

1
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 pled
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 ~~(14)~~⁽¹²⁾ "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.

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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.

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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
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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:

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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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