

FOR CONSIDERATION By the Committee on Budget

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1 A bill to be entitled
2 An act relating to consumer protection; amending s.
3 20.14, F.S.; removing the Division of Dairy Industry
4 within the department; amending s. 320.90, F.S.;
5 requiring the Department of Legal Affairs, rather than
6 the Department of Agriculture and Consumer Services,
7 to distribute free of charge a motor vehicle
8 consumer's rights pamphlet; amending s. 501.160, F.S.;
9 providing for the state attorneys and the Department
10 of Legal Affairs, rather than the Department of
11 Agriculture and Consumer Services, to enforce the law
12 prohibiting price gouging; reenacting s. 570.18, F.S.,
13 relating to the organization of the Department of
14 Agriculture and Consumer Services, to incorporate the
15 amendment made to s. 570.29, F.S., in a reference
16 thereto; amending s. 570.20, F.S.; removing the time
17 limitations on provisions authorizing moneys in the
18 General Inspection Trust Fund to be used for programs
19 operated by the Department of Agriculture and Consumer
20 Services; amending s. 570.29, F.S.; removing the
21 Division of Dairy Industry, to conform, and adding the
22 Division of Licensing as a division within the
23 department; repealing ss. 570.40 and 570.41, F.S.,
24 relating to the powers and duties of the Division of
25 Dairy Industry; amending s. 570.50, F.S.; adding the
26 inspection of dairy farms, milk plants, and milk
27 product plants and other specified functions to the
28 duties of the Division of Food Safety within the
29 department; amending s. 601.15, F.S.; requiring review

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30 and approval by the Legislative Budget Commission of
31 any proposal by the Citrus Commission to increase the
32 box tax rate; repealing s. 681.102(7), F.S., relating
33 to the definition of the term "division"; amending ss.
34 681.103, 681.108, 681.109, 681.1095, 681.1096,
35 681.110, 681.112, 681.114, 681.117, and 681.118, F.S.;
36 providing for the Department of Legal Affairs, rather
37 than the Division of Consumer Services of the
38 Department of Agriculture and Consumer Services, to
39 enforce the state Lemon Law; consolidating enforcement
40 duties under the Motor Vehicle Warranty Enforcement
41 Act within the Department of Legal Affairs; conforming
42 provisions to changes made by the act; providing an
43 effective date.

44
45 Be It Enacted by the Legislature of the State of Florida:

46
47 Section 1. Subsection (2) of section 20.14, Florida
48 Statutes, is amended to read:

49 20.14 Department of Agriculture and Consumer Services.—
50 There is created a Department of Agriculture and Consumer
51 Services.

52 (2) The following divisions of the Department of
53 Agriculture and Consumer Services are established:

- 54 (a) Administration.
55 (b) Agricultural Environmental Services.
56 (c) Animal Industry.
57 (d) Aquaculture.
58 (e) Consumer Services.

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- 59 ~~(f) Dairy Industry.~~
60 (f)~~(g)~~ Food Safety.
61 (g)~~(h)~~ Forestry.
62 (h)~~(i)~~ Fruit and Vegetables.
63 (i)~~(j)~~ Licensing.
64 (j)~~(k)~~ Marketing and Development.
65 (k)~~(l)~~ Plant Industry.
66 (l)~~(m)~~ Standards.

67 Section 2. Section 320.90, Florida Statutes, is amended to
68 read:

69 320.90 Notification of consumer's rights.—The department
70 shall develop a motor vehicle consumer's rights pamphlet which
71 shall be distributed free of charge by the Department of Legal
72 Affairs ~~Agriculture and Consumer Services~~ to the motor vehicle
73 owner upon request. Such pamphlet must contain information
74 relating to odometer fraud and provide a summary of the rights
75 and remedies available to all purchasers of motor vehicles.

76 Section 3. Subsection (8) of section 501.160, Florida
77 Statutes, is amended to read:

78 501.160 Rental or sale of essential commodities during a
79 declared state of emergency; prohibition against unconscionable
80 prices.—

81 (8) Any violation of this section may be enforced by ~~the~~
82 ~~Department of Agriculture and Consumer Services,~~ the office of
83 the state attorney, or the Department of Legal Affairs.

84 Section 4. For the purpose of incorporating the amendment
85 made by this act to section 570.29, Florida Statutes, in a
86 reference thereto, section 570.18, Florida Statutes, is
87 reenacted to read:

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88 570.18 Organization of departmental work.—In the assignment
89 of functions to the 12 divisions of the department created in s.
90 570.29, the department shall retain within the Division of
91 Administration, in addition to executive functions, those powers
92 and duties enumerated in s. 570.30. The department shall
93 organize the work of the other 11 divisions in such a way as to
94 secure maximum efficiency in the conduct of the department. The
95 divisions created in s. 570.29 are solely to make possible the
96 definite placing of responsibility. The department shall be
97 conducted as a unit in which every employee, including each
98 division director, is assigned a definite workload, and there
99 shall exist between division directors a spirit of cooperative
100 effort to accomplish the work of the department.

101 Section 5. Subsection (2) of section 570.20, Florida
102 Statutes, is amended to read:

103 570.20 General Inspection Trust Fund.—

104 (2) ~~For the 2010-2011 fiscal year only and~~ Notwithstanding
105 any other provision of law to the contrary, ~~in addition to the~~
106 ~~spending authorized in subsection (1),~~ moneys in the General
107 Inspection Trust Fund may be appropriated for programs operated
108 by the department which are related to the programs authorized
109 by this chapter in addition to the spending authorized in
110 subsection (1). ~~This subsection expires July 1, 2011.~~

111 Section 6. Section 570.29, Florida Statutes, is amended to
112 read:

113 570.29 Departmental divisions.—The department shall include
114 the following divisions:

115 (1) Administration.

116 (2) Agricultural Environmental Services.

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- 117 (3) Animal Industry.
118 (4) Aquaculture.
119 (5) Consumer Services.
120 ~~(6) Dairy Industry.~~
121 (6)~~(7)~~ Food Safety.
122 (7)~~(8)~~ Forestry.
123 (8)~~(9)~~ Fruit and Vegetables.
124 (9) Licensing.
125 (10) Marketing and Development.
126 (11) Plant Industry.
127 (12) Standards.

128 Section 7. Sections 570.40 and 570.41, Florida Statutes,
129 are repealed.

130 Section 8. Subsections (6) and (7) are added to section
131 570.50, Florida Statutes, to read:

132 570.50 Division of Food Safety; powers and duties.—The
133 duties of the Division of Food Safety include, but are not
134 limited to:

135 (6) Inspecting dairy farms of the state and enforcing those
136 provisions of chapter 502 as are authorized by the department
137 relating to the supervision of milking operations and the rules
138 adopted pursuant to such law.

139 (7) Inspecting milk plants, milk product plants, and plants
140 engaged in the manufacture and distribution of frozen desserts
141 and frozen dessert mixes; analyzing and testing samples of milk,
142 milk products, frozen desserts, and frozen dessert mixes which
143 are collected by the division; and enforcing those provisions of
144 chapter 502 or chapter 503 as are authorized by the department.

145 Section 9. Paragraph (e) of subsection (3) of section

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146 601.15, Florida Statutes, is amended to read:

147 601.15 Advertising campaign; methods of conducting; excise
148 tax; emergency reserve fund; citrus research.—

149 (3)

150 (e) The commission, upon an affirmative vote of a majority
151 of its members and by an order entered by it prior to November 1
152 of any year, may set the tax rates up to the maximum rates
153 specified in this subsection. The tax rate shall apply only to
154 the citrus season which began on August 1 of the same calendar
155 year. Such tax rate may be applied by variety and on the basis
156 of whether the fruit enters the primary channel of trade for use
157 in fresh or processed form. If the commission cannot agree on a
158 box tax rate, the tax rate for the previous year shall remain in
159 effect until the commission approves a new rate. Any proposal by
160 the commission to increase the box tax rate from the previous
161 year's rate is subject to review and approval by the Legislative
162 Budget Commission.

163 Section 10. Subsection (7) of section 681.102, Florida
164 Statutes, is repealed.

165 Section 11. Subsections (2) and (3) of section 681.103,
166 Florida Statutes, are amended to read:

167 681.103 Duty of manufacturer to conform a motor vehicle to
168 the warranty.—

169 (2) Each manufacturer shall provide to its consumers
170 conspicuous notice of the address and phone number for its zone,
171 district, or regional office for this state in the written
172 warranty or owner's manual. By January 1 of each year, each
173 manufacturer shall forward to the department ~~of Legal Affairs~~ a
174 copy of the owner's manual and any written warranty for each

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175 make and model of motor vehicle that it sells in this state.

176 (3) At the time of acquisition, the manufacturer shall
177 inform the consumer clearly and conspicuously in writing how and
178 where to file a claim with a certified procedure if such
179 procedure has been established by the manufacturer pursuant to
180 s. 681.108. The nameplate manufacturer of a recreational vehicle
181 shall, at the time of vehicle acquisition, inform the consumer
182 clearly and conspicuously in writing how and where to file a
183 claim with a program pursuant to s. 681.1096. The manufacturer
184 shall provide to the dealer and, at the time of acquisition, the
185 dealer shall provide to the consumer a written statement that
186 explains the consumer's rights under this chapter. The written
187 statement shall be prepared by the department ~~of Legal Affairs~~
188 and shall contain a toll-free number for the department which
189 ~~division that~~ the consumer can contact to obtain information
190 regarding the consumer's rights and obligations under this
191 chapter or to commence arbitration. If the manufacturer obtains
192 a signed receipt for timely delivery of sufficient quantities of
193 this written statement to meet the dealer's vehicle sales
194 requirements, it shall constitute prima facie evidence of
195 compliance with this subsection by the manufacturer. The
196 consumer's signed acknowledgment of receipt of materials
197 required under this subsection shall constitute prima facie
198 evidence of compliance by the manufacturer and dealer. The form
199 of the acknowledgments shall be approved by the department ~~of~~
200 ~~Legal Affairs~~, and the dealer shall maintain the consumer's
201 signed acknowledgment for 3 years.

202 Section 12. Subsections (1), (2), (3), (4), (5), and (8) of
203 section 681.108, Florida Statutes, are amended to read:

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204 681.108 Dispute-settlement procedures.-

205 (1) If a manufacturer has established a procedure, which
206 the department ~~division~~ has certified as substantially complying
207 with the provisions of 16 C.F.R. part 703, in effect October 1,
208 1983, and with the provisions of this chapter and the rules
209 adopted under this chapter, and has informed the consumer how
210 and where to file a claim with such procedure pursuant to s.
211 681.103(3), the provisions of s. 681.104(2) apply to the
212 consumer only if the consumer has first resorted to such
213 procedure. The decisionmakers for a certified procedure shall,
214 in rendering decisions, take into account all legal and
215 equitable factors germane to a fair and just decision,
216 including, but not limited to, the warranty; the rights and
217 remedies conferred under 16 C.F.R. part 703, in effect October
218 1, 1983; the provisions of this chapter; and any other equitable
219 considerations appropriate under the circumstances.
220 Decisionmakers and staff of a procedure shall be trained in the
221 provisions of this chapter and in 16 C.F.R. part 703, in effect
222 October 1, 1983. In an action brought by a consumer concerning
223 an alleged nonconformity, the decision that results from a
224 certified procedure is admissible in evidence.

225 (2) A manufacturer may apply to the department ~~division~~ for
226 certification of its procedure. After receipt and evaluation of
227 the application, the department ~~division~~ shall certify the
228 procedure or notify the manufacturer of any deficiencies in the
229 application or the procedure.

230 (3) A certified procedure or a procedure of an applicant
231 seeking certification shall submit to the department ~~division~~ a
232 copy of each settlement approved by the procedure or decision

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233 made by a decisionmaker within 30 days after the settlement is
234 reached or the decision is rendered. The decision or settlement
235 must contain at a minimum the:

236 (a) Name and address of the consumer;

237 (b) Name of the manufacturer and address of the dealership
238 from which the motor vehicle was purchased;

239 (c) Date the claim was received and the location of the
240 procedure office that handled the claim;

241 (d) Relief requested by the consumer;

242 (e) Name of each decisionmaker rendering the decision or
243 person approving the settlement;

244 (f) Statement of the terms of the settlement or decision;

245 (g) Date of the settlement or decision; and

246 (h) Statement of whether the decision was accepted or
247 rejected by the consumer.

248 (4) Any manufacturer establishing or applying to establish
249 a certified procedure must file with the department ~~division~~ a
250 copy of the annual audit required under the provisions of 16
251 C.F.R. part 703, in effect October 1, 1983, together with any
252 additional information required for purposes of certification,
253 including the number of refunds and replacements made in this
254 state pursuant to the provisions of this chapter by the
255 manufacturer during the period audited.

256 (5) The department ~~division~~ shall review each certified
257 procedure at least annually, prepare an annual report evaluating
258 the operation of certified procedures established by motor
259 vehicle manufacturers and procedures of applicants seeking
260 certification, and, for a period not to exceed 1 year, shall
261 grant certification to, or renew certification for, those

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262 manufacturers whose procedures substantially comply with the
263 provisions of 16 C.F.R. part 703, in effect October 1, 1983, and
264 with the provisions of this chapter and rules adopted under this
265 chapter. If certification is revoked or denied, the department
266 ~~division~~ shall state the reasons for such action. The reports
267 and records of actions taken with respect to certification shall
268 be public records.

269 (8) The department ~~division~~ shall adopt rules to implement
270 this section.

271 Section 13. Subsections (1), (2), (3), (5), (6), and (7) of
272 section 681.109, Florida Statutes, are amended to read:

273 681.109 Florida New Motor Vehicle Arbitration Board;
274 dispute eligibility.—

275 (1) If a manufacturer has a certified procedure, a consumer
276 claim arising during the Lemon Law rights period must be filed
277 with the certified procedure no later than 60 days after the
278 expiration of the Lemon Law rights period. If a decision is not
279 rendered by the certified procedure within 40 days after ~~of~~
280 filing, the consumer may apply to the department ~~division~~ to
281 have the dispute removed to the board for arbitration.

282 (2) If a manufacturer has a certified procedure, a consumer
283 claim arising during the Lemon Law rights period must be filed
284 with the certified procedure no later than 60 days after the
285 expiration of the Lemon Law rights period. If a consumer is not
286 satisfied with the decision or the manufacturer's compliance
287 therewith, the consumer may apply to the department ~~division~~ to
288 have the dispute submitted to the board for arbitration. A
289 manufacturer may not seek review of a decision made under its
290 procedure.

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291 (3) If a manufacturer has no certified procedure or if a
292 certified procedure does not have jurisdiction to resolve the
293 dispute, a consumer may apply directly to the department
294 ~~division~~ to have the dispute submitted to the board for
295 arbitration.

296 (5) The department ~~division~~ shall screen all requests for
297 arbitration before the board to determine eligibility. The
298 consumer's request for arbitration before the board shall be
299 made on a form prescribed by the department. The department
300 ~~division~~ shall forward to the board all disputes that the
301 department ~~division~~ determines are potentially entitled to
302 relief under this chapter.

303 (6) The department ~~division~~ may reject a dispute that it
304 determines to be fraudulent or outside the scope of the board's
305 authority. Any dispute deemed by the department ~~division~~ to be
306 ineligible for arbitration by the board due to insufficient
307 evidence may be reconsidered upon the submission of new
308 information regarding the dispute. Following a second review,
309 the department ~~division~~ may reject a dispute if the evidence is
310 clearly insufficient to qualify for relief. If a ~~Any~~ dispute is
311 rejected by the department, the department shall send ~~division~~
312 ~~shall be forwarded to the department and a copy shall be sent~~ by
313 registered mail to the consumer and the manufacturer, ~~containing~~
314 a brief explanation as to the reason for rejection.

315 (7) If the department ~~division~~ rejects a dispute, the
316 consumer may file a lawsuit to enforce the remedies provided
317 under this chapter. In any civil action arising under this
318 chapter and relating to a matter considered by the department
319 ~~division~~, any determination made to reject a dispute is

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320 admissible in evidence.

321 Section 14. Subsections (1) through (6) and subsection (11)
322 of section 681.1095, Florida Statutes, are amended to read:

323 681.1095 Florida New Motor Vehicle Arbitration Board;
324 creation and function.—

325 (1) There is established within the department ~~of Legal~~
326 ~~Affairs~~, the Florida New Motor Vehicle Arbitration Board,
327 consisting of members appointed by the Attorney General for an
328 initial term of 1 year. Board members may be reappointed for
329 additional terms of 2 years. Each board member is accountable to
330 the Attorney General for the performance of the member's duties
331 and is exempt from civil liability for any act or omission that
332 ~~which~~ occurs while acting in the member's official capacity. The
333 department ~~of Legal Affairs~~ shall defend a member in any action
334 against the member or the board which arises from any such act
335 or omission. The Attorney General may establish as many regions
336 of the board as necessary to carry out the provisions of this
337 chapter.

338 (2) The boards shall hear cases in various locations
339 throughout the state so any consumer whose dispute is approved
340 for arbitration by the department ~~division~~ may attend an
341 arbitration hearing at a reasonably convenient location and
342 present a dispute orally. Hearings shall be conducted by panels
343 of three board members assigned by the department. A majority
344 vote of the three-member board panel shall be required to render
345 a decision. Arbitration proceedings under this section shall be
346 open to the public on reasonable and nondiscriminatory terms.

347 (3) Each region of the board shall consist of up to eight
348 members. The members of the board shall construe and apply the

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349 provisions of this chapter, and rules adopted thereunder, in
350 making their decisions. An administrator and a secretary shall
351 be assigned to each board by the department ~~of Legal Affairs~~. At
352 least one member of each board must be a person with expertise
353 in motor vehicle mechanics. A member must not be employed by a
354 manufacturer or a franchised motor vehicle dealer or be a staff
355 member, a decisionmaker, or a consultant for a procedure. Board
356 members shall be trained in the application of this chapter and
357 any rules adopted under this chapter, shall be reimbursed for
358 travel expenses pursuant to s. 112.061, and shall be compensated
359 at a rate or wage prescribed by the Attorney General.

360 (4) Before filing a civil action on a matter subject to s.
361 681.104, the consumer must first submit the dispute to the
362 department division, and to the board if such dispute is deemed
363 eligible for arbitration.

364 (5) Manufacturers shall submit to arbitration conducted by
365 the board if such arbitration is requested by a consumer and the
366 dispute is deemed eligible for arbitration by the department
367 ~~division~~ pursuant to s. 681.109.

368 (6) The board shall hear the dispute within 40 days and
369 render a decision within 60 days after the date the request for
370 arbitration is approved. The board may continue the hearing on
371 its own motion or upon the request of a party for good cause
372 shown. A request for continuance by the consumer constitutes
373 waiver of the time periods set forth in this subsection. The
374 department ~~of Legal Affairs~~, at the board's request, may
375 investigate disputes, and may issue subpoenas for the attendance
376 of witnesses and for the production of records, documents, and
377 other evidence before the board. The failure of the board to

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378 hear a dispute or render a decision within the prescribed
379 periods does not invalidate the decision.

380 (11) All provisions in this section and s. 681.109
381 pertaining to compulsory arbitration before the board, the
382 dispute eligibility screening by the department ~~division~~, the
383 proceedings and decisions of the board, and any appeals thereof,
384 are exempt from the provisions of chapter 120.

385 Section 15. Subsections (2) and (4) of section 681.1096,
386 Florida Statutes, are amended to read:

387 681.1096 RV Mediation and Arbitration Program; creation and
388 qualifications.—

389 (2) Each manufacturer of a recreational vehicle involved in
390 a dispute that is determined eligible under this chapter,
391 including chassis and component manufacturers which separately
392 warrant the chassis and components and which otherwise meet the
393 definition of manufacturer set forth in s. 681.102(13)
394 ~~681.102(14)~~, shall participate in a mediation and arbitration
395 program that is deemed qualified by the department.

396 (4) The department shall monitor the program for compliance
397 with this chapter. If the program is determined not qualified or
398 if qualification is revoked, then disputes shall be subject to
399 the provisions of ss. 681.109 and 681.1095. If the program is
400 determined not qualified or if qualification is revoked as to a
401 manufacturer, all those manufacturers potentially involved in
402 the eligible consumer dispute shall be required to submit to
403 arbitration conducted by the board if such arbitration is
404 requested by a consumer and the dispute is deemed eligible for
405 arbitration by the department ~~division~~ pursuant to s. 681.109. A
406 consumer having a dispute involving one or more manufacturers

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407 for which the program has been determined not qualified, or for
408 which qualification has been revoked, is not required to submit
409 the dispute to the program irrespective of whether the program
410 may be qualified as to some of the manufacturers potentially
411 involved in the dispute.

412 Section 16. Section 681.110, Florida Statutes, is amended
413 to read:

414 681.110 Compliance and disciplinary actions.—The department
415 ~~of Legal Affairs~~ may enforce and ensure compliance with the
416 provisions of this chapter and rules adopted thereunder, may
417 issue subpoenas requiring the attendance of witnesses and
418 production of evidence, and may seek relief in the circuit court
419 to compel compliance with such subpoenas. The department ~~of~~
420 ~~Legal Affairs~~ may impose a civil penalty against a manufacturer
421 not to exceed \$1,000 for each count or separate offense. The
422 proceeds from the fine imposed herein shall be placed in the
423 Motor Vehicle Warranty Trust Fund in the department ~~Department~~
424 ~~of Legal Affairs~~ for implementation and enforcement of this
425 chapter.

426 Section 17. Subsection (2) of section 681.112, Florida
427 Statutes, is amended to read:

428 681.112 Consumer remedies.—

429 (2) An action brought under this chapter must be commenced
430 within 1 year after the expiration of the Lemon Law rights
431 period, or, if a consumer resorts to an informal dispute-
432 settlement procedure or submits a dispute to the department
433 ~~division~~ or board, within 1 year after the final action of the
434 procedure, department ~~division~~, or board.

435 Section 18. Subsection (2) of section 681.114, Florida

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436 Statutes, is amended to read:

437 681.114 Resale of returned vehicles.—

438 (2) A person shall not knowingly lease, sell at wholesale
439 or retail, or transfer a title to a motor vehicle returned by
440 reason of a settlement, determination, or decision pursuant to
441 this chapter or similar statute of another state unless the
442 nature of the nonconformity is clearly and conspicuously
443 disclosed to the prospective transferee, lessee, or buyer, and
444 the manufacturer warrants to correct such nonconformity for a
445 term of 1 year or 12,000 miles, whichever occurs first. The
446 department ~~of Legal Affairs~~ shall prescribe by rule the form,
447 content, and procedure pertaining to such disclosure statement.

448 Section 19. Subsection (1) of section 681.117, Florida
449 Statutes, is amended to read:

450 681.117 Fee.—

451 (1) A \$2 fee shall be collected by a motor vehicle dealer,
452 or by a person engaged in the business of leasing motor
453 vehicles, from the consumer at the consummation of the sale of a
454 motor vehicle or at the time of entry into a lease agreement for
455 a motor vehicle. Such fees shall be remitted to the county tax
456 collector or private tag agency acting as agent for the
457 Department of Revenue. If the purchaser or lessee removes the
458 motor vehicle from the state for titling and registration
459 outside this state, the fee shall be remitted to the Department
460 of Revenue. All fees, less the cost of administration, shall be
461 transferred monthly to the department ~~of Legal Affairs~~ for
462 deposit into the Motor Vehicle Warranty Trust Fund. ~~The~~
463 ~~Department of Legal Affairs shall distribute monthly an amount~~
464 ~~not exceeding one-fourth of the fees received to the Division of~~

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465 ~~Consumer Services of the Department of Agriculture and Consumer~~
466 ~~Services to carry out the provisions of ss. 681.108 and 681.109.~~
467 ~~The Department of Legal Affairs shall contract with the Division~~
468 ~~of Consumer Services for payment of services performed by the~~
469 ~~division pursuant to ss. 681.108 and 681.109.~~

470 Section 20. Section 681.118, Florida Statutes, is amended
471 to read:

472 681.118 Rulemaking authority.—The department ~~of Legal~~
473 ~~Affairs~~ shall adopt rules pursuant to ss. 120.536(1) and 120.54
474 to implement the provisions of this chapter.

475 Section 21. This act shall take effect July 1, 2011.