

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.  
4 501.604, F.S.; providing additional exclusions  
5 from the exemptions to pt. IV of ch. 501, F.S.,  
6 the Florida Telemarketing Act; amending s.  
7 501.616, F.S.; providing additional unlawful  
8 practices with respect to telephone  
9 solicitation; amending s. 539.001, F.S.;  
10 revising license requirements under the Florida  
11 Pawnbroking Act; revising conditions of  
12 eligibility for license; requiring specified  
13 persons to file certain documentation upon  
14 application for license; requiring the  
15 submission of fingerprints with each initial  
16 application for licensure; requiring the  
17 Division of Consumer Services to submit  
18 fingerprints of each applicant for licensure to  
19 the Florida Department of Law Enforcement;  
20 requiring the Florida Department of Law  
21 Enforcement to forward the fingerprints to the  
22 Federal Bureau of Investigation; providing an  
23 additional condition under which a pawnbroker  
24 license may be suspended or revoked; providing  
25 that specified unintentional errors in required  
26 applications, documents, or records are not  
27 subject to criminal penalties; amending s.  
28 559.803, F.S.; revising provisions relating to  
29 required information contained in disclosure  
30 statements with respect to the sale or lease of  
31 business opportunities; amending s. 559.805,

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

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

23

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

25

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

31

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

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

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

26           (20)~~(21)~~ "Solicitation" means a request, directly or  
27 indirectly, for money, property, financial assistance, or any  
28 other thing of value on the plea or representation that such  
29 money, property, financial assistance, or other thing of value  
30 or a portion of it will be used for a charitable or sponsor  
31 purpose or will benefit a charitable organization or sponsor.

1 "Solicitation" includes, but is not limited to, the following  
2 methods of requesting or securing the promise, pledge, or  
3 grant of money, property, financial assistance, or any other  
4 thing of value:

5 (a) Any oral or written request;

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

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

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

29  
30 A solicitation is considered as having taken place whether or  
31 not the person making the solicitation receives any

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

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

10 496.405 Registration statements by charitable  
11 organizations and sponsors.--

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

17 (d) A statement of whether:

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

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

26 3. The charitable organization or sponsor has had its  
27 registration or authority denied, suspended, or revoked by any  
28 governmental agency, together with the reasons for such  
29 denial, suspension, or revocation; and

30 4. The charitable organization or sponsor has  
31 voluntarily entered into an assurance of voluntary compliance

1 or agreement similar to that set forth in s. 496.420, together  
2 with a copy of that agreement.

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

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

22 (8) No charitable organization or sponsor shall  
23 knowingly allow any of its officers, directors, trustees, or  
24 employees to solicit contributions on behalf of such  
25 charitable organization or sponsor if such officer, director,  
26 trustee, or employee has, regardless of adjudication, been  
27 convicted of, or found guilty of, or pled guilty or nolo  
28 contendere to, or has been incarcerated within the last 10  
29 years as a result of having previously been convicted of, or  
30 found guilty of, or pled guilty or nolo contendere to, any  
31 felony within the last 10 years or any crime within the last

1 10 years involving fraud, theft, larceny, embezzlement,  
2 fraudulent conversion, misappropriation of property, or any  
3 crime arising from the conduct of a solicitation for a  
4 charitable organization or sponsor, or has been enjoined from  
5 violating any law relating to a charitable solicitation.

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

9 496.409 Registration and duties of professional  
10 fundraising consultant.--

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

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

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

20 (c) The names and residence addresses of all  
21 principals of the applicant, including all officers,  
22 directors, and owners.

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

31

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

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

30           (g) Whether the applicant or any of its officers,  
31 directors, trustees, or employees have been enjoined from

1 violating any law relating to a charitable solicitation and,  
2 if so, the name of such person, the date of the injunction,  
3 and the court issuing the injunction.

4 (9) No person may act as a professional fundraising  
5 consultant, and no professional fundraising consultant shall  
6 knowingly employ any officer, trustee, director, or employee,  
7 if such person has, regardless of adjudication, been convicted  
8 of, or found guilty of, or pled guilty or nolo contendere to,  
9 or has 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, any crime within the last  
12 10 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, or has been enjoined from  
16 violating any law relating to a charitable solicitation.

17 Section 4. Subsections (2) and (14) of section  
18 496.410, Florida Statutes, are amended to read:

19 496.410 Registration and duties of professional  
20 solicitors.--

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

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

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

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

1 (d) The names and residence addresses of all  
2 principals of the applicant, including all officers,  
3 directors, and owners.

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

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

30 (g) A statement as to whether the applicant or any of  
31 its directors, officers, trustees, persons with a controlling

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

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

22 (i)(g) The names of all persons in charge of any  
 23 solicitation activity.

24 (14) No person may act as a professional solicitor,  
 25 and no professional solicitor shall, to solicit for  
 26 compensation, knowingly employ if such person, any officer,  
 27 trustee, or director, employee, or thereof, any person with a  
 28 controlling interest therein, who or any person the  
 29 professional solicitor employs, engages, or procures to  
 30 solicit for compensation, has, regardless of adjudication,  
 31 been 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, a  
4 felony within the last 10 years involving fraud, theft,  
5 larceny, embezzlement, fraudulent conversion, or  
6 misappropriation of property, or any crime arising from the  
7 conduct of a solicitation for a charitable organization or  
8 sponsor, or has been enjoined from violating any law relating  
9 to a charitable solicitation ~~been convicted in the last 5~~  
10 ~~years by a court in any state of the United States of a crime~~  
11 ~~arising from the conduct of a solicitation for a charitable~~  
12 ~~organization or sponsor or a charitable purpose or sponsor~~  
13 ~~purpose.~~

14 Section 5. Section 496.420, Florida Statutes, is  
15 amended to read:

16 496.420 Civil remedies and enforcement.--

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

1 costs, ~~including investigative costs,~~ and any other equitable  
2 relief the court finds appropriate. Upon a finding that any  
3 person has violated any provision of ss. 496.401-496.424 or s.  
4 496.426 with actual knowledge or knowledge fairly implied on  
5 the basis of objective circumstances, a court may enter an  
6 order imposing a civil penalty in an amount not to exceed  
7 \$10,000 per violation.

8 (2) The department ~~of Legal Affairs~~ may conduct any  
9 investigation necessary to bring a civil action under this  
10 section including, but not limited to, administering oaths and  
11 affirmations, subpoenaing witnesses or material, and  
12 collecting evidence.

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

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

29 Section 6. Section 501.025, Florida Statutes, is  
30 amended to read:

31

1           501.025 Home solicitation sale; buyer's right to  
2 cancel.--In addition to any other right to revoke an offer,  
3 the buyer has the right to cancel a home solicitation sale  
4 until midnight of the third business day after the day on  
5 which the buyer signs an agreement or offer to purchase.  
6 Cancellation is evidenced by the buyer giving written notice  
7 of cancellation in person, by telegram, or by mail to the  
8 seller at the address stated in the agreement or offer to  
9 purchase. The written notice of cancellation given by mail  
10 shall be effective upon postmarking. The notice of  
11 cancellation need not take a particular form and is sufficient  
12 if it indicates by any form of written expression the  
13 intention of the buyer not to be bound by the home  
14 solicitation sale. Notice of a buyer's right to cancel must  
15 appear on every note or other evidence of indebtedness given  
16 pursuant to any home solicitation sale. For the purpose of  
17 this section, unless a mortgage also creates the buyer's  
18 promise to pay the secured debt, it is not an evidence of  
19 indebtedness.

20           Section 7. The introductory paragraph of section  
21 501.604, Florida Statutes, is amended to read:

22           501.604 Exemptions.--The provisions of this part,  
23 except s. 501.608 and s. 501.616(6) and (7), do not apply to:

24           (1) A person engaging in commercial telephone  
25 solicitation where the solicitation is an isolated transaction  
26 and not done in the course of a pattern of repeated  
27 transactions of like nature.

28           (2) A person soliciting for religious, charitable,  
29 political, or educational purposes. A person soliciting for  
30 other noncommercial purposes is exempt only if that person is  
31 soliciting for a nonprofit corporation and if that corporation

1 is properly registered as such with the Secretary of State and  
 2 is included within the exemption of s. 501(c)(3) or (6) of the  
 3 Internal Revenue Code.

4 (3) A person who does not make the major sales  
 5 presentation during the telephone solicitation and who does  
 6 not intend to, and does not actually, complete or obtain  
 7 provisional acceptance of a sale during the telephone  
 8 solicitation, but who makes the major sales presentation and  
 9 completes the sale at a later face-to-face meeting between the  
 10 seller and the prospective purchaser in accordance with the  
 11 home solicitation provisions in this chapter. However, if a  
 12 seller, directly following a telephone solicitation, causes an  
 13 individual whose primary purpose it is to go to the  
 14 prospective purchaser to collect the payment or deliver any  
 15 item purchased, this exemption does not apply.

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

1 registered or licensed by the National Association of  
2 Securities Dealers or other self-regulatory organization as  
3 defined by the Securities Exchange Act of 1934, 15 U.S.C. s.  
4 781, or by an official or agency of this state or of any state  
5 of the United States.

6 (5) A person primarily soliciting the sale of a  
7 newspaper of general circulation.

8 (6) A book, video, or record club or contractual plan  
9 or arrangement:

10 (a) Under which the seller provides the consumer with  
11 a form which the consumer may use to instruct the seller not  
12 to ship the offered merchandise.

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

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

23 (7) Any supervised financial institution or parent,  
24 subsidiary, or affiliate thereof. As used in this section,  
25 "supervised financial institution" means any commercial bank,  
26 trust company, savings and loan association, mutual savings  
27 bank, credit union, industrial loan company, consumer finance  
28 lender, commercial finance lender, or insurer, provided that  
29 the institution is subject to supervision by an official or  
30 agency of this state, of any state, or of the United States.  
31 For the purposes of this exemption, "affiliate" means a person

1 who directly, or indirectly through one or more  
2 intermediaries, controls or is controlled by, or is under  
3 common control with, a supervised financial institution.

4 (8) Any licensed insurance broker, agent, customer  
5 representative, or solicitor when soliciting within the scope  
6 of his or her license. As used in this section, "licensed  
7 insurance broker, agent, customer representative, or  
8 solicitor" means any insurance broker, agent, customer  
9 representative, or solicitor licensed by an official or agency  
10 of this state or of any state of the United States.

11 (9) A person soliciting the sale of services provided  
12 by a cable television system operating under authority of a  
13 franchise or permit.

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

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

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

22 (c) The purchaser business intends to use the property  
23 or goods purchased in a recycling, reuse, remanufacturing, or  
24 manufacturing process.

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

28 (a) Contains a written description or illustration of  
29 each item offered for sale.

30 (b) Includes the business address or home office  
31 address of the seller.

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

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

5 (12) A person who solicits contracts for the  
6 maintenance or repair of goods previously purchased from the  
7 person making the solicitation or on whose behalf the  
8 solicitation is made.

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

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

25 (15) A person who is licensed pursuant to chapter 470  
26 or chapter 497 and who is soliciting within the scope of the  
27 license.

28 (16) An issuer or a subsidiary of an issuer that has a  
29 class of securities which is subject to s. 12 of the  
30 Securities Exchange Act of 1934, 15 U.S.C. s. 781, and which  
31 is either registered or exempt from registration under

1 paragraph (A), paragraph (B), paragraph (C), paragraph (E),  
2 paragraph (F), paragraph (G), or paragraph (H) of subsection  
3 (g)(2) of that section.

4 (17) A business soliciting exclusively the sale of  
5 telephone answering services provided that the telephone  
6 answering services will be supplied by the solicitor.

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

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

17 (20) A person who is registered pursuant to part XI of  
18 chapter 559 and who is soliciting within the scope of the  
19 registration.

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

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

29 (a) Either products are displayed and offered for sale  
30 or services are offered for sale and provided at the business  
31 establishment.

1 (b) A majority of the seller's business involves the  
2 buyer obtaining such products or services at the seller's  
3 location.

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

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

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

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

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

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

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

30 501.616 Unlawful acts and practices.--

31

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

5       (7) It shall be unlawful for any commercial telephone  
6 seller or salesperson making telephonic solicitations to take  
7 any intentional action to prevent transmission of the  
8 telephone solicitor's name or telephone number to the party  
9 called when the equipment or service used by the telephone  
10 solicitor is capable of creating and transmitting the  
11 telephone solicitor's name or telephone number.

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

16       539.001 The Florida Pawnbroking Act.--

17       (3) LICENSE REQUIRED.--

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

28       (4) ELIGIBILITY FOR LICENSE.--

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

31       1. Be of good moral character;

1           2. Have a net worth of at least \$50,000 or file with  
 2 the agency a bond issued by a surety company qualified to do  
 3 business in this state in the amount of \$10,000 for each  
 4 license. In lieu of the bond required in this section, the  
 5 applicant may establish a certificate of deposit or an  
 6 irrevocable letter of credit in a Florida banking institution  
 7 in the amount of the bond. The original bond, certificate of  
 8 deposit, or letter of credit shall be filed with the agency,  
 9 and the agency shall be the beneficiary to said document. The  
 10 bond, certificate of deposit, or letter of credit shall be in  
 11 favor of the agency for the use and benefit of any consumer  
 12 who is injured by the fraud, misrepresentation, breach of  
 13 contract, financial failure, or violation of any provision of  
 14 this section by the pawnbroker. Such liability may be enforced  
 15 either by proceeding in an administrative action or by filing  
 16 a judicial suit at law in a court of competent jurisdiction.  
 17 However, in such court suit, the bond, certificate of deposit,  
 18 or letter of credit posted with the agency shall not be  
 19 amenable or subject to any judgment or other legal process  
 20 issuing out of or from such court in connection with such  
 21 lawsuit, but such bond, certificate of deposit, or letter of  
 22 credit shall be amenable to and enforceable only by and  
 23 through administrative proceedings before the agency. It is  
 24 the intent of the Legislature that such bond, certificate of  
 25 deposit, or letter of credit shall be applicable and liable  
 26 only for the payment of claims duly adjudicated by order of  
 27 the agency. The bond, certificate of deposit, or letter of  
 28 credit shall be payable on a pro rata basis as determined by  
 29 the agency, but the aggregate amount may not exceed the amount  
 30 of the bond, certificate of deposit, or letter of credit;  
 31

1           3. 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 plead  
 5     guilty or nolo contendere to, regardless of adjudication, a  
 6     felony within the last 10 years and not be acting as a  
 7     beneficial owner for someone who has been convicted of, or  
 8     found guilty of, or pled guilty or nolo contendere to,  
 9     regardless of adjudication, a felony within the last 10 years;  
 10    and

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

1 ~~relates to the duties and responsibilities of a pawnbroker~~  
2 within the last 10 years.

3 (b) Any applicant claiming to have a net worth of  
4 \$50,000 or more shall file with the department, at the time of  
5 applying for a license, the following documentation:

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

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

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

12  
13 If the agency cannot verify that the applicant meets the net  
14 worth requirement for a license, the agency may require a  
15 finding, including the presentation of a current balance  
16 sheet, by an accounting firm or individual holding a permit to  
17 practice public accounting in this state, that the accountant  
18 has reviewed the books and records of the applicant and that  
19 the applicant meets the net worth requirement.

20 (c) If an applicant for a pawnbroker's license is not  
21 an individual, the eligibility requirements of this  
22 subsection, other than the requirements of subparagraph (a)2.,  
23 apply to each operator of the pawnshop and to each direct or  
24 beneficial owner of at least 10 percent of the outstanding  
25 equity interest of the pawnshop and, if the applicant is a  
26 corporation, to each officer and director of the corporation.

27 (5) APPLICATION FOR LICENSE.--

28 (c) Each initial application for a license must be  
29 accompanied by a complete set of fingerprints taken by an  
30 authorized law enforcement officer,~~an application fee set by~~  
31 ~~the agency not to exceed \$300 for, which shall include the~~

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

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

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

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

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

21 3. The licensee or its applicable agents or employees  
22 who are subject to the eligibility requirements no longer meet  
23 the eligibility requirements to hold a pawnbroker's license;  
24 or

25 ~~4.3.~~ The licensee has through gross negligence or  
26 willful noncompliance failed to comply with a written hold  
27 order.

28 (17) CRIMINAL PENALTIES.--

29 (a) Any person who engages in business as a pawnbroker  
30 without first securing a license commits a felony of the third  
31

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

3 (b) In addition to any other penalty, any person, who  
4 willfully violates this section or who willfully makes a false  
5 entry in any record specifically required by this section  
6 commits a misdemeanor of the first degree, punishable as  
7 provided in s. 775.082 or s. 775.083. Clerical or  
8 recordkeeping errors such as typographical errors, scrivener's  
9 errors, regarding any document or record required by this  
10 section do not constitute a willful violation of this section,  
11 and are not subject to criminal penalties. Clerical or  
12 recordkeeping errors are subject to the administrative  
13 remedies, as provided in this Act.

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

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

1 an index page that briefly lists the contents of the  
 2 disclosure document as required in this section and any pages  
 3 on which the prospective purchaser can find each required  
 4 disclosure. At the top of the index page, the following  
 5 statement must appear in at least 10-point type: "The State of  
 6 Florida requires sellers of business opportunities to disclose  
 7 certain information to prospective purchasers. This index is  
 8 provided to help you locate this information." If the index  
 9 contains other information not required by this section, the  
 10 seller shall place a designation beside each of the  
 11 disclosures required by this section and provide an  
 12 explanation of the designation at the end of the statement at  
 13 the top of the index page. The disclosure document shall  
 14 contain the following information:

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

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

28 Section 11. Subsections (2), (3), and (4) of section  
 29 559.805, Florida Statutes, 1998 Supplement, are renumbered as  
 30 subsections (3), (4), and (5), respectively, and a new  
 31 subsection (2) is added to said section to read:

1           559.805 Filings with the department; disclosure of  
2 advertisement identification number.--

3           (2) Every seller of a business opportunity shall file  
4 with the department a list of the seller's officers,  
5 directors, trustees, general partners, general managers,  
6 principal executives, and any other persons charged with the  
7 responsibility for the seller's business activities relating  
8 to the sale of business opportunities. This list must be kept  
9 current and shall include the following information: name,  
10 home and business address, telephone number, driver's license  
11 number, the state in which the driver's license is issued, and  
12 birth date.

13           Section 12. Section 559.815, Florida Statutes, is  
14 reenacted to read:

15           559.815 Penalties.--Any person who fails to file with  
16 the department as required by s. 559.805 or who commits an act  
17 described in s. 559.809 is guilty of a felony of the third  
18 degree, punishable as provided in s. 775.082, s. 775.083, or  
19 s. 775.084.

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

22           559.903 Definitions.--As used in this act:

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

29           Section 14. Subsection (11) is added to section  
30 559.904, Florida Statutes, 1998 Supplement, to read:

31

1           559.904 Motor vehicle repair shop registration;  
2 application; exemption.--

3           (11) The department shall post a prominent "Closed by  
4 Order of the Department" sign on any motor vehicle repair shop  
5 that has had its registration suspended or revoked. The  
6 department shall also post a sign on any motor vehicle repair  
7 shop that has been judicially or administratively determined  
8 to be operating without a registration. It is a misdemeanor of  
9 the second degree, punishable as provided in s. 775.082 or s.  
10 775.083, for any person to deface such sign or remove such  
11 sign without written authorization by the department or for  
12 any motor vehicle repair shop to open for operation without a  
13 registration or to open for operation as a motor vehicle  
14 repair shop while its registration is suspended or revoked.  
15 The department may impose administrative sanctions provided  
16 for in s. 559.921(4) for violations of this subsection.

17           Section 15. Subsection (1) of section 627.481, Florida  
18 Statutes, is amended to read:

19           627.481 Requirements for certain annuity agreements.--

20           (1) Any duly organized domestic or foreign nonstock  
21 corporation, or any unincorporated charitable trust, if such  
22 corporation or trust

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

26           (b) Has been wholly controlled for at least 10 years  
27 by a corporation or trust qualified under paragraph (a), if  
28 the subunit has been a corporation or trust for at least 2  
29 years, and has engaged in the selling of annuity agreements  
30 authorized under this section in at least three other states  
31 without complaint,

1  
2 may enter into annuity agreements with donors in accordance  
3 with this section. Such corporation or trust may receive gifts  
4 conditioned upon, or in return for, its agreement to pay an  
5 annuity to the donor or other designated beneficiary or  
6 beneficiaries and to make and carry out such annuity  
7 agreement. Annuity benefits under any such annuity agreement  
8 must be calculated to return to such corporation or trust upon  
9 the death of the annuitant a residue at least equal to  
10 one-half the original gift or other consideration for such  
11 annuity.

12 Section 16. Paragraph (a) of subsection (3) of section  
13 741.0305, Florida Statutes, is amended to read:

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

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

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

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 17. Effective July 1, 1999, section 427.802,  
6 Florida Statutes, is amended to read:

7 427.802 Definitions.--As used in this part:

8 (1) "Assistive technology devices" means manual  
9 wheelchairs, motorized wheelchairs, motorized scooters,  
10 voice-synthesized computer modules, optical scanners, talking  
11 software, braille printers, environmental control devices for  
12 use by a person with quadriplegia, motor vehicle adaptive  
13 transportation aids, devices that enable persons with severe  
14 speech disabilities to in effect speak, personal transfer  
15 systems,and specialty beds, including a demonstrator, that a  
16 consumer purchases or accepts transfer of in this state for  
17 use by a person with a disability.

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

22 (3)~~(2)~~ "Person with a disability" means any person who  
23 has one or more permanent physical or mental limitations that  
24 restrict his or her ability to perform the normal activities  
25 of daily living and impede his or her capacity to live  
26 independently.

27 (4)~~(3)~~ "Assistive technology device dealer" means a  
28 business entity that is primarily engaged ~~person who is~~ in the  
29 ~~business of selling or leasing of~~ assistive technology  
30 devices. As used in this subsection, the term "primarily"  
31

1 means no less than 30 percent of the business entity's gross  
2 sales in the previous fiscal year.

3 (5)~~(4)~~ "Assistive technology device lessor" means a  
4 person who leases an assistive technology device to a  
5 consumer, or holds the lessor's rights, under a written lease.

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

10 (7)~~(6)~~ "Consumer" means any of the following:

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

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

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

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

23 (8)~~(7)~~ "Demonstrator" means an assistive technology  
24 device used primarily for the purpose of demonstration to the  
25 public.

26 (9) "Department" means the Department of Agriculture  
27 and Consumer Services.

28 (10)~~(8)~~ "Early termination cost" means any expense or  
29 obligation that an assistive technology device lessor incurs  
30 as a result of both the termination of a written lease before  
31 the termination date set forth in that lease and the return of

1 an assistive technology device to a manufacturer pursuant to  
 2 this section. The term includes a penalty for prepayment  
 3 under a financial arrangement.

4 (11)~~(9)~~ "Early termination saving" means any expense  
 5 or obligation that an assistive technology device lessor  
 6 avoids as a result of both the termination of a written lease  
 7 before the termination date set forth in the lease and the  
 8 return of an assistive technology device to a manufacturer  
 9 pursuant to this section. The term includes an interest  
 10 charge that the assistive technology device lessor would have  
 11 paid to finance the assistive technology device or, if the  
 12 assistive technology device lessor does not finance the  
 13 assistive technology device, the difference between the total  
 14 amount for which the lease obligates the consumer during the  
 15 period of the lease term remaining after the early termination  
 16 and the present value of that amount at the date of the early  
 17 termination.

18 (12)~~(10)~~ "Manufacturer" means a business entity that  
 19 manufactures or produces assistive technology devices for sale  
 20 and agents of that business entity, including an importer, a  
 21 distributor, a factory branch, a distributor branch, and any  
 22 warrantors of the manufacturer's assistive technology device,  
 23 ~~but not~~ including an assistive technology device dealer.

24 (13)~~(11)~~ "Nonconformity" means a condition or defect  
 25 of an assistive technology device which substantially impairs  
 26 the use, value, or safety of the device and which is covered  
 27 by an express warranty applicable to the assistive technology  
 28 device, but does not include a condition or defect that is the  
 29 result of abuse, neglect, or unauthorized modification or  
 30 alteration of the assistive technology device by a consumer.

31

1            ~~(12)~~ (14) "Reasonable attempt to repair" means, within  
2 the terms of an express warranty applicable to a new assistive  
3 technology device:

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

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

12            Section 18. Effective July 1, 1999, section 427.803,  
13 Florida Statutes, is amended to read:

14            427.803 Duty of manufacturer and an assistive  
15 technology device dealer to conform an assistive technology  
16 device to the warranty ~~Express warranty.~~--

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

30            (2) If an assistive technology device does not conform  
31 to the warranty and the consumer first reports the problem to

1 the manufacturer during the Assistive Technology Device  
 2 Warranty Act rights period, the manufacturer shall make such  
 3 repairs as are necessary to conform the device to the  
 4 warranty, irrespective of whether such repairs are made after  
 5 the expiration of the Assistive Technology Device Warranty Act  
 6 rights period. Such repairs shall be at no cost to the  
 7 consumer if reported to the manufacturer or assistive  
 8 technology device dealer during the Assistive Technology  
 9 Device Warranty Act rights period. Nothing in this paragraph  
 10 shall be construed to grant an extension of the Assistive  
 11 Technology Device Warranty Act rights period or to expand the  
 12 time within which a consumer must file a complaint under this  
 13 chapter.

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

23 (4) The manufacturer shall provide to the assistive  
 24 technology device dealer and, at the time of acquisition, the  
 25 assistive technology device dealer shall provide to the  
 26 consumer a written statement that explains the consumer's  
 27 rights under this chapter. The written statement shall be  
 28 prepared by the department and shall contain a toll-free  
 29 number for the department that the consumer can contact to  
 30 obtain information regarding the consumer's rights and  
 31 obligations under this chapter or to commence arbitration. The

1 consumer's signed acknowledgment of receipt of materials  
2 required under this subsection shall constitute prima facie  
3 evidence of compliance by the manufacturer and assistive  
4 technology device dealer. The form of the acknowledgments  
5 shall be approved by the department, and the assistive  
6 technology device dealer shall maintain the consumer's signed  
7 acknowledgment for 3 years.

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

19 Section 19. Effective July 1, 1999, section 427.804,  
20 Florida Statutes, is amended to read:

21 427.804 Repair of nonconforming assistive technology  
22 devices; refund or replacement of devices after attempt to  
23 repair; sale or lease of returned device; arbitration;  
24 investigation; limitation of rights.--

25 (1) If a new assistive technology device does not  
26 conform to an applicable express warranty and the consumer  
27 reports the nonconformity to the manufacturer, the assistive  
28 technology device lessor, or any of the manufacturer's  
29 authorized assistive technology device dealers and makes the  
30 assistive technology device available for repair within 1 year  
31 after first delivery or return of the assistive technology

1 device to the consumer, the nonconformity must be repaired at  
2 no charge to the consumer.

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

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

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

17 (c) With respect to a consumer as defined in s.  
18 427.802~~(7)~~(7)(d), accept return of the assistive technology  
19 device, refund to the assistive technology device lessor and  
20 to any holder of a perfected security interest in the  
21 assistive technology device, as the interest may appear, the  
22 current value of the written lease, and refund to the consumer  
23 the amount that the consumer paid under the written lease plus  
24 any collateral costs.

25 (3) The current value of the written lease equals the  
26 total amount for which the lease obligates the consumer during  
27 the period of the lease remaining after its early termination  
28 plus the assistive technology device dealer's early  
29 termination costs and the value of the assistive technology  
30 device at the lease expiration date if the lease sets forth  
31

1 the value, less the assistive technology device lessor's early  
2 termination savings.

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

15 (5) To receive a refund due under paragraph (2)(b), a  
16 consumer must offer to return the assistive technology device  
17 having the nonconformity to its manufacturer. No later than  
18 30 days after the offer, the manufacturer shall provide the  
19 refund to the consumer. When the manufacturer provides the  
20 refund, the consumer shall return to the manufacturer the  
21 assistive technology device having the nonconformity.

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

31

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

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

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

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

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

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

29           ~~(13)(11)~~ This part does not limit rights or remedies  
30 available to a consumer under any other law.

31

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

3           427.8041 Assistive technology device dealers  
4 registration; application; exemption; penalties; adoption of  
5 fees and fines; purchase fees.--

6           (1) Each assistive technology device dealer must  
7 register with the department prior to doing business in this  
8 state. The application for registration must be on a form  
9 adopted by the department and must include at least the  
10 following information:

11           (a) The name of the applicant.

12           (b) The name under which the applicant is doing  
13 business.

14           (c) The business address at which the applicant sells  
15 assistive technology devices or in the case of a mobile  
16 assistive technology device business, the home address of the  
17 owner, if different from the business address.

18           (d) Copies of all licenses, permits, and  
19 certifications obtained by the applicant or employees of the  
20 applicant.

21           (2) Any assistive technology device dealer maintaining  
22 more than one place of business must register each separate  
23 location. In such case, fees shall be paid for each place of  
24 business.

25           (3) Each initial application and renewal application  
26 for registration must be accompanied by a registration fee of  
27 \$300.

28           (4) The department shall issue to each applicant a  
29 registration certificate. In the case of an applicant with  
30 more than one place of business, the department shall issue a  
31 registration certificate for each place of business. The

1 certificate must show at least the name and address of the  
2 assistive technology device dealer and the registration number  
3 for that place of business. In the case of a mobile assistive  
4 technology device dealer, the certificate must show the home  
5 address of the owner, if different from the business address.  
6 The registration certificate must be posted in a conspicuous  
7 manner in the assistive technology device dealer's place of  
8 business.

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

14 (6) Each registration must be renewed annually on or  
15 before the expiration date of the current registration. A late  
16 fee of \$25 shall be paid, in addition to the registration fee  
17 or any other penalty, for any registration renewal application  
18 that is received by the department after the expiration date  
19 of the current registration. The department may not issue the  
20 registration until all fees are paid.

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

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

27 (b) Have not satisfied a civil fine, administrative  
28 fine, or other penalty arising out of any administrative or  
29 enforcement action brought by any governmental agency based  
30 upon conduct involving fraud, dishonest dealing, or any  
31 violation of this part;

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

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

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

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

16           (a) Violated or is operating in violation of any of  
17 the provisions of this part or of the rules adopted or orders  
18 issued thereunder;

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

22           (c) Refused or failed, or any of its principal  
23 officers have refused or failed, after notice, to produce any  
24 document or record or disclose any information required to be  
25 produced or disclosed under this part or the rules of the  
26 department;

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

30           (e) Has intentionally defrauded the public through  
31 dishonest or deceptive means.

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

4           (a) Issuing a notice of noncompliance pursuant to s.  
5 120.695.

6           (b) Imposing an administrative fine not to exceed  
7 \$5,000 per violation for each act which constitutes a  
8 violation of this part or a rule or order.

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

11           (d) Refusing to register or revoking or suspending a  
12 registration.

13           (e) Placing the registrant on probation for a period  
14 of time, subject to such conditions as the department may  
15 specify.

16           (11) The administrative proceedings which could result  
17 in the entry of an order imposing any of the penalties  
18 specified in subsection (10) shall be conducted in accordance  
19 with chapter 120.

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

28           (13) The enforcing authority may terminate any  
29 investigation or action upon agreement by the offender to pay  
30 a stipulated civil penalty, to make restitution or pay damages  
31

1 to customers, or to satisfy any other relief authorized herein  
2 and requested by the department.

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

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

8 (16) A \$2 fee shall be collected by the assistive  
9 technology device dealer or assistive technology device lessor  
10 from the consumer at the consummation of the sale or lease of  
11 an assistive technology device. Such fees must be remitted  
12 monthly to the Department of Revenue. All fees, less the cost  
13 of administration, must be transferred monthly to the  
14 Department of Agriculture and Consumer Services for deposit  
15 into the General Inspection Trust Fund to carry out the  
16 provisions of s. 427.8041. The Department of Agriculture and  
17 Consumer Services may use an amount it determines necessary to  
18 purchase expert consultation services to assist in carrying  
19 out the provisions of this act.

20 (17) In fiscal year 1999-2000, the Department of  
21 Agriculture and Consumer Services may use 5 percent of the  
22 fees collected and remitted in that fiscal year by the  
23 assistive technology device dealers or lessors under  
24 subsection (16) and, during each fiscal year thereafter, may  
25 use between 5 percent and 10 percent of such fees collected in  
26 that fiscal year, towards the development of an Assistive  
27 Technology Device Warranty Act Education Program or to  
28 purchase expert consultation services from an entity having  
29 the mission of promoting access to, awareness of, and advocacy  
30 for assistive technology devices and services to:

31

1           (a) Assist investigators to effectively carry out s.  
2 427.806.

3           (b) Conduct sensitivity training for the department's  
4 staff as it relates to assistive technology to ensure  
5 effective recording of complaints relating to assistive  
6 technology.

7           (c) Assist in the design and strategy of a consumer  
8 education program to educate consumers of assistive technology  
9 devices and assistive technology device dealers on this act as  
10 amended.

11           (18) In addition to pursuing any other remedy, a  
12 consumer may bring an action to recover damages for any injury  
13 caused by a violation of this part. The court shall award a  
14 consumer who prevails in such an action twice the amount of  
15 any pecuniary loss, together with costs, disbursements, and  
16 reasonable attorney's fees, and any equitable relief that the  
17 court determines is appropriate.

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

22           (20) The department may, at any time during business  
23 hours, enter any business location of an assistive technology  
24 device dealer that is required to be registered under this act  
25 and examine the books and records of the assistive technology  
26 device dealer.

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

29           Section 21. (1) There is appropriated from the  
30 General Inspection Trust Fund of the Department of Agriculture  
31 and Consumer Services for Fiscal Year 1999-2000 the sum of

1 \$450,000 for six full-time equivalent positions to administer  
2 this act.

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

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

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