

By Senator Garcia

40-702A-04

1 A bill to be entitled
2 An act relating to consumer services; amending
3 s. 525.09, F.S.; revising reporting
4 requirements related to remittance of petroleum
5 fuel inspection taxes; amending s. 559.801,
6 F.S.; redefining the term "business
7 opportunity" for the purposes of regulating the
8 sale or lease of business opportunities;
9 amending s. 559.920, F.S.; redefining actions
10 by motor vehicle repair shops or employees
11 which are unlawful; amending s. 559.928, F.S.;
12 revising information to be submitted for
13 registration as a seller of travel and
14 information submitted by independent agents;
15 amending s. 616.242, F.S.; revising conditions
16 under which an amusement ride must be inspected
17 by the Department of Agriculture and Consumer
18 Services; revising schedules for such
19 inspections; amending s. 849.094, F.S.;
20 redefining the term "operator" for purposes of
21 the regulation of game promotions; increasing
22 certain filing fees for operators of game
23 promotions; revising notice requirements for
24 game promotions; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Section 525.09, Florida Statutes, is
29 amended to read:

30 525.09 Inspection fee.--
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1 (1) For the purpose of defraying the expenses incident
2 to inspecting, testing, and analyzing petroleum fuels in this
3 state, there shall be paid to the department a charge of
4 one-eighth cent per gallon on all gasoline, kerosene (except
5 when used as aviation turbine fuel), and #1 fuel oil for sale
6 or use in this state. This inspection fee shall be imposed in
7 the same manner as the motor fuel tax pursuant to s. 206.41.
8 Payment shall be made on or before the 25th day of each month.

9 (2) If any company fails to make the payment herein
10 provided on or before the 25th day of each month, the
11 department may add 10 percent to the amount of such taxes
12 already due as a penalty for failure of the company to make
13 the report and payment by the 25th day of each month. The
14 department shall proceed to collect the tax, together with all
15 costs incident to collection by the same methods as other
16 delinquent taxes are collected by law.

17 (3) All remittances to the department for the
18 inspection tax herein provided shall be accompanied by a
19 detailed report under oath showing the number of gallons of
20 gasoline, kerosene, or fuel oil sold ~~and delivered in each~~
21 ~~county~~.

22 (4) No inspection fee shall be charged on petroleum
23 fuels unloaded in any of the Florida ports for shipment into
24 other states.

25 Section 2. Subsection (1) of section 559.801, Florida
26 Statutes, is amended to read:

27 559.801 Definitions.--For the purpose of ss.
28 559.80-559.815, the term:

29 (1)(a) "Business opportunity" means the sale or lease
30 of any products, equipment, supplies, or services which are
31 sold or leased to a purchaser to enable the purchaser to start

1 a business for which the purchaser is required to pay an
2 initial fee or sum of money which exceeds \$500 to the seller,
3 and in which the seller represents:

4 1. That the seller or person or entity affiliated with
5 or referred by the seller will provide locations, either
6 contemporaneously at the time of the sale or lease or at a
7 future time, or assist the purchaser in finding locations for
8 the use or operation of vending machines, racks, display
9 cases, currency or card operated equipment, or other similar
10 devices or currency-operated amusement machines or devices on
11 premises neither owned nor leased by the purchaser or seller;

12 2. That the seller will purchase, either
13 contemporaneously at the time of the sale or lease or at a
14 future time, any or all products made, produced, fabricated,
15 grown, bred, or modified by the purchaser using in whole or in
16 part the supplies, services, or chattels sold to the
17 purchaser;

18 3. That the seller guarantees that the purchaser will
19 derive income from the business opportunity which exceeds the
20 price paid or rent charged for the business opportunity or
21 that the seller will refund all or part of the price paid or
22 rent charged for the business opportunity, or will repurchase
23 any of the products, equipment, supplies, or chattels supplied
24 by the seller, if the purchaser is unsatisfied with the
25 business opportunity; or

26 4. That the seller will provide, either
27 contemporaneously at the time of the sale or lease or at a
28 future time, a sales program or marketing program that will
29 enable the purchaser to derive income from the business
30 opportunity, except that this paragraph does not apply to the
31 sale of a sales program or marketing program made in

1 conjunction with the licensing of a trademark or service mark
2 that is registered under the laws of any state or of the
3 United States if the seller requires use of the trademark or
4 service mark in the sales agreement.

5
6 For the purpose of subparagraph 1., the term "assist the
7 purchaser in finding locations" means, but is not limited to,
8 supplying the purchaser with names of locator companies,
9 contracting with the purchaser to provide assistance or supply
10 names, or collecting a fee on behalf of or for a locator
11 company.

12 (b) "Business opportunity" does not include:

13 1. The sale of ongoing businesses when the owner of
14 those businesses sells and intends to sell only those business
15 opportunities so long as those business opportunities to be
16 sold are no more than five in number;

17 2. The not-for-profit sale of sales demonstration
18 equipment, materials, or samples for a price that does not
19 exceed \$500 or any sales training course offered by the seller
20 the cost of which does not exceed \$500; or

21 3. The sale or lease of laundry and drycleaning
22 equipment.

23 Section 3. Section 559.920, Florida Statutes, is
24 amended to read:

25 559.920 Unlawful acts and practices.--It shall be a
26 violation of this act for any motor vehicle repair shop or
27 employee thereof to:

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

- 1 (2) Make or charge for repairs which have not been
2 expressly or impliedly authorized by the customer;
- 3 (3) Misrepresent that repairs have been made to a
4 motor vehicle;
- 5 (4) Misrepresent that certain parts and repairs are
6 necessary to repair a vehicle;
- 7 (5) Misrepresent that the vehicle being inspected or
8 diagnosed is in a dangerous condition or that the customer's
9 continued use of the vehicle may be harmful or cause great
10 damage to the vehicle;
- 11 (6) Fraudulently alter any customer contract,
12 estimate, invoice, or other document;
- 13 (7) Fraudulently misuse any customer's credit card;
- 14 (8) Make or authorize in any manner or by any means
15 whatever any written or oral statement which is untrue,
16 deceptive or misleading, and which is known, or which by the
17 exercise of reasonable care should be known, to be untrue,
18 deceptive or misleading;
- 19 (9) Make false promises of a character likely to
20 influence, persuade, or induce a customer to authorize the
21 repair, service, or maintenance of a motor vehicle;
- 22 (10) Substitute used, rebuilt, salvaged, or
23 straightened parts for new replacement parts without notice to
24 the motor vehicle owner and to her or his insurer if the cost
25 of repair is to be paid pursuant to an insurance policy and
26 the identity of the insurer or its claims adjuster is
27 disclosed to the motor vehicle repair shop;
- 28 (11) Cause or allow a customer to sign any work order
29 that does not state the repairs requested by the customer or
30 the automobile's odometer reading at the time of repair;
- 31

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

4 (13) Willfully depart from or disregard accepted
5 practices and professional standards;

6 (14) Have repair work subcontracted without the
7 knowledge or consent of the customer unless the motor vehicle
8 repair shop or employee thereof demonstrates that the customer
9 could not reasonably have been notified;

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

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

18 (17) Perform any other act that is a violation of this
19 part or that constitutes fraud or misrepresentation.

20 Section 4. Subsections (1) and (3) of section 559.928,
21 Florida Statutes, are amended to read:

22 559.928 Registration.--

23 (1) Each seller of travel shall annually register with
24 the department, providing: its legal business or trade name,
25 mailing address, and business locations; the full names,
26 addresses, and telephone numbers, ~~and social security numbers~~
27 of its owners or corporate officers and directors and the
28 Florida agent of the corporation; a statement whether it is a
29 domestic or foreign corporation, its state and date of
30 incorporation, its charter number, and, if a foreign
31 corporation, the date it registered with the State of Florida,

1 and occupational license where applicable; the date on which a
2 seller of travel registered its fictitious name if the seller
3 of travel is operating under a fictitious or trade name; the
4 name of all other corporations, business entities, and trade
5 names through which each owner of the seller of travel
6 operated, was known, or did business as a seller of travel
7 within the preceding 5 years; a list of all authorized
8 independent agents, including the agent's trade name, full
9 name, mailing address, business address, telephone numbers,
10 and social security number; the business location and address
11 of each branch office and full name and address of the manager
12 or supervisor; and proof of purchase of adequate bond or
13 establishment of a letter of credit or certificate of deposit
14 as required in this part. A certificate evidencing proof of
15 registration shall be issued by the department and must be
16 prominently displayed in the seller of travel's primary place
17 of business.

18 (3) Each independent agent shall annually file an
19 affidavit with the department prior to engaging in business in
20 this state. This affidavit must include the independent
21 agent's full name, legal business or trade name, mailing
22 address, business address, and telephone number, ~~social~~
23 ~~security number~~, and the name or names and addresses of each
24 seller of travel represented by the independent agent and must
25 be accompanied by a copy of the independent agent's current
26 contract with each seller of travel. A letter evidencing proof
27 of filing must be issued by the department and must be
28 prominently displayed in the independent agent's primary place
29 of business. As used in this subsection, the term
30 "independent agent" means a person who represents a seller of
31 travel by soliciting persons on its behalf; who has a written

1 contract with a seller of travel which is operating in
2 compliance with this part and any rules adopted thereunder;
3 who does not receive a fee, commission, or other valuable
4 consideration directly from the purchaser for the seller of
5 travel; who does not at any time have any unissued ticket
6 stock or travel documents in his or her possession; and who
7 does not have the ability to issue tickets, vacation
8 certificates, or any other travel document. The term
9 "independent agent" does not include an affiliate of the
10 seller of travel, as that term is used in s. 559.935(3), or
11 the employees of the seller of travel or of such affiliates.

12 Section 5. Subsection (7) of section 616.242, Florida
13 Statutes, is amended to read:

14 616.242 Safety standards for amusement rides.--

15 (7) DEPARTMENT INSPECTIONS.--

16 (a) In order to obtain an annual permit, an amusement
17 ride must be inspected by the department in accordance with
18 subsection (11) and receive an inspection certificate. In
19 addition, each permanent amusement ride must be inspected
20 semiannually by the department in accordance with subsection
21 (11) and receive an inspection certificate and must receive an
22 inspection certificate when it is relocated;~~and each~~
23 temporary amusement ride must be inspected by the department
24 in accordance with subsection (11), and must receive an
25 inspection certificate each time the ride is set up or moved
26 to a new location in this state unless the temporary amusement
27 ride is:

- 28 1. Used at a private event;
- 29 2. A simulator, the capacity of which does not exceed
- 30 16 persons; or

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1 3. A kiddie ride used at a public event, provided that
2 there are no more than three amusement rides at the event,
3 none of the kiddie rides at the event exceeds a capacity of 12
4 persons, and the ride has an inspection certificate that was
5 issued within the preceding 6 months. The capacity of a kiddie
6 ride shall be determined by rule of the department, unless the
7 capacity of the ride has been determined and specified by the
8 manufacturer. Any owner of a kiddie ride operating under this
9 exemption is responsible for ensuring that no more than three
10 amusement rides are operated at the event.

11 (b) To obtain a department inspection for an amusement
12 ride, the owner must submit to the department on a form
13 prescribed by rule of the department a written Request for
14 Inspection. The owner must provide the following information
15 to the department:

16 1. The legal name, address, and primary place of
17 business of the owner, the requested inspection date, the date
18 of first intended use or planned opening date, and the date of
19 arrival on site.

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

23 3. For a temporary amusement ride, for each time the
24 amusement ride is set up or moved to a new location, the
25 requested inspection date ~~of first intended use~~ at the new
26 location and the address or a description of the new location.

27 (c) For permanent amusement rides, the request for
28 inspection must be received by the department at least 15 days
29 before the requested inspection ~~owner's planned opening~~ date
30 or at least 15 days before the expiration of the prior
31 inspection certificate. If the request for inspection is

1 received less than 15 days before the requested inspection
2 ~~owner's planned opening~~ date or less than 15 days before the
3 expiration of the prior inspection certificate, the department
4 may nevertheless inspect the amusement ride and charge a late
5 fee, as set by rule of the department.

6 (d) For temporary amusement rides, the request for
7 inspection must be received by the department for each time
8 the amusement ride is set up or moved to a new location at
9 least 14 days before the requested inspection date ~~of first~~
10 ~~intended use~~ at the new location. If the request for
11 inspection is received less than 14 days before the requested
12 inspection date ~~of first intended use~~ at the new location, the
13 department may nevertheless inspect the amusement ride and
14 charge a late fee, as set by rule of the department.

15 (e) Inspections will be assigned on a first come,
16 first served basis, and overflow requests will be scheduled on
17 the closest date to the date for which the inspection was
18 requested.

19 (f) Upon failure of an amusement ride to pass any
20 department inspection, the owner may request reinspection
21 which shall be submitted in writing to the department on a
22 form prescribed by rule of the department. The department
23 shall reinspect the amusement ride as soon as practical
24 following receipt of the written request for reinspection and
25 any applicable reinspection fees set by rule of the
26 department. Inspections will be assigned on a first come,
27 first served basis, and the overflow requests will be
28 scheduled on the closest date to the date for which the
29 inspection was requested.

30 (g) If the amusement ride passes inspection and the
31 owner pays the applicable fee set by rule of the department,

1 the department shall issue an inspection certificate on a form
2 prescribed by rule of the department.

3 (h) The inspection certificate must contain the date
4 of inspection, the site of the inspection, and the name of the
5 inspector.

6 (i) The inspection certificate is valid only for the
7 site stated on the inspection certificate. The inspection
8 certificate is valid for a period of not more than 6 months
9 from the date of issuance, and is not transferable.

10 (j) The inspection certificate must be displayed on
11 the amusement ride at a place readily visible to patrons of
12 the amusement ride.

13 (k) If the owner fails to timely cancel a Request for
14 Inspection, requests holiday or weekend inspections, or is
15 required to have a replacement USAID plate issued by the
16 department, the owner may be charged an appropriate fee to be
17 set by rule of the department.

18 Section 6. Subsections (1), (3), and (5) of section
19 849.094, Florida Statutes, are amended to read:

20 849.094 Game promotion in connection with sale of
21 consumer products or services.--

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

23 (a) "Game promotion" means, but is not limited to, a
24 contest, game of chance, or gift enterprise, conducted within
25 or throughout the state and other states in connection with
26 the sale of consumer products or services, and in which the
27 elements of chance and prize are present. However, "game
28 promotion" shall not be construed to apply to bingo games
29 conducted pursuant to s. 849.0931.

30 (b) "Operator" means any person, firm, corporation, or
31 association on whose behalf a game promotion is conducted ~~or~~

1 ~~agent or employee thereof who promotes, operates, or conducts~~
2 ~~a game promotion~~, except any charitable nonprofit
3 organization.

4 (3) The operator of a game promotion in which the
5 total announced value of the prizes offered is greater than
6 \$5,000 shall file with the Department of Agriculture and
7 Consumer Services a copy of the rules and regulations of the
8 game promotion and a list of all prizes and prize categories
9 offered at least 7 days before the commencement of the game
10 promotion. Such rules and regulations may not thereafter be
11 changed, modified, or altered. The operator of a game
12 promotion shall conspicuously post the rules and regulations
13 of such game promotion in each and every retail outlet or
14 place where such game promotion may be played or participated
15 in by the public and shall also publish the rules and
16 regulations in all advertising copy used in connection
17 therewith. Radio and television announcements may indicate
18 that the rules and regulations are available at retail outlets
19 or from the operator of the promotion. A nonrefundable filing
20 fee of \$150~~\$100~~ shall accompany each filing and shall be used
21 to pay the costs incurred in administering and enforcing the
22 provisions of this section.

23 (5) Every operator of a game promotion in which the
24 total announced value of the prizes offered is greater than
25 \$5,000 shall provide the Department of Agriculture and
26 Consumer Services with a certified list of the names and
27 addresses of all persons, whether from this state or from
28 another state, who have won prizes which have a value of more
29 than \$100~~\$25~~, the value of such prizes, and the dates when
30 the prizes were won within 60 calendar days after such winners
31 have been finally determined. If there is not a winner, the

1 operator shall provide written notice to the department within
2 60 calendar days after such determination has been made.The
3 operator shall provide a copy of the list of winners, without
4 charge, to any person who requests it. In lieu of the
5 foregoing, the operator of a game promotion may, at his or her
6 option, publish the same information about the winners in a
7 Florida newspaper of general circulation within 60 calendar
8 days after such winners have been determined and shall provide
9 to the Department of Agriculture and Consumer Services a
10 certified copy of the publication containing the information
11 about the winners. The operator of a game promotion is not
12 required to notify a winner by mail or by telephone when the
13 winner is already in possession of a game card from which the
14 winner can determine that he or she has won a designated
15 prize. All winning entries shall be held by the operator for
16 a period of 90 calendar days after the close or completion of
17 the game.

18 Section 7. This act shall take effect October 1, 2004.

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20 *****

21 SENATE SUMMARY

22 Provides that reports accompanying fuel inspection tax
23 remittances need not separately list each county's
24 deliveries. Redefines the term "business opportunity" for
25 purposes of regulating the sale of such opportunities.
26 Deletes a requirement that sellers of travel and
27 independent travel agents include their social security
28 numbers with information submitted in annual registration
29 but requires independent agents to include copies of
30 their contracts with each seller of travel. Requires
31 owners or operators of permanent amusement rides to
obtain an inspection certificate whenever such rides are
relocated. Requires requests for inspection of amusement
rides to include a date on which the inspection is
requested to be conducted. Increases fees for operators
of game promotions and requires certain notice when there
has been no winner in a game.