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A bill to be entitled

An act relating to consumer services; amending s. 525.09, F.S.; revising reporting requirements related to remittance of petroleum fuel inspection taxes; amending s. 559.801, F.S.; redefining the term "business opportunity" for the purposes of regulating the sale or lease of business opportunities; amending s. 559.920, F.S.; redefining actions by motor vehicle repair shops or employees which are unlawful; amending s. 559.928, F.S.; revising information to be submitted for registration as a seller of travel and information submitted by independent agents; amending s. 616.242, F.S.; revising conditions under which an amusement ride must be inspected by the Department of Agriculture and Consumer Services; revising schedules for such inspections; amending s. 849.094, F.S.; redefining the term "operator" for purposes of the regulation of game promotions; increasing certain filing fees for operators of game promotions; revising notice requirements for game promotions; providing an effective date.

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

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

525.09 Inspection fee.--

(1) For the purpose of defraying the expenses incident to inspecting, testing, and analyzing petroleum fuels in this state, there shall be paid to the department a charge of one-

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30 eighth cent per gallon on all gasoline, kerosene (except when
 31 used as aviation turbine fuel), and #1 fuel oil for sale or use
 32 in this state. This inspection fee shall be imposed in the same
 33 manner as the motor fuel tax pursuant to s. 206.41. Payment
 34 shall be made on or before the 25th day of each month.

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

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

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

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

52 559.801 Definitions.--For the purpose of ss. 559.80-
 53 559.815, the term:

54 (1)(a) "Business opportunity" means the sale or lease of
 55 any products, equipment, supplies, or services which are sold or
 56 leased to a purchaser to enable the purchaser to start a
 57 business for which the purchaser is required to pay an initial

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58 fee or sum of money which exceeds \$500 to the seller, and in
 59 which the seller represents:

60 1. That the seller or person or entity affiliated with or
 61 referred by the seller will provide locations, either
 62 contemporaneously at the time of the sale or lease or at a
 63 future time, or assist the purchaser in finding locations for
 64 the use or operation of vending machines, racks, display cases,
 65 currency or card operated equipment, or other similar devices or
 66 currency-operated amusement machines or devices on premises
 67 neither owned nor leased by the purchaser or seller;

68 2. That the seller will purchase, either contemporaneously
 69 at the time of the sale or lease or at a future time, any or all
 70 products made, produced, fabricated, grown, bred, or modified by
 71 the purchaser using in whole or in part the supplies, services,
 72 or chattels sold to the purchaser;

73 3. That the seller guarantees that the purchaser will
 74 derive income from the business opportunity which exceeds the
 75 price paid or rent charged for the business opportunity or that
 76 the seller will refund all or part of the price paid or rent
 77 charged for the business opportunity, or will repurchase any of
 78 the products, equipment, supplies, or chattels supplied by the
 79 seller, if the purchaser is unsatisfied with the business
 80 opportunity; or

81 4. That the seller will provide, either contemporaneously
 82 at the time of the sale or lease or at a future time, a sales
 83 program or marketing program that will enable the purchaser to
 84 derive income from the business opportunity, except that this
 85 paragraph does not apply to the sale of a sales program or
 86 marketing program made in conjunction with the licensing of a

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87 trademark or service mark that is registered under the laws of
 88 any state or of the United States if the seller requires use of
 89 the trademark or service mark in the sales agreement.

90
 91 For the purpose of subparagraph 1., the term "assist the
 92 purchaser in finding locations" means, but is not limited to,
 93 supplying the purchaser with names of locator companies,
 94 contracting with the purchaser to provide assistance or supply
 95 names, or collecting a fee on behalf of or for a locator
 96 company.

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

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

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

106 3. The sale or lease of laundry and drycleaning equipment.

107 Section 3. Section 559.920, Florida Statutes, is amended
 108 to read:

109 559.920 Unlawful acts and practices.--It shall be a
 110 violation of this act for any motor vehicle repair shop or
 111 employee thereof to:

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

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- 115 (2) Make or charge for repairs which have not been
 116 expressly or impliedly authorized by the customer;
- 117 (3) Misrepresent that repairs have been made to a motor
 118 vehicle;
- 119 (4) Misrepresent that certain parts and repairs are
 120 necessary to repair a vehicle;
- 121 (5) Misrepresent that the vehicle being inspected or
 122 diagnosed is in a dangerous condition or that the customer's
 123 continued use of the vehicle may be harmful or cause great
 124 damage to the vehicle;
- 125 (6) Fraudulently alter any customer contract, estimate,
 126 invoice, or other document;
- 127 (7) Fraudulently misuse any customer's credit card;
- 128 (8) Make or authorize in any manner or by any means
 129 whatever any written or oral statement which is untrue,
 130 deceptive or misleading, and which is known, or which by the
 131 exercise of reasonable care should be known, to be untrue,
 132 deceptive or misleading;
- 133 (9) Make false promises of a character likely to
 134 influence, persuade, or induce a customer to authorize the
 135 repair, service, or maintenance of a motor vehicle;
- 136 (10) Substitute used, rebuilt, salvaged, or straightened
 137 parts for new replacement parts without notice to the motor
 138 vehicle owner and to her or his insurer if the cost of repair is
 139 to be paid pursuant to an insurance policy and the identity of
 140 the insurer or its claims adjuster is disclosed to the motor
 141 vehicle repair shop;

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142 (11) Cause or allow a customer to sign any work order that
 143 does not state the repairs requested by the customer or the
 144 automobile's odometer reading at the time of repair;

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

148 (13) Willfully depart from or disregard accepted practices
 149 and professional standards;

150 (14) Have repair work subcontracted without the knowledge
 151 or consent of the customer unless the motor vehicle repair shop
 152 or employee thereof demonstrates that the customer could not
 153 reasonably have been notified;

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

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

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

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

165 559.928 Registration.--

166 (1) Each seller of travel shall annually register with the
 167 department, providing: its legal business or trade name, mailing
 168 address, and business locations; the full names, addresses, and
 169 telephone numbers, ~~and social security numbers~~ of its owners or
 170 corporate officers and directors and the Florida agent of the

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171 corporation; a statement whether it is a domestic or foreign
 172 corporation, its state and date of incorporation, its charter
 173 number, and, if a foreign corporation, the date it registered
 174 with the State of Florida, and occupational license where
 175 applicable; the date on which a seller of travel registered its
 176 fictitious name if the seller of travel is operating under a
 177 fictitious or trade name; the name of all other corporations,
 178 business entities, and trade names through which each owner of
 179 the seller of travel operated, was known, or did business as a
 180 seller of travel within the preceding 5 years; a list of all
 181 authorized independent agents, including the agent's trade name,
 182 full name, mailing address, business address, telephone numbers,
 183 and social security number; the business location and address of
 184 each branch office and full name and address of the manager or
 185 supervisor; and proof of purchase of adequate bond or
 186 establishment of a letter of credit or certificate of deposit as
 187 required in this part. A certificate evidencing proof of
 188 registration shall be issued by the department and must be
 189 prominently displayed in the seller of travel's primary place of
 190 business.

191 (3) Each independent agent shall annually file an
 192 affidavit with the department prior to engaging in business in
 193 this state. This affidavit must include the independent agent's
 194 full name, legal business or trade name, mailing address,
 195 business address, and telephone number, ~~social security number,~~
 196 and the name or names and addresses of each seller of travel
 197 represented by the independent agent and must be accompanied by
 198 a copy of the independent agent's current contract with each
 199 seller of travel. A letter evidencing proof of filing must be

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200 issued by the department and must be prominently displayed in
 201 the independent agent's primary place of business. As used in
 202 this subsection, the term "independent agent" means a person who
 203 represents a seller of travel by soliciting persons on its
 204 behalf; who has a written contract with a seller of travel which
 205 is operating in compliance with this part and any rules adopted
 206 thereunder; who does not receive a fee, commission, or other
 207 valuable consideration directly from the purchaser for the
 208 seller of travel; who does not at any time have any unissued
 209 ticket stock or travel documents in his or her possession; and
 210 who does not have the ability to issue tickets, vacation
 211 certificates, or any other travel document. The term
 212 "independent agent" does not include an affiliate of the seller
 213 of travel, as that term is used in s. 559.935(3), or the
 214 employees of the seller of travel or of such affiliates.

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

217 616.242 Safety standards for amusement rides.--

218 (7) DEPARTMENT INSPECTIONS.--

219 (a) In order to obtain an annual permit, an amusement ride
 220 must be inspected by the department in accordance with
 221 subsection (11) and receive an inspection certificate. In
 222 addition, each permanent amusement ride must be inspected
 223 semiannually by the department in accordance with subsection
 224 (11) and receive an inspection certificate and must receive an
 225 inspection certificate when it is relocated;~~7~~ and each temporary
 226 amusement ride must be inspected by the department in accordance
 227 with subsection (11), and must receive an inspection certificate

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228 each time the ride is set up or moved to a new location in this
 229 state unless the temporary amusement ride is:

- 230 1. Used at a private event;
- 231 2. A simulator, the capacity of which does not exceed 16
 232 persons; or
- 233 3. A kiddie ride used at a public event, provided that
 234 there are no more than three amusement rides at the event, none
 235 of the kiddie rides at the event exceeds a capacity of 12
 236 persons, and the ride has an inspection certificate that was
 237 issued within the preceding 6 months. The capacity of a kiddie
 238 ride shall be determined by rule of the department, unless the
 239 capacity of the ride has been determined and specified by the
 240 manufacturer. Any owner of a kiddie ride operating under this
 241 exemption is responsible for ensuring that no more than three
 242 amusement rides are operated at the event.

243 (b) To obtain a department inspection for an amusement
 244 ride, the owner must submit to the department on a form
 245 prescribed by rule of the department a written Request for
 246 Inspection. The owner must provide the following information to
 247 the department:

- 248 1. The legal name, address, and primary place of business
 249 of the owner, the requested inspection date, the date of first
 250 intended use or planned opening date, and the date of arrival on
 251 site.
- 252 2. A description, manufacturer's name, serial number,
 253 model number, and the United States Amusement Identification
 254 Number, if previously assigned, of the amusement ride.
- 255 3. For a temporary amusement ride, for each time the
 256 amusement ride is set up or moved to a new location, the

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257 requested inspection date ~~of first intended use~~ at the new
258 location and the address or a description of the new location.

259 (c) For permanent amusement rides, the request for
260 inspection must be received by the department at least 15 days
261 before the requested inspection ~~owner's planned opening~~ date or
262 at least 15 days before the expiration of the prior inspection
263 certificate. If the request for inspection is received less than
264 15 days before the requested inspection ~~owner's planned opening~~
265 date or less than 15 days before the expiration of the prior
266 inspection certificate, the department may nevertheless inspect
267 the amusement ride and charge a late fee, as set by rule of the
268 department.

269 (d) For temporary amusement rides, the request for
270 inspection must be received by the department for each time the
271 amusement ride is set up or moved to a new location at least 14
272 days before the requested inspection date ~~of first intended use~~
273 at the new location. If the request for inspection is received
274 less than 14 days before the requested inspection date ~~of first~~
275 ~~intended use~~ at the new location, the department may
276 nevertheless inspect the amusement ride and charge a late fee,
277 as set by rule of the department.

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

281 (f) Upon failure of an amusement ride to pass any
282 department inspection, the owner may request reinspection which
283 shall be submitted in writing to the department on a form
284 prescribed by rule of the department. The department shall
285 reinspect the amusement ride as soon as practical following

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286 receipt of the written request for reinspection and any
 287 applicable reinspection fees set by rule of the department.
 288 Inspections will be assigned on a first come, first served
 289 basis, and the overflow requests will be scheduled on the
 290 closest date to the date for which the inspection was requested.

291 (g) If the amusement ride passes inspection and the owner
 292 pays the applicable fee set by rule of the department, the
 293 department shall issue an inspection certificate on a form
 294 prescribed by rule of the department.

295 (h) The inspection certificate must contain the date of
 296 inspection, the site of the inspection, and the name of the
 297 inspector.

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

302 (j) The inspection certificate must be displayed on the
 303 amusement ride at a place readily visible to patrons of the
 304 amusement ride.

305 (k) If the owner fails to timely cancel a Request for
 306 Inspection, requests holiday or weekend inspections, or is
 307 required to have a replacement USAID plate issued by the
 308 department, the owner may be charged an appropriate fee to be
 309 set by rule of the department.

310 Section 6. Subsections (1), (3), and (5) of section
 311 849.094, Florida Statutes, are amended to read:

312 849.094 Game promotion in connection with sale of consumer
 313 products or services.--

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

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315 (a) "Game promotion" means, but is not limited to, a
 316 contest, game of chance, or gift enterprise, conducted within or
 317 throughout the state and other states in connection with the
 318 sale of consumer products or services, and in which the elements
 319 of chance and prize are present. However, "game promotion" shall
 320 not be construed to apply to bingo games conducted pursuant to
 321 s. 849.0931.

322 (b) "Operator" means any person, firm, corporation, or
 323 association on whose behalf a game promotion is conducted ~~or~~
 324 ~~agent or employee thereof who promotes, operates, or conducts a~~
 325 ~~game promotion~~, except any charitable nonprofit organization.

326 (3) The operator of a game promotion in which the total
 327 announced value of the prizes offered is greater than \$5,000
 328 shall file with the Department of Agriculture and Consumer
 329 Services a copy of the rules and regulations of the game
 330 promotion and a list of all prizes and prize categories offered
 331 at least 7 days before the commencement of the game promotion.
 332 Such rules and regulations may not thereafter be changed,
 333 modified, or altered. The operator of a game promotion shall
 334 conspicuously post the rules and regulations of such game
 335 promotion in each and every retail outlet or place where such
 336 game promotion may be played or participated in by the public
 337 and shall also publish the rules and regulations in all
 338 advertising copy used in connection therewith. Radio and
 339 television announcements may indicate that the rules and
 340 regulations are available at retail outlets or from the operator
 341 of the promotion. A nonrefundable filing fee of \$150 ~~\$100~~ shall
 342 accompany each filing and shall be used to pay the costs

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343 incurred in administering and enforcing the provisions of this
 344 section.

345 (5) Every operator of a game promotion in which the total
 346 announced value of the prizes offered is greater than \$5,000
 347 shall provide the Department of Agriculture and Consumer
 348 Services with a certified list of the names and addresses of all
 349 persons, whether from this state or from another state, who have
 350 won prizes which have a value of more than \$100 ~~\$25~~, the value
 351 of such prizes, and the dates when the prizes were won within 60
 352 calendar days after such winners have been finally determined.
 353 If there is not a winner, the operator shall provide written
 354 notice to the department within 60 calendar days after such
 355 determination has been made. The operator shall provide a copy
 356 of the list of winners, without charge, to any person who
 357 requests it. In lieu of the foregoing, the operator of a game
 358 promotion may, at his or her option, publish the same
 359 information about the winners in a Florida newspaper of general
 360 circulation within 60 calendar days after such winners have been
 361 determined and shall provide to the Department of Agriculture
 362 and Consumer Services a certified copy of the publication
 363 containing the information about the winners. The operator of a
 364 game promotion is not required to notify a winner by mail or by
 365 telephone when the winner is already in possession of a game
 366 card from which the winner can determine that he or she has won
 367 a designated prize. All winning entries shall be held by the
 368 operator for a period of 90 calendar days after the close or
 369 completion of the game.

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