

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 571 (PCB AG 04-01) Consumer Services
SPONSOR(S): Committee on Agriculture, Bowen & Others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1314

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture	13 Y, 0 N	Reese	Reese
2) Finance and Tax	22 Y, 0 N	Shamy	Diez-Arguelles
3) Agriculture & Environment Apps. (Sub)	11 Y, 0 N	Sneed	Dixon
4) Appropriations			
5)			

SUMMARY ANALYSIS

HB 571 contains proposed changes to certain consumer protection programs administered by the Florida Department of Agriculture and Consumer Services (DACCS). The programs affected include: petroleum fuel inspection, business opportunities, motor vehicle repair, sellers of travel, amusement ride inspection, and game promotions.

Most of the proposed revisions are minor, but needed, and may be considered to be “housekeeping or cleanup” in nature.

In this bill, the department requests that the filing fee paid by operators of game promotions increase from \$100 to \$150 per game promotion filed with the department. The department estimates that this will generate approximately \$182,500 per year.

This bill appears to have no fiscal impact to local governments.

The effective date of the bill is October 1, 2004.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0571c.ap.doc
DATE: April 2, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

The bill proposes an increase in the game promotion filing fee. The fee is currently \$100 per filing. An increase of \$50 per filing is proposed in the bill.

B. EFFECT OF PROPOSED CHANGES:

Petroleum fuel inspection

Existing law requires the Department of Agriculture and Consumer Services (department) to inspect all measuring devices used in selling or distributing petroleum fuel at wholesale and retail. Along with the inspection fees due to the department each month, companies must remit a detailed report showing the number of gallons of gasoline, kerosene, or fuel oil sold and delivered in each county.

The department does not use the data relating to the number of gallons delivered in each county; therefore, the proposed change to the law removes this reporting requirement.

Business opportunities

In a recent case relating to the sale or lease of a business opportunity, the hearing officer interpreted a provision in the statutory definition of 'business opportunity' to mean that the seller must provide certain specified information in the future for the purchase to be considered a business opportunity. Department interpretation/policy has been that the information can be provided at the same time the sale or lease is executed, or at a future time.

The proposed revision clarifies that the seller may provide the specified information either contemporaneously at the time of the sale or lease or at a future time.

Motor vehicle repair

Existing law enumerating unlawful acts and practices relating to motor vehicle repair shops states that motor vehicle repair shops or employees of such shops must be registered with the department or submit an affidavit of exemption.

This bill removes the reference to submission of an affidavit of exemption. This language is obsolete as the requirement for submission of such affidavits was deleted by section 17, chapter 2001-214, Laws of Florida.

Sellers of travel

Effective October 1, 2002, s. 119.0721, Florida Statutes, states that all social security numbers held by an agency or its agents, employees, or contractors are confidential and exempt from public records. Sellers of travel and independent agents are currently required to provide their social security numbers

when registering with the department. As the department has no need for the social security numbers, it proposes that the requirement be removed from law.

Currently, each independent agent is required to annually file with the department an affidavit containing the agent's full name, legal business or trade name, mailing address, business address and telephone number, and the name and address of each seller of travel represented by the independent agent. There is no requirement for a copy of the agent's current contract with each seller of travel.

This bill requires independent agents to submit a copy of their contract with each seller of travel. This will provide the department with documentation in the event an agent provides false information. Failure to comply would result in denial of a certificate for proof of registration and/or a penalty for non-compliance.

Amusement ride inspection

Each permanent amusement ride in Florida is required to be inspected semiannually by the department and must receive an inspection certificate. A temporary amusement ride must be inspected each time the ride is set up or moved to a new location. Requirements are unclear as to situations where a previously inspected ride is taken down and relocated within a permanent amusement park.

Current law also requires that amusement ride owners give the department advance notice of the need for an inspection. The advance notice must specify the date of first intended use and the planned opening date. In addition, for both temporary and permanent rides, the owner must provide the date upon which the owner requests inspection. The department uses the provided information to plan and schedule inspections.

Proposed changes to the law:

- clarify that a previously inspected ride must be reinspected and issued a new inspection certificate when that ride is relocated within a permanent amusement park; and,
- restructure the requirements so the law is consistent with the department's information needs.

Proposed revisions include the requested inspection date, the date of first intended use or planned opening date, and the date of arrival on site. This requirement does not apply to theme parks.

Game promotions

This bill proposes several changes to the game promotion laws. The following are explanations of the proposed changes and the reasons they are being requested.

- The existing definition of 'operator', relating to game promotions, is unclear and interpretations have varied. The revised definition, as proposed in this bill, is consistent with terms used in game promotions. It clarifies that an operator is any person, firm, corporation or association on whose behalf a game promotion is conducted. The definition does not apply to charitable, nonprofit organizations.
- The department is also requesting an increase in the filing fee for game promotions. Currently, an operator of a game promotion in which the total announced value of the prizes offered is greater than \$5,000 must file with the department a copy of the rules and regulations of the promotion and a list of all prizes and prize categories offered. The filing must be done at least 7 days before commencement of the game promotion. The nonrefundable filing fee is now \$100. The funds are used to cover the costs incurred by the department in administering and enforcing the statutory game promotion provisions. The proposed fee is \$150.
- In addition to the filing fee, operators must provide to the department a certified list of the names and addresses of all persons who have won prizes with a value of more than \$25 and the list must be submitted within 60 days of final determination of winners. There is no reporting requirement for instances where there is no winner for a game promotion. The bill provides that the threshold for prize reporting be increased from \$25 to \$100 and clarifies that the 60 day

timeframe is 60 calendar days. Additionally, the bill requires that if there is not a winner, the game promotion operator must provide written notice of that fact to the department within 60 calendar days after such a determination has been made.

C. SECTION DIRECTORY:

Section 1. Amends s. 525.09, Florida Statutes, relating to petroleum fuel inspection, to remove a reporting requirement for information no longer used by the department.

Section 2. Amends s. 559.801, Florida Statutes, relating to business opportunities, to clarify that the seller of a business opportunity may provide certain information either contemporaneously at the time of the sale or lease or at a future time.

Section 3. Amends s. 559.920, Florida Statutes, relating motor vehicle repair shops, to remove an obsolete reference to submission of an affidavit of exemption.

Section 4. Amends s. 559.928, Florida Statutes, relating to sellers of travel, to delete a requirement for social security numbers to be submitted and to add a requirement for independent agents to submit a copy of their contract with each seller of travel.

Section 5. Amends s. 616.242, Florida Statutes, relating to amusement rides, to clarify that a previously inspected ride must be reinspected and issued a new inspection certificate when that ride is relocated within a permanent amusement park and to restructure certain information requirements so the law is consistent with the department's information needs.

Section 6. Amends s. 849.094, Florida Statutes, relating to game promotions, to clarify the definition of 'operator', to specify that certain timeframes for submission of information are measured in calendar days, and to increase the game promotion filing fee from \$100 to \$150.

Section 7. Provides an effective date of October 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues (See Fiscal Comments):

General Inspection Trust Fund:

Game Promotion Filing Fees (estimated 3,650 filings)		
At current fee		\$ 365,000
Proposed filing fee increase (\$50)	\$ 182,500	<u>182,500</u>
Proposed annual fee		\$ 547,000

Fair Ride Inspections		
Due to Proposed Increase in the Number of Inspections	\$ 1,050	<u>1,050</u>

Total Proposed Fee Increase \$ 183,550

** Additional revenue would result in additional Service Charge to General Revenue (Sec. 215.20, F.S.) of approximately \$13,400.*

2. Expenditures :

See Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Operators of game promotions will pay an increase of \$50 per game promotion filed with the department. Operators will benefit from the change in the required reporting threshold. Instead of submitting a list of all persons winning prizes worth more than \$25, the list will contain the names and addresses of those persons winning prizes worth more than \$100.

D. FISCAL COMMENTS:

According to the department, the number of game promotion filings has increased each year since 2000, when the game promotion regulation was transferred from the Department of State to the department. For the past 2 years the Division of Consumer Services has processed an average of 3,650 game promotion filings per year. HB 1835, the General Appropriations Act, contains 2 additional FTEs to handle the increased activity.

Fair ride inspection:

The slight increase in revenue is derived from an estimate of the number of rides inspectors observed during a 12-month period that had been moved from one site to another within permanent parks. Inspection fees are currently \$35 per "kiddie" ride and \$70 per "non-kiddie" ride. No fee increase is requested.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 2, 2004, the Subcommittee on Agriculture and Environment Appropriations favorably recommended one amendment sponsored by Representative Bowen, the bill sponsor, to revise the requirement that game rules and regulations be published in advertising copy to instead require publication of the material terms of the rules and regulations.