

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Commerce Committee

BILL: SB 1310

INTRODUCER: Senator Baker

SUBJECT: Sellers of Travel

DATE: March 10, 2008 REVISED: 03/11/08

Table with 4 columns: ANALYST, STAFF DIRECTOR, REFERENCE, ACTION. Row 1: Rogers, Cooper, CM, Fav/5 amendments. Rows 2-6 are empty.

Please see Section VIII. for Additional Information:
A. COMMITTEE SUBSTITUTE..... [ ] Statement of Substantial Changes
B. AMENDMENTS..... [ ] Technical amendments were recommended
[ ] Amendments were recommended
[X] Significant amendments were recommended

I. Summary:

This bill creates disclosure requirements for sellers of travel, requiring them to annually certify to the Department of Agriculture and Consumer Services (department) whether or not they provide travel services to terrorist states. Additionally, this bill repeals the exemption for Airline Reporters Corporation affiliates who are offering travel services to or from terrorist states. This bill creates increased administrative, civil and criminal penalties for failure to comply with the new certification requirements.

This bill increases fees and performance bond thresholds for sellers of travel who engage in the sale of travel services to or from terrorist states, and eliminates the use of letters of credit or certificates of deposit in lieu of the bond required for registration.

This bill creates s. 559.9285, F.S.

This bill amends the following sections of the Florida Statutes: 559.927, 559.928, 559.929, 559.9335, 559.935, 559.9355, 559.936, and 559.937.

## II. Present Situation:

### Sellers of Travel

The Seller of Travel Act, ss. 559.926-559.939, F.S., requires sellers to register with the Department of Agriculture and Consumer Services (department) annually.<sup>1</sup> When a seller of travel registers with the department, a registrant must provide to the department a number of items including, among other items, the registrant's legal business or trade name, mailing address, and business locations, and the full names, addresses, telephone numbers, and social security numbers of its owners or corporate officers and directors and the Florida agent of the corporation.<sup>2</sup>

The current registration fee is \$300 per year.<sup>3</sup> Registrants must also post a single surety bond of \$25,000 (\$50,000 if selling vacation certificates), a letter of credit, certificate of deposit, or annually qualify for a reduction or waiver by the Department.

The statutes specify contract disclosures and cancellation provisions,<sup>4</sup> specify vacation certificate cancellation and refund provisions,<sup>5</sup> and requires copies of certain contracts be submitted with the registration application.<sup>6</sup> In addition, all contracts and advertisements must include the department's certificate number.<sup>7</sup> The statutes also impose record keeping requirements on the registrants.<sup>8</sup>

The statutes list a number of prohibitions on sellers of travel and violations may result in administrative,<sup>9</sup> civil<sup>10</sup> or criminal penalties.<sup>11</sup> Violations may also be considered an unfair or deceptive act or practice or unfair method of competition in violation of the Florida Deceptive and Unfair Trade Practices Act.<sup>12</sup>

Section 559.935, F.S., identifies sellers of travel that are exempt by the department from registration, security, vacation certificate recordkeeping and disclosure requirements. Generally, travel sellers or their affiliates engaged in selling airline tickets or those offering vacation certificates which have contracted with the Airlines Reporting Corporation (ARC),<sup>13</sup> an airline-owned corporation that offers financial, marketing, ticket distribution and other services to sellers of travel, are exempt from state regulation.

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<sup>1</sup> Section 559.928, F.S.; as created by ch. 88-363, L.O.F.

<sup>2</sup> Section 559.928(1), F.S.

<sup>3</sup> Section 559.928(2), F.S.

<sup>4</sup> Section 559.932, F.S.

<sup>5</sup> Section 559.933, F.S.

<sup>6</sup> Section 559.9295, F.S.

<sup>7</sup> Section 559.928(5) & (6), F.S.

<sup>8</sup> Section 559.931, F.S.

<sup>9</sup> Section 559.9335, F.S.

<sup>10</sup> Section 559.936, F.S.

<sup>11</sup> Section 559.937, F.S.

<sup>12</sup> Section 559.934, F.S.

<sup>13</sup> See <http://www.arccorp.com/>

At present, no seller of travel must report its business activities or relationship with nations, countries, or states identified by the U.S. Department of State as “terrorist states.”

### **Terrorist States**

Currently, five countries are designated by the U.S. Department of State as terrorist states: Cuba, Iran, North Korea, Syria, and Sudan.<sup>14</sup> Designating countries that repeatedly support international terrorism, that is, placing a country on the “terrorism list,” imposes four main sets of U.S. government sanctions:

1. A ban on arms-related exports and sales.
2. Controls over exports of dual use items, requiring 30-day Congressional notification for goods or services that could significantly enhance the terrorist list country’s military capability or ability to support terrorism.
3. Prohibitions on economic assistance.
4. Imposition of miscellaneous financial and other restrictions, including:
  - Requiring the U.S. to oppose loans by the World Bank and other international financial institutions.
  - Lifting the diplomatic immunity to allow families of terrorist victims to file civil lawsuits in U.S. courts.
  - Denying companies and individuals tax credits for income earned in terrorist list countries.
  - Denial of duty-free treatment for goods exported to the US.
  - Authority to prohibit any U.S. person from engaging in a financial transaction with a terrorist list government without a Treasury Department license.
  - Prohibition of Defense Department contracts above \$100,000 with companies controlled by terrorist list states.<sup>15</sup>

Although both Cuba and the U.S. are members of the World Trade Organization and have both agreed to abide by the General Agreement on Tariffs and Trade (GATT), GATT does not include trade between the U.S. and Cuba in its provisions.<sup>16</sup>

### **Federal Restrictions on Travel to Terrorist States**

The U.S. Supreme Court has recognized an international right to travel.<sup>17</sup> However, this right may be infringed where national security is at stake. Title 31 of the Code of Federal Regulations, Chapter V, delineates the ability to travel and do business with countries such as Cuba, Iran, North Korea, Syria, and Sudan. The ability to travel to these and other countries varies, as do the

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<sup>14</sup> See “State Sponsors of Terrorism” <http://www.state.gov/s/ct/c14151.htm>.

<sup>15</sup> “Patterns of Global Terrorism” report, U.S. Department of State, pp. 76-81. This report is required to be submitted to Congress pursuant to Title 22 of the United States Code, Section 2656f(a).

<sup>16</sup> See [http://www.wto.org/english/tratop\\_e/gatt\\_e/gatt\\_e.htm](http://www.wto.org/english/tratop_e/gatt_e/gatt_e.htm).

<sup>17</sup> See, *Haig v. Agee*, 453 U.S. 280, 306 (1981); see also Heather E. Reser, Comment, *Airline Terrorism: The Effect of Tightened Security on the Right to Travel*, 68 J. Air L. & Com. 819.

requirements for and the ability to be authorized or licensed by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury for such travel.

Because of its proximity to Florida, Cuba is the most likely terrorist nation receiving regular charter air and vessel travelers to and from Florida. Under the Cuban Assets Control Regulations, OFAC may issue general licenses and specific licenses for travel to Cuba. General licenses may be issued for:

- Official government travel;
- Journalism; or
- Full-time professional research.

Specific licenses may be issued on a case-by-case basis for:

- Journalism;
- Professional research;
- Visits to members of a person's immediate family;
- Educational activities;
- Religious activities;
- Public performances, athletic and other competitions, and exhibitions;
- Support for the Cuban people;
- Humanitarian projects;
- Activities of private foundations or research or educational institutes; or
- Exportation, importation, or transmission of information or informational materials.<sup>18</sup>

### III. Effect of Proposed Changes:

**Section 1** renumbers subsections of s. 559.927, F.S. "Certifying party" and "terrorist state" are inserted and defined. The definition of "prearranged travel, tourist-related services, or tour-guide services" is revised to include any travel arrangement to or from a terrorist state, as designated by the Office of Foreign Assets Control of the U.S. Department of the Treasury.

**Section 2** amends s. 559.928, F.S, increasing registration fees and bond amounts for those selling travel or doing other business with terrorist states and eliminates the use of letters of credit or certificates of deposit in lieu of the bond required for registration. The new schedule is as follows:

- Sellers of travel who do not offer any travel services to or from a terrorist state must pay a \$300 registration fee.
- Sellers of travel who offer any travel services to or from any terrorist state but engage in no other business dealings or commerce with any terrorist state must pay a \$1,000 registration fee.

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<sup>18</sup> United States Treasury Department's Office of Foreign Assets Control, See <https://fastrequest.ofac.treas.gov/notice.aspx>.

- Sellers of travel who engage in the sale of any travel services and also engage in other business dealings or commerce with any terrorist state must pay a \$2,500 registration fee.

This section revises the conditions under which the department may deny or refuse to renew the registration of a seller of travel to include any violation of state or federal law, and deletes “dishonest dealing, or any other act of moral turpitude.”

**Section 3** creates s. 559.9285, F.S. This section categorizes sellers of travel into three groups for the purposes of registration:

- Sellers of travel who do not offer any travel services to or from a terrorist state;
- Sellers of travel who offer any travel services to or from any terrorist state but engage in no other business dealings or commerce with any terrorist state; and
- Sellers of travel who offer any travel services to or from any terrorist state and also engage in other business dealings or commerce with any terrorist state.

This section requires the Department of Agriculture and Consumer Services (department) to specify by rule the form of certification and specifying required certification information. This section requires a seller of travel to annually certify to the department the scope of its business activities by filing a disclosure statement. The disclosure statement must include the following information:

- The legal name, any trade names or fictitious names, mailing address, physical address, telephone number or numbers, fax number or numbers, all Internet and electronic contact information, and registration number, if applicable, of the certifying party.
- Each terrorist state with which the certifying party engages in any business or commerce.
- Each intermediate state, country, or nation through which the certifying party engages in any business or commerce with any terrorist state.
- The legal name, any trade names or fictitious names, mailing address, physical address, telephone number or numbers, fax number or numbers, and all Internet and electronic contact information of every other 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 type of all prearranged travel, tourist-related services, or tour-guide services the certifying party offers for sale to individuals or groups traveling to, from, or within any terrorist state and the frequency with which such services are offered.

**Section 4** amends s. 559.929, F.S. This section revises requirements with respect to the performance bond that must accompany registration or an application for registration as a seller of travel in the following manner:

- Sellers of travel who do not offer any travel services to or from a terrorist state must provide a performance bond in an amount not to exceed \$25,000, or in the amount of \$50,000 if the seller is offering vacation certificates.<sup>19</sup>

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<sup>19</sup> This is the current bond requirements for all non-exempt Sellers of Travel.

- Sellers of travel who offer any travel services to or from any terrorist state but engage in no other business dealings or commerce with any terrorist state must provide a performance bond in an amount not to exceed \$100,000, or in the amount of \$150,000 if the seller is offering vacation certificates.
- Sellers of travel who engage in the sale of any travel services and also engage in other business dealings or commerce with any terrorist state must provide a performance bond in an amount not to exceed \$250,000, or in the amount of \$300,000 if the seller is offering vacation certificates.

Consistent with the change made in Section 2 of the bill, this section eliminates a certificate of deposit or irrevocable letter of credit as an alternative means of satisfying security requirements.

This section also creates a payment priority for bonds held by Sellers of Travel selling travel or doing other business with terrorist states. The first priority is to the department expenses related to prosecution, investigations, unpaid administrative fines or civil penalties. Damages or compensation for travelers is the last priority.

This section revises the conditions under which the department may annually waive the bond, to exclude Sellers of Travel who have had any civil, criminal or administrative action instituted against them pertaining to any violation of any statute pertaining to business or commerce with any terrorist state. This section precludes the following certification categories from waiver of bond:

- Sellers of travel who offer any travel services to or from any terrorist state but engage in no other business dealings or commerce with any terrorist state; and
- Sellers of travel who offer any travel services to or from any terrorist state and also engage in other business dealings or commerce with any terrorist state.

**Section 5** amends s. 559.9335, F.S. This section provides that it is a violation of the Florida Sellers of Travel Act to offer to sell travel or provide any travel-related service to a purchaser traveling to or from any terrorist state without disclosing such business activities in a certification filed with the Department of Agriculture and Consumer Services (see Technical Deficiencies).

**Section 6** amends s. 559.935, F.S. This section deletes the current exemption from registration, security, vacation certificate recordkeeping and disclosure requirement for sellers of travel who are affiliates of the Airlines Reporting Corporation, if the sellers of travel offer travel services to or from any terrorist state or engage in other business dealings or commerce with any terrorist state.

This section also revises conditions under which the Department of Agriculture and Consumer Services may revoke such exemptions, to include any violation of any statute pertaining to business or commerce with any terrorist state. Such violations would include failure to disclose any of the information required for certification.

**Section 7** amends s. 559.9355, F.S. This section authorizes the department to impose an administrative fine not to exceed \$10,000 for each act or omission directly or indirectly

pertaining to an offer to sell travel or provide any travel-related service to purchasers traveling to or from any terrorist state. Such acts or omissions would include failure to disclose any of the information required for certification, which is proposed in section 2 of the bill.

**Section 8** amends s. 559.936, F.S. This section authorizes the department to seek a specified civil penalty for each act or omission directly or indirectly pertaining to an offer to sell travel or provide any travel-related service to a purchaser traveling to or from any terrorist state. Such acts or omissions would include failure to disclose any of the information required for certification, which is proposed in section 2 of the bill.

**Section 9** amends s. 559.937, F.S. This section provides that violations of the Florida Sellers of Travel Act which directly or indirectly pertain to an offer to sell travel or provide any travel-related service to a purchaser traveling to or from any terrorist state are third degree felonies. Violations would include failure to disclose any of the information required for certification, which is proposed in section 2 of the bill.

**Section 10** provides an effective date of July 1, 2008.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

Section 2 of the bill revises the registration fee schedule as follows:

- Sellers of travel who do not offer any travel services to or from a terrorist state must pay a \$300 registration fee.
- Sellers of travel who offer any travel services to or from any terrorist state but engage in no other business dealings or commerce with any terrorist state must pay a \$1,000 registration fee.
- Sellers of travel who engage in the sale of any travel services and also engage in other business dealings or commerce with any terrorist state must pay a \$2,500 registration fee.

Due to the revised fee schedule, sellers of travel who engage in business and sell travel to terrorist states will be required to pay a higher registration fee than required under current law. At present, no seller of travel must report its business activities or relationship with nations, countries, or states identified by the U.S. Department of State as “terrorist states.” Consequently, the number of sellers of travel who will be registering under the proposed revised fee schedule is indeterminate.

**B. Private Sector Impact:**

Section 3 of the bill requires registered and exempt sellers of travel to certify whether or not they offer travel to or from a terrorist state. Those selling travel to and from terrorist nations will pay increased registration fees, be required to post bonds in greater amounts, and will no longer qualify for exemptions from registration and other requirements. The department reports that, in general, sellers of travel will have a slight increase in compliance costs for filing the new certification.

The department states that the business disclosure requirement and the restriction of previously exempt activity may result in litigation cost.

**C. Government Sector Impact:**

There will be an indeterminate impact on the department due to increase filings with the department as required by the revision of the current registration requirements. However, this may be offset by the new fee schedule (see Tax/Fee Issues).

**VI. Technical Deficiencies:**

Section 5 creates subsection (22) of s. 559.9335, F.S., to provide that it is a violation of the Florida Sellers of Travel Act to offer to sell travel or provide any travel-related service to a purchaser traveling to or from any terrorist state without disclosing such business activities in a certification filed with the Department of Agriculture and Consumer Services. There may be an inconsistency between the proposed violation and the proposed annual certification required in Section 2 of the bill.

For example, if a seller of travel certified they do not offer travel services to or from a terrorist state, and subsequent to this certification but before the next required annual certification the seller of travel begins to offer such travel services, they may be considered to be in violation of this provision and subject to administrative action, civil penalties, or criminal penalties. Similarly, if a seller of travel certifies they offer travel services to terrorist states, and discloses all business contacts they have within those states, and subsequent to this certification but before the next required annual certification they establish new business contacts, they may be considered in violation of this provision.

This provision could further be construed to imply that when the seller of travel changes the scope of their services or their business contacts relative to the requirements in this bill, they must submit a new certification with the required information.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

**Barcode 466744 by Commerce on March 11, 2008:**

This amendment clarifies that state or federal laws, as referred to in this section, relate to the selling of travel and commerce.

**Barcode 917870 by Commerce on March 11, 2008:**

This amendment clarifies that, in the required certification of business activities, the seller of travel certifies that they “knowingly” offer or do not offer travel related services to terrorist states.

**Barcode 496716 by Commerce on March 11, 2008:**

This amendment requires the seller of travel to submit an amended certification to the department within 15 days of a change in the scope of their business activities.

**Barcode 606022 by Commerce on March 11, 2008:**

This amendment specifies that a seller of travel must “knowingly” offer travel services for sale with regards to violation of the law.

**Barcode 118476 by Commerce on March 11, 2008:**

This amendment changes the criminal penalty section to specify that only second and subsequent violations of this law are third degree felonies.