

ENROLLED

HB 7239, Engrossed 2

2006 Legislature

1
2 A bill to be entitled

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

Page 1 of 15

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

hb7239-03-er

ENROLLED

HB 7239, Engrossed 2

2006 Legislature

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

ENROLLED
 HB 7239, Engrossed 2

2006 Legislature

57 amusement rides maintain specified amounts of insurance
 58 coverage; providing effective dates.

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

62 Section 1. Paragraph (c) of subsection (2) of section
 63 493.6106, Florida Statutes, is amended to read:

64 493.6106 License requirements; posting.--

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

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

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

78 493.6121 Enforcement; investigation.--

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

ENROLLED
 HB 7239, Engrossed 2

2006 Legislature

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

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

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

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

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

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

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

ENROLLED

HB 7239, Engrossed 2

2006 Legislature

113 license; or

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

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

ENROLLED
 HB 7239, Engrossed 2

2006 Legislature

141 beyond the required total amount of training within the
 142 timeframe prescribed by law at the time she or he was licensed.

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

145 501.059 Telephone solicitation.--

146 (7)

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

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

ENROLLED
 HB 7239, Engrossed 2

2006 Legislature

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

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

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

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

ENROLLED
 HB 7239, Engrossed 2

2006 Legislature

197 (2) The provisions of this section shall not apply to the
 198 sale of food, perishable goods, goods which are custom made,
 199 goods which are custom altered at the request of the customer,
 200 or goods which cannot be resold by the merchant because of any
 201 law, rule, or regulation adopted by a governmental body.

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

206 (a) Issue a notice of noncompliance pursuant to s.
 207 120.695.

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

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

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

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

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

224 Section 6. Section 506.5131, Florida Statutes, is amended

ENROLLED
 HB 7239, Engrossed 2

2006 Legislature

225 | to read:

226 | 506.5131 Return of shopping carts; assessment of fees,

227 | fines, and costs.--

228 | (1) The rightful owner of any shopping cart with a

229 | registered name or mark found on public property shall be

230 | immediately notified of its recovery.

231 | (2) Notwithstanding any other provision of law or local

232 | ordinance, no fee, fine, or costs may be assessed against the

233 | owner of a shopping cart unless the shopping cart was found on

234 | public property and, ~~unless the shopping cart~~ was removed from

235 | the premises or parking area of a retail establishment by the

236 | owner of the shopping cart, or an employee acting on the owner's

237 | behalf, and the ~~such~~ fee, fine, or cost has been approved by the

238 | Department of Agriculture and Consumer Services. This subsection

239 | shall not apply to any ordinance adopted after January 31, 2002,

240 | and prior to June 30, 2002, that requires a business

241 | establishment to install a retention system to retain shopping

242 | carts within the real property boundaries of a business

243 | location.

244 | Section 7. Subsection (1) of section 525.01, Florida

245 | Statutes, is amended to read:

246 | 525.01 Gasoline and oil to be inspected.--

247 | (1) For the purpose of this chapter:

248 | (a) "Department" means the Department of Agriculture and

249 | Consumer Services.

250 | (b) "Petroleum fuel" means all gasoline, kerosene (except

251 | when used as aviation turbine fuel), diesel fuel, benzine, ~~or~~

252 | other like products of petroleum under whatever name designated,

ENROLLED
 HB 7239, Engrossed 2

2006 Legislature

253 or an alternative fuel used for illuminating, heating, cooking,
 254 or power purposes, sold, offered, or exposed for sale in this
 255 state.

256 (c) "Alternative fuel" means:

- 257 1. Methanol, denatured ethanol, or other alcohols;
- 258 2. Mixtures containing 85 percent or more by volume of
 259 methanol, denatured ethanol, or other alcohols with gasoline or
 260 other fuels, or such other percentage, but not less than 70
 261 percent, as determined by the department by rule, to provide for
 262 requirements relating to cold start, safety, or vehicle
 263 functions;
- 264 3. Hydrogen;
- 265 4. Coal-derived liquid fuels; and
- 266 5. Fuels, other than alcohol, derived from biological
 267 materials.

268 Section 8. Section 527.11, Florida Statutes, is amended to
 269 read:

270 527.11 Minimum storage.--

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

ENROLLED
 HB 7239, Engrossed 2

2006 Legislature

281 (2) A dealer in liquefied petroleum gas licensed as of
 282 August 31, 2000, who has entered or who enters into a written
 283 agreement with a wholesaler that the wholesaler will provide
 284 liquefied petroleum gas to the dealer for a period of 12
 285 continuous months is exempt from the requirements of subsection
 286 (1), if the wholesaler has at least 18,000 gallons (water
 287 capacity) of bulk storage within this state permanently
 288 connected for storage, which is used as such for each dealer to
 289 whom gas is sold, and if the wholesaler has loading and
 290 unloading provisions. Such dealer must provide certification of
 291 this agreement on a form provided by the department to the
 292 department before her or his license may be issued. The form
 293 must be signed by both the wholesaler or his or her agent and
 294 the dealer or his or her agent and must be submitted annually
 295 with the license renewal application. A dealer who does not
 296 provide written proof of minimum storage may have her or his
 297 license denied, suspended, or revoked. A ~~No~~ wholesaler may not
 298 enter into written agreements that allocate an amount of storage
 299 that exceeds the wholesaler's total storage capacity minus
 300 18,000 gallons (water capacity).

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

ENROLLED
 HB 7239, Engrossed 2

2006 Legislature

309 by cargo vehicle unless the person complies with requirements
 310 for minimum storage.

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

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

316 (5) Enforcing the provisions of chapter 527.

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

319 570.47 Director; qualifications; duties.--

320 (2) The director shall supervise, direct, and coordinate
 321 the activities of the division and to that end shall, under the
 322 direction of the department, enforce the provisions of chapters
 323 501, 525, 526, 527, 531, and 616.

324 Section 11. Subsections (6) through (9) of section
 325 570.544, Florida Statutes, are amended to read:

326 570.544 Division of Consumer Services; director; powers;
 327 processing of complaints; records.--

328 (6)~~(a)~~ The office or agency to which a complaint has been
 329 referred shall within 30 days acknowledge receipt of the
 330 complaint and ~~report on the disposition made of the complaint.~~
 331 ~~In the event a complaint has not been disposed of within 30~~
 332 ~~days, the receiving office or agency shall file progress reports~~
 333 ~~with the Division of Consumer Services no less frequently than~~
 334 ~~30 days until final disposition.~~

335 ~~(b) The report shall contain at least the following~~
 336 ~~information:~~

ENROLLED

HB 7239, Engrossed 2

2006 Legislature

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

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

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

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

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

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

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

364 ~~(8)~~(9) It shall be the duty of the Division of Consumer

ENROLLED
 HB 7239, Engrossed 2

2006 Legislature

365 Services to maintain records and compile summaries and analyses
 366 of consumer complaints and their eventual disposition, which
 367 data may serve as a basis for recommendations to the Legislature
 368 and to state regulatory agencies.

369 Section 12. Section 526.3135, Florida Statutes, is
 370 repealed.

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

373 616.242 Safety standards for amusement rides.--

374 (9) INSURANCE REQUIREMENTS.--

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

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

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

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

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

392 Section 14. Except as otherwise expressly provided in this

ENROLLED
HB 7239, Engrossed 2

2006 Legislature

393 | act, this act shall take effect July 1, 2006.