

By the Committee on Military Affairs and Domestic Security; and
Senator Baker

583-05263-08

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1 A bill to be entitled
2 An act relating to sellers of travel; amending s. 559.927,
3 F.S.; revising the definition of "prearranged travel,
4 tourist-related services, or tour-guide services";
5 defining "certifying party" and "terrorist state";
6 amending s. 559.928, F.S.; revising provisions relating to
7 registration as a seller of travel; revising registration
8 fees; creating s. 559.9285, F.S.; requiring a seller of
9 travel to annually certify to the Department of
10 Agriculture and Consumer Services the scope of its
11 business activities by filing a disclosure statement;
12 categorizing certifying parties; providing requirements of
13 a certifying party that changes its scope of business;
14 requiring such certifying party to provide the department
15 with appropriate bond; requiring the department to specify
16 by rule the form of certification; specifying required
17 certification information; amending s. 559.929, F.S.;
18 revising requirements with respect to the performance bond
19 that must accompany registration or an application for
20 registration as a seller of travel; specifying amounts of
21 bonds for certification categories; eliminating
22 alternative means of satisfying security requirements;
23 providing for priority of payment with respect to such
24 bonds; revising conditions under which the department may
25 annually waive the bond; precluding specified
26 certification categories from waiver of bond; amending s.
27 559.9335, F.S.; providing that it is a violation of the
28 Florida Sellers of Travel Act to offer to sell travel or
29 provide any travel-related service to a purchaser

583-05263-08

20081310c1

30 traveling to or within any terrorist state without
31 disclosing such business activities in a certification
32 filed with the department and to violate any state or
33 federal law restricting or prohibiting commerce with
34 terrorist states; amending s. 559.935, F.S.; revising
35 provisions that exempt certain sellers of travel and
36 affiliates thereof from specified registration, security,
37 disclosure, and recordkeeping requirements; amending s.
38 559.9355, F.S.; imposing an administrative fine for each
39 act or omission in violation of the prohibited offer to
40 sell travel or provide any travel-related service to
41 purchasers traveling to or within any terrorist state
42 without disclosing such business activities in a
43 certification or in violation of any state or federal law
44 restricting or prohibiting commerce with terrorist states;
45 amending s. 559.936, F.S.; authorizing the department to
46 seek a specified civil penalty for each act or omission in
47 violation of the prohibited offer to sell travel or
48 provide any travel-related service to purchasers traveling
49 to or within any terrorist state without disclosing such
50 business activities in a certification or in violation of
51 any state or federal law restricting or prohibiting
52 commerce with terrorist states; amending s. 559.937, F.S.;
53 providing a criminal penalty for a violation of the
54 Florida Sellers of Travel Act which directly or indirectly
55 pertains to an offer to sell travel or provide any travel-
56 related service to a purchaser traveling to or within any
57 terrorist state; providing an effective date.

58

583-05263-08

20081310c1

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

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61 Section 1. Subsections (2) through (5), (7) through (10),
62 and (11) of section 559.927, Florida Statutes, are renumbered as
63 subsections (3) through (6), (8) through (11), and (13),
64 respectively, subsection (6) is renumbered as subsection (7) and
65 amended, and new subsections (2) and (12) are added to that
66 section, to read:

67 559.927 Definitions.--For the purposes of this part, the
68 term:

69 (2) "Certifying party" means a seller of travel registering
70 under s. 559.928 or a seller of travel who is exempt under s.
71 559.935(2) or (3).

72 (7)~~(6)~~ "Prearranged travel, tourist-related services, or
73 tour-guide services" includes, but is not limited to, car
74 rentals, lodging, transfers, and sightseeing tours and all other
75 such services which are reasonably related to air, sea, rail,
76 motor coach, or other medium of transportation, or accommodations
77 for which a purchaser receives a premium or contracts or pays
78 prior to or after departure. These terms also include services
79 for which a purchaser, whose legal residence is outside the
80 United States, contracts or pays prior to departure, and any
81 arrangement by which a purchaser prepays for, receives a
82 reservation or any other commitment to provide services prior to
83 departure for, or otherwise arranges for travel directly to a
84 terrorist state and which originates in Florida.

85 (12) "Terrorist state" means any state, country, or nation
86 designated by the United States Department of State as a state
87 sponsor of terrorism.

583-05263-08

20081310c1

88 Section 2. Subsections (1) and (2) of section 559.928,
89 Florida Statutes, are amended to read:

90 559.928 Registration.--

91 (1) Each seller of travel shall annually register with the
92 department, providing: its legal business or trade name, mailing
93 address, and business locations; the full names, addresses, and
94 telephone numbers, ~~and social security numbers~~ of its owners or
95 corporate officers and directors and the Florida agent of the
96 corporation; a statement whether it is a domestic or foreign
97 corporation, its state and date of incorporation, its charter
98 number, and, if a foreign corporation, the date it registered
99 with the State of Florida, and occupational license where
100 applicable; the date on which a seller of travel registered its
101 fictitious name if the seller of travel is operating under a
102 fictitious or trade name; the name of all other corporations,
103 business entities, and trade names through which each owner of
104 the seller of travel operated, was known, or did business as a
105 seller of travel within the preceding 5 years; a list of all
106 authorized independent agents, including the agent's trade name,
107 full name, mailing address, business address, and telephone
108 numbers, ~~and social security number~~; the business location and
109 address of each branch office and full name and address of the
110 manager or supervisor; the certification required under s.
111 559.9285; and proof of purchase of adequate bond ~~or establishment~~
112 ~~of a letter of credit or certificate of deposit~~ as required in
113 this part. A certificate evidencing proof of registration shall
114 be issued by the department and must be prominently displayed in
115 the seller of travel's primary place of business.

116 (2) (a) Registration fees shall be as follows:

583-05263-08

20081310c1

117 1. Three hundred dollars ~~\$300~~ per year per registrant
118 certifying its business activities under s. 559.9285(1)(a).

119 2. One thousand dollars per year per registrant certifying
120 its business activities under s. 559.9285(1)(b).

121 3. Twenty-five hundred dollars per year per registrant
122 certifying its business activities under s. 559.9285(1)(c).

123 (b) All amounts collected shall be deposited by the Chief
124 Financial Officer to the credit of the General Inspection Trust
125 Fund of the Department of Agriculture and Consumer Services
126 pursuant to s. 570.20, for the sole purpose of administration of
127 this part.

128 Section 3. Section 559.9285, Florida Statutes, is created
129 to read:

130 559.9285 Certification of business activities.--

131 (1) Each certifying party, as defined in s. 559.927(2):

132 (a) Which does not offer for sale, directly or indirectly,
133 at wholesale or retail, prearranged travel, tourist-related
134 services, or tour-guide services for individuals or groups to or
135 within any terrorist state;

136 (b) Which offers for sale, directly or indirectly, at
137 wholesale or retail, only prearranged travel, tourist-related
138 services, or tour-guide services for individuals or groups to or
139 within any terrorist state but engages in no other business
140 dealings or commerce with any terrorist state; or

141 (c) Which offers for sale, directly or indirectly, at
142 wholesale or retail, prearranged travel, tourist-related
143 services, or tour-guide services for individuals or groups to or
144 within any terrorist state and also engages in any other business
145 dealings or commerce with any terrorist state,

583-05263-08

20081310c1

146
147 shall annually certify its business activities by filing a
148 disclosure statement with the department that accurately
149 represents the scope of the seller's business activities
150 according to the criteria provided in paragraph (a), paragraph
151 (b), or paragraph (c).

152 (2) (a) If a certifying party changes the scope of the
153 business activities certified pursuant to subsection (1), the
154 certifying party shall file the following with the department no
155 later than 15 days following the change in activities:

- 156 1. An amended certificate pursuant to subsection (1); and
- 157 2. The applicable registration fee pursuant to s. 559.928.

158 (b) Within 15 days after filing the amended certificate,
159 the certifying party shall provide the department with a bond in
160 the proper amount for the certified business activity pursuant to
161 s. 559.929.

162 (3) The department shall specify by rule the form of each
163 certification under this section, which shall include the
164 following information:

165 (a) The legal name, any trade names or fictitious names,
166 mailing address, physical address, telephone number or numbers,
167 facsimile number or numbers, all Internet and electronic contact
168 information, and registration number, if applicable, of the
169 certifying party.

170 (b) Each terrorist state with which the certifying party
171 engages in any business or commerce.

172 (c) Each intermediate state, country, or nation through
173 which the certifying party engages in any business or commerce
174 with any terrorist state.

583-05263-08

20081310c1

175 (d) The legal name, any trade names or fictitious names,
176 mailing address, physical address, telephone number or numbers,
177 facsimile number or numbers, and all Internet and electronic
178 contact information of every other entity with which the
179 certifying party engages in business or commerce that is related
180 in any way to the certifying party's business or commerce with
181 any terrorist state.

182 (e) The type of all prearranged travel, tourist-related
183 services, or tour-guide services the certifying party offers for
184 sale to individuals or groups traveling to, from, or within any
185 terrorist state and the frequency with which such services are
186 offered.

187 Section 4. Section 559.929, Florida Statutes, is amended to
188 read:

189 559.929 Security requirements.--

190 (1) An application must be accompanied by a performance
191 bond in an amount set by the department under paragraph (a),
192 paragraph (b), or paragraph (c) not to exceed \$25,000, or in the
193 amount of \$50,000 if the seller of travel is offering vacation
194 certificates. The surety on such bond shall be a surety company
195 authorized to do business in the state.

196 (a) Each seller of travel that certifies its business
197 activities under s. 559.9285(1)(a) shall provide a performance
198 bond in an amount not to exceed \$25,000, or in the amount of
199 \$50,000 if the seller of travel is offering vacation
200 certificates.

201 (b) Each seller of travel that certifies its business
202 activities under s. 559.9285(1)(b) shall provide a performance
203 bond in an amount not to exceed \$100,000, or in the amount of

583-05263-08

20081310c1

204 \$150,000 if the seller of travel is offering vacation
205 certificates.

206 (c) Each seller of travel that certifies its business
207 activities under s. 559.9285(1)(c) shall provide a performance
208 bond in an amount not to exceed \$250,000, or in the amount of
209 \$300,000 if the seller of travel is offering vacation
210 certificates.

211 ~~(2) In lieu of the performance bond required in this part,~~
212 ~~a registrant or applicant for registration may establish a~~
213 ~~certificate of deposit or an irrevocable letter of credit in a~~
214 ~~Florida banking institution in the amount of the performance~~
215 ~~bond. The department shall be the beneficiary to this certificate~~
216 ~~of deposit, and the original shall be filed with the department.~~
217 ~~Any such letter of credit shall provide that the issuer will give~~
218 ~~the department not less than 120 days written notice prior to~~
219 ~~terminating or refusing to renew the letter of credit.~~

220 (2) ~~(3)~~ The bond, letter of credit, or certificate of
221 deposit shall be in favor of the department for the use and
222 benefit of any traveler who is injured by the fraud,
223 misrepresentation, breach of contract, financial failure, or
224 violation of any provision of this part by the seller of travel.
225 Such liability may be enforced either by proceeding in an
226 administrative action as specified in subsection (3) ~~(4)~~ or by
227 filing a judicial suit at law in a court of competent
228 jurisdiction. However, in such court suit the bond, ~~letter of~~
229 ~~credit, or certificate of deposit~~ posted with the department
230 shall not be amenable or subject to any judgment or other legal
231 process issuing out of or from such court in connection with such
232 lawsuit, but such bond, ~~letter of credit, or certificate of~~

583-05263-08

20081310c1

233 ~~deposit~~ shall be amenable to and enforceable only by and through
234 administrative proceedings before the department. It is the
235 intent of the Legislature that such bond, ~~letter of credit, or~~
236 ~~certificate of deposit~~ shall be applicable and liable only for
237 the payment of claims duly adjudicated by order of the
238 department. The bond, ~~letter of credit, or certificate of deposit~~
239 shall be open to successive claims, but the aggregate amount may
240 not exceed the amount of the bond, ~~letter of credit, or~~
241 ~~certificate of deposit~~. In addition to the foregoing, a bond
242 provided by a registrant or applicant for registration which
243 certifies its business activities under s. 559.9285(1)(b) or (c)
244 shall be in favor of the department, with payment in the
245 following order of priority:

246 (a) All expenses for prosecuting the registrant or
247 applicant in any administrative or civil action under this part,
248 including fees for attorneys and other professionals, court costs
249 or other costs of the proceedings, and all other expenses
250 incidental to the action.

251 (b) All costs and expenses of investigation prior to the
252 commencement of an administrative or civil action under this
253 part.

254 (c) Any unpaid administrative fine imposed by final order
255 or any unpaid civil penalty imposed by final judgment under this
256 part.

257 (d) Damages or compensation for any traveler injured as
258 provided in this subsection.

259 (3) (4) Any traveler may file a claim against the bond,
260 letter of credit, or certificate of deposit which shall be made
261 in writing to the department within 120 days after an alleged

583-05263-08

20081310c1

262 injury has occurred or is discovered to have occurred. The
263 proceedings shall be held in accordance with ss. 120.569 and
264 120.57.

265 ~~(4)~~⁽⁵⁾ In any situation in which the seller of travel is
266 currently the subject of an administrative, civil, or criminal
267 action by either the department, the Department of Legal Affairs,
268 or the state attorney concerning compliance with this part, the
269 right to proceed against the bond, ~~letter of credit, or~~
270 ~~certificate of deposit~~, as provided in subsection (3) ~~(4)~~, shall
271 be suspended until after any enforcement action becomes final.

272 ~~(5)~~⁽⁶⁾ The department may waive the bond, ~~letter of credit,~~
273 ~~or certificate of deposit~~ requirement on an annual basis if the
274 seller of travel has had 5 or more consecutive years of
275 experience as a seller of travel in Florida in compliance with
276 this part, has not had any civil, criminal, or administrative
277 action instituted against the seller of travel in the vacation
278 and travel business by any governmental agency or any action
279 involving fraud, theft, misappropriation of property, violation
280 of any statute pertaining to business or commerce with any
281 terrorist state, or moral turpitude, and has a satisfactory
282 consumer complaint history with the department, and certifies its
283 business activities under s. 559.9285. Such waiver may be revoked
284 if the seller of travel violates any provision of this part. A
285 seller of travel that certifies its business activities under s.
286 559.9285(1) (b) or (c) is not entitled to the waiver provided in
287 this subsection.

288 Section 5. Subsection (2) of section 559.9335, Florida
289 Statutes, is amended, subsections (22), (23), and (24) are
290 renumbered as subsections (24), (25), and (26), respectively, and

583-05263-08

20081310c1

291 new subsections (22) and (23) are added to that section, to read:

292 559.9335 Violations.--It is a violation of this part for
293 any person:

294 (2) To conduct business as a seller of travel without an
295 annual purchase of a performance bond ~~or establishment of a~~
296 ~~letter of credit or certificate of deposit~~ in the amount set by
297 the department unless exempt pursuant to s. 559.935.

298 (22) To offer to sell travel or provide any travel-related
299 service to purchasers traveling to or within any terrorist state
300 without disclosing such business activities in a certification
301 filed under s. 559.9285(1)(b) or (c).

302 (23) To violate any state or federal law restricting or
303 prohibiting commerce with terrorist states.

304 Section 6. Subsections (2), (3), and (4) of section
305 559.935, Florida Statutes, are amended to read:

306 559.935 Exemptions.--

307 (2) Sections 559.928, 559.929, 559.9295, 559.931, and
308 559.932 shall not apply to:

309 (a) Sellers of travel directly issuing airline tickets who
310 have contracted with the Airlines Reporting Corporation for the
311 most recent consecutive 3 years or more under the same ownership
312 and control and who do not offer vacation certificates, and who
313 annually certify their business activities under s.

314 559.9285(1)(a); ~~or~~

315 (b) Sellers of travel offering vacation certificates who
316 have contracted with the Airlines Reporting Corporation for the
317 most recent consecutive 5 years or more under the same ownership
318 and control and who annually certify their business activities
319 under s. 559.9285(1)(a).

583-05263-08

20081310c1

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321 This exemption does not apply to sellers of travel certifying
322 their business activities under s. 559.9285(1)(b) or (c).

323 (3) Sections 559.928, 559.929, 559.9295, 559.931, and
324 559.932 shall also not apply to a seller of travel that is an
325 affiliate of an entity exempt pursuant to subsection (2) subject
326 to the following conditions:

327 (a) In the event the department finds the affiliate does
328 not have a satisfactory consumer complaint history or the
329 affiliate fails to respond to a consumer complaint within 30
330 days, the related seller of travel exempt pursuant to subsection
331 (2) shall be liable for the actions of the affiliate, subject to
332 the remedies provided in ss. 559.9355 and 559.936.

333 (b) In the event the department is unable to locate an
334 affiliate, the related seller of travel exempt pursuant to
335 subsection (2) shall be fully liable for the actions of the
336 affiliate, subject to the remedies provided in ss. 559.9355 and
337 559.936.

338 (c) In order to obtain an exemption under this subsection,
339 the affiliate shall file an affidavit of exemption on a form
340 prescribed by the department and shall certify its business
341 activities under s. 559.9285(1)(a). The affidavit of exemption
342 shall be executed by a person who exercises identical control
343 over the seller of travel exempt pursuant to subsection (2) and
344 the affiliate. Failure to file an affidavit of exemption or
345 certification under s. 559.9285(1)(a) prior to engaging in seller
346 of travel activities shall subject the affiliate to the remedies
347 provided in ss. 559.9355 and 559.936.

348 (d) Revocation by the department of an exemption provided

583-05263-08

20081310c1

349 | to a seller of travel under subsection (2) shall constitute
350 | automatic revocation by law of an exemption obtained by an
351 | affiliate under the subsection.

352 | (e) This subsection shall not apply to:

353 | 1. An affiliate that independently qualifies for another
354 | exemption under this section ~~s. 559.935~~.

355 | 2. An affiliate that sells, or offers for sale, vacation
356 | certificates.

357 | 3. An affiliate that certifies its business activities
358 | under s. 559.9285(1)(b) or (c).

359 | (f) For purposes of this section, an "affiliate" means an
360 | entity that meets the following:

361 | 1. The entity has the identical ownership as the seller of
362 | travel that is exempt under subsection (2).

363 | 2. The ownership controlling the seller of travel that is
364 | exempt under subsection (2) also exercises identical control over
365 | the entity.

366 | 3. The owners of the affiliate hold the identical
367 | percentage of voting shares as they hold in the seller of travel
368 | that is exempt under subsection (2).

369 | (4) The department may revoke the exemption provided in
370 | subsection (2) or subsection (3) if the department finds that the
371 | seller of travel does not have a satisfactory consumer complaint
372 | history, has been convicted of a crime involving fraud, theft,
373 | misappropriation of property, deceptive or unfair trade
374 | practices, or moral turpitude, or has not complied with the terms
375 | of any order or settlement agreement arising out of an
376 | administrative or enforcement action brought by a governmental
377 | agency or private person based on conduct involving fraud, theft,

583-05263-08

20081310c1

378 misappropriation of property, deceptive or unfair trade
379 practices, or moral turpitude.

380 Section 7. Section 559.9355, Florida Statutes, is amended
381 to read:

382 559.9355 Administrative remedies; penalties.--

383 (1) The department may enter an order doing one or more of
384 the following if the department finds that a person has violated
385 or is operating in violation of any of the provisions of this
386 part or the rules or orders issued thereunder:

387 (a) Issuing a notice of noncompliance pursuant to s.
388 120.695.

389 (b) Imposing an administrative fine not to exceed \$5,000
390 for each act or omission.

391 (c) Imposing an administrative fine not to exceed \$10,000
392 for each act or omission in violation of s. 559.9335(22) or (23).

393 (d)~~(e)~~ Directing that the person cease and desist specified
394 activities.

395 (e)~~(d)~~ Refusing to register or canceling or suspending a
396 registration.

397 (f)~~(e)~~ Placing the registrant on probation for a period of
398 time, subject to such conditions as the department may specify.

399 (g)~~(f)~~ Canceling an exemption granted under s. 559.935.

400 (2) The administrative proceedings which could result in
401 the entry of an order imposing any of the penalties specified in
402 subsection (1) are governed by chapter 120.

403 (3) The department has the authority to adopt rules
404 pursuant to chapter 120 to implement this section and ss.
405 559.928, 559.929, 559.934, and 559.935.

406 Section 8. Subsections (3) through (6) of section 559.936,

583-05263-08

20081310c1

407 Florida Statutes, are renumbered as subsections (4) through (7),
408 respectively, and a new subsection (3) is added to that section,
409 to read:

410 559.936 Civil penalties; remedies.--

411 (3) The department may seek a civil penalty of up to
412 \$10,000 for each act or omission in violation of s. 559.9335(22)
413 or (23).

414 Section 9. Section 559.937, Florida Statutes, is amended to
415 read:

416 559.937 Criminal penalties.--Any person or business that
417 ~~which~~ violates this part:

418 (1) Commits a misdemeanor of the first degree, punishable
419 as provided in s. 775.082 or s. 775.083.

420 (2) Which violation directly or indirectly pertains to an
421 offer to sell travel or provide any travel-related service to a
422 purchaser traveling to or within any terrorist state, commits a
423 felony of the third degree, punishable as provided in s. 775.082
424 or s. 775.083.

425 Section 10. This act shall take effect July 1, 2008.