

1 A bill to be entitled
2 An act relating to consumer protection; amending s.
3 493.6303, F.S.; revising training requirements for
4 obtaining a Class "D" license; requiring a minimum number
5 of hours of training in terrorism awareness or other
6 training prescribed by the Department of Agriculture and
7 Consumer Services; providing a timeframe for submitting
8 proof of having completed the training; revising the
9 number of training hours required; amending s. 501.059,
10 F.S.; redefining the term "telephonic sales call" to
11 provide that the term applies to sales of any goods or
12 services; redefining the term "consumer goods or services"
13 to remove the term "consumer" and include property used
14 for business purposes; redefining the term "consumer," to
15 conform; redefining the term "merchant" to include the
16 offering of goods and services; redefining the term "doing
17 business in this state" to include calls to telephone
18 numbers in this state; requiring a telephone solicitor to
19 identify himself or herself when calling any telephone
20 number; adding businesses to those who may subscribe to
21 the "no sales solicitation calls" listing of the
22 Department of Agriculture and Consumer Services;
23 prohibiting the transmission of facsimile documents under
24 certain circumstances; providing for attorney's fees and
25 for the recovery of certain litigation expenses by the
26 department and the Department of Legal Affairs; repealing
27 ss. 546.001, 546.002, 546.003, 546.004, 546.006, and
28 546.008, F.S., relating to the "Amusement Ride and

29 Attraction Insurance Act"; amending s. 559.801, F.S.;
30 redefining the term "business opportunity" for purposes of
31 the "Sale of Business Opportunities Act"; amending s.
32 559.920, F.S.; revising actions by motor vehicle repair
33 shops or employees which are unlawful; amending s.
34 559.928, F.S.; revising information to be submitted for
35 registration as a seller of travel and information
36 submitted by independent agents; requiring the payment of
37 an annual fee by independent agents; amending s. 616.242,
38 F.S.; deleting provisions authorizing the owner of an
39 amusement ride to maintain liability protection in the
40 form of a surety bond; exempting certain governmental
41 entities from a requirement to maintain liability
42 protection covering amusement rides; amending s. 849.094,
43 F.S.; redefining the term "operator" for purposes of the
44 regulation of game promotions in connection with the sale
45 of consumer products or services; reenacting s.
46 501.603(1)(a), F.S., which defines "commercial telephone
47 solicitation"; reenacting s. 559.809(12), F.S., which
48 specifies prohibited acts under the "Sale of Business
49 Opportunities Act"; providing an effective date.

50
51 Be It Enacted by the Legislature of the State of Florida:

52
53 Section 1. Section 493.6303, Florida Statutes, is amended
54 to read:

55 493.6303 License requirements.--In addition to the license
56 requirements set forth elsewhere in this chapter, each

57 individual or agency shall comply with the following additional
 58 requirements:

59 (1) Each agency or branch office shall designate a minimum
 60 of one appropriately licensed individual to act as manager,
 61 directing the activities of the Class "D" employees.

62 (2) An applicant for a Class "MB" license shall have 2
 63 years of lawfully gained, verifiable, full-time experience, or
 64 training in:

65 (a) Security work or related fields of work that provided
 66 equivalent experience or training;

67 (b) Experience described in paragraph (a) for 1 year and
 68 experience described in paragraph (c) for 1 year;

69 (c) No more than 1 year using:

70 1. Either college coursework related to criminal justice,
 71 criminology, or law enforcement administration; or

72 2. Successfully completed law enforcement-related training
 73 received from any federal, state, county, or municipal agency;
 74 or

75 (d) Experience described in paragraph (a) for 1 year and
 76 work in a managerial or supervisory capacity for 1 year.

77 (3) An applicant for a Class "M" license shall qualify for
 78 licensure as a Class "MA" manager as outlined under s.
 79 493.6203(2) and as a Class "MB" manager as outlined under
 80 subsection (2).

81 (4)(a) Effective January 1, 2006 ~~October 1, 1994~~, an
 82 applicant for a Class "D" license must complete ~~have completed~~ a
 83 minimum of 44 ~~40~~ hours of professional training administered by
 84 ~~at~~ a school or training facility licensed by the department. The

85 department shall by rule establish the general content and
 86 number of hours of all the training. Such training must include
 87 at least 8 hours of instruction in terrorism awareness or other
 88 special training prescribed by the department.

89 (b) An applicant may fulfill the training requirement
 90 prescribed in paragraph (a) by submitting proof of:

91 1. Successful completion of the total number of required
 92 ~~40~~ hours of training before initial application for a Class "D"
 93 license; or

94 2. Successful completion of 24 hours of training before
 95 initial application ~~for~~, and the remaining 16 hours of training
 96 within 180 days after the date upon the first application is
 97 submitted for renewal of, a Class "D" license. If documentation
 98 of completion of the required training is not submitted within
 99 the specified timeframe, the individual's license is
 100 automatically suspended until such time as proof of the required
 101 training is provided to the department. However, Individuals
 102 licensed before October 1, 1994, or individuals who have
 103 successfully completed 40 hours of professional training before
 104 January 1, 2006, at a school or training facility licensed by
 105 the department are exempt from the training requirements of
 106 paragraph (a) need not complete additional training hours in
 107 order to renew their licenses.

108
 109 However, any person whose license has been revoked or whose
 110 license has been expired for 1 year or longer is considered,
 111 upon reapplication for a license, an initial applicant and must
 112 submit proof of successful completion of the total number of

113 required 40 hours of professional training at a school or
 114 training facility licensed by the department.

115 (5) An applicant for a Class "G" license shall satisfy the
 116 firearms training outlined in s. 493.6115.

117 Section 2. Section 501.059, Florida Statutes, is amended
 118 to read:

119 501.059 Telephone solicitation.--

120 (1) As used in this section:

121 (a) "Telephonic sales call" means a call made by a
 122 telephone solicitor to a telephone number ~~consumer~~, for the
 123 purpose of soliciting a sale of any ~~consumer~~ goods or services,
 124 ~~or~~ for the purpose of soliciting an extension of credit for any
 125 ~~consumer~~ goods or services, or for the purpose of obtaining
 126 information that will or may be used for the direct solicitation
 127 of a sale of any ~~consumer~~ goods or services or an extension of
 128 credit for such purposes.

129 (b) "~~Consumer~~ Goods or services" means any real property
 130 or any tangible or intangible personal property which is
 131 normally used for personal, family, ~~or~~ household, or business
 132 purposes, including, without limitation, any such property
 133 intended to be attached to or installed in any real property
 134 without regard to whether it is so attached or installed, as
 135 well as cemetery lots and timeshare estates, and any services
 136 related to such property.

137 (c) "Unsolicited telephonic sales call" means a telephonic
 138 sales call other than a call made:

- 139 1. In response to an express request of the person called;
- 140 2. Primarily in connection with an existing debt or

141 contract, payment or performance of which has not been completed
 142 at the time of such call;

143 3. To any person with whom the telephone solicitor has a
 144 prior or existing business relationship; or

145 4. By a newspaper publisher or his or her agent or
 146 employee in connection with his or her business.

147 (d) "Commission" means the Florida Public Service
 148 Commission.

149 (e) "Telephone solicitor" means any natural person, firm,
 150 organization, partnership, association, or corporation, or a
 151 subsidiary or affiliate thereof, doing business in this state,
 152 who makes or causes to be made a telephonic sales call,
 153 including, but not limited to, calls made by use of automated
 154 dialing or recorded message devices.

155 (f) "Consumer" means an actual or prospective purchaser,
 156 lessee, or recipient of ~~consumer~~ goods or services.

157 (g) "Merchant" means a person who, directly or indirectly,
 158 offers or makes available to purchasers ~~consumers~~ any ~~consumer~~
 159 goods or services.

160 (h) "Doing business in this state" refers to businesses
 161 who conduct telephonic sales calls from a location in Florida or
 162 from other states or nations to telephone numbers ~~consumers~~
 163 located in Florida.

164 (i) "Department" means the Department of Agriculture and
 165 Consumer Services.

166 (2) Any telephone solicitor who makes an unsolicited
 167 telephonic sales call to any ~~a residential, mobile, or~~
 168 ~~telephonic paging device~~ telephone number shall identify himself

169 or herself by his or her true first and last names and the
 170 business on whose behalf he or she is soliciting immediately
 171 upon making contact by telephone with the person who is the
 172 object of the telephone solicitation.

173 (3)(a) Any residential, business, mobile, or telephonic
 174 paging device telephone subscriber desiring to be placed on a
 175 "no sales solicitation calls" listing indicating that the
 176 subscriber does not wish to receive unsolicited telephonic sales
 177 calls may notify the department and be placed on that listing
 178 upon receipt by the department of a \$10 initial listing charge.

179 This listing shall be renewed by the department annually for
 180 each consumer upon receipt of a renewal notice and a \$5
 181 assessment.

182 (b) The department shall update its "no sales solicitation
 183 calls" listing upon receipt of initial consumer subscriptions or
 184 renewals and provide this listing for a fee to telephone
 185 solicitors upon request.

186 (c) All fees imposed under ~~pursuant to~~ this section shall
 187 be deposited in the General Inspection Trust Fund for the
 188 administration of this section.

189 (4) A ~~No~~ telephone solicitor may not ~~shall~~ make or cause
 190 to be made any unsolicited telephonic sales call to any
 191 residential, mobile, or telephonic paging device or telephone
 192 number if the number for that telephone appears in the then-
 193 current quarterly listing published by the department. Any
 194 telephone solicitor or person who offers for sale any ~~consumer~~
 195 information that ~~which~~ includes residential, mobile, or
 196 telephonic paging device or telephone numbers, except directory

197 assistance and telephone directories sold by telephone companies
 198 and organizations exempt under s. 501(c)(3) or (6) of the
 199 Internal Revenue Code, must ~~shall~~ screen and exclude those
 200 numbers that ~~which~~ appear on the division's then-current "no
 201 sales solicitation calls" list. This subsection does not apply
 202 to any person licensed under ~~pursuant to~~ chapter 475 who calls
 203 an actual or prospective seller or lessor of real property when
 204 the ~~such~~ call is made in response to a yard sign or other form
 205 of advertisement placed by the seller or lessor.

206 (5)(a) A contract made through ~~pursuant to~~ a telephonic
 207 sales call is not valid or ~~and~~ enforceable ~~against a consumer~~
 208 unless the ~~made in compliance with this subsection.~~

209 ~~(b) A contract made pursuant to a telephonic sales call:~~

210 (a)1. ~~Is~~ Shall be reduced to writing and signed by the
 211 consumer.

212 (b)2. Complies ~~Shall comply~~ with all other applicable laws
 213 and rules.

214 (c)3. Matches ~~Shall match~~ the description of goods or
 215 services as principally used in the telephone solicitations.

216 (d)4. Contains ~~Shall contain~~ the name, address, and
 217 telephone number of the seller, the total price of the contract,
 218 and a detailed description of the goods or services being sold.

219 (e)5. Contains ~~Shall contain~~, in bold, conspicuous type,
 220 immediately preceding the signature, the following statement:

221 "You are not obligated to pay any money unless you sign
 222 this contract and return it to the seller."

223 (f)6. Does ~~May~~ not exclude from its terms any oral or
 224 written representations made by the telephone solicitor to the

225 person contacted ~~consumer~~ in connection with the transaction.

226 ~~(c) The provisions of~~

227
 228 This subsection does ~~de~~ not apply to contractual sales regulated
 229 under other sections of the Florida Statutes, or to the sale of
 230 financial services, security sales, or sales transacted by
 231 companies or their wholly owned subsidiaries or agents, which
 232 companies are regulated by chapter 364, or to the sale of cable
 233 television services to the duly franchised cable television
 234 operator's existing subscribers within that cable television
 235 operator's franchise area, or to any sales where no prior
 236 payment is made to the merchant and an invoice accompanies the
 237 goods or services allowing the consumer 7 days to cancel or
 238 return without obligation for any payment.

239 (6)(a) A merchant who engages a telephone solicitor to
 240 make or cause to be made a telephonic sales call may ~~shall~~ not
 241 make or submit any charge to the consumer's credit card account
 242 or make or cause to be made any electronic transfer of funds
 243 until after the merchant receives from the consumer a copy of
 244 the contract, signed by the purchaser, which complies with this
 245 section.

246 (b) A merchant who conducts a credit card account
 247 transaction under ~~pursuant to~~ this section is ~~shall be~~ subject
 248 to ~~the provisions of~~ s. 817.62.

249 ~~(c) The provisions of~~ This subsection does ~~de~~ not apply to
 250 a transaction:

251 1. Made in accordance with prior negotiations in the
 252 course of a visit by the purchaser ~~consumer~~ to a merchant

253 | operating a retail business establishment which has a fixed
 254 | permanent location and where consumer goods are displayed or
 255 | offered for sale on a continuing basis;

256 | 2. In which the purchaser ~~consumer~~ may obtain a full
 257 | refund for the return of undamaged and unused goods or a
 258 | cancellation of services notice to the seller within 7 days
 259 | after receipt by the consumer, and the seller will process the
 260 | refund within 30 days after receipt of the returned merchandise
 261 | by the consumer;

262 | 3. In which the purchaser ~~consumer~~ purchases goods or
 263 | services as part of ~~pursuant to~~ an examination of a television,
 264 | radio, or print advertisement or a sample, brochure, or catalog
 265 | of the merchant that contains:

- 266 | a. The name, address, and telephone number of the
- 267 | merchant;
- 268 | b. A description of the goods or services being sold; and
- 269 | c. Any limitations or restrictions that apply to the
- 270 | offer; or

271 | 4. In which the merchant is a bona fide charitable
 272 | organization or a newspaper as defined in chapter 50.

273 | (7)(a) A ~~No~~ person may not ~~shall~~ make or knowingly allow a
 274 | telephonic sales call to be made if the ~~such~~ call involves an
 275 | automated system for the selection or dialing of telephone
 276 | numbers or the playing of a recorded message when a connection
 277 | is completed to a number called.

278 | (b) Nothing herein prohibits the use of an automated
 279 | telephone dialing system with live messages if the calls are
 280 | made or messages given solely in response to calls initiated by

281 the persons to whom the automatic calls or live messages are
 282 directed or if the telephone numbers selected for automatic
 283 dialing have been screened to exclude any telephone subscriber
 284 who is included on the department's then-current "no sales
 285 solicitation calls" listing or any unlisted telephone number, or
 286 if the calls made concern goods or services that have been
 287 previously ordered or purchased.

288 (c) A person may not transmit or knowingly allow the
 289 transmission of a facsimile of documents through connection with
 290 a telephone network if the facsimile transmission involves
 291 unsolicited advertising material for the sale of any real
 292 property, goods, or services.

293 (8) The department shall investigate any complaints
 294 received concerning violations of this section. If, after
 295 investigating any complaint, the department finds that there has
 296 been a violation of this section, the department or the
 297 Department of Legal Affairs may bring an action to impose a
 298 civil penalty and to seek other relief, including injunctive
 299 relief, as the court deems appropriate against the telephone
 300 solicitor. The civil penalty shall not exceed \$10,000 per
 301 violation and shall be deposited in the General Inspection Trust
 302 Fund if the action or proceeding was brought by the department,
 303 or the Legal Affairs Revolving Trust Fund if the action or
 304 proceeding was brought by the Department of Legal Affairs. This
 305 civil penalty may be recovered in any action brought under this
 306 part by the department, or the department may terminate any
 307 investigation or action upon agreement by the person to pay an
 308 agreed-upon ~~a stipulated~~ civil penalty. The department or the

309 court may waive any civil penalty if the person has previously
 310 made full restitution or reimbursement or has paid actual
 311 damages to the consumers who have been injured by the violation.

312 (9)(a) In any civil litigation resulting from a
 313 transaction involving a violation of this section, the
 314 prevailing party, after judgment in the trial court and
 315 exhaustion of all appeals, if any, shall receive his or her
 316 reasonable attorney's fees and costs from the nonprevailing
 317 party.

318 (b) The attorney for the prevailing party shall submit a
 319 sworn affidavit of his or her time spent on the case and his or
 320 her costs incurred for all the motions, hearings, and appeals to
 321 the trial judge who presided over the civil case.

322 (c) The trial judge shall award the prevailing party the
 323 sum of reasonable costs incurred in the action plus a reasonable
 324 legal fee for the hours actually spent on the case as sworn to
 325 in an affidavit.

326 (d) Any award of attorney's fees or costs shall become a
 327 part of the judgment and subject to execution as the law allows.

328 (e) In any civil litigation initiated by the department or
 329 the Department of Legal Affairs, the court shall ~~may~~ award to
 330 the prevailing party reasonable attorney's fees and costs ~~if the~~
 331 ~~court finds that there was a complete absence of a justiciable~~
 332 ~~issue of either law or fact raised by the losing party or if the~~
 333 ~~court finds bad faith on the part of the losing party.~~ Travel
 334 and per diem expenses incurred by the department or the
 335 Department of Legal Affairs for its attorneys and witnesses
 336 shall be recoverable costs by the department or the Department

337 of Legal Affairs if either party prevails in civil litigation.

338 (10) The commission shall by rule ensure that
 339 telecommunications companies inform their customers of the
 340 provisions of this section. The notification may be made by:

341 (a) Annual inserts in the billing statements mailed to
 342 customers; and

343 (b) Conspicuous publication of the notice in the consumer
 344 information pages of the local telephone directories.

345 Section 3. Sections 546.001, 546.002, 546.003, 546.004,
 346 546.006, and 546.008, Florida Statutes, are repealed.

347 Section 4. Paragraph (a) of subsection (1) of section
 348 559.801, Florida Statutes, is amended to read:

349 559.801 Definitions.--For the purpose of ss. 559.80-
 350 559.815, the term:

351 (1)(a) "Business opportunity" means the sale or lease of
 352 any products, equipment, supplies, or services which are sold or
 353 leased to a purchaser to enable the purchaser to start a
 354 business for which the purchaser is required to pay an initial
 355 fee or sum of money which exceeds \$500 to the seller, and in
 356 which the seller represents:

357 1. That the seller or person or entity affiliated with or
 358 referred by the seller will provide locations, either
 359 contemporaneously at the time of the sale or lease or at a
 360 future time, or assist the purchaser in finding locations for
 361 the use or operation of vending machines, racks, display cases,
 362 currency or card operated equipment, or other similar devices or
 363 currency-operated amusement machines or devices on premises
 364 neither owned nor leased by the purchaser or seller;

365 2. That the seller will purchase, either contemporaneously
 366 at the time of the sale or lease or at a future time, any or all
 367 products made, produced, fabricated, grown, bred, or modified by
 368 the purchaser using in whole or in part the supplies, services,
 369 or chattels sold to the purchaser;

370 3. That the seller guarantees that the purchaser will
 371 derive income from the business opportunity which exceeds the
 372 price paid or rent charged for the business opportunity or that
 373 the seller will refund all or part of the price paid or rent
 374 charged for the business opportunity, or will repurchase any of
 375 the products, equipment, supplies, or chattels supplied by the
 376 seller, if the purchaser is unsatisfied with the business
 377 opportunity; or

378 4. That the seller will provide, either contemporaneously
 379 at the time of the sale or lease or at a future time, a sales
 380 program or marketing program that will enable the purchaser to
 381 derive income from the business opportunity, except that this
 382 paragraph does not apply to the sale of a sales program or
 383 marketing program made in conjunction with the licensing of a
 384 trademark or service mark that is registered under the laws of
 385 any state or of the United States if the seller requires use of
 386 the trademark or service mark in the sales agreement.

387
 388 For the purpose of subparagraph 1., the term "assist the
 389 purchaser in finding locations" means, but is not limited to,
 390 supplying the purchaser with names of locator companies,
 391 contracting with the purchaser to provide assistance or supply
 392 names, or collecting a fee on behalf of or for a locator

393 company.

394 Section 5. Section 559.920, Florida Statutes, is amended
 395 to read:

396 559.920 Unlawful acts and practices.--It shall be a
 397 violation of this act for any motor vehicle repair shop or
 398 employee thereof to:

399 (1) Engage or attempt to engage in repair work for
 400 compensation of any type without first being registered with ~~or~~
 401 ~~having submitted an affidavit of exemption to~~ the department;

402 (2) Make or charge for repairs which have not been
 403 expressly or impliedly authorized by the customer;

404 (3) Misrepresent that repairs have been made to a motor
 405 vehicle;

406 (4) Misrepresent that certain parts and repairs are
 407 necessary to repair a vehicle;

408 (5) Misrepresent that the vehicle being inspected or
 409 diagnosed is in a dangerous condition or that the customer's
 410 continued use of the vehicle may be harmful or cause great
 411 damage to the vehicle;

412 (6) Fraudulently alter any customer contract, estimate,
 413 invoice, or other document;

414 (7) Fraudulently misuse any customer's credit card;

415 (8) Make or authorize in any manner or by any means
 416 whatever any written or oral statement which is untrue,
 417 deceptive or misleading, and which is known, or which by the
 418 exercise of reasonable care should be known, to be untrue,
 419 deceptive or misleading;

420 (9) Make false promises of a character likely to

421 influence, persuade, or induce a customer to authorize the
422 repair, service, or maintenance of a motor vehicle;

423 (10) Substitute used, rebuilt, salvaged, or straightened
424 parts for new replacement parts without notice to the motor
425 vehicle owner and to her or his insurer if the cost of repair is
426 to be paid pursuant to an insurance policy and the identity of
427 the insurer or its claims adjuster is disclosed to the motor
428 vehicle repair shop;

429 (11) Cause or allow a customer to sign any work order that
430 does not state the repairs requested by the customer or the
431 automobile's odometer reading at the time of repair;

432 (12) Fail or refuse to give to a customer a copy of any
433 document requiring the customer's signature upon completion or
434 cancellation of the repair work;

435 (13) Willfully depart from or disregard accepted practices
436 and professional standards;

437 (14) Have repair work subcontracted without the knowledge
438 or consent of the customer unless the motor vehicle repair shop
439 or employee thereof demonstrates that the customer could not
440 reasonably have been notified;

441 (15) Conduct the business of motor vehicle repair in a
442 location other than that stated on the registration certificate;

443 (16) Rebuild or restore a rebuilt vehicle without the
444 knowledge of the owner in such a manner that it does not conform
445 to the original vehicle manufacturer's established repair
446 procedures or specifications and allowable tolerances for the
447 particular model and year; or

448 (17) Perform any other act that is a violation of this

449 part or that constitutes fraud or misrepresentation.

450 Section 6. Subsections (1) and (3) of section 559.928,
 451 Florida Statutes, are amended to read:

452 559.928 Registration.--

453 (1) Each seller of travel shall annually register with the
 454 department, providing: its legal business or trade name, mailing
 455 address, and business locations; the full names, addresses, and
 456 telephone numbers, ~~and social security numbers~~ of its owners or
 457 corporate officers and directors and the Florida agent of the
 458 corporation; a statement whether it is a domestic or foreign
 459 corporation, its state and date of incorporation, its charter
 460 number, and, if a foreign corporation, the date it registered
 461 with the State of Florida, and occupational license where
 462 applicable; the date on which a seller of travel registered its
 463 fictitious name if the seller of travel is operating under a
 464 fictitious or trade name; the name of all other corporations,
 465 business entities, and trade names through which each owner of
 466 the seller of travel operated, was known, or did business as a
 467 seller of travel within the preceding 5 years; a list of all
 468 authorized independent agents, including the agent's trade name,
 469 full name, mailing address, business address, telephone numbers,
 470 and social security number; the business location and address of
 471 each branch office and full name and address of the manager or
 472 supervisor; and proof of purchase of adequate bond or
 473 establishment of a letter of credit or certificate of deposit as
 474 required in this part. A certificate evidencing proof of
 475 registration shall be issued by the department and must be
 476 prominently displayed in the seller of travel's primary place of

477 business.

478 (3) Each independent agent shall annually file an
 479 affidavit with the department and pay a fee of \$100 prior to
 480 engaging in business in this state. This affidavit must include
 481 the independent agent's full name, legal business or trade name,
 482 mailing address, business address, and telephone number, ~~social~~
 483 ~~security number~~, and the name or names and addresses of each
 484 seller of travel represented by the independent agent and must
 485 be accompanied by a copy of the independent agent's current
 486 contract with each seller of travel. A letter evidencing proof
 487 of filing must be issued by the department and must be
 488 prominently displayed in the independent agent's primary place
 489 of business. As used in this subsection, the term "independent
 490 agent" means a person who represents a seller of travel by
 491 soliciting persons on its behalf; who has a written contract
 492 with a seller of travel which is operating in compliance with
 493 this part and any rules adopted thereunder; who does not receive
 494 a fee, commission, or other valuable consideration directly from
 495 the purchaser for the seller of travel; who does not at any time
 496 have any unissued ticket stock or travel documents in his or her
 497 possession; and who does not have the ability to issue tickets,
 498 vacation certificates, or any other travel document. The term
 499 "independent agent" does not include an affiliate of the seller
 500 of travel, as that term is used in s. 559.935(3), or the
 501 employees of the seller of travel or of such affiliates.

502 Section 7. Paragraph (b) of subsection (5) and subsection
 503 (9) of section 616.242, Florida Statutes, are amended to read:
 504 616.242 Safety standards for amusement rides.--

505 (5) ANNUAL PERMIT.--

506 (b) To apply for an annual permit an owner must submit to
 507 the department a written application on a form prescribed by
 508 rule of the department, which must include the following:

509 1. The legal name, address, and primary place of business
 510 of the owner.

511 2. A description, manufacturer's name, serial number,
 512 model number and, if previously assigned, the United States
 513 Amusement Identification Number of the amusement ride.

514 3. A valid certificate of insurance ~~or bond~~ for each
 515 amusement ride.

516 4. An affidavit of compliance that the amusement ride was
 517 inspected in person by the affiant and that the amusement ride
 518 is in general conformance with the requirements of this section
 519 and all applicable rules adopted by the department. The
 520 affidavit must be executed by a professional engineer or a
 521 qualified inspector no earlier than 60 days before, but not
 522 later than, the date of the filing of the application with the
 523 department. The owner shall request inspection and permitting of
 524 the amusement ride within 60 days of the date of filing the
 525 application with the department. The department shall inspect
 526 and permit the amusement ride within 60 days after filing the
 527 application with the department.

528 5. If required by subsection (6), an affidavit of
 529 nondestructive testing dated and executed no earlier than 60
 530 days prior to, but not later than, the date of the filing of the
 531 application with the department. The owner shall request
 532 inspection and permitting of the amusement ride within 60 days

533 of the date of filing the application with the department. The
 534 department shall inspect and permit the amusement ride within 60
 535 days after filing the application with the department.

536 6. A request for inspection.

537 7. Upon request, the owner shall, at no cost to the
 538 department, provide the department a copy of the manufacturer's
 539 current recommended operating instructions in the possession of
 540 the owner, the owner's operating fact sheet, and any written
 541 bulletins in the possession of the owner concerning the safety,
 542 operation, or maintenance of the amusement ride.

543 (9) INSURANCE REQUIREMENTS.--

544 (a) An owner may not operate an amusement ride unless the
 545 owner has in effect at all times of operation ~~insurance meeting~~
 546 ~~the following requirements:~~

547 ~~1. an insurance policy in an amount of not less than \$1~~
 548 ~~million per occurrence, \$1 million in the aggregate, which~~
 549 ~~insures the owner of the amusement ride against liability for~~
 550 ~~injury to persons arising out of the use of the amusement ride;~~
 551 ~~or~~

552 ~~2. A bond in a like amount; however, the aggregate~~
 553 ~~liability of the surety under the bond may not exceed the face~~
 554 ~~amount thereof.~~

555 (b) The policy ~~or bond~~ must be procured from an insurer or
 556 surety that is licensed to transact business in this state or
 557 that is approved as a surplus lines insurer.

558 (c) The insurance requirements imposed under this
 559 subsection do not apply to a governmental entity that is covered
 560 by the provisions of s. 768.28(16).

561 Section 8. Subsection (1) of section 849.094, Florida
 562 Statutes, is amended to read:

563 849.094 Game promotion in connection with sale of consumer
 564 products or services.--

565 (1) As used in this section, the term:

566 (a) "Game promotion" means, but is not limited to, a
 567 contest, game of chance, or gift enterprise, conducted within or
 568 throughout the state and other states in connection with the
 569 sale of consumer products or services, and in which the elements
 570 of chance and prize are present. However, "game promotion" shall
 571 not be construed to apply to bingo games conducted pursuant to
 572 s. 849.0931.

573 (b) "Operator" means any person, firm, corporation, or
 574 association on whose behalf a game promotion is conducted ~~or~~
 575 ~~agent or employee thereof who promotes, operates, or conducts a~~
 576 ~~game promotion~~, except any charitable nonprofit organization.

577 Section 9. For the purpose of incorporating the amendment
 578 to section 501.059, Florida Statutes, in a reference thereto,
 579 paragraph (a) of subsection (1) of section 501.603, Florida
 580 Statutes, is reenacted to read:

581 501.603 Definitions.--As used in this part, unless the
 582 context otherwise requires, the term:

583 (1) "Commercial telephone solicitation" means:

584 (a) An unsolicited telephone call to a person initiated by
 585 a commercial telephone seller or salesperson, or an automated
 586 dialing machine used in accordance with the provisions of s.
 587 501.059(7) for the purpose of inducing the person to purchase or
 588 invest in consumer goods or services;

589
590 For purposes of this section, "other communication" means a
591 written or oral notification or advertisement transmitted
592 through any means. Also, for purposes of this section, "invites
593 a response by telephone" does not mean the mere listing or
594 including of a telephone number in a notification or
595 advertisement.

596 Section 10. For the purpose of incorporating the amendment
597 to section 559.801, Florida Statutes, in a reference thereto,
598 subsection (12) of section 559.809, Florida Statutes, is
599 reenacted to read:

600 559.809 Prohibited acts.--Business opportunity sellers
601 shall not:

602 (12) Misrepresent their ability or the ability of a person
603 or entity providing services as defined in s. 559.801(1)(a) to
604 provide locations or assist the purchaser in finding locations
605 expected to have a positive impact on the success of the
606 business opportunity.

607 Section 11. This act shall take effect October 1, 2005.