

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 prohibiting the employment of specified persons
20 by professional fundraising consultants;
21 amending s. 496.410, F.S.; revising and
22 providing additional information to be included
23 within application for registration or renewal
24 of registration as a professional solicitor;
25 revising provisions which prohibit a person
26 from acting as a professional solicitor;
27 prohibiting the employment of specified persons
28 by professional solicitors; amending s.
29 496.420, F.S.; revising provisions relating to
30 civil remedies and enforcement; amending s.
31 501.025, F.S.; providing that specified

1 mortgages do not constitute an evidence of
2 indebtedness for purposes of a buyer's right to
3 cancel a home solicitation sale; amending s.
4 501.33, F.S.; providing for additional
5 disclosures with respect to the use of
6 aftermarket crash parts in preparing an
7 estimate for repairs; amending s. 501.604,
8 F.S.; providing additional exclusions from the
9 exemptions to pt. IV of ch. 501, F.S., the
10 Florida Telemarketing Act; amending s. 501.616,
11 F.S.; providing additional unlawful practices
12 with respect to telephone solicitation;
13 amending s. 539.001, F.S.; revising license
14 requirements under the Florida Pawnbroking Act;
15 revising conditions of eligibility for license;
16 requiring specified persons to file certain
17 documentation upon application for license;
18 requiring the submission of fingerprints with
19 each initial application for licensure;
20 requiring the Division of Consumer Services to
21 submit fingerprints of each applicant for
22 licensure to the Florida Department of Law
23 Enforcement; requiring the Florida Department
24 of Law Enforcement to forward the fingerprints
25 to the Federal Bureau of Investigation;
26 providing an additional condition under which a
27 pawnbroker license may be suspended or revoked;
28 providing that specified unintentional errors
29 in required applications, documents, or records
30 are not subject to criminal penalties; amending
31 s. 559.803, F.S.; revising provisions relating

1 to required information contained in disclosure
 2 statements with respect to the sale or lease of
 3 business opportunities; amending s. 559.805,
 4 F.S.; requiring a seller of business
 5 opportunities to file additional information
 6 with the department; reenacting s. 559.815,
 7 F.S.; providing a penalty; amending s. 559.903,
 8 F.S.; revising the definition of "motor
 9 vehicle" for the purposes of pt. IX of ch. 559,
 10 F.S., relating to repair of motor vehicles;
 11 amending s. 559.904, F.S.; requiring the
 12 department to post a specified sign at any
 13 motor vehicle repair shop that has had its
 14 registration suspended or revoked or that has
 15 been determined to be operating without a
 16 registration; providing a second degree
 17 misdemeanor penalty for defacing or removing
 18 such a sign, for operating without a
 19 registration, or operating with a revoked or
 20 suspended registration; authorizing the
 21 department to impose administrative sanctions;
 22 amending s. 627.481, F.S.; prescribing
 23 conditions under which a subunit of an
 24 organized domestic or foreign nonstock
 25 corporation or an unincorporated charitable
 26 trust may enter into annuity agreements;
 27 amending s. 741.0305, F.S.; correcting a cross
 28 reference; amending s. 427.802, F.S.;
 29 providing definitions; amending s. 427.803,
 30 F.S.; requiring the manufacturer to make
 31 repairs necessary to conform the device to the

1 warranty; providing notice of the dealer's and
2 manufacturer's address and telephone number;
3 providing procedures for filing claims;
4 amending s. 427.804, F.S.; allowing consumers
5 to submit disputes to the Department of
6 Agriculture and Consumer Services; authorizing
7 the department to investigate complaints;
8 creating s. 427.8041, F.S.; providing for
9 registration of dealers, for fees, and for
10 application procedures; providing grounds for
11 refusal or denial of registration; requiring
12 dealers to allow department personnel to enter
13 their places of business; authorizing the
14 department to impose penalties; authorizing the
15 department or the state attorney to bring civil
16 actions for violations of the act; providing
17 for fees and fines collected to be deposited
18 into the General Inspection Trust Fund;
19 authorizing dealers to collect a fee from the
20 consumer at the time of sale or lease of a
21 device; allowing consumers to bring a civil
22 action for violation of the act; requiring
23 recordkeeping and retention of records;
24 providing for rulemaking; providing an
25 appropriation; providing effective dates.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Subsections (5) and (6) of section 496.404,
30 Florida Statutes, 1998 Supplement, are amended, present
31 subsection (21) is renumbered as subsection (20) and amended,

1 and subsections (7) through (24) are renumbered as subsections
2 (6) through (23), respectively, to read:

3 496.404 Definitions.--As used in ss. 496.401-496.424:

4 (5) "Contribution" means the promise, pledge, or grant
5 of any money or property, financial assistance, or any other
6 thing of value in response to a solicitation. "Contribution"
7 includes, in the case of a charitable organization or sponsor
8 offering goods and services to the public, the difference
9 between the direct cost of the goods and services to the
10 charitable organization or sponsor and the price at which the
11 charitable organization or sponsor or any person acting on
12 behalf of the charitable organization or sponsor resells those
13 goods or services to the public. "Contribution" does not
14 include bona fide fees, dues, or assessments paid by members,
15 provided that membership is not conferred solely as
16 consideration for making a contribution in response to a
17 solicitation. "Contribution" also does not include funds
18 obtained by a charitable organization or sponsor pursuant to
19 government grants or contracts, or obtained as an allocation
20 from a United Way organization that is duly registered with
21 the department or received from an organization that is exempt
22 from federal income taxation under s. 501(a) of the Internal
23 Revenue Code and described in s. 501(c) of the Internal
24 Revenue Code that is duly registered with the department.

25 ~~(6) "Conviction" means a determination of guilt~~
26 ~~resulting from plea or trial, regardless of whether~~
27 ~~adjudication was withheld or imposition of sentence was~~
28 ~~suspended.~~

29 ~~(20)(21)~~ "Solicitation" means a request, directly or
30 indirectly, for money, property, financial assistance, or any
31 other thing of value on the plea or representation that such

1 money, property, financial assistance, or other thing of value
2 or a portion of it will be used for a charitable or sponsor
3 purpose or will benefit a charitable organization or sponsor.
4 "Solicitation" includes, but is not limited to, the following
5 methods of requesting or securing the promise, pledge, or
6 grant of money, property, financial assistance, or any other
7 thing of value:

8 (a) Any oral or written request;

9 (b) Making any announcement to the press, on radio or
10 television, by telephone or telegraph, or by any other
11 communication device concerning an appeal or campaign by or
12 for any charitable organization or sponsor or for any
13 charitable or sponsor purpose;

14 (c) Distributing, circulating, posting, or publishing
15 any handbill, written advertisement, or other publication that
16 directly or by implication seeks to obtain any contribution;
17 or

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

1
2 A solicitation is considered as having taken place whether or
3 not the person making the solicitation receives any
4 contribution. A solicitation does not occur when a person
5 applies for a grant or an award to the government or to an
6 organization that is exempt from federal income taxation under
7 s. 501(a) of the Internal Revenue Code and described in s.
8 501(c) of the Internal Revenue Code and is duly registered
9 with the department.

10 Section 2. Paragraph (d) of subsection (2) of section
11 496.405, Florida Statutes, 1998 Supplement, is amended, and a
12 new subsection (8) is added to said section, to read:

13 496.405 Registration statements by charitable
14 organizations and sponsors.--

15 (2) The initial registration statement must be
16 submitted on a form prescribed by the department, signed under
17 oath by the treasurer or chief fiscal officer of the
18 charitable organization or sponsor, and include the following
19 information or material:

20 (d) A statement of whether:

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

23 2. The charitable organization or sponsor or any of
24 its officers, directors, trustees, or principal salaried
25 executive personnel have been enjoined in any jurisdiction
26 from soliciting contributions or have been found to have
27 engaged in unlawful practices in the solicitation of
28 contributions or administration of charitable assets;

29 3. The charitable organization or sponsor has had its
30 registration or authority denied, suspended, or revoked by any
31

1 governmental agency, together with the reasons for such
2 denial, suspension, or revocation; and

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

7 5. The charitable organization or sponsor or any of
8 its officers, directors, trustees, or employees, regardless of
9 adjudication, has been convicted of, or found guilty of, or
10 pled guilty or nolo contendere to, or has been incarcerated
11 within the last 10 years as a result of having previously been
12 convicted of, or found guilty of, or pled guilty or nolo
13 contendere to, any felony or any crime involving fraud, theft,
14 larceny, embezzlement, fraudulent conversion, misappropriation
15 of property, or any crime arising from the conduct of a
16 solicitation for a charitable organization or sponsor within
17 the last 10 years and, if so, the name of such person, the
18 nature of the offense, the date of the offense, the court
19 having jurisdiction in the case, the date of conviction or
20 other disposition, and the disposition of the offense.

21 6. The charitable organization or sponsor or any of
22 its officers, directors, trustees, or employees has been
23 enjoined from violating any law relating to a charitable
24 solicitation, and, if so, the name of such person, the date of
25 the injunction, and the court issuing the injunction.

26 (8) No charitable organization or sponsor shall
27 knowingly allow any of its officers, directors, trustees, or
28 employees to solicit contributions on behalf of such
29 charitable organization or sponsor if such officer, director,
30 trustee, or employee has, regardless of adjudication, been
31 convicted of, or found guilty of, or pled guilty or nolo

1 contendere to, or has 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 within the last 10 years or any crime within the last
5 10 years involving fraud, theft, larceny, embezzlement,
6 fraudulent conversion, misappropriation of property, or any
7 crime arising from the conduct of a solicitation for a
8 charitable organization or sponsor, or has been enjoined from
9 violating any law relating to a charitable solicitation.

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

13 496.409 Registration and duties of professional
14 fundraising consultant.--

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

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

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

24 (c) The names and residence addresses of all
25 principals of the applicant, including all officers,
26 directors, and owners.

27 (d) Whether any of the owners, directors, officers, or
28 employees of the applicant are related as parent, child,
29 spouse, or sibling to any other directors, officers, owners,
30 or employees of the applicant; to any officer, director,
31 trustee, or employee of any charitable organization or sponsor

1 under contract to the applicant; or to any supplier or vendor
 2 providing goods or services to any charitable organization or
 3 sponsor under contract to the applicant.

4 (e) Whether the applicant or any of its officers,
 5 directors, trustees, or ~~principal salaried~~ employees have,
 6 within the last 10 ~~5~~ years, regardless of adjudication, been
 7 convicted, or found guilty of, or pled guilty or nolo
 8 contendere to, or have been incarcerated within the last 10
 9 years as a result of having previously been convicted of, or
 10 found guilty of, or pled guilty or nolo contendere to, any
 11 felony and, if so, the name of such person, the nature of the
 12 offense, the date of the offense, the court having
 13 jurisdiction in the case, the date of conviction or other
 14 disposition, and the disposition of the offense ~~of any felony,~~
 15 ~~or of any misdemeanor arising from the conduct of a~~
 16 ~~solicitation for a charitable organization or sponsor or~~
 17 ~~charitable or sponsor purpose, or been enjoined from violating~~
 18 ~~a charitable solicitation law in this or any other state.~~

19 (f) Whether the applicant or any of its officers,
 20 directors, trustees, or employees have, regardless of
 21 adjudication, been convicted of, or found guilty of, or pled
 22 guilty or nolo contendere to, or have been incarcerated within
 23 the last 10 years as a result of having previously been
 24 convicted of, or found guilty of, or pled guilty or nolo
 25 contendere to, a crime within the last 10 years involving
 26 fraud, theft, larceny, embezzlement, fraudulent conversion, or
 27 misappropriation of property, or any crime arising from the
 28 conduct of a solicitation for a charitable organization or
 29 sponsor and, if so, the name of such person, the nature of the
 30 offense, the date of the offense, the court having

1 jurisdiction in the case, the date of conviction or other
2 disposition, and the disposition of the offense.

3 (g) Whether the applicant or any of its officers,
4 directors, trustees, or employees have been enjoined from
5 violating any law relating to a charitable solicitation and,
6 if so, the name of such person, the date of the injunction,
7 and the court issuing the injunction.

8 (9) No person may act as a professional fundraising
9 consultant, and no professional fundraising consultant shall
10 knowingly employ any officer, trustee, director, or employee,
11 if such person has, regardless of adjudication, been convicted
12 of, or found guilty of, or pled guilty or nolo contendere to,
13 or has been incarcerated within the last 10 years as a result
14 of having previously been convicted of, or found guilty of, or
15 pled guilty or nolo contendere to, any crime within the last
16 10 years involving fraud, theft, larceny, embezzlement,
17 fraudulent conversion, or misappropriation of property, or any
18 crime arising from the conduct of a solicitation for a
19 charitable organization or sponsor, or has been enjoined from
20 violating any law relating to a charitable solicitation.

21 Section 4. Subsections (2) and (14) of section
22 496.410, Florida Statutes, are amended to read:

23 496.410 Registration and duties of professional
24 solicitors.--

25 (2) Applications for registration or renewal of
26 registration must be submitted on a form prescribed by rule of
27 the department, signed under oath, and must include the
28 following information:

29 (a) The street address and telephone number of the
30 principal place of business of the applicant and any Florida
31

1 street addresses if the principal place of business is located
2 outside this state.

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

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

6 (d) The names and residence addresses of all
7 principals of the applicant, including all officers,
8 directors, and owners.

9 (e) A statement as to whether any of the owners,
10 directors, officers, or employees of the applicant are related
11 as parent, spouse, child, or sibling to any other directors,
12 officers, owners, or employees of the applicant; to any
13 officer, director, trustee, or employee of any charitable
14 organization or sponsor under contract to the applicant; or to
15 any supplier or vendor providing goods or services to any
16 charitable organization or sponsor under contract to the
17 applicant.

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

1 ~~sponsor or charitable or sponsor purpose, or been enjoined~~
2 ~~from violating a charitable solicitation law in this or any~~
3 ~~other state.~~

4 (g) A statement as to whether the applicant or any of
5 its directors, officers, trustees, persons with a controlling
6 interest in the applicant, or employees or agents involved in
7 solicitation have, regardless of adjudication, been convicted
8 of, or found guilty of, or pled guilty or nolo contendere to,
9 or have been incarcerated within the last 10 years as a result
10 of having previously been convicted of, or found guilty of, or
11 pled guilty or nolo contendere to, a crime within the last 10
12 years involving fraud, theft, larceny, embezzlement,
13 fraudulent conversion, or misappropriation of property, or any
14 crime arising from the conduct of a solicitation for a
15 charitable organization or sponsor and, if so, the name of
16 such person, the nature of the offense, the date of the
17 offense, the court having jurisdiction in the case, the date
18 of conviction or other disposition, and the disposition of the
19 offense.

20 (h) A statement as to whether the applicant or any of
21 its directors, officers, trustees, persons with a controlling
22 interest in the applicant, or employees or agents involved in
23 solicitation have been enjoined from violating any law
24 relating to a charitable solicitation and, if so, the name of
25 such person, the date of the injunction, and the court issuing
26 the injunction.

27 (i)(g) The names of all persons in charge of any
28 solicitation activity.

29 (14) No person may act as a professional solicitor,
30 and no professional solicitor shall, to solicit for
31 compensation, knowingly employ if such person, any officer,

1 trustee, or director, employee, or thereof, any person with a
 2 controlling interest therein, who ~~or any person the~~
 3 ~~professional solicitor employs, engages, or procures to~~
 4 ~~solicit for compensation,~~ has, regardless of adjudication,
 5 been convicted of, or found guilty of, or pled guilty or nolo
 6 contendere to, or has been incarcerated within the last 10
 7 years as a result of having previously been convicted of, or
 8 found guilty of, or pled guilty or nolo contendere to, a
 9 felony within the last 10 years involving fraud, theft,
 10 larceny, embezzlement, fraudulent conversion, or
 11 misappropriation of property, or any crime arising from the
 12 conduct of a solicitation for a charitable organization or
 13 sponsor, or has been enjoined from violating any law relating
 14 to a charitable solicitation ~~been convicted in the last 5~~
 15 ~~years by a court in any state of the United States of a crime~~
 16 ~~arising from the conduct of a solicitation for a charitable~~
 17 ~~organization or sponsor or a charitable purpose or sponsor~~
 18 ~~purpose.~~

19 Section 5. Section 496.420, Florida Statutes, is
 20 amended to read:

21 496.420 Civil remedies and enforcement.--

22 (1) In addition to other remedies authorized by law,
 23 the department of ~~Legal Affairs~~ may bring a civil action in
 24 circuit court to enforce ss. 496.401-496.424 or s. 496.426.
 25 Upon a finding that any person has violated any of these
 26 sections, a court may make any necessary order or enter a
 27 judgment including, but not limited to, a temporary or
 28 permanent injunction, a declaratory judgment, the appointment
 29 of a master or receiver, the sequestration of assets, the
 30 reimbursement of persons from whom contributions have been
 31 unlawfully solicited, the distribution of contributions in

1 accordance with the charitable or sponsor purpose expressed in
 2 the registration statement or in accordance with the
 3 representations made to the person solicited, the
 4 reimbursement of the department for investigative costs, and
 5 ~~of the Department of Legal Affairs for attorney's fees and~~
 6 ~~costs, including investigative costs,~~ and any other equitable
 7 relief the court finds appropriate. Upon a finding that any
 8 person has violated any provision of ss. 496.401-496.424 or s.
 9 496.426 with actual knowledge or knowledge fairly implied on
 10 the basis of objective circumstances, a court may enter an
 11 order imposing a civil penalty in an amount not to exceed
 12 \$10,000 per violation.

13 (2) The department ~~of Legal Affairs~~ may conduct any
 14 investigation necessary to bring a civil action under this
 15 section including, but not limited to, administering oaths and
 16 affirmations, subpoenaing witnesses or material, and
 17 collecting evidence.

18 (3) The department ~~of Legal Affairs~~ may terminate an
 19 investigation or an action upon acceptance of a person's
 20 written assurance of voluntary compliance with ss.
 21 496.401-496.424 or s. 496.426. Acceptance of an assurance may
 22 be conditioned on commitment to reimburse donors or to take
 23 other appropriate corrective action. An assurance is not
 24 evidence of a prior violation of any of these sections.
 25 However, unless an assurance has been rescinded by agreement
 26 of the parties or voided by a court for good cause, subsequent
 27 failure to comply with the terms of an assurance is prima
 28 facie evidence of a violation of one or more of these
 29 sections.

30 (4) All moneys, including, but not limited to, civil
 31 penalties and attorney's fees and costs, collected pursuant to

1 this section and s. 496.416, shall be paid into the General
2 Inspection Consumer Frauds Trust Fund.

3 Section 6. Section 501.025, Florida Statutes, is
4 amended to read:

5 501.025 Home solicitation sale; buyer's right to
6 cancel.--In addition to any other right to revoke an offer,
7 the buyer has the right to cancel a home solicitation sale
8 until midnight of the third business day after the day on
9 which the buyer signs an agreement or offer to purchase.
10 Cancellation is evidenced by the buyer giving written notice
11 of cancellation in person, by telegram, or by mail to the
12 seller at the address stated in the agreement or offer to
13 purchase. The written notice of cancellation given by mail
14 shall be effective upon postmarking. The notice of
15 cancellation need not take a particular form and is sufficient
16 if it indicates by any form of written expression the
17 intention of the buyer not to be bound by the home
18 solicitation sale. Notice of a buyer's right to cancel must
19 appear on every note or other evidence of indebtedness given
20 pursuant to any home solicitation sale. For the purpose of
21 this section, unless a mortgage also creates the buyer's
22 promise to pay the secured debt, it is not an evidence of
23 indebtedness.

24 Section 7. Section 501.33, Florida Statutes, is
25 amended to read:

26 501.33 Disclosure.--In all instances where nonoriginal
27 equipment manufacturer aftermarket crash parts are used in
28 preparing an estimate for repairs, the written estimate
29 prepared by the insurer or the repair facility, or both, shall
30 clearly identify each such part and its country of
31 manufacture. A disclosure, signed by the insured or vehicle

1 owner prior to the repair, shall be attached to, or included
2 in, the estimate and shall contain the following information
3 in no smaller than 10-point type: THIS ESTIMATE HAS BEEN
4 PREPARED BASED ON THE USE OF CRASH PARTS SUPPLIED BY A SOURCE
5 OTHER THAN THE MANUFACTURER OF YOUR MOTOR VEHICLE. THE
6 AFTERMARKET CRASH PARTS USED IN THE PREPARATION OF THIS
7 ESTIMATE ARE WARRANTED BY THE MANUFACTURER OR DISTRIBUTOR OF
8 SUCH PARTS RATHER THAN THE MANUFACTURER OF YOUR VEHICLE.

9 Signature: _____ Date: _____

10 Section 8. The introductory paragraph of section
11 501.604, Florida Statutes, is amended to read:

12 501.604 Exemptions.--The provisions of this part,
13 except s. 501.608 and s. 501.616(6) and (7), do not apply to:

14 (1) A person engaging in commercial telephone
15 solicitation where the solicitation is an isolated transaction
16 and not done in the course of a pattern of repeated
17 transactions of like nature.

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

25 (3) A person who does not make the major sales
26 presentation during the telephone solicitation and who does
27 not intend to, and does not actually, complete or obtain
28 provisional acceptance of a sale during the telephone
29 solicitation, but who makes the major sales presentation and
30 completes the sale at a later face-to-face meeting between the
31 seller and the prospective purchaser in accordance with the

1 home solicitation provisions in this chapter. However, if a
2 seller, directly following a telephone solicitation, causes an
3 individual whose primary purpose it is to go to the
4 prospective purchaser to collect the payment or deliver any
5 item purchased, this exemption does not apply.

6 (4) Any licensed securities, commodities, or
7 investment broker, dealer, or investment adviser, when
8 soliciting within the scope of his or her license, or any
9 licensed associated person of a securities, commodities, or
10 investment broker, dealer, or investment adviser, when
11 soliciting within the scope of his or her license. As used in
12 this section, "licensed securities, commodities, or investment
13 broker, dealer, or investment adviser" means a person subject
14 to license or registration as such by the Securities and
15 Exchange Commission, by the National Association of Securities
16 Dealers or other self-regulatory organization as defined by
17 the Securities Exchange Act of 1934, 15 U.S.C. s. 781, or by
18 an official or agency of this state or of any state of the
19 United States. As used in this section, "licensed associated
20 person of a securities, commodities, or investment broker,
21 dealer, or investment adviser" means any associated person
22 registered or licensed by the National Association of
23 Securities Dealers or other self-regulatory organization as
24 defined by the Securities Exchange Act of 1934, 15 U.S.C. s.
25 781, or by an official or agency of this state or of any state
26 of the United States.

27 (5) A person primarily soliciting the sale of a
28 newspaper of general circulation.

29 (6) A book, video, or record club or contractual plan
30 or arrangement:

31

1 (a) Under which the seller provides the consumer with
2 a form which the consumer may use to instruct the seller not
3 to ship the offered merchandise.

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

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

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

26 (8) Any licensed insurance broker, agent, customer
27 representative, or solicitor when soliciting within the scope
28 of his or her license. As used in this section, "licensed
29 insurance broker, agent, customer representative, or
30 solicitor" means any insurance broker, agent, customer
31

1 representative, or solicitor licensed by an official or agency
2 of this state or of any state of the United States.

3 (9) A person soliciting the sale of services provided
4 by a cable television system operating under authority of a
5 franchise or permit.

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

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

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

14 (c) The purchaser business intends to use the property
15 or goods purchased in a recycling, reuse, remanufacturing, or
16 manufacturing process.

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

20 (a) Contains a written description or illustration of
21 each item offered for sale.

22 (b) Includes the business address or home office
23 address of the seller.

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

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

28 (12) A person who solicits contracts for the
29 maintenance or repair of goods previously purchased from the
30 person making the solicitation or on whose behalf the
31 solicitation is made.

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

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

17 (15) A person who is licensed pursuant to chapter 470
18 or chapter 497 and who is soliciting within the scope of the
19 license.

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

27 (17) A business soliciting exclusively the sale of
28 telephone answering services provided that the telephone
29 answering services will be supplied by the solicitor.

30 (18) A person soliciting a transaction regulated by
31 the Commodity Futures Trading Commission if the person is

1 registered or temporarily licensed for this activity with the
2 Commodity Futures Trading Commission under the Commodity
3 Exchange Act, 7 U.S.C. ss. 1 et seq., and the registration or
4 license has not expired or been suspended or revoked.

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

9 (20) A person who is registered pursuant to part XI of
10 chapter 559 and who is soliciting within the scope of the
11 registration.

12 (21) A person soliciting business from prospective
13 consumers who have an existing business relationship with or
14 who have previously purchased from the business enterprise for
15 which the solicitor is calling, if the solicitor is operating
16 under the same exact business name.

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

21 (a) Either products are displayed and offered for sale
22 or services are offered for sale and provided at the business
23 establishment.

24 (b) A majority of the seller's business involves the
25 buyer obtaining such products or services at the seller's
26 location.

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

30 (24) Any person which has been providing telemarketing
31 sales services continuously for at least 5 years under the

1 same ownership and control and which derives 75 percent of its
2 gross telemarketing sales revenues from contracts with persons
3 exempted in this section.

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

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

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

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

20 Section 9. Subsections (6) and (7) are added to
21 section 501.616, Florida Statutes, to read:

22 501.616 Unlawful acts and practices.--

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

27 (7) It shall be unlawful for any commercial telephone
28 seller or salesperson making telephonic solicitations to take
29 any intentional action to prevent transmission of the
30 telephone solicitor's name or telephone number to the party
31 called when the equipment or service used by the telephone

1 solicitor is capable of creating and transmitting the
2 telephone solicitor's name or telephone number.

3 Section 10. Paragraph (c) of subsection (3), paragraph
4 (c) of subsection (5), paragraph (a) of subsection (6), and
5 subsection (4) of section 539.001, Florida Statutes, are
6 amended to read:

7 539.001 The Florida Pawnbroking Act.--

8 (3) LICENSE REQUIRED.--

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

19 (4) ELIGIBILITY FOR LICENSE.--

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

22 1. Be of good moral character;

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

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

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

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

24 (b) Any applicant claiming to have a net worth of
 25 \$50,000 or more shall file with the department, at the time of
 26 applying for a license, the following documentation:

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

29 2. An affidavit stating the applicant's net worth is
 30 at least \$50,000, accompanied by supporting documentation; or
 31

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

3
4 If the agency cannot verify that the applicant meets the net
5 worth requirement for a license, the agency may require a
6 finding, including the presentation of a current balance
7 sheet, by an accounting firm or individual holding a permit to
8 practice public accounting in this state, that the accountant
9 has reviewed the books and records of the applicant and that
10 the applicant meets the net worth requirement.

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

18 (5) APPLICATION FOR LICENSE.--

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

1 ~~investigating the applicant.~~ These fees and costs are not
2 refundable.

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

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

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

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

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

17 ~~4.3.~~ The licensee has through gross negligence or
18 willful noncompliance failed to comply with a written hold
19 order.

20 (17) CRIMINAL PENALTIES.--

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

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

1 section do not constitute a willful violation of this section,
2 and are not subject to criminal penalties. Clerical or
3 recordkeeping errors are subject to the administrative
4 remedies, as provided in this Act.

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

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

1 seller shall place a designation beside each of the
2 disclosures required by this section and provide an
3 explanation of the designation at the end of the statement at
4 the top of the index page. The disclosure document shall
5 contain the following information:

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

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

19 Section 12. Subsections (2), (3), and (4) of section
20 559.805, Florida Statutes, 1998 Supplement, are renumbered as
21 subsections (3), (4), and (5), respectively, and a new
22 subsection (2) is added to said section to read:

23 559.805 Filings with the department; disclosure of
24 advertisement identification number.--

25 (2) Every seller of a business opportunity shall file
26 with the department a list of the seller's officers,
27 directors, trustees, general partners, general managers,
28 principal executives, and any other persons charged with the
29 responsibility for the seller's business activities relating
30 to the sale of business opportunities. This list must be kept
31 current and shall include the following information: name,

1 home and business address, telephone number, driver's license
2 number, the state in which the driver's license is issued, and
3 birth date.

4 Section 13. Section 559.815, Florida Statutes, is
5 reenacted to read:

6 559.815 Penalties.--Any person who fails to file with
7 the department as required by s. 559.805 or who commits an act
8 described in s. 559.809 is guilty of a felony of the third
9 degree, punishable as provided in s. 775.082, s. 775.083, or
10 s. 775.084.

11 Section 14. Subsection (6) of section 559.903, Florida
12 Statutes, is amended to read:

13 559.903 Definitions.--As used in this act:

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

20 Section 15. Subsection (11) is added to section
21 559.904, Florida Statutes, 1998 Supplement, to read:

22 559.904 Motor vehicle repair shop registration;
23 application; exemption.--

24 (11) The department shall post a prominent "Closed by
25 Order of the Department" sign on any motor vehicle repair shop
26 that has had its registration suspended or revoked. The
27 department shall also post a sign on any motor vehicle repair
28 shop that has been judicially or administratively determined
29 to be operating without a registration. It is a misdemeanor of
30 the second degree, punishable as provided in s. 775.082 or s.
31 775.083, for any person to deface such sign or remove such

1 sign without written authorization by the department or for
2 any motor vehicle repair shop to open for operation without a
3 registration or to open for operation as a motor vehicle
4 repair shop while its registration is suspended or revoked.
5 The department may impose administrative sanctions provided
6 for in s. 559.921(4) for violations of this subsection.

7 Section 16. Subsection (1) of section 627.481, Florida
8 Statutes, is amended to read:

9 627.481 Requirements for certain annuity agreements.--

10 (1) Any duly organized domestic or foreign nonstock
11 corporation, or any unincorporated charitable trust, if such
12 corporation or trust

13 (a) Has been in active operation for at least 5 years
14 prior thereto and has qualified as an exempt organization
15 under the Internal Revenue Code, 26 U.S.C. s. 501(c)(3), or

16 (b) Has been wholly controlled for at least 10 years
17 by a corporation or trust qualified under paragraph (a), if
18 the subunit has been a corporation or trust for at least 2
19 years, and has engaged in the selling of annuity agreements
20 authorized under this section in at least three other states
21 without complaint,

22
23 may enter into annuity agreements with donors in accordance
24 with this section. Such corporation or trust may receive gifts
25 conditioned upon, or in return for, its agreement to pay an
26 annuity to the donor or other designated beneficiary or
27 beneficiaries and to make and carry out such annuity
28 agreement. Annuity benefits under any such annuity agreement
29 must be calculated to return to such corporation or trust upon
30 the death of the annuitant a residue at least equal to
31

1 one-half the original gift or other consideration for such
2 annuity.

3 Section 17. Paragraph (a) of subsection (3) of section
4 741.0305, Florida Statutes, is amended to read:

5 741.0305 Marriage fee reduction for completion of
6 premarital preparation course.--

7 (3)(a) All individuals electing to participate in a
8 premarital preparation course shall choose from the following
9 list of qualified instructors:

- 10 1. A psychologist licensed under chapter 490.
- 11 2. A clinical social worker licensed under chapter
12 491.
- 13 3. A marriage and family therapist licensed under
14 chapter 491.
- 15 4. A mental health counselor licensed under chapter
16 491.
- 17 5. An official representative of a religious
18 institution which is recognized under s. 496.404~~(19)~~(20), if
19 the representative has relevant training.
- 20 6. Any other provider designated by a judicial
21 circuit, including, but not limited to, school counselors who
22 are certified to offer such courses. Each judicial circuit may
23 establish a roster of area course providers, including those
24 who offer the course on a sliding fee scale or for free.

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

27 Section 18. Effective July 1, 1999, section 427.802,
28 Florida Statutes, is amended to read:

29 427.802 Definitions.--As used in this part:

30 (1) "Assistive technology devices" means manual
31 wheelchairs, motorized wheelchairs, motorized scooters,

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

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

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

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

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

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

31 (7)~~(6)~~ "Consumer" means any of the following:

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

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

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

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

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

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

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

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

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

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

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

21 (14)~~(12)~~ "Reasonable attempt to repair" means, within
22 the terms of an express warranty applicable to a new assistive
23 technology device:

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

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

1 Section 19. Effective July 1, 1999, section 427.803,
2 Florida Statutes, is amended to read:

3 427.803 Duty of manufacturer and an assistive
4 technology device dealer to conform an assistive technology
5 device to the warranty ~~Express warranty.--~~

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

19 (2) If an assistive technology device does not conform
20 to the warranty and the consumer first reports the problem to
21 the manufacturer during the Assistive Technology Device
22 Warranty Act rights period, the manufacturer shall make such
23 repairs as are necessary to conform the device to the
24 warranty, irrespective of whether such repairs are made after
25 the expiration of the Assistive Technology Device Warranty Act
26 rights period. Such repairs shall be at no cost to the
27 consumer if reported to the manufacturer or assistive
28 technology device dealer during the Assistive Technology
29 Device Warranty Act rights period. Nothing in this paragraph
30 shall be construed to grant an extension of the Assistive
31 Technology Device Warranty Act rights period or to expand the

1 time within which a consumer must file a complaint under this
2 chapter.

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

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

28 (5) A manufacturer or an assistive technology device
29 dealer shall provide to the consumer, each time the consumer's
30 assistive technology device is returned after being examined
31 or repaired under the warranty, a fully itemized, legible

1 statement of any diagnosis made and all work performed on the
2 assistive technology device, including, but not limited to, a
3 general description of the problem reported by the consumer or
4 an identification of the defect or condition, parts and labor,
5 the date on which the assistive technology device was
6 submitted for examination or repair, and the date when the
7 repair or examination was completed.

8 Section 20. Effective July 1, 1999, section 427.804,
9 Florida Statutes, is amended to read:

10 427.804 Repair of nonconforming assistive technology
11 devices; refund or replacement of devices after attempt to
12 repair; sale or lease of returned device; arbitration;
13 investigation; limitation of rights.--

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

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

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

31

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

7 (c) With respect to a consumer as defined in s.
8 427.802(7)~~(6)~~(d), accept return of the assistive technology
9 device, refund to the assistive technology device lessor and
10 to any holder of a perfected security interest in the
11 assistive technology device, as the interest may appear, the
12 current value of the written lease, and refund to the consumer
13 the amount that the consumer paid under the written lease plus
14 any collateral costs.

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

23 (4) To receive a comparable new assistive technology
24 device or a refund due under paragraph (2)(a), a consumer must
25 offer to the manufacturer of the assistive technology device
26 having the nonconformity to transfer possession of the
27 assistive technology device to the manufacturer. No later
28 than 30 days after the offer, the manufacturer shall provide
29 the consumer with the comparable assistive technology device
30 or refund. When the manufacturer provides the comparable
31 assistive technology device or refund, the consumer shall

1 return the assistive technology device having the
2 nonconformity to the manufacturer, along with any endorsements
3 necessary to transfer real possession to the manufacturer.

4 (5) To receive a refund due under paragraph (2)(b), a
5 consumer must offer to return the assistive technology device
6 having the nonconformity to its manufacturer. No later than
7 30 days after the offer, the manufacturer shall provide the
8 refund to the consumer. When the manufacturer provides the
9 refund, the consumer shall return to the manufacturer the
10 assistive technology device having the nonconformity.

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

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

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

30 (9) Each consumer may submit any dispute arising under
31 this part to the department by completing a complaint form.

1 The department may investigate the complaint on behalf of the
2 consumer if reasonable evidence warrants such an action.

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

5 (11)(9) Each consumer may submit any dispute arising
6 under this part to an alternative arbitration mechanism
7 established pursuant to chapter 682. Upon notice by the
8 consumer, all manufacturers must submit to such alternative
9 arbitration.

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

17 (13)(11) This part does not limit rights or remedies
18 available to a consumer under any other law.

19 Section 21. Effective July 1, 1999, section 427.8041,
20 Florida Statutes, is created to read:

21 427.8041 Assistive technology device dealers
22 registration; application; exemption; penalties; adoption of
23 fees and fines; purchase fees.--

24 (1) Each assistive technology device dealer must
25 register with the department prior to doing business in this
26 state. The application for registration must be on a form
27 adopted by the department and must include at least the
28 following information:

29 (a) The name of the applicant.

30 (b) The name under which the applicant is doing
31 business.

1 (c) The business address at which the applicant sells
2 assistive technology devices or in the case of a mobile
3 assistive technology device business, the home address of the
4 owner, if different from the business address.

5 (d) Copies of all licenses, permits, and
6 certifications obtained by the applicant or employees of the
7 applicant.

8 (2) Any assistive technology device dealer maintaining
9 more than one place of business must register each separate
10 location. In such case, fees shall be paid for each place of
11 business.

12 (3) Each initial application and renewal application
13 for registration must be accompanied by a registration fee of
14 \$300.

15 (4) The department shall issue to each applicant a
16 registration certificate. In the case of an applicant with
17 more than one place of business, the department shall issue a
18 registration certificate for each place of business. The
19 certificate must show at least the name and address of the
20 assistive technology device dealer and the registration number
21 for that place of business. In the case of a mobile assistive
22 technology device dealer, the certificate must show the home
23 address of the owner, if different from the business address.
24 The registration certificate must be posted in a conspicuous
25 manner in the assistive technology device dealer's place of
26 business.

27 (5) Any person applying for or renewing a local
28 occupational license on or after July 1, 1999, to engage in
29 selling assistive technology devices must exhibit an active
30 registration certificate from the department before the local
31 occupational license may be issued or renewed.

1 (6) Each registration must be renewed annually on or
2 before the expiration date of the current registration. A late
3 fee of \$25 shall be paid, in addition to the registration fee
4 or any other penalty, for any registration renewal application
5 that is received by the department after the expiration date
6 of the current registration. The department may not issue the
7 registration until all fees are paid.

8 (7) The department may deny or refuse to renew the
9 registration of the assistive technology device dealer based
10 upon a determination that the dealer, or any of its directors,
11 officers, owners, or general partners:

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

14 (b) Have not satisfied a civil fine, administrative
15 fine, or other penalty arising out of any administrative or
16 enforcement action brought by any governmental agency based
17 upon conduct involving fraud, dishonest dealing, or any
18 violation of this part;

19 (c) Have had against them any civil, criminal, or
20 administrative adjudication in any jurisdiction, based upon
21 conduct involving fraud, dishonest dealing, or any violation
22 of this part; or

23 (d) Have had a judgment entered against them in any
24 action brought by the department or the state attorney.

25 (8) All assistive technology device dealers shall
26 allow department personnel to enter their place of business to
27 ascertain whether the registration certificate is current. If
28 department personnel are refused entry or access to the
29 premises, the department may seek injunctive relief in circuit
30 court in order to obtain compliance with this subsection.

31

1 (9) The department may enter an order imposing one or
2 more of the penalties set forth in subsection (13) if the
3 department finds that an assistive technology device dealer:

4 (a) Violated or is operating in violation of any of
5 the provisions of this part or of the rules adopted or orders
6 issued thereunder;

7 (b) Made a material false statement in any
8 application, document, or record required to be submitted or
9 retained under this part;

10 (c) Refused or failed, or any of its principal
11 officers have refused or failed, after notice, to produce any
12 document or record or disclose any information required to be
13 produced or disclosed under this part or the rules of the
14 department;

15 (d) Made a material false statement in response to any
16 request or investigation by the department, the Department of
17 Legal Affairs, or the state attorney; or

18 (e) Has intentionally defrauded the public through
19 dishonest or deceptive means.

20 (10) Upon a finding as set forth in subsection (12),
21 the department may enter an order doing one or more of the
22 following:

23 (a) Issuing a notice of noncompliance pursuant to s.
24 120.695.

25 (b) Imposing an administrative fine not to exceed
26 \$5,000 per violation for each act which constitutes a
27 violation of this part or a rule or order.

28 (c) Directing that the assistive technology device
29 dealer cease and desist specified activities.

30 (d) Refusing to register or revoking or suspending a
31 registration.

1 (e) Placing the registrant on probation for a period
2 of time, subject to such conditions as the department may
3 specify.

4 (11) The administrative proceedings which could result
5 in the entry of an order imposing any of the penalties
6 specified in subsection (10) shall be conducted in accordance
7 with chapter 120.

8 (12) The department or the state attorney, if a
9 violation of this part occurs in his or her judicial circuit,
10 shall be the enforcing authority for purposes of this part and
11 may bring a civil action in circuit court for temporary or
12 permanent injunctive relief and may seek other appropriate
13 civil relief, including a civil penalty not to exceed \$5,000
14 for each violation, restitution and damages for injured
15 customers, court costs, and reasonable attorney's fees.

16 (13) The enforcing authority may terminate any
17 investigation or action upon agreement by the offender to pay
18 a stipulated civil penalty, to make restitution or pay damages
19 to customers, or to satisfy any other relief authorized herein
20 and requested by the department.

21 (14) The remedies provided for in this section shall
22 be in addition to any other remedy provided by law.

23 (15) Fees and fines collected under this part by the
24 Department of Agriculture and Consumer Services shall be
25 deposited in the General Inspection Trust Fund.

26 (16) A \$2 fee shall be collected by the assistive
27 technology device dealer or assistive technology device lessor
28 from the consumer at the consummation of the sale or lease of
29 an assistive technology device. Such fees must be remitted
30 monthly to the Department of Revenue. All fees, less the cost
31 of administration, must be transferred monthly to the

1 Department of Agriculture and Consumer Services for deposit
2 into the General Inspection Trust Fund to carry out the
3 provisions of s. 427.8041. The Department of Agriculture and
4 Consumer Services may use an amount it determines necessary to
5 purchase expert consultation services to assist in carrying
6 out the provisions of this act.

7 (17) In fiscal year 1999-2000, the Department of
8 Agriculture and Consumer Services may use 5 percent of the
9 fees collected and remitted in that fiscal year by the
10 assistive technology device dealers or lessors under
11 subsection (16) and, during each fiscal year thereafter, may
12 use between 5 percent and 10 percent of such fees collected in
13 that fiscal year, towards the development of an Assistive
14 Technology Device Warranty Act Education Program or to
15 purchase expert consultation services from an entity having
16 the mission of promoting access to, awareness of, and advocacy
17 for assistive technology devices and services to:

18 (a) Assist investigators to effectively carry out s.
19 427.806.

20 (b) Conduct sensitivity training for the department's
21 staff as it relates to assistive technology to ensure
22 effective recording of complaints relating to assistive
23 technology.

24 (c) Assist in the design and strategy of a consumer
25 education program to educate consumers of assistive technology
26 devices and assistive technology device dealers on this act as
27 amended.

28 (18) In addition to pursuing any other remedy, a
29 consumer may bring an action to recover damages for any injury
30 caused by a violation of this part. The court shall award a
31 consumer who prevails in such an action twice the amount of

1 any pecuniary loss, together with costs, disbursements, and
2 reasonable attorney's fees, and any equitable relief that the
3 court determines is appropriate.

4 (19) An assistive technology device dealer that is
5 required to be registered under this act must keep and
6 maintain records relating to each sale or lease of assistive
7 technology devices for a period of 2 years.

8 (20) The department may, at any time during business
9 hours, enter any business location of an assistive technology
10 device dealer that is required to be registered under this act
11 and examine the books and records of the assistive technology
12 device dealer.

13 (21) The department may adopt rules in accordance with
14 chapter 120 to implement this part.

15 Section 22. (1) There is appropriated from the
16 General Inspection Trust Fund of the Department of Agriculture
17 and Consumer Services for Fiscal Year 1999-2000 the sum of
18 \$450,000 for six full-time equivalent positions to administer
19 this act.

20 (2) This section shall take effect July 1, 1999.

21 Section 23. Except as otherwise provided herein, this
22 act shall take effect upon becoming a law.
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