

House Bill No. 1061

An act relating to consumer protection; amending s. 496.404, F.S.; revising definitions; amending s. 496.405, F.S.; providing additional information to be included within initial registration statements for charitable organizations and sponsors; prohibiting an employee of a charitable organization or sponsor from soliciting contributions on behalf of the charitable organization or sponsor under specified conditions; amending s. 496.409, F.S.; revising and providing additional information to be included within application for registration or renewal of registration as a professional fundraising consultant; prohibiting a person from acting as a professional fundraising consultant under specified circumstances; prohibiting the employment of specified persons by professional fundraising consultants; amending s. 496.410, F.S.; revising and providing additional information to be included within application for registration or renewal of registration as a professional solicitor; revising provisions which prohibit a person from acting as a professional solicitor; prohibiting the employment of specified persons by professional solicitors; amending s. 496.420, F.S.; revising provisions relating to civil remedies and enforcement; amending s. 501.025, F.S.; providing that specified mortgages do not constitute an evidence of indebtedness for purposes of a buyer's right to cancel a home solicitation sale; amending s. 501.604, F.S.; providing additional exclusions from the exemptions to pt. IV of ch. 501, F.S., the Florida Telemarketing Act; amending s. 501.616, F.S.; providing additional unlawful practices with respect to telephone solicitation; amending s. 539.001, F.S.; revising license requirements under the Florida Pawnbroking Act; revising conditions of eligibility for license; requiring specified persons to file certain documentation upon application for license; requiring the submission of fingerprints with each initial application for licensure; requiring the Division of Consumer Services to submit fingerprints of each applicant for licensure to the Florida Department of Law Enforcement; requiring the Florida Department of Law Enforcement to forward the fingerprints to the Federal Bureau of Investigation; providing an additional condition under which a pawnbroker license may be suspended or revoked; providing that specified unintentional errors in required applications, documents, or records are not subject to criminal penalties; amending s. 559.803, F.S.; revising provisions relating to required information contained in disclosure statements with respect to the sale or lease of business opportunities; amending s. 559.805, F.S.; requiring a seller of business opportunities to file additional information with the department; reenacting s. 559.815, F.S.; providing a penalty; amending s. 559.903, F.S.; revising the definition of "motor vehicle" for the purposes of pt. IX of ch. 559, F.S., relating to repair of motor vehicles; amending s. 559.904, F.S.; requiring the department to post a specified sign at any motor vehicle repair shop that has had its registration suspended or revoked or that has been determined to be operating without a registration; providing a second degree misdemeanor

penalty for defacing or removing such a sign, for operating without a registration, or operating with a revoked or suspended registration; authorizing the department to impose administrative sanctions; amending s. 627.481, F.S.; prescribing conditions under which a subunit of an organized domestic or foreign nonstock corporation or an unincorporated charitable trust may enter into annuity agreements; amending s. 741.0305, F.S.; correcting a cross reference; amending s. 427.802, F.S.; providing definitions; amending s. 427.803, F.S.; requiring the manufacturer to make repairs necessary to conform the device to the warranty; providing notice of the dealer's and manufacturer's address and telephone number; providing procedures for filing claims; amending s. 427.804, F.S.; allowing consumers to submit disputes to the Department of Agriculture and Consumer Services; authorizing the department to investigate complaints; creating s. 427.8041, F.S.; providing for registration of dealers, for fees, and for application procedures; providing grounds for refusal or denial of registration; requiring dealers to allow department personnel to enter their places of business; authorizing the department to impose penalties; authorizing the department or the state attorney to bring civil actions for violations of the act; providing for fees and fines collected to be deposited into the General Inspection Trust Fund; authorizing dealers to collect a fee from the consumer at the time of sale or lease of a device; allowing consumers to bring a civil action for violation of the act; requiring recordkeeping and retention of records; providing for rulemaking; providing an appropriation; providing effective dates.

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

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

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

(5) “Contribution” means the promise, pledge, or grant of any money or property, financial assistance, or any other thing of value in response to a solicitation. “Contribution” includes, in the case of a charitable organization or sponsor offering goods and services to the public, the difference between the direct cost of the goods and services to the charitable organization or sponsor and the price at which the charitable organization or sponsor or any person acting on behalf of the charitable organization or sponsor resells those goods or services to the public. “Contribution” does not include bona fide fees, dues, or assessments paid by members, provided that membership is not conferred solely as consideration for making a contribution in response to a solicitation. “Contribution” also does not include funds obtained by a charitable organization or sponsor pursuant to government grants or contracts, or obtained as an allocation from a United Way organization that is duly registered with the department or received from an organization that is exempt from federal income taxation under s. 501(a) of the Internal

Revenue Code and described in s. 501(c) of the Internal Revenue Code that is duly registered with the department.

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

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

(a) Any oral or written request;

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

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

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

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

Section 2. Paragraph (d) of subsection (2) of section 496.405, Florida Statutes, 1998 Supplement, is amended, and a new subsection (8) is added to said section, to read:

496.405 Registration statements by charitable organizations and sponsors.—

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

(d) A statement of whether:

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

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

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

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

5. The charitable organization or sponsor or any of its officers, directors, trustees, or employees, regardless of adjudication, has been convicted of, or found guilty of, or pled guilty or nolo contendere to, or has been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, any felony or any crime involving fraud, theft, larceny, embezzlement, fraudulent conversion, misappropriation of property, or any crime arising from the conduct of a solicitation for a charitable organization or sponsor within the last 10 years and, if so, the name of such person, the nature of the offense, the date of the offense, the court having jurisdiction in the case, the date of conviction or other disposition, and the disposition of the offense.

6. The charitable organization or sponsor or any of its officers, directors, trustees, or employees has been enjoined from violating any law relating to a charitable solicitation, and, if so, the name of such person, the date of the injunction, and the court issuing the injunction.

(8) No charitable organization or sponsor shall knowingly allow any of its officers, directors, trustees, or employees to solicit contributions on behalf of such charitable organization or sponsor if such officer, director, trustee, or employee has, regardless of adjudication, been convicted of, or found guilty of, or pled guilty or nolo contendere to, or has been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, any felony within the last 10 years or any crime within the last 10 years involving fraud, theft, larceny, embezzlement, fraudulent conversion, misappropriation of property, or any crime arising from the conduct of a solicitation for a charitable organization or sponsor, or has been enjoined from violating any law relating to a charitable solicitation.

Section 3. Subsection (2) of section 496.409, Florida Statutes, is amended, and a new subsection (9) is added to said section, to read:

496.409 Registration and duties of professional fundraising consultant.—

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

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

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

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

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

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

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

(g) Whether the applicant or any of its officers, directors, trustees, or employees have been enjoined from violating any law relating to a charitable

solicitation and, if so, the name of such person, the date of the injunction, and the court issuing the injunction.

(9) No person may act as a professional fundraising consultant, and no professional fundraising consultant shall knowingly employ any officer, trustee, director, or employee, if such person has, regardless of adjudication, been convicted of, or found guilty of, or pled guilty or nolo contendere to, or has been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, any crime within the last 10 years involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property, or any crime arising from the conduct of a solicitation for a charitable organization or sponsor, or has been enjoined from violating any law relating to a charitable solicitation.

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

496.410 Registration and duties of professional solicitors.—

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

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

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

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

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

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

(f) A statement as to whether the applicant or any of its directors, officers, trustees, persons with a controlling interest in the applicant, or employees or agents involved in solicitation have ~~been convicted~~, within the last 10 ~~5~~ years, regardless of adjudication, been convicted of, or found guilty of, or pled guilty or nolo contendere to, or have been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, any felony and, if so, the name of such person, the nature of the offense, the date of the offense, the court having jurisdiction in the case, the date of conviction or other disposition,

~~and the disposition of the offense of any felony, or of a misdemeanor arising from the conduct of a solicitation for any charitable organization or sponsor or charitable or sponsor purpose, or been enjoined from violating a charitable solicitation law in this or any other state.~~

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

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

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

(14) No person may act as a professional solicitor, and no professional solicitor shall, to solicit for compensation, knowingly employ if such person, any officer, trustee, or director, employee, or thereof, any person with a controlling interest therein, who or any person the professional solicitor employs, engages, or procures to solicit for compensation, has, regardless of adjudication, been convicted of, or found guilty of, or pled guilty or nolo contendere to, or has been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, a felony within the last 10 years involving fraud, theft, larceny, embezzlement, fraudulent conversion, or misappropriation of property, or any crime arising from the conduct of a solicitation for a charitable organization or sponsor, or has been enjoined from violating any law relating to a charitable solicitation been convicted in the last 5 years by a court in any state of the United States of a crime arising from the conduct of a solicitation for a charitable organization or sponsor or a charitable purpose or sponsor purpose.

Section 5. Section 496.420, Florida Statutes, is 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.

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

(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.

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

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

501.025 Home solicitation sale; buyer's right to cancel.—In addition to any other right to revoke an offer, the buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase. Cancellation is evidenced by the buyer giving written notice of cancellation in person, by telegram, or by mail to the seller at the address stated in the agreement or offer to purchase. The written notice of cancellation given by mail shall be effective upon postmarking. The notice of cancellation need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale. Notice of a buyer's right to cancel must appear on every note or other evidence of indebtedness given pursuant to any home solicitation sale. For the purpose of this section, unless a mortgage also creates the buyer's promise to pay the secured debt, it is not an evidence of indebtedness.

Section 7. The introductory paragraph of section 501.604, Florida Statutes, is amended to read:

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

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

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

(3) A person who does not make the major sales presentation during the telephone solicitation and who does not intend to, and does not actually, complete or obtain provisional acceptance of a sale during the telephone solicitation, but who makes the major sales presentation and completes the sale at a later face-to-face meeting between the seller and the prospective purchaser in accordance with the home solicitation provisions in this chapter. However, if a seller, directly following a telephone solicitation, causes an individual whose primary purpose it is to go to the prospective purchaser to collect the payment or deliver any item purchased, this exemption does not apply.

(4) Any licensed securities, commodities, or investment broker, dealer, or investment adviser, when soliciting within the scope of his or her license, or any licensed associated person of a securities, commodities, or investment broker, dealer, or investment adviser, when soliciting within the scope of his or her license. As used in this section, "licensed securities, commodities, or investment broker, dealer, or investment adviser" means a person subject to license or registration as such by the Securities and Exchange Commission, by the National Association of Securities Dealers or other self-regulatory organization as defined by the Securities Exchange Act of 1934, 15 U.S.C. s. 78l, or by an official or agency of this state or of any state of the United States. As used in this section, "licensed associated person of a securities, commodities, or investment broker, dealer, or investment adviser" means any associated person registered or licensed by the National Association of Securities Dealers or other self-regulatory organization as defined by the Securities Exchange Act of 1934, 15 U.S.C. s. 78l, or by an official or agency of this state or of any state of the United States.

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

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

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

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

(c) Which provides for the sale of books, records, or videos which are not covered under paragraph (a) or paragraph (b), including continuity plans, subscription arrangements, standing order arrangements, supplements,

and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive such merchandise on a periodic basis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(16) An issuer or a subsidiary of an issuer that has a class of securities which is subject to s. 12 of the Securities Exchange Act of 1934, 15 U.S.C. s. 78l, and which is either registered or exempt from registration under paragraph (A), paragraph (B), paragraph (C), paragraph (E), paragraph (F), paragraph (G), or paragraph (H) of subsection (g)(2) of that section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

501.616 Unlawful acts and practices.—

(6) It shall be unlawful for any commercial telephone seller or salesperson to make a commercial telephone solicitation phone call before 8:00 a.m. or after 9:00 p.m. local time at the called person's location.

(7) It shall be unlawful for any commercial telephone seller or salesperson making telephonic solicitations to take any intentional action to prevent transmission of the telephone solicitor's name or telephone number to the party called when the equipment or service used by the telephone solicitor is capable of creating and transmitting the telephone solicitor's name or telephone number.

Section 9. Paragraph (c) of subsection (3), paragraph (c) of subsection (5), paragraph (a) of subsection (6), and subsection (4) of section 539.001, Florida Statutes, are amended to read:

539.001 The Florida Pawnbroking Act.—

(3) LICENSE REQUIRED.—

(c) Each license is valid for a period of 1 year unless remains in effect until it is earlier relinquished, suspended, or revoked, or expires. Each license shall be renewed annually, and each licensee shall, initially and

annually thereafter, pay to the agency a license fee of ~~not to exceed~~ \$300 for each license held. ~~If the annual license fee remains unpaid 30 days after written notice of delinquency has been given to the licensee by the agency, the license shall thereupon expire on the expiration date specified in the registration certificate.~~

(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, or not have been incarcerated within the last 10 years as a result of having previously 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 guilty or nolo contendere to, or not have been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, regardless of adjudication, a crime that involves theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, or any other fraudulent or dishonest dealing 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, or has been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, regardless of adjudication, a crime that involves theft, larceny, dealing in stolen property, receiving stolen property, burglary, embezzlement, obtaining property by false pretenses, possession of altered property, or any other fraudulent or dishonest dealing the agency finds directly relates to the duties and responsibilities of a pawnbroker within the last 10 years.

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

1. A current financial statement prepared by a Florida certified public accountant; or
2. An affidavit stating the applicant's net worth is at least \$50,000, accompanied by supporting documentation; or
3. If the applicant is a corporation, a copy of the applicant's most recently filed federal tax return.

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

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

(5) APPLICATION FOR LICENSE.—

(c) Each initial application for a license must be accompanied by a complete set of fingerprints taken by an authorized law enforcement officer, an application fee set by the agency not to exceed \$300 for, which shall include the first year's license fee, and for the first year's operation, plus the actual cost to the department for fingerprint analysis for each person subject to the eligibility requirements. The agency shall submit the fingerprints to the Department of Law Enforcement for state processing and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check owner application, to cover the costs of investigating the applicant. These fees and costs are not refundable.

(6) SUSPENSION, REVOCATION, AND SURRENDER OF LICENSE; NET WORTH REQUIREMENT.—

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

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

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

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

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

(17) CRIMINAL PENALTIES.—

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

(b) In addition to any other penalty, any person, who willfully violates this section or who willfully makes a false entry in any record specifically required by this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Clerical or recordkeeping errors such as typographical errors, scrivener's errors, regarding any document or record required by this section do not constitute a willful violation of this section, and are not subject to criminal penalties. Clerical or recordkeeping errors are subject to the administrative remedies, as provided in this Act.

Section 10. Paragraph (a) 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):

(a) Has, at any time during the previous 10 7 fiscal years, regardless of adjudication, been convicted of, or found guilty of, or pled guilty or nolo contendere to, or has been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, a felony or a crime involving a felony or pleaded nolo contendere to a felony charge if the felony involved fraud, theft, larceny, ~~(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.

Section 11. Subsections (2), (3), and (4) of section 559.805, Florida Statutes, 1998 Supplement, are renumbered as subsections (3), (4), and (5), respectively, and a new subsection (2) is added to said section to read:

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

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

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

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

Section 13. Subsection (6) of section 559.903, Florida Statutes, is 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, or special mobile equipment as defined in s. 316.003(48).

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

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

(11) The department shall post a prominent “Closed by Order of the Department” sign on any motor vehicle repair shop that has had its registration suspended or revoked. The department shall also post a sign on any motor vehicle repair shop that has been judicially or administratively determined to be operating without a registration. It is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for any person to deface such sign or remove such sign without written authorization by the department or for any motor vehicle repair shop to open for operation without a registration or to open for operation as a motor vehicle repair shop while its registration is suspended or revoked. The department may impose administrative sanctions provided for in s. 559.921(4) for violations of this subsection.

Section 15. Subsection (1) of section 627.481, Florida Statutes, is amended to read:

627.481 Requirements for certain annuity agreements.—

(1) Any duly organized domestic or foreign nonstock corporation, or any unincorporated charitable trust, if such corporation or trust

(a) Has been in active operation for at least 5 years prior thereto and has qualified as an exempt organization under the Internal Revenue Code, 26 U.S.C. s. 501(c)(3), or

(b) Has been wholly controlled for at least 10 years by a corporation or trust qualified under paragraph (a), if the subunit has been a corporation or trust for at least 2 years, and has engaged in the selling of annuity agreements authorized under this section in at least three other states without complaint,

may enter into annuity agreements with donors in accordance with this section. Such corporation or trust may receive gifts conditioned upon, or in return for, its agreement to pay an annuity to the donor or other designated beneficiary or beneficiaries and to make and carry out such annuity agreement. Annuity benefits under any such annuity agreement must be calculated to return to such corporation or trust upon the death of the annuitant a residue at least equal to one-half the original gift or other consideration for such annuity.

Section 16. Paragraph (a) of subsection (3) of section 741.0305, Florida Statutes, is amended to read:

741.0305 Marriage fee reduction for completion of premarital preparation course.—

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

1. A psychologist licensed under chapter 490.
2. A clinical social worker licensed under chapter 491.
3. A marriage and family therapist licensed under chapter 491.
4. A mental health counselor licensed under chapter 491.
5. An official representative of a religious institution which is recognized under s. 496.404(19)(20), if the representative has relevant training.

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

(b) The costs of such premarital preparation course shall be paid by the applicant.

Section 17. Effective July 1, 1999, section 427.802, Florida Statutes, is amended to read:

427.802 Definitions.—As used in this part:

(1) “Assistive technology devices” means manual wheelchairs, motorized wheelchairs, motorized scooters, voice-synthesized computer modules, optical scanners, talking software, braille printers, environmental control devices for use by a person with quadriplegia, motor vehicle adaptive transportation aids, devices that enable persons with severe speech disabilities to in effect speak, personal transfer systems, and specialty beds, including a demonstrator, that a consumer purchases or accepts transfer of in this state for use by a person with a disability.

(2) “Assistive Technology Device Warranty Act rights period” means the period ending 1 year after first delivery of the assistive technology device to the consumer or the manufacturer’s express written warranty, whichever is longer.

(3)(2) “Person with a disability” means any person who has one or more permanent physical or mental limitations that restrict his or her ability to perform the normal activities of daily living and impede his or her capacity to live independently.

(4)(3) “Assistive technology device dealer” means a business entity that is primarily engaged person who is in the business of selling or leasing of assistive technology devices. As used in this subsection, the term “primarily” means no less than 30 percent of the business entity’s gross sales in the previous fiscal year.

~~(5)~~(4) “Assistive technology device lessor” means a person who leases an assistive technology device to a consumer, or holds the lessor’s rights, under a written lease.

~~(6)~~(5) “Collateral costs” means expenses incurred by a consumer in connection with the repair of a nonconformity, including the costs of obtaining an alternative assistive technology device.

~~(7)~~(6) “Consumer” means any of the following:

(a) The purchaser of an assistive technology device, if the assistive technology device was purchased from an assistive technology device dealer or manufacturer for purposes other than resale.

(b) A person to whom the assistive technology device is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the assistive technology device.

(c) A person who may enforce the warranty.

(d) A person who leases an assistive technology device from an assistive technology device lessor under a written lease.

~~(8)~~(7) “Demonstrator” means an assistive technology device used primarily for the purpose of demonstration to the public.

(9) “Department” means the Department of Agriculture and Consumer Services.

~~(10)~~(8) “Early termination cost” means any expense or obligation that an assistive technology device lessor incurs as a result of both the termination of a written lease before the termination date set forth in that lease and the return of an assistive technology device to a manufacturer pursuant to this section. The term includes a penalty for prepayment under a financial arrangement.

~~(11)~~(9) “Early termination saving” means any expense or obligation that an assistive technology device lessor avoids as a result of both the termination of a written lease before the termination date set forth in the lease and the return of an assistive technology device to a manufacturer pursuant to this section. The term includes an interest charge that the assistive technology device lessor would have paid to finance the assistive technology device or, if the assistive technology device lessor does not finance the assistive technology device, the difference between the total amount for which the lease obligates the consumer during the period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination.

~~(12)~~(10) “Manufacturer” means a business entity that manufactures or produces assistive technology devices for sale and agents of that business entity, including an importer, a distributor, a factory branch, a distributor branch, and any warrantors of the manufacturer’s assistive technology device, ~~but not~~ including an assistive technology device dealer.

(13)(14) “Nonconformity” means a condition or defect of an assistive technology device which substantially impairs the use, value, or safety of the device and which is covered by an express warranty applicable to the assistive technology device, but does not include a condition or defect that is the result of abuse, neglect, or unauthorized modification or alteration of the assistive technology device by a consumer.

(14)(12) “Reasonable attempt to repair” means, within the terms of an express warranty applicable to a new assistive technology device:

(a) A maximum of three efforts by the manufacturer, the assistive technology device lessor, or any of the manufacturer’s authorized assistive technology device dealers to repair a nonconformity that is subject to repair under the warranty; or

(b) The passage of at least 30 cumulative days during which the assistive technology device is out of service because of a nonconformity that is covered by the warranty.

Section 18. Effective July 1, 1999, section 427.803, Florida Statutes, is amended to read:

427.803 Duty of manufacturer and an assistive technology device dealer to conform an assistive technology device to the warranty ~~Express warranty.~~—

(1) A manufacturer who sells a new assistive technology device to a consumer, either directly or through an assistive technology device dealer, shall furnish the consumer with an express warranty for the assistive technology device. The duration of the express warranty must be at least 1 year after first delivery of the assistive technology device to the consumer. In the absence of an express warranty from the manufacturer, the manufacturer is considered to have expressly warranted to the consumer of an assistive technology device that, for a period of 1 year after the date of first delivery to the consumer, the assistive technology device will be free from any condition or defect that substantially impairs the value of the assistive technology device to the consumer.

(2) If an assistive technology device does not conform to the warranty and the consumer first reports the problem to the manufacturer during the Assistive Technology Device Warranty Act rights period, the manufacturer shall make such repairs as are necessary to conform the device to the warranty, irrespective of whether such repairs are made after the expiration of the Assistive Technology Device Warranty Act rights period. Such repairs shall be at no cost to the consumer if reported to the manufacturer or assistive technology device dealer during the Assistive Technology Device Warranty Act rights period. Nothing in this paragraph shall be construed to grant an extension of the Assistive Technology Device Warranty Act rights period or to expand the time within which a consumer must file a complaint under this chapter.

(3) Each manufacturer or assistive technology device dealer shall provide to its consumers conspicuous notice of the address and phone number for its

zone, district, or regional office for this state in the written warranty or owner's manual. Within 10 days after the department's written request, a manufacturer shall forward to the department a copy of the owner's manual and any written warranty for each make and model of assistive technology device that it sells in this state.

(4) The manufacturer shall provide to the assistive technology device dealer and, at the time of acquisition, the assistive technology device dealer shall provide to the consumer a written statement that explains the consumer's rights under this chapter. The written statement shall be prepared by the department and shall contain a toll-free number for the department that the consumer can contact to obtain information regarding the consumer's rights and obligations under this chapter or to commence arbitration. The consumer's signed acknowledgment of receipt of materials required under this subsection shall constitute prima facie evidence of compliance by the manufacturer and assistive technology device dealer. The form of the acknowledgments shall be approved by the department, and the assistive technology device dealer shall maintain the consumer's signed acknowledgment for 3 years.

(5) A manufacturer or an assistive technology device dealer shall provide to the consumer, each time the consumer's assistive technology device is returned after being examined or repaired under the warranty, a fully itemized, legible statement of any diagnosis made and all work performed on the assistive technology device, including, but not limited to, a general description of the problem reported by the consumer or an identification of the defect or condition, parts and labor, the date on which the assistive technology device was submitted for examination or repair, and the date when the repair or examination was completed.

Section 19. Effective July 1, 1999, section 427.804, Florida Statutes, is amended to read:

427.804 Repair of nonconforming assistive technology devices; refund or replacement of devices after attempt to repair; sale or lease of returned device; arbitration; investigation; limitation of rights.—

(1) If a new assistive technology device does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the assistive technology device lessor, or any of the manufacturer's authorized assistive technology device dealers and makes the assistive technology device available for repair within 1 year after first delivery or return of the assistive technology device to the consumer, the nonconformity must be repaired at no charge to the consumer.

(2) If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer, at the direction of a consumer as defined in s. 427.802(7)(~~6~~)(a)-(c), must do one of the following:

(a) Accept return of the assistive technology device and replace the assistive technology device with a comparable new assistive technology device and refund any collateral costs.

(b) Accept return of the assistive technology device and refund to the consumer and to any holder of a perfected security interest in the consumer's assistive technology device, as the interest may appear, the full purchase price plus any finance charge amount paid by the consumer at the point of sale, and collateral costs.

(c) With respect to a consumer as defined in s. 427.802(7)(6)(d), accept return of the assistive technology device, refund to the assistive technology device lessor and to any holder of a perfected security interest in the assistive technology device, as the interest may appear, the current value of the written lease, and refund to the consumer the amount that the consumer paid under the written lease plus any collateral costs.

(3) The current value of the written lease equals the total amount for which the lease obligates the consumer during the period of the lease remaining after its early termination plus the assistive technology device dealer's early termination costs and the value of the assistive technology device at the lease expiration date if the lease sets forth the value, less the assistive technology device lessor's early termination savings.

(4) To receive a comparable new assistive technology device or a refund due under paragraph (2)(a), a consumer must offer to the manufacturer of the assistive technology device having the nonconformity to transfer possession of the assistive technology device to the manufacturer. No later than 30 days after the offer, the manufacturer shall provide the consumer with the comparable assistive technology device or refund. When the manufacturer provides the comparable assistive technology device or refund, the consumer shall return the assistive technology device having the nonconformity to the manufacturer, along with any endorsements necessary to transfer real possession to the manufacturer.

(5) To receive a refund due under paragraph (2)(b), a consumer must offer to return the assistive technology device having the nonconformity to its manufacturer. No later than 30 days after the offer, the manufacturer shall provide the refund to the consumer. When the manufacturer provides the refund, the consumer shall return to the manufacturer the assistive technology device having the nonconformity.

(6) To receive a refund due under paragraph (2)(c), an assistive technology device lessor must offer to transfer possession of the assistive technology device having the nonconformity to its manufacturer. No later than 30 days after the offer, the manufacturer shall provide the refund to the assistive technology device lessor. When the manufacturer provides the refund, the assistive technology device lessor shall provide to the manufacturer any endorsements necessary to transfer legal possession to the manufacturer.

(7) A person may not enforce the lease against the consumer after the consumer receives a refund due under paragraph (2)(c).

(8) An assistive technology device that is returned by a consumer or assistive technology device lessor in this state, or by a consumer or assistive technology device lessor in another state under a similar law of that state,

may not be sold or leased again in this state, unless full disclosure of the reasons for return is made to any prospective buyer or lessee.

(9) Each consumer may submit any dispute arising under this part to the department by completing a complaint form. The department may investigate the complaint on behalf of the consumer if reasonable evidence warrants such an action.

(10) The department shall process consumer complaints pursuant to s. 570.544.

(11)(9) Each consumer may submit any dispute arising under this part to an alternative arbitration mechanism established pursuant to chapter 682. Upon notice by the consumer, all manufacturers must submit to such alternative arbitration.

(12)(40) Such alternative arbitration must be conducted by a professional arbitrator or arbitration firm appointed under chapter 682 and any applicable rules. These procedures must provide for the personal objectivity of the arbitrators and for the right of each party to present its case, to be in attendance during any presentation made by the other party, and to rebut or refute such a presentation.

(13)(44) This part does not limit rights or remedies available to a consumer under any other law.

Section 20. Effective July 1, 1999, section 427.8041, Florida Statutes, is created to read:

427.8041 Assistive technology device dealers registration; application; exemption; penalties; adoption of fees and fines; purchase fees.—

(1) Each assistive technology device dealer must register with the department prior to doing business in this state. The application for registration must be on a form adopted 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 sells assistive technology devices or in the case of a mobile assistive technology device business, 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.

(2) Any assistive technology device dealer maintaining more than one place of business must register each separate location. In such case, fees shall be paid for each place of business.

(3) Each initial application and renewal application for registration must be accompanied by a registration fee of \$300.

(4) The department shall issue to each applicant a registration certificate. 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 assistive technology device dealer and the registration number for that place of business. In the case of a mobile assistive technology device dealer, the certificate must show the home address of the owner, if different from the business address. The registration certificate must be posted in a conspicuous manner in the assistive technology device dealer's place of business.

(5) Any person applying for or renewing a local occupational license on or after July 1, 1999, to engage in selling assistive technology devices must exhibit an active registration certificate from the department before the local occupational license may be issued or renewed.

(6) Each registration must be renewed annually on or before the expiration date of the current registration. A late fee of \$25 shall be paid, in addition to the registration fee or any other penalty, for any registration renewal application that is received by the department after the expiration date of the current registration. The department may not issue the registration until all fees are paid.

(7) The department may deny or refuse to renew the registration of the assistive technology device dealer based upon a determination that the dealer, or any of its directors, officers, owners, or general partners:

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

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

(d) Have had a judgment entered against them in any action brought by the department or the state attorney.

(8) All assistive technology device dealers shall allow department personnel to enter their place of business to ascertain whether the registration certificate is current. If department personnel are refused entry or access to the premises, the department may seek injunctive relief in circuit court in order to obtain compliance with this subsection.

(9) The department may enter an order imposing one or more of the penalties set forth in subsection (13) if the department finds that an assistive technology device dealer:

(a) Violated or is operating in violation of any of the provisions of this part or of the rules adopted or orders issued thereunder;

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

(c) Refused or failed, or any of its principal officers have 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;

(d) 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

(e) Has intentionally defrauded the public through dishonest or deceptive means.

(10) Upon a finding as set forth in subsection (12), the department may enter an order doing one or more of the following:

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

(b) 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.

(c) Directing that the assistive technology device dealer cease and desist specified activities.

(d) Refusing to register or revoking or suspending a registration.

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

(11) The administrative proceedings which could result in the entry of an order imposing any of the penalties specified in subsection (10) shall be conducted in accordance with chapter 120.

(12) The department or the state attorney, if a violation of this part occurs in his or her judicial circuit, shall be the enforcing authority for purposes of this part and may bring a civil action in circuit court for temporary or permanent injunctive relief and may seek other appropriate civil relief, including a civil penalty not to exceed \$5,000 for each violation, restitution and damages for injured customers, court costs, and reasonable attorney's fees.

(13) The enforcing authority may terminate any investigation or action upon agreement by the offender to pay a stipulated civil penalty, to make restitution or pay damages to customers, or to satisfy any other relief authorized herein and requested by the department.

(14) The remedies provided for in this section shall be in addition to any other remedy provided by law.

(15) Fees and fines collected under this part by the Department of Agriculture and Consumer Services shall be deposited in the General Inspection Trust Fund.

(16) A \$2 fee shall be collected by the assistive technology device dealer or assistive technology device lessor from the consumer at the consummation of the sale or lease of an assistive technology device. Such fees must be remitted monthly to the Department of Revenue. All fees, less the cost of administration, must be transferred monthly to the Department of Agriculture and Consumer Services for deposit into the General Inspection Trust Fund to carry out the provisions of s. 427.8041. The Department of Agriculture and Consumer Services may use an amount it determines necessary to purchase expert consultation services to assist in carrying out the provisions of this act.

(17) In fiscal year 1999-2000, the Department of Agriculture and Consumer Services may use 5 percent of the fees collected and remitted in that fiscal year by the assistive technology device dealers or lessors under subsection (16) and, during each fiscal year thereafter, may use between 5 percent and 10 percent of such fees collected in that fiscal year, towards the development of an Assistive Technology Device Warranty Act Education Program or to purchase expert consultation services from an entity having the mission of promoting access to, awareness of, and advocacy for assistive technology devices and services to:

(a) Assist investigators to effectively carry out s. 427.806.

(b) Conduct sensitivity training for the department's staff as it relates to assistive technology to ensure effective recording of complaints relating to assistive technology.

(c) Assist in the design and strategy of a consumer education program to educate consumers of assistive technology devices and assistive technology device dealers on this act as amended.

(18) In addition to pursuing any other remedy, a consumer may bring an action to recover damages for any injury caused by a violation of this part. The court shall award a consumer who prevails in such an action twice the amount of any pecuniary loss, together with costs, disbursements, and reasonable attorney's fees, and any equitable relief that the court determines is appropriate.

(19) An assistive technology device dealer that is required to be registered under this act must keep and maintain records relating to each sale or lease of assistive technology devices for a period of 2 years.

(20) The department may, at any time during business hours, enter any business location of an assistive technology device dealer that is required to be registered under this act and examine the books and records of the assistive technology device dealer.

(21) The department may adopt rules in accordance with chapter 120 to implement this part.

Section 21. (1) There is appropriated from the General Inspection Trust Fund of the Department of Agriculture and Consumer Services for Fiscal Year 1999-2000 the sum of \$450,000 for six full-time equivalent positions to administer this act.

(2) This section shall take effect July 1, 1999.

Section 22. Except as otherwise provided herein, this act shall take effect upon becoming a law.

Approved by the Governor June 8, 1999.

Filed in Office Secretary of State June 8, 1999.