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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; revising conditions for denial of or refusal to
9 renew the registration of any seller of travel by the
10 Department of Agriculture and Consumer Services; creating
11 s. 559.9285, F.S.; requiring a seller of travel to
12 annually certify to the department the scope of its
13 business activities by filing a disclosure statement;
14 categorizing certifying parties; requiring the department
15 to specify by rule the form of certification; specifying
16 required certification information; amending s. 559.929,
17 F.S.; revising requirements with respect to the
18 performance bond which must accompany registration or an
19 application for registration as a seller of travel;
20 specifying amounts of bonds for certification categories;
21 eliminating alternative means of satisfying security
22 requirements; providing for priority of payment with
23 respect to such bonds; revising conditions under which the
24 department may annually waive the bond; precluding
25 specified certification categories from waiver of bond;
26 amending s. 559.9335, F.S.; providing that it is a
27 violation of the Florida Sellers of Travel Act to offer to
28 sell travel or provide any travel-related service to a

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

53
54 Be It Enacted by the Legislature of the State of Florida:
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56 Section 1. Subsections (2) through (5), (7) through (10),
57 and (11) of section 559.927, Florida Statutes, are renumbered as
58 subsections (3) through (6), (8) through (11), and (13),
59 respectively, subsection (6) is renumbered as subsection (7) and
60 amended, and new subsections (2) and (12) are added to that
61 section, to read:

62 559.927 Definitions.--For the purposes of this part, the
63 term:

64 (2) "Certifying party" means a seller of travel
65 registering under s. 559.928 or a seller of travel who is exempt
66 under s. 559.935(2) or (3).

67 (7)~~(6)~~ "Prearranged travel, tourist-related services, or
68 tour-guide services" includes, but is not limited to, car
69 rentals, lodging, transfers, and sightseeing tours and all other
70 such services which are reasonably related to air, sea, rail,
71 motor coach, or other medium of transportation, or
72 accommodations for which a purchaser receives a premium or
73 contracts or pays prior to or after departure. These terms also
74 include services for which a purchaser, whose legal residence is
75 outside the United States, contracts or pays prior to departure,
76 and any arrangement by which a purchaser prepays for, receives a
77 reservation or any other commitment to provide services prior to
78 departure for, or otherwise arranges for travel to or from a
79 terrorist state directly from Florida or through one or more
80 intermediate states, countries, or nations.

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

84 Section 2. Subsections (1), (2), and (9) of section
85 559.928, Florida Statutes, are amended to read:

86 559.928 Registration.--

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

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

113 1. Three hundred dollars ~~\$300~~ per year per registrant

114 certifying its business activities under s. 559.9285(1)(a).

115 2. One thousand dollars per year per registrant certifying

116 its business activities under s. 559.9285(1)(b).

117 3. Twenty-five hundred dollars per year per registrant

118 certifying its business activities under s. 559.9285(1)(c).

119 (b) All amounts collected shall be deposited by the Chief

120 Financial Officer to the credit of the General Inspection Trust

121 Fund of the Department of Agriculture and Consumer Services

122 pursuant to s. 570.20, for the sole purpose of administration of

123 this part.

124 (9) The department may deny or refuse to renew the

125 registration of any seller of travel based upon a determination

126 that the seller of travel, or any of its directors, officers,

127 owners, or general partners:

128 (a) Has failed to meet the requirements for registration

129 as provided in this part;

130 (b) Has been convicted of a crime involving fraud,

131 dishonest dealing, or any other violation punishable as a crime

132 under state or federal law ~~or any other act of moral turpitude;~~

133 (c) Has not satisfied a civil fine or penalty arising out

134 of any administrative or enforcement action brought by any

135 governmental agency or private person based upon conduct

136 involving fraud, dishonest dealing, or any violation of this

137 part;

138 (d) Has pending against her or him any criminal,

139 administrative, or enforcement proceedings in any jurisdiction,

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140 based upon any violation of state or federal law ~~conduct~~
141 ~~involving fraud, dishonest dealing, or any other act of moral~~
142 ~~turpitude~~; or

143 (e) Has had a judgment entered against her or him in any
144 action brought by the department or the Department of Legal
145 Affairs pursuant to ss. 501.201-501.213 or this part.

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

148 559.9285 Certification of business activities.--

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

150 (a) Which does not offer for sale, directly or indirectly,
151 at wholesale or retail, prearranged travel, tourist-related
152 services, or tour-guide services for individuals or groups to or
153 from any terrorist state;

154 (b) Which only offers for sale, directly or indirectly, at
155 wholesale or retail, prearranged travel, tourist-related
156 services, or tour-guide services for individuals or groups to or
157 from any terrorist state but engages in no other business
158 dealings or commerce with any terrorist state; or

159 (c) Which offers for sale, directly or indirectly, at
160 wholesale or retail, prearranged travel, tourist-related
161 services, or tour-guide services for individuals or groups to or
162 from any terrorist state and also engages in any other business
163 dealings or commerce with any terrorist state,

164
165 shall annually certify its business activities by filing a
166 disclosure statement with the department that accurately
167 represents the scope of the seller's business activities

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168 according to the criteria provided in either paragraph (a),
169 paragraph (b), or paragraph (c).

170 (2) The department shall specify by rule the form of each
171 certification under this section, which shall include the
172 following information:

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

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

180 (c) Each intermediate state, country, or nation through
181 which the certifying party engages in any business or commerce
182 with any terrorist state.

183 (d) The legal name, any trade names or fictitious names,
184 mailing address, physical address, telephone number or numbers,
185 fax number or numbers, and all Internet and electronic contact
186 information of every other entity with which the certifying
187 party engages in business or commerce that is related in any way
188 to the certifying party's business or commerce with any
189 terrorist state.

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

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

197 559.929 Security requirements.--

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

204 (a) Each seller of travel which certifies its business
205 activities under s. 559.9285(1)(a) shall provide a performance
206 bond in an amount not to exceed \$25,000, or in the amount of
207 \$50,000 if the seller of travel is offering vacation
208 certificates.

209 (b) Each seller of travel which certifies its business
210 activities under s. 559.9285(1)(b) shall provide a performance
211 bond in an amount not to exceed \$100,000, or in the amount of
212 \$150,000 if the seller of travel is offering vacation
213 certificates.

214 (c) Each seller of travel which certifies its business
215 activities under s. 559.9285(1)(c) shall provide a performance
216 bond in an amount not to exceed \$250,000, or in the amount of
217 \$300,000 if the seller of travel is offering vacation
218 certificates.

219 ~~(2) In lieu of the performance bond required in this part,~~
220 ~~a registrant or applicant for registration may establish a~~
221 ~~certificate of deposit or an irrevocable letter of credit in a~~
222 ~~Florida banking institution in the amount of the performance~~

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223 ~~bond. The department shall be the beneficiary to this~~
224 ~~certificate of deposit, and the original shall be filed with the~~
225 ~~department. Any such letter of credit shall provide that the~~
226 ~~issuer will give the department not less than 120 days written~~
227 ~~notice prior to terminating or refusing to renew the letter of~~
228 ~~credit.~~

229 (2)~~(3)~~ The bond, ~~letter of credit, or certificate of~~
230 ~~deposit~~ shall be in favor of the department for the use and
231 benefit of any traveler who is injured by the fraud,
232 misrepresentation, breach of contract, financial failure, or
233 violation of any provision of this part by the seller of travel.
234 Such liability may be enforced either by proceeding in an
235 administrative action as specified in subsection (3)~~(4)~~ or by
236 filing a judicial suit at law in a court of competent
237 jurisdiction. However, in such court suit the bond, ~~letter of~~
238 ~~credit, or certificate of deposit~~ posted with the department
239 shall not be amenable or subject to any judgment or other legal
240 process issuing out of or from such court in connection with
241 such lawsuit, but such bond, ~~letter of credit, or certificate of~~
242 ~~deposit~~ shall be amenable to and enforceable only by and through
243 administrative proceedings before the department. It is the
244 intent of the Legislature that such bond, ~~letter of credit, or~~
245 ~~certificate of deposit~~ shall be applicable and liable only for
246 the payment of claims duly adjudicated by order of the
247 department. The bond, ~~letter of credit, or certificate of~~
248 ~~deposit~~ shall be open to successive claims, but the aggregate
249 amount may not exceed the amount of the bond, ~~letter of credit,~~
250 ~~or certificate of deposit.~~ In addition to the foregoing, a bond

251 provided by a registrant or applicant for registration which
 252 certifies its business activities under s. 559.9285(1)(b) or (c)
 253 shall be in favor of the department, with payment in the
 254 following order of priority:

255 (a) All expenses for prosecuting the registrant or
 256 applicant in any administrative or civil action, including fees
 257 for attorneys and other professionals, court costs or other
 258 costs of the proceedings, and all other expenses incidental to
 259 the action.

260 (b) All costs and expenses of investigation prior to the
 261 commencement of an administrative or civil action.

262 (c) Any unpaid administrative fine imposed by final order
 263 or any unpaid civil penalty imposed by final judgment.

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

266 ~~(3)(4)~~ Any traveler may file a claim against the bond,
 267 ~~letter of credit, or certificate of deposit~~ which shall be made
 268 in writing to the department within 120 days after an alleged
 269 injury has occurred or is discovered to have occurred. The
 270 proceedings shall be held in accordance with ss. 120.569 and
 271 120.57.

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

278 shall be suspended until after any enforcement action becomes
 279 final.

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

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

301 559.9335 Violations.--It is a violation of this part for
 302 any person:

303 (2) To conduct business as a seller of travel without an
 304 annual purchase of a performance bond ~~or establishment of a~~

305 ~~letter of credit or certificate of deposit~~ in the amount set by
 306 the department unless exempt pursuant to s. 559.935.

307 (22) To offer to sell travel or provide any travel-related
 308 service to purchasers traveling to or from any terrorist state
 309 without disclosing such business activities in a certification
 310 filed under ss. 559.9285(1)(b) or (c).

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

313 Section 6. Subsections (2), (3), and (4) of section
 314 559.935, Florida Statutes, are amended to read:

315 559.935 Exemptions.--

316 (2) Sections 559.928, 559.929, 559.9295, 559.931, and
 317 559.932 shall not apply to:

318 (a) Sellers of travel directly issuing airline tickets who
 319 have contracted with the Airlines Reporting Corporation for the
 320 most recent consecutive 3 years or more under the same ownership
 321 and control, ~~and~~ who do not offer vacation certificates, and who
 322 annually certify their business activities under s.
 323 559.9285(1)(a); ~~or~~

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

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

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

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

342 (b) In the event the department is unable to locate an
343 affiliate, the related seller of travel exempt pursuant to
344 subsection (2) shall be fully liable for the actions of the
345 affiliate, subject to the remedies provided in ss. 559.9355 and
346 559.936.

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

357 (d) Revocation by the department of an exemption provided
358 to a seller of travel under subsection (2) shall constitute

359 automatic revocation by law of an exemption obtained by an
 360 affiliate under the subsection.

361 (e) This subsection shall not apply to:

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

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

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

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

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

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

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

378 (4) The department may revoke the exemption provided in
 379 subsection (2) or subsection (3) if the department finds that
 380 the seller of travel does not have a satisfactory consumer
 381 complaint history, has been convicted of a crime involving
 382 fraud, theft, misappropriation of property, or deceptive or
 383 unfair trade practices, has been in violation of any statute
 384 pertaining to business or commerce with any terrorist state, ~~or~~
 385 ~~moral turpitude,~~ or has not complied with the terms of any order
 386 or settlement agreement arising out of an administrative or

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387 enforcement action brought by a governmental agency or private
 388 person based on conduct involving fraud, theft, misappropriation
 389 of property, deceptive or unfair trade practices, or a violation
 390 of any statute pertaining to business or commerce with any
 391 terrorist state ~~moral turpitude.~~

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

394 559.9355 Administrative remedies; penalties.--

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

399 (a) Issuing a notice of noncompliance pursuant to s.
 400 120.695.

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

403 (c) Imposing an administrative fine not to exceed \$10,000
 404 for each act or omission directly or indirectly pertaining to an
 405 offer to sell travel or provide any travel-related service to
 406 purchasers traveling to or from any terrorist state.

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

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

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

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

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

417 (3) The department has the authority to adopt rules
418 pursuant to chapter 120 to implement this section and ss.
419 559.928, 559.929, 559.934, and 559.935.

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

424 559.936 Civil penalties; remedies.--

425 (3) The department may seek a civil penalty of up to
426 \$10,000 for each act or omission directly or indirectly
427 pertaining to an offer to sell travel or provide any travel-
428 related service to a purchaser traveling to or from any
429 terrorist state.

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

432 559.937 Criminal penalties.-- Any person or business that
433 ~~which~~ violates this part:

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

436 (2) Which violation directly or indirectly pertains to an
437 offer to sell travel or provide any travel-related service to a
438 purchaser traveling to or from any terrorist state, commits a
439 felony of the third degree, punishable as provided in s. 775.082
440 or s. 775.083.

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