

By the Committees on Judiciary; Commerce and Consumer Services; and Senator Lynn

590-2039-05

1 A bill to be entitled
2 An act relating to consumer protection;
3 amending s. 493.6303, F.S.; revising training
4 requirements for obtaining a Class "D" license;
5 requiring a minimum number of hours of training
6 in terrorism awareness or other training
7 prescribed by the Department of Agriculture and
8 Consumer Services; providing a timeframe for
9 submitting proof of having completed the
10 training; revising the number of training hours
11 required; amending s. 501.059, F.S.;
12 prohibiting the transmission of facsimile
13 documents under certain circumstances;
14 providing for attorney's fees and for the
15 recovery of certain litigation expenses by the
16 department and the Department of Legal Affairs;
17 repealing ss. 546.001, 546.002, 546.003,
18 546.004, 546.006, and 546.008, F.S., relating
19 to the "Amusement Ride and Attraction Insurance
20 Act"; amending s. 559.801, F.S.; redefining the
21 term "business opportunity" for purposes of the
22 "Sale of Business Opportunities Act"; amending
23 s. 559.920, F.S.; redefining actions by motor
24 vehicle repair shops or employees which are
25 unlawful; amending s. 559.927, F.S.; defining
26 the term "travel club" for the purpose of part
27 XI of ch. 559, F.S., relating to sellers of
28 travel; amending s. 559.928, F.S.; revising
29 information to be submitted for registration as
30 a seller of travel and information submitted by
31 independent agents; requiring the payment of an

1 annual fee; amending s. 616.242, F.S.;
2 exempting certain governmental entities from a
3 requirement to maintain liability protection
4 covering amusement rides; amending s. 849.094,
5 F.S.; redefining the term "operator" for
6 purposes of the regulation of game promotions;
7 providing requirements relating to disclosure
8 of the rules and regulations of a game
9 promotion; directing the State Technology
10 Office to integrate additional features into
11 the state's official Internet website;
12 directing the State Technology Office to
13 integrate information concerning the Florida
14 211 Network into the state's official Internet
15 website; amending s. 570.544, F.S.; designating
16 the Division of Consumer Services within the
17 Department of Agriculture and Consumer Services
18 as the state clearinghouse for matters relating
19 to consumer protection, consumer information,
20 and consumer services; deleting reporting
21 requirements; providing for implementation;
22 providing effective dates.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Section 493.6303, Florida Statutes, is
27 amended to read:

28 493.6303 License requirements.--In addition to the
29 license requirements set forth elsewhere in this chapter, each
30 individual or agency shall comply with the following
31 additional requirements:

1 (1) Each agency or branch office shall designate a
2 minimum of one appropriately licensed individual to act as
3 manager, directing the activities of the Class "D" employees.

4 (2) An applicant for a Class "MB" license shall have 2
5 years of lawfully gained, verifiable, full-time experience, or
6 training in:

7 (a) Security work or related fields of work that
8 provided equivalent experience or training;

9 (b) Experience described in paragraph (a) for 1 year
10 and experience described in paragraph (c) for 1 year;

11 (c) No more than 1 year using:

12 1. Either college coursework related to criminal
13 justice, criminology, or law enforcement administration; or

14 2. Successfully completed law enforcement-related
15 training received from any federal, state, county, or
16 municipal agency; or

17 (d) Experience described in paragraph (a) for 1 year
18 and work in a managerial or supervisory capacity for 1 year.

19 (3) An applicant for a Class "M" license shall qualify
20 for licensure as a Class "MA" manager as outlined under s.
21 493.6203(2) and as a Class "MB" manager as outlined under
22 subsection (2).

23 (4)(a) Effective January 1, 2006 ~~October 1, 1994~~, an
24 applicant for a Class "D" license must complete ~~have completed~~
25 a minimum of 44 ~~40~~ hours of professional training administered
26 by at a school or training facility licensed by the
27 department. The department shall by rule establish the general
28 content and number of hours of all the training. Such training
29 must include at least 8 hours of instruction in terrorism
30 awareness or other special training prescribed by the
31 department.

1 (b) An applicant may fulfill the training requirement
2 prescribed in paragraph (a) by submitting proof of:

3 1. Successful completion of the total number of
4 required ~~40~~ hours of training before initial application for a
5 Class "D" license; or

6 2. Successful completion of 24 hours of training
7 before initial application ~~for~~, and the remaining 16 hours of
8 training within 180 days after the date upon the first
9 application is submitted for renewal of, a Class "D" license.

10 If documentation of completion of the required training is not
11 submitted within the specified timeframe, the individual's
12 license is automatically suspended until such time as proof of
13 the required training is provided to the department. However,
14 Individuals licensed before October 1, 1994, or individuals
15 who have successfully completed 40 hours of professional
16 training before January 1, 2006, at a school or training
17 facility licensed by the department, are exempt from the
18 training requirements of paragraph (a) need not complete
19 additional training hours in order to renew their licenses.

20
21 However, any person whose license has been revoked or whose
22 license has been expired for 1 year or longer is considered,
23 upon reapplication for a license, an initial applicant and
24 must submit proof of successful completion of the total number
25 of required ~~40~~ hours of professional training at a school or
26 training facility licensed by the department.

27 (5) An applicant for a Class "G" license shall satisfy
28 the firearms training outlined in s. 493.6115.

29 Section 2. Subsections (7), (8), and (9) of section
30 501.059, Florida Statutes, are amended to read:

31 501.059 Telephone solicitation.--

1 (7)(a) ~~A No~~ person may not ~~shall~~ make or knowingly
2 allow a telephonic sales call to be made if the ~~such~~ call
3 involves an automated system for the selection or dialing of
4 telephone numbers or the playing of a recorded message when a
5 connection is completed to a number called.

6 (b) Nothing herein prohibits the use of an automated
7 telephone dialing system with live messages if the calls are
8 made or messages given solely in response to calls initiated
9 by the persons to whom the automatic calls or live messages
10 are directed or if the telephone numbers selected for
11 automatic dialing have been screened to exclude any telephone
12 subscriber who is included on the department's then-current
13 "no sales solicitation calls" listing or any unlisted
14 telephone number, or if the calls made concern goods or
15 services that have been previously ordered or purchased.

16 (c) A person may not transmit, or knowingly allow the
17 transmission of, a facsimile of documents through connection
18 with a telephone network if the facsimile transmission
19 involves unsolicited advertising material for the sale of any
20 real property, goods, or services.

21 (8) The department shall investigate any complaints
22 received concerning violations of this section. If, after
23 investigating any complaint, the department finds that there
24 has been a violation of this section, the department or the
25 Department of Legal Affairs may bring an action to impose a
26 civil penalty and to seek other relief, including injunctive
27 relief, as the court deems appropriate against the telephone
28 solicitor. The civil penalty shall not exceed \$10,000 per
29 violation and shall be deposited in the General Inspection
30 Trust Fund if the action or proceeding was brought by the
31 department, or the Legal Affairs Revolving Trust Fund if the

1 | action or proceeding was brought by the Department of Legal
2 | Affairs. This civil penalty may be recovered in any action
3 | brought under this part by the department, or the department
4 | may terminate any investigation or action upon agreement by
5 | the person to pay an agreed-upon ~~a stipulated~~ civil penalty.
6 | The department or the court may waive any civil penalty if the
7 | person has previously made full restitution or reimbursement
8 | or has paid actual damages to the consumers who have been
9 | injured by the violation.

10 | (9)(a) In any civil litigation resulting from a
11 | transaction involving a violation of this section, the
12 | prevailing party, after judgment in the trial court and
13 | exhaustion of all appeals, if any, shall receive his or her
14 | reasonable attorney's fees and costs from the nonprevailing
15 | party.

16 | (b) The attorney for the prevailing party shall submit
17 | a sworn affidavit of his or her time spent on the case and his
18 | or her costs incurred for all the motions, hearings, and
19 | appeals to the trial judge who presided over the civil case.

20 | (c) The trial judge shall award the prevailing party
21 | the sum of reasonable costs incurred in the action plus a
22 | reasonable legal fee for the hours actually spent on the case
23 | as sworn to in an affidavit.

24 | (d) Any award of attorney's fees or costs shall become
25 | a part of the judgment and subject to execution as the law
26 | allows.

27 | (e) In any civil litigation initiated by the
28 | department or the Department of Legal Affairs, ~~the court may~~
29 | ~~award to~~ the prevailing party may recover reasonable
30 | attorney's fees and costs ~~if the court finds that there was a~~
31 | ~~complete absence of a justiciable issue of either law or fact~~

1 ~~raised by the losing party or if the court finds bad faith on~~
2 ~~the part of the losing party. Travel and per diem expenses~~
3 ~~incurred by the department or the Department of Legal Affairs~~
4 ~~for its attorneys and witnesses shall be recoverable costs by~~
5 ~~the department or the Department of Legal Affairs if either~~
6 ~~agency prevails in civil litigation.~~

7 Section 3. Sections 546.001, 546.002, 546.003,
8 546.004, 546.006, and 546.008, Florida Statutes, are repealed.

9 Section 4. Paragraph (a) of subsection (1) of section
10 559.801, Florida Statutes, is amended to read:

11 559.801 Definitions.--For the purpose of ss.
12 559.80-559.815, the term:

13 (1)(a) "Business opportunity" means the sale or lease
14 of any products, equipment, supplies, or services which are
15 sold or leased to a purchaser to enable the purchaser to start
16 a business for which the purchaser is required to pay an
17 initial fee or sum of money which exceeds \$500 to the seller,
18 and in which the seller represents:

19 1. That the seller or person or entity affiliated with
20 or referred by the seller will provide locations, either
21 contemporaneously at the time of the sale or lease or at a
22 future time, or assist the purchaser in finding locations for
23 the use or operation of vending machines, racks, display
24 cases, currency or card operated equipment, or other similar
25 devices or currency-operated amusement machines or devices on
26 premises neither owned nor leased by the purchaser or seller;

27 2. That the seller will purchase, either
28 contemporaneously at the time of the sale or lease or at a
29 future time, any or all products made, produced, fabricated,
30 grown, bred, or modified by the purchaser using in whole or in
31

1 part the supplies, services, or chattels sold to the
2 purchaser;

3 3. That the seller guarantees that the purchaser will
4 derive income from the business opportunity which exceeds the
5 price paid or rent charged for the business opportunity or
6 that the seller will refund all or part of the price paid or
7 rent charged for the business opportunity, or will repurchase
8 any of the products, equipment, supplies, or chattels supplied
9 by the seller, if the purchaser is unsatisfied with the
10 business opportunity; or

11 4. That the seller will provide, either
12 contemporaneously at the time of the sale or lease or at a
13 future time, a sales program or marketing program that will
14 enable the purchaser to derive income from the business
15 opportunity, except that this paragraph does not apply to the
16 sale of a sales program or marketing program made in
17 conjunction with the licensing of a trademark or service mark
18 that is registered under the laws of any state or of the
19 United States if the seller requires use of the trademark or
20 service mark in the sales agreement.

21
22 For the purpose of subparagraph 1., the term "assist the
23 purchaser in finding locations" means, but is not limited to,
24 supplying the purchaser with names of locator companies,
25 contracting with the purchaser to provide assistance or supply
26 names, or collecting a fee on behalf of or for a locator
27 company.

28 Section 5. Section 559.920, Florida Statutes, is
29 amended to read:

30
31

1 559.920 Unlawful acts and practices.--It shall be a
2 violation of this act for any motor vehicle repair shop or
3 employee thereof to:

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

8 (2) Make or charge for repairs which have not been
9 expressly or impliedly authorized by the customer;

10 (3) Misrepresent that repairs have been made to a
11 motor vehicle;

12 (4) Misrepresent that certain parts and repairs are
13 necessary to repair a vehicle;

14 (5) Misrepresent that the vehicle being inspected or
15 diagnosed is in a dangerous condition or that the customer's
16 continued use of the vehicle may be harmful or cause great
17 damage to the vehicle;

18 (6) Fraudulently alter any customer contract,
19 estimate, invoice, or other document;

20 (7) Fraudulently misuse any customer's credit card;

21 (8) Make or authorize in any manner or by any means
22 whatever any written or oral statement which is untrue,
23 deceptive or misleading, and which is known, or which by the
24 exercise of reasonable care should be known, to be untrue,
25 deceptive or misleading;

26 (9) Make false promises of a character likely to
27 influence, persuade, or induce a customer to authorize the
28 repair, service, or maintenance of a motor vehicle;

29 (10) Substitute used, rebuilt, salvaged, or
30 straightened parts for new replacement parts without notice to
31 the motor vehicle owner and to her or his insurer if the cost

1 of repair is to be paid pursuant to an insurance policy and
2 the identity of the insurer or its claims adjuster is
3 disclosed to the motor vehicle repair shop;

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

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

10 (13) Willfully depart from or disregard accepted
11 practices and professional standards;

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

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

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

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

26 Section 6. Present subsection (11) of section 559.927,
27 Florida Statutes, is redesignated as subsection (12), and a
28 new subsection (11) is added to that section, to read:

29 559.927 Definitions.--For the purposes of this part,
30 the term:

31

1 (11) "Travel club" means an organization in which a
2 member has the right to receive or purchase prearranged
3 travel, tourist-related services, or tour-guide services, as
4 such prearranged travel, tourist-related services, or
5 tour-guide services are from time to time offered, for an
6 advance fee or payment, which may be subject to reservation on
7 a first-come, first-served, space-available basis, but in
8 which a member is not granted a legal or equitable interest in
9 any real property or specific right of use of any specific
10 property. A travel club properly registered under this part
11 does not constitute a timeshare interest or timeshare plan.

12 Section 7. Subsections (1) and (3) of section 559.928,
13 Florida Statutes, are amended to read:

14 559.928 Registration.--

15 (1) Each seller of travel shall annually register with
16 the department, providing: its legal business or trade name,
17 mailing address, and business locations; the full names,
18 addresses, and telephone numbers, ~~and social security numbers~~
19 of its owners or corporate officers and directors and the
20 Florida agent of the corporation; a statement whether it is a
21 domestic or foreign corporation, its state and date of
22 incorporation, its charter number, and, if a foreign
23 corporation, the date it registered with the State of Florida,
24 and occupational license where applicable; the date on which a
25 seller of travel registered its fictitious name if the seller
26 of travel is operating under a fictitious or trade name; the
27 name of all other corporations, business entities, and trade
28 names through which each owner of the seller of travel
29 operated, was known, or did business as a seller of travel
30 within the preceding 5 years; a list of all authorized
31 independent agents, including the agent's trade name, full

1 name, mailing address, business address, telephone numbers,
2 and social security number; the business location and address
3 of each branch office and full name and address of the manager
4 or supervisor; and proof of purchase of adequate bond or
5 establishment of a letter of credit or certificate of deposit
6 as required in this part. A certificate evidencing proof of
7 registration shall be issued by the department and must be
8 prominently displayed in the seller of travel's primary place
9 of business.

10 (3) Each independent agent shall annually file an
11 affidavit with the department and pay a fee of \$100 prior to
12 engaging in business in this state. This affidavit must
13 include the independent agent's full name, legal business or
14 trade name, mailing address, business address, and telephone
15 number, ~~social security number~~, and the name or names and
16 addresses of each seller of travel represented by the
17 independent agent and must be accompanied by a copy of the
18 independent agent's current contract with each seller of
19 travel. A letter evidencing proof of filing must be issued by
20 the department and must be prominently displayed in the
21 independent agent's primary place of business. As used in
22 this subsection, the term "independent agent" means a person
23 who represents a seller of travel by soliciting persons on its
24 behalf; who has a written contract with a seller of travel
25 which is operating in compliance with this part and any rules
26 adopted thereunder; who does not receive a fee, commission, or
27 other valuable consideration directly from the purchaser for
28 the seller of travel; who does not at any time have any
29 unissued ticket stock or travel documents in his or her
30 possession; and who does not have the ability to issue
31 tickets, vacation certificates, or any other travel document.

1 The term "independent agent" does not include an affiliate of
2 the seller of travel, as that term is used in s. 559.935(3),
3 or the employees of the seller of travel or of such
4 affiliates.

5 Section 8. Paragraph (c) is added to subsection (9) of
6 section 616.242, Florida Statutes, to read:

7 616.242 Safety standards for amusement rides.--

8 (9) INSURANCE REQUIREMENTS.--

9 (c) The insurance requirements imposed under this
10 subsection do not apply to a governmental entity that is
11 covered by the provisions of s. 768.28(16).

12 Section 9. Subsections (1) and (3) of section 849.094,
13 Florida Statutes, are amended to read:

14 849.094 Game promotion in connection with sale of
15 consumer products or services.--

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

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

24 (b) "Operator" means any person, firm, corporation, or
25 association on whose behalf a game promotion is conducted ~~or~~
26 ~~agent or employee thereof who promotes, operates, or conducts~~
27 ~~a game promotion~~, except any charitable nonprofit
28 organization.

29 (3) The operator of a game promotion in which the
30 total announced value of the prizes offered is greater than
31 \$5,000 shall file with the Department of Agriculture and

1 Consumer Services a copy of the rules and regulations of the
2 game promotion and a list of all prizes and prize categories
3 offered at least 7 days before the commencement of the game
4 promotion. Such rules and regulations may not thereafter be
5 changed, modified, or altered. The operator of a game
6 promotion shall conspicuously post the rules and regulations
7 of such game promotion in each and every retail outlet or
8 place where such game promotion may be played or participated
9 in by the public and shall also publish the rules and
10 regulations in all advertising copy used in connection
11 therewith. However, such advertising copy need only include
12 the material terms of the rules and regulations if the
13 advertising copy includes a website address, a toll-free
14 telephone number, or a mailing address where the full rules
15 and regulations may be viewed, heard, or obtained for the full
16 duration of the game promotion. Such disclosures must be
17 legible. Radio and television announcements may indicate that
18 the rules and regulations are available at retail outlets or
19 from the operator of the promotion. A nonrefundable filing fee
20 of \$100 shall accompany each filing and shall be used to pay
21 the costs incurred in administering and enforcing the
22 provisions of this section.

23 Section 10. The State Technology Office shall provide
24 a banner on the official Internet website of the state which
25 is hyperlinked to a website of the Department of Agriculture
26 and Consumer Services which:

27 (1) Aggregates a wide variety of consumer-protection
28 information and resources available from state agencies;

29 (2) Features useful tools to help consumers identify
30 which agencies have jurisdiction over specific subjects; and
31

1 (3) Includes alerts for consumers on known fraudulent
2 practices.

3 Section 11. The State Technology Office shall provide
4 a banner on the official Internet website of the state which
5 is hyperlinked to a website of the Florida 211 Network which:

6 (1) Profiles the information and referral system known
7 as the Florida 211 Network; and

8 (2) Lists areas within the state where the network is
9 available and the respective telephone numbers to access
10 members of the Florida 211 network.

11 Section 12. Subsections (3), (6), and (7) of section
12 570.544, Florida Statutes, are amended to read:

13 570.544 Division of Consumer Services; director;
14 powers; processing of complaints; records.--

15 (3) In addition to the powers, duties, and
16 responsibilities authorized by this or any other chapter, the
17 Division of Consumer Services shall serve as the state a
18 clearinghouse for matters relating to consumer protection,
19 consumer information, and consumer services generally. It
20 shall receive complaints and grievances from consumers and
21 promptly transmit them to that agency most directly concerned
22 in order that the complaint or grievance may be expeditiously
23 handled in the best interests of the complaining consumer. If
24 no agency exists, the Division of Consumer Services shall seek
25 a settlement of the complaint using formal or informal methods
26 of mediation and conciliation and may seek any other
27 resolution of the matter in accordance with its jurisdiction.

28 ~~(6)(a)~~ The office or agency to which a complaint has
29 been referred shall within 30 days acknowledge receipt of the
30 complaint ~~and report on the disposition made of the complaint.~~
31 ~~In the event a complaint has not been disposed of within 30~~

1 ~~days, the receiving office or agency shall file progress~~
2 ~~reports with the Division of Consumer Services no less~~
3 ~~frequently than 30 days until final disposition.~~

4 ~~(b) The report shall contain at least the following~~
5 ~~information:~~

6 ~~1. A finding of whether the receiving agency has~~
7 ~~jurisdiction of the subject matter involved in the complaint.~~

8 ~~2. Whether the complaint is deemed to be frivolous,~~
9 ~~sham, or without basis in fact or law.~~

10 ~~3. What action has been taken and a report on whether~~
11 ~~the original complainant was satisfied with the final~~
12 ~~disposition.~~

13 ~~4. Any recommendation regarding needed changes in law~~
14 ~~or procedure which in the opinion of the reporting agency or~~
15 ~~office will improve consumer protection in the area involved.~~

16 ~~(7)(a) If the office or agency receiving a complaint~~
17 ~~fails to file a report as contemplated in this section, that~~
18 ~~failure shall be construed as a denial by the receiving office~~
19 ~~or agency that it has jurisdiction of the subject matter~~
20 ~~contained in the complaint.~~

21 ~~(b) If an office or agency receiving a complaint~~
22 ~~determines that the matter presents a prima facie case for~~
23 ~~criminal prosecution or if the complaint cannot be settled at~~
24 ~~the administrative level, the complaint together with all~~
25 ~~supporting evidence shall be transmitted to the Department of~~
26 ~~Legal Affairs or other appropriate enforcement agency with a~~
27 ~~recommendation for civil or criminal action warranted by the~~
28 ~~evidence.~~

29 Section 13. This act is not contingent upon the
30 appropriation of funds or an increase in fees for its
31 implementation.

1 Section 14. Except as otherwise expressly provided in
2 this act, this act shall take effect October 1, 2005.

3
4 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
5 COMMITTEE SUBSTITUTE FOR
6 CS/Senate Bill 1520

7 The committee substitute:

- 8 -- Eliminates proposed fee increases or new fees for
9 charitable organizations, certain motor vehicle repair
10 shops licensed locally, game promotion operators, and
11 health studios.
12 -- Reduces the proposed new filing fee for independent
13 agents of sellers of travel to \$100 (from \$150).
14 -- Retains the option for amusement ride operators to
15 maintain liability protection using a surety bond.
16 -- Eliminates appropriations to the Department of
17 Agriculture and Consumer Services.
18 -- Specifies that implementation of the act is not
19 contingent upon appropriations or fee increases.
20
21
22
23
24
25
26
27
28
29
30
31