

Committee Substitute for
Committee Substitute for Senate Bill No. 784

An act relating to consumer protection; amending s. 400.925, F.S.; revising definitions; amending s. 400.93, F.S.; exempting providers of home medical equipment operated by the Department of Health from certain licensure requirements; amending s. 427.802, F.S.; revising definitions; amending s. 427.803, F.S.; revising warranty requirements; amending s. 427.804, F.S.; conforming references; deleting investigation and complaint processing requirements of the Department of Agriculture and Consumer Services; repealing s. 427.8041, F.S., relating to the registration of assistive technology device dealers; amending s. 496.411, F.S.; requiring charitable organizations or sponsors to display certain information on certain solicitation materials; amending s. 501.017, F.S.; requiring certain health studio contract refunds to be issued within a time certain; amending s. 501.019, F.S.; expanding application of felony penalties for knowingly making false representations for certain purposes; amending s. 539.001, F.S.; redefining the term "agency"; prohibiting pawnbrokers from knowingly accepting stolen property; correcting terminology; amending s. 559.801, F.S.; revising a definition; amending s. 559.803, F.S.; revising statements that must be placed in disclosure documents; specifying additional information required in certain business opportunity contract disclosure statements; amending s. 559.807, F.S.; revising application of requirements for certain securities relating to selling business opportunities; amending s. 559.809, F.S.; specifying an additional prohibited act by business opportunity sellers; reenacting s. 559.815, F.S., relating to penalties for violations of s. 559.809, F.S.; amending s. 559.902, F.S.; providing an additional exception for certain schools to application of certain motor vehicle repair shop provisions; amending s. 559.904, F.S.; revising certain requirements for motor vehicle repair shop registrations; amending s. 559.905, F.S.; providing additional estimated cost of repair requirements for written repair estimates; amending s. 559.9221, F.S.; revising Motor Vehicle Repair Advisory Council membership requirements; repealing s. 559.903(5), F.S., relating to a definition of minor repair service; providing for severability; amending s. 501.203, F.S.; including business or commercial entity within the definition of the term "consumer" for purposes of ch. 501, F.S.; incorporating revisions to applicable regulations; amending s. 501.204, F.S.; incorporating interpretations relating to the Federal Trade Commission Act; amending s. 501.207, F.S.; authorizing an action on behalf of a governmental entity for damages caused by a violation of part II of ch. 501, F.S.; amending s. 501.2075, F.S.; providing for waiver of civil penalties if restitution is made for actual damages to a governmental entity; repealing s. 501.2091, F.S., relating to an authorization for a stay of proceedings pending trial by a party to an action under part II of ch. 501, F.S.; amending s. 501.211, F.S.; providing for the recovery of actual damages on the part of a

person who suffers a loss as a result of a violation of part II of ch. 501, F.S.; amending s. 501.212, F.S.; providing that an exemption from regulation under part II of ch. 501, F.S., applies to activities regulated under laws administered by the Public Service Commission; providing effective dates.

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

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

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

(8) “Home medical equipment” includes any product as defined by the Federal Drug Administration’s Drugs, Devices and Cosmetics Act, any products reimbursed under the Medicare Part B Durable Medical Equipment benefits, or any products reimbursed under the Florida Medicaid durable medical equipment program. Home medical equipment includes, but is not limited to, oxygen and related respiratory equipment. Home medical equipment includes customized wheelchairs and related seating and positioning, but does not include prosthetics or orthotics or any splints, braces, or aids custom fabricated by a licensed health care practitioner. Home medical equipment includes assistive technology devices, including: manual wheelchairs, motorized wheelchairs, motorized scooters, voice-synthesized computer modules, optical scanners, talking software, braille printers, environmental control devices for use by person with quadriplegia, motor vehicle adaptive transportation aids, devices that enable persons with severe speech disabilities to in effect speak, personal transfer systems and specialty beds, including demonstrator, for use by a person with a medical need.

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

400.93 Home medical equipment providers to be licensed; expiration of license; exemptions; unlawful acts; penalties.—

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

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

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

427.802 Definitions.—As used in this part:

(1) “Assistive technology devices” means manual wheelchairs, motorized wheelchairs, motorized scooters, voice-synthesized computer modules, optical scanners, talking software, braille printers, environmental control devices for use by a person with quadriplegia, motor vehicle adaptive transpor-

tation aids, devices that enable persons with severe speech disabilities to in effect speak, personal transfer systems, and specialty beds, including a demonstrator, that a consumer purchases or accepts transfer of in this state for use by a person with a disability.

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

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

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

~~(4)(5) “Assistive technology device lessor” means a person who leases an assistive technology device to a consumer, or holds the lessor’s rights, under a written lease.~~

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

~~(6)(7) “Consumer” means any of the following:~~

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

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

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

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

~~(7)(8) “Demonstrator” means an assistive technology device used primarily for the purpose of demonstration to the public.~~

~~(9) “Department” means the Department of Agriculture and Consumer Services.~~

~~(8)(10) “Early termination cost” means any expense or obligation that an assistive technology device lessor incurs as a result of both the termination of a written lease before the termination date set forth in that lease and the return of an assistive technology device to a manufacturer pursuant to this~~

section. The term includes a penalty for prepayment under a financial arrangement.

(9)(14) “Early termination saving” means any expense or obligation that an assistive technology device lessor avoids as a result of both the termination of a written lease before the termination date set forth in the lease and the return of an assistive technology device to a manufacturer pursuant to this section. The term includes an interest charge that the assistive technology device lessor would have paid to finance the assistive technology device or, if the assistive technology device lessor does not finance the assistive technology device, the difference between the total amount for which the lease obligates the consumer during the period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination.

(10)(12) “Manufacturer” means a business entity that manufactures or produces assistive technology devices for sale and agents of that business entity, including an importer, a distributor, a factory branch, a distributor branch, and any warrantors of the manufacturer’s assistive technology device, but not including an assistive technology device dealer.

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

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

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

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

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

~~427.803 Express Duty of manufacturer and an assistive technology device dealer to conform an assistive technology device to the warranty.—~~

(4) A manufacturer who sells a new assistive technology device to a consumer, either directly or through an assistive technology device dealer, shall furnish the consumer with an express warranty for the assistive technology device. The duration of the express warranty must be at least 1 year after first delivery of the assistive technology device to the consumer. In the absence of an express warranty from the manufacturer, the manufacturer is considered to have expressly warranted to the consumer of an assistive technology device that, for a period of 1 year after the date of first delivery

to the consumer, the assistive technology device will be free from any condition or defect that substantially impairs the value of the assistive technology device to the consumer.

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

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

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

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

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

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

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

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

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

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

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

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

(4) To receive a comparable new assistive technology device or a refund due under paragraph (2)(a), a consumer must offer to the manufacturer of the assistive technology device having the nonconformity to transfer possession of the assistive technology device to the manufacturer. No later than 30 days after the offer, the manufacturer shall provide the consumer with the comparable assistive technology device or refund. When the manufacturer provides the comparable assistive technology device or refund, the consumer shall return the assistive technology device having the nonconformity to the manufacturer, along with any endorsements necessary to transfer real possession to the manufacturer.

(5) To receive a refund due under paragraph (2)(b), a consumer must offer to return the assistive technology device having the nonconformity to its manufacturer. No later than 30 days after the offer, the manufacturer shall provide the refund to the consumer who paid for or the provider who billed a third party payor source for the assistive technology device. The provider shall return the manufacturer's refund to the third party payor

source, unless the provider was not reimbursed by the third party payor. When the manufacturer provides the refund, the consumer shall return to the manufacturer the assistive technology device having the nonconformity.

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

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

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

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

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

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

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

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

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

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

496.411 Disclosure requirements and duties of charitable organizations and sponsors.—

(6) Each charitable organization or sponsor that is required to register under s. 496.405 shall conspicuously display the following information on

every printed solicitation, written confirmation, receipt, or reminder of a contribution:

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

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

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

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

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

501.017 Health studios; contracts.—

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

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

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

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

- a. Upon sale, for not more than 14 consecutive days; or
- b. During ownership, for not more than 7 consecutive days and not more than two periods of 7 consecutive days in any calendar year.

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

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

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

501.019 Health studios; penalties.—

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

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

539.001 The Florida Pawnbroking Act.—

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

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

(4) ELIGIBILITY FOR LICENSE.—

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

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

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

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

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

(5) APPLICATION FOR LICENSE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) “As required by Florida law, the seller has secured a bond issued by ..., a surety company authorized to do business in this state. Before signing a contract to purchase this business opportunity, you should confirm the bond’s status with the surety company.”; or

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

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

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

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

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

559.807 Bond or other security ~~trust account~~ required.—

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

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

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

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

559.809 Prohibited acts.—Business opportunity sellers shall not:

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

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

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

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

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

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

However, such person may voluntarily register under this act.

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

559.904 Motor vehicle repair shop registration; application; exemption.—

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

(a) ~~If the place of business only performed “minor repair service”:~~ \$25.

- (a)(b) If the place of business has 1 to 5 employees: \$50.
- (b)(c) If the place of business has 6 to 10 employees: \$150.
- (c)(d) If the place of business has 11 or more employees: \$300.

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

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

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

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

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

- (a) Have failed to meet the requirements for registration as provided in this part;
- (b) Have not satisfied a civil fine, administrative fine, or other penalty arising out of any administrative or enforcement action brought by any governmental agency based upon conduct involving fraud, dishonest dealing, or any violation of this part;
- (c) Have had against them any civil, criminal, or administrative adjudication in any jurisdiction, based upon conduct involving fraud, dishonest dealing, or any violation of this part; or
- (d) Have had a judgment entered against them in any action brought by the department or the state attorney pursuant to ss. 501.201-501.213 or this part.

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

559.905 Written motor vehicle repair estimate and disclosure statement required.—

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

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

“This charge represents costs and profits to the motor vehicle repair facility for miscellaneous shop supplies or waste disposal.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) “Enforcing authority” means the office of the state attorney if a violation of this part occurs in or affects the judicial circuit under the office’s jurisdiction. “Enforcing authority” means the Department of Legal Affairs if the violation occurs in or affects more than one judicial circuit or if the office of the state attorney defers to the department in writing, or fails to act upon a violation within 90 days after a written complaint has been filed with the state attorney.

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

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

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

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

(4) “Department” means the Department of Legal Affairs.

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

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

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

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

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

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

501.204 Unlawful acts and practices.—

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

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

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

501.207 Remedies of enforcing authority.—

(1) The enforcing authority may bring:

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

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

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

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

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

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

501.2075 Civil penalty.—Except as provided in s. 501.2077, any person, firm, corporation, association, or entity, or any agent or employee of the foregoing, who is willfully using, or has willfully used, a method, act, or practice declared unlawful under s. 501.204, or who is willfully violating any of the rules of the department ~~adopted~~ promulgated under this part, is liable for a civil penalty of not more than \$10,000 for each such violation. Willful violations occur when the person knew or should have known that his or her conduct was unfair or deceptive or prohibited by rule. This civil penalty may be recovered in any action brought under this part by the enforcing authority; or the enforcing authority may terminate any investigation or action upon agreement by the person, firm, corporation, association, or entity, or the agent or employee of the foregoing, to pay a stipulated civil penalty. The department or the court may waive any such civil penalty if the person, firm, corporation, association, or entity, or the agent or employee of the foregoing, has previously made full restitution or reimbursement or has paid actual damages to the consumers or governmental entities who have been injured by the unlawful act or practice or rule violation. If civil penalties are assessed in any litigation, the enforcing authority is entitled to reasonable attorney's fees and costs. A civil penalty so collected shall accrue to the state

and shall be deposited as received into the General Revenue Fund unallocated.

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

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

501.211 Other individual remedies.—

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

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

501.212 Application.—This part does not apply to:

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

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

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

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

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

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

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

Approved by the Governor June 13, 2001.

Filed in Office Secretary of State June 13, 2001.