

Committee Substitute for
Committee Substitute for Senate Bill No. 1310

An act relating to sellers of travel; amending s. 559.927, F.S.; revising the definition of “prearranged travel, tourist-related services, or tour-guide services”; defining “certifying party” and “terrorist state”; amending s. 559.928, F.S.; revising provisions relating to registration as a seller of travel; revising registration fees; creating s. 559.9285, F.S.; requiring a seller of travel to annually certify to the Department of Agriculture and Consumer Services the scope of its business activities by filing a disclosure statement; categorizing certifying parties; providing requirements of a certifying party that changes its scope of business; requiring that such certifying party provide to the department an appropriate bond; requiring the department to specify by rule the form of certification; specifying required certification information; amending s. 559.929, F.S.; revising requirements with respect to the performance bond that must accompany registration or an application for registration as a seller of travel; specifying amounts of bonds for certification categories; eliminating alternative means of satisfying security requirements; providing for priority of payment with respect to such bonds; revising conditions under which the department may annually waive the bond; precluding specified certification categories from waiver of bond; amending s. 559.9335, F.S.; providing that it is a violation of the Florida Sellers of Travel Act to offer to sell, at wholesale or retail, prearranged travel, tourist-related services, or tour-guide services for individuals or groups directly to any terrorist state which originate in Florida without disclosing such business activities in a certification filed with the department and to violate any state or federal law restricting or prohibiting commerce with terrorist states; amending s. 559.935, F.S.; revising provisions that exempt certain sellers of travel and affiliates thereof from specified registration, security, disclosure, and recordkeeping requirements; amending s. 559.9355, F.S.; imposing an administrative fine for each act or omission in violation of the prohibited offer to sell, at wholesale or retail, prearranged travel, tourist-related services, or tour-guide services for individuals or groups directly to any terrorist state which originate in Florida without disclosing such business activities in a certification or in violation of any state or federal law restricting or prohibiting commerce with terrorist states; amending s. 559.936, F.S.; authorizing the department to seek a specified civil penalty for each act or omission in violation of the prohibited offer to sell, at wholesale or retail, prearranged travel, tourist-related services, or tour-guide services for individuals or groups directly to any terrorist state which originate in Florida without disclosing such business activities in a certification or in violation of any state or federal law restricting or prohibiting commerce with terrorist states; amending s. 559.937, F.S.; providing a criminal penalty for a violation of the Florida Sellers of Travel Act which directly or indirectly pertains to

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

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

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

559.927 Definitions.—For the purposes of this part, the term:

(2) “Certifying party” means a seller of travel registering under s. 559.928 or a seller of travel who is exempt under s. 559.935(2) or (3).

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

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

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

559.928 Registration.—

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

each branch office and full name and address of the manager or supervisor; the certification required under s. 559.9285; and proof of purchase of adequate bond ~~or establishment of a letter of credit or certificate of deposit~~ as required in this part. A certificate evidencing proof of registration shall be issued by the department and must be prominently displayed in the seller of travel's primary place of business.

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

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

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

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

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

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

559.9285 Certification of business activities.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

559.929 Security requirements.—

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

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

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

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

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

~~(2)(3) The bond, letter of credit, or certificate of deposit shall be in favor of the department for the use and benefit of any traveler who is injured by the fraud, misrepresentation, breach of contract, financial failure, or violation of any provision of this part by the seller of travel. Such liability may be enforced either by proceeding in an administrative action as specified in subsection (3) (4) or by filing a judicial suit at law in a court of competent jurisdiction. However, in such court suit the bond, letter of credit, or certificate of deposit posted with the department shall not be amenable or subject to any judgment or other legal process issuing out of or from such court in connection with such lawsuit, but such bond, letter of credit, or certificate of deposit shall be amenable to and enforceable only by and through administrative proceedings before the department. It is the intent of the Legislature that such bond, letter of credit, or certificate of deposit shall be applicable and liable only for the payment of claims duly adjudicated by order of the department. The bond, letter of credit, or certificate of deposit shall be open to successive claims, but the aggregate amount may not exceed the amount of the bond, letter of credit, or certificate of deposit. In addition to the foregoing, a bond provided by a registrant or applicant for registration which certifies its business activities under s. 559.9285(1)(b) or (c) shall be in favor of the department, with payment in the following order of priority:~~

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

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

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

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

~~(3)(4) Any traveler may file a claim against the bond, letter of credit, or certificate of deposit which shall be made in writing to the department within 120 days after an alleged injury has occurred or is discovered to have~~

occurred. The proceedings shall be held in accordance with ss. 120.569 and 120.57.

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

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

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

559.9335 Violations.—It is a violation of this part for any person:

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

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

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

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

559.935 Exemptions.—

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

(a) Sellers of travel directly issuing airline tickets who have contracted with the Airlines Reporting Corporation for the most recent consecutive 3

years or more under the same ownership and control, ~~and~~ who do not offer vacation certificates, ~~and~~ who annually certify their business activities under s. 559.9285(1)(a).~~;~~ ~~or~~

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

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

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

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

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

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

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

(e) This subsection shall not apply to:

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

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

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

(f) For purposes of this section, an “affiliate” means an entity that meets the following:

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

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

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

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

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

559.9355 Administrative remedies; penalties.—

(1) 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 part or the rules or orders issued thereunder:

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

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

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

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

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

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

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

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

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

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

559.936 Civil penalties; remedies.—

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

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

559.937 Criminal penalties.—Any person or business that ~~which~~ violates this part:

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

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

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

Approved by the Governor June 23, 2008.

Filed in Office Secretary of State June 23, 2008.