any of the  
12 dangerous features or characteristics set forth in this  
13 section.

14           (8) RULEMAKING AUTHORITY.--The department may adopt  
15 rules pursuant to ss. 120.536(1) and 120.54 to administer this  
16 section.

17           Section 23. Subsection (10) is added to section  
18 509.221, Florida Statutes, to read:

19           509.221 Sanitary regulations.--

20           (10) No transient public lodging establishment shall  
21 offer or provide for use a full-size or non-full-size crib  
22 that is unsafe for any infant using the crib because it is not  
23 in conformity with the requirements of s. 501.144.

24           Section 24. Section 509.032, Florida Statutes, is  
25 reenacted to read:

26           509.032 Duties.--

27           (1) GENERAL.--The division shall carry out all of the  
28 provisions of this chapter and all other applicable laws and  
29 rules relating to the inspection or regulation of public  
30 lodging establishments and public food service establishments  
31 for the purpose of safeguarding the public health, safety, and

1 welfare. The division shall be responsible for ascertaining  
2 that an operator licensed under this chapter does not engage  
3 in any misleading advertising or unethical practices.

4 (2) INSPECTION OF PREMISES.--

5 (a) The division has responsibility and jurisdiction  
6 for all inspections required by this chapter. The division  
7 has responsibility for quality assurance. Each licensed  
8 establishment shall be inspected at least biannually and at  
9 such other times as the division determines is necessary to  
10 ensure the public's health, safety, and welfare. The division  
11 shall establish a system to determine inspection frequency.  
12 Public lodging units classified as resort condominiums or  
13 resort dwellings are not subject to this requirement, but  
14 shall be made available to the division upon request. If,  
15 during the inspection of a public lodging establishment  
16 classified for renting to transient or nontransient tenants,  
17 an inspector identifies vulnerable adults who appear to be  
18 victims of neglect, as defined in s. 415.102, or, in the case  
19 of a building that is not equipped with automatic sprinkler  
20 systems, tenants or clients who may be unable to self-preserve  
21 in an emergency, the division shall convene meetings with the  
22 following agencies as appropriate to the individual situation:  
23 the Department of Health, the Department of Elderly Affairs,  
24 the area agency on aging, the local fire marshal, the landlord  
25 and affected tenants and clients, and other relevant  
26 organizations, to develop a plan which improves the prospects  
27 for safety of affected residents and, if necessary, identifies  
28 alternative living arrangements such as facilities licensed  
29 under part II or part III of chapter 400.

30 (b) For purposes of performing required inspections  
31 and the enforcement of this chapter, the division has the

1 right of entry and access to public lodging establishments and  
2 public food service establishments at any reasonable time.

3 (c) Public food service establishment inspections  
4 shall be conducted to enforce provisions of this part and to  
5 educate, inform, and promote cooperation between the division  
6 and the establishment.

7 (d) The division shall adopt and enforce sanitation  
8 rules consistent with law to ensure the protection of the  
9 public from food-borne illness in those establishments  
10 licensed under this chapter. These rules shall provide the  
11 standards and requirements for obtaining, storing, preparing,  
12 processing, serving, or displaying food in public food service  
13 establishments, approving public food service establishment  
14 facility plans, conducting necessary public food service  
15 establishment inspections for compliance with sanitation  
16 regulations, cooperating and coordinating with the Department  
17 of Health in epidemiological investigations, and initiating  
18 enforcement actions, and for other such responsibilities  
19 deemed necessary by the division. The division may not  
20 establish by rule any regulation governing the design,  
21 construction, erection, alteration, modification, repair, or  
22 demolition of any public lodging or public food service  
23 establishment. It is the intent of the Legislature to preempt  
24 that function to the Florida Building Commission and the State  
25 Fire Marshal through adoption and maintenance of the Florida  
26 Building Code and the Florida Fire Prevention Code. The  
27 division shall provide technical assistance to the commission  
28 and the State Fire Marshal in updating the construction  
29 standards of the Florida Building Code and the Florida Fire  
30 Prevention Code which govern public lodging and public food  
31 service establishments. Further, the division shall enforce

1 the provisions of the Florida Building Code and the Florida  
2 Fire Prevention Code which apply to public lodging and public  
3 food service establishments in conducting any inspections  
4 authorized by this part.

5 (e)1. Relating to facility plan approvals, the  
6 division may establish, by rule, fees for conducting plan  
7 reviews and may grant variances from construction standards in  
8 hardship cases, which variances may be less restrictive than  
9 the provisions specified in this section or the rules adopted  
10 under this section. A variance may not be granted pursuant to  
11 this section until the division is satisfied that:

12 a. The variance shall not adversely affect the health  
13 of the public.

14 b. No reasonable alternative to the required  
15 construction exists.

16 c. The hardship was not caused intentionally by the  
17 action of the applicant.

18 2. The division's advisory council shall review  
19 applications for variances and recommend agency action. The  
20 division shall make arrangements to expedite emergency  
21 requests for variances, to ensure that such requests are acted  
22 upon within 30 days of receipt.

23 3. The division shall establish, by rule, a fee for  
24 the cost of the variance process. Such fee shall not exceed  
25 \$150 for routine variance requests and \$300 for emergency  
26 variance requests.

27 (f) In conducting inspections of establishments  
28 licensed under this chapter, the division shall determine if  
29 each coin-operated amusement machine that is operated on the  
30 premises of a licensed establishment is properly registered  
31 with the Department of Revenue. Each month the division shall

1 report to the Department of Revenue the sales tax registration  
2 number of the operator of any licensed establishment that has  
3 on location a coin-operated amusement machine and that does  
4 not have an identifying certificate conspicuously displayed as  
5 required by s. 212.05(1)(i).

6 (g) In inspecting public food service establishments,  
7 the department shall provide each inspected establishment with  
8 the food-recovery brochure developed under s. 570.0725.

9 (3) SANITARY STANDARDS; EMERGENCIES; TEMPORARY FOOD  
10 SERVICE EVENTS.--The division shall:

11 (a) Prescribe sanitary standards which shall be  
12 enforced in public food service establishments.

13 (b) Inspect public lodging establishments and public  
14 food service establishments whenever necessary to respond to  
15 an emergency or epidemiological condition.

16 (c) Administer a public notification process for  
17 temporary food service events and distribute educational  
18 materials that address safe food storage, preparation, and  
19 service procedures.

20 1. Sponsors of temporary food service events shall  
21 notify the division not less than 3 days prior to the  
22 scheduled event of the type of food service proposed, the time  
23 and location of the event, a complete list of food service  
24 vendor owners and operators participating in each event, and  
25 the current license numbers of all public food service  
26 establishments participating in each event. Notification may  
27 be completed orally, by telephone, in person, or in writing.  
28 A public food service establishment or food service vendor may  
29 not use this notification process to circumvent the license  
30 requirements of this chapter.

31

1           2. The division shall keep a record of all  
2 notifications received for proposed temporary food service  
3 events and shall provide appropriate educational materials to  
4 the event sponsors, including the food-recovery brochure  
5 developed under s. 570.0725.

6           3.a. A public food service establishment or other food  
7 vendor must obtain a license from the division for each  
8 temporary food service event in which it participates.

9           b. Public food service establishments holding current  
10 licenses from the division may operate under the regulations  
11 of such a license at temporary food service events of 3 days  
12 or less in duration.

13           (4) STOP-SALE ORDERS.--The division may stop the sale,  
14 and supervise the proper destruction, of any food or food  
15 product when the director or the director's designee  
16 determines that such food or food product represents a threat  
17 to the public safety or welfare. If the operator of a public  
18 food service establishment licensed under this chapter has  
19 received official notification from a health authority that a  
20 food or food product from that establishment has potentially  
21 contributed to any instance or outbreak of food-borne illness,  
22 the food or food product must be maintained in safe storage in  
23 the establishment until the responsible health authority has  
24 examined, sampled, seized, or requested destruction of the  
25 food or food product.

26           (5) REPORTS REQUIRED.--The division shall send the  
27 Governor a written report, which shall state, but not be  
28 limited to, the total number of inspections conducted by the  
29 division to ensure the enforcement of sanitary standards, the  
30 total number of inspections conducted in response to emergency  
31 or epidemiological conditions, the number of violations of

1 each sanitary standard, and any recommendations for improved  
2 inspection procedures. The division shall also keep accurate  
3 account of all expenses arising out of the performance of its  
4 duties and all fees collected under this chapter. The report  
5 shall be submitted by September 30 following the end of the  
6 fiscal year.

7 (6) RULEMAKING AUTHORITY.--The division shall adopt  
8 such rules as are necessary to carry out the provisions of  
9 this chapter.

10 (7) PREEMPTION AUTHORITY.--The regulation of public  
11 lodging establishments and public food service establishments,  
12 the inspection of public lodging establishments and public  
13 food service establishments for compliance with the sanitation  
14 standards adopted under this section, and the regulation of  
15 food safety protection standards for required training and  
16 testing of food service establishment personnel are preempted  
17 to the state. This subsection does not preempt the authority  
18 of a local government or local enforcement district to conduct  
19 inspections of public lodging and public food service  
20 establishments for compliance with the Florida Building Code  
21 and the Florida Fire Prevention Code, pursuant to ss. 553.80  
22 and 633.022.

23 Section 25. Section 402.3031, Florida Statutes, is  
24 created to read:

25 402.3031 Infant crib safety.--No child care facility,  
26 family day care home, large family child care home, or  
27 specialized child care facility for the care of mildly ill  
28 children shall offer or provide for use a full-size or  
29 non-full-size crib that is not in conformity with the  
30 requirements of s. 501.144. The department shall enforce the  
31



1 provisions of this section and may adopt rules pursuant to ss.  
2 120.536(1) and 120.54 to administer this section.

3 Section 26. Effective July 1, 2001, section 501.203,  
4 Florida Statutes, is amended to read:

5 501.203 Definitions.--As used in this chapter, unless  
6 the context otherwise requires, the term:

7 (1) "Final judgment" means a judgment, including any  
8 supporting opinion, that determines the rights of the parties  
9 and concerning which appellate remedies have been exhausted or  
10 the time for appeal has expired.

11 (2) "Enforcing authority" means the office of the  
12 state attorney if a violation of this part occurs in or  
13 affects the judicial circuit under the office's jurisdiction.  
14 "Enforcing authority" means the Department of Legal Affairs if  
15 the violation occurs in or affects more than one judicial  
16 circuit or if the office of the state attorney defers to the  
17 department in writing, or fails to act upon a violation within  
18 90 days after a written complaint has been filed with the  
19 state attorney.

20 (3) "Violation of this part" means any violation of  
21 this act or the rules adopted under this act and may be based  
22 upon any of the following as of July 1, 2001:

23 (a) Any rules promulgated pursuant to the Federal  
24 Trade Commission Act, 15 U.S.C. ss. 41 et seq. ~~or this act~~;

25 (b) The standards of unfairness and deception set  
26 forth and interpreted by the Federal Trade Commission or the  
27 federal courts;

28 (c) Any law, statute, rule, regulation, or ordinance  
29 which proscribes unfair methods of competition, or unfair,  
30 deceptive, or unconscionable acts or practices.

31

1           (4) "Department" means the Department of Legal  
2 Affairs.

3           (5) "Order" means a cease and desist order issued by  
4 the enforcing authority as set forth in s. 501.208.

5           (6) "Interested party or person" means any person  
6 affected by a violation of this part or any person affected by  
7 an order of the enforcing authority.

8           (7) "Consumer" means an individual; child, by and  
9 through its parent or legal guardian; business; firm;  
10 association; joint venture; partnership; estate; trust;  
11 business trust; syndicate; fiduciary; corporation; any  
12 commercial entity, however denominated; or any other group or  
13 combination.

14           (8) "Trade or commerce" means the advertising,  
15 soliciting, providing, offering, or distributing, whether by  
16 sale, rental, or otherwise, of any good or service, or any  
17 property, whether tangible or intangible, or any other  
18 article, commodity, or thing of value, wherever situated.  
19 "Trade or commerce" shall include the conduct of any trade or  
20 commerce, however denominated, including any nonprofit or  
21 not-for-profit person or activity.

22           (9) "Thing of value" may include, without limitation,  
23 any moneys, donation, membership, credential, certificate,  
24 prize, award, benefit, license, interest, professional  
25 opportunity, or chance of winning.

26           Section 27. Effective July 1, 2001, section 501.204,  
27 Florida Statutes, is amended to read:

28           501.204 Unlawful acts and practices.--

29           (1) Unfair methods of competition, unconscionable acts  
30 or practices, and unfair or deceptive acts or practices in the  
31 conduct of any trade or commerce are hereby declared unlawful.

1           (2) It is the intent of the Legislature that, in  
2     construing subsection (1), due consideration and great weight  
3     shall be given to the interpretations of the Federal Trade  
4     Commission and the federal courts relating to s. 5(a)(1) of  
5     the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of  
6     July 1, 2001.

7           Section 28. Effective July 1, 2001, subsections (1),  
8     (3), and (6) of section 501.207, Florida Statutes, are amended  
9     to read:

10          501.207 Remedies of enforcing authority.--

11          (1) The enforcing authority may bring:

12          (a) An action to obtain a declaratory judgment that an  
13     act or practice violates this part.

14          (b) An action to enjoin any person who has violated,  
15     is violating, or is otherwise likely to violate, this part.

16          (c) An action on behalf of one or more consumers or  
17     governmental entities for the actual damages caused by an act  
18     or practice in violation of this part. However, ~~no~~ damages  
19     are not shall be recoverable under this section against a  
20     retailer who has in good faith engaged in the dissemination of  
21     claims of a manufacturer or wholesaler without actual  
22     knowledge that it violated this part.

23          (3) Upon motion of the enforcing authority or any  
24     interested party in any action brought under subsection (1),  
25     the court may make appropriate orders, including, but not  
26     limited to, appointment of a master or receiver or  
27     sequestration or freezing of assets, to reimburse consumers or  
28     governmental entities found to have been damaged; to carry out  
29     a transaction in accordance with the consumers' reasonable  
30     expectations of consumers or governmental entities; to strike  
31     or limit the application of clauses of contracts to avoid an

1 unconscionable result; to order any defendant to divest  
2 herself or himself of any interest in any enterprise,  
3 including real estate; to impose reasonable restrictions upon  
4 the future activities of any defendant to impede her or him  
5 from engaging in or establishing the same type of endeavor; to  
6 order the dissolution or reorganization of any enterprise; or  
7 to grant legal, equitable, or other appropriate relief. The  
8 court may assess the expenses of a master or receiver against  
9 a person who has violated, is violating, or is otherwise  
10 likely to violate this part. Any injunctive order, whether  
11 temporary or permanent, issued by the court shall be effective  
12 throughout the state unless otherwise provided in the order.

13 (6) The enforcing authority may terminate an  
14 investigation or an action upon acceptance of a person's  
15 written assurance of voluntary compliance with this part.  
16 Acceptance of an assurance may be conditioned on a commitment  
17 to reimburse consumers or governmental entities, make  
18 contributions, pay civil penalties, pay attorney's fees and  
19 costs, or take other appropriate corrective action. An  
20 assurance is not evidence of a prior violation of this part.  
21 However, unless an assurance has been rescinded by agreement  
22 of the parties or voided by a court for good cause, subsequent  
23 failure to comply with the terms of an assurance is prima  
24 facie evidence of a violation of this part. ~~No~~ Such assurance  
25 is not ~~shall act as~~ a limitation upon any action or remedy  
26 available to a person aggrieved by a violation of this part.

27 Section 29. Effective July 1, 2001, section 501.2075,  
28 Florida Statutes, is amended to read:

29 501.2075 Civil penalty.--Except as provided in s.  
30 501.2077, any person, firm, corporation, association, or  
31 entity, or any agent or employee of the foregoing, who is

1 willfully using, or has willfully used, a method, act, or  
2 practice declared unlawful under s. 501.204, or who is  
3 willfully violating any of the rules of the department adopted  
4 ~~promulgated~~ under this part, is liable for a civil penalty of  
5 not more than \$10,000 for each such violation. Willful  
6 violations occur when the person knew or should have known  
7 that his or her conduct was unfair or deceptive or prohibited  
8 by rule. This civil penalty may be recovered in any action  
9 brought under this part by the enforcing authority; or the  
10 enforcing authority may terminate any investigation or action  
11 upon agreement by the person, firm, corporation, association,  
12 or entity, or the agent or employee of the foregoing, to pay a  
13 stipulated civil penalty. The department or the court may  
14 waive any such civil penalty if the person, firm, corporation,  
15 association, or entity, or the agent or employee of the  
16 foregoing, has previously made full restitution or  
17 reimbursement or has paid actual damages to the consumers or  
18 governmental entities who have been injured by the unlawful  
19 act or practice or rule violation. If civil penalties are  
20 assessed in any litigation, the enforcing authority is  
21 entitled to reasonable attorney's fees and costs. A civil  
22 penalty so collected shall accrue to the state and shall be  
23 deposited as received into the General Revenue Fund  
24 unallocated.

25 Section 30. Effective July 1, 2001, section 501.2091,  
26 Florida Statutes, is repealed.

27 Section 31. Effective July 1, 2001, subsection (2) of  
28 section 501.211, Florida Statutes, is amended to read:

29 501.211 Other individual remedies.--

30 (2) In any ~~individual~~ action brought by a person  
31 ~~consumer~~ who has suffered a loss as a result of a violation of

1 this part, such person ~~consumer~~ may recover actual damages,  
2 plus attorney's fees and court costs as provided in s.  
3 501.2105.~~7~~However, ~~no~~ damages, fees, or costs are not ~~shall~~  
4 ~~be~~ recoverable under this section against a retailer who has,  
5 in good faith, engaged in the dissemination of claims of a  
6 manufacturer or wholesaler without actual knowledge that it  
7 violated this part.

8 Section 32. Effective July 1, 2001, section 501.212,  
9 Florida Statutes, is amended to read:

10 501.212 Application.--This part does not apply to:

11 (1) An act or practice required or specifically  
12 permitted by federal or state law.

13 (2) A publisher, broadcaster, printer, or other person  
14 engaged in the dissemination of information or the  
15 reproduction of printed or pictorial matter, insofar as the  
16 information or matter has been disseminated or reproduced on  
17 behalf of others without actual knowledge that it violated  
18 this part.

19 (3) A claim for personal injury or death or a claim  
20 for damage to property other than the property that is the  
21 subject of the consumer transaction.

22 (4) Any person or activity regulated under laws  
23 administered by the Department of Insurance ~~or the Florida~~  
24 ~~Public Service Commission~~ or banks and savings and loan  
25 associations regulated by the Department of Banking and  
26 Finance or banks or savings and loan associations regulated by  
27 federal agencies.

28 (5) Any activity regulated under laws administered by  
29 the Florida Public Service Commission.

30 ~~(6)~~~~(5)~~ An act or practice involving the sale, lease,  
31 rental, or appraisal of real estate by a person licensed,

1 certified, or registered pursuant to chapter 475, which act or  
2 practice violates s. 475.42 or s. 475.626.

3 Section 33. Except as otherwise expressly provided in  
4 this act, this act shall take effect October 1, 2001.

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