

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) <u>Agriculture Committee</u>	<u>10 Y, 0 N, w/CS</u>	<u>Reese</u>	<u>Reese</u>
2) <u>Civil Justice Committee</u>	<u>5 Y, 0 N, w/CS</u>	<u>Lammers</u>	<u>Billmeier</u>
3) <u>Agriculture & Environment Appropriations Committee</u>	<u></u>	<u>Davis</u>	<u>Dixon</u>
4) <u>State Resources Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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 makes transmittal of unsolicited facsimiles to a Florida number 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Motor vehicle repair: The reference to submission of an affidavit of exemption is removed, as it is obsolete and no longer required.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 pay a new \$100 filing fee as well as submit to the department a copy of their contract with each seller of travel. The bill also provides a definition for the term "travel club" to distinguish travel clubs from timeshares.

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 also reduces the publishing requirements for advertising for game promotions where the total prize value is greater than \$5,000.

State Technology Office: The bill requires changes to the official state website to provide consumers with easily accessible consumer protection information.

The bill provides a \$260,000 appropriation from the General Revenue Fund and creates two full-time equivalent positions. The bill may generate an estimated \$195,000 in revenue to the department.

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0833e.AGEA.doc
DATE: 4/5/2005

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – The 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.

Provide limited government – The bill creates two additional full-time positions within the department and provides a \$260,000 appropriation.

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.¹ 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.²

This bill increases 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 makes it unlawful to transmit unsolicited facsimiles within the state.³ The Attorney General is the enforcing authority and violators are subject to injunctions and fines of \$500 per violation.⁴

This 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, and increases the penalty for a violation of the unsolicited facsimile law to \$10,000. 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

The sale of a “business opportunity” is defined as the sale or lease of products, equipment, supplies or services sold to a purchaser to enable him to start a business in certain defined circumstances.⁵ In connection with the sale of a “business opportunity,” s. 559.801(1)1., F.S., provides that:

¹ Section 493.6303(4)(a), F.S.

² *Id.* at (4)(b)2., F.S.

³ Section 365.1657(1), F.S.

⁴ *Id.* at (2).

⁵ *Batlemento v. Dove Fountain, Inc.*, 593 So. 2d 234, 239 (Fla. 5th DCA 1991).

the seller or person or entity affiliated with or referred by the seller will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases, currency or card operated equipment, or other similar devices or currency-operated amusement machines or devices on premises neither owned nor leased by the purchaser or seller

For purposes of s. 559.801(1)1., F.S., “the term ‘assist the purchaser in finding locations’ means, but is not limited to, supplying the purchaser with names of locator companies, contracting with the purchaser to provide assistance or supply names, or collecting a fee on behalf of or for a locator company.”⁶

In a case prosecuted by the department, 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, even though the department’s long-standing policy has been that the information can be provided at the same time the sale or lease is executed, or at a future time.⁷

This bill provides that the seller may provide the specified information either contemporaneous to 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.⁸

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 s. 17, ch. 2001-214, Laws of Florida.

Travel club

Section 559.927(10), F.S., defines “seller of travel” and uses the phrase “travel club” within that definition. Currently, there is no definition of “travel club” in the Florida statutes.

The bill creates s. 559.927(12), F.S., defining “travel club” as a membership in an organization in which a member has the right to receive or purchase prearranged travel, tourist-related services, or tour-guide services, for an advance fee or payment, available on a first-come, first-served, space available basis. The bill provides that a member of a travel club is not granted a legal or equitable interest in any real property or specific right of use of any specific property, and a properly registered travel club shall not be a timeshare interest or timeshare plan.

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.⁹ As the department has no need for the social security numbers, it proposes that the requirement be removed from law.¹⁰

⁶ Section 559.801(1), F.S.

⁷ Department of Agriculture and Consumer Services, 2005 Legislative Proposal (hereinafter “2005 Legislative Proposal”).

⁸ Section 559.920(1), F.S.

⁹ Section 559.928(3), F.S.

¹⁰ 2005 Legislative Proposal.

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.¹¹ There is no requirement that a copy of the agent's current contract with each seller of travel be submitted to the department.

This bill requires independent agents to pay a new \$100 fee prior to engaging in business in Florida, and 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.¹² Failure to comply would result in the denial of a certificate for proof of registration from the department.

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.¹³ 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.¹⁴

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.¹⁵ 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.

The bill amends s. 849.094(3), F.S., to require that only the "material terms" of a game promotion's rules and regulations must be included in all advertising copy used in conjunction with a game promotion where the total prize value is greater than \$5,000, if the advertising copy includes a website address, toll-free telephone number, or mailing address where the complete rules and regulations will be available for the duration of the game promotion. The bill provides that this disclosure must be legible.

State Technology Office

The State Technology Office is required to place a banner on the state's Internet website providing a link to the Department of Agriculture and Consumer Services, compiling in a central location resources related to consumer protection. The State Office of Technology shall also provide a link and information to the Florida 211 Network referral system.

Section 570.544

¹¹ Section 559.928(3), F.S.

¹² 2005 Legislative Proposal.

¹³ Section 616.242(9)(a)-(b), F.S.

¹⁴ 2005 Legislative Proposal.

¹⁵ See *Beasley Broadcasting, Inc. v. Dep't of State, Div. of Licensing*, 693 So. 2d 668, 670 (Fla. 2d DCA 1997).

The bill amends this section to state that the Division of Consumer Services shall serve as the state clearinghouse for matters related to consumer protection and services. The bill deletes several subsections of s. 570.544 that required progress reports on consumer complaints to be submitted to the Division of Consumer Services and amends s. 526.3135, F.S., to remove a cross-reference to a now-stricken subsection of s. 570.544.

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. 501.059, F.S.; providing that a person may not send unsolicited advertisements for the sale of any real property, goods, or services, via facsimile; 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. 559.927, F.S., to add subsection 12, defining the term "travel club".

Section 7. 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 8. 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 9. 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; reducing the requirements for advertising copy associated with game promotions.

Section 10. Reenacting s. 501.603(1)(a), F.S.; which defines "commercial telephone solicitation".

Section 11. Reenacting s. 559.809(12), F.S.; which specifies prohibited acts under the "Sale of Business Opportunities Act".

Section 12. Instructs the State Technology Office to provide a link on the state website for the consolidation of information related to consumer protection.

Section 13. Directs the State Technology Office to provide a link on the state website to the Florida 211 Network.

Section 14. Amends s. 570.544, F.S., deleting portions requiring reports to be submitted to the Division of Consumer Services.

Section 15. Effective July 1, 2005, appropriates \$260,000, from the General Revenue Fund to the Department of Agriculture and Consumer Services for computer upgrades and to create two full-time equivalent positions.

Section 16. Amends s. 526.3135, F.S., to correct a cross-reference to s. 570.544, F.S.

Section 17. Provides an effective date of October 1, 2005, except as otherwise provided.

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’s General Inspection Trust Fund (GITF)	\$195,000	\$195,000	\$195,000

This revenue is based on the fact that there are approximately 1,950 independent sellers of travel on file with the department, and each agent will be required to pay a \$100 fee.¹⁶ See fiscal comments below.

2. Expenditures:

One-Time Expenses:

General Revenue Fund	\$140,000		
----------------------	-----------	--	--

Recurring Expenses:

General Revenue Fund	\$120,000	\$120,000	\$120,000
----------------------	-----------	-----------	-----------

This bill provides for a \$140,000 one-time allocation to upgrade the computer system used to process consumer complaints and allocates \$120,000 to create two full-time equivalent positions to provide additional resources for the department’s complaint clearinghouse. See fiscal comments below.

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.

D. FISCAL COMMENTS:

¹⁶ Department of Agriculture and Consumer Services, Bill Analysis, provided to substantive committee.

This bill provides a \$260,000 appropriation and authorizes two new positions for the department's complaint clearinghouse. This issue was considered as part of the department's Legislative Budget Request but was not funded in the House-proposed General Appropriations Act for Fiscal Year 2005-06, HB 1885. Unrelated to this appropriation, the bill institutes a new, \$100 filing fee for independent agents representing sellers of travel. Independent agents must currently file an affidavit with the department for registration purposes, but are not required to pay any fee. HB 833 CS would require independent agents to pay the department a \$100 filing fee and provide DACS a copy of their contracts with those they represent. The bill, however, does not specify a depository for the revenue generated by the fee, nor any new and/or additional workload requirements of the department.

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:

None.

B. RULE-MAKING AUTHORITY:

The bill allows the department to determine by rule the total number of hours of training required for security officers.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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 copy must include the material terms of the rules and regulations of the game, rather than the full rules and regulations currently required. Advertising copy must 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.

The Civil Justice Committee considered the committee substitute on March 23, 2005, and adopted an amendment to the bill requiring the State Technology Office to add a link and resources related to consumer protection to the state's Internet website, establishing the Division of Consumer Services as the state clearinghouse for consumer protection services, and appropriating \$260,000 from the General Revenue Fund to the department.