

House Bill No. 7239

An act relating to the Department of Agriculture and Consumer Services; amending s. 493.6106, F.S.; clarifying that private investigative, private security, and repossession services are licensed by the department; amending s. 493.6121, F.S.; authorizing the department to institute judicial proceedings to enforce ch. 493, F.S., or any rule or order of the department; amending s. 493.6303, F.S.; revising the requirements for a Class "D" private security license; requiring the department to establish the number of hours of each subject area to be taught in training; providing for automatic suspension of a license upon failure to submit documentation of completing the required training; prescribing requirements and conditions for persons licensed before a certain date; providing exemptions; amending s. 501.059, F.S.; prohibiting a telephone solicitor from blocking certain information from a recipient's caller identification service; providing an exception; authorizing a telephone solicitor to substitute certain information provided to the recipient's caller identification service; providing a definition; prohibiting alteration of a caller's voice during a telephonic sales call under certain circumstances and for certain purposes; amending s. 501.142, F.S.; providing that the regulation of refunds in retail sales establishments is preempted to the department; authorizing the department to adopt rules; authorizing the department to enter orders for certain violations; requiring that any moneys recovered by the department as a penalty be deposited in the General Inspection Trust Fund; authorizing a local government to impose penalties; requiring that any moneys recovered by a local government as a penalty be deposited in the appropriate local account; amending s. 506.5131, F.S.; revising provisions relating to assessment of fees, fines, and costs against the owner of a shopping cart; providing an exemption; amending s. 525.01, F.S.; defining the term "alternative fuel" for purposes of ch. 525, F.S., relating to the inspection of gasoline and oil; amending s. 527.11, F.S.; exempting the delivery of certain amounts of propane gas for use with outdoor equipment or appliances from provisions governing the delivery of liquefied petroleum gas; requiring that a person delivering liquefied petroleum gas in bulk comply with certain storage requirements; amending ss. 570.46 and 570.47, F.S.; authorizing the Division of Standards within the department to enforce ch. 527, F.S., relating to the sale of liquefied petroleum gas; amending s. 570.544, F.S.; deleting provisions requiring that an office or agency receiving a complaint file progress reports with the Division of Consumer Services within the department; repealing s. 526.3135, F.S., relating to reports by the Division of Standards, to conform to changes made by the act; amending s. 616.242, F.S.; exempting certain governmental entities from requirements that operators of amusement rides maintain specified amounts of insurance coverage; providing effective dates.

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

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

493.6106 License requirements; posting.—

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

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

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

493.6121 Enforcement; investigation.—

(5) In order to carry out the duties of the department prescribed in this chapter, designated employees of the Division of Licensing of the Department of Agriculture and Consumer Services State may obtain access to the information in criminal justice information systems and to criminal justice information as defined in s. 943.045, on such terms and conditions as are reasonably calculated to provide necessary information and protect the confidentiality of the information. Such criminal justice information submitted to the division is confidential and exempt from the provisions of s. 119.07(1).

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

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

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

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

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

1. Successful completion of the total number of required 40 hours of training before initial application for a Class “D” license; or

2. Successful completion of 24 hours of training before initial application for a Class “D” license, and successful completion of the remaining 16 hours of training within 180 days after the date that upon the first application is submitted for renewal of, a Class “D” license. If documentation of completion of the required training is not submitted within the specified timeframe, the individual’s license is automatically suspended until such time as proof of the required training is provided to the department However, individuals licensed before October 1, 1994, need not complete additional training hours in order to renew their licenses.

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

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

501.059 Telephone solicitation.—

(7)

(c) It shall be unlawful for any person who makes a telephonic sales call or causes a telephonic sales call to be made to fail to transmit or cause not to be transmitted the telephone number and, when made available by the telephone solicitor’s carrier, the name of the telephone solicitor to any caller identification service in use by a recipient of a telephonic sales call. However, it shall not be a violation to substitute, for the name and telephone number used in or billed for making the call, the name of the seller on behalf of which a telephonic sales call is placed and the seller’s customer service telephone number, which is answered during regular business hours. For purposes of this section, the term “caller identification service” means a service that allows a telephone subscriber to have the telephone number and, where available, the name of the calling party transmitted contemporaneously with the telephone call and displayed on a device in or connected to the subscriber’s telephone.

(d) It shall be unlawful for any person who makes a telephonic sales call or causes a telephonic sales call to be made to intentionally alter the voice of the caller in an attempt to disguise or conceal the identity of the caller in order to defraud, confuse, or financially or otherwise injure the recipient of a telephonic sales call or in order to obtain personal information from the recipient of a telephonic sales call which may be used in a fraudulent or unlawful manner.

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

501.142 Retail sales establishments; preemption; notice of refund policy; exceptions; penalty.—

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

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

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

- (a) Issue a notice of noncompliance pursuant to s. 120.695.
- (b) Impose an administrative fine not to exceed \$100 for each violation.
- (c) Direct the person to cease and desist specified activities.

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

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

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

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

506.5131 Return of shopping carts; assessment of fees, fines, and costs.—

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

(2) Notwithstanding any other provision of law or local ordinance, no fee, fine, or costs may be assessed against the owner of a shopping cart unless the shopping cart was found on public property and, unless the shopping cart was removed from the premises or parking area of a retail establishment by the owner of the shopping cart, or an employee acting on the owner's behalf, and the such fee, fine, or cost has been approved by the Department of Agriculture and Consumer Services. This subsection shall not apply to any ordinance adopted after January 31, 2002, and prior to June 30, 2002, that requires a business establishment to install a retention system to retain shopping carts within the real property boundaries of a business location.

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

525.01 Gasoline and oil to be inspected.—

(1) For the purpose of this chapter:

(a) “Department” means the Department of Agriculture and Consumer Services.

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

(c) “Alternative fuel” means:

1. Methanol, denatured ethanol, or other alcohols;

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

3. Hydrogen;
4. Coal-derived liquid fuels; and
5. Fuels, other than alcohol, derived from biological materials.

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

527.11 Minimum storage.—

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

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

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

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

570.46 Division of Standards; powers and duties.—The duties of the Division of Standards include, but are not limited to:

- (5) Enforcing the provisions of chapter 527.

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

570.47 Director; qualifications; duties.—

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

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

570.544 Division of Consumer Services; director; powers; processing of complaints; records.—

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

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

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

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

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

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

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

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

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

(8)(9) It shall be the duty of the Division of Consumer Services to maintain records and compile summaries and analyses of consumer complaints and their eventual disposition, which data may serve as a basis for recommendations to the Legislature and to state regulatory agencies.

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

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

616.242 Safety standards for amusement rides.—

(9) INSURANCE REQUIREMENTS.—

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

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

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

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

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

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

Approved by the Governor June 9, 2006.

Filed in Office Secretary of State June 9, 2006.