

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 833 CS Consumer Protection
SPONSOR(S): Vana
TIED BILLS: **IDEN./SIM. BILLS:** SB 1520

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee		Reese	Reese
2) Civil Justice Committee			
3) Agriculture & Environment Appropriations Committee			
4) State Resources Council			
5) _____			

SUMMARY ANALYSIS

The bill contains a number of provisions relating to the consumer protection activities of the Department of Agriculture and Consumer Services (department).

Security officer licensing: The bill increases the required minimum number of professional training hours from 40 to 44 and requires that at least 8 hours of instruction in terrorism awareness be included.

Telephone and facsimile solicitation: The bill allows businesses to be eligible for addition to the Florida "do not call" list. In addition, the bill makes transmittal of unsolicited facsimiles to a Florida number, from either in-state or out-of-state numbers, a violation of the Florida no sales solicitation laws.

Business opportunities: The bill clarifies that a seller may provide the required sales or marketing plan either contemporaneously at the time of the sale or lease or at a future time.

Motor vehicle repair: The reference to submission of an affidavit of exemption is removed, as it is obsolete and no longer required.

Sellers of travel: The bill requires independent agents to submit to the department a copy of their contract with each seller of travel.

Amusement facilities: The term "surety bond" is removed from the law leaving an insurance policy in a like amount as the only acceptable instrument to satisfy the insurance requirement.

Game promotions: The bill revises the definition of the term "operator" to be consistent with terms used in actual game promotions. It clarifies that an operator is any person, firm, corporation or association on whose behalf a game promotion is conducted. The definition does not apply to charitable, nonprofit organizations.

The bill appears to have no fiscal impact on local government and may generate an estimated \$195,000 in revenue to the department

The effective date of the bill is October 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – To assist in covering the cost of the regulatory program, this bill requires independent agents operating under the sellers of travel law to pay a fee of \$100 prior to engaging in business in Florida.

Maintain public security -- The bill increases the required minimum number of professional training hours for a Class “D” security officer’s license to 44. At least 8 hours of instruction in terrorism awareness or other special training must be included as part of the 44 total hours.

B. EFFECT OF PROPOSED CHANGES:

Security officer licensing

Current law provides that an applicant for a Class “D” security officer’s license must have completed a minimum of 40 hours of professional training at a school or facility licensed by the department. The law also provides that, upon completion of 24 of the required 40 hours, an applicant is eligible for licensure and the remaining 16 hours of training can be done upon first application for license renewal.

Provisions of this bill increase the required minimum number of professional training hours to 44. The bill also provides flexibility for the department to determine the total number of hours for all training. In addition, the bill requires that at least 8 hours of instruction in terrorism awareness be included as part of the 44 and that all training be accomplished within 180 days of initially applying for a license. Individuals who successfully complete the existing 40 hours of required training prior to January 1, 2006, are exempt from the new requirements.

Telephone and facsimile solicitation

Current law regarding telephone solicitation allows individual consumers to be included in the state’s “do not call” list. Businesses, however, are not permitted to participate. Current law (s. 365.1657, F.S.) also makes it unlawful to transmit unsolicited facsimiles with the state. The Attorney General is the enforcing authority and violators are subject to injunctions and fines of \$500 per violation.

The bill proposes allowing businesses to be eligible for addition to the Florida “do not call” list. In addition, the bill makes transmittal of unsolicited facsimiles to a Florida number, from either in-state or out-of-state numbers, a violation of the Florida no sales solicitation laws. In addition, the bill specifies that in any civil litigation initiated by the department or the Department of Legal Affairs, travel and per diem expenses incurred for attorneys and witnesses shall be recoverable costs if either party prevails in civil litigation.

Business opportunities

In a recent case relating to the sale or lease of a business opportunity, the hearing officer interpreted a provision in the statutory definition of “business opportunity” to mean that the seller must provide certain specified information in the future for the purchase to be considered a business opportunity. Department interpretation/policy has been that the information can be provided at the same time the sale or lease is executed, or at a future time.

The proposed revision clarifies that the seller may provide the specified information either contemporaneously at the time of the sale or lease or at a future time.

Motor vehicle repair

Existing law enumerating unlawful acts and practices relating to motor vehicle repair shops states that motor vehicle repair shops or employees of such shops must be registered with the department or submit an affidavit of exemption.

This bill removes the reference to submission of an affidavit of exemption. This language is obsolete as the requirement for submission of such affidavits was deleted by section 17, chapter 2001-214, Laws of Florida.

Sellers of travel

Effective October 1, 2002, s. 119.0721, F.S., states that all social security numbers held by an agency or its agents, employees, or contractors are confidential and exempt from public records. Sellers of travel and independent agents are currently required to provide their social security numbers when registering with the department. As the department has no need for the social security numbers, it proposes that the requirement be removed from law.

Currently, each independent agent is required to annually file with the department an affidavit containing the agent's full name, legal business or trade name, mailing address, business address and telephone number, and the name and address of each seller of travel represented by the independent agent. There is no requirement for a copy of the agent's current contract with each seller of travel.

This bill requires independent agents to pay a fee of \$100 prior to engaging in business in Florida and to submit a copy of their contract with each seller of travel. This will provide the department with documentation in the event an agent provides false information. Failure to comply would result in denial of a certificate for proof of registration and/or a penalty for non-compliance.

Amusement facilities

Current law provides that an insurance policy or surety bond in the amount of \$1 million per occurrence and \$1 million in the aggregate procured from an insurer or surety licensed to transact business in Florida or approved as a surplus lines insurer may be submitted to the department to satisfy the required annual insurance on fair rides. There are no surety bonds for this purpose on file in the department and, to the department's knowledge, none of the approximately 400 fair rides companies listed in the department's database have ever submitted a surety bond as proof of insurance.

The bill removes the term "surety bond" from the law, leaving an insurance policy in a like amount as the only acceptable instrument to satisfy the insurance requirement. The bill also repeals ss. 546.001, 546.002, 546.003, 546.004, 546.006, and 546.008, F.S. The provisions of those sections of law are addressed in s. 616.242, F.S., Safety Standards for Amusement Rides.

Game promotions

The existing definition of "operator", relating to game promotions, is unclear and interpretations have varied. The revised definition, as proposed in this bill, is consistent with terms used in actual game promotions. It clarifies that an operator is any person, firm, corporation or association on whose behalf a game promotion is conducted. The definition does not apply to charitable, nonprofit organizations.

C. SECTION DIRECTORY:

Section 1. Amending s. 493.6303, F.S.; revising training requirements for obtaining a Class "D" License; requiring a minimum number of hours of training in terrorism awareness or other training prescribed by the Department of Agriculture and Consumer Services; providing a timeframe for submitting proof of having completed the training; revising the number of training hours required.

Section 2. Amending s. 501.509, F.S.; redefining the term “telephonic sales call” to provide that the term applies to sales of any goods or services; redefining the term “merchant” to include the offering of goods and services; redefining the term “doing business in this state” to include calls to telephone numbers in this state; requiring a telephone solicitor to identify himself or herself when calling any telephone number; adding businesses to those who may subscribe to the “no sales solicitation calls” listing of the department; prohibiting the transmission of facsimile documents under certain circumstances; providing for attorney’s fees and for the recovery of certain litigation expenses by the department and the Department of Legal Affairs.

Section 3. Repealing ss. 546.001, 546.002, 546.003, 546.004, 546.006, and 546.008, F.S.; relating to the “Amusement Ride and Attraction Insurance Act”.

Section 4. Amending s. 559.801, F.S.; redefining the term “business opportunity” for purposes of the “Sale of Business Opportunities Act”.

Section 5. Amending s. 559.920, F.S.; revising actions by motor vehicle repair shops or employees which are unlawful.

Section 6. Amending s. 559.928, F.S.; revising information to be submitted for registration as a seller of travel and information submitted by independent agents; requiring the payment of an annual fee by independent agents.

Section 7. Amending s. 616.242, F.S.; deleting provisions authorizing the owner of an amusement ride to maintain liability protection in the form of a surety bond; exempting certain governmental entities from a requirement to maintain liability protection covering amusement rides.

Section 8. Amending s. 849.094, F.S.; redefining the term “operator” for purposes of the regulation of game promotions in connection with the sale of consumer products or services.

Section 9. Reenacting s. 501.603(1)(a), F.S.; which defines “commercial telephone solicitation”.

Section 10. Reenacting s. 559.809(12), F.S.; which specifies prohibited acts under the “Sale of Business Opportunities Act”.

Section 11. Provides an effective date of October 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

	2005-06	2006-07	2007-08
1. Revenues:			
Recurring – Dept. of Agriculture & Consumer Services’ General Inspection Trust Fund (GITF)	\$195,000	\$195,000	\$195,000

With respect to independent sellers of travel, there are approximately 1,950 on file with the department. Anticipated revenues were calculated at \$100 per agent.

2. Expenditures:

The bill appears to have no impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

No impact on local government revenue is anticipated.

2. Expenditures:

No impact on local government expenditures is anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Division of Licensing: Based on information provided by the department and various entities that provide security officer training, costs to the private sector cannot be determined. It is anticipated that costs will be minimal.

Division of Consumer Services: Telephone solicitors that are telemarketing businesses will be required to purchase the no sales solicitation calls listing in order to comply with the Florida Do Not Call law in the same fashion that current solicitors that are telemarketing consumers purchase the list. The cost of purchasing the list is \$30 per quarter per area code or \$100 per quarter for the entire state.

Businesses subscribing their telephone numbers to the no sales solicitation calls listing will be required to pay \$10 for the initial subscription and \$5 to renew annually thereafter. It is unknown how many businesses will subscribe to the listing.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

B. RULE-MAKING AUTHORITY:

The bill contains no grant of rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 9, 2005, the Agriculture Committee adopted 3 amendments to HB 833. The amendments:

- Reduced the publishing requirements for advertising for game promotions where the total prize value is greater than \$5,000. Advertising must include the material terms of the rules and regulations of the game, rather than the full rules and regulations as is currently required. Advertising must also include a website address, a toll-free telephone number, or a mailing address where the full rules and regulations may be heard, viewed, or obtained.
- Added a definition for the term “travel club” to the sellers of travel law to distinguish travel clubs from timeshares.
- Removed the provision allowing businesses to subscribe to the no sales solicitation call listing.