

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 which 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, at

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

CS/HB 671

2008

57 penalty for a violation of the Florida Sellers of Travel
 58 Act which directly or indirectly pertains to an offer to
 59 sell, at wholesale or retail, prearranged travel, tourist-
 60 related services, or tour-guide services for individuals
 61 or groups directly to any terrorist state which originate
 62 in Florida; providing an effective date.

63

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

65

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

72 559.927 Definitions.--For the purposes of this part, the
 73 term:

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

77 (7)~~(6)~~ "Prearranged travel, tourist-related services, or
 78 tour-guide services" includes, but is not limited to, car
 79 rentals, lodging, transfers, and sightseeing tours and all other
 80 such services which are reasonably related to air, sea, rail,
 81 motor coach, or other medium of transportation, or
 82 accommodations for which a purchaser receives a premium or
 83 contracts or pays prior to or after departure. These terms also
 84 include services for which a purchaser, whose legal residence is

85 outside the United States, contracts or pays prior to departure,
 86 and any arrangement by which a purchaser prepays for, receives a
 87 reservation or any other commitment to provide services prior to
 88 departure for, or otherwise arranges for travel directly to a
 89 terrorist state and which originates in Florida.

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

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

95 559.928 Registration.--

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

113 numbers, ~~and social security number~~; the business location and
 114 address of each branch office and full name and address of the
 115 manager or supervisor; the certification required under s.
 116 559.9285; and proof of purchase of adequate bond ~~or~~
 117 ~~establishment of a letter of credit or certificate of deposit~~ as
 118 required in this part. A certificate evidencing proof of
 119 registration shall be issued by the department and must be
 120 prominently displayed in the seller of travel's primary place of
 121 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 only offers for sale, at wholesale or retail,
 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
 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 that accurately
 155 represents the scope of the seller's business activities
 156 according to the criteria provided in either paragraph (a),
 157 paragraph (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 from 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 of filing the amended certificate, the
 165 certifying party shall provide the department with a bond in the
 166 proper amount for the certified business activity pursuant to s.
 167 559.929.

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 fax number or numbers, all Internet and electronic contact
 174 information, and registration number, if applicable, of the
 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 fax number or numbers, and all Internet and electronic contact
 181 information of every other entity with which the certifying
 182 party engages in business or commerce that is related in any way
 183 to the certifying party's business or commerce with any
 184 terrorist state.

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

190 Section 4. Section 559.929, Florida Statutes, is amended
 191 to read:

192 559.929 Security requirements.--

193 (1) An application must be accompanied by a performance
 194 bond in an amount set by the department under paragraph (a),
 195 paragraph (b), or paragraph (c) not to exceed \$25,000, or in the
 196 amount of \$50,000 if the seller of travel is offering vacation

197 ~~certificates~~. The surety on such bond shall be a surety company
198 authorized to do business in the state.

199 (a) Each seller of travel which certifies its business
200 activities under s. 559.9285(1)(a) shall provide a performance
201 bond in an amount not to exceed \$25,000, or in the amount of
202 \$50,000 if the seller of travel is offering vacation
203 certificates.

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

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

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

224 (2)(3) The bond, ~~letter of credit, or certificate of~~

225 ~~deposit~~ shall be in favor of the department for the use and
 226 benefit of any traveler who is injured by the fraud,
 227 misrepresentation, breach of contract, financial failure, or
 228 violation of any provision of this part by the seller of travel.
 229 Such liability may be enforced either by proceeding in an
 230 administrative action as specified in subsection (3)~~(4)~~ or by
 231 filing a judicial suit at law in a court of competent
 232 jurisdiction. However, in such court suit the bond, ~~letter of~~
 233 ~~credit, or certificate of deposit~~ posted with the department
 234 shall not be amenable or subject to any judgment or other legal
 235 process issuing out of or from such court in connection with
 236 such lawsuit, but such bond, ~~letter of credit, or certificate of~~
 237 ~~deposit~~ shall be amenable to and enforceable only by and through
 238 administrative proceedings before the department. It is the
 239 intent of the Legislature that such bond, ~~letter of credit, or~~
 240 ~~certificate of deposit~~ shall be applicable and liable only for
 241 the payment of claims duly adjudicated by order of the
 242 department. The bond, ~~letter of credit, or certificate of~~
 243 ~~deposit~~ shall be open to successive claims, but the aggregate
 244 amount may not exceed the amount of the bond, ~~letter of credit,~~
 245 ~~or certificate of deposit~~. In addition to the foregoing, a bond
 246 provided by a registrant or applicant for registration which
 247 certifies its business activities under s. 559.9285(1)(b) or (c)
 248 shall be in favor of the department, with payment in the
 249 following order of priority:
 250 (a) All expenses for prosecuting the registrant or
 251 applicant in any administrative or civil action under this part,
 252 including fees for attorneys and other professionals, court

253 costs or other costs of the proceedings, and all other expenses
 254 incidental to the action.

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

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

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

263 (3)-(4) Any traveler may file a claim against the bond,
 264 ~~letter of credit, or certificate of deposit~~ which shall be made
 265 in writing to the department within 120 days after an alleged
 266 injury has occurred or is discovered to have occurred. The
 267 proceedings shall be held in accordance with ss. 120.569 and
 268 120.57.

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

277 (5)-(6) The department may waive the bond, ~~letter of~~
 278 ~~credit, or certificate of deposit~~ requirement on an annual basis
 279 if the 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
 288 its business activities under s. 559.9285. Such waiver may be
 289 revoked if the seller of travel violates any provision of this
 290 part. A seller of travel which certifies its business activities
 291 under s. 559.9285(1)(b) or (c) shall not be entitled to the
 292 waiver provided in 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,
 296 and new subsections (22) and (23) are added to that section, to
 297 read:

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

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

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

309 (c).

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

312 Section 6. Subsections (2), (3), and (4) of section
 313 559.935, Florida Statutes, are amended to read:

314 559.935 Exemptions.--

315 (2) Sections 559.928, 559.929, 559.9295, 559.931, and
 316 559.932 shall not apply to:

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

322 559.9285(1)(a). ~~or~~

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

328

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

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

335 (a) In the event the department finds the affiliate does
 336 not have a satisfactory consumer complaint history or the

337 affiliate fails to respond to a consumer complaint within 30
 338 days, the related seller of travel exempt pursuant to subsection
 339 (2) shall be liable for the actions of the affiliate, subject to
 340 the remedies provided in ss. 559.9355 and 559.936.

341 (b) In the event the department is unable to locate an
 342 affiliate, the related seller of travel exempt pursuant to
 343 subsection (2) shall be fully liable for the actions of the
 344 affiliate, subject to the remedies provided in ss. 559.9355 and
 345 559.936.

346 (c) In order to obtain an exemption under this subsection,
 347 the affiliate shall file an affidavit of exemption on a form
 348 prescribed by the department and shall certify its business
 349 activities under s. 559.9285(1)(a). The affidavit of exemption
 350 shall be executed by a person who exercises identical control
 351 over the seller of travel exempt pursuant to subsection (2) and
 352 the affiliate. Failure to file an affidavit of exemption or
 353 certification under s. 559.9285(1)(a) prior to engaging in
 354 seller of travel activities shall subject the affiliate to the
 355 remedies provided in ss. 559.9355 and 559.936.

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

360 (e) This subsection shall not apply to:

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

363 2. An affiliate that sells, or offers for sale, vacation
 364 certificates.

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

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

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

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

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

377 (4) The department may revoke the exemption provided in
 378 subsection (2) or subsection (3) if the department finds that
 379 the seller of travel does not have a satisfactory consumer
 380 complaint history, has been convicted of a crime involving
 381 fraud, theft, misappropriation of property, deceptive or unfair
 382 trade practices, or moral turpitude, or has not complied with
 383 the terms of any order or settlement agreement arising out of an
 384 administrative or enforcement action brought by a governmental
 385 agency or private person based on conduct involving fraud,
 386 theft, misappropriation of property, deceptive or unfair trade
 387 practices, or moral turpitude.

388 Section 7. Section 559.9355, Florida Statutes, is amended
 389 to read:

390 559.9355 Administrative remedies; penalties.--

391 (1) The department may enter an order doing one or more of
 392 the following if the department finds that a person has violated

393 or is operating in violation of any of the provisions of this
 394 part or the rules or orders issued thereunder:

395 (a) Issuing a notice of noncompliance pursuant to s.
 396 120.695.

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

399 (c) Imposing an administrative fine not to exceed \$10,000
 400 for each act or omission in violation of s. 559.9335(22) or
 401 (23).

402 (d)-(e) Directing that the person cease and desist
 403 specified activities.

404 (e)-(d) Refusing to register or canceling or suspending a
 405 registration.

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

408 (g)-(f) Canceling an exemption granted under s. 559.935.

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

412 (3) The department has the authority to adopt rules
 413 pursuant to chapter 120 to implement this section and ss.
 414 559.928, 559.929, 559.934, and 559.935.

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

419 559.936 Civil penalties; remedies.--

420 (3) The department may seek a civil penalty of up to

CS/HB 671

2008

421 \$10,000 for each act or omission in violation of s. 559.9335(22)
 422 or (23).

423 Section 9. Section 559.937, Florida Statutes, is amended
 424 to read:

425 559.937 Criminal penalties.-- Any person or business that
 426 ~~which~~ violates this part:

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

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

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