

By Senator Meek

36-1436A-99

See HB

1 A bill to be entitled
2 An act relating to consumer protection;
3 amending s. 496.404, F.S.; revising
4 definitions; amending s. 496.405, F.S.;
5 providing additional information to be included
6 within initial registration statements for
7 charitable organizations and sponsors;
8 prohibiting an employee of a charitable
9 organization or sponsor from soliciting
10 contributions on behalf of the charitable
11 organization or sponsor under specified
12 conditions; amending s. 496.409, F.S.; revising
13 and providing additional information to be
14 included within application for registration or
15 renewal of registration as a professional
16 fundraising consultant; prohibiting a person
17 from acting as a professional fundraising
18 consultant under specified circumstances;
19 amending s. 496.410, F.S.; revising and
20 providing additional information to be included
21 within application for registration or renewal
22 of registration as a professional solicitor;
23 revising provisions that prohibit a person from
24 acting as a professional solicitor; amending s.
25 496.420, F.S.; revising provisions relating to
26 civil remedies and enforcement; amending ss.
27 501.604, 501.616, F.S.; prohibiting certain
28 telephone calls by a commercial telephone
29 seller or salesperson; amending s. 539.001,
30 F.S.; revising license requirements under the
31 Florida Pawnbroking Act; revising conditions of

1 eligibility for license; requiring specified
2 persons to file certain documentation upon
3 application for license; requiring the
4 submission of fingerprints with each initial
5 application for licensure; requiring the
6 Division of Consumer Services to submit
7 fingerprints of each applicant for licensure to
8 the Florida Department of Law Enforcement;
9 requiring the Florida Department of Law
10 Enforcement to forward the fingerprints to the
11 Federal Bureau of Investigation; providing an
12 additional condition under which a pawnbroker
13 license may be suspended or revoked; amending
14 s. 559.803, F.S.; revising provisions relating
15 to required information contained in disclosure
16 statements with respect to the sale or lease of
17 business opportunities; amending s. 559.805,
18 F.S.; requiring a seller of business
19 opportunities to file additional information
20 with the department; reenacting s. 559.815,
21 F.S.; providing a penalty; amending s. 559.903,
22 F.S.; revising the definition of "motor
23 vehicle" for the purposes of pt. IX of ch. 559,
24 F.S., relating to repair of motor vehicles;
25 amending s. 559.904, F.S.; requiring the
26 department to post a specified sign at any
27 motor vehicle repair shop that has had its
28 registration suspended or revoked or that has
29 been determined to be operating without a
30 registration; providing a second-degree
31 misdemeanor penalty for defacing or removing

1 such a sign, for operating without a
2 registration, or for operating with a revoked
3 or suspended registration; authorizing the
4 department to impose administrative sanctions;
5 amending s. 741.0305, F.S.; conforming a
6 cross-reference; providing an effective date.
7

8 Be It Enacted by the Legislature of the State of Florida:
9

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

15 496.404 Definitions.--As used in ss. 496.401-496.424:

16 (5) "Contribution" means the promise, pledge, or grant
17 of any money or property, financial assistance, or any other
18 thing of value in response to a solicitation. "Contribution"
19 includes, in the case of a charitable organization or sponsor
20 offering goods and services to the public, the difference
21 between the direct cost of the goods and services to the
22 charitable organization or sponsor and the price at which the
23 charitable organization or sponsor or any person acting on
24 behalf of the charitable organization or sponsor resells those
25 goods or services to the public. "Contribution" does not
26 include bona fide fees, dues, or assessments paid by members,
27 provided that membership is not conferred solely as
28 consideration for making a contribution in response to a
29 solicitation. "Contribution" also does not include funds
30 obtained by a charitable organization or sponsor pursuant to
31 government grants or contracts, or obtained as an allocation

1 from a United Way organization that is duly registered with
2 the department or received from an organization that is exempt
3 from federal income taxation under s. 501(a) of the Internal
4 Revenue Code and described in s. 501(c) of the Internal
5 Revenue Code and that is duly registered with the department.

6 ~~(6) "Conviction" means a determination of guilt~~
7 ~~resulting from plea or trial, regardless of whether~~
8 ~~adjudication was withheld or imposition of sentence was~~
9 ~~suspended.~~

10 (20)~~(21)~~ "Solicitation" means a request, directly or
11 indirectly, for money, property, financial assistance, or any
12 other thing of value on the plea or representation that such
13 money, property, financial assistance, or other thing of value
14 or a portion of it will be used for a charitable or sponsor
15 purpose or will benefit a charitable organization or sponsor.
16 "Solicitation" includes, but is not limited to, the following
17 methods of requesting or securing the promise, pledge, or
18 grant of money, property, financial assistance, or any other
19 thing of value:

20 (a) Any oral or written request;

21 (b) Making any announcement to the press, on radio or
22 television, by telephone or telegraph, or by any other
23 communication device concerning an appeal or campaign by or
24 for any charitable organization or sponsor or for any
25 charitable or sponsor purpose;

26 (c) Distributing, circulating, posting, or publishing
27 any handbill, written advertisement, or other publication that
28 directly or by implication seeks to obtain any contribution;

29 or

30 (d) Selling or offering or attempting to sell any
31 advertisement, advertising space, book, card, coupon, chance,

1 device, magazine, membership, merchandise, subscription,
2 sponsorship, flower, admission, ticket, food, or other service
3 or tangible good, item, or thing of value, or any right of any
4 description in connection with which any appeal is made for
5 any charitable organization or sponsor or charitable or
6 sponsor purpose, or when the name of any charitable
7 organization or sponsor is used or referred to in any such
8 appeal as an inducement or reason for making the sale or when,
9 in connection with the sale or offer or attempt to sell, any
10 statement is made that all or part of the proceeds from the
11 sale will be used for any charitable or sponsor purpose or
12 will benefit any charitable organization or sponsor.

13

14 A solicitation is considered as having taken place whether or
15 not the person making the solicitation receives any
16 contribution. A solicitation does not occur when a person
17 applies for a grant or an award to the government or to an
18 organization that is exempt from federal income taxation under
19 s. 501(a) of the Internal Revenue Code and described in s.
20 501(c) of the Internal Revenue Code and that is duly
21 registered with the department.

22 Section 2. Paragraph (d) of subsection (2) of section
23 496.405, Florida Statutes, 1998 Supplement, is amended, and
24 subsection (8) is added to that section, to read:

25 496.405 Registration statements by charitable
26 organizations and sponsors.--

27 (2) The initial registration statement must be
28 submitted on a form prescribed by the department, signed under
29 oath by the treasurer or chief fiscal officer of the
30 charitable organization or sponsor, and include the following
31 information or material:

- 1 (d) A statement of whether:
- 2 1. The charitable organization or sponsor is
- 3 authorized by any other state to solicit contributions;
- 4 2. The charitable organization or sponsor or any of
- 5 its officers, directors, trustees, or principal salaried
- 6 executive personnel have been enjoined in any jurisdiction
- 7 from soliciting contributions or have been found to have
- 8 engaged in unlawful practices in the solicitation of
- 9 contributions or administration of charitable assets;
- 10 3. The charitable organization or sponsor has had its
- 11 registration or authority denied, suspended, or revoked by any
- 12 governmental agency, together with the reasons for such
- 13 denial, suspension, or revocation; and
- 14 4. The charitable organization or sponsor has
- 15 voluntarily entered into an assurance of voluntary compliance
- 16 or agreement similar to that set forth in s. 496.420, together
- 17 with a copy of that agreement.
- 18 5. The charitable organization or sponsor or any of
- 19 its officers, directors, trustees, or principal salaried
- 20 executive personnel, regardless of adjudication, has been
- 21 convicted of, or found guilty of, or pled guilty or nolo
- 22 contendere to, or has been incarcerated within the last 10
- 23 years as a result of having previously been convicted of, or
- 24 found guilty of, or pled guilty or nolo contendere to, any
- 25 felony or any crime involving fraud, theft, larceny,
- 26 embezzlement, fraudulent conversion, misappropriation of
- 27 property, or any crime arising from the conduct of a
- 28 solicitation for a charitable organization or sponsor within
- 29 the last 10 years and, if so, the name of such person, the
- 30 nature of the offense, the date of the offense, the court
- 31

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

3 6. The charitable organization or sponsor or any of
4 its officers, directors, trustees, or principal salaried
5 executive personnel has been enjoined from violating any law
6 relating to a charitable solicitation, and, if so, the name of
7 such person, the date of the injunction, and the court issuing
8 the injunction.

9 (8) No employee of a charitable organization or
10 sponsor may solicit contributions on behalf of such charitable
11 organization or sponsor if such employee has, regardless of
12 adjudication, been convicted of, or found guilty of, or pled
13 guilty or nolo contendere to, or has been incarcerated within
14 the last 10 years as a result of having previously been
15 convicted of, or found guilty of, or pled guilty or nolo
16 contendere to, any felony within the last 10 years or any
17 crime within the last 10 years involving fraud, theft,
18 larceny, embezzlement, fraudulent conversion, misappropriation
19 of property, or any crime arising from the conduct of a
20 solicitation for a charitable organization or sponsor, or has
21 been enjoined from violating any law relating to a charitable
22 solicitation.

23 Section 3. Subsection (2) of section 496.409, Florida
24 Statutes, is amended, and subsection (9) is added to that
25 section, to read:

26 496.409 Registration and duties of professional
27 fundraising consultant.--

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

1 (a) The street address and telephone number of the
2 principal place of business of the applicant and any Florida
3 street addresses if the principal place of business is located
4 outside this state.

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

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

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

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

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

15 (g) Whether the applicant or any of its officers,
16 directors, trustees, or principal salaried employees have been
17 enjoined from violating any law relating to a charitable
18 solicitation and, if so, the name of such person, the date of
19 the injunction, and the court issuing the injunction.

20 (9) No person may act as a professional fundraising
21 consultant if such person or any officer, trustee, director,
22 or principal salaried employee thereof has, regardless of
23 adjudication, been convicted of, or found guilty of, or pled
24 guilty or nolo contendere to, or has been incarcerated within
25 the last 10 years as a result of having previously been
26 convicted of, or found guilty of, or pled guilty or nolo
27 contendere to, any crime within the last 10 years involving
28 fraud, theft, larceny, embezzlement, fraudulent conversion, or
29 misappropriation of property, or any crime arising from the
30 conduct of a solicitation for a charitable organization or
31

1 sponsor, or has been enjoined from violating any law relating
2 to a charitable solicitation.

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

5 496.410 Registration and duties of professional
6 solicitors.--

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

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

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

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

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

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

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

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

1 (h) A statement as to whether the applicant or any of
2 its directors, officers, trustees, persons with a controlling
3 interest in the applicant, or employees or agents involved in
4 solicitation have been enjoined from violating any law
5 relating to a charitable solicitation and, if so, the name of
6 such person, the date of the injunction, and the court issuing
7 the injunction.

8 (i)(g) The names of all persons in charge of any
9 solicitation activity.

10 (14) No person may act as a professional solicitor if
11 such person, any officer, trustee, or director thereof, any
12 person with a controlling interest therein, or any person the
13 professional solicitor employs, engages, or procures to
14 solicit for compensation, has, regardless of adjudication,
15 been convicted of, or found guilty of, or pled guilty or nolo
16 contendere to, or has been incarcerated within the last 10
17 years as a result of having previously been convicted of, or
18 found guilty of, or pled guilty or nolo contendere to, a
19 felony within the last 10 years involving fraud, theft,
20 larceny, embezzlement, fraudulent conversion, or
21 misappropriation of property, or any crime arising from the
22 conduct of a solicitation for a charitable organization or
23 sponsor, or has been enjoined from violating any law relating
24 to a charitable solicitation ~~been convicted in the last 5~~
25 ~~years by a court in any state of the United States of a crime~~
26 ~~arising from the conduct of a solicitation for a charitable~~
27 ~~organization or sponsor or a charitable purpose or sponsor~~
28 ~~purpose.~~

29 Section 5. Section 496.420, Florida Statutes, is
30 amended to read:

31 496.420 Civil remedies and enforcement.--

1 (1) In addition to other remedies authorized by law,
2 the department ~~of Legal Affairs~~ may bring a civil action in
3 circuit court to enforce ss. 496.401-496.424 or s. 496.426.
4 Upon a finding that any person has violated any of these
5 sections, a court may make any necessary order or enter a
6 judgment including, but not limited to, a temporary or
7 permanent injunction, a declaratory judgment, the appointment
8 of a master or receiver, the sequestration of assets, the
9 reimbursement of persons from whom contributions have been
10 unlawfully solicited, the distribution of contributions in
11 accordance with the charitable or sponsor purpose expressed in
12 the registration statement or in accordance with the
13 representations made to the person solicited, the
14 reimbursement of the department for investigative costs, and
15 ~~of the Department of Legal Affairs for attorney's fees and~~
16 ~~costs, including investigative costs,~~ and any other equitable
17 relief the court finds appropriate. Upon a finding that any
18 person has violated any provision of ss. 496.401-496.424 or s.
19 496.426 with actual knowledge or knowledge fairly implied on
20 the basis of objective circumstances, a court may enter an
21 order imposing a civil penalty in an amount not to exceed
22 \$10,000 per violation.

23 (2) The department ~~of Legal Affairs~~ may conduct any
24 investigation necessary to bring a civil action under this
25 section including, but not limited to, administering oaths and
26 affirmations, subpoenaing witnesses or material, and
27 collecting evidence.

28 (3) The department ~~of Legal Affairs~~ may terminate an
29 investigation or an action upon acceptance of a person's
30 written assurance of voluntary compliance with ss.
31 496.401-496.424 or s. 496.426. Acceptance of an assurance may

1 be conditioned on commitment to reimburse donors or to take
2 other appropriate corrective action. An assurance is not
3 evidence of a prior violation of any of these sections.
4 However, unless an assurance has been rescinded by agreement
5 of the parties or voided by a court for good cause, subsequent
6 failure to comply with the terms of an assurance is prima
7 facie evidence of a violation of one or more of these
8 sections.

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

13 Section 6. Section 501.604, Florida Statutes, is
14 amended to read:

15 501.604 Exemptions.--The provisions of this part,
16 except s. 501.608 and s. 501.616(6) and (7), do not apply to:

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

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

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

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

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

30 (5) A person primarily soliciting the sale of a
31 newspaper of general circulation.

1 (6) A book, video, or record club or contractual plan
2 or arrangement:

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

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

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

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

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

1 solicitor" means any insurance broker, agent, customer
2 representative, or solicitor licensed by an official or agency
3 of this state or of any state of the United States.

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

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

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

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

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

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

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

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

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

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

29 (12) A person who solicits contracts for the
30 maintenance or repair of goods previously purchased from the
31

1 person making the solicitation or on whose behalf the
2 solicitation is made.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 Section 7. Subsections (6) and (7) are added to
23 section 501.616, Florida Statutes, to read:

24 501.616 Unlawful acts and practices.--

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

29 (7) It is unlawful for any commercial telephone seller
30 or salesperson making telephonic solicitations to take any
31

1 intentional action that would prevent the solicitor's
2 telephone number from being passed on to the called party.

3 Section 8. Paragraph (c) of subsection (3), subsection
4 (4), paragraph (c) of subsection (5), and paragraph (a) of
5 subsection (6), and subsection (17) of section 539.001,
6 Florida Statutes, are amended to read:

7 539.001 The Florida Pawnbroking Act.--

8 (3) LICENSE REQUIRED.--

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

19 (4) ELIGIBILITY FOR LICENSE.--

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

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

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

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

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

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

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

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

30 or

31

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

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

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

18 (5) APPLICATION FOR LICENSE.--

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

31

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

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

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

7 1. The licensee, either knowingly or without the
8 exercise of due care, has violated this section or has aided
9 or conspired with another person to violate this section;
10 2. A condition exists that, had it existed when the
11 ~~original~~ license was issued, would have justified the agency's
12 refusal to issue a license; ~~or~~

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

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

20 (17) CRIMINAL PENALTIES.--

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

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

30 Section 9. Paragraph (a) of subsection (11) of section
31 559.803, Florida Statutes, is amended to read:

1 559.803 Disclosure statement.--At least 3 working days
2 prior to the time the purchaser signs a business opportunity
3 contract, or at least 3 working days prior to the receipt of
4 any consideration by the seller, whichever occurs first, the
5 seller must provide the prospective purchaser a written
6 document, the cover sheet of which is entitled in at least
7 12-point boldfaced capital letters "DISCLOSURES REQUIRED BY
8 FLORIDA LAW." Under this title shall appear the following
9 statement in at least 10-point type: "The State of Florida
10 has not reviewed and does not approve, recommend, endorse, or
11 sponsor any business opportunity. The information contained
12 in this disclosure has not been verified by the state. If you
13 have any questions about this investment, see an attorney
14 before you sign a contract or agreement." Nothing except the
15 title and required statement shall appear on the cover sheet.
16 Immediately following the cover sheet, the seller must provide
17 an index page that briefly lists the contents of the
18 disclosure document as required in this section and any pages
19 on which the prospective purchaser can find each required
20 disclosure. At the top of the index page, the following
21 statement must appear in at least 10-point type: "The State of
22 Florida requires sellers of business opportunities to disclose
23 certain information to prospective purchasers. This index is
24 provided to help you locate this information." If the index
25 contains other information not required by this section, the
26 seller shall place a designation beside each of the
27 disclosures required by this section and provide an
28 explanation of the designation at the end of the statement at
29 the top of the index page. The disclosure document shall
30 contain the following information:
31

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

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

14 Section 10. Present subsections (2), (3), and (4) of
15 section 559.805, Florida Statutes, 1998 Supplement, are
16 renumbered as subsections (3), (4), and (5), respectively, and
17 a new subsection (2) is added to that section to read:

18 559.805 Filings with the department; disclosure of
19 advertisement identification number.--

20 (2) Every seller of a business opportunity shall file
21 with the department a list of the seller's officers,
22 directors, trustees, general partners, general managers,
23 principal executives, and any other persons charged with the
24 responsibility for the seller's business activities relating
25 to the sale of business opportunities. This list must be kept
26 current and shall include the following information: name,
27 home and business address, telephone number, driver's license
28 number, the state in which the driver's license is issued, and
29 birth date.

30 Section 11. Section 559.815, Florida Statutes, is
31 reenacted to read:

1 559.815 Penalties.--Any person who fails to file with
2 the department as required by s. 559.805 or who commits an act
3 described in s. 559.809 is guilty of a felony of the third
4 degree, punishable as provided in s. 775.082, s. 775.083, or
5 s. 775.084.

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

8 559.903 Definitions.--As used in this act:

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

15 Section 13. Subsection (11) is added to section
16 559.904, Florida Statutes, 1998 Supplement, to read:

17 559.904 Motor vehicle repair shop registration;
18 application; exemption.--

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

1 The department may impose administrative sanctions provided
2 for in s. 559.921(4) for violations of this subsection.

3 Section 14. Paragraph (a) of subsection (3) of section
4 741.0305, Florida Statutes, is amended to read:

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

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

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

25 Section 15. This act shall take effect upon becoming a
26 law.

27
28
29
30
31

LEGISLATIVE SUMMARY

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

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

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

Revises the definition of "motor vehicle" for the purposes of pt. IX of ch. 559, F.S., relating to repair of motor vehicles. Requires the department to post a specified sign at any motor vehicle repair shop that has had its registration suspended or revoked or that has been determined to be operating without a registration. Provides a second-degree misdemeanor penalty for defacing or removing such a sign, for operating without a registration, or for operating with a revoked or

1 | suspended registration. Authorizes the department to
2 | impose administrative sanctions.
3 |
4 |
5 |
6 |
7 |
8 |
9 |
10 |
11 |
12 |
13 |
14 |
15 |
16 |
17 |
18 |
19 |
20 |
21 |
22 |
23 |
24 |
25 |
26 |
27 |
28 |
29 |
30 |
31 |