

1
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; amending s. 501.203, F.S.;
24 including business or commercial entity within
25 the definition of the term "consumer" for
26 purposes of ch. 501, F.S.; incorporating
27 revisions to applicable regulations; amending
28 s. 501.204, F.S.; incorporating interpretations
29 relating to the Federal Trade Commission Act;
30 amending s. 501.207, F.S.; authorizing an
31 action on behalf of a governmental entity for

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

18

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

20

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

23 400.925 Definitions.--As used in this part, the term:

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

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

13 Section 2. Paragraph (a) of subsection (5) of section
14 400.93, Florida Statutes, is amended to read:

15 400.93 Home medical equipment providers to be
16 licensed; expiration of license; exemptions; unlawful acts;
17 penalties.--

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

24 (a) Providers operated by the Department of Health or
25 Federal Government.

26 Section 3. Section 427.802, Florida Statutes, is
27 amended to read:

28 427.802 Definitions.--As used in this part:

29 (1) "Assistive technology devices" means manual
30 wheelchairs, motorized wheelchairs, motorized scooters,
31 voice-synthesized computer modules, optical scanners, talking

1 software, braille printers, environmental control devices for
2 use by a person with quadriplegia, motor vehicle adaptive
3 transportation aids, devices that enable persons with severe
4 speech disabilities to in effect speak, personal transfer
5 systems, and specialty beds, including a demonstrator, that a
6 consumer purchases or accepts transfer of in this state for
7 use by a person with a disability.

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

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

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

23 (4)~~(5)~~ "Assistive technology device lessor" means a
24 person who leases an assistive technology device to a
25 consumer, or holds the lessor's rights, under a written lease.

26 (5)~~(6)~~ "Collateral costs" means expenses incurred by a
27 consumer in connection with the repair of a nonconformity,
28 including the costs of obtaining an alternative assistive
29 technology device.

30 (6)~~(7)~~ "Consumer" means any of the following:

31

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

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

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

10 (d) A person who leases an assistive technology device
11 from an assistive technology device lessor under a written
12 lease.

13 (7)~~(8)~~ "Demonstrator" means an assistive technology
14 device used primarily for the purpose of demonstration to the
15 public.

16 ~~(9) "Department" means the Department of Agriculture~~
17 ~~and Consumer Services.~~

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

25 (9)~~(11)~~ "Early termination saving" means any expense
26 or obligation that an assistive technology device lessor
27 avoids as a result of both the termination of a written lease
28 before the termination date set forth in the lease and the
29 return of an assistive technology device to a manufacturer
30 pursuant to this section. The term includes an interest
31 charge that the assistive technology device lessor would have

1 paid to finance the assistive technology device or, if the
2 assistive technology device lessor does not finance the
3 assistive technology device, the difference between the total
4 amount for which the lease obligates the consumer during the
5 period of the lease term remaining after the early termination
6 and the present value of that amount at the date of the early
7 termination.

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

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

22 (12)~~(14)~~ "Reasonable attempt to repair" means, within
23 the terms of an express warranty applicable to a new assistive
24 technology device:

25 (a) A maximum of three efforts by the manufacturer,
26 the assistive technology device lessor, or any of the
27 manufacturer's authorized assistive technology device dealers
28 to repair a nonconformity that is subject to repair under the
29 warranty; or

30
31

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

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

6 427.803 Express ~~Duty of manufacturer and an assistive~~
7 ~~technology device dealer to conform an assistive technology~~
8 ~~device to the warranty.--~~

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

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

1 ~~Device Warranty Act rights period. Nothing in this subsection~~
2 ~~shall be construed to grant an extension of the Assistive~~
3 ~~Technology Device Warranty Act rights period or to expand the~~
4 ~~time within which a consumer must file a complaint under this~~
5 ~~chapter.~~

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

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

31

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

12 Section 5. Section 427.804, Florida Statutes, is
13 amended to read:

14 427.804 Repair of nonconforming assistive technology
15 devices; refund or replacement of devices after attempt to
16 repair; sale or lease of returned device; arbitration;
17 investigation/limitation of rights.--

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

27 (2) If, after a reasonable attempt to repair, the
28 nonconformity is not repaired, the manufacturer, at the
29 direction of a consumer as defined in s. 427.802(6)~~(7)~~(a)-(c),
30 must do one of the following:
31

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

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

11 (c) With respect to a consumer as defined in s.
12 427.802(6)~~(7)~~(d), accept return of the assistive technology
13 device, refund to the assistive technology device lessor and
14 to any holder of a perfected security interest in the
15 assistive technology device, as the interest may appear, the
16 current value of the written lease, and refund to the consumer
17 the amount that the consumer paid under the written lease plus
18 any collateral costs.

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

27 (4) To receive a comparable new assistive technology
28 device or a refund due under paragraph (2)(a), a consumer must
29 offer to the manufacturer of the assistive technology device
30 having the nonconformity to transfer possession of the
31 assistive technology device to the manufacturer. No later

1 than 30 days after the offer, the manufacturer shall provide
2 the consumer with the comparable assistive technology device
3 or refund. When the manufacturer provides the comparable
4 assistive technology device or refund, the consumer shall
5 return the assistive technology device having the
6 nonconformity to the manufacturer, along with any endorsements
7 necessary to transfer real possession to the manufacturer.

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

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

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

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

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

12 ~~(10) The department shall process consumer complaints~~
13 ~~pursuant to s. 570.544.~~

14 (9)~~(11)~~ Each consumer may submit any dispute arising
15 under this part to an alternative arbitration mechanism
16 established pursuant to chapter 682. Upon notice by the
17 consumer, all manufacturers must submit to such alternative
18 arbitration.

19 (10)~~(12)~~ Such alternative arbitration must be
20 conducted by a professional arbitrator or arbitration firm
21 appointed under chapter 682 and any applicable rules. These
22 procedures must provide for the personal objectivity of the
23 arbitrators and for the right of each party to present its
24 case, to be in attendance during any presentation made by the
25 other party, and to rebut or refute such a presentation.

26 (11)~~(13)~~ This part does not limit rights or remedies
27 available to a consumer under any other law.

28 Section 6. Section 427.8041, Florida Statutes, is
29 repealed.

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

1 496.411 Disclosure requirements and duties of
2 charitable organizations and sponsors.--

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

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

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

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

15
16 If the solicitation consists of more than a single item, the
17 statement shall be displayed prominently in the solicitation
18 materials.

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

21 501.017 Health studios; contracts.--

22 (1) Every contract for the sale of future health
23 studio services which is paid for in advance or which the
24 buyer agrees to pay for in future installment payments shall
25 be in writing and shall contain, contractual provisions to the
26 contrary notwithstanding, in immediate proximity to the space
27 reserved in the contract for the signature of the buyer, and
28 in 10-point boldfaced type, language substantially equivalent
29 to the following:

30 (b)1. A provision for the cancellation and refund of
31 the contract if the contracting business location of the

1 health studio goes out of business, or moves its facilities
2 more than 5 driving miles from the business location
3 designated in such contract and fails to provide, within 30
4 days, a facility of equal quality located within 5 driving
5 miles of the business location designated in such contract at
6 no additional cost to the buyer.

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

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

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

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

28

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

31

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

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

23 501.019 Health studios; penalties.--

24 (2) Any person ~~health studio owner or, in the case of~~
25 ~~corporate ownership, any officer of the corporation, or any~~
26 ~~manager of a health studio or health studio's business~~
27 ~~location,~~ who knowingly makes a false representation to the
28 department with the intent to obtain an exemption of any kind
29 from the requirements of s. 501.016 commits a felony of the
30 third degree, punishable as provided in s. 775.082, s.
31 775.083, or s. 775.084.

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

6 539.001 The Florida Pawnbroking Act.--

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

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

10 (4) ELIGIBILITY FOR LICENSE.--

11 (b) Any applicant claiming to have a net worth of
12 \$50,000 or more shall file with the agency department, at the
13 time of applying for a license, the following documentation:

14 1. A current financial statement prepared by a Florida
15 certified public accountant; or

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

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

20
21 If the agency cannot verify that the applicant meets the net
22 worth requirement for a license, the agency may require a
23 finding, including the presentation of a current balance
24 sheet, by an accounting firm or individual holding a permit to
25 practice public accounting in this state, that the accountant
26 has reviewed the books and records of the applicant and that
27 the applicant meets the net worth requirement.

28 (5) APPLICATION FOR LICENSE.--

29 (c) Each initial application for a license must be
30 accompanied by a complete set of fingerprints taken by an
31 authorized law enforcement officer, \$300 for the first year's

1 license fee, and the actual cost to the agency ~~department~~ for
2 fingerprint analysis for each person subject to the
3 eligibility requirements. The agency shall submit the
4 fingerprints to the Department of Law Enforcement for state
5 processing, and the Department of Law Enforcement shall
6 forward the fingerprints to the Federal Bureau of
7 Investigation for a national criminal history check. These
8 fees and costs are not refundable.

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

11 (n) Knowingly accept or receive misappropriated
12 property from a conveying customer in a pawn or purchase
13 transaction.

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

17 Section 11. Paragraph (a) of subsection (1) of section
18 559.801, Florida Statutes, is amended to read:

19 559.801 Definitions.--For the purpose of ss.
20 559.80-559.815, the term:

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

27 1. That the seller or person or entity affiliated with
28 or referred by the seller will provide locations or assist the
29 purchaser in finding locations for the use or operation of
30 vending machines, racks, display cases, currency or card
31 operated equipment, or other similar devices or

1 currency-operated amusement machines or devices on premises
2 neither owned nor leased by the purchaser or seller;

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

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

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

23
24 For the purpose of subparagraph 1., the term "assist the
25 purchaser in finding locations" means, but is not limited to,
26 supplying the purchaser with names of locator companies,
27 contracting with the purchaser to provide assistance or supply
28 names, or collecting a fee on behalf of or for a locator
29 company.

30 Section 12. Subsection (8) of section 559.803, Florida
31 Statutes, is amended, present subsections (11), (12), and (13)

1 of that section are renumbered as subsections (12), (13), and
2 (14), respectively, and a new subsection (11) is added to that
3 section, to read:

4 559.803 Disclosure statement.--At least 3 working days
5 prior to the time the purchaser signs a business opportunity
6 contract, or at least 3 working days prior to the receipt of
7 any consideration by the seller, whichever occurs first, the
8 seller must provide the prospective purchaser a written
9 document, the cover sheet of which is entitled in at least
10 12-point boldfaced capital letters "DISCLOSURES REQUIRED BY
11 FLORIDA LAW." Under this title shall appear the following
12 statement in at least 10-point type: "The State of Florida
13 has not reviewed and does not approve, recommend, endorse, or
14 sponsor any business opportunity. The information contained
15 in this disclosure has not been verified by the state. If you
16 have any questions about this investment, see an attorney
17 before you sign a contract or agreement." Nothing except the
18 title and required statement shall appear on the cover sheet.
19 Immediately following the cover sheet, the seller must provide
20 an index page that briefly lists the contents of the
21 disclosure document as required in this section and any pages
22 on which the prospective purchaser can find each required
23 disclosure. At the top of the index page, the following
24 statement must appear in at least 10-point type: "The State of
25 Florida requires sellers of business opportunities to disclose
26 certain information to prospective purchasers. This index is
27 provided to help you locate this information." If the index
28 contains other information not required by this section, the
29 seller shall place a designation beside each of the
30 disclosures required by this section and provide an
31 explanation of the designation at the end of the statement at

1 the top of the index page. The disclosure document shall
2 contain the following information:

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

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

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

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

23 (b) The names, addresses, and telephone numbers of the
24 10 persons who previously purchased the business opportunity
25 from the seller and who are geographically closest to the
26 potential purchaser.

27
28 Should any seller of business opportunities prepare a
29 disclosure statement pursuant to 16 C.F.R. ss. 436.1 et seq.,
30 a Trade Regulation Rule of the Federal Trade Commission
31 regarding Disclosure Requirements and Prohibitions Concerning

1 Franchising and Business Opportunity Ventures, the seller may
2 file that disclosure statement in lieu of the document
3 required pursuant to this section. Should the seller be
4 required pursuant to 16 C.F.R. to prepare any other documents
5 to be presented to the prospective purchaser, those documents
6 shall also be filed with the department.

7 Section 13. Section 559.807, Florida Statutes, is
8 amended to read:

9 559.807 Bond or other security ~~trust account~~
10 required.--

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

20 (2) The bond, certificate of deposit, or guaranteed
21 letter of credit ~~trust account~~ shall be in the favor of the
22 department for the use and benefit of any person who is
23 injured by the fraud, misrepresentation, damaged by any
24 violation of ss. 559.80-559.815, or by the seller's breach of
25 the contract, financial failure, or violation of any provision
26 of this part by the seller. Such liability may be enforced by
27 filing an action at law in a court of competent jurisdiction
28 without precluding enforcement in an administrative action
29 pursuant to chapter 120. However, the bond, certificate of
30 deposit, or guaranteed letter of credit shall be amenable and
31 enforceable only by and through administrative proceedings

1 before the department. A money judgment resulting from an
2 action at law, less any award for costs and attorney's fees,
3 shall be prima facie evidence sufficient to establish the
4 value of the claim in an administrative action. It is the
5 intent of the Legislature that such bond, certificate of
6 deposit, or guaranteed letter of credit shall be applicable
7 and liable only for payment of claims duly adjudicated by
8 order of the department. The bond, certificate of deposit, or
9 guaranteed letter of credit shall be open to successive claims
10 ~~but for the business opportunity sale or of any obligation~~
11 ~~arising therefrom, may bring an action against the bond, trust~~
12 ~~account, or guaranteed letter of credit to recover damages~~
13 ~~suffered; however, the aggregate amount may not liability of~~
14 ~~the surety or trustee shall be only for actual damages and in~~
15 ~~no event shall exceed the amount of the bond, certificate of~~
16 ~~deposit trust account, or guaranteed letter of credit.~~

17 Section 14. Subsection (14) is added to section
18 559.809, Florida Statutes, to read:

19 559.809 Prohibited acts.--Business opportunity sellers
20 shall not:

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

24 Section 15. For the purpose of incorporating the
25 amendment to section 559.809, Florida Statutes, in a reference
26 thereto, section 559.815, Florida Statutes, is reenacted to
27 read:

28 559.815 Penalties.--Any person who fails to file with
29 the department as required by s. 559.805 or who commits an act
30 described in s. 559.809 is guilty of a felony of the third
31

1 degree, punishable as provided in s. 775.082, s. 775.083, or
2 s. 775.084.

3 Section 16. Subsection (5) is added to section
4 559.902, Florida Statutes, to read:

5 559.902 Scope and application.--This act shall apply
6 to all motor vehicle repair shops in Florida, except:

7 (5) Those located in public schools as defined in s.
8 228.041 or charter technical career centers as defined in s.
9 228.505.

10

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

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

14 559.904 Motor vehicle repair shop registration;
15 application; exemption.--

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

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

20 (a)(b) If the place of business has 1 to 5 employees:
21 \$50.

22 (b)(c) If the place of business has 6 to 10 employees:
23 \$150.

24 (c)(d) If the place of business has 11 or more
25 employees: \$300.

26 (4) Each initial and renewal application for
27 registration must be accompanied by copies of the applicant's
28 estimate and invoice forms. Such forms must comply with the
29 applicable provisions of this act before a registration may be
30 issued.

31

1 (5)~~(4)~~ No annual registration fee is required for any
2 motor vehicle repair shop which has a local municipal or
3 county license issued pursuant to an ordinance containing
4 standards which the department determines are at least equal
5 to the requirements of this part, or for any motor vehicle
6 dealer licensed pursuant to chapter 320.

7 (6)~~(5)~~ The department shall issue to each applicant a
8 registration certificate in the form and size as prescribed by
9 the department in accordance with s. 120.60. In the case of
10 an applicant with more than one place of business, the
11 department shall issue a registration certificate for each
12 place of business. The certificate must show at least the name
13 and address of the motor vehicle repair shop and the
14 registration number for that place of business. In the case of
15 a mobile motor vehicle repair shop, the certificate must show
16 the home address of the owner, if different from the business
17 address.

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

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

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

28 (b) Have not satisfied a civil fine, administrative
29 fine, or other penalty arising out of any administrative or
30 enforcement action brought by any governmental agency based
31

1 upon conduct involving fraud, dishonest dealing, or any
2 violation of this part;

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

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

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

12 559.905 Written motor vehicle repair estimate and
13 disclosure statement required.--

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

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

26 "This charge represents costs and profits to
27 the motor vehicle repair facility for
28 miscellaneous shop supplies or waste disposal."
29 If a charge is mandated by state or federal law, the estimate
30 shall contain a statement identifying the law and the specific
31 amount charged under the law.

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

3 559.9221 Motor Vehicle Repair Advisory Council.--The
4 Motor Vehicle Repair Advisory Council is created to advise and
5 assist the department in carrying out this part.

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

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

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

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

30
31

1 (c) Two consumer members of the council must be
2 residents of this state and must not be connected with the
3 motor vehicle repair business.

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

12 Section 20. Subsection (5) of section 559.903, Florida
13 Statutes, is repealed.

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

20 Section 22. Effective July 1, 2001, section 501.203,
21 Florida Statutes, is amended to read:

22 501.203 Definitions.--As used in this chapter, unless
23 the context otherwise requires, the term:

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

28 (2) "Enforcing authority" means the office of the
29 state attorney if a violation of this part occurs in or
30 affects the judicial circuit under the office's jurisdiction.

31 "Enforcing authority" means the Department of Legal Affairs if

1 the violation occurs in or affects more than one judicial
2 circuit or if the office of the state attorney defers to the
3 department in writing, or fails to act upon a violation within
4 90 days after a written complaint has been filed with the
5 state attorney.

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

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

11 (b) The standards of unfairness and deception set
12 forth and interpreted by the Federal Trade Commission or the
13 federal courts;

14 (c) Any law, statute, rule, regulation, or ordinance
15 which proscribes unfair methods of competition, or unfair,
16 deceptive, or unconscionable acts or practices.

17 (4) "Department" means the Department of Legal
18 Affairs.

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

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

24 (7) "Consumer" means an individual; child, by and
25 through its parent or legal guardian; business; firm;
26 association; joint venture; partnership; estate; trust;
27 business trust; syndicate; fiduciary; corporation; any
28 commercial entity, however denominated; or any other group or
29 combination.

30 (8) "Trade or commerce" means the advertising,
31 soliciting, providing, offering, or distributing, whether by

1 sale, rental, or otherwise, of any good or service, or any
2 property, whether tangible or intangible, or any other
3 article, commodity, or thing of value, wherever situated.
4 "Trade or commerce" shall include the conduct of any trade or
5 commerce, however denominated, including any nonprofit or
6 not-for-profit person or activity.

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

11 Section 23. Effective July 1, 2001, section 501.204,
12 Florida Statutes, is amended to read:

13 501.204 Unlawful acts and practices.--

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

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

23 Section 24. Effective July 1, 2001, subsections (1),
24 (3), and (6) of section 501.207, Florida Statutes, are amended
25 to read:

26 501.207 Remedies of enforcing authority.--

27 (1) The enforcing authority may bring:

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

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

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

8 (3) Upon motion of the enforcing authority or any
9 interested party in any action brought under subsection (1),
10 the court may make appropriate orders, including, but not
11 limited to, appointment of a master or receiver or
12 sequestration or freezing of assets, to reimburse consumers or
13 governmental entities found to have been damaged; to carry out
14 a transaction in accordance with the consumers' reasonable
15 expectations of consumers or governmental entities; to strike
16 or limit the application of clauses of contracts to avoid an
17 unconscionable result; to order any defendant to divest
18 herself or himself of any interest in any enterprise,
19 including real estate; to impose reasonable restrictions upon
20 the future activities of any defendant to impede her or him
21 from engaging in or establishing the same type of endeavor; to
22 order the dissolution or reorganization of any enterprise; or
23 to grant legal, equitable, or other appropriate relief. The
24 court may assess the expenses of a master or receiver against
25 a person who has violated, is violating, or is otherwise
26 likely to violate this part. Any injunctive order, whether
27 temporary or permanent, issued by the court shall be effective
28 throughout the state unless otherwise provided in the order.

29 (6) The enforcing authority may terminate an
30 investigation or an action upon acceptance of a person's
31 written assurance of voluntary compliance with this part.

1 Acceptance of an assurance may be conditioned on a commitment
2 to reimburse consumers or governmental entities, make
3 contributions, pay civil penalties, pay attorney's fees and
4 costs, or take other appropriate corrective action. An
5 assurance is not evidence of a prior violation of this part.
6 However, unless an assurance has been rescinded by agreement
7 of the parties or voided by a court for good cause, subsequent
8 failure to comply with the terms of an assurance is prima
9 facie evidence of a violation of this part. ~~No~~ Such assurance
10 is not shall act as a limitation upon any action or remedy
11 available to a person aggrieved by a violation of this part.

12 Section 25. Effective July 1, 2001, section 501.2075,
13 Florida Statutes, is amended to read:

14 501.2075 Civil penalty.--Except as provided in s.
15 501.2077, any person, firm, corporation, association, or
16 entity, or any agent or employee of the foregoing, who is
17 willfully using, or has willfully used, a method, act, or
18 practice declared unlawful under s. 501.204, or who is
19 willfully violating any of the rules of the department adopted
20 ~~promulgated~~ under this part, is liable for a civil penalty of
21 not more than \$10,000 for each such violation. Willful
22 violations occur when the person knew or should have known
23 that his or her conduct was unfair or deceptive or prohibited
24 by rule. This civil penalty may be recovered in any action
25 brought under this part by the enforcing authority; or the
26 enforcing authority may terminate any investigation or action
27 upon agreement by the person, firm, corporation, association,
28 or entity, or the agent or employee of the foregoing, to pay a
29 stipulated civil penalty. The department or the court may
30 waive any such civil penalty if the person, firm, corporation,
31 association, or entity, or the agent or employee of the

1 foregoing, has previously made full restitution or
2 reimbursement or has paid actual damages to the consumers or
3 governmental entities who have been injured by the unlawful
4 act or practice or rule violation. If civil penalties are
5 assessed in any litigation, the enforcing authority is
6 entitled to reasonable attorney's fees and costs. A civil
7 penalty so collected shall accrue to the state and shall be
8 deposited as received into the General Revenue Fund
9 unallocated.

10 Section 26. Effective July 1, 2001, section 501.2091,
11 Florida Statutes, is repealed.

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

14 501.211 Other individual remedies.--

15 (2) In any ~~individual~~ action brought by a person
16 ~~consumer~~ who has suffered a loss as a result of a violation of
17 this part, such person ~~consumer~~ may recover actual damages,
18 plus attorney's fees and court costs as provided in s.
19 501.2105.~~+~~However, ~~no~~ damages, fees, or costs are not ~~shall~~
20 ~~be~~ recoverable under this section against a retailer who has,
21 in good faith, engaged in the dissemination of claims of a
22 manufacturer or wholesaler without actual knowledge that it
23 violated this part.

24 Section 28. Effective July 1, 2001, section 501.212,
25 Florida Statutes, is amended to read:

26 501.212 Application.--This part does not apply to:

27 (1) An act or practice required or specifically
28 permitted by federal or state law.

29 (2) A publisher, broadcaster, printer, or other person
30 engaged in the dissemination of information or the
31 reproduction of printed or pictorial matter, insofar as the

1 information or matter has been disseminated or reproduced on
2 behalf of others without actual knowledge that it violated
3 this part.

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

7 (4) Any person or activity regulated under laws
8 administered by the Department of Insurance ~~or the Florida~~
9 ~~Public Service Commission~~ or banks and savings and loan
10 associations regulated by the Department of Banking and
11 Finance or banks or savings and loan associations regulated by
12 federal agencies.

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

15 (6)~~(5)~~ An act or practice involving the sale, lease,
16 rental, or appraisal of real estate by a person licensed,
17 certified, or registered pursuant to chapter 475, which act or
18 practice violates s. 475.42 or s. 475.626.

19 Section 29. Except as otherwise expressly provided in
20 this act, this act shall take effect October 1, 2001.

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