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1 A bill to be entitled
2 An act relating to the Department of Agriculture and
3 Consumer Services; amending s. 493.6106, F.S.; clarifying
4 that private investigative, private security, and
5 repossession services are licensed by the department;
6 amending s. 493.6121, F.S.; authorizing the department to
7 institute judicial proceedings to enforce ch. 493, F.S.,
8 or any rule or order of the department; amending s.
9 493.6303, F.S.; revising the requirements for a Class "D"
10 private security license; requiring the department to
11 establish the number of hours of each subject area to be
12 taught in training; providing for automatic suspension of
13 a license upon failure to submit documentation of
14 completing the required training; prescribing requirements
15 and conditions for persons licensed before a certain date;
16 providing exemptions; amending s. 501.059, F.S.;
17 prohibiting a telephone solicitor from blocking certain
18 information from a recipient's caller identification
19 service; providing an exception; authorizing a telephone
20 solicitor to substitute certain information provided to
21 the recipient's caller identification service; providing a
22 definition; prohibiting alteration of a caller's voice
23 during a telephonic sales call under certain circumstances
24 and for certain purposes; amending s. 501.142, F.S.;
25 providing that the regulation of refunds in retail sales
26 establishments is preempted to the department; authorizing
27 the department to adopt rules; authorizing the department
28 to enter orders for certain violations; requiring that any

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29 | moneys recovered by the department as a penalty be
30 | deposited in the General Inspection Trust Fund;
31 | authorizing a local government to impose penalties;
32 | requiring that any moneys recovered by a local government
33 | as a penalty be deposited in the appropriate local
34 | account; amending s. 506.5131, F.S.; revising provisions
35 | relating to assessment of fees, fines, and costs against
36 | the owner of a shopping cart; providing an exemption;
37 | amending s. 525.01, F.S.; defining the term "alternative
38 | fuel" for purposes of ch. 525, F.S., relating to the
39 | inspection of gasoline and oil; amending s. 527.11, F.S.;
40 | exempting the delivery of certain amounts of propane gas
41 | for use with outdoor equipment or appliances from
42 | provisions governing the delivery of liquefied petroleum
43 | gas; requiring that a person delivering liquefied
44 | petroleum gas in bulk comply with certain storage
45 | requirements; amending ss. 570.46 and 570.47, F.S.;
46 | authorizing the Division of Standards within the
47 | department to enforce ch. 527, F.S., relating to the sale
48 | of liquefied petroleum gas; amending s. 570.544, F.S.;
49 | deleting provisions requiring that an office or agency
50 | receiving a complaint file progress reports with the
51 | Division of Consumer Services within the department;
52 | repealing s. 526.3135, F.S., relating to reports by the
53 | Division of Standards, to conform to changes made by the
54 | act; amending s. 616.242, F.S.; exempting certain
55 | governmental entities from requirements that operators of
56 | amusement rides maintain specified amounts of insurance

57 coverage; providing effective dates.

58

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

60

61 Section 1. Paragraph (c) of subsection (2) of section
62 493.6106, Florida Statutes, is amended to read:

63 493.6106 License requirements; posting.--

64 (2) Each agency shall have a minimum of one physical
65 location within this state from which the normal business of the
66 agency is conducted, and this location shall be considered the
67 primary office for that agency in this state.

68 (c) Each Class "A," Class "B," Class "R," branch office,
69 or school licensee shall display, in a place that is in clear
70 and unobstructed public view, a notice on a form prescribed by
71 the department stating that the business operating at this
72 location is licensed and regulated by the Department of
73 Agriculture and Consumer Services ~~State~~ and that any questions
74 or complaints should be directed to the department.

75 Section 2. Subsections (5) and (7) of section 493.6121,
76 Florida Statutes, are amended to read:

77 493.6121 Enforcement; investigation.--

78 (5) In order to carry out the duties of the department
79 prescribed in this chapter, designated employees of the Division
80 of Licensing of the Department of Agriculture and Consumer
81 Services ~~State~~ may obtain access to the information in criminal
82 justice information systems and to criminal justice information
83 as defined in s. 943.045, on such terms and conditions as are
84 reasonably calculated to provide necessary information and

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85 protect the confidentiality of the information. Such criminal
 86 justice information submitted to the division is confidential
 87 and exempt from the provisions of s. 119.07(1).

88 (7) The department may institute ~~of Legal Affairs shall~~
 89 ~~represent the Department of Agriculture and Consumer Services in~~
 90 judicial proceedings in the appropriate circuit court seeking
 91 enforcement of this chapter, or any rule or order of the
 92 department upon an action by any party seeking redress against
 93 ~~the department, and shall coordinate with the department in the~~
 94 ~~conduct of any investigations incident to its legal~~
 95 ~~responsibility.~~

96 Section 3. Effective January 1, 2007, subsection (4) of
 97 section 493.6303, Florida Statutes, is amended to read:

98 493.6303 License requirements.--In addition to the license
 99 requirements set forth elsewhere in this chapter, each
 100 individual or agency shall comply with the following additional
 101 requirements:

102 (4) (a) ~~Effective October 1, 1994,~~ An applicant for a Class
 103 "D" license must complete ~~have completed~~ a minimum of 40 hours
 104 of professional training at a school or training facility
 105 licensed by the department. The department shall by rule
 106 establish the general content and number of hours of each
 107 subject area to be taught ~~the training.~~

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

- 110 1. Successful completion of the total number of required
 111 ~~40~~ hours of training before initial application for a Class "D"
 112 license; or

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113 2. Successful completion of 24 hours of training before
114 initial application for a Class "D" license, and successful
115 completion of the remaining 16 hours of training within 180 days
116 after the date that ~~upon the first~~ application is submitted for
117 ~~renewal of,~~ a Class "D" license. If documentation of completion
118 of the required training is not submitted within the specified
119 timeframe, the individual's license is automatically suspended
120 until such time as proof of the required training is provided to
121 the department ~~However, individuals licensed before October 1,~~
122 ~~1994, need not complete additional training hours in order to~~
123 ~~renew their licenses.~~

124
125 However, any person whose license has been revoked, suspended
126 pursuant to subparagraph 2., or whose license has been expired
127 for 1 year or longer is considered, upon reapplication for a
128 license, an initial applicant and must submit proof of
129 successful completion of 40 hours of professional training at a
130 school or training facility licensed by the department as
131 prescribed in paragraph (a) before a license will be issued. Any
132 person whose license was issued before January 1, 2007, and
133 whose license has been expired for less than 1 year must, upon
134 reapplication for a license, submit documentation of completion
135 of the total number of hours of training prescribed by law at
136 the time her or his initial license was issued before another
137 license will be issued. This subsection does not require an
138 individual licensed before January 1, 2007, to complete
139 additional training hours in order to renew an active license,
140 beyond the required total amount of training within the

141 timeframe prescribed by law at the time she or he was licensed.

142 Section 4. Paragraphs (c) and (d) are added to subsection
 143 (7) of section 501.059, Florida Statutes, to read:

144 501.059 Telephone solicitation.--

145 (7)

146 (c) It shall be unlawful for any person who makes a
 147 telephonic sales call or causes a telephonic sales call to be
 148 made to fail to transmit or cause not to be transmitted the
 149 telephone number and, when made available by the telephone
 150 solicitor's carrier, the name of the telephone solicitor to any
 151 caller identification service in use by a recipient of a
 152 telephonic sales call. However, it shall not be a violation to
 153 substitute, for the name and telephone number used in or billed
 154 for making the call, the name of the seller on behalf of which a
 155 telephonic sales call is placed and the seller's customer
 156 service telephone number, which is answered during regular
 157 business hours. For purposes of this section, the term "caller
 158 identification service" means a service that allows a telephone
 159 subscriber to have the telephone number and, where available,
 160 the name of the calling party transmitted contemporaneously with
 161 the telephone call and displayed on a device in or connected to
 162 the subscriber's telephone.

163 (d) It shall be unlawful for any person who makes a
 164 telephonic sales call or causes a telephonic sales call to be
 165 made to intentionally alter the voice of the caller in an
 166 attempt to disguise or conceal the identity of the caller in
 167 order to defraud, confuse, or financially or otherwise injure
 168 the recipient of a telephonic sales call or in order to obtain

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169 personal information from the recipient of a telephonic sales
 170 call which may be used in a fraudulent or unlawful manner.

171 Section 5. Section 501.142, Florida Statutes, is amended
 172 to read:

173 501.142 Retail sales establishments; preemption; notice of
 174 refund policy; exceptions; penalty.--

175 (1) The regulation of refunds is preempted to the
 176 Department of Agriculture and Consumer Services notwithstanding
 177 any other law or local ordinance to the contrary. Every retail
 178 sales establishment offering goods for sale to the general
 179 public that offers no cash refund, credit refund, or exchange of
 180 merchandise must post a sign so stating at the point of sale.
 181 Failure of a retail sales establishment to exhibit a "no refund"
 182 sign under such circumstances at the point of sale shall mean
 183 that a refund or exchange policy exists, and the policy shall be
 184 presented in writing to the consumer upon request. Any retail
 185 establishment failing to comply with the provisions of this
 186 section shall grant to the consumer, upon request and proof of
 187 purchase, a refund on the merchandise, within 7 days of the date
 188 of purchase, provided the merchandise is unused and in the
 189 original carton, if one was furnished. Nothing herein shall
 190 prohibit a retail sales establishment from having a refund
 191 policy which exceeds the number of days specified herein. The
 192 department may adopt rules pursuant to ss. 120.536(1) and 120.54
 193 to enforce the provisions of this section. However, this
 194 subsection does not prohibit a local government from enforcing
 195 the provisions established by this section or department rule.

196 (2) The provisions of this section shall not apply to the

197 sale of food, perishable goods, goods which are custom made,
 198 goods which are custom altered at the request of the customer,
 199 or goods which cannot be resold by the merchant because of any
 200 law, rule, or regulation adopted by a governmental body.

201 (3) The department may enter an order doing one or more of
 202 the following if the department finds that a person has violated
 203 or is operating in violation of any of the provisions of this
 204 section or the rules or orders issued under this section:

205 (a) Issue a notice of noncompliance pursuant to s.
 206 120.695.

207 (b) Impose an administrative fine not to exceed \$100 for
 208 each violation.

209 (c) Direct the person to cease and desist specified
 210 activities.

211 (4) The administrative proceedings that could result in
 212 the entry of an order imposing any of the penalties specified in
 213 subsection (3) are governed by chapter 120.

214 (5) Any moneys recovered by the Department of Agriculture
 215 and Consumer Services as a penalty under this section shall be
 216 deposited in the General Inspection Trust Fund.

217 (6) Upon the first violation of this section, a local
 218 government may issue a written warning. Upon a second and any
 219 subsequent violation, a local government may impose a fine of up
 220 to \$50 per violation. Any moneys recovered by the local
 221 government as a penalty under this section shall be deposited in
 222 the appropriate local account.

223 Section 6. Section 506.5131, Florida Statutes, is amended
 224 to read:

225 506.5131 Return of shopping carts; assessment of fees,
 226 fines, and costs.--

227 (1) The rightful owner of any shopping cart with a
 228 registered name or mark found on public property shall be
 229 immediately notified of its recovery.

230 (2) Notwithstanding any other provision of law or local
 231 ordinance, no fee, fine, or costs may be assessed against the
 232 owner of a shopping cart unless the shopping cart was found on
 233 public property and, unless the shopping cart was removed from
 234 the premises or parking area of a retail establishment by the
 235 owner of the shopping cart, or an employee acting on the owner's
 236 behalf, and the such fee, fine, or cost has been approved by the
 237 Department of Agriculture and Consumer Services. This subsection
 238 shall not apply to any ordinance adopted prior to June 2002 that
 239 requires a business establishment to install an electronic
 240 retention system to retain shopping carts within the real
 241 property boundaries of a business location.

242 Section 7. Subsection (1) of section 525.01, Florida
 243 Statutes, is amended to read:

244 525.01 Gasoline and oil to be inspected.--

245 (1) For the purpose of this chapter:

246 (a) "Department" means the Department of Agriculture and
 247 Consumer Services.

248 (b) "Petroleum fuel" means all gasoline, kerosene (except
 249 when used as aviation turbine fuel), diesel fuel, benzine, ~~or~~
 250 other like products of petroleum under whatever name designated,
 251 or an alternative fuel used for illuminating, heating, cooking,
 252 or power purposes, sold, offered, or exposed for sale in this

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253 state.

254 (c) "Alternative fuel" means:

255 1. Methanol, denatured ethanol, or other alcohols;

256 2. Mixtures containing 85 percent or more by volume of
257 methanol, denatured ethanol, or other alcohols with gasoline or
258 other fuels, or such other percentage, but not less than 70
259 percent, as determined by the department by rule, to provide for
260 requirements relating to cold start, safety, or vehicle
261 functions;

262 3. Hydrogen;

263 4. Coal-derived liquid fuels; and

264 5. Fuels, other than alcohol, derived from biological
265 materials.

266 Section 8. Section 527.11, Florida Statutes, is amended to
267 read:

268 527.11 Minimum storage.--

269 (1) Every person who engages in the distribution of
270 liquefied petroleum gas for resale to domestic, commercial, or
271 industrial consumers as a prerequisite to obtaining a liquefied
272 petroleum gas license shall install, own, or lease a bulk
273 storage filling plant of not less than 18,000 gallons (water
274 capacity) within the state and shall be located within a 75-mile
275 radius of the licensed company's business location. This bulk
276 storage filling plant must have loading and unloading provisions
277 solely for the licenseholder and be operated and maintained in
278 compliance with this chapter for the duration of the license.

279 (2) A dealer in liquefied petroleum gas licensed as of
280 August 31, 2000, who has entered or who enters into a written

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281 agreement with a wholesaler that the wholesaler will provide
282 liquefied petroleum gas to the dealer for a period of 12
283 continuous months is exempt from the requirements of subsection
284 (1), if the wholesaler has at least 18,000 gallons (water
285 capacity) of bulk storage within this state permanently
286 connected for storage, which is used as such for each dealer to
287 whom gas is sold, and if the wholesaler has loading and
288 unloading provisions. Such dealer must provide certification of
289 this agreement on a form provided by the department to the
290 department before her or his license may be issued. The form
291 must be signed by both the wholesaler or his or her agent and
292 the dealer or his or her agent and must be submitted annually
293 with the license renewal application. A dealer who does not
294 provide written proof of minimum storage may have her or his
295 license denied, suspended, or revoked. A ~~no~~ wholesaler may not
296 enter into written agreements that allocate an amount of storage
297 that exceeds the wholesaler's total storage capacity minus
298 18,000 gallons (water capacity).

299 (3) A dealer in liquefied petroleum gas operating a single
300 dispensing unit for the sole purpose of direct product sale to
301 customers, including delivery of cylinders of 40 pounds or less
302 of propane gas capacity for use with outdoor equipment or
303 appliances that are not connected to or part of the permanent
304 interior piping of a structure, ~~(no deliveries)~~ or an operator
305 of a cylinder exchange unit is exempt from the requirements of
306 this section. A person may not deliver liquefied petroleum gas
307 by cargo vehicle unless the person complies with requirements
308 for minimum storage.

309 Section 9. Subsection (5) is added to section 570.46,
 310 Florida Statutes, to read:

311 570.46 Division of Standards; powers and duties.--The
 312 duties of the Division of Standards include, but are not limited
 313 to:

314 (5) Enforcing the provisions of chapter 527.

315 Section 10. Subsection (2) of section 570.47, Florida
 316 Statutes, is amended to read:

317 570.47 Director; qualifications; duties.--

318 (2) The director shall supervise, direct, and coordinate
 319 the activities of the division and to that end shall, under the
 320 direction of the department, enforce the provisions of chapters
 321 501, 525, 526, 527, 531, and 616.

322 Section 11. Subsections (6) through (9) of section
 323 570.544, Florida Statutes, are amended to read:

324 570.544 Division of Consumer Services; director; powers;
 325 processing of complaints; records.--

326 ~~(6)(a) The office or agency to which a complaint has been~~
 327 ~~referred shall within 30 days acknowledge receipt of the~~
 328 ~~complaint and report on the disposition made of the complaint.~~
 329 ~~In the event a complaint has not been disposed of within 30~~
 330 ~~days, the receiving office or agency shall file progress reports~~
 331 ~~with the Division of Consumer Services no less frequently than~~
 332 ~~30 days until final disposition.~~

333 ~~(b) The report shall contain at least the following~~
 334 ~~information:~~

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

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

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

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

344 ~~(7)(a) If the office or agency receiving a complaint fails~~
345 ~~to file a report as contemplated in this section, that failure~~
346 ~~shall be construed as a denial by the receiving office or agency~~
347 ~~that it has jurisdiction of the subject matter contained in the~~
348 ~~complaint.~~

349 ~~(b)~~ If an office or agency receiving a complaint
350 determines that the matter presents a prima facie case for
351 criminal prosecution or if the complaint cannot be settled at
352 the administrative level, the complaint together with all
353 supporting evidence shall be transmitted to the Department of
354 Legal Affairs or other appropriate enforcement agency with a
355 recommendation for civil or criminal action warranted by the
356 evidence.

357 (7)~~(8)~~ The records of the Division of Consumer Services
358 are public records. However, customer lists, customer names, and
359 trade secrets are confidential and exempt from the provisions of
360 s. 119.07(1). Disclosure necessary to enforcement procedures
361 shall not be construed as violative of this prohibition.

362 (8)~~(9)~~ It shall be the duty of the Division of Consumer
363 Services to maintain records and compile summaries and analyses
364 of consumer complaints and their eventual disposition, which

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365 data may serve as a basis for recommendations to the Legislature
 366 and to state regulatory agencies.

367 Section 12. Section 526.3135, Florida Statutes, is
 368 repealed.

369 Section 13. Subsection (9) of section 616.242, Florida
 370 Statutes, is amended to read:

371 616.242 Safety standards for amusement rides.--

372 (9) INSURANCE REQUIREMENTS.--

373 (a) An owner may not operate an amusement ride unless the
 374 owner has in effect at all times of operation insurance meeting
 375 the following requirements:

376 1. An insurance policy in an amount of not less than \$1
 377 million per occurrence, \$1 million in the aggregate, which
 378 insures the owner of the amusement ride against liability for
 379 injury to persons arising out of the use of the amusement ride;
 380 or

381 2. A bond in a like amount; however, the aggregate
 382 liability of the surety under the bond may not exceed the face
 383 amount thereof.

384 (b) The policy or bond must be procured from an insurer or
 385 surety that is licensed to transact business in this state or
 386 that is approved as a surplus lines insurer.

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

390 Section 14. Except as otherwise expressly provided in this
 391 act, this act shall take effect July 1, 2006.