

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 833 CS Consumer Protection  
**SPONSOR(S):** Vana  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1520

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| REFERENCE   | ACTION          | ANALYST | STAFF DIRECTOR |
|---|-----------------|---------|----------------|
| 1) Agriculture Committee                              | 10 Y, 0 N, w/CS | Reese   | Reese          |
| 2) Civil Justice Committee                            | 5 Y, 0 N, w/CS  | Lammers | Billmeier      |
| 3) Agriculture & Environment Appropriations Committee | 8 Y, 0 N, w/CS  | Davis   | Dixon          |
| 4) State Resources Council                            | 7 Y, 0 N, w/CS  | Reese   | Hamby          |
| 5) _____  | _____           | _____   | _____          |

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### SUMMARY ANALYSIS

The bill contains a number of provisions relating to the consumer protection activities of the Department of Agriculture and Consumer Services (department).

Security officer licensing: The bill increases the required minimum number of professional training hours from 40 to 44 and requires that at least 8 hours of instruction in terrorism awareness be included.

Telephone and facsimile solicitation: The bill makes transmittal of unsolicited facsimiles to a Florida number a violation of the Florida no sales solicitation laws.

Retail sales establishments: The bill expressly preempts the regulation of refunds in retail sales establishments to the department. The bill also specifies that no fee, fine, or costs may be assessed against a shopping cart's owner unless the cart is found on public property and it was removed from a retail establishment's premises or parking area by the owner or an employee acting on the owner's behalf.

Division of Standards: The bill repeals the requirement for a report containing a compilation of complaints, as the information is not current or useful to the parties designated to receive the report.

Business opportunities: The bill clarifies that a seller may provide the required sales or marketing plan either contemporaneously at the time of the sale or lease or at a future time.

Motor vehicle repair: The reference to submission of an affidavit of exemption is removed, as it is obsolete and no longer required.

Sellers of travel: The bill requires independent agents to pay a new \$100 filing fee as well as submit to the department a copy of their contract with each seller of travel. The bill also provides a definition for the term "travel club" to distinguish travel clubs from timeshares.

Amusement facilities: The bill specifies that certain liability insurance requirements do not apply to governmental entities covered by the provisions of law relating to waiver of sovereign immunity in tort actions. The bill also repeals several sections of law, the provisions of which are addressed in another section of law relating to safety standards for amusement rides.

Game promotions: The bill revises the definition of the term "operator" 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 also reduces the publishing requirements for advertising for game promotions where the total prize value is greater than \$5,000.

State Technology Office: The bill requires changes to the official state website to provide consumers with easily accessible consumer protection information.

The bill may generate an estimated \$195,000 in revenue to the department.

The effective date of the bill is October 1, 2005.

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

**STORAGE NAME:** h0833h.SRC.doc  
**DATE:** 4/25/2005

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Ensure lower taxes** – The bill requires independent agents operating under the sellers of travel law to pay a fee of \$100 prior to engaging in business in Florida.

**Maintain public security** – The bill increases the required minimum number of professional training hours for a Class “D” security officer’s license to 44. At least 8 hours of instruction in terrorism awareness or other special training must be included as part of the 44 total hours.

#### B. EFFECT OF PROPOSED CHANGES:

##### Security officer licensing

Current law provides that an applicant for a Class “D” security officer’s license must have completed a minimum of 40 hours of professional training at a school or facility licensed by the department.<sup>1</sup> The law also provides that, upon completion of 24 of the required 40 hours, an applicant is eligible for licensure and the remaining 16 hours of training can be done upon first application for license renewal.<sup>2</sup>

This bill increases the required minimum number of professional training hours to 44. The bill also provides flexibility for the department to determine the total number of hours for all training. In addition, the bill requires that at least 8 hours of instruction in terrorism awareness be included as part of the 44 and that all training 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

Current law makes it unlawful to transmit unsolicited facsimiles within the state.<sup>3</sup> The Attorney General is the enforcing authority and violators are subject to injunctions and fines of \$500 per violation.<sup>4</sup>

This bill makes transmittal of unsolicited facsimiles to a Florida number, from either in-state or out-of-state numbers, a violation of the Florida no sales solicitation laws, and increases the penalty for a violation of the unsolicited facsimile law to \$10,000. In addition, the bill specifies that in any civil litigation initiated by the department or the Department of Legal Affairs, travel and per diem expenses incurred for attorneys and witnesses shall be recoverable costs if either the department or the Department of Legal Affairs prevails in civil litigation.

##### Retail sales establishments

Existing law provides that every retail sales establishment offering goods for sale to the general public that offers no cash refund, credit refund, or exchange of merchandise must post a sign so stating at the point of sale. Failure to exhibit a “no refund” sign under such circumstances at the point of sale means that a refund or exchange policy exists, and the policy shall be presented in writing to the consumer upon request. Any retail establishment failing to comply with the provisions of this section shall grant to the consumer, upon request and proof of purchase, a refund on the merchandise, within 7 days of the date of purchase, provided the merchandise is unused and in the original carton, if one was furnished.<sup>5</sup>

The bill expressly preempts the regulation of refunds in retail sales establishments to the department.

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<sup>1</sup> Section 493.6303(4)(a), F.S.

<sup>2</sup> *Id.* at (4)(b)2., F.S.

<sup>3</sup> Section 365.1657(1), F.S.

<sup>4</sup> *Id.* at (2).

<sup>5</sup> Section 501.142(1), F.S.

### Return of shopping carts

Current law provides that no fee, fine, or costs may be assessed against the owner of a shopping cart found on public property, unless the shopping cart was removed from the premises or parking area of a retail establishment by the owner of the shopping cart, or an employee acting on the owner's behalf, and such fee, fine, or cost has been approved by the Department of Agriculture and Consumer Services.<sup>6</sup>

The bill specifies that no fee, fine, or costs may be assessed against the owner of a shopping cart unless the cart is found on public property and it was removed from the premises or parking area of a retail establishment by the cart's owner or an employee acting on the owner's behalf.

### Division of Standards

The division is currently required by law to compile an annual report of its received complaints and submit it to the presiding officers of the Legislature. As most complaints relating to the Motor Fuel Marketing Act go initially to the Division of Consumer Services, the report is not accurate or truly reflective of complaints regarding the industry.<sup>7</sup>

The bill repeals the requirement for the report, as the information contained is not current or useful to the parties designated to receive the report.

### Business opportunities

The sale of a "business opportunity" is defined as the sale or lease of products, equipment, supplies or services sold to a purchaser to enable him to start a business in certain defined circumstances.<sup>8</sup> In connection with the sale of a "business opportunity," s. 559.801(1)1., F.S., provides 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 . . . .

For purposes of s. 559.801(1)1., F.S., "the term 'assist the purchaser in finding locations' means, but is not limited to, supplying the purchaser with names of locator companies, contracting with the purchaser to provide assistance or supply names, or collecting a fee on behalf of or for a locator company."<sup>9</sup>

In a case prosecuted by the department, 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, even though the department's long-standing policy has been that the information can be provided at the same time the sale or lease is executed, or at a future time.<sup>10</sup>

This bill provides that the seller may provide the specified information either contemporaneous to 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.<sup>11</sup>

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<sup>6</sup> Section 506.5131(2), F.S.

<sup>7</sup> Section 526.3235, F.S.

<sup>8</sup> *Batlemento v. Dove Fountain, Inc.*, 593 So. 2d 234, 239 (Fla. 5th DCA 1991).

<sup>9</sup> Section 559.801(1), F.S.

<sup>10</sup> Department of Agriculture and Consumer Services, 2005 Legislative Proposal (hereinafter "2005 Legislative Proposal").

<sup>11</sup> Section 559.920(1), F.S.

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 s. 17, ch. 2001-214, Laws of Florida.

#### Travel club

Section 559.927(10), F.S., defines “seller of travel” and uses the phrase “travel club” within that definition. Currently, there is no definition of “travel club” in the Florida statutes.

The bill creates s. 559.927(12), F.S., defining “travel club” as a membership in an organization in which a member has the right to receive or purchase prearranged travel, tourist-related services, or tour-guide services, for an advance fee or payment, available on a first-come, first-served, space available basis. The bill provides that a member of a travel club is not granted a legal or equitable interest in any real property or specific right of use of any specific property, and a properly registered travel club shall not be a timeshare interest or timeshare plan.

#### Sellers of travel

Effective October 1, 2002, s. 119.0721, F.S., 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.<sup>12</sup> As the department has no need for the social security numbers, it proposes that the requirement be removed from law.<sup>13</sup>

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.<sup>14</sup> There is no requirement that a copy of the agent’s current contract with each seller of travel be submitted to the department.

This bill requires independent agents to pay a new \$100 fee prior to engaging in business in Florida, and 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.<sup>15</sup> Failure to comply would result in the denial of a certificate for proof of registration from the department.

#### Amusement facilities

Current law provides that an insurance policy or surety bond in the amount of \$1 million per occurrence and \$1 million in the aggregate, procured from an insurer or surety licensed to transact business in Florida, or approved as a surplus lines insurer, may be submitted to the department to satisfy the required annual insurance on fair rides.<sup>16</sup>

The bill specifies that the insurance requirements do not apply to governmental entities covered by the provisions of s. 768.28(16), F.S., which provides a waiver of sovereign immunity for self-insurance. The bill also repeals ss. 546.001, 546.002, 546.003, 546.004, 546.006, and 546.008, F.S. The provisions of those sections of law are addressed in s. 616.242, F.S., Safety Standards for Amusement Rides.

#### Game promotions

The existing definition of “operator”, relating to game promotions, is unclear and interpretations have varied.<sup>17</sup> The revised definition, as proposed in this bill, is consistent with terms used in actual game

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<sup>12</sup> Section 559.928(3), F.S.

<sup>13</sup> 2005 Legislative Proposal.

<sup>14</sup> Section 559.928(3), F.S.

<sup>15</sup> 2005 Legislative Proposal.

<sup>16</sup> Section 616.242(9)(a)-(b), F.S.

<sup>17</sup> See *Beasley Broadcasting, Inc. v. Dep’t of State, Div. of Licensing*, 693 So. 2d 668, 670 (Fla. 2d DCA 1997).

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 amends s. 849.094(3), F.S., to require that only the "material terms" of a game promotion's rules and regulations must be included in all advertising copy used in conjunction with a game promotion where the total prize value is greater than \$5,000, if the advertising copy includes a website address, toll-free telephone number, or mailing address where the complete rules and regulations will be available for the duration of the game promotion. The bill provides that this disclosure must be legible.

#### State Technology Office

The State Technology Office is required to place a banner on the state's Internet website providing a link to the Department of Agriculture and Consumer Services, compiling in a central location resources related to consumer protection. The State Office of Technology shall also provide a link and information to the Florida 211 Network referral system.

#### Section 570.544, F.S.

The bill amends this section to state that the Division of Consumer Services shall serve as the state clearinghouse for matters related to consumer protection and services. The bill deletes several subsections of s. 570.544, F.S., that required progress reports on consumer complaints to be submitted to the Division of Consumer Services and amends s. 526.3135, F.S., to remove a cross-reference to a now-stricken subsection of s. 570.544, F.S.

#### C. SECTION DIRECTORY:

Section 1. Amending s. 493.6303, F.S.; revising training requirements for obtaining a Class "D" License; requiring a minimum number of hours of training in terrorism awareness or other training prescribed by the Department of Agriculture and Consumer Services; providing a timeframe for submitting proof of having completed the training; revising the number of training hours required.

Section 2. Amending s. 501.059, F.S.; providing that a person may not send unsolicited advertisements for the sale of any real property, goods, or services, via facsimile; providing for attorney's fees and for the recovery of certain litigation expenses by the department and the Department of Legal Affairs.

Section 3. Amending s. 501.142, F.S.; providing for preemption of the regulation of refunds in retail sales establishments to the Department of Agriculture and Consumer Services.

Section 4. Amending s. 506.5131, F.S.; clarifying provisions with respect to the assessment of fees, fines, and costs relating to shopping carts found on public property.

Section 5. Repealing s. 526.3135, F.S.; relating to an annual report compiled by the Division of Standards of the Department of Agriculture and Consumer Services.

Section 6. Repealing ss. 546.001, 546.002, 546.003, 546.004, 546.006, and 546.008, F.S.; relating to the "Amusement Ride and Attraction Insurance Act".

Section 7. Amending s. 559.801, F.S.; redefining the term "business opportunity" for purposes of the "Sale of Business Opportunities Act".

Section 8. Amending s. 559.920, F.S.; revising actions by motor vehicle repair shops or employees which are unlawful.

Section 9. Amending s. 559.927, F.S., to add subsection 12, defining the term "travel club".

Section 10. Amending s. 559.928, F.S.; revising information to be submitted for registration as a seller of travel and information submitted by independent agents; requiring the payment of an annual fee by independent agents.

Section 11. Amending s. 616.242, F.S.; exempting certain governmental entities from a requirement to maintain liability protection covering amusement rides.

Section 12. Amending s. 849.094, F.S.; redefining the term “operator” for purposes of the regulation of game promotions in connection with the sale of consumer products or services; reducing the requirements for advertising copy associated with game promotions.

Section 13. Reenacting s. 501.603(1)(a), F.S.; which defines “commercial telephone solicitation”.

Section 14. Reenacting s. 559.809(12), F.S.; which specifies prohibited acts under the “Sale of Business Opportunities Act”.

Section 15. Instructs the State Technology Office to provide a link on the state website for the consolidation of information related to consumer protection.

Section 16. Directs the State Technology Office to provide a link on the state website to the Florida 211 Network.

Section 17. Amends s. 570.544, F.S., deleting portions requiring reports to be submitted to the Division of Consumer Services.

Section 18. Amends s. 526.3135, F.S., to correct a cross-reference to s. 570.544, F.S.

Section 16. Provides an effective date of October 1, 2005, except as otherwise provided.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

|   | 2005-06   | 2006-07   | 2007-08   |
|---|-----------|-----------|-----------|
| 1. Revenues:  |           |           |           |
| Recurring – Dept. of Agriculture &<br>Consumer Services’s General<br>Inspection Trust Fund (GITF) | \$195,000 | \$195,000 | \$195,000 |

This revenue is based on the fact that there are approximately 1,950 independent sellers of travel on file with the department, and each agent will be required to pay a \$100 fee.<sup>18</sup>

### 2. Expenditures:

The bill does not specify any new and/or additional workload requirements of the department.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

No impact on local government revenue is anticipated.

2. Expenditures:

No impact on local government expenditures is anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Division of Licensing: Based on information provided by the department and various entities that provide security officer training, costs to the private sector cannot be determined. It is anticipated that costs will be minimal.

Sellers of travel: The bill institutes a new, \$100 filing fee for independent agents representing sellers of travel. Independent agents must currently file an affidavit with the department for registration purposes, but are not required to pay any fee. HB 833 CS requires independent agents to pay the department a \$100 filing fee and provide a copy of their contracts with those they represent.

D. FISCAL COMMENTS:

None.

### 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:

The bill allows the department to determine by rule the total number of hours of training required for security officers.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 9, 2005, the Agriculture Committee adopted 3 amendments to HB 833. The amendments:

- Reduced the publishing requirements for advertising for game promotions where the total prize value is greater than \$5,000. Advertising copy must include the material terms of the rules and regulations of the game, rather than the full rules and regulations currently required. Advertising copy must include a website address, a toll-free telephone number, or a mailing address where the full rules and regulations may be heard, viewed, or obtained.
- Added a definition for the term "travel club" to the sellers of travel law to distinguish travel clubs from timeshares.

- Removed the provision allowing businesses to subscribe to the no sales solicitation call listing.

The Civil Justice Committee considered the committee substitute on March 23, 2005, and adopted an amendment to the bill requiring the State Technology Office to add a link and resources related to consumer protection to the state's Internet website, establishing the Division of Consumer Services as the state clearinghouse for consumer protection services, and appropriating \$260,000 from the General Revenue Fund to the department.

On April 11, 2005, the Agriculture and Environment Appropriations Committee adopted two amendments before reporting the bill favorably.

- Amendment 1 removed a \$260,000 appropriation and an authorization of two positions.
- Amendment 2 specified the General Inspection Trust Fund as the depository for the \$100 registration fee on independent agents representing sellers of travel.

On April 20, the State Resources Council adopted a strike-all amendment to HB 833 w/CS before reporting the bill favorably. The amendment differs from the bill in the following ways.

- Regulation of refunds in retail establishments is preempted to the Department of Agriculture & Consumer Services.
- The law relating to fines and assessments against owners of shopping carts found on public property is amended to clarify that cart owners cannot be fined unless the cart is found on public property and that the cart was removed from the retailer's premises by the owner or an employee acting on the owner's behalf.
- Current law is restored allowing the option of a surety bond or an insurance policy for amusement ride owners to maintain required liability protection.
- Section 526.3135, F.S., relating to an obsolete requirement directing the Division of Standards to compile an annual report of all complaints received by the division and to submit the report to the Legislature, is repealed.