

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	—	(Y/N)
ADOPTED AS AMENDED	—	(Y/N)
ADOPTED W/O OBJECTION	—	(Y/N)
FAILED TO ADOPT	—	(Y/N)
WITHDRAWN	—	(Y/N)
OTHER	—	

1 Committee/Subcommittee hearing bill: Regulatory Affairs
 2 Committee

3 Representative Trumbull offered the following:

4
 5 **Amendment (with title amendment)**

6 Remove lines 1047-1616 and insert:

7 Section 28. Subsections (1), (7), (8), (10), (11), and (13)
 8 of section 559.927, Florida Statutes, are amended to read:

9 559.927 Definitions.—For the purposes of this part, the
 10 term:

11 (1) "Accommodations" means any hotel or motel room,
 12 condominium or cooperative unit, cabin, lodge, or apartment; any
 13 other commercial structure designed for occupancy by one or more
 14 individuals; or any lodging establishment as provided by law.

15 The term does not include long-term home rentals covered under a
 16 lease pursuant to chapter 83.

17 (7) "Prearranged travel or tourist-related services, ~~or~~
 18 ~~tour-guide services~~" includes, but is not limited to, car

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19 rentals, lodging, transfers, and ~~sightseeing tours~~ and all other
20 such services that ~~which~~ are reasonably related to air, sea,
21 rail, motor coach, or other medium of transportation, or
22 accommodations for which a purchaser receives a premium or
23 contracts or pays before ~~prior to~~ or after departure. This term
24 ~~These terms~~ also includes ~~include~~ services for which a
25 purchaser, whose legal residence is outside the United States,
26 contracts or pays before ~~prior to~~ departure, and any arrangement
27 by which a purchaser prepays for, receives a reservation or any
28 other commitment to provide services before ~~prior to~~ departure
29 for, or otherwise arranges for travel directly to a terrorist
30 state and which originates in Florida.

31 (8) "Purchaser" means the purchaser of, or person otherwise
32 entitled to receive, prearranged travel or ~~tourist-related~~
33 ~~services, or tour-guide services,~~ for a fee or commission, or
34 who has acquired a vacation certificate for personal use.

35 (10) "Satisfactory consumer complaint history" means no
36 unresolved complaints regarding prearranged travel or ~~tourist-~~
37 ~~related services, or tour-guide services~~ are on file with the
38 department. A complaint is unresolved when a seller of travel
39 does not respond to the department's efforts to mediate the
40 complaint or a complaint where the department has determined
41 that a violation of this part has occurred and the complaint has
42 not been satisfied by the seller of travel.

43 (11) "Seller of travel" means any resident or nonresident
44 person, firm, corporation, or business entity that ~~who~~ offers
45 ~~for sale, directly or indirectly, at wholesale or retail,~~
46 prearranged travel or ~~tourist-related services, or tour-guide~~

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47 ~~services~~ for individuals or groups, including, but not limited
48 to, vacation ~~or tour~~ packages, or vacation certificates in
49 exchange for a fee, commission, or other valuable consideration.
50 The term includes such person, firm, corporation, or business
51 entity who sells a vacation certificate to third-party merchants
52 for a fee, or in exchange for a commission, or who offers such
53 certificates to consumers in exchange for attendance at sales
54 presentations. The term also includes any business entity
55 offering membership in a travel club or travel services for an
56 advance fee or payment, even if no travel contracts or
57 certificates or vacation or tour packages are sold by the
58 business entity. The term does not include third parties who may
59 offer prearranged travel or tourist-related services, but do not
60 participate in travel fulfillment or vacation certificate
61 redemption.

62 (13) "Vacation certificate" means any arrangement, plan,
63 program, ~~or~~ vacation package, or advance travel purchase that
64 promotes, discusses, or discloses a destination or itinerary or
65 type of travel, whereby a purchaser ~~for consideration paid in~~
66 ~~advance~~ is entitled to the use of travel, accommodations, or
67 facilities for any number of days, whether certain or uncertain,
68 during the period in which the certificate can be exercised, and
69 no specific date or dates for its use are designated. A vacation
70 certificate does not include prearranged travel or, tourist-
71 related services, ~~or tour-guide services~~ when a seller of travel
72 remits full payment for the cost of such services to the
73 provider or supplier within 10 business days of the purchaser's
74 initial payment to the seller of travel. The term does not

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75 include travel if exact travel dates are selected, guaranteed,
76 and paid for at the time of the purchase.

77 Section 29. Subsections (2) through (9) of section 559.928,
78 Florida Statutes, are amended to read:

79 559.928 Registration.—

80 (2) (a) Registration fees shall be as follows:

81 1. Three hundred dollars per year per registrant certifying
82 its business activities under s. 559.9285(1) (a).

83 2. One thousand dollars per year per registrant certifying
84 its business activities under s. 559.9285(1) (b).

85 3. Twenty-five hundred dollars per year per registrant
86 certifying its business activities under s. 559.9285(1) (c).

87 (b) All amounts collected shall be deposited by the Chief
88 Financial Officer to the credit of the General Inspection Trust
89 Fund of the Department of Agriculture and Consumer Services
90 pursuant to s. 570.20, for the sole purpose of administration of
91 this part.

92 (c) The department shall waive the initial registration fee
93 for an honorably discharged veteran of the United States Armed
94 Forces, the spouse of such a veteran, or a business entity that
95 has a majority ownership held by such a veteran or spouse if the
96 department receives an application, in a format prescribed by
97 the department, within 60 months after the date of the veteran's
98 discharge from any branch of the United States Armed Forces. To
99 qualify for the waiver, a veteran must provide to the department
100 a copy of his or her DD Form 214, as issued by the United States
101 Department of Defense, or another acceptable form of
102 identification as specified by the Department of Veterans'

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103 Affairs; the spouse of a veteran must provide to the department
104 a copy of the veteran's DD Form 214, as issued by the United
105 States Department of Defense, or another acceptable form of
106 identification as specified by the Department of Veterans'
107 Affairs, and a copy of a valid marriage license or certificate
108 verifying that he or she was lawfully married to the veteran at
109 the time of discharge; or a business entity must provide to the
110 department proof that a veteran or the spouse of a veteran holds
111 a majority ownership in the business, a copy of the veteran's DD
112 Form 214, as issued by the United States Department of Defense,
113 or another acceptable form of identification as specified by the
114 Department of Veterans' Affairs, and, if applicable, a copy of a
115 valid marriage license or certificate verifying that the spouse
116 of the veteran was lawfully married to the veteran at the time
117 of discharge.

118 (3) Each independent agent shall annually file an
119 application affidavit with the department before ~~prior to~~
120 engaging in business in this state. This application affidavit
121 must include the independent agent's full name, legal business
122 or trade name, mailing address, business address, telephone
123 number, and the name and address of each seller of travel
124 represented by the independent agent. A letter evidencing proof
125 of filing must be issued by the department and must be
126 prominently displayed in the independent agent's primary place
127 of business. Each independent agent must also submit an annual
128 registration fee of \$50. All moneys collected pursuant to the
129 imposition of the fee shall be deposited by the Chief Financial
130 Officer into the General Inspection Trust Fund of the Department

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131 of Agriculture and Consumer Services for the sole purpose of
132 administrating this part. As used in this subsection, the term
133 "independent agent" means a person who represents a seller of
134 travel by soliciting persons on its behalf; who has a written
135 contract with a seller of travel which is operating in
136 compliance with this part and any rules adopted thereunder; who
137 does not receive a fee, commission, or other valuable
138 consideration directly from the purchaser for the seller of
139 travel; who does not at any time have any unissued ticket stock
140 or travel documents in his or her possession; and who does not
141 have the ability to issue tickets, vacation certificates, or any
142 other travel document. The term "independent agent" does not
143 include an affiliate of the seller of travel, as that term is
144 used in s. 559.935(3), or the employees of the seller of travel
145 or of such affiliates.

146 (4) A ~~Any~~ person applying for or renewing a local business
147 tax receipt to engage in business as a seller of travel must
148 exhibit a current registration certificate from the department
149 before the local business tax receipt may be issued or reissued.

150 (5) Each contract, advertisement, certificate, or travel
151 document of a seller of travel must include the phrase "... (NAME
152 OF FIRM)... is registered with the State of Florida as a Seller
153 of Travel. Registration No....."

154 ~~(6) Each advertisement of a seller of travel must include~~
155 ~~the phrase "Fla. Seller of Travel Reg. No....."~~

156 (6) ~~(7)~~ A ~~No~~ registration is not ~~shall~~ be valid for any
157 seller of travel transacting business at any place other than
158 that designated in its application, unless the department is

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159 first notified in writing in advance of any change of location.
160 ~~A Nor shall the~~ registration is not ~~be~~ valid for an affiliate of
161 the seller of travel who engages in the prearranged travel and
162 tourist business. A registration issued under this part may
163 ~~shall~~ not be assignable, and the seller of travel may ~~shall~~ not
164 be permitted to conduct business under more than one name except
165 as registered. A seller of travel desiring to change its
166 registered name or location or designated agent for service of
167 process at a time other than upon renewal of registration shall
168 notify the department of such change.

169 ~~(7)(8)~~ Applications under this section are ~~shall be~~ subject
170 to ~~the provisions of~~ s. 120.60.

171 ~~(8)(9)~~ The department may deny, ~~or~~ refuse to renew, or
172 revoke the registration of any seller of travel based upon a
173 determination that the seller of travel, or any of its
174 directors, officers, owners, or general partners while acting on
175 behalf of the seller of travel:

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

178 (b) Has been convicted of a crime involving fraud, theft,
179 embezzlement, dishonest dealing, or any other act of moral
180 turpitude or any other act arising out of conduct as a seller of
181 travel;

182 (c) Has not satisfied a civil fine or penalty arising out
183 of any administrative or enforcement action brought by any
184 governmental agency or private person based upon conduct
185 involving fraud, theft, embezzlement, dishonest dealing, or any
186 violation of this part; or

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187 ~~(d) Has pending against her or him any criminal,~~
188 ~~administrative, or enforcement proceedings in any jurisdiction,~~
189 ~~based upon conduct involving fraud, dishonest dealing, or any~~
190 ~~other act of moral turpitude; or~~

191 (d) ~~(e)~~ Has had a judgment entered against her or him in any
192 action brought by the department or the Department of Legal
193 Affairs pursuant to ss. 501.201-501.213 or this act part.

194 (9) The department may deny or refuse to renew the
195 registration of any seller of travel based upon a determination
196 by the department that the seller of travel, or any of the
197 seller's directors, officers, owners, or general partners has
198 pending against him or her while acting on behalf of the seller
199 of travel any criminal, administrative, or enforcement
200 proceedings in any jurisdiction, based upon conduct involving
201 fraud, theft, embezzlement, dishonest dealing, or any other act
202 of moral turpitude.

203 Section 30. Subsections (2) through (6) of section 559.929,
204 Florida Statutes, are amended to read:

205 559.929 Security requirements.—

206 (2) The bond must be filed with the department on a form
207 adopted by department rule and must be in favor of the
208 department for the use and benefit of a consumer ~~traveler~~ who is
209 injured by the fraud, misrepresentation, breach of contract, or
210 financial failure, or any other violation of this part by the
211 seller of travel. Such liability may be enforced by proceeding
212 in an administrative action as specified in subsection (3) or by
213 filing a civil action. ~~However, in such civil action the bond~~
214 ~~posted with the department shall not be amenable or subject to a~~

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215 ~~judgment or other legal process issuing out of or from such~~
216 ~~court in connection with such civil action, but such bond shall~~
217 ~~be amenable to and enforceable only by and through~~
218 ~~administrative proceedings before the department. It is the~~
219 ~~intent of the Legislature that such bond be applicable and~~
220 ~~liable only for the payment of claims duly adjudicated by order~~
221 ~~of the department.~~ The bond must be open to successive claims,
222 but the aggregate amount awarded may not exceed the amount of
223 the bond. In addition to the foregoing, a bond provided by a
224 registrant or applicant for registration which certifies its
225 business activities under s. 559.9285(1)(b) or (c) must be in
226 favor of the department, with payment in the following order of
227 priority:

228 (a) The expenses for prosecuting the registrant or
229 applicant in an administrative or civil action under this part,
230 including attorney fees and fees for other professionals, court
231 costs or other costs of the proceedings, and all other expenses
232 incidental to the action.

233 (b) The costs and expenses of investigation before the
234 commencement of an administrative or civil action under this
235 part.

236 (c) An unpaid administrative fine imposed by final order or
237 an unpaid civil penalty imposed by final judgment under this
238 part.

239 (d) Damages or compensation for a consumer ~~traveler~~ injured
240 as provided in this subsection.

241 (3) A consumer ~~traveler~~ may file a claim against the bond.
242 Such claim, which must be submitted in writing on an affidavit

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243 form adopted by department rule, must be submitted to the
244 department within 120 days after an alleged injury has occurred
245 or is discovered to have occurred or a judgment has been
246 entered. The proceedings shall be conducted pursuant to chapter
247 120. For proceedings conducted pursuant to ss. 120.569 and
248 120.57, the agency shall act only as a nominal party.

249 (4) A consumer who is injured by the seller of travel, or
250 the department or another governmental agency acting on behalf
251 of the injured consumer, may bring and maintain an action to
252 recover against the bond.

253 (5) Any indebtedness determined by final order of the
254 department shall be paid by the seller of travel to the
255 department within 30 days after the order is entered for
256 disbursement to the consumer. If the seller of travel fails to
257 make payment within 30 days, the agency shall make a demand for
258 payment upon the surety which includes an institution issuing a
259 letter of credit or depository on a certificate of deposit. Upon
260 failure of a surety to comply with a demand for payment pursuant
261 to a final order, the department may file an action in circuit
262 court to recover payment, up to the amount of the bond or other
263 form of security, pursuant to s. 120.69. If the department
264 prevails, the department may recover court costs and reasonable
265 attorney fees.

266 (6)-(5) If the seller of travel is currently the subject of
267 an administrative, civil, or criminal action by the department,
268 the Department of Legal Affairs, or the state attorney relating
269 to compliance with this part, the right to proceed against the
270 bond as provided in subsection (3) is suspended until any

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271 enforcement action becomes final.

272 (7)~~(6)~~ The department may waive the bond requirement on an
273 annual basis if the seller of travel has had 5 or more
274 consecutive years of experience as a seller of travel in this
275 state in compliance with this part, has not had a civil,
276 criminal, or administrative action instituted against the seller
277 of travel in the vacation and travel business by a governmental
278 agency or an action involving fraud, theft, misappropriation of
279 property, violation of a statute pertaining to business or
280 commerce with a terrorist state, ~~or~~ moral turpitude, or other
281 violation of this part and has a satisfactory consumer complaint
282 history with the department, and certifies its business
283 activities under s. 559.9285. Such waiver may be revoked if the
284 seller of travel violates this part. A seller of travel which
285 certifies its business activities under s. 559.9285(1)(b) or (c)
286 is not entitled to the waiver provided in this subsection.

287 Section 31. Subsections (2) and (17) of section 559.9295,
288 Florida Statutes, are amended to read:

289 559.9295 Submission of vacation certificate documents.—
290 Sellers of travel who offer vacation certificates must submit
291 and disclose to the department with the application for
292 registration, and any time such document is changed, but prior
293 to the sale of any vacation certificate, the following
294 materials:

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

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299 that include terms such "free," "awarded," "prize," "absolutely
300 without charge," and "free of charge," or similar words or
301 groups of words, which might reasonably lead a person to believe
302 that he or she may receive, or has been selected to receive,
303 something of value without making full or partial compensation
304 in any form from the recipient must:

305 (a) Clearly and conspicuously display the following
306 disclosure in at least 12-point type: "... (NAME OF FIRM) ... is
307 registered with the State of Florida as a seller of travel,
308 Registration No... THIS IS NOT A FREE OFFER. SEE TERMS AND
309 CONDITIONS VIA WWW. (OFFER WEBSITE).COM. RESPONSE TO THIS OFFER
310 DOES NOT GUARANTEE TRAVEL." The offer website referred to in the
311 disclosure must include, and clearly indicate, the terms and
312 conditions for such a vacation certificate offer.

313 (b) Disclose the number of individuals who actually
314 traveled pursuant to the vacation certificate, as opposed to the
315 number of individuals who submitted or otherwise activated the
316 vacation certificate, in the 12 months preceding issuance of the
317 promotional material.

318 ~~(17) Within 10 working days after receipt of any materials~~
319 ~~submitted subsequent to filing an initial registration~~
320 ~~application or any annual renewal thereof, the department shall~~
321 ~~determine whether such materials are adequate to meet the~~
322 ~~requirements of this section. The department shall notify the~~
323 ~~seller of travel that materials submitted are in substantial~~
324 ~~compliance, or shall notify the seller of travel of any specific~~
325 ~~deficiencies. If the department fails to notify the seller of~~
326 ~~travel of its determination within the period specified in this~~

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327 ~~subsection, the materials shall be deemed in compliance;~~
328 ~~however, the failure of the department to send notification in~~
329 ~~either case will not relieve the seller of travel from the duty~~
330 ~~of complying with this section.~~

331 Neither the submission of these materials nor the department's
332 response implies approval, recommendation, or endorsement by the
333 department or that the contents of said materials have been
334 verified by the department.

335 Section 32. Section 559.932, Florida Statutes, is amended
336 to read:

337 559.932 Vacation certificate disclosure.—

338 (1) ~~A It shall be unlawful for any seller of travel~~ must to
339 ~~fail to~~ provide each person solicited with a contract that
340 includes which shall include the following information, which
341 shall be in 12-point type, unless otherwise specified:

342 (a) A space for the date, name, address, and signature of
343 the purchaser.

344 (b) The expiration date of the vacation certificate and the
345 terms and conditions of its extension or renewal, if available.

346 (c) The name and business address of any seller of travel
347 who may solicit vacation certificate purchasers for further
348 purchases, and a full and complete statement as to the nature
349 and method of that solicitation.

350 (d) The total financial obligation of the purchaser which
351 shall include the initial purchase price and any additional
352 charges to which the purchaser may be subject, including, but
353 not limited to, any per diem, seasonal, reservation, or
354 recreational charge.

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355 (e) The name and street address of any person who has the
356 right to alter, amend, or add to the charges to which the
357 purchaser may be subject and the terms and conditions under
358 which such charges may be imposed.

359 (f) If any accommodation or facility which a purchaser
360 acquires the right to use pursuant to the vacation certificate
361 is not completed at the time the certificate is offered for
362 sale, the date of availability of each component of the
363 accommodation or facility.

364 (g) By means of a section entitled "terms and conditions":

365 1. All eligibility requirements for use of the vacation
366 certificate, including, but not limited to, age, sex, marital
367 status, group association, residency, or geographic limitations.

368 2. All eligibility requirements for use of any discount or
369 complimentary coupon or ticket.

370 3. A statement as to whether transportation and meals are
371 provided pursuant to use of the certificate.

372 4. Any room deposit requirement, including all conditions
373 for its return or refund.

374 5. The manner in which reservation requests are to be made
375 and the method by which they are to be confirmed.

376 6. Any identification, credential, or other means by which
377 a purchaser must establish her or his entitlement to the rights,
378 benefits, or privileges of the vacation certificate.

379 7. Any restriction or limitation upon transfer of the
380 vacation certificate or any right, benefit, or privilege
381 thereunder.

382 8. Any other term, limitation, condition, or requirement

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383 material to use of the vacation certificate or any right,
384 benefit, or privilege thereunder.

385 (h) In immediate proximity to the space reserved in the
386 contract for the date and the name, address, and signature of
387 the purchaser, the following statement in boldfaced type of a
388 size of 10 points:

389

390 "YOU MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR
391 OBLIGATION WITHIN 30 DAYS FROM THE DATE OF PURCHASE OR RECEIPT
392 OF THE VACATION CERTIFICATE, WHICHEVER OCCURS LATER."

393 "YOU MAY ALSO CANCEL THIS CONTRACT IF ACCOMMODATIONS OR
394 FACILITIES ARE NOT AVAILABLE PURSUANT TO A REQUEST FOR USE AS
395 PROVIDED IN THE CONTRACT."

396 "TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A
397 STATEMENT THAT YOU ARE CANCELING THE AGREEMENT SHOULD BE MAILED
398 AND POSTMARKED, OR DELIVERED TO ... (NAME) ... AT ... (ADDRESS) ...
399 NO LATER THAN MIDNIGHT OF (DATE)"

400 ~~"IF YOU DECIDE TO CANCEL, YOU MUST NOTIFY THE SELLER IN~~
401 ~~WRITING OF YOUR INTENT TO CANCEL BY RETURNING THE CERTIFICATE~~
402 ~~AND SENDING NOTICE TO: ... (NAME OF SELLER) ... AT ... (SELLER'S~~
403 ~~ADDRESS)"~~

404 (i) In immediate proximity to the statement required in
405 paragraph (h), the following statement in boldfaced type of a
406 size of 12 ~~10~~ points:

407

408 "NO PURCHASER SHOULD RELY UPON REPRESENTATIONS OTHER THAN
409 THOSE INCLUDED IN THIS CONTRACT."

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411 However, inclusion of this statement shall not impair any
412 purchaser's right to bring legal action based on verbal
413 statements.

414 (j) In immediate proximity to the statement required in
415 paragraph (i), the following statement:

416 "This contract is for the purchase of a vacation
417 certificate and puts all assignees on notice of the consumer's
418 right to cancel under section 559.933, Florida Statutes."

419 (2) If a sale or agreement to purchase a vacation
420 certificate is completed over the telephone, the seller shall
421 inform the purchaser over the telephone that:

422 (a) The purchaser may cancel the contract without any
423 penalty or obligation within 30 days from the date of purchase
424 or receipt of the vacation certificate, whichever occurs later.

425 (b) The purchaser may also cancel the contract if
426 accommodations or facilities are not available upon request for
427 use as provided in the contract.

428 (3) Upon receipt of a copy of a vacation certificate or
429 contract required pursuant to s. 559.9295, the department shall
430 review the certificate or contract for compliance with the
431 disclosures required under this section. The submission of the
432 certificate or contract, and the department's response, do not
433 imply approval, recommendation, or endorsement by the department
434 or that the contents of the certificate or contract have been
435 verified by the department.

436 Section 33. Section 559.933, Florida Statutes, is amended
437 to read:

438 559.933 Vacation certificate cancellation and refund

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439 provisions.-

440 (1) A ~~It shall be unlawful for any~~ seller of travel or
441 assignee ~~must honor a purchaser's request to cancel a vacation~~
442 certificate if such request is made:

443 ~~(1) To fail or refuse to honor a purchaser's vacation~~
444 ~~certificate request to cancel if such request is made:~~

445 (a) Within 30 days after ~~from~~ the date of purchase or
446 receipt of the vacation certificate, whichever occurs later; or

447 (b) At any time accommodations or facilities are not
448 available pursuant to a request for use as provided in the
449 contract, provided that:

450 1. The contract may ~~shall~~ not require notice greater than
451 60 days in advance of the date requested for use;

452 2. If acceptable to the purchaser, comparable alternate
453 accommodations or facilities in a city, or reservations for a
454 date different than that requested, may be provided.

455 (2) A seller of travel or assignee must ~~To fail to~~ refund
456 any and all payments made by the vacation certificate purchaser
457 within 30 days after receipt of the certificate and notice of
458 cancellation made pursuant to this section, if the purchaser has
459 not received any benefits pursuant to the vacation certificate.

460 (3) A seller of travel or assignee must, if the purchaser
461 has received any benefits pursuant to the vacation certificate,
462 ~~to fail to~~ refund within 30 days after receipt of the
463 certificate and notice of cancellation made pursuant to this
464 section any and all payments made by the purchaser which exceed
465 a pro rata portion of the total price, representing the portion
466 of any benefits actually received by the vacation certificate

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467 purchaser during the time preceding cancellation.

468 (4) If ~~Where~~ any purchaser has received confirmation of
469 reservations in advance and is refused accommodations upon
470 arrival, a seller of travel or assignee must ~~to fail to~~ procure
471 comparable alternate accommodations for the purchaser in the
472 same city at no expense to the purchaser, or ~~to fail to~~ fully
473 compensate the purchaser for the room rate incurred in securing
474 comparable alternate accommodations himself or herself.

475 (5) A seller of travel or assignee may not ~~to~~ collect more
476 than the full contract price from the purchaser.

477 (6) A seller of travel or assignee may not ~~to~~ sell, assign,
478 or otherwise transfer any interest in a seller of travel
479 business, or ~~to~~ sell, assign, or otherwise transfer to a third
480 party any interest in any vacation certificate unless:

481 (a) The third party agrees in writing to fully honor the
482 rights of vacation certificate purchasers to cancel and to
483 receive an appropriate refund or reimbursement as provided in
484 this section.

485 (b) The third party agrees in writing to comply with all
486 other provisions of this part for as long as the third party
487 continues the sale of vacation certificates or for the duration
488 of the period of validity of outstanding vacation certificates,
489 whichever is longer in time.

490 (c) The seller of travel agrees to be liable for and fully
491 indemnify a purchaser from any loss occasioned by the failure of
492 the third party to honor the purchaser's right to cancel and
493 failure to make prompt and complete refund to the purchaser of
494 all sums paid to the third party, or occasioned by the third

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495 party's failure to comply with the provisions of this part.

496 (7) A seller of travel or assignee must ~~To fail to~~ fulfill
497 the terms of a vacation certificate within 18 months after ~~of~~
498 the initial payment of any consideration by the purchaser to a
499 seller of travel or third party.

500 Section 34. Section 559.9335, Florida Statutes, is amended
501 to read:

502 559.9335 Violations.—It is a violation of this part for any
503 seller of travel, independent agent, assignee, or other person:

504 (1) To conduct business as a seller of travel without
505 registering annually with the department unless exempt pursuant
506 to s. 559.935.

507 (2) To conduct business as a seller of travel without an
508 annual purchase of a performance bond in the amount set by the
509 department unless exempt pursuant to s. 559.935.

510 (3) Knowingly to make any false statement, representation,
511 or certification in any application, document, or record
512 required to be submitted or retained under this part or in any
513 response to an inquiry or investigation conducted by the
514 department or any other governmental agency.

515 (4) Knowingly to sell or market any ~~number of~~ vacation
516 certificates that exceed the number disclosed to the department
517 pursuant to this section.

518 (5) Knowingly to sell or market vacation certificates with
519 an expiration date of more than 18 months from the date of
520 issuance.

521 ~~(6) Knowingly to require, request, encourage, or suggest,~~
522 ~~directly or indirectly, that payment for the right to obtain a~~

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523 ~~travel contract, certificate, or vacation package must be by~~
524 ~~credit card authorization or to otherwise announce a preference~~
525 ~~for that method of payment over any other when no correct and~~
526 ~~true explanation for such preference is likewise stated.~~

527 ~~(6)-(7)~~ Knowingly to state, represent, indicate, suggest, or
528 imply, directly or indirectly, that the travel contract,
529 certificate, or vacation package being offered by the seller of
530 travel cannot be purchased at some later time or may not
531 otherwise be available after the initial contact, or that
532 callbacks by the prospective purchaser are not accepted, when no
533 such restrictions or limitations in fact exist.

534 ~~(7)-(8)~~ To misrepresent ~~in any manner~~ the purchaser's right
535 to cancel and to receive an appropriate refund or reimbursement
536 as provided by this part.

537 ~~(8)-(9)~~ To sell any vacation certificate the duration of
538 which exceeds the duration of any agreement between the seller
539 and any business entity obligated thereby to provide
540 accommodations or facilities pursuant to the vacation
541 certificate.

542 ~~(9)-(10)~~ To misrepresent or deceptively represent:

543 (a) The amount of time or period of time accommodations or
544 facilities will be available.

545 (b) The location of accommodations or facilities offered.

546 (c) The price, size, nature, extent, qualities, or
547 characteristics of accommodations or facilities offered.

548 (d) The nature or extent of other goods, services, or
549 amenities offered.

550 (e) A purchaser's rights, privileges, or benefits.

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551 (f) The conditions under which the purchaser may obtain a
552 reservation for the use of offered accommodations or facilities.

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

557 ~~(10)~~~~(11)~~ To fail to inform a purchaser of a nonrefundable
558 cancellation policy before ~~prior to~~ the seller of travel
559 accepting any fee, commission, or other valuable consideration.

560 ~~(11)~~~~(12)~~ To fail to include, when offering to sell a
561 vacation certificate, in any advertisement or promotional
562 material, the following statement: "This is an offer to sell
563 travel."

564 ~~(12)~~~~(13)~~ To fail to honor and comply with all provisions of
565 the vacation certificate regarding the purchaser's rights,
566 benefits, and privileges thereunder.

567 ~~(13)~~~~(14)~~ (a) To include in any vacation certificate or
568 contract any provision purporting to waive or limit any right or
569 benefit provided to purchasers under this part; or

570 (b) To seek or solicit such waiver or acceptance of
571 limitation from a purchaser concerning rights or benefits
572 provided under this part.

573 ~~(14)~~~~(15)~~ To offer vacation certificates for any
574 accommodation or facility for which there is no contract with
575 the owner of the accommodation or facility securing the
576 purchaser's right to occupancy and use, unless the seller is the
577 owner.

578 ~~(15)~~~~(16)~~ To use a local mailing address, registration

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579 facility, drop box, or answering service in the promotion,
580 advertising, solicitation, or sale of vacation certificates,
581 unless the seller's fixed business address is clearly disclosed
582 during any telephone solicitation and is prominently and
583 conspicuously disclosed on all solicitation materials and on the
584 contract.

585 ~~(16)-(17)~~ To use any registered trademark, trade name, or
586 trade logo in any promotional, advertising, or solicitation
587 materials without written authorization from the holder of such
588 trademark, trade name, or trade logo.

589 ~~(17)-(18)~~ To represent, directly or by implication, any
590 affiliation with, or endorsement by, any governmental,
591 charitable, educational, medical, religious, fraternal, or civic
592 organization or body, or any individual, in the promotion,
593 advertisement, solicitation, or sale of vacation certificates
594 without express written authorization.

595 ~~(18)-(19)~~ To sell a vacation certificate to any purchaser
596 who is ineligible for its use.

597 ~~(19)-(20)~~ To sell any ~~number of~~ vacation certificates in
598 excess of exceeding the number of available accommodations
599 ~~disclosed pursuant to this part.~~

600 ~~(20)-(21)~~ During the period of a vacation certificate's
601 validity, in the event, for any reason whatsoever, of lapse or
602 breach of an agreement for the provision of accommodations or
603 facilities to purchasers, to fail to procure similar agreement
604 for the provision of comparable alternate accommodations or
605 facilities in the same city or surrounding area.

606 ~~(21)-(22)~~ To offer to sell, at wholesale or retail,

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607 prearranged travel or, tourist-related services, ~~or tour-guide~~
608 ~~services~~ for individuals or groups directly to any terrorist
609 state and which originate in Florida, without disclosing such
610 business activities in a certification filed under s.
611 559.9285(1)(b) or (c).

612 ~~(22)-(23)~~ To violate any state or federal law restricting or
613 prohibiting commerce with terrorist states.

614 ~~(23)-(24)~~ To engage in ~~do~~ any other action that ~~act which~~
615 constitutes fraud, misrepresentation, or failure to disclose a
616 material fact, or to commit any other violation of, or fail to
617 comply with, this part.

618 ~~(24)-(25)~~ To refuse or fail, or for any of its principal
619 officers to refuse or fail, after notice, to produce any
620 document or record or disclose any information required to be
621 produced or disclosed.

622 ~~(25)-(26)~~ Knowingly to make a material false statement in
623 response to any request or investigation by the department, the
624 Department of Legal Affairs, or the state attorney.

625 Section 35. Subsections (3) and (4) of section 559.935,
626 Florida Statutes, are amended to read:

627 559.935 Exemptions.—

628 (3) Sections 559.928, 559.929, 559.9295, 559.931, and
629 559.932 ~~shall~~ also do not apply to a seller of travel that is an
630 affiliate of an entity exempt pursuant to subsection (2) subject
631 to the following conditions:

632 (a) If ~~In the event~~ the department finds the affiliate
633 does not have a satisfactory consumer complaint history or the

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634 affiliate fails to respond to a consumer complaint within 30
635 days, the related seller of travel exempt pursuant to subsection
636 (2) ~~is shall be~~ liable for the actions of the affiliate, subject
637 to the remedies provided in ss. 559.9355 and 559.936.

638 (b) ~~If In the event~~ the department is unable to locate an
639 affiliate, the related seller of travel exempt pursuant to
640 subsection (2) ~~is shall be~~ fully liable for the actions of the
641 affiliate, subject to the remedies provided in ss. 559.9355 and
642 559.936.

643 ~~(c) In order to obtain an exemption under this subsection,~~
644 ~~the affiliate shall file an affidavit of exemption on a form~~
645 ~~prescribed by the department and shall certify its business~~
646 ~~activities under s. 559.9285(1)(a). The affidavit of exemption~~
647 ~~shall be executed by a person who exercises identical control~~
648 ~~over the seller of travel exempt pursuant to subsection (2) and~~
649 ~~the affiliate. Failure to file an affidavit of exemption or~~
650 ~~certification under s. 559.9285(1)(a) prior to engaging in~~
651 ~~seller of travel activities shall subject the affiliate to the~~
652 ~~remedies provided in ss. 559.9355 and 559.936.~~

653 ~~(c)(d)~~ Revocation by the department of an exemption
654 provided to a seller of travel under subsection (2) shall
655 constitute automatic revocation by law of an exemption obtained
656 by an affiliate under the subsection.

657 ~~(d)(e)~~ This subsection does ~~shall~~ not apply to:

658 1. An affiliate that independently qualifies for another
659 exemption under this section.

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660 2. An affiliate that sells, or offers for sale, vacation
661 certificates.

662 3. An affiliate that certifies its business activities
663 under s. 559.9285(1) (b) or (c).

664 ~~(e)-(f)~~ For purposes of this section, the term an
665 "affiliate" means an entity that meets the following:

666 1. The entity has the identical ownership as the seller of
667 travel that is exempt under subsection (2).

668 2. The ownership controlling the seller of travel that is
669 exempt under subsection (2) also exercises identical control
670 over the entity.

671 3. The owners of the affiliate hold the identical
672 percentage of voting shares as they hold in the seller of travel
673 that is exempt under subsection (2).

674 (4) The department may revoke the exemption provided in
675 subsection (2) or subsection (3) if the department finds that
676 the seller of travel does not have a satisfactory consumer
677 complaint history, has been convicted of a crime involving
678 fraud, theft, embezzlement, misappropriation of property,
679 deceptive or unfair trade practices, or moral turpitude, or has
680 not complied with the terms of any order or settlement agreement
681 arising out of an administrative or enforcement action brought
682 by a governmental agency or private person based on conduct
683 involving fraud, theft, embezzlement, misappropriation of
684 property, deceptive or unfair trade practices, or moral
685 turpitude.

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686 Section 36. Subsection (3) of section 559.936, Florida
687 Statutes, is amended to read:

688 559.936 Civil penalties; remedies.—

689 (3) The department may seek a civil penalty in the Class
690 III category pursuant to s. 570.971 for each act or omission in
691 violation of s. 559.9335(21) or (22) ~~s. 559.9335(22) or (23)~~.

692

693

694 **T I T L E A M E N D M E N T**

695 Remove lines 115-146 and insert:

696 repair shops; amending s. 559.927, F.S.; revising definitions;
697 amending s. 559.928, F.S.; requiring the department to waive the
698 initial seller of travel registration fee for certain veterans,
699 the spouses of such veterans, or certain business entities that
700 have a majority ownership held by such veterans or spouses;
701 requiring each advertisement, each certificate, or any other
702 travel document to include a specified phrase; deleting a
703 provision requiring an advertisement to include a specified
704 phrase; revising the circumstances under which the department
705 may deny or refuse to renew a registration; authorizing the
706 department to revoke the registration of a seller of travel
707 under certain circumstances; amending s. 559.929, F.S.; revising
708 certain security requirements; providing requirements for
709 consumer claims against a bond; amending s. 559.9295, F.S.;
710 revising the requirements that certain sellers of travel submit
711 and disclose to the department; deleting provisions relating to

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 641 (2016)

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712 the duties of the department; amending s. 559.932, F.S.;

713 requiring a specified typeface point size for certain

714 disclosures; requiring the department to review copies of

715 certain certificates and contracts for compliance with

716 disclosure requirements; amending s. 559.933, F.S.; making

717 technical changes; amending s. 559.9335, F.S.; revising

718 violations relating to the sale of travel; amending s. 559.935,

719 F.S.; deleting a provision requiring an affidavit of exemption

720 to obtain a seller of travel affiliate exemption; adding

721 embezzlement as a crime for which the department may revoke

722 certain exemptions; amending s. 559.936, F.S.; conforming cross-

723 references; amending s. 616.242,