

By the Committee on Regulated Industries and Senator Meek

315-1982-99

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 s.  
27          501.025, F.S.; clarifying provisions relating  
28          to home solicitation sale and buyer's right to  
29          cancel; amending ss. 501.604, 501.616, F.S.;  
30          prohibiting certain telephone calls by a  
31          commercial telephone seller or salesperson;

1 amending s. 539.001, F.S.; revising license  
2 requirements under the Florida Pawnbroking Act;  
3 revising conditions of eligibility for license;  
4 requiring specified persons to file certain  
5 documentation upon application for license;  
6 requiring the submission of fingerprints with  
7 each initial application for licensure;  
8 requiring the Division of Consumer Services to  
9 submit fingerprints of each applicant for  
10 licensure to the Florida Department of Law  
11 Enforcement; requiring the Florida Department  
12 of Law Enforcement to forward the fingerprints  
13 to the Federal Bureau of Investigation;  
14 providing an additional condition under which a  
15 pawnbroker license may be suspended or revoked;  
16 amending s. 559.803, F.S.; revising provisions  
17 relating to required information contained in  
18 disclosure statements with respect to the sale  
19 or lease of business opportunities; amending s.  
20 559.805, F.S.; requiring a seller of business  
21 opportunities to file additional information  
22 with the department; reenacting s. 559.815,  
23 F.S.; providing a penalty; amending s. 559.903,  
24 F.S.; revising the definition of "motor  
25 vehicle" for the purposes of pt. IX of ch. 559,  
26 F.S., relating to repair of motor vehicles;  
27 amending s. 559.904, F.S.; requiring the  
28 department to post a specified sign at any  
29 motor vehicle repair shop that has had its  
30 registration suspended or revoked or that has  
31 been determined to be operating without a

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

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

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

17 496.404 Definitions.--As used in ss. 496.401-496.424:

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

1 obtained by a charitable organization or sponsor pursuant to  
2 government grants or contracts, or obtained as an allocation  
3 from a United Way organization that is duly registered with  
4 the department or received from an organization that is exempt  
5 from federal income taxation under s. 501(a) of the Internal  
6 Revenue Code and described in s. 501(c) of the Internal  
7 Revenue Code and that is duly registered with the department.

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

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

22 (a) Any oral or written request;

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

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

31 or

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

15

16 A solicitation is considered as having taken place whether or  
17 not the person making the solicitation receives any  
18 contribution. A solicitation does not occur when a person  
19 applies for a grant or an award to the government or to an  
20 organization that is exempt from federal income taxation under  
21 s. 501(a) of the Internal Revenue Code and described in s.  
22 501(c) of the Internal Revenue Code and that is duly  
23 registered with the department.

24           Section 2. Paragraph (d) of subsection (2) of section  
25 496.405, Florida Statutes, 1998 Supplement, is amended, and  
26 subsection (8) is added to that section, to read:

27           496.405 Registration statements by charitable  
28 organizations and sponsors.--

29           (2) The initial registration statement must be  
30 submitted on a form prescribed by the department, signed under  
31 oath by the treasurer or chief fiscal officer of the

1 charitable organization or sponsor, and include the following  
2 information or material:

3 (d) A statement of whether:

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

6 2. The charitable organization or sponsor or any of  
7 its officers, directors, trustees, or principal salaried  
8 executive personnel have been enjoined in any jurisdiction  
9 from soliciting contributions or have been found to have  
10 engaged in unlawful practices in the solicitation of  
11 contributions or administration of charitable assets;

12 3. The charitable organization or sponsor has had its  
13 registration or authority denied, suspended, or revoked by any  
14 governmental agency, together with the reasons for such  
15 denial, suspension, or revocation; and

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

20 5. The charitable organization or sponsor or any of  
21 its officers, directors, trustees, or principal salaried  
22 executive personnel, regardless of adjudication, 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, any  
27 felony or any crime involving fraud, theft, larceny,  
28 embezzlement, fraudulent conversion, misappropriation of  
29 property, or any crime arising from the conduct of a  
30 solicitation for a charitable organization or sponsor within  
31 the last 10 years and, if so, the name of such person, the

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

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

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

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

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

29 (2) Applications for registration or renewal of  
30 registration must be submitted on a form prescribed by the  
31

1 department, signed under oath, and must include the following  
2 information:

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

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

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

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

19 (e) Whether the applicant or any of its officers,  
20 directors, trustees, or principal salaried employees have,  
21 within the last 10 5 years, regardless of adjudication, been  
22 convicted of, or found guilty of, or pled guilty or nolo  
23 contendere to, or have been incarcerated within the last 10  
24 years as a result of having previously been convicted of, or  
25 found guilty of, or pled guilty or nolo contendere to, any  
26 felony 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 ~~of any felony,~~  
30 ~~or of any misdemeanor arising from the conduct of a~~  
31 ~~solicitation for a charitable organization or sponsor or~~



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

3 (f) Whether the applicant or any of its officers,  
4 directors, trustees, or principal salaried employees have,  
5 regardless of adjudication, been convicted of, or found guilty  
6 of, or pled guilty or nolo contendere to, or have been  
7 incarcerated within the last 10 years as a result of having  
8 previously been convicted of, or found guilty of, or pled  
9 guilty or nolo contendere to, a crime within the last 10 years  
10 involving fraud, theft, larceny, embezzlement, fraudulent  
11 conversion, or misappropriation of property, or any crime  
12 arising from the conduct of a solicitation for a charitable  
13 organization or sponsor and, if so, the name of such person,  
14 the 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 (g) Whether the applicant or any of its officers,  
18 directors, trustees, or principal salaried employees have 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 (9) No person may act as a professional fundraising  
23 consultant if such person or any officer, trustee, director,  
24 or principal salaried employee thereof has, regardless of  
25 adjudication, been convicted of, or found guilty of, or pled  
26 guilty or nolo contendere to, or has been incarcerated within  
27 the last 10 years as a result of having previously been  
28 convicted of, or found guilty of, or pled guilty or nolo  
29 contendere to, any crime within the last 10 years involving  
30 fraud, theft, larceny, embezzlement, fraudulent conversion, or  
31 misappropriation of property, or any crime arising from the

1 conduct of a solicitation for a charitable organization or  
2 sponsor, or has been enjoined from violating any law relating  
3 to a charitable solicitation.

4 Section 4. Subsections (2) and (14) of section  
5 496.410, Florida Statutes, are amended to read:

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

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

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

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

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

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

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

31

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

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

1 of conviction or other disposition, and the disposition of the  
2 offense.

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

10 (i)(g) The names of all persons in charge of any  
11 solicitation activity.

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

1           Section 5. Section 496.420, Florida Statutes, is  
2 amended to read:

3           496.420 Civil remedies and enforcement.--

4           (1) In addition to other remedies authorized by law,  
5 the department ~~of Legal Affairs~~ may bring a civil action in  
6 circuit court to enforce ss. 496.401-496.424 or s. 496.426.  
7 Upon a finding that any person has violated any of these  
8 sections, a court may make any necessary order or enter a  
9 judgment including, but not limited to, a temporary or  
10 permanent injunction, a declaratory judgment, the appointment  
11 of a master or receiver, the sequestration of assets, the  
12 reimbursement of persons from whom contributions have been  
13 unlawfully solicited, the distribution of contributions in  
14 accordance with the charitable or sponsor purpose expressed in  
15 the registration statement or in accordance with the  
16 representations made to the person solicited, the  
17 reimbursement of the department for investigative costs,and  
18 ~~of the Department of Legal Affairs for~~ attorney's fees and  
19 costs, ~~including investigative costs,~~and any other equitable  
20 relief the court finds appropriate. Upon a finding that any  
21 person has violated any provision of ss. 496.401-496.424 or s.  
22 496.426 with actual knowledge or knowledge fairly implied on  
23 the basis of objective circumstances, a court may enter an  
24 order imposing a civil penalty in an amount not to exceed  
25 \$10,000 per violation.

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

31

1           (3) The department ~~of Legal Affairs~~ may terminate an  
2 investigation or an action upon acceptance of a person's  
3 written assurance of voluntary compliance with ss.  
4 496.401-496.424 or s. 496.426. Acceptance of an assurance may  
5 be conditioned on commitment to reimburse donors or to take  
6 other appropriate corrective action. An assurance is not  
7 evidence of a prior violation of any of these sections.  
8 However, unless an assurance has been rescinded by agreement  
9 of the parties or voided by a court for good cause, subsequent  
10 failure to comply with the terms of an assurance is prima  
11 facie evidence of a violation of one or more of these  
12 sections.

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

17           Section 6. 501.025, Florida Statutes, is amended to  
18 read:

19           501.025 Home solicitation sale; buyer's right to  
20 cancel.--In addition to any other right to revoke an offer,  
21 the buyer has the right to cancel a home solicitation sale  
22 until midnight of the third business day after the day on  
23 which the buyer signs an agreement or offer to purchase.  
24 Cancellation is evidenced by the buyer giving written notice  
25 of cancellation in person, by telegram, or by mail to the  
26 seller at the address stated in the agreement or offer to  
27 purchase. The written notice of cancellation given by mail  
28 shall be effective upon postmarking. The notice of  
29 cancellation need not take a particular form and is sufficient  
30 if it indicates by any form of written expression the  
31 intention of the buyer not to be bound by the home

1 solicitation sale. Notice of a buyer's right to cancel must  
2 appear on every note or other evidence of indebtedness given  
3 pursuant to any home solicitation sale. For the purposes of  
4 this section, unless a mortgage also creates the buyer's  
5 promise to pay the secured debt, it is not an evidence of  
6 indebtedness.

7 Section 7. Section 501.604, Florida Statutes, is  
8 amended to read:

9 501.604 Exemptions.--The provisions of this part,  
10 except s. 501.608 and s. 501.616(6) and (7), do not apply to:

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

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

22 (3) A person who does not make the major sales  
23 presentation during the telephone solicitation and who does  
24 not intend to, and does not actually, complete or obtain  
25 provisional acceptance of a sale during the telephone  
26 solicitation, but who makes the major sales presentation and  
27 completes the sale at a later face-to-face meeting between the  
28 seller and the prospective purchaser in accordance with the  
29 home solicitation provisions in this chapter. However, if a  
30 seller, directly following a telephone solicitation, causes an  
31 individual whose primary purpose it is to go to the

1 prospective purchaser to collect the payment or deliver any  
2 item purchased, this exemption does not apply.

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

24 (5) A person primarily soliciting the sale of a  
25 newspaper of general circulation.

26 (6) A book, video, or record club or contractual plan  
27 or arrangement:

28 (a) Under which the seller provides the consumer with  
29 a form which the consumer may use to instruct the seller not  
30 to ship the offered merchandise.

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

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

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

23 (8) Any licensed insurance broker, agent, customer  
24 representative, or solicitor when soliciting within the scope  
25 of his or her license. As used in this section, "licensed  
26 insurance broker, agent, customer representative, or  
27 solicitor" means any insurance broker, agent, customer  
28 representative, or solicitor licensed by an official or agency  
29 of this state or of any state of the United States.

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

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

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

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

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

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

18           (a) Contains a written description or illustration of  
19 each item offered for sale.

20           (b) Includes the business address or home office  
21 address of the seller.

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

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

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

30           (13) A commercial telephone seller licensed pursuant  
31 to chapter 516 or part II of chapter 520. For purposes of this

1 exemption, the seller must solicit to sell a consumer good or  
2 service within the scope of his or her license and the  
3 completed transaction must be subject to the provisions of  
4 chapter 516 or part II of chapter 520.

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

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

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

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

28 (18) A person soliciting a transaction regulated by  
29 the Commodity Futures Trading Commission if the person is  
30 registered or temporarily licensed for this activity with the  
31 Commodity Futures Trading Commission under the Commodity

1 Exchange Act, 7 U.S.C. ss. 1 et seq., and the registration or  
2 license has not expired or been suspended or revoked.

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

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

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

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

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

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

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

28 (24) Any person which has been providing telemarketing  
29 sales services continuously for at least 5 years under the  
30 same ownership and control and which derives 75 percent of its  
31

1 gross telemarketing sales revenues from contracts with persons  
2 exempted in this section.

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

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

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

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

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

21 501.616 Unlawful acts and practices.--

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

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

31

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

3 Section 9. 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~~

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

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

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

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

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

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

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

20 (17) CRIMINAL PENALTIES.--

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

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

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

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

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

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

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

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

19 Section 11. Present subsections (2), (3), and (4) of  
20 section 559.805, Florida Statutes, 1998 Supplement, are  
21 renumbered as subsections (3), (4), and (5), respectively, and  
22 a new subsection (2) is added to that section to read:

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

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

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

4 Section 12. Section 559.815, Florida Statutes, is  
5 reenacted to read:

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

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

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

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

20 Section 14. Subsection (11) is added to section  
21 559.904, Florida Statutes, 1998 Supplement, to read:

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

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

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

7 Section 15. Paragraph (a) of subsection (3) of section  
8 741.0305, Florida Statutes, is amended to read:

9 741.0305 Marriage fee reduction for completion of  
10 premarital preparation course.--

11 (3)(a) All individuals electing to participate in a  
12 premarital preparation course shall choose from the following  
13 list of qualified instructors:

14 1. A psychologist licensed under chapter 490.

15 2. A clinical social worker licensed under chapter  
16 491.

17 3. A marriage and family therapist licensed under  
18 chapter 491.

19 4. A mental health counselor licensed under chapter  
20 491.

21 5. An official representative of a religious  
22 institution which is recognized under s. 496.404~~(19)~~~~(20)~~, if  
23 the representative has relevant training.

24 6. Any other provider designated by a judicial  
25 circuit, including, but not limited to, school counselors who  
26 are certified to offer such courses. Each judicial circuit may  
27 establish a roster of area course providers, including those  
28 who offer the course on a sliding fee scale or for free.

29 Section 16. This act shall take effect upon becoming a  
30 law.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
SB 1712

Amends s. 501.025, F.S., to clarify that a mortgage is not evidence of indebtedness and not required to contain language as a notice of the buyer's right to cancel a home solicitation sale, unless it also creates the buyer's promise to pay the secured debt.

Makes it unlawful for any commercial telephone seller or salesperson to take intentional action to prevent transmission of the telephone solicitor's name or telephone number to the party called when the equipment or service used by the telephone solicitor is capable of creating and transmitting the telephone solicitor's name or telephone number.

Provides that clerical or recordkeeping errors regarding any document or record required by the Florida Pawnbroking Act do not constitute a willful violation and are not subject to criminal penalties. Clerical or recordkeeping errors are subject to administrative remedies.