

CHAPTER 97-250

House Bill No. 1619

An act relating to consumer protection; amending ss. 496.405, 496.419, 496.420, and 496.424, F.S.; revising the provisions of the Solicitation of Contributions Act to revise the authority of the Department of Agriculture and Consumer Services to make rules; establishing a fee; providing authority of the department with respect to registration and solicitation requirements; amending ss. 501.013, 501.014, 501.015, 501.016, and 501.019, F.S.; revising provisions of law regulating health studios to provide an exemption from regulation for certain country clubs, to authorize rules, to eliminate a penalty for certain late registrations, to require the registration number in certain printed material, to revise provisions relating to security requirements, and to revise penalties with respect to health studio violations; providing retroactive application of an exemption under certain circumstances; amending s. 501.021, F.S.; deleting the definition of "division" with respect to home solicitation sales; amending s. 501.022, F.S.; deleting language with respect to persons engaging in home solicitation sales in more than one county in the state to eliminate certain certificates; amending s. 501.052, F.S.; providing that the Attorney General or state attorney shall enforce the act; amending s. 501.143, F.S.; providing for registration fees with respect to dance studios; eliminating reference to such fees set by the department; providing for penalties for violations of rules or orders adopted pursuant to such rules; revising language with respect to rulemaking authority; amending s. 501.605, F.S.; providing for the fee for licensing of commercial telephone sellers; deleting reference to the authority of the department to set such fees; amending s. 501.607, F.S.; revising language with respect to licensure of salespersons; eliminating reference to the department to set license fees; amending s. 501.612, F.S.; revising language with respect to grounds for denial of licensure; amending s. 501.626, F.S.; revising language with respect to rulemaking authority; amending s. 501.925, F.S.; revising conditions under which a watch is considered a used watch; amending s. 539.001, F.S.; revising the Florida Pawnbroking Act to provide definitions, to provide that local occupational licenses may not be issued without providing proof of a state license, revising language with respect to administrative penalties; providing for a notice of noncompliance rather than a letter of concern, and to provide for rulemaking authority; amending ss. 559.801-559.813, F.S.; revising the Sale of Business Opportunities Act; revising definitions; revising language with respect to the disclosure statement; providing increased requirements with respect to required filings with the department; requiring that written contracts be given to the purchaser at a certain number of days before signing; revising provisions with respect to remedies and enforcement; providing for rulemaking authority; amending ss. 559.903, 559.904, 559.905, 559.921, and 559.9221, F.S.; revising the Florida Motor Vehicle Repair Act; revising definitions; revising the registration fee schedule;

revising requirements with respect to registration certificates; providing criteria for denying or refusing to renew the registration of a motor vehicle repair shop; providing for additional remedies; revising language with respect to the Motor Vehicle Repair Advisory Council; creating s. 559.92201, F.S.; providing for rulemaking authority; amending s. 559.927, F.S.; revising the definition of the term "seller of travel" with respect to the Florida Sellers of Travel Act; amending s. 559.928, F.S.; providing registration fees; requiring an annual affidavit by each independent agent; defining the term "independent agent"; amending s. 559.929, F.S.; revising language with respect to security requirements; amending s. 559.9295, F.S.; providing for the effect of the submission of vacation certificate documents; providing for alternative document filing; establishing the timeframe for the department to respond with respect to document submissions; amending s. 559.9335, F.S.; providing for additional acts which are violations; revising language with respect to rules; amending s. 559.9355, F.S.; revising language with respect to administrative remedies and penalties; repealing s. 559.8015, F.S., relating to applicability to advertisers of business opportunities; providing an effective date.

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

Section 1. Paragraph (b) of subsection (4) and subsection (7) of section 496.405, Florida Statutes, are amended to read:

496.405 Registration statements by charitable organizations and sponsors.—

(4)

(b) A charitable organization or sponsor which fails to file a registration statement by the due date may be assessed an additional fee for such late filing. The late filing fee ~~shall be~~ must be established by rule of the department and must not exceed \$25 for each month or part of a month after the date on which the annual renewal statement and financial report were due to be filed with the department.

(7) The department must examine each initial registration statement or annual renewal statement and the supporting documents filed by a charitable organization or sponsor and shall determine whether the registration requirements are satisfied. Within 10 working days after its receipt of a statement, the department must examine the statement, notify the applicant of any apparent errors or omissions, and request any additional information the department is allowed by law to require. Failure to correct an error or omission or to supply additional information is not grounds for denial of the initial registration or annual renewal statement unless the department has notified the applicant within the ~~10-working-day~~ 10-day period. The department must approve or deny each statement, or must notify the applicant that the activity for which he seeks registration is exempt from the registration requirement, within 10 working days after

receipt of the initial registration or annual renewal statement or the requested additional information or correction of errors or omissions. Any statement that is not approved or denied within 10 working days after receipt of the requested additional information or correction of errors or omissions is approved. Within 7 working days after receipt of a notification that the registration requirements are not satisfied, the charitable organization or sponsor may request a hearing. The hearing must be held within 7 working days after receipt of the request, and any recommended order, if one is issued, must be rendered within 3 working days of the hearing. The final order must then be issued within 2 working days after the recommended order. If a recommended order is not issued, the final order must be issued within 5 working days after the hearing. The proceedings must be conducted in accordance with chapter 120, except that the time limits and provisions set forth in this subsection prevail to the extent of any conflict.

Section 2. Subsection (1), paragraphs (a), (b), and (c) of subsection (4), and subsections (5), (8), and (9) of section 496.419, Florida Statutes, are amended to read:

496.419 Powers of the department.—

(1) The department may conduct an investigation of any person or organization whenever there is an appearance, either upon complaint or otherwise, that a violation of ss. 496.401-496.424 or s. 496.426 or of any rule adopted or of any order issued pursuant thereto has been committed or is about to be committed.

(4) The department may enter an order imposing one or more of the penalties set forth in subsection (5) if the department finds that a charitable organization, sponsor, professional fundraising consultant, or professional solicitor, or an agent, servant, or employee thereof has:

(a) Violated or is operating in violation of any of the provisions of ss. 496.401-496.424 or s. 496.426 or of the rules adopted or orders issued thereunder;

(b) Made a material false statement in an application, statement, or report required to be filed under ss. 496.401-496.424 or s. 496.426;

(c) Refused or failed, or any of its principal officers has refused or failed, after notice, to produce any records of such organization or to disclose any information required to be disclosed under ss. 496.401-496.424 or s. 496.426 or the rules of the department; or

(5) Upon a finding as set forth in subsection (4), the department may enter an order doing one or more of the following:

~~(a)(e)~~ Issuing a notice of noncompliance pursuant to s. 120.695; of a letter of concern; and

(b) Issuing a cease and desist order that directs that the person cease and desist specified fundraising activities;

- (c) Refusing to register or canceling or suspending a registration;
- (d) Placing the registrant on probation for a period of time, subject to such conditions as the department may specify;
- (e)(f) Canceling an exemption granted under s. 496.406; and
- (f)(a) Imposing an administrative fine not to exceed \$1,000 for each act or omission which constitutes a violation of ss. 496.401-496.424 or s. 496.426 or a rule or order;

With respect to a section 501(c)(3) organization, the penalty imposed pursuant to this subsection shall not exceed \$500 per violation. The penalty shall be the entire amount per violation and is not to be interpreted as a daily penalty.

(8) The department shall report any criminal violation of ss. 496.401-496.424 or s. 496.426 to the proper prosecuting authority for prompt prosecution.

(9) All fines collected by the department under subsection (5) must be paid into the General Inspection Trust Fund to be used to pay the costs incurred in administering and enforcing ss. 496.401-496.424 or s. 496.426. Money deposited in the fund and allocated for the purposes of ss. 496.401-496.424 or s. 496.426 must be disbursed by the department for the funding of activities conducted by the department pursuant to ss. 496.401-496.424 or s. 496.426, inclusive.

Section 3. Subsections (1) and (3) of section 496.420, Florida Statutes, are amended to read:

496.420 Civil remedies and enforcement.—

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

(3) The Department of Legal Affairs may terminate an investigation or an action upon acceptance of a person's written assurance of voluntary

compliance with ss. 496.401-496.424 or s. 496.426. Acceptance of an assurance may be conditioned on commitment to reimburse donors or to take other appropriate corrective action. An assurance is not evidence of a prior violation of any of these sections. However, unless an assurance has been rescinded by agreement of the parties or voided by a court for good cause, subsequent failure to comply with the terms of an assurance is prima facie evidence of a violation of one or more of these sections.

Section 4. Section 496.424, Florida Statutes, is amended to read:

496.424 Rulemaking authority.—The department has the authority to may adopt rules pursuant to chapter 120 to implement necessary to effectuate the purposes of ss. 496.401-496.424 or s. 496.426.

Section 5. Subsection (5) is added to section 501.013, Florida Statutes, to read:

501.013 Health studios; exemptions.—The following businesses or activities may be declared exempt from the provisions of ss. 501.012-501.019 upon the filing of an affidavit with the department establishing that the stated qualifications are met:

(5) A country club that has as its primary function the provision of a social life and recreational amenities to its members, and for which a program of physical exercise is merely incidental to membership. As used in this subsection, the term “country club” means a facility that offers its members a variety of services that may include, but need not be limited to, social activities; dining, banquet, catering, and lounge facilities; swimming; yachting; golf; tennis; card games such as bridge and canasta; and special programs for members’ children. Upon the filing of an affidavit with the department establishing that the stated qualifications of this subsection were met before July 1, 1997, this subsection will apply retroactively to the date that the country club met these qualifications.

Section 6. Section 501.014, Florida Statutes, is amended to read:

501.014 Health studios; powers and duties of the department.—

(1) The department may, at any time during business hours, enter any business location of a health studio required to be registered pursuant to ss. 501.012-501.019, examine the books or records of the health studio, and subpoena all necessary records when the department has reason to believe a violation of the provisions of ss. 501.012-501.019 has occurred.

(2) The department has the authority to adopt rules pursuant to chapter 120 to implement ss. 501.012-501.019.

~~(3)~~(2) The department shall:

~~(a) Promulgate such rules as may be necessary to carry out the provisions of ss. 501.012-501.019.~~

~~(a)~~(b) Provide each business location of a health studio with a registration number at the time of registration.

~~(b)(c)~~ Provide a certificate of registration which prominently displays the registration number.

~~(c)(d)~~ Place all fees and fines collected pursuant to ss. 501.012-501.019 in the General Inspection Trust Fund of Florida as created in s. 570.20.

Section 7. Subsections (4) and (6) of section 501.015, Florida Statutes, are amended to read:

501.015 Health studios; registration requirements and fees.—Each health studio shall:

~~(4) Be subject to a penalty fee not to exceed \$10 per day up to \$100 maximum per business location if registration has not been renewed within 30 days after its expiration date.~~

(6) Include the registration number issued by the department in all printed advertisements, contracts, and publications utilized by the health studio for a business location.

Section 8. Section 501.016, Florida Statutes, is amended to read:

501.016 Health studios; security requirements.—~~Each~~ Every health studio ~~that which~~ sells contracts for health studio services shall, ~~during any period before opening and for a period of 5 years after commencement of business,~~ meet the following requirements:

(1) Each health studio shall maintain for each separate business location a bond issued by a surety company admitted to do business in this state. The principal sum of the bond shall be \$50,000, and the bond, when required, shall be obtained before an occupational license may be issued under chapter 205. Upon issuance of an occupational license, the licensing authority shall immediately notify the department of such issuance in a manner established by the department by rule. The bond shall be in favor of the state for the benefit of any person injured as a result of a violation of ss. 501.012-501.019. The aggregate liability of the surety to all persons for all breaches of the conditions of the bonds provided herein shall in no event exceed the amount of the bond. The original surety bond required by this section shall be filed with the department.

(2) In lieu of maintaining the bond required in subsection (1), the health studio may furnish to the department:

(a) An irrevocable letter of credit from any foreign or domestic bank in the amount of \$50,000; or

(b) A guaranty agreement which is secured by a certificate of deposit in the amount of \$50,000.

The original letter of credit or certificate of deposit submitted in lieu of the bond shall be filed with the department. The department shall decide whether the security furnished in lieu of bond by the health studio is in compliance with the requirements of this section.

(3) A health studio which sells contracts for future health studio services and which collects direct payment on a monthly basis for those services shall be exempt from the security requirements of subsections (1) and (2) provided that any service fee charged is a reasonable and fair service fee. The number of monthly payments in such a contract shall be equal to the number of months in the contract. The contract shall conform to all the requirements for future health studio services contracts as specified in ss. 501.012-501.019 and shall specify in the terms of the contract the charges to be assessed for those health studio services.

(4) If the health studio furnishes the department with evidence satisfactory to the department that the aggregate dollar amount of all current outstanding contracts of the health studio is less than \$5,000, the department may, at its discretion, reduce the principal amount of the surety bond or other sufficient financial responsibility required in subsections (1) and (2) to a sum of not less than \$10,000. However, at any time the aggregate dollar amount of such contracts exceeds \$5,000, the health studio shall so notify the department and shall thereupon provide the bond or other documentation as required in subsections (1) and (2). Health studios whose bonds have been reduced must provide the department with an annually updated list of members. Failure to file an annual report will result in the department raising the security requirement to \$50,000.

(5) Each health studio shall furnish the department with a copy of the escrow account which would contain all funds received for future consumer services, whether by contract or otherwise, sold prior to the business location's full operation and specify a date certain for opening, if such an escrow account is established.

(6) Subsections (1) and (2) shall not apply to a health studio that has been operating continuously under the same ownership and control for the most recent 5-year period in compliance with ss. 501.012-501.019 and the rules adopted thereunder and that has not had any civil, criminal, or administrative adjudication against it by any state or federal agency; and that has a satisfactory consumer complaint history. As used in this subsection, the term "satisfactory consumer complaint history" means that no unresolved consumer complaints regarding the health studio are on file with the department. A consumer complaint is unresolved if a health studio has not responded to the department's efforts to mediate the complaint or if there has been an adjudication that the health studio has violated ss. 501.012-501.019 or the rules adopted thereunder. Those health studios that have been in business continuously since October 1, 1985, are exempt from the requirements of subsections (1) and (2). Those health studios that have been in business continuously since October 1, 1986, are exempt effective October 1, 1991, from the requirements of subsections (1) and (2). Those health studios that have been in business continuously since October 1, 1987, are exempt effective October 1, 1992, from the requirements of subsections (1) and (2). Those health studios that have been in business continuously since October 1, 1988, are exempt effective October 1, 1993, from the requirements of subsections (1) and (2). Those health studios that have been in business continuously since October 1, 1989, are exempt effective October 1, 1994, from the requirements of subsections (1) and (2). Such exemption

extends to all current and future business locations of an exempt health studio.

(7) A business, otherwise defined as a health studio, which sells a single contract of 30 days or less to any member without any option for renewal or any other condition which establishes any right in the member beyond the term of such contract is exempt from the provisions of this section. This exemption shall not apply if the business offers any other health studio contract of whatever duration at any time during or prior to the existence of such single contract of 30 days or less.

(8) Except in the case of a natural disaster or an act of God, a health studio that is exempt from the requirements of subsections (1) and (2), but that which has no business locations open for 14 consecutive days, waives shall be deemed to have waived its exemption and is shall be considered to be a new health studio for the purposes of ss. 501.012-501.019.

Section 9. Subsection (4) of section 501.019, Florida Statutes, is amended to read:

501.019 Health studios; penalties.—

(4)(a) The department may enter an order imposing one or more of the penalties set forth in paragraph (b) if the department finds that a health studio:

1. Violated or is operating in violation of any of the provisions of this part or of the rules adopted or orders issued thereunder;

2. Made a material false statement in any application, document, or record required to be submitted or retained under this part;

3. Refused or failed, or any of its principal officers has refused or failed, after notice, to produce any document or record or disclose any information required to be produced or disclosed under this part or the rules of the department;

4. Made a material false statement in response to any request or investigation by the department, the Department of Legal Affairs, or the state attorney; or

5. Has intentionally defrauded the public through dishonest or deceptive means. The department may impose administrative fines as prescribed below:

~~(a) For a violation of s. 501.016, a fine not to exceed \$5,000 per violation.~~

(b) Upon a finding as set forth in paragraph (a), the department may enter an order doing one or more of the following:

1. Issuing a notice of noncompliance pursuant to s. 120.695.

2. For a violation of s. 501.015 or s. 501.016, imposing an administrative fine not to exceed \$5,000 per violation.

3. For a violation of s. 501.013, s. 501.017, or s. 501.018, imposing an administrative a fine not to exceed \$500 per violation.
4. Directing that the health studio cease and desist specified activities.
5. Refusing to register or revoking or suspending a registration.
6. Placing the registrant on probation for a period of 5 years, subject to such conditions as the department may specify by rule.

(c) The administrative proceedings which could result in the entry of an order imposing any of the penalties specified in paragraph (b) shall be conducted in accordance with chapter 120 ~~For a violation of s. 501.015, a fine not to exceed \$100 per violation.~~

Section 10. Section 501.021, Florida Statutes, is amended to read:

501.021 Home solicitation sale; definitions.—As used in ss. 501.021-501.055:

~~(1) “Division” means the Division of Consumer Services of the Department of Agriculture and Consumer Services.~~

~~(1)(2)~~ “Home solicitation sale” means a sale, lease, or rental of consumer goods or services with a purchase price in excess of \$25 which includes all interest, service charges, finance charges, postage, freight, insurance, and service or handling charges, whether under single or multiple contracts, made pursuant to an installment contract, a loan agreement, other evidence of indebtedness, or a cash transaction or other consumer credit transaction, in which:

(a) The seller or a person acting for him engages in a personal solicitation of the sale, lease, or rental at a place other than at the seller’s fixed location business establishment where goods or services are offered or exhibited for sale, lease, or rental, and

(b) The buyer’s agreement or offer to purchase is given to the seller and the sale, lease, or rental is consummated at a place other than at the seller’s fixed location business establishment,

including a transaction unsolicited by the consumer and consummated by telephone and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services. It does not include a sale, lease, or rental made at any fair or similar commercial exhibit or a sale, lease, or rental that results from a request for specific goods or services by the purchaser or lessee or a sale made by a motor vehicle dealer licensed under s. 320.27 which occurs at a location or facility open to the general public or to a designated group.

~~(2)(3)~~ “Business day” means any calendar day except Sunday or a federal holiday the following business holidays: New Year’s Day, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, and Christmas Day.

(3)(4) “Future delivery” means delivery more than 3 business days after the buyer signs an agreement or offer to purchase.

Section 11. Paragraph (a) of subsection (1) and subsections (6), (8), and (9) of section 501.022, Florida Statutes, are amended to read:

501.022 Home solicitation sale; permit required.—

(1)(a) It is unlawful for any person to conduct any home solicitation sale, as defined in s. 501.021(2), or to supervise excluded minors conducting such sales provided in subparagraph (b)5., in this state without first obtaining a valid home solicitation sale permit as provided in this section.

(6) The issuing clerk of the circuit court for the county shall notify each applicant or permitholder of a decision to deny, suspend, or revoke a permit by certified mail sent to any one of the last addresses submitted by the applicant or permitholder. ~~A copy of the notice shall be sent to the division.~~

~~(8) Any person who intends to engage in home solicitation sales in more than one county or on a statewide basis shall first obtain a home solicitation sale permit from the clerk of the circuit court for the county in the county where the applicant's fixed location business establishment is located or, if the applicant has no such location in this state, from any clerk of the circuit court of the applicant's choice. The holder of a county home solicitation sale permit may register said permit with the division, and after receipt of a reasonable fee to be established by the division and verification of the validity of the permit, the division shall issue a certificate which shall permit the holder to solicit on a statewide basis. A certificate issued hereunder shall expire on the expiration date of the permit registered with the division.~~

~~(8)(9)~~ Every permitholder shall carry the permit and certificate required by this section at all times while engaged in home solicitation sales and shall display the same to all prospective buyers before initiating the solicitation of a sale, lease, or rental.

Section 12. Section 501.052, Florida Statutes, is amended to read:

501.052 Home solicitation sale; enforcement authority; injunctive relief.—~~The division shall investigate any complaints received concerning violations of ss. 501.021-501.055 and report the results of its investigation to the Attorney General or state attorney, and it may institute proceedings to enjoin any person found by the division to be violating the provisions of ss. 501.021-501.055.~~

Section 13. Paragraph (d) of subsection (3), paragraphs (a), (b), (c), and (e) of subsection (7), and subsection (12) of section 501.143, Florida Statutes, are amended to read:

501.143 Dance Studio Act.—

(3) REGISTRATION OF BALLROOM DANCE STUDIOS.—

(d) Registration fees shall be ~~set by department rule in an amount equal to the costs to the department of implementing and enforcing this section.~~

~~However, such fee shall be based on the number of clients and may not be greater than \$300 per year for each dance studio location per registrant. All amounts collected shall be deposited in the General Inspection Trust Fund of the Department of Agriculture and Consumer Services for the administration of this section.~~

(7) PENALTIES; REMEDIES.—The following penalties and remedies are available for enforcement of the provisions of this section:

(a) ~~The department shall have administrative authority to issue a notice of noncompliance pursuant to s. 120.695 and~~ to suspend or revoke the registration of any ballroom dance studio that violates any of the provisions of this section or the rules adopted or orders issued pursuant to such rules ~~of the department~~. Such ballroom dance studio may not engage in business while the registration is revoked or suspended.

(b) The department may impose an administrative fine not to exceed \$5,000 per violation against any ballroom dance studio that violates any of the provisions of this section or the rules adopted or orders issued pursuant to this section.

(c) Notwithstanding the provisions of subsection (5), the department may require any ballroom dance studio that has operated or is operating in violation of any of the provisions of this section or the rules adopted or orders issued pursuant to such rules ~~of the department~~ to post security with the department in an amount not to exceed \$25,000.

(e) The enforcing authority may seek a civil penalty not to exceed \$5,000 for each violation of this section or the rules adopted or orders issued pursuant to such rules and may institute a civil action in circuit court to recover any penalties or damages allowed in this section and for injunctive relief to enforce compliance with this section or any rule or order of the department.

(12) RULEMAKING AUTHORITY.—The department has the authority to adopt ~~shall promulgate such rules pursuant to chapter 120 to implement as may be necessary to carry out the provisions of~~ this section.

Section 14. Paragraph (b) of subsection (5) of section 501.605, Florida Statutes, 1996 Supplement, is amended to read:

501.605 Licensure of commercial telephone sellers.—

(5) An application filed pursuant to this part must be verified and accompanied by:

(b) ~~A fee for licensing in the amount of, to be set by rule of the department, sufficient to cover the administrative costs of this part, but not to exceed \$1,500. The fee shall be deposited into the General Inspection Trust Fund.~~

Section 15. Paragraphs (d) and (e) of subsection (1) and paragraph (b) of subsection (2) of section 501.607, Florida Statutes, are amended to read:

501.607 Licensure of salespersons.—

(1) An applicant for a license as a salesperson must submit to the department, in such form as it prescribes, a written application for a license. The application must set forth the following information:

(d) Whether the applicant, regardless of conviction, has previously been arrested for, convicted or found guilty of, has entered a plea of guilty or a plea of nolo contendere to, or is under indictment or information for, a felony and, if so, the nature of the felony. ~~Conviction includes a finding of guilt where adjudication has been withheld.~~

(e) Whether the applicant, regardless of adjudication, has previously been convicted or found guilty of, has entered a plea of guilty or a plea of nolo contendere to, or is under indictment or information for, racketeering or any offense involving fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property. ~~Conviction includes a finding of guilt where adjudication has been withheld.~~

(2) An application filed pursuant to this section must be verified and be accompanied by:

(b) A fee for licensing in the amount of, to be set by rule of the department, sufficient to cover the administrative costs of this part, but not to exceed \$50 per salesperson. The fee shall be deposited into the General Inspection Trust Fund. The fee for licensing may be paid after the application is filed, but must be paid within 14 days after the applicant begins work as a salesperson.

Section 16. Section 501.612, Florida Statutes, 1996 Supplement, is amended to read:

501.612 Grounds for denial of licensure.—

(1) The department may enter an order directing that one or more of the actions set forth in subsection (2) be taken if the department finds that a commercial telephone seller or salesperson or any person applying for licensure as a commercial telephone seller or salesperson, including, but not limited to, owners, operators, officers, directors, partners, or other individuals engaged in the management activities of a business entity deny licensure to any applicant who:

(a) Has, regardless of adjudication, been convicted or found guilty of, or has entered a plea of guilty or a plea of nolo contendere to, racketeering or any offense involving fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property, or any other crime involving moral turpitude; ~~Conviction includes a finding of guilt where adjudication has been withheld or where a plea of nolo contendere has been entered;~~

(b) Has, regardless of adjudication, been convicted or found guilty of, or has entered a plea of guilty or a plea of nolo contendere to, any felony;

(c)(b) Has had entered against him or any business for which he has worked or been affiliated, an injunction, a temporary restraining order, or

a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property or the use of any untrue or misleading representation in an attempt to sell or dispose of real or personal property or the use of any unfair, unlawful, or deceptive trade practice;

~~(d)~~(e) Is subject to or has worked or been affiliated with any company which is, or ever has been, subject to any injunction, temporary restraining order, or final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, or any restrictive court order relating to a business activity as the result of any action brought by a governmental agency, including any action affecting any license to do business or practice an occupation or trade;

~~(e)~~(d) Has at any time during the previous 7 years filed for bankruptcy, been adjudged bankrupt, or been reorganized because of insolvency;

~~(f)~~(e) Has been a principal, director, officer, or trustee of, or a general or limited partner in, or had responsibilities as a manager in, any corporation, partnership, joint venture, or other entity that filed the bankruptcy, was adjudged bankrupt, or was reorganized because of insolvency within 1 year after the person held that position;

~~(g)~~(f) Has been previously convicted of or found to have been acting as a salesperson or commercial telephone seller without a license or whose licensure has previously been refused, revoked, or suspended in any jurisdiction;

~~(h)~~(g) Falsifies or willfully omits any material information asked for in any the application, document, or record required to be submitted or retained under this part; ~~or~~

~~(i)~~ Makes a material false statement in response to any request or investigation by the department or the state attorney;

~~(j)~~ Refuses or fails, after notice, to produce any document or record or disclose any information required to be produced or disclosed under this part or the rules of the department;

~~(k)~~ Is not of good moral character; or

~~(l)~~(h) Otherwise violates or is operating in violation of any of the provisions of this part or of the rules adopted or orders issued thereunder.

(2) Upon a finding as set forth in subsection (1), the department may enter an order:

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

(b) Imposing an administrative fine not to exceed \$10,000 for each act or omission which constitutes a violation under this part.

(c) Directing that the person cease and desist specified activities.

(d) Refusing to issue or renew or revoking or suspending a license.

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

~~(3)(2) The administrative proceedings which could result in entry of an order under subsection (2) shall be conducted. An applicant may appeal the denial or nonrenewal of a license by requesting in writing, within 30 days of receipt of the notice of denial or nonrenewal, a hearing. Said hearing shall be conducted in accordance with the provisions of chapter 120 and presided over by a hearing officer designated by the Department of Agriculture and Consumer Services. When any hearing officer conducts a hearing pursuant to the provisions of chapter 120 with respect to the issuance of a license by the Department of Agriculture and Consumer Services, the hearing officer shall submit his recommendation order to the Department of Agriculture and Consumer Services, which shall thereupon issue a final order of the Department of Agriculture and Consumer Services in accordance with the provisions of chapter 120.~~

Section 17. Section 501.626, Florida Statutes, is amended to read:

501.626 Rulemaking power.—The department has the authority to adopt ~~shall promulgate rules pursuant to chapter 120~~ to implement and carry out the provisions of this part.

Section 18. Paragraph (b) of subsection (5) of section 501.925, Florida Statutes, is amended to read:

501.925 Used watches; sales regulated.—

(5) A watch shall be deemed to be used if:

(b) Its case serial numbers or movement numbers or other distinguishing numbers or identification marks are ~~shall be~~ erased, defaced, removed, altered or covered; however, a watch will not be deemed used if such numbers or marks are erased, defaced, removed, altered, or covered by any person, firm, partnership, association, or corporation engaged in the business of selling watches who bought or acquired such watch for resale, but not for his use or the use of another, from an authorized dealer who bought or acquired such watch directly from its manufacturer, wholesaler, or distributor; or

Section 19. Paragraphs (t) and (u) are added to subsection (2), paragraph (f) is added to subsection (3), paragraph (a) of subsection (4) and paragraph (b) of subsection (7) are amended, and subsection (22) is added to section 539.001, Florida Statutes, 1996 Supplement, to read:

539.001 The Florida Pawnbroking Act.—

(2) DEFINITIONS.—As used in this section, the term:

(t) “Beneficial owner” means a person who does not have title to property but has rights in the property which are the normal incident of owning the property.

(u) “Operator” means a person who has charge of a corporation or company and has control of its business, or of its branch establishments, divisions, or departments, and who is vested with a certain amount of discretion and independent judgment.

(3) LICENSE REQUIRED.—

(f) Any person applying for or renewing a local occupational license to engage in business as a pawnbroker must exhibit a current license from the agency before the local occupational license may be issued or reissued.

(4) ELIGIBILITY FOR LICENSE.—

(a) To be eligible for a pawnbroker’s license, an applicant must:

1. Be of good moral character;

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

3. Not have been convicted of, or found guilty of, or pled guilty or nolo contendere to, regardless of adjudication, a felony within the last 10 years and not be acting as a beneficial owner for someone who has been convicted of, or found guilty of, or pled guilty or nolo contendere to, regardless of adjudication, a felony within the last 10 years; and

4. Not have been convicted of, or found guilty of, or pled nolo contendere to, regardless of adjudication, a crime that the agency finds directly relates

to the duties and responsibilities of a pawnbroker within the last 10 years, and not be acting as a beneficial owner for someone who has been convicted, of, or found guilty of, or pled guilty or nolo contendere to, regardless of adjudication, a crime that the agency finds directly relates to the duties and responsibilities of a pawnbroker within the last 10 years.

(7) ORDERS IMPOSING PENALTIES.—

(b) Upon a finding as set forth in paragraph (a), the agency may enter an order doing one or more of the following:

1. Issuing a notice of noncompliance pursuant to s. 120.695.

2.1. Imposing an administrative fine not to exceed \$5,000 for each act which constitutes a violation of this section or a rule or an order.

3.2. Directing that the pawnbroker cease and desist specified activities.

4.3. Refusing to license or revoking or suspending a license.

5.4. Placing the licensee on probation for a period of time, subject to such conditions as the agency may specify.

~~5.— Issuing a letter of concern.~~

(22) RULEMAKING AUTHORITY.—The department has authority to adopt rules pursuant to chapter 120 to implement the provisions of this section.

Section 20. Paragraph (a) of subsection (1) of section 559.801, Florida Statutes, is amended to read:

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

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

1. That the seller or person or entity affiliated with or referred by the seller will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases, currency or card operated equipment, or other similar devices or currency-operated amusement machines or devices on premises neither owned nor leased by the purchaser or seller;

2. That the seller will purchase any or all products made, produced, fabricated, grown, bred, or modified by the purchaser using in whole or in part the supplies, services, or chattels sold to the purchaser;

3. That the seller guarantees in writing that the purchaser will derive income from the business opportunity which exceeds the price paid or rent charged for the business opportunity or that the seller will refund all or part

of the price paid or rent charged for the business opportunity, or will repurchase any of the products, equipment, supplies, or chattels supplied by the seller, if the purchaser is unsatisfied with the business opportunity; or

4. That the seller will provide a sales program or marketing program that will enable the purchaser to derive income from the business opportunity, except that this paragraph does not apply to the sale of a sales program or marketing program made in conjunction with the licensing of a trademark or service mark that is registered under the laws of any state or of the United States.

For the purpose of subparagraph 1., the term “assist the purchaser in finding locations” means, but is not limited to, supplying the purchaser with names of locator companies, contracting with the purchaser to provide assistance or supply names, or collecting a fee on behalf of or for a locator company.

Section 21. Paragraph (c) of subsection (11) of section 559.803, Florida Statutes, is amended to read:

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

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

(c) Is subject to any currently effective state or federal agency or court injunctive or restrictive order, or has been subject to any administrative action in which an order by a governmental agency was rendered, or is a party to a proceeding currently pending in which such order is sought,

relating to or affecting business opportunities activities or the business opportunity seller-purchaser relationship or involving fraud (including violation of any franchise or business opportunity law or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade.

Such statement shall set forth the identity and location of the court or agency; the date of conviction, judgment, or decision; the penalty imposed; the damages assessed; the terms of settlement or the terms of the order; and the date, nature, and issuer of each such order or ruling. A business opportunity seller may include a summary opinion of counsel as to any pending litigation, but only if counsel's consent to the use of such opinion is included in the disclosure statement.

Section 22. Subsection (1) of section 559.805, Florida Statutes, is amended to read:

559.805 Filings with the department; disclosure of advertisement identification number.—

(1) Every seller of a business opportunity shall annually file with the department a copy of the disclosure statement required by s. 559.803 prior to placing an advertisement or making any other representation designed to offer to, sell to, or solicit an offer to buy a business opportunity from a prospective purchaser in this state and shall update this filing by reporting as any material change in the required information within 30 days after the material change occurs, but not less frequently than annually. An advertisement is not placed in the state merely because the publisher circulates, or there is circulated on his behalf in the state, any bona fide newspaper or other publication of general, regular, and paid circulation which has had more than two-thirds of its circulation during the past 12 months outside the state or because a radio or television program originating outside the state is received in the state. If the seller is required by s. 559.807 to provide a bond or establish a trust account or guaranteed letter of credit, he shall contemporaneously file with the department a copy of the bond, a copy of the formal notification by the depository that the trust account is established, or a copy of the guaranteed letter of credit. Every seller of a business opportunity shall file with the department a list of independent agents who will engage in the offer or sale of business opportunities on behalf of the seller in this state. This list must be kept current and shall include the following information: name, home and business address, telephone number, present employer, social security number, and birth date. No person shall be allowed to offer or sell business opportunities unless the required information has been provided to the department.

Section 23. Subsection (1) of section 559.811, Florida Statutes, is amended, and subsection (8) is added to said section to read:

559.811 Contracts to be in writing; form; provisions.—

(1) Every business opportunity contract shall be in writing, and a copy shall be given to the purchaser at least 3 working days before signing 72 hours prior to the time he signs the contract.

Section 24. Subsection (2) of section 559.813, Florida Statutes, is amended, and subsection (8) is added to said section, to read:

559.813 Remedies; enforcement.—

(2)(a) The department may enter an order imposing one or more of the penalties set forth in paragraph (b) if the department finds that a seller or any of the seller's principal officers or agents:

1. Violated or is operating in violation of any of the provisions of this part or of the rules adopted or orders issued thereunder;

2. Made a material false statement in any application, document, or record required to be submitted or retained under this part;

3. Refused or failed, after notice, to produce any document or record or disclose any information required to be produced or disclosed under this part or the rules of the department;

4. Made a material false statement in response to any request or investigation by the department, the Department of Legal Affairs, or the state attorney; or

5. Has intentionally defrauded the public through dishonest or deceptive means.

(b) Upon a finding as set forth in paragraph (a), the department may enter an order doing one or more of the following:

1. Issuing a notice of noncompliance pursuant to s. 120.695.

2. Imposing an administrative fine not to exceed \$5,000 per violation for each act which constitutes a violation of this part or a rule or order.

3. Directing that the seller or its principal officers or agents cease and desist specified activities.

4. Refusing to issue or revoking or suspending an advertisement identification number.

5. Placing the registrant on probation for a period of time, subject to such conditions as the department may specify.

(c) The administrative proceedings which could result in the entry of an order imposing any of the penalties specified in paragraph (b) shall be conducted in accordance with chapter 120. If a business opportunity seller uses untrue or misleading statements in the sale of a business opportunity, fails to give the proper disclosures, fails to include the contract provisions, fails to post the bond as required in this part, or violates any other provision of this part, the department may order the seller to cease and desist selling business opportunities until the seller complies with the provisions of this part. The department also may impose an administrative fine not to exceed \$5,000 per violation.

(8) The department has the authority to adopt rules pursuant to chapter 120 to implement this part.

Section 25. Subsections (6), (7), and (8) of section 559.903, Florida Statutes, are amended to read:

559.903 Definitions.—As used in this act:

(6) “Motor vehicle” means any automobile, truck, bus, recreational vehicle, motorcycle, motor scooter, or other motor powered vehicle, but does not include trailers, mobile homes, travel trailers, or trailer coaches without independent motive power, or watercraft or aircraft.

(7) “Motor vehicle repair shop” means any person who, for compensation, engages or attempts to engage in the repair of motor vehicles owned by other persons and includes, but is not limited to: mobile motor vehicle repair shops, motor vehicle and recreational vehicle dealers; garages; service stations; self-employed individuals; truck stops; paint and body shops; brake, muffler, or transmission shops; and shops doing upholstery or glass work. Any person who engages solely in the maintenance or repair of the coach portion of a recreational vehicle is not a motor vehicle repair shop.

(8) “Place of business” means a physical place where the business of motor vehicle repair is conducted, including any vehicle constituting a mobile motor vehicle repair shop from which the business of motor vehicle repair is conducted.

Section 26. Section 559.904, Florida Statutes, is amended to read:

559.904 Motor vehicle repair shop registration; application; exemption.—

(1) Each motor vehicle repair shop engaged or attempting to engage in the business of motor vehicle repair work must register with the department prior to doing business in this state. The application for registration must be on a form provided by the department and must include at least the following information:

(a) The name of the applicant.

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

(c) The business address at which the applicant performs repair work or in the case of a mobile motor vehicle repair shop, the home address of the owner, if different from the business address.

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

(e) Number of employees which the applicant intends to employ or which are currently employed.

(2) Any motor vehicle repair shop maintaining more than one place of business may file a single application annually, which, along with the other

information required by this part, clearly indicates the location of and the individual in charge of each facility or in the case of a mobile motor vehicle repair shop, the home address of the owner, if different from the business address. In such case, fees shall be paid for each place of business location.

(3) Each application for registration must be accompanied by a registration fee set forth as follows:

(a) If the place of business only performed "minor repair service": \$25.

(b)(a) If the place of business has 1 to 5 employees: \$50 \$25.

(c)(b) If the place of business has 6 to 10 employees: \$150.

(d)(c) If the place of business has 11 or more employees: \$300.

(4) No annual registration fee is required for any motor vehicle repair shop which has a local municipal or county license issued pursuant to an ordinance containing standards which the department determines are at least equal to the requirements of this part, or for any motor vehicle dealer licensed pursuant to chapter 320.

(5) The department shall issue to each applicant a registration certificate in the form and size as prescribed by the department in accordance with s. 120.60. In the case of an applicant with more than one place of business, the department shall issue a registration certificate for each place of business. The certificate must show at least the name and address of the motor vehicle repair shop and the registration number for that place of business. In the case of a mobile motor vehicle repair shop, the certificate must show the home address of the owner, if different from the business address.

(6) Any affidavit of exemption proof of filing certificate, issued by the department prior to July 1, 1997, to a motor vehicle repair shop conducting only minor repair services shall be valid until its expiration. Each motor vehicle repair shop which performs only "minor repairs" is exempt from the provisions of subsections (1)-(5); however, any motor vehicle repair shop claiming to be exempt shall annually file with the department an affidavit of exemption accompanied by a \$10 fee prior to engaging in business in this state. The affidavit of exemption shall be on forms prescribed by the department and shall include the name of the business and the business address where minor repair is performed. Any motor vehicle repair shop maintaining more than one business, each of which performs only minor repairs, may file a single affidavit of exemption annually, which, along with the other information required by this part, clearly indicates the location and individual in each place of business. In such case, fees shall be paid for each location. Notwithstanding any exemption from the provisions of subsections (1)-(5), all other provisions of this part shall apply to any motor vehicle repair shop claiming to perform only minor repairs.

(7) Any person applying for or renewing a local occupational license on or after October 1, 1993, to engage in business as a motor vehicle repair shop must exhibit an active registration certificate or active affidavit of exemption proof of filing certificate from the department or a copy of the affidavit of exemption before the local occupational license may be issued or renewed.

(8) Each registration ~~and affidavit of exemption~~ must be renewed annually.

(9) No annual registration application or fee is required for an individual with no employees and no established place of business. In the case of a mobile motor vehicle repair shop, the established place of business shall be considered the home address of the owner, if different than the business address.

(10) The department may deny or refuse to renew the registration of a motor vehicle repair shop based upon a determination that the motor vehicle repair shop, or any of its directors, officers, owners, or general partners:

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

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

(c) Has had against him any civil, criminal, or administrative adjudication in any jurisdiction, based upon conduct involving fraud, dishonest dealing, or any violation of this part; or

(d) Has had a judgment entered against him in any action brought by the department or the state attorney pursuant to ss. 501.201-501.213 or this part.

Section 27. Subsections (1) and (2) of section 559.905, Florida Statutes, are amended to read:

559.905 Written motor vehicle repair estimate and disclosure statement required.—

(1) When any customer requests a motor vehicle repair shop to perform repair work on a motor vehicle, the cost of which repair work will exceed \$100 \$50 to the customer, the shop shall prepare a written repair estimate, which is a form setting forth the estimated cost of repair work, including diagnostic work, before effecting any diagnostic work or repair. The written repair estimate shall also include the following items:

(a) The name, address, and telephone number of the motor vehicle repair shop.

(b) The name, address, and telephone number of the customer.

(c) The date and time of the written repair estimate.

(d) The year, make, model, odometer reading, and license tag number of the motor vehicle.

(e) The proposed work completion date.

(f) A general description of the customer’s problem or request for repair work or service relating to the motor vehicle.

(g) A statement as to whether the customer is being charged according to a flat rate or an hourly rate, or both.

(h) The estimated cost of repair.

(i) The charge for making a repair price estimate or, if the charge cannot be predetermined, the basis on which the charge will be calculated.

(j) The customer’s intended method of payment.

(k) The name and telephone number of another person who may authorize repair work, if the customer desires to designate such person.

(l) A statement indicating what, if anything, is guaranteed in connection with the repair work and the time and mileage period for which the guarantee is effective.

(m) A statement allowing the customer to indicate whether replaced parts should be saved for inspection or return.

(n) A statement indicating the daily charge for storing the customer’s motor vehicle after the customer has been notified that the repair work has been completed. However, no storage charges shall accrue or be due and payable for a period of 3 working days from the date of such notification.

(2) If the cost of repair work will exceed \$100 \$50, the shop shall present to the customer a written notice conspicuously disclosing, in a separate, blocked section, only the following statement, in capital letters of at least 12-point type:

PLEASE READ CAREFULLY, CHECK ONE OF THE STATEMENTS BELOW, AND SIGN:

I UNDERSTAND THAT, UNDER STATE LAW, I AM ENTITLED TO A WRITTEN ESTIMATE IF MY FINAL BILL WILL EXCEED \$100 \$50.

.... I REQUEST A WRITTEN ESTIMATE.

.... I DO NOT REQUEST A WRITTEN ESTIMATE AS LONG AS THE REPAIR COSTS DO NOT EXCEED \$.... THE SHOP MAY NOT EXCEED THIS AMOUNT WITHOUT MY WRITTEN OR ORAL APPROVAL.

.... I DO NOT REQUEST A WRITTEN ESTIMATE.

SIGNED

DATE

Section 28. Subsection (4) of section 559.921, Florida Statutes, is amended to read:

559.921 Remedies.—

(4)(a) The department may enter an order imposing one or more of the penalties set forth in paragraph (b) if the department finds that a motor vehicle repair shop:

1. Violated or is operating in violation of any of the provisions of this part or of the rules adopted or orders issued thereunder;

2. Made a material false statement in any application, document, or record required to be submitted or retained under this part;

3. Refused or failed, or any of its principal officers has refused or failed, after notice, to produce any document or record or disclose any information required to be produced or disclosed under this part or the rules of the department;

4. Made a material false statement in response to any request or investigation by the department, the Department of Legal Affairs, or the state attorney; or

5. Has intentionally defrauded the public through dishonest or deceptive means.

(b) Upon a finding as set forth in paragraph (a), the department may enter an order doing one or more of the following:

1. Issuing a notice of noncompliance pursuant to s. 120.695.

2. Imposing an administrative fine not to exceed \$1,000 per violation for each act which constitutes a violation of this part or a rule or order.

3. Directing that the motor vehicle repair shop cease and desist specified activities.

4. Refusing to register or revoking or suspending a registration.

5. Placing the registrant on probation for a period of time, subject to such conditions as the department may specify.

(c) The administrative proceedings which could result in the entry of an order imposing any of the penalties specified in paragraph (b) shall be conducted in accordance with chapter 120. The department may enforce the provisions of this part by imposing administrative fines not to exceed \$1,000 per violation or by taking action to suspend or revoke the registration of a motor vehicle repair shop when:

~~(a) The business has a pattern of failing to comply with or violating the provisions of this part;~~

~~(b) The business has filed an application in which any material fact is omitted or falsely stated; or~~

~~(c) The business has intentionally defrauded the public through dishonest or deceptive means.~~

~~All hearings under this subsection shall be conducted in accordance with chapter 120.~~

Section 29. Section 559.92201, Florida Statutes, is created to read:

559.92201 Rulemaking power.—The department has the authority to adopt rules pursuant to chapter 120 to implement this part.

Section 30. Paragraph (b) of subsection (1) of section 559.9221, Florida Statutes, is amended to read:

559.9221 Motor Vehicle Repair Advisory Council.—The Motor Vehicle Repair Advisory Council is created to advise and assist the department in carrying out this part.

(1) The membership of the council may not exceed 11 members appointed by the Commissioner of Agriculture.

(b) One member of the council must be chosen from persons already engaged solely in minor repair service ~~who are eligible to submit an affidavit of exemption and who submit such affidavit by October 1, 1993. Thereafter, the minor repair shop member of this council must file an annual affidavit of exemption pursuant to this part.~~

Section 31. Subsection (10) of section 559.927, Florida Statutes, is amended to read:

559.927 Definitions.—For the purposes of this part, the term:

(10) “Seller of travel” means any resident or nonresident person, firm, corporation, or business entity who offers for sale, directly or indirectly, at wholesale or retail, prearranged travel, tourist-related services, or tour-guide services for individuals or groups, including, but not limited to, through vacation or tour packages, or through vacation certificates in exchange for a fee, commission, or other valuable consideration. The term includes any business entity offering membership in a travel club or travel services for an advance fee or payment, even if no travel contracts or certificates or vacation or tour packages are sold by the business entity.

Section 32. Subsection (2) of section 559.928, Florida Statutes, is amended, subsections (3), (4), (5), (6), (7), and (8) are renumbered as subsections (4), (5), (6), (7), (8), and (9), respectively, and a new subsection (3) is added to said section, to read:

559.928 Registration.—

(2) Registration fees shall be ~~in an amount equal to the costs to the department of implementing and enforcing this part. However, such fee may not be greater than \$300 per year per registrant.~~ All amounts collected shall be deposited by the Treasurer to the credit of the General Inspection Trust Fund of the Department of Agriculture and Consumer Services pursuant to s. 570.20, for the sole purpose of administration of this part.

(3) Each independent agent shall annually file an affidavit with the department prior to engaging in business in this state. This affidavit must include the independent agent’s full name, legal business or trade name,

mailing address, business address, telephone number, social security number, and the name or names and addresses of each seller of travel represented by the independent agent. A letter evidencing proof of filing must be issued by the department and must be prominently displayed in the independent agent's primary place of business. As used in this subsection, the term "independent agent" means a person who represents a seller of travel by soliciting persons on its behalf; who has a written contract with a seller of travel which is operating in compliance with this part and any rules adopted thereunder; who does not receive a fee, commission, or other valuable consideration directly from the purchaser for the seller of travel; who does not at any time have any unissued ticket stock or travel documents in his or her possession; and who does not have the ability to issue tickets, vacation certificates, or any other travel document. The term "independent agent" does not include an affiliate of the seller of travel, as that term is used in s. 559.935(3), or the employees of the seller of travel or of such affiliates.

Section 33. Subsection (1) of section 559.929, Florida Statutes, 1996 Supplement, is amended to read:

559.929 Security requirements.—

(1) An application must be accompanied by a performance bond in an amount set by the department not to exceed \$25,000, or in the an amount of set by the department not to exceed \$50,000 if the seller of travel is offering vacation certificates. The surety on such bond shall be a surety company authorized to do business in the state.

Section 34. Section 559.9295, Florida Statutes, is amended to read:

559.9295 Submission of vacation certificate documents.—Sellers of travel who offer vacation certificates must submit and disclose to the department with the application for registration, and any time such document is changed, but prior to the sale of any vacation certificate, the following materials:

(1) A copy of the contract by which the rights, obligations, benefits, and privileges resulting from purchase of a vacation certificate are established.

(2) A copy of each promotional brochure, pamphlet, form letter, registration form, or any other written material disseminated in connection with the advertising, promotion, or sale of any vacation certificate.

(3) A verbatim script of each radio, television, or movie, or other similar advertisement, broadcast to the public in connection with the advertising, promotion, or sale of any vacation certificates.

(4) A transcript of any standard verbal sales presentation utilized in connection with the advertising, promotion, or sale of vacation certificates.

(5) A copy of all rules, regulations, conditions, or limitations upon the use of, or obtaining reservations for the use of, accommodations or facilities available pursuant to the vacation certificate.

(6) A copy of a written authorization for the use of any registered trademark, trade name, or trade logo utilized in promotional brochures, pamphlets, form letters, registration forms, or other written materials disseminated in connection with the advertising, promotion, or sale of vacation certificates from the holder of each trademark, trade name, or trade logo so used.

(7) A complete copy of the original of each testimonial letter from previous vacation certificate purchasers utilized in advertisements disseminated in connection with advertising, promotion, or sale of vacation certificates.

(8) Where discount or complimentary coupons or tickets are to be provided to purchasers, a copy of such ticket or coupon which shall include a statement of the names and addresses of businesses where honored, the goods, services, or amenities provided, and any additional charges, limitations, or conditions.

(9) Where other goods, services, or amenities are provided to the purchaser in addition to the right to use accommodations or facilities, a description of such goods, services, or amenities, including any charges, limitations, or conditions, and a statement of the names and addresses of business entities which are to provide or honor them.

(10) A statement of the number of certificates to be issued and the date of their expiration.

(11) A copy of the vacation certificate and its component parts, including, but not limited to, any registration card, form letter, reservation form, confirmation form, and lodging directory.

(12) A copy of any agreement between the seller and business entities providing accommodations or facilities to purchasers.

(13) A copy of any agreement between the seller and each business entity providing or honoring discount or complimentary coupons or tickets, or providing other goods, services, or amenities to the purchaser.

(14) A listing of the full name, address, and telephone number of each person through which the distribution and sale of vacation certificates is to be carried out, including the number of vacation certificates allocated or sold to each such person and the name and address of a Florida registered agent for service of process.

(15) A financial statement prepared by an independent certified public accountant in accordance with generally accepted accounting principles or the most recently filed federal income tax return. Such statement or return shall be submitted annually at the close of each fiscal year. A seller which has not yet begun operations shall submit a balance sheet prepared by an independent certified public accountant in accordance with generally accepted auditing principles in lieu of an initial financial statement, thereafter annually submitting a financial statement or federal income tax return at the close of the fiscal year.

(16) An annual submission fee not to exceed \$100.

(17) Within 10-working days after receipt of any materials submitted subsequent to filing an initial registration application or any annual renewal thereof, the department shall determine whether such materials are adequate to meet the requirements of this section. The department shall notify the seller of travel that materials submitted are in substantial compliance, or shall notify the seller of travel of any specific deficiencies. If the department fails to notify the seller of travel of its determination within the period specified in this paragraph, the materials shall be deemed in compliance; however, the failure of the department to send notification in either case will not relieve the seller of travel from the duty of complying with this section. Neither the submission of these materials nor the department's response implies approval, recommendation, or endorsement by the department or that the contents of said materials have been verified by the department.

Section 35. Paragraph (g) is added to subsection (11) of section 559.9335, Florida Statutes, subsections (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), and (23), are renumbered as subsections (14), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), and (25), respectively, and new subsections (12) and (13) are added to said section, to read:

559.9335 Violations.—It is a violation of this part for any person:

(11) To misrepresent or deceptively represent:

(g) That the recipient of an advertisement or promotional materials is a winner, or has been selected, or is otherwise being involved in a select group for receipt, of a gift, award, or prize, unless this fact is the truth.

(12) To fail to inform a purchaser of a nonrefundable cancellation policy prior to the seller of travel accepting any fee, commission, or other valuable consideration.

(13) To fail to include, when offering to sell a vacation certificate, in any advertisement or promotional material, the following statement: "This is an offer to sell travel."

Section 36. Subsections (1) and (3) of section 559.9355, Florida Statutes, are amended to read:

559.9355 Administrative remedies; penalties.—

(1) The department may enter an order doing one or more of the following if the department finds that a person seller of travel has violated or is operating in violation of any of the provisions of this part or the rules or orders issued thereunder:

(a)(e) Issuing a notice of noncompliance pursuant to s. 120.695 of a letter of concern.

(b)(a) Imposing an administrative fine not to exceed \$5,000 for each act or omission.

~~(c)(b)~~ Directing that the person seller of travel cease and desist specified activities.

~~(d)(e)~~ Refusing to register or canceling or suspending a registration.

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

(f) Canceling an exemption granted under s. 559.935.

(3) The department has the authority to adopt ~~may adopt any reasonable rules rule pursuant to chapter 120 to implement to carry out the provisions~~ of this section and ss. 559.928, 559.929, 559.934, and 559.935.

Section 37. Section 559.8015, Florida Statutes, is hereby repealed.

Section 38. This act shall take effect July 1, 1997.

Became a law without the Governor's approval May 30, 1997.

Filed in Office Secretary of State May 29, 1997.