

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: General Government Appropriations Committee

BILL: CS/CS/CS/SB 1520

SPONSOR: General Government Appropriations Committee, Judiciary Committee, Commerce and Consumer Services Committee, and Senator Lynn

SUBJECT: Consumer Protection

DATE: April 26, 2005                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siebert	Cooper	CM	<b>Fav/CS</b>
2.	Maclure	Maclure	JU	<b>Fav/CS</b>
3.	Blizzard	Hayes	GA	<b>Fav/CS</b>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

Committee Substitute for Committee Substitute for Committee Substitute for Senate Bill 1520 revises a number of programs and activities under the jurisdiction of the Department of Agriculture and Consumer Services (department). In particular, the bill:

- Requires an applicant for a Class “D” security license to complete terrorism training or other specialized training prescribed by the department;
- Preempts the regulation of refunds by retail sales establishments to the department;
- Clarifies provisions prohibiting local governments from imposing a monetary penalty on owners of shopping carts removed from their premises;
- Incorporates within the state’s anti-telephone solicitation law a prohibition against transmission of unsolicited advertising materials via facsimile;
- Clarifies the statutory definition of a business opportunity;
- Repeals the provisions of the Amusement Ride and Attraction Insurance Act under ch. 546, F.S., while retaining comparable insurance provisions in s. 616.242, F.S.;
- Exempts certain governmental entities from amusement ride insurance requirements.
- Defines “travel clubs” for the purposes of the Florida Sellers of Travel Act;
- Authorizes operators of game promotions to include only the material terms of a game promotion in advertisements – if the advertisement includes a website, toll-free telephone number, or mailing address where the full rules and regulations may be heard, viewed, or obtained; and
- Requires a \$100 annual filing fee for independent agents of sellers of travel.

The bill also directs the State Technology Office to provide, through the state's official website, linkages and information relating to consumer protection and human and social services. The Senate budget transfers operation and maintenance of the state's official website to the Department of Management Services (DMS). The DMS would be responsible for maintenance of the state's official website to provide the linkages and information required by this bill.

The bill designates the Department of Agriculture and Consumer Services' Division of Consumer Services as the state clearinghouse for matters relating to consumer protection, information, and services and deletes the requirement of an outdated report.

This bill substantially amends sections the following sections of the Florida Statutes: 493.6303, 501.059, 501.142, 506.5131, 559.801, 559.920, 559.927, 559.928, 570.544, 616.242, and 849.094. The bill repeals the following sections of the Florida Statutes: 526.3135, 546.001, 546.002, 546.003, 546.004, 546.006, and 546.008.

## II. Present Situation:

### Security Officer License

An applicant for a Class "D" security license is required to file an application with the Department of Agriculture and Consumer Services.<sup>1</sup> The department must approve the application prior to the applicant assuming duties permitted with the Class "D" license.<sup>2</sup>

Currently, there is a statutory 40-hour limit on the hours required for a security officer license.<sup>3</sup> Upon the competition of 24 of the 40 hours, an applicant is eligible for licensure, and the remaining 16 hours are to be completed upon renewal, which is 2 years from initial licensure.<sup>4</sup>

### Telephone and Facsimile Solicitation

Florida's "no sales solicitation calls" law, s. 501.059, F.S., established in 1990, provides Florida consumers who pay an initial \$10 per telephone number the opportunity to place a residential, mobile, or pager telephone number on the "no sales solicitation calls" listing, administered by the Department of Agriculture and Consumer Services.<sup>5</sup> The law prohibits most telephone solicitors from calling consumers who have registered their telephone numbers with the state to sell items normally used for personal, family, or household purposes. An annual renewal subscription fee of \$5 per telephone number is required each year thereafter.<sup>6</sup> Consumers may subscribe up to five years in advance. Consumers may subscribe by calling a toll-free telephone number to request an application, or they may download the application from the department's website and mail it to the department with the appropriate fee. Currently, Florida law does not provide the option to a business to subscribe a business telephone number to the listing.

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<sup>1</sup> Section 493.6105(1), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Section 493.6303(4)(a), F.S.

<sup>4</sup> Section 493.6303(4)(b), F.S.

<sup>5</sup> Section 501.059(3)(a), F.S.

<sup>6</sup> *Id.*

In January 2003, the Federal Trade Commission (FTC) revised its Telemarketing Sales Rule (TSR) to create a national Do-Not-Call (DNC) registry that prohibits calls to a consumer registered on the registry.<sup>7</sup> On July 7, 2003, consumers were able to register with the FTC on the Internet and by telephone a residential or mobile telephone number.<sup>8</sup> As of June 18, 2004, 62 million phone numbers had been registered with the federal DNC registry.<sup>9</sup> Registration to the federal DNC registry is free and is effective for five years. The federal DNC registry does not provide the option for a business to subscribe business telephone numbers.

The Department of Agriculture and Consumer Services issued a report on March 1, 2004, regarding the current status of the state's "no sales solicitation calls" listing. The report found for the first 7 months of the 2003-2004 fiscal year, as compared to the 2002-2003 fiscal year, a 44-percent decrease in initial subscriptions, a 13.6-percent decrease in subscription renewals, an increase in the purchases of the listing by telephone solicitors, and a 27-percent decrease in complaints by consumers. Although the federal DNC program and the associated litigation have caused some uncertainty over the last 7 months, the department stated it believes Florida's citizens value the service provided by the department through the state listing and that an 87-percent renewal rate indicated the value of the listing to citizens in maintaining their privacy.<sup>10</sup>

Under s. 501.059(7)(a), F.S., a person may not make a telephonic sales call if the call involves an automated system for the selection or dialing of telephone numbers or the playing of a recorded message.

Unsolicited advertising solicitations via facsimile are also unlawful within Florida.<sup>11</sup> Violators are subject to injunctions and fines of \$500 per violation. The Attorney General is the enforcing authority for this statute.

### **Retail Sales Refunds**

Retail establishments are required by s. 501.142, F.S., to post a "no refund" sign if none is offered. There is no statewide, standardized set of rules or guidelines regarding refund policies.

### **Return of Shopping Carts**

Pursuant to s. 506.5131, F.S., owners of shopping carts found on public property cannot be subjected to a monetary penalty unless the shopping cart was removed from the owner's premises by someone acting on behalf of the owner's behalf. Large retail outlets contend that some local governments have caused them to incur expense, either directly or indirectly, to prevent cart removal or to recover their carts.

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<sup>7</sup> See *Telemarketing Sales Rule, Final Amended Rule*, Federal Trade Commission, 68 Fed. Reg. 4580 (Jan. 29, 2003) (*FTC Order*); authorized under 47 U.S.C. s. 227 (2000).

<sup>8</sup> Press Release, FTC and FCC, "National Do Not Call Registry Opens," (June 27, 2003), available at <http://www.ftc.gov/opa/2003/06/donotcall.htm> (last visited March 18, 2005).

<sup>9</sup> Press Release, National Do Not Call Registry Celebrates One-Year Anniversary (June 24, 2004), available at <http://www.ftc.gov/opa/2004/06/dncanny.htm> (last visited March 18, 2005).

<sup>10</sup> Department of Agriculture and Consumer Services, *Interim Report on Effect of Federal Do Not Call Registry on Florida's Do Not Call Law*, at 3-5, 8 (March 1, 2004).

<sup>11</sup> Section 365.1657, F.S.

## **Amusement Rides**

Florida law, in Part II of ch. 616, F.S., requires that each permanent amusement ride be inspected by the Department of Agriculture and Consumer Services semiannually and receive an inspection certificate, and that each temporary amusement ride be inspected each time the ride is set up or moved to a new location.<sup>12</sup> Current law is not clear in the situation in which a previously inspected permanent ride is taken down and relocated within a permanent amusement park.

Florida law also requires an insurance policy or surety bond in the amount of \$1 million per occurrence and \$1 million in the aggregate be submitted to the department to satisfy the required annual insurance on fair rides.<sup>13</sup> The insurance or bond must be procured from an insurer or surety that is licensed to transact business in Florida or that is approved as a surplus lines insurer.<sup>14</sup> According to the department, there are no surety bonds on file in the department, and none of the approximately 400 fair rides companies listed in the department's database have ever submitted a surety bond as proof of insurance. Similar insurance requirements for amusement rides or attractions is found in ch. 546, F.S., the Amusement Ride and Attraction Insurance Act. According to the department, the provisions in ch. 546, F.S., are in some cases duplicative and no longer necessary, in light of the insurance requirements under s. 616.242(9), F.S.

## **Business Opportunities**

The Department of Agriculture and Consumer Services regulates the sale or lease of business opportunities under Part VIII of ch. 559, F.S. A business opportunity means the "sale or lease of any products, equipment, supplies, or services which are sold or leased to a purchaser to enable the purchaser to start a business for which the purchaser is required to pay an initial fee or sum of money which exceeds \$500 to the seller, and in which the seller represents:

- That the seller or person or entity affiliated with or referred by the seller will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases, currency or card operated equipment, or other similar devices or currency-operated amusement machines or devices on premises neither owned nor leased by the purchaser or seller;
- That the seller will purchase any or all products made, produced, fabricated, grown, bred, or modified by the purchaser using in whole or in part the supplies, services, or chattels sold to the purchaser;
- That the seller guarantees that the purchaser will derive income from the business opportunity which exceeds the price paid or rent charged for the business opportunity or that the seller will refund all or part of the price paid or rent charged for the business opportunity, or will repurchase any of the products, equipment, supplies, or chattels supplied by the seller, if the purchaser is unsatisfied with the business opportunity; or
- That the seller will provide a sales program or marketing program that will enable the purchaser to derive income from the business opportunity, except that this paragraph does not

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<sup>12</sup> Section 616.242(7)(a), F.S.

<sup>13</sup> Section 616.242(9), F.S.

<sup>14</sup> *Id.*

apply to the sale of a sales program or marketing program made in conjunction with the licensing of a trademark or service mark that is registered under the laws of any state or of the United States if the seller requires use of the trademark or service mark in the sales agreement.”<sup>15</sup>

### **Motor Vehicle Repair Shops**

The Department of Agriculture and Consumer Services regulates motor vehicle repair shops under Part IX of ch. 559, F.S. Prior to conducting business as a motor vehicle repair shop, a person must first register with the department. The application for registration must include at least the following.

- The name of the applicant.
- The name under which the applicant is doing business.
- The business address at which the applicant performs repair work or, in the case of a mobile motor vehicle repair shop, the home address of the owner, if different from the business address.
- Copies of all licenses, permits, and certifications obtained by the applicant or employees of the applicant.
- Number of employees which the applicant intends to employ or which are currently employed.<sup>16</sup>

The department charges a fee based upon the number of employees on a per-year basis as follows.

- If the place of business has 1 to 5 employees: \$50
- If the place of business has 6 to 10 employees: \$150
- If the place of business has 11 or more employees: \$300<sup>17</sup>

Section 559.920, F.S., sets out for motor vehicle repair shops and their employees what are unlawful acts and practices. Some of the unlawful acts and practices include engaging or attempting to engage in repair work for compensation without first being registered with or having submitted an affidavit of exemption to the department, making or charging for repairs that have not been expressly or impliedly authorized by the customer, misrepresenting that repairs have been made to a motor vehicle, and misrepresenting that certain parts and repairs are necessary to repair a vehicle.<sup>18</sup>

### **Sellers of Travel**

The Department of Agriculture and Consumer Services oversees sellers of travel through Part XI of ch. 559, F.S., which requires them to register annually. When a seller of travel registers with the department, a registrant must provide to the department a number of items including, among

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<sup>15</sup> Section 559.801(1)(a), F.S.

<sup>16</sup> Section 559.904(1)(a)-(e), F.S.

<sup>17</sup> Section 559.904(3)(a)-(c), F.S.

<sup>18</sup> Section 559.920(1)-(4), F.S.

other items, the registrant's legal business or trade name, mailing address, and business locations, and the full names, addresses, telephone numbers, and social security numbers of its owners or corporate officers and directors and the Florida agent of the corporation.<sup>19</sup> The registration fee is \$300 per year.<sup>20</sup>

An independent agent acting on behalf of a seller of travel must also register annually with the department before engaging in business. An independent agent must provide certain information in an affidavit to the department including the independent agent's full name, legal business or trade name, mailing address, telephone number, and social security number, and the name or names and addresses of each seller of travel represented by the independent agent.<sup>21</sup> There are currently no filing fees for independent agents.

### **Game Promotions**

An additional area of regulatory oversight for the Department of Agriculture and Consumer Services is game promotions in connection with the sale of consumer products or services under s. 849.094, F.S. Game promotion means, but is not limited to, "a contest, game of chance, or gift enterprise, conducted within or throughout the state and other states in connection with the sale of consumer products or services, and in which the elements of chance and prize are present."<sup>22</sup> This definition does not apply to bingo games. An operator means "any person, firm, corporation, or association or agent or employee thereof who promotes, operates, or conducts a game promotion."<sup>23</sup> This definition does not apply to any charitable nonprofit organization.<sup>24</sup>

If a game promotion operator plans to offer a game promotion in which the total announced value of the prizes offered is greater than \$5,000, the operator must file with the department a copy of the rules and regulations of the game promotion and a list of the prizes and prize categories offered at least 7 days prior to the start of the game promotion with a filing fee of \$100. The game promotion rules and regulations must be published in all advertising copy.<sup>25</sup>

Once a game promotion has been completed, the game promotion operator must file a certified list of the names and addresses of the winners who have won prizes with a value of more than \$25 and the dates when the prizes were won within 60 days after the winners have been finally determined.<sup>26</sup> The game promoter must provide the list for free to anyone who requests it or may publish the list in a Florida newspaper within 60 days of when the winners were determined and must provide the department with a certified copy of the publication.<sup>27</sup> All winning entries must be held by the game promotion operator for 90 days after the close of the game.<sup>28</sup>

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<sup>19</sup> Section 559.928 (1), F.S.

<sup>20</sup> *Id.* at (2).

<sup>21</sup> *Id.* at (3).

<sup>22</sup> Section 849.094(1)(a), F.S.

<sup>23</sup> *Id.* at (b), F.S.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at (3).

<sup>26</sup> *Id.* at (5).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

## **Consumer Access to State Agencies<sup>29</sup>**

State agencies offer a variety of services to consumers who are preparing to enter the marketplace and want information on a business or professional, as well as for consumers who feel they have been aggrieved in the marketplace. In support of these kinds of consumer services, the state employs various infrastructure, such as toll-free or other telephone numbers, agency-staffed or contracted customer call centers, and agency websites with regulatory information or on-line licensure and complaint capabilities.

Because agencies generally have their own consumer-service operations, a Floridian familiar with the division of responsibility in state government may be served most efficiently by directly contacting, via telephone, the Internet, or regular mail, the agency with responsibility for the particular issue. However, a consumer unfamiliar with the jurisdiction of agencies may experience difficulty determining where to start to turn for assistance. In the latter case, two important avenues for information are the state's official Internet portal, which operates as myflorida.com, and the state operator and directory assistance system, known as the State Information Center. In addition, the Department of Agriculture and Consumer Services (DACCS) is statutorily tasked with serving as a clearinghouse for the receipt and referral of consumer inquiries and complaints.

### **Official State Portal: Myflorida.com**

The state's official portal – www.myflorida.com – is an increasingly important avenue for consumers to access services of state government. The portal receives approximately 150,000 visits<sup>30</sup> per day.<sup>31</sup> The foundation for myflorida.com is a commercial portal product from Yahoo, purchased by the state and maintained by the State Technology Office (STO).<sup>32</sup> Individual state agencies, however, separately host and maintain their own portals. In this manner, STO develops the taxonomy on myflorida.com and works cooperatively with other state agencies to identify the appropriate linkages on the official state portal. The agencies themselves, however, control the content once a user links from myflorida.com to the agency's website.

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<sup>29</sup> For additional information on this topic, see The Florida Senate, Committee on Commerce and Consumer Services, *Accessing Consumer Services of State Government*, Interim Project Report 2005-113, November 2004.

<sup>30</sup> The STO staff explained that a visit is a unique session on the portal. One visit typically results in several "hits" to stage-agency pages during the visit.

<sup>31</sup> A "portal" generally refers to a website designed to be a starting place for users to access content and services. It may feature a directory of websites or a search capacity.

<sup>32</sup> The STO is responsible, among other things, for operating the Shared Resource Center in Tallahassee that serves 84 state agencies, boards, commissions, local governments, and eligible non-profit organizations. The center's services include communications access, information processing, Internet services, custom application development support and maintenance for Internet and mainframe applications, electronic commerce services, and legacy system operations and maintenance. For Fiscal Year 2004-2005, the State Technology Office Program was appropriated \$255.7 million, of which trust funds account for 99 percent (or \$253.8 million) and general revenue account for 1 percent (or \$1.8 million), and had 240.5 authorized positions.

## **Complaint Clearinghouse**

The Division of Consumer Services of DACS serves as the state's clearinghouse for consumer protection, consumer information, and consumer services in general.<sup>33</sup> Under this responsibility, the division receives consumer complaints<sup>34</sup> and transmits them for handling by the appropriate agency with jurisdiction over the complaint's subject matter. As part of this clearinghouse arrangement, if a state agency receives a complaint that addresses a consumer fraud or consumer protection issue outside that agency's jurisdiction, the statute directs the agency to refer the complaint to the Division of Consumer Services at DACS for re-referral to the proper agency.<sup>35</sup> When the subject of a complaint is not within the regulatory authority of any state agency, the division is directed to pursue formal or informal methods of mediating a settlement of the complaint between the consumer and business.<sup>36</sup>

In addition to serving as the state's complaint clearinghouse, DACS has statutorily assigned regulatory oversight of multiple business sectors (e.g., motor vehicle repair shops, sellers of travel, and dance studios).<sup>37</sup> To facilitate the processing of unregulated complaints and complaints within the department's jurisdiction, as well as the referral of complaints to other agencies, the Division of Consumer Services at DACS maintains a call center (e.g., 800-HELP-FLA) and a website ([www.800helpfla.com](http://www.800helpfla.com)). The Division of Standards is required to make a report of motor fuel complaints received. Most such complaints are handled by the industry and this report is not used.

## **State Information and Directory Services**

The state information and directory services functions of the STO also play a role in how Floridians access consumer services of state government, as well as in how agencies refer consumer complaints and inquiries to one another. Among these functions are:

- The provision of directory assistance through a state operator ("State Information Center");
- The maintenance of telephone data for participants in the SunCom system ("SunCom Directory Services"); and
- The provision of data for publication in commercial telephone directories ("Commercial Directory Records").

## **Attorney General's Office of Citizen Services**

Although it is not statutorily assigned to serve as the complaint clearinghouse, the Office of the Attorney General operates a consumer unit that provides some comparable services to the clearinghouse operated by the Division of Consumer Services at DACS.

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<sup>33</sup> Section 570.544(3), F.S.

<sup>34</sup> As provided for in Section 570.544(8), F.S., the records of the Division of Consumer Services are public records with the exception of customer lists, customer names, and trade secrets.

<sup>35</sup> An agency to which the Division of Consumer Services refers a complaint shall, within 30 days, acknowledge its receipt and report on its disposition or status. See s. 570.544(6), F.S.

<sup>36</sup> Section 570.544(3), F.S.

<sup>37</sup> See, e.g., ss. 559.901-559.9221, 559.926-559.939, and 501.143, F.S.



The Office of Citizen Services is staffed with 13 full-time employees, 10 of whom are telephone and correspondence analysts, as well as approximately 60-80 hours of “other personal services” (OPS) each week. The office processes approximately 630 calls per day. The core mission of the office is to identify and track fraudulent activity, and, upon seeing a pattern of this activity, to share the information with the Attorney General’s economic crimes unit. However, some of the calls that come into the center are more general consumer inquiries or complaints and may relate to the jurisdiction of another state agency.

In addition to providing consumers with contact information for another agency, the Office of Citizen Services in some instances will download forms from the other agency and provide them to the consumer or send a complaint for the consumer directly to the appropriate agency. The Office of the Attorney General also maintains topic-specific databases that can be used, for example, to determine if a consumer’s call relates to an active investigation of the economic crimes unit.

### **Consumer Roundtable**

In 2003, consumer-service staff from multiple state agencies on their own initiative formed a Consumer Roundtable. The initial purpose of the roundtable was to exchange information on agency services, with the goal of improving the referral of consumers among agencies and avoiding misdirected referrals. In June 2004, the roundtable formed a steering committee to lead the organization and meet on at least a quarterly basis.<sup>38</sup>

### **Florida 211 Network**

The Florida 211 Network was developed to serve as the single point of coordination for information and referral for health and human services in Florida.<sup>39</sup> Among other objectives, the Florida 211 Network strives to provide and improve access to accurate health and human service information and promote public awareness of the availability of information and referral services. The Network is a collaboration of 2-1-1 regional and local call centers that currently provide 2-1-1 access to approximately 75 percent of the state’s population, and handle over 500,000 calls per year.<sup>40</sup> To participate in the Florida 2-1-1 Network, a provider must be certified by the Agency for Health Care Administration.<sup>41</sup> There are currently additional call centers under development.

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<sup>38</sup> The steering committee is comprised of staff from the Agency for Health Care Administration and the following departments: Business and Professional Regulation, Children and Family Services, Agriculture and Consumer Services, Financial Services, Legal Affairs, Elder Affairs, Health, Revenue, and Highway Safety and Motor Vehicles. At its first meeting, the steering committee decided it would meet monthly. However, increased agency workloads associated with the hurricanes that made landfall in the state during the summer of 2004 disrupted the meeting schedule.

<sup>39</sup> Section 408.918(1), F.S. The Florida 2-1-1 Network Internet website address is <http://flairs.org/index.htm>.

<sup>40</sup> <http://flairs.org/florida211networkplan.htm>

<sup>41</sup> Section 408.918(2), F.S.

### III. Effect of Proposed Changes:

Committee Substitute for Committee Substitute for Senate Bill 1520 revises a number of programs and activities under the jurisdiction of the Department of Agriculture and Consumer Services (department). In particular, the bill:

- Requires an applicant for a Class “D” security license to complete terrorism training or other specialized training prescribed by the department;
- Incorporates within the state’s telephone solicitation law a prohibition against transmission of unsolicited advertising materials via facsimile;
- Clarifies the statutory definition of a business opportunity;
- Repeals the provisions of the Amusement Ride and Attraction Insurance Act under ch. 546, F.S., while retaining comparable insurance provisions in s. 616.242, F.S.;
- Exempts certain governmental entities from amusement ride insurance requirements.
- Defines “travel clubs” for the purposes of the Florida Sellers of Travel Act;
- Authorizes operators of game promotions to include only the materials terms of a game promotion in advertisements – if the advertisement includes a website, toll-free telephone number, or mailing address where the full rules and regulations may be heard, viewed, or obtained; and
- Requires a \$100 annual filing fee for independent agents of sellers of travel.

The bill also directs the State Technology Office to provide, through the state’s official website, linkages and information relating to consumer protection and other human and social services. The Senate budget transfers operation and maintenance of the state’s official website to the Department of Management Services (DMS). The DMS would be responsible for maintenance of the state’s official website to provide the linkages and information required by this bill.

The bill designates the Department of Agriculture and Consumer Services’ Division of Consumer Services as the state clearinghouse for matters relating to consumer protection, information, and services.

#### Security Officer License

**Section 1** amends s. 493.6303, F.S., to require applicants for Class “D” security licenses to complete at least 44 hours of professional training (increased from 40 hours), 8 of which shall be in terrorism awareness or other special training prescribed by the Department of Agriculture and Consumer Services. All training must be accomplished within 180 days of initially applying for a license. Individuals who successfully complete the existing 40 hours of required training prior to January 1, 2006, are exempt from the new requirements.

#### Telephone and Facsimile Solicitation

**Section 2** amends s. 501.059, F.S., to prohibit using a fax machine to send unsolicited advertising material for the sale of any real property, goods, or services.

### **Retail Sales Refunds**

**Section 3** amends s. 501.142, F.S., to preempt the regulation of refunds by retail sales establishments to the Department of Agriculture and Consumer Services. It provides rulemaking authority and remedies to enable DACS to carry out this function. Moneys recovered are to be deposited into the General Inspection Trust Fund. Local governments are allowed to enforce the refund provisions and can retain any moneys recovered as a penalty.

### **Return of Shopping Carts**

**Section 4** amends s. 506.5131, F.S., to clarify that owners of a shopping cart that was removed from its premises and found on public property are not subject to a monetary charge even if a local ordinance provides otherwise.

### **Amusement Rides**

**Section 6** repeals ss. 546.001, 546.002, 546.003, 546.004, 546.006, and 546.008, F.S., the Amusement Ride and Attraction Insurance Act. Insurance requirements for these facilities will continue to be required under s. 616.242(9), F.S.

**Section 11** amends s. 616.242, F.S., to specify that governmental entities with sovereign immunity, pursuant to s. 768.28(16), F.S., are exempt from the insurance requirements of this section.

### **Business Opportunities**

**Section 7** amends s. 559.801, F.S., to revise the definition of “business opportunity” to clarify that the sale or lease of a business opportunity occurs either when the sales or marketing plan is provided contemporaneously at the time of the sale or lease or at a future time.

### **Motor Vehicle Repair Shops**

**Section 8** amends s. 559.920, F.S., relating to unlawful acts by motor vehicle repair shops, to remove language referencing an affidavit of exemption that may be filed in lieu of registering with the department. According to the department, the phrase “affidavit of exemption” is obsolete and no longer applicable.

### **Sellers of Travel**

**Section 9** amends s. 559.927, F.S., relating to definitions under the Florida Sellers of Travel Act. The bill defines a “travel club” as an organization in which a member has the right to receive or purchase prearranged travel, tourist-related services, or tour-guide services, as such prearranged travel, tourist-related services, or tour-guide services are from time to time offered, for an advance fee or payment, which may be subject to reservation on a first-come, first-served, space-available basis, but in which a member is not granted a legal or equitable interest in any real property or specific right of use, without a reservation, of any specific property. A travel club properly registered under this part does not constitute a timeshare interest or timeshare plan.

**Section 10** amends s. 559.928, F.S., to remove language requiring social security numbers be submitted with annual registration for sellers of travel with the department. Also, independent agents are required to submit a copy of their contract with each seller of travel along with a \$100 filing fee which is to be deposited into the General Inspection Trust Fund of the department.

### **Game Promotions**

**Section 12** amends s. 849.094, F.S. to clarify the definition of the word “Operator” in order to be consistent with terms used in actual 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 bill provides that advertising for a game promotion need only include the material terms of the rules and regulations – provided that the advertisement includes a website address, a toll-free telephone number, or a mailing address where the full rules and regulations may be viewed, heard, or obtained.

### **Consumer Access to State Agencies**

#### *State Technology Office Duties*

**Section 13** directs the State Technology Office (STO) to aggregate certain consumer-protection information through the state’s official website – including a link to the website of the Department of Agriculture and Consumer Services (DACS); consumer-protection information and resources available from state agencies; useful tools to help consumer identify which agencies have jurisdiction over specific subjects; and alerts for consumers on known fraudulent practices. The Senate budget transfers operation and maintenance of the state’s official website to the Department of Management Services (DMS). The DMS would be responsible for maintenance of the state’s official website to provide the linkages and information required by this bill.

**Section 14** directs the STO to provide a link to the Florida 211 Network on the official Internet website of the state, including profiling the information and referral system and listing areas within the state where the network is available, along with the respective phone numbers. The Senate budget transfers operation and maintenance of the state’s official website to the Department of Management Services (DMS). The DMS would be responsible for maintenance of the state’s official website to provide the linkages and information required by this bill.

#### *Complaint Clearinghouse*

**Section 5** repeals s. 526.3135, F.S., which required a report regarding motor fuel complaints which is not used by the department.

**Section 15** amends s. 570.544, F.S., to designate the Department of Agriculture and Consumer Services as the state’s clearinghouse for matters relating to consumer protection, information, and services. This section also deletes the reporting requirement that an agency must report back to the department within 30 days on the disposition of a complaint referred to the agency or a progress report on the status of the complaint.

### *Appropriations*

**Section 16** specifies that implementation of this act is not contingent upon the appropriation of funds or an increase in fees.

### **Effective Date**

**Section 17** provides an effective date October 1, 2005, unless otherwise provided in the bill.

## **IV. Constitutional Issues:**

### A. Municipality/County Mandates Restrictions:

None.

### B. Public Records/Open Meetings Issues:

None.

### C. Trust Funds Restrictions:

None.

## **V. Economic Impact and Fiscal Note:**

### A. Tax/Fee Issues:

This bill creates a filing fee of \$100 for independent agents of sellers of travel.

### B. Private Sector Impact:

The cost of the revised security officer training is unable to be determined; however it is anticipated that costs would be minimal.

See Tax/Fee Issues, above, for a discussion of a filing fee for independent agents of sellers of travel.

### C. Government Sector Impact:

Estimates on the impact for the State Technology Office for providing links and required information, under the bill, through myflorida.com are not available at this time; however, it is anticipated that the addition of the new links and information to the state's official website can be absorbed within existing resources. The Senate budget transfers operation and maintenance of the state's official website to the Department of Management Services (DMS). The DMS would be responsible for maintenance of the state's official website to provide the linkages and information required by this bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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