

By the Committees on Criminal Justice; Military Affairs and Domestic Security; and Senator Baker

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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 that such certifying party provide to the
15 department an appropriate bond; requiring the department
16 to specify by rule the form of certification; specifying
17 required certification information; amending s. 559.929,
18 F.S.; revising requirements with respect to the
19 performance bond that must accompany registration or an
20 application for registration as a seller of travel;
21 specifying amounts of bonds for certification categories;
22 eliminating alternative means of satisfying security
23 requirements; providing for priority of payment with
24 respect to such bonds; revising conditions under which the
25 department may annually waive the bond; precluding
26 specified certification categories from waiver of bond;
27 amending s. 559.9335, F.S.; providing that it is a
28 violation of the Florida Sellers of Travel Act to offer to
29 sell, at wholesale or retail, prearranged travel, tourist-

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

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59 directly or indirectly pertains to an offer to sell, at
60 wholesale or retail, prearranged travel, tourist-related
61 services, or tour-guide services for individuals or groups
62 directly to any terrorist state which originate in
63 Florida; providing an effective date.
64

65 Be It Enacted by the Legislature of the State of Florida:
66

67 Section 1. Subsections (2) through (5), (7) through (10),
68 and (11) of section 559.927, Florida Statutes, are renumbered as
69 subsections (3) through (6), (8) through (11), and (13),
70 respectively, subsection (6) is renumbered as subsection (7) and
71 amended, and new subsections (2) and (12) are added to that
72 section, to read:

73 559.927 Definitions.--For the purposes of this part, the
74 term:

75 (2) "Certifying party" means a seller of travel registering
76 under s. 559.928 or a seller of travel who is exempt under s.
77 559.935(2) or (3).

78 (7)(6) "Prearranged travel, tourist-related services, or
79 tour-guide services" includes, but is not limited to, car
80 rentals, lodging, transfers, and sightseeing tours and all other
81 such services which are reasonably related to air, sea, rail,
82 motor coach, or other medium of transportation, or accommodations
83 for which a purchaser receives a premium or contracts or pays
84 prior to or after departure. These terms also include services
85 for which a purchaser, whose legal residence is outside the
86 United States, contracts or pays prior to departure, and any
87 arrangement by which a purchaser prepays for, receives a

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88 reservation or any other commitment to provide services prior to
89 departure for, or otherwise arranges for travel directly to a
90 terrorist state and which originates in Florida.

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

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

96 559.928 Registration.--

97 (1) Each seller of travel shall annually register with the
98 department, providing: its legal business or trade name, mailing
99 address, and business locations; the full names, addresses, and
100 ~~telephone numbers, and social security numbers~~ of its owners or
101 corporate officers and directors and the Florida agent of the
102 corporation; a statement whether it is a domestic or foreign
103 corporation, its state and date of incorporation, its charter
104 number, and, if a foreign corporation, the date it registered
105 with the State of Florida, and occupational license where
106 applicable; the date on which a seller of travel registered its
107 fictitious name if the seller of travel is operating under a
108 fictitious or trade name; the name of all other corporations,
109 business entities, and trade names through which each owner of
110 the seller of travel operated, was known, or did business as a
111 seller of travel within the preceding 5 years; a list of all
112 authorized independent agents, including the agent's trade name,
113 full name, mailing address, business address, and telephone
114 ~~numbers, and social security number~~; the business location and
115 address of each branch office and full name and address of the
116 manager or supervisor; the certification required under s.

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117 559.9285; and proof of purchase of adequate bond ~~or establishment~~
118 ~~of a letter of credit or certificate of deposit~~ as required in
119 this part. A certificate evidencing proof of registration shall
120 be issued by the department and must be prominently displayed in
121 the seller of travel's primary place of business.

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

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

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

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

129 (b) All amounts collected shall be deposited by the Chief
130 Financial Officer to the credit of the General Inspection Trust
131 Fund of the Department of Agriculture and Consumer Services
132 pursuant to s. 570.20, for the sole purpose of administration of
133 this part.

134 Section 3. Section 559.9285, Florida Statutes, is created
135 to read:

136 559.9285 Certification of business activities.--

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

138 (a) Which does not offer for sale, at wholesale or retail,
139 prearranged travel, tourist-related services, or tour-guide
140 services for individuals or groups directly to any terrorist
141 state and which originate in Florida;

142 (b) Which offers for sale, at wholesale or retail, only
143 prearranged travel, tourist-related services, or tour-guide
144 services for individuals or groups directly to any terrorist
145 state and which originate in Florida, but engages in no other

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146 business dealings or commerce with any terrorist state; or

147 (c) Which offers for sale, at wholesale or retail,
148 prearranged travel, tourist-related services, or tour-guide
149 services for individuals or groups directly to any terrorist
150 state and which originate in Florida, and also engages in any
151 other business dealings or commerce with any terrorist state,

152
153 shall annually certify its business activities by filing a
154 disclosure statement with the department which accurately
155 represents the scope of the seller's business activities
156 according to the criteria provided in paragraph (a), paragraph
157 (b), or paragraph (c).

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

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

164 (b) Within 15 days after filing the amended certificate,
165 the certifying party shall provide to the department a bond in
166 the proper amount for the certified business activity pursuant to
167 s. 559.929.

168 (3) The department shall specify by rule the form of each
169 certification under this section which shall include the
170 following information:

171 (a) The legal name, any trade names or fictitious names,
172 mailing address, physical address, telephone number or numbers,
173 facsimile number or numbers, all Internet and electronic contact
174 information, and registration number, if applicable, of the

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175 certifying party.

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

178 (c) The legal name, any trade names or fictitious names,
179 mailing address, physical address, telephone number or numbers,
180 facsimile number or numbers, and all Internet and electronic
181 contact information of every other commercial entity with which
182 the certifying party engages in business or commerce that is
183 related in any way to the certifying party's business or commerce
184 with any terrorist state. The information disclosed pursuant to
185 this paragraph does not constitute customer lists, customer
186 names, or trade secrets protected under s. 570.544(7).

187 (d) The type of all prearranged travel, tourist-related
188 services, or tour-guide services that the certifying party offers
189 for sale to individuals or groups traveling directly to any
190 terrorist state and that originate in Florida, and the frequency
191 with which such services are offered.

192 Section 4. Section 559.929, Florida Statutes, is amended to
193 read:

194 559.929 Security requirements.--

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

201 (a) Each seller of travel that certifies its business
202 activities under s. 559.9285(1)(a) shall provide a performance
203 bond in an amount not to exceed \$25,000, or in the amount of

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204 \$50,000 if the seller of travel is offering vacation
205 certificates.

206 (b) Each seller of travel that certifies its business
207 activities under s. 559.9285(1)(b) shall provide a performance
208 bond in an amount not to exceed \$100,000, or in the amount of
209 \$150,000 if the seller of travel is offering vacation
210 certificates.

211 (c) Each seller of travel that certifies its business
212 activities under s. 559.9285(1)(c) shall provide a performance
213 bond in an amount not to exceed \$250,000, or in the amount of
214 \$300,000 if the seller of travel is offering vacation
215 certificates.

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

225 (2)(3) The bond, letter of credit, or certificate of
226 deposit shall be in favor of the department for the use and
227 benefit of any traveler who is injured by the fraud,
228 misrepresentation, breach of contract, financial failure, or
229 violation of any provision of this part by the seller of travel.
230 Such liability may be enforced either by proceeding in an
231 administrative action as specified in subsection (3) (4) or by
232 filing a judicial suit at law in a court of competent

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

251 (a) All expenses for prosecuting the registrant or
252 applicant in any administrative or civil action under this part,
253 including fees for attorneys and other professionals, court costs
254 or other costs of the proceedings, and all other expenses
255 incidental to the action.

256 (b) All costs and expenses of investigation prior to the
257 commencement of an administrative or civil action under this
258 part.

259 (c) Any unpaid administrative fine imposed by final order
260 or any unpaid civil penalty imposed by final judgment under this
261 part.

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

264 ~~(3)(4)~~ Any traveler may file a claim against the bond,
265 ~~letter of credit, or certificate of deposit~~ which shall be made
266 in writing to the department within 120 days after an alleged
267 injury has occurred or is discovered to have occurred. The
268 proceedings shall be held in accordance with ss. 120.569 and
269 120.57.

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

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

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291 559.9285(1)(b) or (c) is not entitled to the waiver provided in
292 this subsection.

293 Section 5. Subsection (2) of section 559.9335, Florida
294 Statutes, is amended, subsections (22), (23), and (24) are
295 renumbered as subsections (24), (25), and (26), respectively, and
296 new subsections (22) and (23) are added to that section, to read:

297 559.9335 Violations.--It is a violation of this part for
298 any person:

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

303 (22) To offer to sell, at wholesale or retail, prearranged
304 travel, tourist-related services, or tour-guide services for
305 individuals or groups directly to any terrorist state and which
306 originate in Florida, without disclosing such business activities
307 in a certification filed under s. 559.9285(1)(b) or (c).

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

310 Section 6. Subsections (2), (3), and (4) of section
311 559.935, Florida Statutes, are amended to read:

312 559.935 Exemptions.--

313 (2) Sections 559.928, 559.929, 559.9295, 559.931, and
314 559.932 shall not apply to:

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

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320 559.9285(1) (a). ~~or~~

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

326
327 This exemption does not apply to sellers of travel certifying
328 their business activities under s. 559.9285(1) (b) or (c).

329 (3) Sections 559.928, 559.929, 559.9295, 559.931, and
330 559.932 shall also not apply to a seller of travel that is an
331 affiliate of an entity exempt pursuant to subsection (2) subject
332 to the following conditions:

333 (a) In the event the department finds the affiliate does
334 not have a satisfactory consumer complaint history or the
335 affiliate fails to respond to a consumer complaint within 30
336 days, the related seller of travel exempt pursuant to subsection
337 (2) shall be liable for the actions of the affiliate, subject to
338 the remedies provided in ss. 559.9355 and 559.936.

339 (b) In the event the department is unable to locate an
340 affiliate, the related seller of travel exempt pursuant to
341 subsection (2) shall be fully liable for the actions of the
342 affiliate, subject to the remedies provided in ss. 559.9355 and
343 559.936.

344 (c) In order to obtain an exemption under this subsection,
345 the affiliate shall file an affidavit of exemption on a form
346 prescribed by the department and shall certify its business
347 activities under s. 559.9285(1) (a). The affidavit of exemption
348 shall be executed by a person who exercises identical control

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349 over the seller of travel exempt pursuant to subsection (2) and
350 the affiliate. Failure to file an affidavit of exemption or
351 certification under s. 559.9285(1)(a) prior to engaging in seller
352 of travel activities shall subject the affiliate to the remedies
353 provided in ss. 559.9355 and 559.936.

354 (d) Revocation by the department of an exemption provided
355 to a seller of travel under subsection (2) shall constitute
356 automatic revocation by law of an exemption obtained by an
357 affiliate under the subsection.

358 (e) This subsection shall not apply to:

359 1. An affiliate that independently qualifies for another
360 exemption under this section ~~s. 559.935~~.

361 2. An affiliate that sells, or offers for sale, vacation
362 certificates.

363 3. An affiliate that certifies its business activities
364 under s. 559.9285(1)(b) or (c).

365 (f) For purposes of this section, an "affiliate" means an
366 entity that meets the following:

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

369 2. The ownership controlling the seller of travel that is
370 exempt under subsection (2) also exercises identical control over
371 the entity.

372 3. The owners of the affiliate hold the identical
373 percentage of voting shares as they hold in the seller of travel
374 that is exempt under subsection (2).

375 (4) The department may revoke the exemption provided in
376 subsection (2) or subsection (3) if the department finds that the
377 seller of travel does not have a satisfactory consumer complaint

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378 | history, has been convicted of a crime involving fraud, theft,
379 | misappropriation of property, deceptive or unfair trade
380 | practices, or moral turpitude, or has not complied with the terms
381 | of any order or settlement agreement arising out of an
382 | administrative or enforcement action brought by a governmental
383 | agency or private person based on conduct involving fraud, theft,
384 | misappropriation of property, deceptive or unfair trade
385 | practices, or moral turpitude.

386 | Section 7. Section 559.9355, Florida Statutes, is amended
387 | to read:

388 | 559.9355 Administrative remedies; penalties.--

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

393 | (a) Issuing a notice of noncompliance pursuant to s.
394 | 120.695.

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

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

399 | ~~(d)~~ Directing that the person cease and desist specified
400 | activities.

401 | ~~(e)~~ Refusing to register or canceling or suspending a
402 | registration.

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

405 | ~~(g)~~ Canceling an exemption granted under s. 559.935.

406 | (2) The administrative proceedings which could result in

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407 the entry of an order imposing any of the penalties specified in
408 subsection (1) are governed by chapter 120.

409 (3) The department has the authority to adopt rules
410 pursuant to chapter 120 to implement this section and ss.
411 559.928, 559.929, 559.934, and 559.935.

412 Section 8. Subsections (3) through (6) of section 559.936,
413 Florida Statutes, are renumbered as subsections (4) through (7),
414 respectively, and a new subsection (3) is added to that section,
415 to read:

416 559.936 Civil penalties; remedies.--

417 (3) The department may seek a civil penalty of up to
418 \$10,000 for each act or omission in violation of s. 559.9335(22)
419 or (23).

420 Section 9. Section 559.937, Florida Statutes, is amended to
421 read:

422 559.937 Criminal penalties.--Any person or business that
423 ~~which~~ violates this part:

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

426 (2) Which violation directly or indirectly pertains to an
427 offer to sell, at wholesale or retail, prearranged travel,
428 tourist-related services, or tour-guide services for individuals
429 or groups directly to any terrorist state and which originate in
430 Florida, commits a felony of the third degree, punishable as
431 provided in s. 775.082 or s. 775.083.

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