

By the Committee on Business Regulation & Consumer Affairs  
and Representatives Ogles, Futch, J. Miller, Cantens, Kilmer,  
Greenstein and Turnbull

1                                   A bill to be entitled  
2           An act relating to consumer protection;  
3           amending s. 496.404, F.S.; revising  
4           definitions; amending s. 496.405, F.S.;  
5           providing additional information to be included  
6           within initial registration statements for  
7           charitable organizations and sponsors;  
8           prohibiting an employee of a charitable  
9           organization or sponsor from soliciting  
10          contributions on behalf of the charitable  
11          organization or sponsor under specified  
12          conditions; amending s. 496.409, F.S.; revising  
13          and providing additional information to be  
14          included within application for registration or  
15          renewal of registration as a professional  
16          fundraising consultant; prohibiting a person  
17          from acting as a professional fundraising  
18          consultant under specified circumstances;  
19          amending s. 496.410, F.S.; revising and  
20          providing additional information to be included  
21          within application for registration or renewal  
22          of registration as a professional solicitor;  
23          revising provisions which prohibit a person  
24          from acting as a professional solicitor;  
25          amending s. 496.420, F.S.; revising provisions  
26          relating to civil remedies and enforcement;  
27          amending s. 501.025, F.S.; providing that  
28          specified mortgages do not constitute an  
29          evidence of indebtedness for purposes of a  
30          buyer's right to cancel a home solicitation  
31          sale; amending s. 501.604, F.S.; providing

1 additional exclusions from the exemptions to  
2 pt. IV of ch. 501, F.S., the Florida  
3 Telemarketing Act; amending s. 501.616, F.S.;  
4 providing additional unlawful practices with  
5 respect to telephone solicitation; amending s.  
6 539.001, F.S.; revising license requirements  
7 under the Florida Pawnbroking Act; revising  
8 conditions of eligibility for license;  
9 requiring specified persons to file certain  
10 documentation upon application for license;  
11 requiring the submission of fingerprints with  
12 each initial application for licensure;  
13 requiring the Division of Consumer Services to  
14 submit fingerprints of each applicant for  
15 licensure to the Florida Department of Law  
16 Enforcement; requiring the Florida Department  
17 of Law Enforcement to forward the fingerprints  
18 to the Federal Bureau of Investigation;  
19 providing an additional condition under which a  
20 pawnbroker license may be suspended or revoked;  
21 providing that specified unintentional errors  
22 in required applications, documents, or records  
23 are not subject to criminal penalties; amending  
24 s. 559.803, F.S.; revising provisions relating  
25 to required information contained in disclosure  
26 statements with respect to the sale or lease of  
27 business opportunities; amending s. 559.805,  
28 F.S.; requiring a seller of business  
29 opportunities to file additional information  
30 with the department; reenacting s. 559.815,  
31 F.S.; providing a penalty; amending s. 559.903,

1 F.S.; revising the definition of "motor  
2 vehicle" for the purposes of pt. IX of ch. 559,  
3 F.S., relating to repair of motor vehicles;  
4 amending s. 559.904, F.S.; requiring the  
5 department to post a specified sign at any  
6 motor vehicle repair shop that has had its  
7 registration suspended or revoked or that has  
8 been determined to be operating without a  
9 registration; providing a second degree  
10 misdemeanor penalty for defacing or removing  
11 such a sign, for operating without a  
12 registration, or operating with a revoked or  
13 suspended registration; authorizing the  
14 department to impose administrative sanctions;  
15 amending s. 741.0305, F.S.; correcting a cross  
16 reference; providing an effective date.

17  
18 Be It Enacted by the Legislature of the State of Florida:

19  
20 Section 1. Subsections (5) and (6) of section 496.404,  
21 Florida Statutes, 1998 Supplement, are amended, present  
22 subsection (21) is renumbered as subsection (20) and amended,  
23 and subsections (7) through (24) are renumbered as subsections  
24 (6) through (23), respectively, to read:

25 496.404 Definitions.--As used in ss. 496.401-496.424:

26 (5) "Contribution" means the promise, pledge, or grant  
27 of any money or property, financial assistance, or any other  
28 thing of value in response to a solicitation. "Contribution"  
29 includes, in the case of a charitable organization or sponsor  
30 offering goods and services to the public, the difference  
31 between the direct cost of the goods and services to the

1 charitable organization or sponsor and the price at which the  
2 charitable organization or sponsor or any person acting on  
3 behalf of the charitable organization or sponsor resells those  
4 goods or services to the public. "Contribution" does not  
5 include bona fide fees, dues, or assessments paid by members,  
6 provided that membership is not conferred solely as  
7 consideration for making a contribution in response to a  
8 solicitation. "Contribution" also does not include funds  
9 obtained by a charitable organization or sponsor pursuant to  
10 government grants or contracts, or obtained as an allocation  
11 from a United Way organization that is duly registered with  
12 the department or received from an organization that is exempt  
13 from federal income taxation under s. 501(a) of the Internal  
14 Revenue Code and described in s. 501(c) of the Internal  
15 Revenue Code that is duly registered with the department.

16 ~~(6) "Conviction" means a determination of guilt~~  
17 ~~resulting from plea or trial, regardless of whether~~  
18 ~~adjudication was withheld or imposition of sentence was~~  
19 ~~suspended.~~

20 (20)~~(21)~~ "Solicitation" means a request, directly or  
21 indirectly, for money, property, financial assistance, or any  
22 other thing of value on the plea or representation that such  
23 money, property, financial assistance, or other thing of value  
24 or a portion of it will be used for a charitable or sponsor  
25 purpose or will benefit a charitable organization or sponsor.  
26 "Solicitation" includes, but is not limited to, the following  
27 methods of requesting or securing the promise, pledge, or  
28 grant of money, property, financial assistance, or any other  
29 thing of value:

30 (a) Any oral or written request;

31

1           (b) Making any announcement to the press, on radio or  
2 television, by telephone or telegraph, or by any other  
3 communication device concerning an appeal or campaign by or  
4 for any charitable organization or sponsor or for any  
5 charitable or sponsor purpose;

6           (c) Distributing, circulating, posting, or publishing  
7 any handbill, written advertisement, or other publication that  
8 directly or by implication seeks to obtain any contribution;  
9 or

10           (d) Selling or offering or attempting to sell any  
11 advertisement, advertising space, book, card, coupon, chance,  
12 device, magazine, membership, merchandise, subscription,  
13 sponsorship, flower, admission, ticket, food, or other service  
14 or tangible good, item, or thing of value, or any right of any  
15 description in connection with which any appeal is made for  
16 any charitable organization or sponsor or charitable or  
17 sponsor purpose, or when the name of any charitable  
18 organization or sponsor is used or referred to in any such  
19 appeal as an inducement or reason for making the sale or when,  
20 in connection with the sale or offer or attempt to sell, any  
21 statement is made that all or part of the proceeds from the  
22 sale will be used for any charitable or sponsor purpose or  
23 will benefit any charitable organization or sponsor.

24  
25 A solicitation is considered as having taken place whether or  
26 not the person making the solicitation receives any  
27 contribution. A solicitation does not occur when a person  
28 applies for a grant or an award to the government or to an  
29 organization that is exempt from federal income taxation under  
30 s. 501(a) of the Internal Revenue Code and described in s.

31

1 501(c) of the Internal Revenue Code and is duly registered  
2 with the department.

3 Section 2. Paragraph (d) of subsection (2) of section  
4 496.405, Florida Statutes, 1998 Supplement, is amended, and a  
5 new subsection (8) is added to said section, to read:

6 496.405 Registration statements by charitable  
7 organizations and sponsors.--

8 (2) The initial registration statement must be  
9 submitted on a form prescribed by the department, signed under  
10 oath by the treasurer or chief fiscal officer of the  
11 charitable organization or sponsor, and include the following  
12 information or material:

13 (d) A statement of whether:

14 1. The charitable organization or sponsor is  
15 authorized by any other state to solicit contributions;

16 2. The charitable organization or sponsor or any of  
17 its officers, directors, trustees, or principal salaried  
18 executive personnel have been enjoined in any jurisdiction  
19 from soliciting contributions or have been found to have  
20 engaged in unlawful practices in the solicitation of  
21 contributions or administration of charitable assets;

22 3. The charitable organization or sponsor has had its  
23 registration or authority denied, suspended, or revoked by any  
24 governmental agency, together with the reasons for such  
25 denial, suspension, or revocation; and

26 4. The charitable organization or sponsor has  
27 voluntarily entered into an assurance of voluntary compliance  
28 or agreement similar to that set forth in s. 496.420, together  
29 with a copy of that agreement.

30 5. The charitable organization or sponsor or any of  
31 its officers, directors, trustees, or principal salaried

1 executive personnel, regardless of adjudication, has been  
2 convicted of, or found guilty of, or pled guilty or nolo  
3 contendere to, or has been incarcerated within the last 10  
4 years as a result of having previously been convicted of, or  
5 found guilty of, or pled guilty or nolo contendere to, any  
6 felony or any crime involving fraud, theft, larceny,  
7 embezzlement, fraudulent conversion, misappropriation of  
8 property, or any crime arising from the conduct of a  
9 solicitation for a charitable organization or sponsor within  
10 the last 10 years and, if so, the name of such person, the  
11 nature of the offense, the date of the offense, the court  
12 having jurisdiction in the case, the date of conviction or  
13 other disposition, and the disposition of the offense.

14 6. The charitable organization or sponsor or any of  
15 its officers, directors, trustees, or principal salaried  
16 executive personnel has been enjoined from violating any law  
17 relating to a charitable solicitation, and, if so, the name of  
18 such person, the date of the injunction, and the court issuing  
19 the injunction.

20 (8) No employee of a charitable organization or  
21 sponsor may solicit contributions on behalf of such charitable  
22 organization or sponsor if such employee has, regardless of  
23 adjudication, been convicted of, or found guilty of, or pled  
24 guilty or nolo contendere to, or has been incarcerated within  
25 the last 10 years as a result of having previously been  
26 convicted of, or found guilty of, or pled guilty or nolo  
27 contendere to, any felony within the last 10 years or any  
28 crime within the last 10 years involving fraud, theft,  
29 larceny, embezzlement, fraudulent conversion, misappropriation  
30 of property, or any crime arising from the conduct of a  
31 solicitation for a charitable organization or sponsor, or has

1 been enjoined from violating any law relating to a charitable  
2 solicitation.

3 Section 3. Subsection (2) of section 496.409, Florida  
4 Statutes, is amended, and a new subsection (9) is added to  
5 said section, to read:

6 496.409 Registration and duties of professional  
7 fundraising consultant.--

8 (2) Applications for registration or renewal of  
9 registration must be submitted on a form prescribed by the  
10 department, signed under oath, and must include the following  
11 information:

12 (a) The street address and telephone number of the  
13 principal place of business of the applicant and any Florida  
14 street addresses if the principal place of business is located  
15 outside this state.

16 (b) The form of the applicant's business.

17 (c) The names and residence addresses of all  
18 principals of the applicant, including all officers,  
19 directors, and owners.

20 (d) Whether any of the owners, directors, officers, or  
21 employees of the applicant are related as parent, child,  
22 spouse, or sibling to any other directors, officers, owners,  
23 or employees of the applicant; to any officer, director,  
24 trustee, or employee of any charitable organization or sponsor  
25 under contract to the applicant; or to any supplier or vendor  
26 providing goods or services to any charitable organization or  
27 sponsor under contract to the applicant.

28 (e) Whether the applicant or any of its officers,  
29 directors, trustees, or principal salaried employees have,  
30 within the last 10 ~~5~~ years, regardless of adjudication, been  
31 convicted, or found guilty of, or pled guilty or nolo



1 contendere to, or have been incarcerated within the last 10  
2 years as a result of having previously been convicted of, or  
3 found guilty of, or pled guilty or nolo contendere to, any  
4 felony and, if so, the name of such person, the nature of the  
5 offense, the date of the offense, the court having  
6 jurisdiction in the case, the date of conviction or other  
7 disposition, and the disposition of the offense ~~of any felony,~~  
8 ~~or of any misdemeanor arising from the conduct of a~~  
9 ~~solicitation for a charitable organization or sponsor or~~  
10 ~~charitable or sponsor purpose, or been enjoined from violating~~  
11 ~~a charitable solicitation law in this or any other state.~~

12 (f) Whether the applicant or any of its officers,  
13 directors, trustees, or principal salaried employees have,  
14 regardless of adjudication, been convicted of, or found guilty  
15 of, or pled guilty or nolo contendere to, or have been  
16 incarcerated within the last 10 years as a result of having  
17 previously been convicted of, or found guilty of, or pled  
18 guilty or nolo contendere to, a crime within the last 10 years  
19 involving fraud, theft, larceny, embezzlement, fraudulent  
20 conversion, or misappropriation of property, or any crime  
21 arising from the conduct of a solicitation for a charitable  
22 organization or sponsor and, if so, the name of such person,  
23 the nature of the offense, the date of the offense, the court  
24 having jurisdiction in the case, the date of conviction or  
25 other disposition, and the disposition of the offense.

26 (g) Whether the applicant or any of its officers,  
27 directors, trustees, or principal salaried employees have been  
28 enjoined from violating any law relating to a charitable  
29 solicitation and, if so, the name of such person, the date of  
30 the injunction, and the court issuing the injunction.

31

1           (9) No person may act as a professional fundraising  
2 consultant if such person or any officer, trustee, director,  
3 or principal salaried employee thereof has, regardless of  
4 adjudication, been convicted of, or found guilty of, or pled  
5 guilty or nolo contendere to, or has been incarcerated within  
6 the last 10 years as a result of having previously been  
7 convicted of, or found guilty of, or pled guilty or nolo  
8 contendere to, any crime within the last 10 years involving  
9 fraud, theft, larceny, embezzlement, fraudulent conversion, or  
10 misappropriation of property, or any crime arising from the  
11 conduct of a solicitation for a charitable organization or  
12 sponsor, or has been enjoined from violating any law relating  
13 to a charitable solicitation.

14           Section 4. Subsections (2) and (14) of section  
15 496.410, Florida Statutes, are amended to read:

16           496.410 Registration and duties of professional  
17 solicitors.--

18           (2) Applications for registration or renewal of  
19 registration must be submitted on a form prescribed by rule of  
20 the department, signed under oath, and must include the  
21 following information:

22           (a) The street address and telephone number of the  
23 principal place of business of the applicant and any Florida  
24 street addresses if the principal place of business is located  
25 outside this state.

26           (b) The form of the applicant's business.

27           (c) The place and date when the applicant, if other  
28 than an individual, was legally established.

29           (d) The names and residence addresses of all  
30 principals of the applicant, including all officers,  
31 directors, and owners.

1           (e) A statement as to whether any of the owners,  
2 directors, officers, or employees of the applicant are related  
3 as parent, spouse, child, or sibling to any other directors,  
4 officers, owners, or employees of the applicant; to any  
5 officer, director, trustee, or employee of any charitable  
6 organization or sponsor under contract to the applicant; or to  
7 any supplier or vendor providing goods or services to any  
8 charitable organization or sponsor under contract to the  
9 applicant.

10           (f) A statement as to whether the applicant or any of  
11 its directors, officers, ~~trustees,~~ persons with a controlling  
12 interest in the applicant, or employees or agents involved in  
13 solicitation have ~~been convicted,~~ within the last 10 5 years,  
14 regardless of adjudication, been convicted of, or found guilty  
15 of, or pled guilty or nolo contendere to, or have been  
16 incarcerated within the last 10 years as a result of having  
17 previously been convicted of, or found guilty of, or pled  
18 guilty or nolo contendere to, any felony and, if so, the name  
19 of such person, the nature of the offense, the date of the  
20 offense, the court having jurisdiction in the case, the date  
21 of conviction or other disposition, and the disposition of the  
22 offense of any felony, or of a misdemeanor arising from the  
23 ~~conduct of a solicitation for any charitable organization or~~  
24 ~~sponsor or charitable or sponsor purpose, or been enjoined~~  
25 ~~from violating a charitable solicitation law in this or any~~  
26 ~~other state.~~

27           (g) A statement as to whether the applicant or any of  
28 its directors, officers, trustees, persons with a controlling  
29 interest in the applicant, or employees or agents involved in  
30 solicitation have, regardless of adjudication, been convicted  
31 of, or found guilty of, or pled guilty or nolo contendere to,

1 or have been incarcerated within the last 10 years as a result  
2 of having previously been convicted of, or found guilty of, or  
3 pled guilty or nolo contendere to, a crime within the last 10  
4 years involving fraud, theft, larceny, embezzlement,  
5 fraudulent conversion, or misappropriation of property, or any  
6 crime arising from the conduct of a solicitation for a  
7 charitable organization or sponsor and, if so, the name of  
8 such person, the nature of the offense, the date of the  
9 offense, the court having jurisdiction in the case, the date  
10 of conviction or other disposition, and the disposition of the  
11 offense.

12 (h) A statement as to whether the applicant or any of  
13 its directors, officers, trustees, persons with a controlling  
14 interest in the applicant, or employees or agents involved in  
15 solicitation have been enjoined from violating any law  
16 relating to a charitable solicitation and, if so, the name of  
17 such person, the date of the injunction, and the court issuing  
18 the injunction.

19 (i)~~(g)~~ The names of all persons in charge of any  
20 solicitation activity.

21 (14) No person may act as a professional solicitor if  
22 such person, any officer, trustee, or director thereof, any  
23 person with a controlling interest therein, or any person the  
24 professional solicitor employs, engages, or procures to  
25 solicit for compensation, has, regardless of adjudication,  
26 been convicted of, or found guilty of, or pled guilty or nolo  
27 contendere to, or has been incarcerated within the last 10  
28 years as a result of having previously been convicted of, or  
29 found guilty of, or pled guilty or nolo contendere to, a  
30 felony within the last 10 years involving fraud, theft,  
31 larceny, embezzlement, fraudulent conversion, or

1 misappropriation of property, or any crime arising from the  
2 conduct of a solicitation for a charitable organization or  
3 sponsor, or has been enjoined from violating any law relating  
4 to a charitable solicitation ~~been convicted in the last 5~~  
5 ~~years by a court in any state of the United States of a crime~~  
6 ~~arising from the conduct of a solicitation for a charitable~~  
7 ~~organization or sponsor or a charitable purpose or sponsor~~  
8 ~~purpose.~~

9 Section 5. Section 496.420, Florida Statutes, is  
10 amended to read:

11 496.420 Civil remedies and enforcement.--

12 (1) In addition to other remedies authorized by law,  
13 the department ~~of Legal Affairs~~ may bring a civil action in  
14 circuit court to enforce ss. 496.401-496.424 or s. 496.426.  
15 Upon a finding that any person has violated any of these  
16 sections, a court may make any necessary order or enter a  
17 judgment including, but not limited to, a temporary or  
18 permanent injunction, a declaratory judgment, the appointment  
19 of a master or receiver, the sequestration of assets, the  
20 reimbursement of persons from whom contributions have been  
21 unlawfully solicited, the distribution of contributions in  
22 accordance with the charitable or sponsor purpose expressed in  
23 the registration statement or in accordance with the  
24 representations made to the person solicited, the  
25 reimbursement of the department for investigative costs, and  
26 ~~of the Department of Legal Affairs for attorney's fees and~~  
27 ~~costs, including investigative costs,~~ and any other equitable  
28 relief the court finds appropriate. Upon a finding that any  
29 person has violated any provision of ss. 496.401-496.424 or s.  
30 496.426 with actual knowledge or knowledge fairly implied on  
31 the basis of objective circumstances, a court may enter an

1 order imposing a civil penalty in an amount not to exceed  
2 \$10,000 per violation.

3 (2) The department ~~of Legal Affairs~~ may conduct any  
4 investigation necessary to bring a civil action under this  
5 section including, but not limited to, administering oaths and  
6 affirmations, subpoenaing witnesses or material, and  
7 collecting evidence.

8 (3) The department ~~of Legal Affairs~~ may terminate an  
9 investigation or an action upon acceptance of a person's  
10 written assurance of voluntary compliance with ss.  
11 496.401-496.424 or s. 496.426. Acceptance of an assurance may  
12 be conditioned on commitment to reimburse donors or to take  
13 other appropriate corrective action. An assurance is not  
14 evidence of a prior violation of any of these sections.  
15 However, unless an assurance has been rescinded by agreement  
16 of the parties or voided by a court for good cause, subsequent  
17 failure to comply with the terms of an assurance is prima  
18 facie evidence of a violation of one or more of these  
19 sections.

20 (4) All moneys, including, but not limited to, civil  
21 penalties and attorney's fees and costs, collected pursuant to  
22 this section and s. 496.416, shall be paid into the General  
23 Inspection Consumer Frauds Trust Fund.

24 Section 6. Section 501.025, Florida Statutes, is  
25 amended to read:

26 501.025 Home solicitation sale; buyer's right to  
27 cancel.--In addition to any other right to revoke an offer,  
28 the buyer has the right to cancel a home solicitation sale  
29 until midnight of the third business day after the day on  
30 which the buyer signs an agreement or offer to purchase.  
31 Cancellation is evidenced by the buyer giving written notice

1 of cancellation in person, by telegram, or by mail to the  
2 seller at the address stated in the agreement or offer to  
3 purchase. The written notice of cancellation given by mail  
4 shall be effective upon postmarking. The notice of  
5 cancellation need not take a particular form and is sufficient  
6 if it indicates by any form of written expression the  
7 intention of the buyer not to be bound by the home  
8 solicitation sale. Notice of a buyer's right to cancel must  
9 appear on every note or other evidence of indebtedness given  
10 pursuant to any home solicitation sale. For the purpose of  
11 this section, unless a mortgage also creates the buyer's  
12 promise to pay the secured debt, it is not an evidence of  
13 indebtedness.

14 Section 7. The introductory paragraph of section  
15 501.604, Florida Statutes, is amended to read:

16 501.604 Exemptions.--The provisions of this part,  
17 except s. 501.608 and s. 501.616(6) and (7), do not apply to:

18 (1) A person engaging in commercial telephone  
19 solicitation where the solicitation is an isolated transaction  
20 and not done in the course of a pattern of repeated  
21 transactions of like nature.

22 (2) A person soliciting for religious, charitable,  
23 political, or educational purposes. A person soliciting for  
24 other noncommercial purposes is exempt only if that person is  
25 soliciting for a nonprofit corporation and if that corporation  
26 is properly registered as such with the Secretary of State and  
27 is included within the exemption of s. 501(c)(3) or (6) of the  
28 Internal Revenue Code.

29 (3) A person who does not make the major sales  
30 presentation during the telephone solicitation and who does  
31 not intend to, and does not actually, complete or obtain

1 provisional acceptance of a sale during the telephone  
2 solicitation, but who makes the major sales presentation and  
3 completes the sale at a later face-to-face meeting between the  
4 seller and the prospective purchaser in accordance with the  
5 home solicitation provisions in this chapter. However, if a  
6 seller, directly following a telephone solicitation, causes an  
7 individual whose primary purpose it is to go to the  
8 prospective purchaser to collect the payment or deliver any  
9 item purchased, this exemption does not apply.

10 (4) Any licensed securities, commodities, or  
11 investment broker, dealer, or investment adviser, when  
12 soliciting within the scope of his or her license, or any  
13 licensed associated person of a securities, commodities, or  
14 investment broker, dealer, or investment adviser, when  
15 soliciting within the scope of his or her license. As used in  
16 this section, "licensed securities, commodities, or investment  
17 broker, dealer, or investment adviser" means a person subject  
18 to license or registration as such by the Securities and  
19 Exchange Commission, by the National Association of Securities  
20 Dealers or other self-regulatory organization as defined by  
21 the Securities Exchange Act of 1934, 15 U.S.C. s. 78l, or by  
22 an official or agency of this state or of any state of the  
23 United States. As used in this section, "licensed associated  
24 person of a securities, commodities, or investment broker,  
25 dealer, or investment adviser" means any associated person  
26 registered or licensed by the National Association of  
27 Securities Dealers or other self-regulatory organization as  
28 defined by the Securities Exchange Act of 1934, 15 U.S.C. s.  
29 78l, or by an official or agency of this state or of any state  
30 of the United States.

31



1           (5) A person primarily soliciting the sale of a  
2 newspaper of general circulation.

3           (6) A book, video, or record club or contractual plan  
4 or arrangement:

5           (a) Under which the seller provides the consumer with  
6 a form which the consumer may use to instruct the seller not  
7 to ship the offered merchandise.

8           (b) Which is regulated by the Federal Trade Commission  
9 trade regulation concerning "use of negative option plans by  
10 sellers in commerce."

11           (c) Which provides for the sale of books, records, or  
12 videos which are not covered under paragraph (a) or paragraph  
13 (b), including continuity plans, subscription arrangements,  
14 standing order arrangements, supplements, and series  
15 arrangements under which the seller periodically ships  
16 merchandise to a consumer who has consented in advance to  
17 receive such merchandise on a periodic basis.

18           (7) Any supervised financial institution or parent,  
19 subsidiary, or affiliate thereof. As used in this section,  
20 "supervised financial institution" means any commercial bank,  
21 trust company, savings and loan association, mutual savings  
22 bank, credit union, industrial loan company, consumer finance  
23 lender, commercial finance lender, or insurer, provided that  
24 the institution is subject to supervision by an official or  
25 agency of this state, of any state, or of the United States.  
26 For the purposes of this exemption, "affiliate" means a person  
27 who directly, or indirectly through one or more  
28 intermediaries, controls or is controlled by, or is under  
29 common control with, a supervised financial institution.

30           (8) Any licensed insurance broker, agent, customer  
31 representative, or solicitor when soliciting within the scope

1 of his or her license. As used in this section, "licensed  
2 insurance broker, agent, customer representative, or  
3 solicitor" means any insurance broker, agent, customer  
4 representative, or solicitor licensed by an official or agency  
5 of this state or of any state of the United States.

6 (9) A person soliciting the sale of services provided  
7 by a cable television system operating under authority of a  
8 franchise or permit.

9 (10) A business-to-business sale where:

10 (a) The commercial telephone seller has been operating  
11 continuously for at least 3 years under the same business name  
12 and has at least 50 percent of its dollar volume consisting of  
13 repeat sales to existing businesses;

14 (b) The purchaser business intends to resell or offer  
15 for purposes of advertisement or as a promotional item the  
16 property or goods purchased; or

17 (c) The purchaser business intends to use the property  
18 or goods purchased in a recycling, reuse, remanufacturing, or  
19 manufacturing process.

20 (11) A person who solicits sales by periodically  
21 publishing and delivering a catalog of the seller's  
22 merchandise to prospective purchasers, if the catalog:

23 (a) Contains a written description or illustration of  
24 each item offered for sale.

25 (b) Includes the business address or home office  
26 address of the seller.

27 (c) Includes at least 20 pages of written material and  
28 illustrations and is distributed in more than one state.

29 (d) Has an annual circulation by mailing of not less  
30 than 150,000.

31

1           (12) A person who solicits contracts for the  
2 maintenance or repair of goods previously purchased from the  
3 person making the solicitation or on whose behalf the  
4 solicitation is made.

5           (13) A commercial telephone seller licensed pursuant  
6 to chapter 516 or part II of chapter 520. For purposes of this  
7 exemption, the seller must solicit to sell a consumer good or  
8 service within the scope of his or her license and the  
9 completed transaction must be subject to the provisions of  
10 chapter 516 or part II of chapter 520.

11           (14) A telephone company subject to the provisions of  
12 chapter 364, or affiliate thereof or its agents, or a business  
13 which is regulated by the Florida Public Service Commission,  
14 or a Federal Communications Commission licensed cellular  
15 telephone company or other bona fide radio telecommunication  
16 services provider. For the purposes of this exemption,  
17 "affiliate" means a person who directly, or indirectly through  
18 one or more intermediaries, controls or is controlled by, or  
19 is under common control with, a telephone company subject to  
20 the provisions of chapter 364.

21           (15) A person who is licensed pursuant to chapter 470  
22 or chapter 497 and who is soliciting within the scope of the  
23 license.

24           (16) An issuer or a subsidiary of an issuer that has a  
25 class of securities which is subject to s. 12 of the  
26 Securities Exchange Act of 1934, 15 U.S.C. s. 781, and which  
27 is either registered or exempt from registration under  
28 paragraph (A), paragraph (B), paragraph (C), paragraph (E),  
29 paragraph (F), paragraph (G), or paragraph (H) of subsection  
30 (g)(2) of that section.

31

1           (17) A business soliciting exclusively the sale of  
2 telephone answering services provided that the telephone  
3 answering services will be supplied by the solicitor.

4           (18) A person soliciting a transaction regulated by  
5 the Commodity Futures Trading Commission if the person is  
6 registered or temporarily licensed for this activity with the  
7 Commodity Futures Trading Commission under the Commodity  
8 Exchange Act, 7 U.S.C. ss. 1 et seq., and the registration or  
9 license has not expired or been suspended or revoked.

10           (19) A person soliciting the sale of food or produce  
11 as defined in chapter 500 or chapter 504 if the solicitation  
12 neither intends to result in, or actually results in, a sale  
13 which costs the purchaser in excess of \$500.

14           (20) A person who is registered pursuant to part XI of  
15 chapter 559 and who is soliciting within the scope of the  
16 registration.

17           (21) A person soliciting business from prospective  
18 consumers who have an existing business relationship with or  
19 who have previously purchased from the business enterprise for  
20 which the solicitor is calling, if the solicitor is operating  
21 under the same exact business name.

22           (22) A person who has been operating, for at least 1  
23 year, a retail business establishment under the same name as  
24 that used in connection with telemarketing, and both of the  
25 following occur on a continuing basis:

26           (a) Either products are displayed and offered for sale  
27 or services are offered for sale and provided at the business  
28 establishment.

29           (b) A majority of the seller's business involves the  
30 buyer obtaining such products or services at the seller's  
31 location.

1           (23) A person who is a registered developer or  
2 exchange company pursuant to chapter 721 and who is soliciting  
3 within the scope of the chapter.

4           (24) Any person which has been providing telemarketing  
5 sales services continuously for at least 5 years under the  
6 same ownership and control and which derives 75 percent of its  
7 gross telemarketing sales revenues from contracts with persons  
8 exempted in this section.

9           (25) A person who is a licensed real estate  
10 salesperson or broker pursuant to chapter 475 and who is  
11 soliciting within the scope of the chapter.

12           (26) A publisher, or an agent of a publisher by  
13 written agreement, who solicits the sale of his or her  
14 periodical or magazine of general, paid circulation. The term  
15 "paid circulation" shall not include magazines that are only  
16 circulated as part of a membership package or that are given  
17 as a free gift or prize from the publisher or agent of the  
18 publisher by written agreement.

19           (27) A person who is a licensed operator or an  
20 identification cardholder as defined in chapter 482, and who  
21 is soliciting within the scope of the chapter.

22           (28) A licensee, or an affiliate of a licensee,  
23 regulated under chapter 560, the Money Transmitters' Code, for  
24 foreign currency exchange services.

25           Section 8. Subsections (6) and (7) are added to  
26 section 501.616, Florida Statutes, to read:

27           501.616 Unlawful acts and practices.--

28           (6) It shall be unlawful for any commercial telephone  
29 seller or salesperson to make a commercial telephone  
30 solicitation phone call before 8:00 a.m. or after 9:00 p.m.  
31 local time at the called person's location.

1       (7) It shall be unlawful for any commercial telephone  
2 seller or salesperson making telephonic solicitations to take  
3 any intentional action that would prevent the solicitor's  
4 telephone number from being passed on to the called party.

5           Section 9. Paragraph (c) of subsection (3), paragraph  
6 (c) of subsection (5), paragraph (a) of subsection (6), and  
7 subsection (4) of section 539.001, Florida Statutes, are  
8 amended to read:

9           539.001 The Florida Pawnbroking Act.--

10          (3) LICENSE REQUIRED.--

11          (c) Each license is valid for a period of 1 year  
12 ~~unless remains in effect until it is earlier~~ relinquished,  
13 ~~suspended, or revoked, or expires.~~ Each license shall be  
14 renewed annually, and each licensee shall, initially and  
15 annually thereafter, pay to the agency a license fee of not to  
16 ~~exceed \$300 for each license held. If the annual license fee~~  
17 ~~remains unpaid 30 days after written notice of delinquency has~~  
18 ~~been given to the licensee by the agency, the license shall~~  
19 ~~thereupon expire on the expiration date specified in the~~  
20 ~~registration certificate.~~

21          (4) ELIGIBILITY FOR LICENSE.--

22          (a) To be eligible for a pawnbroker's license, an  
23 applicant must:

- 24           1. Be of good moral character;
- 25           2. Have a net worth of at least \$50,000 or file with  
26 the agency a bond issued by a surety company qualified to do  
27 business in this state in the amount of \$10,000 for each  
28 license. In lieu of the bond required in this section, the  
29 applicant may establish a certificate of deposit or an  
30 irrevocable letter of credit in a Florida banking institution  
31 in the amount of the bond. The original bond, certificate of

1 deposit, or letter of credit shall be filed with the agency,  
2 and the agency shall be the beneficiary to said document. The  
3 bond, certificate of deposit, or letter of credit shall be in  
4 favor of the agency for the use and benefit of any consumer  
5 who is injured by the fraud, misrepresentation, breach of  
6 contract, financial failure, or violation of any provision of  
7 this section by the pawnbroker. Such liability may be enforced  
8 either by proceeding in an administrative action or by filing  
9 a judicial suit at law in a court of competent jurisdiction.  
10 However, in such court suit, the bond, certificate of deposit,  
11 or letter of credit posted with the agency shall not be  
12 amenable or subject to any judgment or other legal process  
13 issuing out of or from such court in connection with such  
14 lawsuit, but such bond, certificate of deposit, or letter of  
15 credit shall be amenable to and enforceable only by and  
16 through administrative proceedings before the agency. It is  
17 the intent of the Legislature that such bond, certificate of  
18 deposit, or letter of credit shall be applicable and liable  
19 only for the payment of claims duly adjudicated by order of  
20 the agency. The bond, certificate of deposit, or letter of  
21 credit shall be payable on a pro rata basis as determined by  
22 the agency, but the aggregate amount may not exceed the amount  
23 of the bond, certificate of deposit, or letter of credit;

24         3. Not have been convicted of, or found guilty of, or  
25 pled guilty or nolo contendere to, or not have been  
26 incarcerated within the last 10 years as a result of having  
27 previously been convicted of, or found guilty of, or plead  
28 guilty or nolo contendere to, regardless of adjudication, a  
29 felony within the last 10 years and not be acting as a  
30 beneficial owner for someone who has been convicted of, or  
31 found guilty of, or pled guilty or nolo contendere to,

1 regardless of adjudication, a felony within the last 10 years;  
2 and

3 4. Not have been convicted of, or found guilty of, or  
4 pled guilty or nolo contendere to, or not have been  
5 incarcerated within the last 10 years as a result of having  
6 previously been convicted of, or found guilty of, or pled  
7 guilty or nolo contendere to, regardless of adjudication, a  
8 crime that involves theft, larceny, dealing in stolen  
9 property, receiving stolen property, burglary, embezzlement,  
10 obtaining property by false pretenses, possession of altered  
11 property, or any other fraudulent or dishonest dealing ~~the~~  
12 ~~agency finds directly relates to the duties and~~  
13 ~~responsibilities of a pawnbroker~~ within the last 10 years, and  
14 not be acting as a beneficial owner for someone who has been  
15 convicted, of, or found guilty of, or pled guilty or nolo  
16 contendere to, or has been incarcerated within the last 10  
17 years as a result of having previously been convicted of, or  
18 found guilty of, or pled guilty or nolo contendere to,  
19 regardless of adjudication, a crime that involves theft,  
20 larceny, dealing in stolen property, receiving stolen  
21 property, burglary, embezzlement, obtaining property by false  
22 pretenses, possession of altered property, or any other  
23 fraudulent or dishonest dealing ~~the agency finds directly~~  
24 ~~relates to the duties and responsibilities of a pawnbroker~~  
25 within the last 10 years.

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

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

31



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

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

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

13           (c) If an applicant for a pawnbroker's license is not  
14 an individual, the eligibility requirements of this  
15 subsection, other than the requirements of subparagraph (a)2.,  
16 apply to each operator of the pawnshop and to each direct or  
17 beneficial owner of at least 10 percent of the outstanding  
18 equity interest of the pawnshop and, if the applicant is a  
19 corporation, to each officer and director of the corporation.

20           (5) APPLICATION FOR LICENSE.--

21           (c) Each initial application for a license must be  
22 accompanied by a complete set of fingerprints taken by an  
23 authorized law enforcement officer,~~an application fee set by~~  
24 ~~the agency not to exceed \$300 for,~~ which shall include the  
25 first year's license fee, and for the first year's operation,  
26 ~~plus~~ the actual cost to the department for fingerprint  
27 analysis for each person subject to the eligibility  
28 requirements. The agency shall submit the fingerprints to the  
29 Department of Law Enforcement for state processing and the  
30 Department of Law Enforcement shall forward the fingerprints  
31 to the Federal Bureau of Investigation for a national criminal

1 ~~history check~~ ~~owner application, to cover the costs of~~  
2 ~~investigating the applicant.~~ These fees and costs are not  
3 refundable.

4 (6) SUSPENSION, REVOCATION, AND SURRENDER OF LICENSE;  
5 NET WORTH REQUIREMENT.--

6 (a) The agency may, after notice and a hearing,  
7 suspend or revoke any license upon a finding that:

8 1. The licensee, either knowingly or without the  
9 exercise of due care, has violated this section or has aided  
10 or conspired with another person to violate this section;

11 2. A condition exists that, had it existed when the  
12 ~~original~~ license was issued, would have justified the agency's  
13 refusal to issue a license; ~~or~~

14 3. The licensee or its applicable agents or employees  
15 who are subject to the eligibility requirements no longer meet  
16 the eligibility requirements to hold a pawnbroker's license;  
17 or

18 ~~4.3.~~ The licensee has through gross negligence or  
19 willful noncompliance failed to comply with a written hold  
20 order.

21 (17) CRIMINAL PENALTIES.--

22 (a) Any person who engages in business as a pawnbroker  
23 without first securing a license commits a felony of the third  
24 degree, punishable as provided in s. 775.082, s. 775.083, or  
25 s. 775.084.

26 (b) In addition to any other penalty, any person, who  
27 willfully violates this section or who willfully makes a false  
28 entry in any record specifically required by this section  
29 commits a misdemeanor of the first degree, punishable as  
30 provided in s. 775.082 or s. 775.083. Clerical or  
31 recordkeeping errors such as typographical errors, scrivener's

1 errors and computer errors regarding any application,  
2 document, or record required by this section do not constitute  
3 a willful violation of this section and are not subject to  
4 criminal penalties. Clerical errors are subject to  
5 administrative penalties pursuant to subsection (7). Repeated  
6 patterns of clerical errors may be subject to administrative  
7 remedies as set forth in subsection (6) as determined by the  
8 agency.

9           Section 10. Paragraph (a) of subsection (11) of  
10 section 559.803, Florida Statutes, is amended to read:

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

1 Florida requires sellers of business opportunities to disclose  
2 certain information to prospective purchasers. This index is  
3 provided to help you locate this information." If the index  
4 contains other information not required by this section, the  
5 seller shall place a designation beside each of the  
6 disclosures required by this section and provide an  
7 explanation of the designation at the end of the statement at  
8 the top of the index page. The disclosure document shall  
9 contain the following information:

10 (11) A statement disclosing who, if any, of the  
11 persons listed in subsections (1) and (2):

12 (a) Has, at any time during the previous 10 ~~7~~ fiscal  
13 years, regardless of adjudication, been convicted of, or found  
14 guilty of, or pled guilty or nolo contendere to, or has been  
15 incarcerated within the last 10 years as a result of having  
16 previously been convicted of, or found guilty of, or pled  
17 guilty or nolo contendere to, a felony or a crime involving a  
18 ~~felony or pleaded nolo contendere to a felony charge if the~~  
19 ~~felony involved~~ fraud, theft, larceny, (including violation of  
20 any franchise or business opportunity law or unfair or  
21 deceptive practices law), embezzlement, fraudulent conversion,  
22 misappropriation of property, or restraint of trade.

23 Section 11. Subsections (2), (3), and (4) of section  
24 559.805, Florida Statutes, 1998 Supplement, are renumbered as  
25 subsections (3), (4), and (5), respectively, and a new  
26 subsection (2) is added to said section to read:

27 559.805 Filings with the department; disclosure of  
28 advertisement identification number.--

29 (2) Every seller of a business opportunity shall file  
30 with the department a list of the seller's officers,  
31 directors, trustees, general partners, general managers,

1 principal executives, and any other persons charged with the  
2 responsibility for the seller's business activities relating  
3 to the sale of business opportunities. This list must be kept  
4 current and shall include the following information: name,  
5 home and business address, telephone number, driver's license  
6 number, the state in which the driver's license is issued, and  
7 birth date.

8 Section 12. Section 559.815, Florida Statutes, is  
9 reenacted to read:

10 559.815 Penalties.--Any person who fails to file with  
11 the department as required by s. 559.805 or who commits an act  
12 described in s. 559.809 is guilty of a felony of the third  
13 degree, punishable as provided in s. 775.082, s. 775.083, or  
14 s. 775.084.

15 Section 13. Subsection (6) of section 559.903, Florida  
16 Statutes, is amended to read:

17 559.903 Definitions.--As used in this act:

18 (6) "Motor vehicle" means any automobile, truck, bus,  
19 recreational vehicle, motorcycle, motor scooter, or other  
20 motor powered vehicle, but does not include trailers, mobile  
21 homes, travel trailers, ~~or~~ trailer coaches without independent  
22 motive power, ~~or~~ watercraft or aircraft, or special mobile  
23 equipment as defined in s. 316.003(48).

24 Section 14. Subsection (11) is added to section  
25 559.904, Florida Statutes, 1998 Supplement, to read:

26 559.904 Motor vehicle repair shop registration;  
27 application; exemption.--

28 (11) The department shall post a prominent "Closed by  
29 Order of the Department" sign on any motor vehicle repair shop  
30 that has had its registration suspended or revoked. The  
31 department shall also post a sign on any motor vehicle repair

1 shop that has been judicially or administratively determined  
2 to be operating without a registration. It is a misdemeanor of  
3 the second degree, punishable as provided in s. 775.082 or s.  
4 775.083, for any person to deface such sign or remove such  
5 sign without written authorization by the department or for  
6 any motor vehicle repair shop to open for operation without a  
7 registration or to open for operation as a motor vehicle  
8 repair shop while its registration is suspended or revoked.  
9 The department may impose administrative sanctions provided  
10 for in s. 559.921(4) for violations of this subsection.

11 Section 15. Paragraph (a) of subsection (3) of section  
12 741.0305, Florida Statutes, is amended to read:

13 741.0305 Marriage fee reduction for completion of  
14 premarital preparation course.--

15 (3)(a) All individuals electing to participate in a  
16 premarital preparation course shall choose from the following  
17 list of qualified instructors:

- 18 1. A psychologist licensed under chapter 490.
- 19 2. A clinical social worker licensed under chapter  
20 491.
- 21 3. A marriage and family therapist licensed under  
22 chapter 491.
- 23 4. A mental health counselor licensed under chapter  
24 491.
- 25 5. An official representative of a religious  
26 institution which is recognized under s. 496.404(19)~~(20)~~, if  
27 the representative has relevant training.
- 28 6. Any other provider designated by a judicial  
29 circuit, including, but not limited to, school counselors who  
30 are certified to offer such courses. Each judicial circuit may  
31

1 establish a roster of area course providers, including those  
2 who offer the course on a sliding fee scale or for free.

3 (b) The costs of such premarital preparation course  
4 shall be paid by the applicant.

5 Section 16. This act shall take effect upon becoming a  
6 law.

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HOUSE SUMMARY

Revises various provisions relating to consumer protection under the regulation of the Department of Agriculture and Consumer Services. Revises definitions with respect to ch. 496, F.S., relating to solicitation of funds. Provides additional information to be included within initial registration statements for charitable organizations and sponsors. Prohibits an employee of a charitable organization or sponsor from soliciting contributions on behalf of the charitable organization or sponsor under specified conditions. Revises and provides additional information to be included within application for registration or renewal of registration as a professional fundraising consultant. Prohibits a person from acting as a professional fundraising consultant under specified circumstances. Revises and provides additional information to be included within application for registration or renewal of registration as a professional solicitor. Revises provisions which prohibit a person from acting as a professional solicitor. Revises provisions relating to civil remedies and enforcement.

Provides that specified mortgages do not constitute an evidence of indebtedness for purposes of a buyer's right to cancel a home solicitation sale.

Provides additional exclusions from the exemptions to pt. IV of ch. 501, F.S., the Florida Telemarketing Act. Provides additional unlawful practices with respect to telephone solicitation.

Revises license requirements under the Florida Pawnbroking Act. Revises conditions of eligibility for license. Requires specified persons to file certain documentation upon application for license. Requires the submission of fingerprints with each initial application for licensure. Requires the Division of Consumer Services to submit fingerprints of each applicant for licensure to the Florida Department of Law Enforcement and requires the Florida Department of Law Enforcement to forward the fingerprints to the Federal Bureau of Investigation. Provides an additional condition under which a pawnbroker license may be suspended or revoked.

Revises provisions relating to required information contained in disclosure statements with respect to the sale or lease of business opportunities. Requires a seller of business opportunities to file additional information with the department and provides a third degree felony penalty for failure to file such information.

Revises the definition of "motor vehicle" for the



1 | purposes of pt. IX of ch. 559, F.S., relating to repair  
2 | of motor vehicles. Requires the department to post a  
3 | specified sign at any motor vehicle repair shop that has  
4 | had its registration suspended or revoked or that has  
5 | been determined to be operating without a registration.  
6 | Provides a second degree misdemeanor penalty for defacing  
7 | or removing such a sign, for operating without a  
8 | registration, or operating with a revoked or suspended  
9 | registration. Authorizes the department to impose  
10 | administrative sanctions.  
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