

# The Florida Senate

## 2021 Florida Statutes (Including 2021B Session)

Title XXXIII

REGULATION OF TRADE, COMMERCE,  
INVESTMENTS, AND SOLICITATIONS

**Chapter 559**

**REGULATION OF TRADE, COMMERCE, AND  
INVESTMENTS, GENERALLY**

**CHAPTER 559****REGULATION OF TRADE, COMMERCE, AND INVESTMENTS, GENERALLY****PART I****TRADING STAMPS**

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**PART I**  
**TRADING STAMPS**

- 559.01 Definitions.
- 559.02 Fraud; false representation and lotteries prohibited.
- 559.03 Declared face value; redemption.
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**559.01 Definitions.**— As used in this part:

(1) The term “trading stamp” means any stamp or similar device issued in connection with the retail sale of merchandise or service, as a cash discount or for any other marketing purpose, which entitles the rightful holder, on its due presentation for redemption, to receive merchandise, service, or cash. This term, however, shall not mean any redeemable device used by the manufacturer or packer of an article, in advertising or selling it, or any redeemable device issued and redeemed by a newspaper, magazine or other publication.

(2) The term “trading stamp company” means any person engaged in distributing trading stamps for retail issuance by others, or in redeeming trading stamps for retailers, in any way or under any guise.

(3) The term “person” means any individual, partnership, corporation, association, or other organization.

**History.**—s. 1, ch. 59-311.

**559.02 Fraud; false representation and lotteries prohibited.**— No trading stamp company shall commit any fraud or shall make any false representation or shall resort to any lottery, in distributing or redeeming trading stamps in this state.

**History.**—s. 2, ch. 59-311.

**559.03 Declared face value; redemption.**— No trading stamp company shall distribute trading stamps in this state or shall redeem trading stamps hereafter issued therein unless each stamp has legibly printed upon its face in cents or any fraction thereof a cash value determined by the company, and the rightful holders may, at their option, redeem the stamps in cash when duly presented to the company for redemption in a number having an aggregate cash value of not less than 25 cents.

**History.**—s. 3, ch. 59-311.

**559.06 Penalties for violations.**— Any person violating any provision of this part shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.083, and the circuit court shall have jurisdiction in equity on the complaint of any interested person to restrain and enjoin the violation of any of said provisions.

**History.**—s. 6, ch. 59-311; s. 552, ch. 71-136.

**PART II**  
**BUDGET PLANNING**

- 559.10 Definition; “budget planning.”
- 559.11 Budget planning prohibited.
- 559.12 Exceptions.
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**559.10 Definition; “budget planning.” —**

(1) The term “budget planning” as used in this part shall mean the act of entering into a contract by any person, firm, corporation, or association with a particular debtor by the terms of which contract the debtor agrees to deposit periodically with such person, firm, corporation, or association a specified sum of money and said person, firm, corporation, or association agrees to distribute said sum of money among specified creditors of the debtor in accordance with an agreed plan for which service the debtor agrees to pay a valuable consideration.

(2) The term “budget planning” does not include the following:

(a) The act of entering into a contract for services by any person, firm, corporation, or association with a particular mortgagor by the terms of which contract the mortgagor agrees to periodically deposit with such person, firm, corporation, or association, a specified sum of money and said person, firm, corporation, or association agrees to utilize said deposits to accelerate payments on a single mortgage loan of the mortgagor.

(b) Other activities defined by rule of the Financial Services Commission as not within the prohibition of this part, provided such rule is adopted after a finding that consumers are adequately protected in the activity and that its prohibition is not required in the public interest.

**History.**—s. 1, ch. 59-345; s. 5, ch. 90-104; s. 671, ch. 2003-261; s. 81, ch. 2013-18.

**559.11 Budget planning prohibited.**— No person, firm, corporation, or association shall engage in the business of budget planning as defined in s. 559.10; provided, the provisions of this part shall not be construed to affect any contract for services to facilitate accelerated payment of a mortgage loan.

**History.**—s. 2, ch. 59-345; s. 6, ch. 90-104; s. 82, ch. 2018-110.

**559.12 Exceptions. —**

(1) “Person” as used in this part shall not include a person actively practicing law in Florida and who is also admitted to The Florida Bar, and any person who is currently a member of The Florida Bar.

(2) “Firm” as used in this part shall not include a partnership, all the members of which are admitted to practice law in this state, and who are current members of The Florida Bar.

**History.**—s. 3, ch. 59-345.

**559.13 Penalty.**— Whoever either individually or as an officer, director or employee of a person, firm, corporation or association, violates the provisions of this part shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 4, ch. 59-345; s. 553, ch. 71-136.

### PART III

#### FIRE AND GOING-OUT-OF-BUSINESS

#### SALES AND AUCTIONS

559.20 Definitions.

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**559.20 Definitions.**— In construing this part, and each and every word, phrase or part thereof, where the context will permit, the definitions contained in s. 1.01, shall be applicable, and:

(1) “Fire and other altered goods sale” is a sale held out in such a manner as to reasonably cause the public to believe that the sale will offer goods damaged or altered by fire, smoke, water, or other means.

(2) “Going-out-of-business sale” is a sale held out in such a manner as to reasonably cause the public to believe that upon the disposal of the stock of goods on hand the business will cease and be discontinued, including but not limited to the following sales: Adjusters, adjustment, alteration, assignees, bankrupt, benefit of administrators, benefit of creditors, benefit of trustees, building coming down, closing, creditor’s committee, creditors, end, executors, final days, forced out of business, insolvents, last days, lease expires, liquidation, loss of lease, mortgage sale, receiver’s, trustees, quitting business, removal. Any sale using any of the foregoing words or words of similar import, at the conclusion of which sale the business will not cease and be discontinued, and not publishing that fact or the qualified nature of said sale with equal prominence with each advertisement of such sale, shall be deemed to be a going-out-of-business sale.

(3) “Goods” is meant to include any goods, wares, merchandise, or other property capable of being the object of a sale regulated hereunder.

(4) “Person” is any person, firm, partnership, association, corporation, company, or organization of any kind.

(5) The words “publish,” “publishing,” “advertising” and “advertisement” shall include any and all means of conveying to the public notice of sale or notice of intention to conduct a sale, whether by word of mouth, by newspaper advertisement, by magazine advertisement, by handbill, by written notice, by printed display, by billboard display, by poster, by radio announcement, and any and all means including oral, written, or printed.

(6) The word “shall” is always mandatory and not merely directory.

**History.**—s. 1, ch. 59-292.

#### **559.21 Regulation of sales.—**

(1) A person may not publish or conduct any sale of the type herein defined without a permit therefor. Such permit shall be issued by the tax collector, upon written application and verified by the person who, or by an officer of the corporation which intends to conduct such sale. Such application shall contain a description of the place where such sale is to be held, the nature of the occupancy, and whether by lease or sublease and the effective date of termination of such occupancy, the means to be employed in publishing such sale. Such application shall further contain, as part thereof, an itemized list of the goods, wares, and merchandise to be offered for sale.

(2) Upon receipt of such application and payment of the fee prescribed in s. 559.23, the tax collector shall examine the same, and may make such investigation as she or he may deem proper. The tax collector shall determine if the person or corporation that intends to conduct the sale owes any taxes with respect to the goods to be offered for sale. The tax collector may not issue a permit to such person or corporation until all delinquent taxes on such goods have been paid. If after such investigation she or he is satisfied as to the truth of the statements contained in such application, the tax collector may issue a license permitting the publication and conduct of such sale on the following terms:

(a) The permit shall authorize the sale described in the application for a period of not more than 60 consecutive days, counting Sundays and legal holidays following the issuance thereof.

(b) The permit shall authorize only the one type of sale described in the application at the location named therein.

(c) The permit shall authorize only the sale of goods described in the inventory attached to the application.

(d) Upon being issued a permit hereunder for a going-out-of-business sale, the permittee shall surrender to the tax collector all other business licenses she or he may hold at that time applicable to the location and goods covered by the application for a permit under this part, which license or licenses shall be transmitted by the tax collector to the licensing authority for cancellation.

(e) Any permit herein provided for shall not be assignable or transferable.

**History.**—s. 2, ch. 59-292; ss. 12, 35, ch. 69-106; s. 198, ch. 77-104; s. 1, ch. 93-82; s. 37, ch. 95-312; s. 811, ch. 97-103.

#### **559.22 Duties of permittee.—**A permittee under this part shall:

(1) Make no additions whatsoever, during the period of authorized sale, to the stock of goods set forth in the inventory attached to the application for permit.

(2) Specify the registration or permit number of the permit issued by the tax collector within any advertising of the sale.

- (3) Refrain from employing any untrue, deceptive or misleading advertising.
- (4) Conduct the authorized sale in strict conformity with any advertising or holding out incident thereto.

**History.**—s. 2, ch. 59-292; s. 2, ch. 93-82.

**559.23 Fees.**— Upon filing an application for a permit to advertise and conduct a sale, or special sale, the applicant shall pay to the tax collector a fee in the sum of \$50 which shall be deemed income of his or her office. If an application is disapproved, such payment shall be retained as and for the cost of investigating the statements contained in such application, and the applicant.

**History.**—s. 3, ch. 59-292; s. 11, ch. 83-255; s. 3, ch. 93-82; s. 812, ch. 97-103.

**559.24 Enforcement.**—

(1) Upon commencement of a sale, the permit issued shall be prominently displayed near the entrance to the premises. Duplicate originals of the application, the stock list pursuant to which the permit was issued, and the permit shall be forwarded to the tax collector, who may examine all merchandise in the premises for comparison with the stock list.

(2) All advertisements or advertising and the language contained therein must be in accordance with the purpose of the sale as stated in the application pursuant to which a permit was issued, and the wording of such advertisements may not vary from the wording as indicated in the application. Such advertising must contain a statement in these words and no others:

Sale held pursuant to \_\_\_\_ County, \_\_\_\_ sale No. \_\_\_\_ granted the \_\_\_\_ day of \_\_\_\_, (in such blank spaces shall be indicated the type of sale, the permit number and the requisite dates.)

(3) Suitable books and records as prescribed by the tax collector shall be kept by the permittee and shall during business hours be available to the sheriff. At the close of business each day the stock list attached to the application shall be revised and those items disposed of during such day shall be so marked thereon.

**History.**—s. 4, ch. 59-292; ss. 12, 35, ch. 69-106; s. 4, ch. 93-82; s. 38, ch. 95-312.

**559.25 Exemptions.**— The provisions of this part shall not apply to or affect the following persons:

- (1) Persons acting pursuant to an order or process of a court of competent jurisdiction.
- (2) Persons acting in accordance with their powers and duties as public officers such as sheriffs and marshals, and similar public officers.
- (3) Duly licensed auctioneers, selling at auction.
- (4) Persons holding licenses or permits duly issued to conduct such sales by municipalities having municipal ordinances similar to this part.

**History.**—s. 5, ch. 59-292.

**559.26 Violations.**—

(1) Any person who violates this part is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A person who publishes an advertisement for a fire and other altered goods sale or going-out-of-business sale, which advertisement does not conform to the requirements specified in s. 559.24, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—s. 6, ch. 59-292; s. 554, ch. 71-136; s. 5, ch. 93-82.

**559.27 Tag required reflecting value of item offered for sale at auction.**—

(1) At all auctions of goods at public outcry, the auctioneer or her or his agent shall place or cause to be placed upon each item to be offered at auction a tag showing the value attributed to the item at the time it is offered. Such tag shall remain affixed to the item and shall be delivered to the buyer along with the item at the time of sale.

(2) The provisions of this section shall not apply:

- (a) To agricultural commodities, livestock, agricultural equipment, automobiles, or other items of goods which are most commonly marketed at auction;
  - (b) When a value is not expressed by the auctioneer as a guide to the bidder; or
  - (c) To auctions held as a result of court action.
- (3) Violation of this section shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**—ss. 1, 2, 3, ch. 70-151; s. 555, ch. 71-136; s. 813, ch. 97-103.

## PART IV BUYING SERVICES

- 559.3901 Short title.
- 559.3902 Definitions.
- 559.3903 Contracts of membership; right of cancellation; how exercised; entitlement to refund; right not waivable.
- 559.3904 Contracts of membership; requirements; notice; effect of noncompliance.
- 559.3905 Required disclosures; prohibited acts.
- 559.3906 Violations of act.

**559.3901 Short title.**— This act may be cited as the “Buying Services Act of 1991.”

**History.**—s. 1, ch. 91-72.

**559.3902 Definitions.**— As used in this act, the term:

- (1) “Business day” means any day other than a Saturday, Sunday, or legal holiday.
- (2) “Buying service,” “buying club,” or “club” means any corporation, nonprofit corporation, partnership, unincorporated association, cooperative association, or other business enterprise which is organized with the primary purpose of providing benefits to members from the cooperative purchase of service or merchandise and which desires to effect such purpose through direct solicitation or other business activity in this state.
- (3) “Contract” means any contract or agreement by which a person becomes a member of a buying service or club.
- (4) “Member” means any person or entity entitled to any of the benefits of a buying service or buying club.
- (5) “Prepayment” means any payment for service, merchandise, or membership made before the service is rendered. Money received by a club from a financial institution upon assignment of a contract shall be considered prepayment when and to the extent the member is required to make prepayments to the financial institution pursuant to the contract.

**History.**—s. 1, ch. 91-72.

**559.3903 Contracts of membership; right of cancellation; how exercised; entitlement to refund; right not waivable.**—

- (1) Any person who has elected to become a member of a club may cancel such membership by giving written notice of cancellation any time before 12 midnight of the third business day following the date on which membership was attained.
- (2) Notice of cancellation may be given personally or by mail. If given by mail, the notice is effective upon deposit in a mailbox, properly addressed, and postage prepaid. Notice of cancellation need not take a particular form and is sufficient if it indicates, by any form of written expression, the intention or desire of the member to cancel the contract.
- (3) Cancellation shall be without liability on the part of the member. The member will be entitled to a total refund, within 10 days after notice of cancellation is given, of the entire consideration paid for the contract.
- (4) Rights of cancellation may not be waived or otherwise surrendered.
- (5) Any purchase made by the member prior to cancellation will be void. If upon demand of the club the member tenders to the club all merchandise received in the same condition it was received at the time of purchase, the member shall receive a total refund for all purchases made prior to cancellation within 10 days after notice of cancellation is given.

**History.**—s. 1, ch. 91-72.

**559.3904 Contracts of membership; requirements; notice; effect of noncompliance.—**

(1) A copy of a member's contract, with all blank spaces filled in, shall be delivered to the member at the time the contract is signed.

(2) Every contract shall be in writing, shall be signed by the member, shall designate the date on which the member signed the contract, and shall state, clearly and conspicuously in boldfaced type of a minimum size of 14 points, the following:

**"MEMBER'S RIGHT TO CANCEL**

If you wish to cancel this contract, you may cancel by delivering or mailing a written notice to the club. To prove that you canceled, it is recommended that you send the notice by certified mail. The notice shall state that you do not wish to be bound by the contract and shall be delivered or mailed before 12 midnight of the third business day after you sign this contract. The notice shall be delivered or mailed to: (insert name and mailing address of club). If you cancel, the club will return, within 10 days of the date on which you give notice of cancellation, a total refund. It is recommended that you mail the notice of cancellation by certified mail, return receipt requested; check with your post office as to the time when you will be able to mail a certified letter. Be sure to keep a photocopy of the notice of cancellation which you mail."

(3) No contract shall be valid for a term longer than 24 months from the date upon which the contract is signed. However, a club may allow a member to convert his or her contract into a contract for a period longer than 24 months after the member has been a member of the club for a period of at least 6 months. The duration of the contract shall be clearly and conspicuously disclosed in the contract in boldfaced type of a minimum size of 14 points.

(4) Every contract shall provide that if any goods, except custom manufactured goods, ordered by the member from the buying club, are not delivered to the member or available for pickup by the member at the location where the order was placed within 6 weeks from the date the member placed an order for such goods, then any payment by the member for such goods in advance of delivery shall, upon the member's request, be fully refunded, unless a predetermined delivery date has been furnished to the member in writing at the time he or she ordered such goods and the goods are delivered to the member or available for pickup by that date. Every contract shall disclose that delivery dates for furniture or custom manufactured goods cannot be predicted, if such is the case.

(5) If a buying club or any of its agents or employees represents orally or in writing that use of its services will result in savings to its members it shall disclose in writing in the contract that all savings claims made by the buying club are based on price comparisons with retailers doing business in the trade area in which the claims are made if the same or comparable items are offered for sale in the trade area and with prices at which the merchandise is actually sold or offered for sale.

(6) Every contract which does not contain the requirements specified in subsections (2)-(5) may be canceled by the member at any time, without liability, by giving notice of cancellation by any means. Nothing contained in this section shall be construed to require that a member's cancellation notice be sent by certified mail in order to effect a cancellation.

**History.**—s. 1, ch. 91-72; s. 814, ch. 97-103.

**559.3905 Required disclosures; prohibited acts.—**

(1) It shall be unlawful for any buying club to fail to disclose to a prospective member in writing, prior to the sale of any contract for buying services:

(a) That goods or services can only be bought through catalogs with no opportunity to inspect samples if such is the case.

(b) The buying club's policies regarding warranties or guarantees on goods ordered, return of ordered goods by buyers, procedures for cancellation of merchandise orders by the buyer, and refunds of deposits for the cancellation of orders.

(c) Any charges, such as estimated freight costs, handling fees, credit life or disability insurance, suppliers' and buying clubs' markup, and other costs incidental to the purchase of goods through the buying club and which are to be paid by the buyer.

(d) Advice that the contract for buying service or incidental retail installments contracts will be transferred, sold, or assigned to a third party if such practice is the case.

(e) The percentage of the purchase price required as a down payment on merchandise orders of any nature. This prohibition applies in all cases where rebates are offered, regardless of whether such promised rebates are contingent upon the seller's ability to enroll the referred persons into the buying club.

(2) It shall be unlawful for any buying club to fail to disclose to a prospective member and to give the prospective member an opportunity to examine a list of suppliers and the nature of merchandise which is available to buyers from cooperative suppliers prior to the sale of any contract for buying services. Such lists shall be updated bimonthly.

(3) It shall be unlawful for a buying club to:

(a) Represent that it is affiliated with any other buying club organization or showroom unless an affiliation in fact exists and unless the prospective buyer would be legally entitled to services from the allegedly affiliated organization as a result of being a buyer of the subject buying club. If such an affiliation is claimed by the representative of the buying club, written proof of such a binding legal right shall be given the prospective buyer, including a description of the services available from the affiliated club, before the signing of any contract for discount buying services or application;

(b) Represent that the prospective buyer will be entitled to a particular benefit unless that benefit is currently available from the buying club on a regular basis;

(c) Offer any gifts or consideration of any nature to a prospective buyer as a solicitation for such persons to attend a buying club sales presentation or to sign a membership application or a contract for buying services where the club fails to honor or deliver the gift or consideration in accordance with the terms of its promise;

(d) Represent or suggest in any manner that it offers its buyers the lowest prices, excluding freight and service charges, available on all categories of merchandise handled by the club, unless such is true;

(e) Represent that merchandise is available to the buyer from any particular supplier unless such is true at the time the representation is made. Reference to unavailable suppliers or manufacturers may be made only for purposes of allowing prospective buyers to compare merchandise costs against those manufacturers which are available through the club. No buying club may represent to a prospective buyer that the club can purchase any item of merchandise at supplier's cost unless such is true;

(f) Make savings claims that are not based on price comparisons with retailers offering the same or comparable items in the trade area in which the claims are made and with prices at which the merchandise is actually sold or offered for sale; or

(g) Misrepresent a material fact or create a false or misleading impression regarding the advertising sale or promotion of a buying service or club.

**History.**—s. 1, ch. 91-72.

**559.3906 Violations of act.**—A violation of this act shall be deemed an unfair or deceptive trade practice within the meaning of part II of chapter 501. Violators shall be subject to the penalties and remedies provided therein.

**History.**—s. 1, ch. 91-72.

## PART V COMMERCIAL COLLECTION PRACTICES

559.541 Short title.

559.542 Legislative intent.

559.543 Definitions.

559.544 Registration required; exemptions.

559.545 Registration of commercial collection agencies; procedure.

559.546 Bond; evidence of current and valid bond.

559.547 Void registration.

559.548 Penalties.

**559.541 Short title.**— Sections 559.541-559.548 may be cited as the “Florida Commercial Collection Practices Act.”

**History.**—ss. 1, 2, ch. 93-275.

**559.542 Legislative intent.**— The Legislature finds that commercial collection practices in this state are not governed by the federal and state laws relating to the collection of consumer claims and that current criminal laws are inadequate to deal with certain unlawful and fraudulent activities specifically involving the collection of commercial claims in this state. Under such circumstances, there have been in the past, and will be in the future unless the Legislature acts, persons who succeed in flaunting the criminal laws of this state while engaging in the business of collecting commercial claims. Therefore, the Legislature intends by this part to specifically regulate commercial collection activities, separate and apart from consumer collection activities, to prevent unlawful and fraudulent commercial collection activities that otherwise may go unpenalized. The Legislature seeks to do so by requiring the registration of persons and businesses engaged in soliciting the collection of commercial claims or in collecting commercial claims, by prohibiting collection activities in this state by unregistered persons, and by providing effective mechanisms for enforcement of this part.

**History.**—ss. 1, 2, ch. 93-275.

**559.543 Definitions.**— As used in this part:

(1) “Claim” or “commercial claim” means any obligation for the payment of money or its equivalent arising out of a transaction wherein credit has been offered or extended to any person, and the money, property, or service which was the subject of the transaction was primarily for commercial purposes and not primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment. The term “claim” or “commercial claim” includes an obligation of a person who is comaker, endorser, guarantor, or surety as well as the person to whom such credit was originally extended.

(2) “Commercial collection agency” means any person engaged, as a primary or secondary business activity, in the business of soliciting commercial claims for collection or in the business of collecting commercial claims, asserted to be owed or due to another person, regardless of whether the collection efforts are directed at the primary debtor or some other source of payment.

(3) “Credit grantor” means any person or entity to whom a commercial claim is owed, due, or alleged to be owed or due, whether or not such person or entity is domiciled or doing business within this state and whether or not such commercial claim arose within this state. However, such term does not apply to any registrant under this part who has received an assignment or transfer of a commercial claim in default solely for the purpose of facilitating collection of such commercial claim for another.

(4) “Out-of-state collector” means any person or business entity engaged in the business of soliciting commercial claims for collection or of collecting commercial claims whose business activities in this state are limited to collecting commercial claims by means of interstate communications, including telephone, mail, or facsimile transmission, originating from outside this state.

(5) “Commission” means the Financial Services Commission.

(6) “Office” means the Office of Financial Regulation of the commission.

**History.**—ss. 1, 2, ch. 93-275; s. 672, ch. 2003-261.

**559.544 Registration required; exemptions.**—

(1) No person shall engage in business in this state as a commercial collection agency, as defined in this part, or continue to do business in this state as a commercial collection agency, without first registering in accordance with this part and thereafter maintaining such registration.

(2) Each commercial collection agency doing business in this state shall register with the office and annually renew such registration, providing the registration fee, information, and surety bond required by this part.

(3) No registration shall be valid for any commercial collection agency transacting business at any place other than that designated in the registration unless the office is first notified in advance of any change of location. A registration under this part is not transferable or assignable. Any commercial collection agency desiring to change its registered name, location, or agent for service of process at any time other than renewal of registration shall notify the office of such change prior to the change.

(4) The office shall not accept any registration for any commercial collection agency as validly made and filed with the office under this section unless the registration information furnished to the office by the registrant is complete pursuant to s. 559.545 and facially demonstrates that such registrant is qualified to engage in business as a commercial collection agency, including specifically that neither the registrant nor any principal of the registrant has engaged in any unlawful collection practices, dishonest dealings, acts of moral turpitude, or other criminal acts that reflect an inability to engage in the commercial collection agency business. The office shall inform any person whose registration is rejected by the office of the fact of and basis for such rejection. A prospective registrant shall be entitled to be registered when her or his or its registration information is complete on its face, the applicable registration fee has been paid, and the required evidence of current bond is furnished to the office.

(5) This section shall not apply to:

(a) A member of The Florida Bar, unless such person is primarily engaged in the collection of commercial claims. "Primarily engaged in the collection of commercial claims" means that more than one-half of the income of such person arises from the business of soliciting commercial claims for collection or collecting commercial claims.

(b) A financial institution authorized to do business in this state and any wholly owned subsidiary and affiliate thereof.

(c) A licensed real estate broker.

(d) A title insurance company authorized to do business in this state.

(e) A collection agency which is not primarily engaged in the collection of commercial claims. "Not primarily engaged in the collection of commercial claims" means that less than one-half of the collection revenue of such agency arises from the collection of commercial claims.

(f) A consumer finance company and any wholly owned subsidiary and affiliate thereof.

(g) A person licensed pursuant to chapter 520.

(h) A credit grantor.

(i) An out-of-state collector as defined in this part.

(j) An FDIC-insured institution or subsidiary or affiliate thereof.

**History.**—ss. 1, 2, ch. 93-275; s. 815, ch. 97-103; s. 673, ch. 2003-261.

**559.545 Registration of commercial collection agencies; procedure.**— Any person who wishes to register as a commercial collection agency in compliance with this part shall do so on forms adopted by the commission and furnished by the office. Any renewal of registration shall be made between October 1 and December 31 of each year. In registering or renewing a registration as required by this part, each commercial collection agency shall furnish to the office a registration fee, information, and surety bond, as follows:

(1) The registrant shall pay to the office a registration fee of \$500. All amounts collected shall be deposited to the credit of the Regulatory Trust Fund of the office.

(2) The registrant shall provide the following information:

(a) The business name or trade name of the commercial collection agency, the current mailing address of the agency, and the current business location of each place from which the agency operates either a main or branch office, with a designation of which location constitutes its principal place of business.

(b) The full names, current addresses, current telephone numbers, and social security numbers, or federal identification numbers of any corporate owner, of the registrant's owners or corporate officers and directors, and of the Florida resident agent of the registering agency.

(c) A statement as to whether the registrant is a domestic or foreign corporation, together with the state and date of incorporation, charter number of the corporation, and, if a foreign corporation, the date the corporation first registered to do business in this state.

(d) A statement listing each county in this state in which the registrant is currently doing business or plans to do business within the next calendar year, indicating each county in which the registrant holds an occupational license.

(e) A statement listing each county in this state in which the registrant is operating under a fictitious name or trade name other than that of the registrant, indicating the date and place of registration of any such fictitious name or trade name.

(f) A statement listing the names of any other corporations, entities, or trade names through which any owner or director of the registrant was known or did business as a commercial or consumer collection agency within the 5 calendar years immediately preceding the year in which the agency is registering.

(g) A statement clearly identifying and explaining any occasion on which any professional license or occupational license held by the registrant, any principal of the registrant, or any business entity in which any principal of the registrant was the owner of 10 percent or more of such business was the subject of any suspension, revocation, or other disciplinary action.

(h) A statement clearly identifying and explaining any occasion of a finding of guilt of any crime involving moral turpitude or dishonest conduct on the part of any principal of the registrant.

(3) The registrant shall furnish to the office evidence, as provided in s. 559.546, of the registrant having a current surety bond in the amount of \$50,000, valid for the year of registration, paid for and issued for the use and benefit of any credit grantor who suffers or sustains any loss or damage by reason of any violation of the provisions of this part by the registrant, or by any agent or employee of the registrant acting within the scope of her or his employment, and issued to ensure conformance with the provisions of this part.

**History.**—ss. 1, 2, ch. 93-275; s. 816, ch. 97-103; s. 674, ch. 2003-261.

**559.546 Bond; evidence of current and valid bond.**—Pursuant to s. 559.545, the registrant shall provide to the office evidence that the registrant has been issued a current and valid surety bond as required by this part.

(1) In addition to each registration filed pursuant to s. 559.545 and any renewal of such registration, each registrant shall furnish to the office the following:

(a) A copy of the surety bond, which bond shall be one issued by a surety known by the registrant to be acceptable to the office.

(b) A statement from the surety that the annual premium for the bond has been paid in full by the registrant.

(c) A statement from the surety that the bond issued by the surety meets the requirements of this part.

(2) The liability of the surety under any bond issued pursuant to the requirements of this part shall not exceed in the aggregate the amount of the bond, regardless of the number or amount of any claims filed or which might be asserted against the surety on such bond. If multiple claims are filed against the surety on any such bond in excess of the amount of the bond, the surety may pay the full amount of the bond to the office and shall not be further liable under the bond. The office shall hold such funds for distribution to claimants and administratively determine and pay to each claimant the pro rata share of each valid claim made against the funds within 6 months after the date of the filing of the first claim against the surety.

**History.**—ss. 1, 2, ch. 93-275; s. 675, ch. 2003-261.

**559.547 Void registration.**—

(1) Any registration made under this part by any person or commercial collection agency based upon the presentation by such person or collection agency of false identification or information, or identification not current with respect to name, address, and business location, or any other fact material to such registration shall be void.

(2) Any registration made under this part, but which is void under subsection (1), shall not be construed as creating any defense to any prosecution for violation of any provision of this part.

**History.**—ss. 1, 2, ch. 93-275.

**559.548 Penalties.**—

(1) Each of the following acts constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:

(a) Operating or soliciting business as a commercial collection agency in this state without first registering with the office, unless specifically exempted by this part.

(b) Registering or attempting to register by means of fraud, misrepresentation, or concealment.

(2) Each of the following acts constitutes a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083:

(a) Relocating a business as a commercial collection agency, or operating under any name other than that designated in the registration, unless written notification is given to the office and to the surety or sureties on the original bond.

(b) Assigning or attempting to assign a registration under this part.

(3) The court may, in addition to other punishment provided for, invalidate the registration of any registrant under this part who has been found guilty of conduct prohibited in subsection (1) or subsection (2).

**History.**—ss. 1, 2, ch. 93-275; s. 676, ch. 2003-261.

## PART VI CONSUMER COLLECTION PRACTICES

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**559.55 Definitions.**— The following terms shall, unless the context otherwise indicates, have the following meanings for the purpose of this part:

(1) “Commission” means the Financial Services Commission.

(2) “Communication” means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) “Consumer collection agency” means any debt collector or business entity engaged in the business of soliciting consumer debts for collection or of collecting consumer debts, which debt collector or business is not expressly exempted as set forth in s. 559.553(3).

(4) “Control person” means an individual, partnership, corporation, trust, or other organization that possesses the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. The term includes, but is not limited to:

(a) A company's executive officers, including the president, chief executive officer, chief financial officer, chief operations officer, chief legal officer, chief compliance officer, director, and other individuals having similar status or functions.

(b) For a corporation, a shareholder who, directly or indirectly, owns 10 percent or more or that has the power to vote 10 percent or more, of a class of voting securities unless the applicant is a publicly traded company.

(c) For a partnership, all general partners and limited or special partners who have contributed 10 percent or more or that have the right to receive, upon dissolution, 10 percent or more of the partnership's capital.

(d) For a trust, each trustee.

(e) For a limited liability company, all elected managers and those members who have contributed 10 percent or more or that have the right to receive, upon dissolution, 10 percent or more of the partnership's capital.

(5) "Creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but does not include any person to the extent that they receive an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(6) "Debt" or "consumer debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

(7) "Debt collector" means any person who uses any instrumentality of commerce within this state, whether initiated from within or outside this state, in any business the principal purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. The term "debt collector" includes any creditor who, in the process of collecting her or his own debts, uses any name other than her or his own which would indicate that a third person is collecting or attempting to collect such debts. The term does not include:

(a) Any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(b) Any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person is acting as a debt collector for persons to whom it is so related or affiliated and if the principal business of such persons is not the collection of debts;

(c) Any officer or employee of any federal, state, or local governmental body to the extent that collecting or attempting to collect any debt is in the performance of her or his official duties;

(d) Any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(e) Any not-for-profit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; or

(f) Any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent that such activity is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; concerns a debt which was originated by such person; concerns a debt which was not in default at the time it was obtained by such person; or concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(8) "Debtor" or "consumer" means any natural person obligated or allegedly obligated to pay any debt.

(9) "Federal Fair Debt Collection Practices Act" or "Federal Act" means the federal legislation regulating fair debt collection practices, as set forth in Pub. L. No. 95-109, as amended and published in 15 U.S.C. ss. 1692 et seq.

(10) "Office" means the Office of Financial Regulation of the commission.

(11) "Out-of-state consumer debt collector" means any person whose business activities in this state involve both collecting or attempting to collect consumer debt from debtors located in this state by means of interstate communication originating from outside this state and soliciting consumer debt accounts for collection from creditors who have a business presence in this state. For purposes of this subsection, a creditor has a business presence in this state if either the creditor or an affiliate or subsidiary of the creditor has an office in this state.

**History.**—s. 1, ch. 72-81; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 3, 6, ch. 81-314; ss. 2, 3, ch. 81-318; ss. 1, 3, ch. 83-265; ss. 4, 13, ch. 93-275; s. 817, ch. 97-103; s. 677, ch. 2003-261; s. 1, ch. 2014-116; s. 68, ch. 2016-10.

**559.551 Short title.**— Sections 559.55-559.785 may be cited as the “Florida Consumer Collection Practices Act.”

**History.**—ss. 5, 13, ch. 93-275.

**559.552 Relationship of state and federal law.**— Nothing in this part shall be construed to limit or restrict the continued applicability of the federal Fair Debt Collection Practices Act to consumer collection practices in this state. This part is in addition to the requirements and regulations of the federal act. In the event of any inconsistency between any provision of this part and any provision of the federal act, the provision which is more protective of the consumer or debtor shall prevail.

**History.**—ss. 5, 13, ch. 93-275.

**559.553 Registration of consumer collection agencies required; exemptions.**—

(1) A person may not engage in business in this state as a consumer collection agency or continue to do business in this state as a consumer collection agency without first registering in accordance with this part, and thereafter maintaining a valid registration.

(2) Each consumer collection agency doing business in this state shall register with the office and renew such registration annually as set forth in s. 559.555.

(3) This section does not apply to:

- (a) An original creditor.
  - (b) A member of The Florida Bar.
  - (c) A financial institution authorized to do business in this state and any wholly owned subsidiary and affiliate thereof.
  - (d) A licensed real estate broker.
  - (e) An insurance company authorized to do business in this state.
  - (f) A consumer finance company and any wholly owned subsidiary and affiliate thereof.
  - (g) A person licensed pursuant to chapter 520.
  - (h) An out-of-state consumer debt collector who does not solicit consumer debt accounts for collection from credit grantors who have a business presence in this state.
  - (i) An FDIC-insured institution or subsidiary or affiliate thereof.
- (4) An out-of-state consumer debt collector as defined in s. 559.55(11) who is not exempt from registration by application of subsection (3) and who fails to register in accordance with this part shall be subject to an enforcement action by the state as specified in s. 559.565.

**History.**—ss. 5, 13, ch. 93-275; s. 678, ch. 2003-261; s. 2, ch. 2014-116.

**559.554 Powers and duties of the commission and office.**—

- (1) The office is responsible for the administration and enforcement of this part.
- (2) The commission may adopt rules to administer this part, including rules:
- (a) Requiring electronic submission of forms, documents, and fees required by this part.
  - (b) Establishing time periods during which a consumer collection agency is barred from registration due to prior criminal convictions of, or guilty or nolo contendere pleas by, an applicant’s control persons, regardless of adjudication.
- 1. The rules must provide:
    - a. A 15-year disqualifying period for felonies involving fraud, dishonesty, breach of trust, money laundering, or other acts of moral turpitude.
    - b. A 7-year disqualifying period for all other felonies.
    - c. A 5-year disqualifying period for misdemeanors involving fraud, dishonesty, or other acts of moral turpitude.
  - 2. The rules must provide for an additional waiting period due to dates of imprisonment or community supervision, the commitment of multiple crimes, and other factors reasonably related to the applicant’s criminal history.
  - 3. The rules must provide for mitigating factors for crimes identified in sub-subparagraphs 1.a., 1.b., and 1.c.
  - 4. An applicant is not eligible for registration until expiration of the disqualifying period set by rule.

5. Section 112.011 does not apply to eligibility for registration under this part.

(3) All fees, charges, and fines collected pursuant to this part shall be deposited into the Regulatory Trust Fund of the office.

**History.**—s. 3, ch. 2014-116.

#### **559.5541 Examinations and investigations.—**

(1) Notwithstanding s. 559.725(4), the office may, without advance notice, conduct examinations and investigations, within or outside this state, to determine whether a person has violated this part or related rules. For purposes of this section, the office may examine the books, accounts, records, and other documents or matters of any person subject to this part. The office may compel the production of all relevant books, records, and other documents and materials relative to an examination or investigation. Examinations may not be made more often than once during a 48-month period unless the office has reason to believe a person has violated or will violate this part or related rules.

(2) In order to reduce the burden on persons subject to this part, the office may conduct a joint or concurrent examination with a state or federal regulatory agency and may furnish a copy of all examinations to an appropriate regulator if the regulator agrees to abide by the confidentiality provisions in chapter 119 and this part. The office may also accept an examination from any appropriate regulator.

**History.**—s. 4, ch. 2014-116.

#### **559.555 Registration of consumer collection agencies; procedure.—**

(1) A person who acts as a consumer collection agency must be registered in accordance with this section.

(2) In order to apply for a consumer collection agency registration, an applicant must:

(a) Submit a completed application form as prescribed by rule of the commission.

(b) Submit a nonrefundable application fee of \$200. Application fees may not be prorated for partial years of registration.

(c) Submit fingerprints for each of the applicant's control persons in accordance with rules adopted by the commission.

1. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting.

2. A state criminal history background check must be conducted through the Department of Law Enforcement, and a national criminal history background check must be conducted through the Federal Bureau of Investigation.

3. All fingerprints submitted to the Department of Law Enforcement must be submitted electronically and entered into the statewide automated biometric identification system established in s. 943.05(2)(b) and available for use in accordance with s. 943.05(2)(g) and (h). The office shall pay an annual fee to the Department of Law Enforcement to participate in the system and inform the Department of Law Enforcement of any person whose fingerprints are no longer required to be retained.

4. The costs of fingerprint processing, including the cost of retaining the fingerprints, shall be borne by the person subject to the background check.

5. The office is responsible for reviewing the results of the state and national criminal history background checks and determining whether the applicant meets registration requirements.

(3) The office shall issue a consumer collection agency registration to each person who is not otherwise ineligible and who meets the requirements of this section. However, it is a ground for denial of registration if the applicant or one of the applicant's control persons has committed any violation specified in this part, or is the subject of a pending felony criminal prosecution or a prosecution or an administrative enforcement action, in any jurisdiction, which involves fraud, dishonesty, breach of trust, money laundering, or any other act of moral turpitude.

(4) A registration issued under this part is not transferable or assignable.

(5) A consumer collection agency shall report, on a form prescribed by rule of the commission, any change in the information contained in an initial application form, or an amendment thereto, within 30 days after the change is effective.

(6) Renewal of registration shall be made between October 1 and December 31 of each year. There shall be no proration of the fee for any registration. In order to renew a consumer collection agency registration, a registrant must submit a nonrefundable renewal fee equal to the registration fee and a nonrefundable fee to cover the costs of further fingerprint processing and retention as set forth by commission rule.

**History.**—ss. 5, 13, ch. 93-275; s. 679, ch. 2003-261; s. 5, ch. 2014-116; s. 69, ch. 2016-10.

**559.5551 Requirements of registrants.**— A registrant under this part shall report to the office in a manner prescribed by rule of the commission:

(1) A conviction of, or plea of nolo contendere to, regardless of adjudication, a crime or administrative violation that involves fraud, dishonesty, breach of trust, money laundering, or any other act of moral turpitude, in any jurisdiction, by the registrant or any control person within 30 days after the date of conviction, entry of a plea of nolo contendere, or final administrative action.

(2) A conviction of, or plea of nolo contendere to, regardless of adjudication, a felony committed by the registrant or any control person within 30 days after the date of conviction or the date the plea of nolo contendere is entered.

(3) A change to the information contained in an initial application form or an amendment to the application within 30 days after the change is effective.

(4) An addition or subtraction of a control person or a change in the form of business organization. A control person added by a registrant is subject to this part and must submit fingerprints in accordance with s. 559.555 and the rules of the commission. The office may bring an administrative action in accordance with s. 559.730 to enforce this part if the added control person fails to meet registration requirements or comply with any other provision of this part.

**History.**—s. 6, ch. 2014-116.

**559.5556 Maintenance of records.**—

(1) Each registered consumer collection agency shall maintain, at the principal place of business designated on the registration, all books, accounts, records, and documents necessary to determine the registrant's compliance with this part.

(2) The office may authorize the maintenance of records at a location other than a principal place of business. The office may require books, accounts, and records to be produced and available at a reasonable and convenient location in this state.

(3) The commission may prescribe by rule the minimum information to be shown in the books, accounts, records, and documents of registrants so that such records enable the office to determine the registrant's compliance with this part.

(4) All books, accounts, records, documents, and receipts of any debt collection transaction must be preserved and kept available for inspection by the office for at least 3 years after the date the transaction is completed. The commission may prescribe by rule requirements for the destruction of books, accounts, records, and documents retained by the registrant after the completion of the 3 years.

**History.**—s. 1, ch. 2010-127.

**559.5558 Public records exemption; investigations and examinations.**—

(1) As used in this section, the term "personal financial and health information" means:

(a) Information relating to the existence, nature, source, or amount of a consumer's personal income, expenses, and debt;

(b) Information relating to a consumer's financial transactions of any kind;

(c) Information relating to the existence, identification, nature, or value of a consumer's assets, liabilities, or net worth;

(d) A consumer's personal health condition, disease, or injury; or

(e) A history of a consumer's personal medical diagnosis or treatment.

(2)(a) Except as otherwise provided by this section, information held by the office pursuant to an investigation or examination of a violation of this part is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State

Constitution. However, information made confidential and exempt pursuant to this section may be disclosed by the office to a law enforcement agency or another administrative agency in the performance of its official duties and responsibilities.

(b) Information made confidential and exempt pursuant to this section is no longer confidential and exempt once the investigation or examination is completed or ceases to be active unless disclosure of the information would:

1. Jeopardize the integrity of another active investigation or examination.
2. Reveal the personal identifying information of a consumer, unless the consumer is also the complainant. A complainant's personal identifying information is subject to disclosure after the investigation or examination is completed or ceases to be active. However, a complainant's personal financial and health information remains confidential and exempt.
3. Reveal the identity of a confidential source.
4. Reveal investigative or examination techniques or procedures.
5. Reveal trade secrets, as defined in s. 688.002.

(c) For purposes of this subsection, an investigation or examination is considered active if the investigation or examination is proceeding with reasonable dispatch and the office has a reasonable good faith belief that the investigation or examination may lead to the filing of an administrative, civil, or criminal proceeding or to the denial or conditional grant of an application for registration or other approval required under this part.

**History.**—s. 1, ch. 2014-117; s. 1, ch. 2019-33.

**559.563 Void registration.**— Any registration made under this part based upon false identification or false information, or identification not current with respect to name, address, and business location, or other fact which is material to such registration, shall be void. Any registration made and subsequently void under this section shall not be construed as creating any defense in any action by the office to impose any sanction for any violation of this part.

**History.**—ss. 5, 13, ch. 93-275; s. 680, ch. 2003-261.

**559.565 Enforcement action against out-of-state consumer debt collector.**— The remedies of this section are cumulative to other sanctions and enforcement provisions of this part for any violation by an out-of-state consumer debt collector, as defined in s. 559.55(11).

(1) An out-of-state consumer debt collector who collects or attempts to collect consumer debts in this state without first registering in accordance with this part is subject to an administrative fine of up to \$10,000 together with reasonable attorney fees and court costs in any successful action by the state to collect such fines.

(2) A person, whether or not exempt from registration under this part, who violates s. 559.72 is subject to sanctions the same as any other consumer debt collector, including imposition of an administrative fine. The registration of a duly registered out-of-state consumer debt collector is subject to revocation or suspension in the same manner as the registration of any other registrant under this part.

(3) In order to effectuate this section and enforce the requirements of this part as it relates to out-of-state consumer debt collectors, the Attorney General is expressly authorized to initiate such action on behalf of the state as he or she deems appropriate in any state or federal court of competent jurisdiction.

**History.**—ss. 5, 13, ch. 93-275; s. 818, ch. 97-103; s. 2, ch. 2010-127; s. 7, ch. 2014-116.

**559.715 Assignment of consumer debts.**— This part does not prohibit the assignment, by a creditor, of the right to bill and collect a consumer debt. However, the assignee must give the debtor written notice of such assignment as soon as practical after the assignment is made, but at least 30 days before any action to collect the debt. The assignee is a real party in interest and may bring an action to collect a debt that has been assigned to the assignee and is in default.

**History.**—s. 1, ch. 89-69; ss. 6, 13, ch. 93-275; s. 3, ch. 2010-127.

**559.72 Prohibited practices generally.**— In collecting consumer debts, no person shall:

- (1) Simulate in any manner a law enforcement officer or a representative of any governmental agency.
- (2) Use or threaten force or violence.

(3) Tell a debtor who disputes a consumer debt that she or he or any person employing her or him will disclose to another, orally or in writing, directly or indirectly, information affecting the debtor's reputation for credit worthiness without also informing the debtor that the existence of the dispute will also be disclosed as required by subsection (6).

(4) Communicate or threaten to communicate with a debtor's employer before obtaining final judgment against the debtor, unless the debtor gives her or his permission in writing to contact her or his employer or acknowledges in writing the existence of the debt after the debt has been placed for collection. However, this does not prohibit a person from telling the debtor that her or his employer will be contacted if a final judgment is obtained.

(5) Disclose to a person other than the debtor or her or his family information affecting the debtor's reputation, whether or not for credit worthiness, with knowledge or reason to know that the other person does not have a legitimate business need for the information or that the information is false.

(6) Disclose information concerning the existence of a debt known to be reasonably disputed by the debtor without disclosing that fact. If a disclosure is made before such dispute has been asserted and written notice is received from the debtor that any part of the debt is disputed, and if such dispute is reasonable, the person who made the original disclosure must reveal upon the request of the debtor within 30 days the details of the dispute to each person to whom disclosure of the debt without notice of the dispute was made within the preceding 90 days.

(7) Willfully communicate with the debtor or any member of her or his family with such frequency as can reasonably be expected to harass the debtor or her or his family, or willfully engage in other conduct which can reasonably be expected to abuse or harass the debtor or any member of her or his family.

(8) Use profane, obscene, vulgar, or willfully abusive language in communicating with the debtor or any member of her or his family.

(9) Claim, attempt, or threaten to enforce a debt when such person knows that the debt is not legitimate, or assert the existence of some other legal right when such person knows that the right does not exist.

(10) Use a communication that simulates in any manner legal or judicial process or that gives the appearance of being authorized, issued, or approved by a government, governmental agency, or attorney at law, when it is not.

(11) Communicate with a debtor under the guise of an attorney by using the stationery of an attorney or forms or instruments that only attorneys are authorized to prepare.

(12) Orally communicate with a debtor in a manner that gives the false impression or appearance that such person is or is associated with an attorney.

(13) Advertise or threaten to advertise for sale any debt as a means to enforce payment except under court order or when acting as an assignee for the benefit of a creditor.

(14) Publish or post, threaten to publish or post, or cause to be published or posted before the general public individual names or any list of names of debtors, commonly known as a deadbeat list, for the purpose of enforcing or attempting to enforce collection of consumer debts.

(15) Refuse to provide adequate identification of herself or himself or her or his employer or other entity whom she or he represents if requested to do so by a debtor from whom she or he is collecting or attempting to collect a consumer debt.

(16) Mail any communication to a debtor in an envelope or postcard with words typed, written, or printed on the outside of the envelope or postcard calculated to embarrass the debtor. An example of this would be an envelope addressed to "Deadbeat, Jane Doe" or "Deadbeat, John Doe."

(17) Communicate with the debtor between the hours of 9 p.m. and 8 a.m. in the debtor's time zone without the prior consent of the debtor.

(a) The person may presume that the time a telephone call is received conforms to the local time zone assigned to the area code of the number called, unless the person reasonably believes that the debtor's telephone is located in a different time zone.

(b) If, such as with toll-free numbers, an area code is not assigned to a specific geographic area, the person may presume that the time a telephone call is received conforms to the local time zone of the debtor's last known place of residence, unless the person reasonably believes that the debtor's telephone is located in a different time zone.

(18) Communicate with a debtor if the person knows that the debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the debtor's

attorney fails to respond within 30 days to a communication from the person, unless the debtor's attorney consents to a direct communication with the debtor, or unless the debtor initiates the communication.

(19) Cause a debtor to be charged for communications by concealing the true purpose of the communication, including collect telephone calls and telegram fees.

**History.**—s. 18, ch. 72-81; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 1, 6, ch. 81-314; ss. 2, 3, ch. 81-318; ss. 1, 3, ch. 83-265; ss. 7, 13, ch. 93-275; s. 819, ch. 97-103; s. 1, ch. 2001-206; s. 4, ch. 2010-127.

#### **559.725 Consumer complaints; administrative duties.—**

(1) The office shall receive and maintain records of correspondence and complaints from consumers concerning any and all persons who collect debts, including consumer collection agencies.

(2) The office shall inform and furnish relevant information to the appropriate regulatory body of the state or the Federal Government, or The Florida Bar in the case of attorneys, if a person has been named in a consumer complaint pursuant to subsection (3) alleging violations of s. 559.72. The Attorney General may take action against any person in violation of this part.

(3) The complainant, subject to penalty of perjury as provided in s. 837.06, shall certify on a form approved by the Financial Services Commission a summary of the nature of the alleged violation and the facts that allegedly support the complaint, and shall submit the form to the office.

(4) The office shall investigate complaints and record the resolution of such complaints.

(5) The office shall advise the appropriate state attorney or the Attorney General of any determination by the office of a violation of this part by any consumer collection agency that is not registered as required by this part. The office shall furnish the state attorney or Attorney General with the office's information concerning the alleged violations of such requirements.

(6) A registered consumer collection agency must provide a written response to the office within 45 days after receipt of a written request from the office for information concerning a consumer complaint. The response must address the issues and allegations raised in the complaint. The office may impose an administrative fine of up to \$250 per request per day upon any registrant that fails to comply with this subsection.

**History.**—ss. 8, 13, ch. 93-275; s. 681, ch. 2003-261; s. 5, ch. 2010-127.

#### **559.726 Subpoenas.—**

(1) The office may:

(a) Issue and serve subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of all books, accounts, records, and other documents and materials relevant to an investigation conducted by the office. The office, or its authorized representative, may administer oaths and affirmations to any person.

(b) Seek subpoenas or subpoenas duces tecum from any court to command the appearance of witnesses and the production of books, accounts, records, and other documents or materials at a time and place named in the subpoenas, and an authorized representative of the office may serve such subpoenas.

(2) If there is substantial noncompliance with a subpoena or subpoena duces tecum issued by the office, the office may petition the court in the county where the person subpoenaed resides or has his or her principal place of business for an order requiring the person to appear, testify, or produce such books, accounts, records, and other documents as are specified in the subpoena or subpoena duces tecum.

(3) The office is entitled to the summary procedure provided in s. 51.011, and the court shall advance such cause on its calendar. Attorney's fees and any other costs incurred by the office to obtain an order granting, in whole or in part, a petition for enforcement of a subpoena or subpoena duces tecum shall be taxed against the subpoenaed person, and failure to comply with such order is a contempt of court.

(4) To aid in the enforcement of this part, the office may require or permit a person to file a statement in writing, under oath, or otherwise as the office determines, as to all the facts and circumstances concerning the matter to be investigated.

**History.**—s. 6, ch. 2010-127.

**559.727 Cease and desist orders.**— The office may issue and serve upon any person an order to cease and desist and to take corrective action if it has reason to believe the person is violating, has violated, or is about to violate any provision of this part, any rule or order issued under this part, or any written agreement between the person and the office. All procedural matters relating to issuance and enforcement of such order are governed by chapter 120.

**History.**—s. 7, ch. 2010-127.

**559.730 Grounds for disciplinary action; administrative remedies.**—

(1) Each of the following acts constitutes a ground for which the disciplinary actions specified in subsection (2) may be taken against a person registered or required to be registered under this part:

- (a) Failure to disburse funds in accordance with agreements.
- (b) Fraud, misrepresentation, deceit, negligence, or incompetence in a collection transaction.
- (c) Commission of fraud, misrepresentation, concealment, or dishonest dealing by trick, scheme, or device; culpable negligence; breach of trust in a business transaction in any state, nation, or territory; or aiding, assisting, or conspiring with another person engaged in such misconduct and in furtherance thereof.
- (d) Being convicted of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a felony or crime involving fraud, dishonesty, breach of trust, money laundering, or act of moral turpitude.
- (e) Having a final judgment entered against the registrant in a civil action upon grounds of fraud, embezzlement, misrepresentation, or deceit.
- (f) Being the subject of a decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, or administrative order by a court of competent jurisdiction or an administrative law judge, or by a state or federal agency, involving a violation of a federal or state law relating to debt collection or a rule or regulation adopted under such law.
- (g) Having a license or registration, or the equivalent, to practice a profession or occupation denied, suspended, or revoked, or otherwise acted against, including the denial of a registration or license by a registration or licensing authority of this state or another state, territory, or country.
- (h) Acting as a consumer collection agency without a current registration issued under this part.
- (i) A material misstatement or omission of fact on an initial or amended registration application.
- (j) Payment to the office for a registration or permit with a check or electronic transmission of funds, which is dishonored by the applicant's or registrant's financial institution.
- (k) Failure to comply with, or a violation of, any provision of this part, or any rule or order made or issued pursuant to this part.
- (l) Failure to maintain, preserve, and keep available for examination all books, accounts, or other documents required by this part and the rules of the commission.
- (m) Refusal to permit an investigation or examination of books and records, or refusal to comply with an office subpoena or subpoena duces tecum.
- (n) Failure to timely pay a fee, charge, or fine imposed or assessed pursuant to this part and the rules of the commission.

(2) If the office finds a person in violation of any act specified in this section, it may enter an order imposing one or more of the following penalties:

- (a) Issuance of a reprimand.
- (b) Suspension of a registration, subject to reinstatement upon satisfying all reasonable conditions imposed by the office.
- (c) Revocation of a registration.
- (d) Denial of a registration.
- (e) Imposition of a fine of up to \$10,000 for each count or separate offense.
- (f) An administrative fine of up to \$1,000 per day for each day that a person engages as a consumer collection agency without a valid registration issued under this part.

(3) The office may impose suspension rather than revocation of a registration if circumstances warrant that one or the other should be imposed and the registrant demonstrates that the registrant has taken affirmative steps that can be

expected to effectively eliminate the violations and that the registrant's registration has never been previously suspended.

(4) A consumer collection agency is subject to the disciplinary actions specified in subsection (2) for a violation of subsection (1) by a control person of the consumer collection agency.

(5) Pursuant to s. 120.60(6), the office may summarily suspend the registration of a consumer collection agency if the office has reason to believe that a registrant poses an immediate, serious danger to the public's health, safety, or welfare. The arrest of the registrant, or the consumer collection agency's control person, for any felony or any crime involving fraud, dishonesty, breach of trust, money laundering, or any other act of moral turpitude is deemed sufficient to constitute an immediate danger to the public's health, safety, or welfare. Any proceeding for the summary suspension of a registration must be conducted by the commissioner of the office, or designee, who shall issue the final summary order.

(6) The office may deny a request to terminate a registration or withdraw a registration application if the office believes that an act that would be a ground for registration denial, suspension, restriction, or revocation under this part has been committed.

(7) The commission shall adopt rules establishing guidelines for imposing administrative penalties.

(8) This part does not preclude any person from pursuing remedies available under the Federal Fair Debt Collection Practices Act for any violation of such act.

**History.**—ss. 9, 13, ch. 93-275; s. 250, ch. 96-410; s. 682, ch. 2003-261; s. 8, ch. 2010-127; s. 8, ch. 2014-116.

#### **559.77 Civil remedies.—**

(1) A debtor may bring a civil action against a person violating the provisions of s. 559.72 in the county in which the alleged violator resides or has his or her principal place of business or in the county where the alleged violation occurred.

(2) Any person who fails to comply with any provision of s. 559.72 is liable for actual damages and for additional statutory damages as the court may allow, but not exceeding \$1,000, together with court costs and reasonable attorney's fees incurred by the plaintiff. In determining the defendant's liability for any additional statutory damages, the court shall consider the nature of the defendant's noncompliance with s. 559.72, the frequency and persistence of the noncompliance, and the extent to which the noncompliance was intentional. In a class action lawsuit brought under this section, the court may award additional statutory damages of up to \$1,000 for each named plaintiff and an aggregate award of additional statutory damages up to the lesser of \$500,000 or 1 percent of the defendant's net worth for all remaining class members; however, the aggregate award may not provide an individual class member with additional statutory damages in excess of \$1,000. The court may award punitive damages and may provide such equitable relief as it deems necessary or proper, including enjoining the defendant from further violations of this part. If the court finds that the suit fails to raise a justiciable issue of law or fact, the plaintiff is liable for court costs and reasonable attorney's fees incurred by the defendant.

(3) A person may not be held liable in any action brought under this section if the person shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid such error.

(4) An action brought under this section must be commenced within 2 years after the date the alleged violation occurred.

(5) In applying and construing this section, due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to the federal Fair Debt Collection Practices Act.

**History.**—s. 23, ch. 72-81; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 9, ch. 78-95; ss. 3, 6, ch. 81-314; ss. 2, 3, ch. 81-318; ss. 1, 3, ch. 83-265; ss. 10, 13, ch. 93-275; s. 820, ch. 97-103; s. 2, ch. 2001-206; s. 9, ch. 2010-127.

**559.78 Judicial enforcement.—**In addition to other penalties provided in this part, state attorneys and their assistants are authorized to apply to the court of competent jurisdiction within their respective jurisdictions, upon the sworn affidavit of any person alleging a violation of any of the provisions of this part. Such court shall have

jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of this part, whether or not there exists an adequate remedy at law; and such injunction, suspension, or revocation shall issue without bond.

**History.**—s. 24, ch. 72-81; s. 26, ch. 73-334; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 6, ch. 81-314; ss. 2, 3, ch. 81-318; ss. 1, 3, ch. 83-265; ss. 11, 13, ch. 93-275.

**559.785 Criminal penalty.**— It shall be a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for any person not exempt from registering as provided in this part to engage in collecting consumer debts in this state without first registering with the office, or to register or attempt to register by means of fraud, misrepresentation, or concealment.

**History.**—ss. 12, 13, ch. 93-275; s. 683, ch. 2003-261.

## PART VII

### LICENSING BY DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

559.79 Applications for license or renewal.

559.791 False swearing on application; penalties.

#### **559.79 Applications for license or renewal.—**

(1) Each application for a license issued by the Department of Business and Professional Regulation shall include a statement showing the name, address, and social security number of each person who owns 10 percent or more of the outstanding stock or equity interest in the licensed activity and the name, address, and social security number of each officer, director, chief executive, or other person who, in accordance with the rules of the issuing agency, is determined to be able directly or indirectly to control the operation of the business of the licensed entity, and each application for renewal of such a license shall set out any changes in the required names and addresses which have occurred since the license was issued or last renewed.

(2) Each application for a license or renewal of a license issued by the Department of Business and Professional Regulation shall be signed under oath or affirmation by the applicant, or owner or chief executive of the applicant, without the need for witnesses unless otherwise required by law.

(3) The department shall work cooperatively with the Department of Revenue to establish an automated method for periodically disclosing information relating to current licensees to the Department of Revenue, the state's Title IV-D agency. The purpose of this subsection is to promote the public policy of this state relating to child support as established in s. 409.2551. The department shall, when directed by the court or the Department of Revenue pursuant to s. 409.2598, suspend or deny the license of any licensee found not to be in compliance with a support order, a subpoena, an order to show cause, or a written agreement with the Department of Revenue. The department shall issue or reinstate the license without additional charge to the licensee when notified by the court or the Department of Revenue that the licensee has complied with the terms of the support order. The department is not liable for any license denial or suspension resulting from the discharge of its duties under this subsection.

**History.**—ss. 1, 2, ch. 78-51; s. 11, ch. 93-208; s. 209, ch. 94-218; s. 53, ch. 2001-158; s. 8, ch. 2008-92.

**559.791 False swearing on application; penalties.**— Any license issued by the Department of Business and Professional Regulation which is issued or renewed in response to an application upon which the person signing under oath or affirmation has falsely sworn to a material statement, including, but not limited to, the names and addresses of the owners or managers of the licensee or applicant, shall be subject to denial of the application or suspension or revocation of the license, and the person falsely swearing shall be subject to any other penalties provided by law.

**History.**—s. 3, ch. 78-51; s. 210, ch. 94-218.

## PART VIII

## SALE OR LEASE OF BUSINESS OPPORTUNITIES

- 559.80 Short title.
- 559.801 Definitions.
- 559.802 Franchises; exemption.
- 559.803 Disclosure statement.
- 559.807 Bond or other security required.
- 559.809 Prohibited acts.
- 559.811 Contracts to be in writing; form; provisions.
- 559.813 Remedies; enforcement.
- 559.815 Penalties.

**559.80 Short title.**— Sections 559.80-559.815 may be cited as the “Sale of Business Opportunities Act.”

**History.**—s. 1, ch. 79-374.

**559.801 Definitions.**— For the purpose of ss. 559.80-559.815, the term:

(1)(a) “Business opportunity” means the sale or lease of any products, equipment, supplies, or services which are sold or leased to a purchaser to enable the purchaser to start a business for which the purchaser is required to pay an initial fee or sum of money which exceeds \$500 to the seller, and in which the seller represents:

1. That 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;
2. That the seller will purchase any or all products made, produced, fabricated, grown, bred, or modified by the purchaser using in whole or in part the supplies, services, or chattels sold to the purchaser;
3. That the seller guarantees that the purchaser will derive income from the business opportunity which exceeds the price paid or rent charged for the business opportunity or that the seller will refund all or part of the price paid or rent charged for the business opportunity, or will repurchase any of the products, equipment, supplies, or chattels supplied by the seller, if the purchaser is unsatisfied with the business opportunity; or
4. That the seller will provide a sales program or marketing program that will enable the purchaser to derive income from the business opportunity, except that this paragraph does not apply to the sale of a sales program or marketing program made in conjunction with the licensing of a trademark or service mark that is registered under the laws of any state or of the United States if the seller requires use of the trademark or service mark in the sales agreement.

For the purpose of subparagraph 1., 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.

(b) “Business opportunity” does not include:

1. The sale of ongoing businesses when the owner of those businesses sells and intends to sell only those business opportunities so long as those business opportunities to be sold are no more than five in number;
  2. The not-for-profit sale of sales demonstration equipment, materials, or samples for a price that does not exceed \$500 or any sales training course offered by the seller the cost of which does not exceed \$500; or
  3. The sale or lease of laundry and drycleaning equipment.
- (2) “Department” means the Department of Agriculture and Consumer Services.
- (3) “Purchaser” includes a lessee.
- (4) “Seller” includes a lessor.

**History.**—s. 1, ch. 79-374; s. 7, ch. 81-314; s. 1, ch. 89-193; s. 5, ch. 90-231; s. 1, ch. 92-161; s. 82, ch. 92-291; s. 1, ch. 93-244; s. 20, ch. 97-250; s. 11, ch. 2001-214.

**559.802 Franchises; exemption.**—

(1) The sale of a franchise is exempt from this part if:

(a) The franchise meets the definition of that term as defined by the Federal Trade Commission regulations entitled, “Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures,” as set forth in 16 C.F.R. ss. 436.1 et seq.; and

(b) Before offering for sale or selling a franchise to be located in this state or to a resident of this state, the franchisor files a notice with the department, on a form adopted by the department, stating that the franchisor is in substantial compliance with the requirements of the Federal Trade Commission rule and pays a fee in an amount set by the department not exceeding \$100.

(2) The initial exemption granted under this section is for a period of 1 year after the date of filing the notice, and it may be renewed each year for an additional 1-year period upon filing a notice for renewal and paying a renewal fee in an amount set by the department, not exceeding \$100.

(3) The department may require only the name of the applicant, the name of the franchise and the name under which the applicant intends to, or does, transact business, if different, the applicant’s principal business address, and the applicant’s federal employer identification number.

(4) The department may adopt rules to implement the provisions of this section.

**History.**—s. 3, ch. 93-244; s. 39, ch. 2013-251.

**559.803 Disclosure statement.**— At least 3 working days before the time the purchaser signs a business opportunity contract, or at least 3 working days before the receipt of any consideration by the seller, whichever occurs first, the seller must provide the prospective purchaser a written document, the cover sheet of which is entitled in at least 12-point boldfaced capital letters “DISCLOSURES REQUIRED BY FLORIDA LAW.” Under this title shall appear the following statement in at least 10-point type: “The State of Florida has not reviewed and does not approve, recommend, endorse, or sponsor any business opportunity. The information contained in this disclosure has not been verified by the state. If you have any questions about this investment, see an attorney before you sign a contract or agreement.” Nothing except the title and required statement shall appear on the cover sheet. Immediately following the cover sheet, the seller must provide an index page that briefly lists the contents of the disclosure document as required in this section and any pages on which the prospective purchaser can find each required disclosure. At the top of the index page, the following statement must appear in at least 10-point type: “The State of Florida requires sellers of business opportunities to disclose certain information to prospective purchasers. This index is provided to help you locate this information.” If the index contains other information not required by this section, the seller shall place a designation beside each of the disclosures required by this section and provide an explanation of the designation at the end of the statement at the top of the index page. The disclosure document shall contain the following information:

(1) The name of the seller; whether the seller is doing business as an individual, partnership, corporation, or other business entity; the names under which the seller has done business; and the name of any parent or affiliated company that will engage in business transactions with the purchasers or who takes responsibility for statements made by the seller.

(2) The names, addresses, and titles of the seller’s officers, directors, trustees, general partners, general managers, and principal executives and of any other persons charged with the responsibility for the seller’s business activities relating to the sale of business opportunities.

(3) The length of time the seller has:

(a) Sold business opportunities; or

(b) Sold business opportunities involving the products, equipment, supplies, or services currently being offered to the purchaser.

(4) A full and detailed description of the actual services that the business opportunity seller undertakes to perform for the purchaser.

(5) A copy of a current financial statement of the seller that is no older than 13 months, updated to reflect material changes in the seller's financial condition.

(6) If training is promised by the seller, a complete description of the training, the length of the training, and the cost or incidental expenses of that training, including the cost or expense the purchaser will be required to incur.

(7) If the seller promises services to be performed in connection with the placement of the equipment, product, or supplies at a location, the full nature of those services as well as the nature of the agreements to be made with the owners or managers of the location where the purchaser's equipment, product, or supplies will be placed.

(8) If the business opportunity seller is required to secure a bond, guaranteed letter of credit, or certificate of deposit pursuant to s. 559.807, either of the following statements:

(a) "As required by Florida law, the seller has secured a bond issued by \_\_\_\_\_, a surety company authorized to do business in this state. Before signing a contract to purchase this business opportunity, you should confirm the bond's status with the surety company."; or

(b) "As required by Florida law, the seller has established a guaranteed letter of credit or certificate of deposit (number of account) with (name and address of bank or savings institution). Before signing a contract to purchase this business opportunity, you should confirm with the bank or savings institution the current status of the guaranteed letter of credit or certificate of deposit."

(9) The following statement: "If the seller fails to deliver the product, equipment, or supplies necessary to begin substantial operation of the business within 45 days of the delivery date stated in your contract, you may notify the seller in writing and cancel your contract."

(10) If the seller makes any statement concerning sales or earnings or a range of sales or earnings that may be made through this business opportunity, a statement disclosing:

(a) The total number of purchasers of business opportunities involving the product, equipment, supplies, or services being offered who have actually achieved sales of or received earnings in the amount or range specified within 3 years prior to the date of the disclosure statement.

(b) The total number of purchasers of business opportunities involving the product, equipment, supplies, or services being offered within 3 years before the date of the disclosure statement.

(11)(a) The total number of persons who purchased the business opportunity being offered by the seller within the past 3 years.

(b) The names, addresses, and telephone numbers of the 10 persons who previously purchased the business opportunity from the seller and who are geographically closest to the potential purchaser.

(12) A statement disclosing who, if any, of the persons listed in subsections (1) and (2):

(a) Has, at any time during the previous 10 fiscal years, regardless of adjudication, been convicted of, or found guilty of, or pled guilty or nolo contendere to, or has been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, a felony or a crime involving fraud, theft, larceny, violation of any franchise or business opportunity law or unfair or deceptive practices law, embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade.

(b) Has, at any time during the previous 7 fiscal years, been held liable in a civil action resulting in a final judgment or has settled out of court any civil action or is a party to any civil action involving allegations of fraud (including violation of any franchise or business opportunity law or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade or any civil action which was brought by a present or former franchisee or franchisees and which involves or involved the franchise relationship. However, only material individual civil actions need be so listed pursuant to this paragraph, including any group of civil actions which, irrespective of the materiality of any single such action, in the aggregate is material.

(c) Is subject to any currently effective state or federal agency or court injunctive or restrictive order, or has been subject to any administrative action in which an order by a governmental agency was rendered, or is a party to a proceeding currently pending in which such order is sought, relating to or affecting business opportunities activities or the business opportunity seller-purchaser relationship or involving fraud, including violation of any franchise or

business opportunity law or unfair or deceptive practices law, embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade.

Such statement shall set forth the identity and location of the court or agency; the date of conviction, judgment, or decision; the penalty imposed; the damages assessed; the terms of settlement or the terms of the order; and the date, nature, and issuer of each such order or ruling. A business opportunity seller may include a summary opinion of counsel as to any pending litigation, but only if counsel's consent to the use of such opinion is included in the disclosure statement.

(13) A statement disclosing who, if any, of the persons listed in subsections (1) and (2) at any time during the previous 7 fiscal years has:

- (a) Filed in bankruptcy.
- (b) Been adjudged bankrupt.
- (c) Been reorganized due to insolvency.
- (d) Been a principal, director, executive officer, or partner of any other person that has so filed or was so adjudged or reorganized during or within 1 year after the period that such person held such position in relation to such other person. If so, the name and location of the person having so filed or having been so adjudged or reorganized, the date thereof, and any other material facts relating thereto shall be set forth.

(14) A copy of the business opportunity contract which the seller uses as a matter of course and which is to be presented to the purchaser at closing.

**History.**—s. 1, ch. 79-374; s. 83, ch. 92-291; s. 4, ch. 93-244; s. 21, ch. 97-250; s. 10, ch. 99-307; s. 64, ch. 2000-154; s. 12, ch. 2001-214; s. 40, ch. 2013-251; s. 40, ch. 2013-251.

**559.807 Bond or other security required.**— If the business opportunity seller makes any representations set forth in s. 559.801(1)(a)3., the seller must either have obtained a surety bond issued by a surety company authorized to do business in this state or have established a certificate of deposit or a guaranteed letter of credit with a licensed and insured bank or savings institution located in the state. The amount of the bond, certificate of deposit, or guaranteed letter of credit shall be an amount not less than \$50,000.

**History.**—s. 1, ch. 79-374; s. 85, ch. 92-291; s. 65, ch. 2000-154; s. 13, ch. 2001-214; s. 42, ch. 2013-251.

**559.809 Prohibited acts.**— Business opportunity sellers shall not:

- (1) Misrepresent, by failure to disclose or otherwise, the known required total investment for such business opportunity.
- (2) Misrepresent or fail to disclose efforts to sell or establish more franchises or distributorships than it is reasonable to expect the market or market area for the particular business opportunity to sustain.
- (3) Misrepresent the quantity or the quality of the products to be sold or distributed through the business opportunity.
- (4) Misrepresent the training and management assistance available to the business opportunity purchaser.
- (5) Misrepresent the amount of profits, net or gross, which the franchisee can expect from the operation of the business opportunity.
- (6) Misrepresent, by failure to disclose or otherwise, the termination, transfer, or renewal provision of a business opportunity agreement.
- (7) Falsely claim or imply that a primary marketer or trademark of products or services sponsors or participates directly or indirectly in the business opportunity.
- (8) Assign a so-called “exclusive territory” encompassing the same area to more than one business opportunity purchaser.
- (9) Provide vending locations for which written authorizations have not been granted by the property owners or lessees.
- (10) Provide machines or displays of a brand or kind substantially different from and inferior to those promised by the business opportunity seller.
- (11) Fail to provide the purchaser a written contract as provided in s. 559.811.

(12) Misrepresent their ability or the ability of a person or entity providing services as defined in s. 559.801(1)(a) to provide locations or assist the purchaser in finding locations expected to have a positive impact on the success of the business opportunity.

(13) Misrepresent a material fact or create a false or misleading impression in the sale of a business opportunity.

(14) Fail to provide or deliver the products, equipment, supplies, or services as specified in the written contract required under s. 559.811.

**History.**—s. 1, ch. 79-374; s. 6, ch. 93-244; s. 32, ch. 97-98; s. 14, ch. 2001-214.

**559.811 Contracts to be in writing; form; provisions.—**

(1) Every business opportunity contract shall be in writing, and a copy shall be given to the purchaser at least 3 working days before signing the contract.

(2) Every contract for a business opportunity shall include the following:

(a) The terms and conditions of payment, including the total financial obligation of the purchaser to the seller.

(b) A full and detailed description of the acts or services that the business opportunity seller undertakes to perform for the purchaser.

(c) The seller's principal business address and the name and address of its agent in the state authorized to receive service of process.

(d) The approximate delivery date of products, equipment, or supplies which the business opportunity seller is to deliver to the purchaser.

**History.**—s. 1, ch. 79-374; s. 822, ch. 97-103; s. 23, ch. 97-250.

**559.813 Remedies; enforcement.—**

(1) If a business opportunity seller uses untrue or misleading statements in the sale of a business opportunity, fails to give the proper disclosures in the manner required by this part, or fails to deliver the equipment, supplies, or products necessary to begin substantial operation of the business within 45 days after the delivery date stated in the business opportunity contract, or if the contract does not comply with the requirements of this part, the purchaser may, within 1 year after the date of execution of the contract and upon written notice to the seller, rescind the contract and shall be entitled to receive from the business opportunity seller all sums paid to the business opportunity seller. Upon receipt of such sums, the purchaser shall make available to the seller at the purchaser's address, or at the places at which they are located at the time notice is given, all products, equipment, or supplies received by the purchaser. The purchaser shall not be entitled to unjust enrichment by exercising the remedies provided in this subsection.

(2) Any purchaser injured by a violation of this part, or by the business opportunity seller's breach of a contract subject to this part or any obligation arising therefrom, may bring an action for recovery of damages, including reasonable attorney fees.

(3) Upon complaint of any person that a business opportunity seller has violated this part, the circuit court shall have jurisdiction to enjoin the defendant from further such violations.

(4) The Department of Legal Affairs, or the state attorney if a violation of this part occurs in her or his judicial circuit, is the enforcing authority for purposes of this part and may bring civil actions in circuit court for temporary or permanent injunctive relief and may seek other appropriate civil relief, including, but not limited to, a civil penalty not to exceed \$5,000 for each violation, restitution and damages for injured purchasers of business opportunities, and court costs and reasonable attorney fees.

(5) Any remedy provided in this section may be recovered in an appropriate action, or the enforcing authority may terminate any investigation or action upon agreement by the offender to pay a stipulated civil penalty, to make restitution or pay damages to purchasers, or to satisfy any other relief authorized in this section and requested by the enforcing authority.

(6) The remedies provided in this section shall be in addition to any other remedies provided by law or in equity.

**History.**—s. 1, ch. 79-374; s. 86, ch. 92-291; s. 7, ch. 93-244; s. 823, ch. 97-103; s. 24, ch. 97-250; s. 43, ch. 2013-251.

**559.815 Penalties.—**Any person who commits an act described in s. 559.809 is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**History.**—s. 1, ch. 79-374; s. 87, ch. 92-291; s. 12, ch. 99-307; s. 15, ch. 2001-214; s. 44, ch. 2013-251.

## PART IX REPAIR OF MOTOR VEHICLES

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- 559.9215 Deposit of fees and fines.
- 559.92201 Rulemaking power.
- 559.9221 Motor Vehicle Repair Advisory Council.

**559.901 Short title.**— Sections 559.901-559.9221 shall be known and may be cited as the “Florida Motor Vehicle Repair Act.”

**History.**—s. 1, ch. 80-139; s. 1, ch. 93-219.

**559.902 Scope and application.**— This act shall apply to all motor vehicle repair shops in Florida, except:

- (1) Any motor vehicle repair shop of a municipal, county, state, or federal government when carrying out the functions of the government.
- (2) Any person who engages solely in the repair of:
  - (a) Motor vehicles that are owned, maintained, and operated exclusively by such person for that person’s own use; or
  - (b) For-hire vehicles, as defined in s. 320.01(15)(a), which are rented for periods of 30 days or less.
- (3) Any person who repairs only motor vehicles which are operated principally for agricultural or horticultural pursuits on farms, groves, or orchards and which are operated on the roads of this state only incidentally en route to or from such farms, groves, or orchards.
- (4) Motor vehicle auctions licensed under s. 320.27(1)(c)4. or persons performing motor vehicle repair solely for such auctions.
- (5) Those located in public schools as defined in s. 1000.04 or charter technical career centers as defined in s. 1002.34.

However, such person may voluntarily register under this act.

**History.**—s. 1, ch. 80-139; s. 2, ch. 93-219; s. 16, ch. 2001-214; s. 1029, ch. 2002-387.

**559.903 Definitions.**— As used in this act:

- (1) “Customer” means the person who signs the written repair estimate or any other person whom the person who signs the written repair estimate designates on the written repair estimate as a person who may authorize repair work.

- (2) "Department" means the Department of Agriculture and Consumer Services.
- (3) "Employee" means an individual who is employed full time or part time by a motor vehicle repair shop and performs motor vehicle repair.
- (4) "Final estimate" means the last estimate approved by the customer either in writing or orally, as evidenced by the written repair estimate.
- (5) "Motor vehicle" means any automobile, truck, bus, recreational vehicle, motorcycle, motor scooter, or other motor powered vehicle, but does not include trailers, mobile homes, travel trailers, trailer coaches without independent motive power, watercraft or aircraft, or special mobile equipment as defined in s. 316.003.
- (6) "Motor vehicle repair shop" means any person who, for compensation, engages or attempts to engage in the repair of motor vehicles owned by other persons and includes, but is not limited to: mobile motor vehicle repair shops, motor vehicle and recreational vehicle dealers; garages; service stations; self-employed individuals; truck stops; paint and body shops; brake, muffler, or transmission shops; and shops doing glass work. Any person who engages solely in the maintenance or repair of the coach portion of a recreational vehicle is not a motor vehicle repair shop.
- (7) "Place of business" means a physical place where the business of motor vehicle repair is conducted, including any vehicle constituting a mobile motor vehicle repair shop from which the business of motor vehicle repair is conducted.
- (8) "Motor vehicle repair" means all maintenance of and modifications and repairs to motor vehicles, and diagnostic work incident thereto, including, but not limited to, the rebuilding or restoring of rebuilt vehicles, body work, painting, warranty work, and other work customarily undertaken by motor vehicle repair shops.

**History.**—s. 1, ch. 80-139; s. 3, ch. 93-219; s. 25, ch. 97-250; s. 13, ch. 99-307; s. 20, ch. 2001-214; s. 79, ch. 2016-239.

**559.904 Motor vehicle repair shop registration; application; exemption.—**

(1) Each motor vehicle repair shop engaged or attempting to engage in the business of motor vehicle repair work must register with the department prior to doing business in this state. The application for registration must be on a form provided by the department and must include at least the following information:

- (a) The name of the applicant.
  - (b) The name under which the applicant is doing business.
  - (c) The business address at which the applicant performs repair work or in the case of a mobile motor vehicle repair shop, the home address of the owner, if different from the business address.
  - (d) Copies of all licenses, permits, and certifications obtained by the applicant or employees of the applicant.
  - (e) Number of employees which the applicant intends to employ or which are currently employed.
- (2) Any motor vehicle repair shop maintaining more than one place of business may file a single application biennially, which, along with the other information required by this part, clearly indicates the location of and the individual in charge of each facility or in the case of a mobile motor vehicle repair shop, the home address of the owner, if different from the business address. In such case, fees shall be paid for each place of business.

(3)(a) Each application for registration must be accompanied by a registration fee calculated on a per-year basis as follows:

- 1. If the place of business has 1 to 5 employees: \$50.
- 2. If the place of business has 6 to 10 employees: \$150.
- 3. If the place of business has 11 or more employees: \$300.

(b) The department shall waive the initial registration fee for an honorably discharged veteran of the United States Armed Forces, the spouse or surviving spouse of such a veteran, a current member of the United States Armed Forces who has served on active duty, the spouse of such a member, the surviving spouse of a member of the United States Armed Forces if the member died while serving on active duty, or a business entity that has a majority ownership held by such a veteran or spouse or surviving spouse if the department receives an application, in a format prescribed by the department. The application format must include the applicant's signature, under penalty of perjury, and supporting documentation. To qualify for the waiver:

- 1. A veteran must provide to the department a copy of his or her DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans'

Affairs;

2. The spouse or surviving spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or

3. A business entity must provide to the department proof that a veteran or the spouse or surviving spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse or surviving spouse of the veteran was lawfully married to the veteran at the time of discharge.

(c) The department shall waive registration renewal fees for a registrant who:

1. Is an active duty member of the United States Armed Forces or the spouse of such member;
2. Is or was a member of the United States Armed Forces and served on active duty within the 2 years preceding the renewal date. To qualify for the fee waiver under this subparagraph, a registrant who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding the biennial renewal date must have received an honorable discharge upon separation or discharge from the United States Armed Forces; or
3. Is the surviving spouse of a member of the United States Armed Forces if the member was serving on active duty at the time of death and died within the 2 years preceding the renewal.

A registrant seeking such waiver must apply in a format prescribed by the department, including the applicant's signature, under penalty of perjury, and supporting documentation.

(4) Each initial application for registration must be accompanied by copies of the applicant's estimate and invoice forms. Each renewal application for registration must be accompanied by copies of the applicant's estimate and invoice forms only if the original forms filed by the applicant are changed, altered, or revised. Such forms must comply with the applicable provisions of this act before a registration may be issued.

(5) No biennial registration fee is required for any motor vehicle repair shop which has a local municipal or county license issued pursuant to an ordinance containing standards which the department determines are at least equal to the requirements of this part, or for any motor vehicle dealer licensed pursuant to chapter 320.

(6) The department shall issue to each applicant a registration certificate in the form and size as prescribed by the department in accordance with s. 120.60. In the case of an applicant with more than one place of business, the department shall issue a registration certificate for each place of business. The certificate must show at least the name and address of the motor vehicle repair shop and the registration number for that place of business. In the case of a mobile motor vehicle repair shop, the certificate must show the home address of the owner, if different from the business address.

(7) Any person applying for or renewing a local business tax receipt to engage in business as a motor vehicle repair shop must exhibit an active registration certificate from the department before the local business tax receipt may be issued or renewed.

(8) Each registration must be renewed biennially on or before the expiration date of the current registration. A late fee of \$25 shall be paid, in addition to the registration fee or any other penalty, for any registration renewal application that is received by the department after the expiration date of the current registration. The department may not issue the registration until all fees are paid.

(9) No registration application or fee is required for an individual with no employees and no established place of business. In the case of a mobile motor vehicle repair shop, the established place of business shall be considered the home address of the owner, if different than the business address.

(10) The department may deny, revoke, or refuse to renew the registration of a motor vehicle repair shop based upon a determination that the motor vehicle repair shop, or any of its directors, officers, owners, or general partners:

- (a) Have failed to meet the requirements for registration as provided in this part;
- (b) Have not satisfied a civil fine, administrative fine, or other penalty arising out of any administrative or enforcement action brought by any governmental agency based upon conduct involving fraud, dishonest dealing, or

any violation of this part;

(c) Have had against them any civil, criminal, or administrative adjudication in any jurisdiction, based upon conduct involving fraud, dishonest dealing, or any violation of this part; or

(d) Have had a judgment entered against them in any action brought by the department or the state attorney pursuant to ss. 501.201-501.213 or this part.

(11) The department shall post a prominent "Closed by Order of the Department" sign on any motor vehicle repair shop that has had its registration suspended or revoked. The department shall also post a sign on any motor vehicle repair shop that has been judicially or administratively determined to be operating without a registration. It is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for any person to deface such sign or remove such sign without written authorization by the department or for any motor vehicle repair shop to open for operation without a registration or to open for operation as a motor vehicle repair shop while its registration is suspended or revoked. The department may impose administrative sanctions provided for in s. 559.921(4) for violations of this subsection.

**History.**—s. 4, ch. 93-219; s. 6, ch. 94-298; s. 26, ch. 97-250; s. 10, ch. 98-299; s. 14, ch. 99-307; s. 17, ch. 2001-214; s. 9, ch. 2003-132; s. 16, ch. 2006-2; s. 35, ch. 2012-67; s. 26, ch. 2016-166; s. 39, ch. 2018-7.

**559.905 Written motor vehicle repair estimate and disclosure statement required.—**

(1) When any customer requests a motor vehicle repair shop to perform repair work on a motor vehicle, the cost of which repair work will exceed \$100 to the customer, the shop shall prepare a written repair estimate, which is a form setting forth the estimated cost of repair work, including diagnostic work, before effecting any diagnostic work or repair. The written repair estimate shall also include the following items:

- (a) The name, address, and telephone number of the motor vehicle repair shop.
- (b) The name, address, and telephone number of the customer.
- (c) The date and time of the written repair estimate.
- (d) The year, make, model, odometer reading, and license tag number of the motor vehicle.
- (e) The proposed work completion date.
- (f) A general description of the customer's problem or request for repair work or service relating to the motor vehicle.
- (g) A statement as to whether the customer is being charged according to a flat rate or an hourly rate, or both.
- (h) The estimated cost of repair which shall include any charge for shop supplies or for hazardous or other waste removal and, if a charge is included, the estimate shall include the following statement:

"This charge represents costs and profits to the motor vehicle repair facility for miscellaneous shop supplies or waste disposal."

If a charge is mandated by state or federal law, the estimate shall contain a statement identifying the law and the specific amount charged under the law.

- (i) The charge for making a repair price estimate or, if the charge cannot be predetermined, the basis on which the charge will be calculated.
- (j) The customer's intended method of payment.
- (k) The name and telephone number of another person who may authorize repair work, if the customer desires to designate such person.
- (l) A statement indicating what, if anything, is guaranteed in connection with the repair work and the time and mileage period for which the guarantee is effective.
- (m) A statement allowing the customer to indicate whether replaced parts should be saved for inspection or return.
- (n) A statement indicating the daily charge for storing the customer's motor vehicle after the customer has been notified that the repair work has been completed. However, no storage charges shall accrue or be due and payable for a period of 3 working days from the date of such notification.

(2) If the cost of repair work will exceed \$100, the shop shall present to the customer a written notice conspicuously disclosing, in a separate, blocked section, only the following statement, in capital letters of at least 12-point type:

PLEASE READ CAREFULLY, CHECK ONE OF THE STATEMENTS BELOW, AND SIGN:

I UNDERSTAND THAT, UNDER STATE LAW, I AM ENTITLED TO A WRITTEN ESTIMATE IF MY FINAL BILL WILL EXCEED \$100.

\_\_\_\_ I REQUEST A WRITTEN ESTIMATE.

\_\_\_\_ I DO NOT REQUEST A WRITTEN ESTIMATE AS LONG AS THE REPAIR COSTS DO NOT EXCEED \$ \_\_\_\_.  
THE SHOP MAY NOT EXCEED THIS AMOUNT WITHOUT MY WRITTEN OR ORAL APPROVAL.

\_\_\_\_ I DO NOT REQUEST A WRITTEN ESTIMATE.

SIGNED \_\_\_\_\_ DATE \_\_\_\_\_

(3) The information required by paragraphs (1)(h) and (i) need not be provided if the customer waives in writing her or his right to receive a written estimate.

(4) Except as provided in subsection (5), a copy of the written repair estimate required by subsection (1) and the disclosure statement required by subsection (2) shall be given to the customer before repair work is begun. The disclosure statement may be provided on the same form as the written repair estimate.

(5) If the customer leaves her or his motor vehicle at a motor vehicle repair shop during hours when the shop is not open or if the customer permits the shop or another person to deliver the motor vehicle to the shop, there shall be an implied partial waiver of the written estimate; however, upon completion of diagnostic work necessary to estimate the cost of repair, the shop shall notify the customer as required in s. 559.909(1).

(6) Nothing in this section shall be construed to require a motor vehicle repair shop to give a written estimated price if the motor vehicle repair shop does not agree to perform the requested repair.

**History.**—s. 1, ch. 80-139; s. 824, ch. 97-103; s. 27, ch. 97-250; s. 18, ch. 2001-214.

#### **559.907 Charges for motor vehicle repair estimate; requirement of waiver of rights prohibited.—**

(1) No motor vehicle repair shop shall charge for making a repair price estimate unless, prior to making the price estimate, the shop:

(a) Discloses to the customer the amount of the charge or, if the amount cannot be determined, the basis on which the charge will be calculated; and

(b) Obtains authorization on the written repair estimate, in accordance with s. 559.905, to prepare an estimate. No motor vehicle repair shop shall impose or threaten to impose any such charge which is clearly excessive in relation to the work involved in making the price estimate.

(2) It shall be unlawful for any motor vehicle repair shop to require that any person waive her or his rights provided in this part as a precondition to the repair of her or his vehicle by the shop.

**History.**—s. 1, ch. 80-139; s. 5, ch. 93-219; s. 825, ch. 97-103.

#### **559.909 Notification of charges in excess of repair estimate; unlawful charges; refusal to return vehicle prohibited; inspection of parts.—**

(1) In the event that:

(a) The written repair estimate contains only an estimate for diagnostic work necessary to estimate the cost of repair and such diagnostic work has been completed;

(b) A determination is made by a motor vehicle repair shop that the actual charges for the repair work will exceed the written estimate by more than \$10 or 10 percent, whichever is greater, but not to exceed \$50; or

(c) An implied partial waiver exists for diagnostic work, as described in s. 559.905(5), and such diagnostic work has been completed,

the customer shall be promptly notified by telephone, telegraph, mail, or other means of the additional repair work and estimated cost thereof. A customer so notified shall, orally or in writing, authorize, modify, or cancel the order for repair.

(2) If a customer cancels the order for repair after being advised that a repair which she or he has authorized cannot be accomplished within the previously authorized estimate, the shop shall expeditiously reassemble the motor vehicle in a condition reasonably similar to the condition in which it was received unless:

- (a) The customer waives reassembly, or
- (b) The reassembled vehicle would be unsafe.

After cancellation of the repair order, the shop may charge for the cost of teardown, the cost of parts and labor to replace items that were destroyed by teardown, and the cost to reassemble the component or the vehicle, provided the customer was notified of these possible costs in the estimate prior to commencement of the diagnostic work.

(3) It shall be unlawful for a motor vehicle repair shop to charge more than the written estimate plus \$10 or 10 percent, whichever is greater, but not to exceed \$50, unless the motor vehicle repair shop has obtained authorization to exceed the written estimate in accordance with subsection (1).

(4) It shall be unlawful for any motor vehicle repair shop to fail to return any customer's motor vehicle because the customer has refused to pay for unauthorized repairs or because the customer has refused to pay for repair charges in excess of the final estimate in violation of this section.

(5) Upon request made at the time the repair work is authorized by the customer, the customer is entitled to inspect parts removed from her or his vehicle or, if the shop has no warranty arrangement or exchange parts program with a manufacturer, supplier, or distributor, have them returned to her or him.

**History.**—s. 1, ch. 80-139; s. 6, ch. 93-219; s. 826, ch. 97-103.

**559.911 Invoice required of motor vehicle repair shop.**— The motor vehicle repair shop shall provide each customer, upon completion of any repair, with a legible copy of an invoice for such repair. The invoice may be provided on the same form as the written repair estimate and shall include the following information:

- (1) The current date and odometer reading of the motor vehicle.
- (2) A statement indicating what was done to correct the problem or a description of the service provided.
- (3) An itemized description of all labor, parts, and merchandise supplied and the costs thereof, indicating what is supplied to the customer without cost or at a reduced cost because of a shop or manufacturer's warranty.
- (4) A statement identifying any replacement part as being used, rebuilt, or reconditioned, as the case may be.
- (5) A statement indicating what, if anything, is guaranteed in connection with the repair work and the time and mileage period for which the guarantee is effective.
- (6) The registration number from the certificate issued by the department pursuant to this part.

**History.**—s. 1, ch. 80-139; s. 7, ch. 93-219.

**559.915 Motor vehicle repair shop records.**—

(1) Each motor vehicle repair shop shall maintain repair records which shall include written repair estimates and repair invoices. A customer's records shall be available to the customer for inspection and copying for a period of at least 12 months. A reasonable charge may be made for copying if copying facilities are available. The customer may not remove such original records from the premises.

(2) Motor vehicle repair shops shall allow department personnel to inspect or copy these records during regular business hours.

**History.**—s. 1, ch. 80-139; s. 8, ch. 93-219.

**559.916 Required disclosure; signs; notice to customers. —**

(1) The department shall prescribe, by rule, the specifications for a sign to be posted by all registered motor vehicle repair shops in a manner conspicuous to the public. The sign shall contain the toll-free telephone number of the department for consumer information and assistance and shall inform customers that they may request, at the time the work order is taken, the return or inspection of all parts that have been replaced during the motor vehicle repair.

(2) All motor vehicle repair shops required to register under the provisions of this part must include the registration number from the certificate issued by the department in any advertisements, announcements, or listings relating to motor vehicle repair which are placed in a newspaper, magazine, or directory.

**History.**—s. 9, ch. 93-219; s. 33, ch. 97-98.

**559.917 Bond to release possessory lien claimed by motor vehicle repair shop. —**

(1)(a) A customer or a person of record claiming a lien against a motor vehicle may obtain the release of the motor vehicle from any lien claimed under part II of chapter 713 by a motor vehicle repair shop for repair work performed under a written repair estimate by filing with the clerk of the court in the circuit in which the disputed transaction occurred a cash or surety bond, payable to the person claiming the lien and conditioned for the payment of any judgment which may be entered on the lien. The bond shall be in the amount stated on the invoice required by s. 559.911, plus accrued storage charges, if any, less any amount paid to the motor vehicle repair shop as indicated on the invoice. The customer or person shall not be required to institute judicial proceedings in order to post the bond in the registry of the court and shall not be required to use a particular form for posting the bond unless the clerk provides such form to the customer or person for filing. Upon the posting of such bond, the clerk of the court shall automatically issue a certificate notifying the lienor of the posting of the bond and directing the lienor to release the motor vehicle.

(b) The lienor shall have 60 days to file suit to recover the bond. The prevailing party in that action may be entitled to damages plus court costs and reasonable attorney fees. If the lienor fails to file suit within 60 days after the posting of such bond, the bond shall be discharged by the clerk.

(2) The failure of a lienor to release or return to the customer or person the motor vehicle upon which any lien is claimed, upon receiving a copy of a certificate giving notice of the posting of the bond and directing release of the motor vehicle, shall subject the lienor to judicial proceedings which may be brought by the customer or person to compel compliance with the certificate. Whenever a customer or person brings an action to compel compliance with the certificate, the customer or person need only establish that:

(a) Bond in the amount of the invoice, plus accrued storage charges, if any, less any amount paid to the motor vehicle repair shop as indicated on the invoice, was posted;

(b) A certificate was issued pursuant to this section;

(c) The motor vehicle repair shop, or any employee or agent thereof who is authorized to release the motor vehicle, received a copy of a certificate issued pursuant to this section; and

(d) The motor vehicle repair shop or employee authorized to release the motor vehicle failed to release the motor vehicle.

The customer or person, upon a judgment in her or his favor in an action brought under this subsection, may be entitled to damages plus court costs and reasonable attorney fees sustained by her or him by reason of such wrongful detention or retention. Upon a judgment in favor of the motor vehicle repair shop, the shop may be entitled to reasonable attorney fees.

(3) A motor vehicle repair shop that, or an employee or agent thereof who is authorized to release the motor vehicle who, upon receiving a copy of a certificate giving notice of the posting of the bond in the required amount and directing release of the motor vehicle, fails to release or return the property to the customer or person pursuant to this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) A customer or person who stops payment on a credit card charge or a check drawn in favor of a motor vehicle repair shop on account of an invoice or who fails to post a cash or surety bond pursuant to this section shall be prohibited from any recourse under this section with respect to the motor vehicle repair shop.

**History.**—s. 1, ch. 80-139; s. 147, ch. 91-224; s. 827, ch. 97-103; s. 1, ch. 2019-73.

**559.919 Enforcement of liens restricted.**— No motor vehicle repair shop may refuse to return a customer's motor vehicle by virtue of any miscellaneous lien, nor may it enforce such a lien in any other fashion if it has failed to substantially comply with the provisions of this part.

**History.**—s. 1, ch. 80-139; s. 10, ch. 93-219.

**559.920 Unlawful acts and practices.**— It shall be a violation of this act for any motor vehicle repair shop or employee thereof to:

- (1) Engage or attempt to engage in repair work for compensation of any type without first being registered with or having submitted an affidavit of exemption to the department;
- (2) Make or charge for repairs which have not been expressly or impliedly authorized by the customer;
- (3) Misrepresent that repairs have been made to a motor vehicle;
- (4) Misrepresent that certain parts and repairs are necessary to repair a vehicle;
- (5) Misrepresent that the vehicle being inspected or diagnosed is in a dangerous condition or that the customer's continued use of the vehicle may be harmful or cause great damage to the vehicle;
- (6) Fraudulently alter any customer contract, estimate, invoice, or other document;
- (7) Fraudulently misuse any customer's credit card;
- (8) Make or authorize in any manner or by any means whatever any written or oral statement which is untrue, deceptive or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive or misleading;
- (9) Make false promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of a motor vehicle;
- (10) Substitute used, rebuilt, salvaged, or straightened parts for new replacement parts without notice to the motor vehicle owner and to her or his insurer if the cost of repair is to be paid pursuant to an insurance policy and the identity of the insurer or its claims adjuster is disclosed to the motor vehicle repair shop;
- (11) Cause or allow a customer to sign any work order that does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair;
- (12) Fail or refuse to give to a customer a copy of any document requiring the customer's signature upon completion or cancellation of the repair work;
- (13) Willfully depart from or disregard accepted practices and professional standards;
- (14) Have repair work subcontracted without the knowledge or consent of the customer unless the motor vehicle repair shop or employee thereof demonstrates that the customer could not reasonably have been notified;
- (15) Conduct the business of motor vehicle repair in a location other than that stated on the registration certificate;
- (16) Rebuild or restore a rebuilt vehicle without the knowledge of the owner in such a manner that it does not conform to the original vehicle manufacturer's established repair procedures or specifications and allowable tolerances for the particular model and year; or
- (17) Perform any other act that is a violation of this part or that constitutes fraud or misrepresentation.
- (18) Violate any provision of s. 713.585.

**History.**—s. 11, ch. 93-219; s. 828, ch. 97-103; s. 2, ch. 2019-73.

**559.921 Remedies.**—

- (1) Any customer injured by a violation of this part may bring an action in the appropriate court for relief. The prevailing party in that action may be entitled to damages plus court costs and reasonable attorney's fees. The customer may also bring an action for injunctive relief in the circuit court.
- (2) The department shall process consumer complaints according to ss. 570.07 and 570.544.
- (3) All motor vehicle repair shops shall allow department personnel to enter their place of business to ascertain whether the registration certificate is current. If department personnel are refused entry or access to the premises, the department may seek injunctive relief in circuit court in order to obtain compliance with this subsection.

(4)(a) The department may enter an order imposing one or more of the penalties set forth in paragraph (b) if the department finds that a motor vehicle repair shop:

1. Violated or is operating in violation of any of the provisions of this part or of the rules adopted or orders issued thereunder;
2. Made a material false statement in any application, document, or record required to be submitted or retained under this part;
3. Refused or failed, or any of its principal officers have refused or failed, after notice, to produce any document or record or disclose any information required to be produced or disclosed under this part or the rules of the department;
4. Made a material false statement in response to any request or investigation by the department, the Department of Legal Affairs, or the state attorney; or
5. Has intentionally defrauded the public through dishonest or deceptive means.

(b) Upon a finding as set forth in paragraph (a), the department may enter an order doing one or more of the following:

1. Issuing a notice of noncompliance pursuant to s. 120.695.
2. Imposing an administrative fine in the Class I category pursuant to s. 570.971 for each violation for each act which constitutes a violation of this part or a rule or order.
3. Directing that the motor vehicle repair shop cease and desist specified activities.
4. Refusing to register or revoking or suspending a registration.
5. Placing the registrant on probation, subject to such conditions as the department may specify.

(c) The administrative proceedings which could result in the entry of an order imposing any of the penalties specified in paragraph (b) shall be conducted in accordance with chapter 120.

(5)(a) The department or the state attorney, if a violation of this part occurs in his or her judicial circuit, shall be the enforcing authority for purposes of this part and may bring a civil action in circuit court for temporary or permanent injunctive relief and may seek other appropriate civil relief, including a civil penalty in the Class I category pursuant to s. 570.971 for each violation, restitution and damages for injured customers, court costs, and reasonable attorney fees.

(b) The enforcing authority may terminate any investigation or action upon agreement by the offender to pay a stipulated civil penalty, to make restitution or pay damages to customers, or to satisfy any other relief authorized herein and requested by the department.

(6) The Department of Highway Safety and Motor Vehicles shall have exclusive authority to impose the remedies in subsection (4) for motor vehicle and recreational vehicle dealers licensed under chapter 320. The Department of Highway Safety and Motor Vehicles and the state attorney shall have exclusive authority to impose the remedies in subsection (5) for motor vehicle and recreational vehicle dealers licensed under chapter 320. Upon receipt of a final order from the Department of Highway Safety and Motor Vehicles for suspension or revocation of a motor vehicle repair shop registration, the department shall suspend or revoke the registration according to the order. Rules adopted by the Department of Highway Safety and Motor Vehicles to enforce the provisions of this part shall be consistent with the rules of the Department of Agriculture and Consumer Services.

(7) If, in any proceeding brought pursuant to this part, it is determined that the repairs and costs thereof were in fact authorized, orally or in writing, the repairs were completed in a proper manner, and the consumer benefited therefrom, then the enforcing authority may consider such factors in assessing penalties or damages and may award the reasonable value of such repairs.

(8) The remedies provided for in this section shall be in addition to any other remedy provided by law.

**History.**—s. 1, ch. 80-139; s. 12, ch. 93-219; s. 829, ch. 97-103; s. 28, ch. 97-250; s. 45, ch. 2001-279; ss. 64, 65, ch. 2003-399; s. 56, ch. 2014-150.

**Note.**—Former s. 559.923.

**559.9215 Deposit of fees and fines.**—Fees and fines collected under this part by the Department of Agriculture and Consumer Services shall be deposited in the General Inspection Trust Fund. Fines collected under this part by the

Department of Highway Safety and Motor Vehicles shall be deposited in the Motor Vehicle License Plate Replacement Trust Fund.

**History.**—s. 13, ch. 93-219.

**559.92201 Rulemaking power.**— The department has the authority to adopt rules pursuant to chapter 120 to implement this part.

**History.**—s. 29, ch. 97-250.

**559.9221 Motor Vehicle Repair Advisory Council.**— The Motor Vehicle Repair Advisory Council is created to advise and assist the department in carrying out this part.

(1) The membership of the council may not exceed nine members appointed by the Commissioner of Agriculture.

(a) Six industry members of the council must be chosen from individuals already engaged in the motor vehicle repair business who are eligible to be registered under this part. The professional members of this council must be licensed under this part. The commissioner shall select one industry member from each of the following categories:

1. Independent automotive mechanics shops.
2. Franchise or company-owned automotive mechanics shops.
3. Automotive collision shops.
4. Tire dealer.
5. Independent motor vehicle dealer licensed under s. 320.27.
6. Franchise motor vehicle dealer licensed under s. 320.27.

(b) One member of the council may be chosen from persons already engaged in motor vehicle repair service.

(c) Two consumer members of the council must be residents of this state and must not be connected with the motor vehicle repair business.

(d) As terms of the members expire, the commissioner shall appoint successors for terms of 4 years. Members shall serve from the time of their appointment until their successors are appointed.

(2)(a) The council shall annually elect from its members a chair and a vice chair.

(b) The council shall meet at the call of its chair, at the request of a majority of its membership, or at the request of the department.

(c) In conducting its meetings, the council shall use accepted rules of procedure. The department shall keep a complete record of each meeting, which must show the names of members present and the actions taken. These records and other documents about matters within the jurisdiction of the council must be kept on file with the department.

(3) The members of the council shall receive no compensation for their services.

(4) The department shall be responsible for providing administrative and staff support services relating to the functions of the council.

(5) The council shall review the rules relating to the Florida Motor Vehicle Repair Act which are adopted by the department and shall advise the department on matters relating to educational grants, advancements in industry standards and practices, and other issues that require technical expertise and consultation or that promote better consumer protection in the motor vehicle repair industry.

**History.**—s. 15, ch. 93-219; s. 830, ch. 97-103; s. 30, ch. 97-250; s. 19, ch. 2001-214; s. 31, ch. 2011-206; s. 45, ch. 2013-251.

## PART X RENTAL-PURCHASE AGREEMENTS

559.9231 Short title.

559.9232 Definitions; exclusion of rental-purchase agreements from certain regulations.

559.9233 Rental-purchase agreements.

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**559.9231 Short title.**— This act may be cited as the “Rental-Purchase Agreement Act.”

**History.**—s. 1, ch. 88-69.

**559.9232 Definitions; exclusion of rental-purchase agreements from certain regulations.**—

- (1) As used in this act, the term:
  - (a) “Cash price” means the price at which the lessor, in the ordinary course of business, would offer to sell for cash the property or service that is the subject of the rental-purchase agreement. The term “cash price” may include the price of accessories, services related to the agreement, and taxes.
  - (b) “Lessee” means a natural person who rents personal property pursuant to a rental-purchase agreement.
  - (c) “Lessor” means a person or corporation who, in the ordinary course of business, regularly offers to rent personal property, or arranges for personal property to be rented, pursuant to a rental-purchase agreement.
  - (d) “Personal property” means any property that is not real property under the laws of the state where it is located and which is offered or made available for lease under a rental-purchase agreement.
  - (e) “Rental-purchase agreement” means an agreement for the use of personal property by a natural person primarily for personal, family, or household purposes, for an initial period of 4 months or less, that is automatically renewed with each rental payment after the initial period and that permits the lessee to acquire ownership of the property.
  - (f) “Services” means work, labor, or other personal services furnished pursuant to a rental-purchase agreement, including, but not limited to, the delivery, installation, servicing, repair, or improvement of rental property and excluding the provision of such property and associated services to the lessee.
- (2) A rental-purchase agreement that complies with this act shall not be construed to be, nor be governed by, any of the following:
  - (a) A lease or agreement that constitutes a credit sale as defined in 12 C.F.R. s. 226.2(a)(16) and s. 1602(g) of the federal Truth in Lending Act, 15 U.S.C. ss. 1601 et seq.;
  - (b) A lease that constitutes a “consumer lease” as defined in 12 C.F.R. s. 213.2(a)(6);
  - (c) Any lease for agricultural, business, or commercial purposes;
  - (d) Any lease made to an organization;
  - (e) A lease or agreement that constitutes a “retail installment contract” or “retail installment transaction” as those terms are defined in s. 520.31; or
  - (f) A security interest as defined in s. 671.201(38).

**History.**—s. 2, ch. 88-69; s. 51, ch. 95-144; s. 20, ch. 99-164; s. 685, ch. 2003-261; s. 52, ch. 2006-213; s. 20, ch. 2007-134; s. 1, ch. 2010-131.

**559.9233 Rental-purchase agreements.**—

- (1) A rental-purchase agreement must be in writing, must be signed by both the lessor and the lessee, and must be completed as to all essential provisions prior to being signed by the lessee.
- (2) The printed portion of the rental-purchase agreement must be in at least 6-point type and must contain the following notice in substantially this form:

Notice to the Lessee

- (a) Do not sign this rental-purchase agreement before you read it or if it contains any blank spaces.
- (b) You are entitled to an exact copy of the rental-purchase agreement you sign. Keep it to protect your legal rights.

(3) The lessor must deliver to the lessee, or mail to the lessee at her or his address shown on the rental-purchase agreement, a copy of the rental-purchase agreement signed by the lessor. Before the transaction is completed, a copy of the rental-purchase agreement, or a separate statement on which the disclosures required by this section are made and on which the lessee and lessor are identified, must be delivered to the lessee. Any acknowledgment by the lessee of delivery of a copy of the rental-purchase agreement, if contained in the rental-purchase agreement, must appear directly above or adjacent to the lessee's signature.

(4) A rental-purchase agreement must contain the following:

- (a) The name of the lessor and the name of the lessee;
- (b) The place of business of the lessor and the residence or place of business of the lessee, as specified by the lessee;
- (c) A brief description of the rental property, sufficient to identify the property to the lessee and lessor, including a statement indicating whether the property is new or previously rented. If a rental-purchase agreement is for multiple items, a description of each item may be provided in a separate statement incorporated by reference in the primary disclosure statement;
- (d) The total amount of any initial payment, including any advance payment, delivery charge, or any trade-in allowance to be paid by the lessee at or before completion of the rental-purchase agreement;
- (e) The amount and timing of rental payments;
- (f) The amount of all other charges, individually itemized, payable by the lessee to the lessor which are not included in the rental payments;
- (g) A statement of the total cost of the rental-purchase agreement expressed as the total of the initial payment, all rental payments, and all other charges necessary to acquire ownership of the rental property;
- (h) A statement of the party liable for loss, damage in excess of normal wear and tear, or destruction to the rental property;
- (i) The lessee's right to reinstate the rental-purchase agreement and the amount, or method of determining the amount, of any penalty or other charge for reinstatement;
- (j) The party responsible for maintaining or servicing the rental property and a brief description of the responsibility;
- (k) A statement of the conditions under which the lessee or lessor may terminate the rental-purchase agreement;
- (l) A statement that the lessee has the option to purchase the rental property during the term of the rental-purchase agreement and the price, formula, or method by which the purchase price is to be determined;
- (m) A statement that if, at the time the lessee acquires ownership of the property, any part of a manufacturer's warranty covering the rental property exists, such warranty will be transferred to the lessee if allowed by the terms of the warranty; and
- (n) The cash price of the rental property that is the subject of the rental-purchase agreement.

(5) With respect to matters specifically governed by the federal Consumer Credit Protection Act, compliance with the provisions of such act satisfies the requirements of this section.

(6) All information required by this section must be stated in a clear and coherent manner, using words and phrases of common meaning. The information must be appropriately divided and captioned by sections. All numerical amounts and percentages must be stated in figures. All of the information required by this section must be provided directly on the rental-purchase agreement or on a separate form.

(7) At the lessor's option, information in addition to that required by this section may be disclosed, if the additional information is not stated, utilized, or placed in a manner which will contradict, obscure, or detract attention from the required information.

**History.**—s. 3, ch. 88-69; s. 831, ch. 97-103.

**559.9234 Prohibited rental-purchase agreement provisions.**— A rental-purchase agreement may not:

- (1) Require garnishment of the lessee's wages or grant the lessor a power of attorney for the lessee or require the lessee to confess judgment.

(2) Grant to the lessor, a person acting on the lessor's behalf, or an assignee authority to unlawfully enter upon the lessee's premises or to permit any breach of the peace in the repossession of the rental property.

(3) Require the lessee to waive any defense, counterclaim, or right of action against the lessor, person acting on the lessor's behalf, or an assignee under the rental-purchase agreement in repossessing the rental property.

(4) Require the lessee to purchase insurance from the lessor.

(5) Allow the lessor to impose a penalty for early termination of a rental-purchase agreement or for the return of the rental property at any time, except those charges authorized by s. 559.9235(2) and any damage charges which may be imposed for destruction or damage to rental property.

(6) Allow the lessor to impose a fee for any in-home collection of a payment unless the lessee has expressly agreed in writing to the fee and the amount of the fee is disclosed in the rental-purchase agreement.

**History.**—s. 4, ch. 88-69.

#### **559.9235 Reinstatement.—**

(1) A lessee who fails to make timely rental payments has the right to reinstate the original rental-purchase agreement without losing any rights or options previously acquired under the rental-purchase agreement, if:

(a) The lessee promptly surrenders the rental property to the lessor or its agent upon request; and

(b) The lessee tenders the reinstatement fees within 60 days after the expiration of the last rental period for which the lessee made a timely payment.

(2) Before reinstating the rental-purchase agreement, a lessor may require a lessee to pay unpaid rental payments, including any rental renewal charges incurred, a reinstatement fee of not more than \$5, and a delivery charge if redelivery of the rental property is necessary.

(3) If reinstatement occurs pursuant to this section, the lessor shall provide the lessee with the same personal property rented by the lessee prior to the reinstatement or with substitute personal property of comparable quality and condition. If substitute personal property is provided, the lessor must provide new disclosures to the lessee, including all of the information required by s. 559.9233.

**History.**—s. 5, ch. 88-69.

#### **559.9236 Receipts.—**

(1) If a lessee so requests, the lessor must give or forward to the lessee a receipt for any payment made in cash. The lessor must also furnish, upon the lessee's request, an accounting of all charges, payments, and their dates in connection with a rental-purchase agreement. A charge of \$5 may be imposed upon the lessee by the lessor for the second and each subsequent accounting request by the lessee in a 12-month period.

(2) After payment of all sums necessary for the lessee to acquire ownership of the rental property, a lessor must deliver or mail to the lessee, at her or his last known address, one or more good and sufficient instruments acknowledging that the lessee has acquired ownership of the rental property.

**History.**—s. 6, ch. 88-69; s. 832, ch. 97-103.

**559.9237 Rental renewal charges; attorney's fees; court costs.—** A rental-purchase agreement may provide for payment by the lessee of a charge for failure to make a timely rental renewal payment, which charge may not exceed \$5 on any payment made after either payment is due or after the return of the rental property is required. A charge pursuant to a rental-purchase agreement for a lessee's failure to make a timely rental renewal payment may be collected only once on any accrued payment, no matter how long it remains unpaid. Such a charge may be collected at the time it accrues or any time thereafter. Such a charge may not be assessed against a payment that is timely made, even though an earlier charge has not been paid in full. A rental-purchase agreement may provide for the payment of reasonable attorney's fees incurred by an attorney, not a salaried employee of the lessor, in the course of collection, and for the payment of court costs.

**History.**—s. 7, ch. 88-69.

**559.9238 Willful violations.—** Any person who willfully and intentionally violates any provision of this act is guilty of a misdemeanor of the second degree, punishable by fine only as provided in s. 775.083.

**History.**—s. 8, ch. 88-69.

**559.9239 Damages.**— In case of a violation of a provision of this act with respect to a rental-purchase agreement, the lessee under the rental-purchase agreement may recover from the lessor or assignee committing the violation, or may setoff or counterclaim in an action brought by that lessor or assignee, an amount equal to the greater of actual damages or 25 percent of the total cost to acquire ownership under the rental-purchase agreement, plus attorney's fees and court costs. Notwithstanding the provisions of this section, a lessor or assignee is not subject to any penalty for failure to comply with any provision of this act until the lessee has notified such lessor or assignee in writing of such a failure and unless within 30 days after such notice such failure is not corrected by such lessor or assignee.

**History.**—s. 9, ch. 88-69.

**559.9240 Waiver.**— Any waiver by the lessee of any provisions of this act or of any remedies granted to the lessee by this act is unenforceable and void.

**History.**—s. 10, ch. 88-69.

**559.9241 Statute of limitations.**— An action may not be brought under this act more than 5 years after the occurrence of the alleged violation.

**History.**—s. 11, ch. 88-69.

## PART XI SELLERS OF TRAVEL

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**559.926 Short title.**— This part may be cited as the “Florida Sellers of Travel Act.”

**History.**—s. 4, ch. 95-314.

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

- (1) “Accommodations” means any hotel or motel room, condominium or cooperative unit, cabin, lodge, or apartment; any other commercial structure designed for occupancy by one or more individuals; or any lodging establishment as provided by law. The term does not include long-term home rentals covered under a lease pursuant to chapter 83.
- (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).

(3) “Contract” means any contract, certificate, reservation request or confirmation form, membership application or use agreement, license, or reservation confirmation whereby the purchaser obtains the right to benefits and privileges of the prearranged travel or tourist service, or to a vacation certificate, or any such other document, writing, or form committing the seller of travel to provide travel services or privileges pertaining to reservations, tour or travel arrangements, and accommodations.

(4) “Department” means the Department of Agriculture and Consumer Services.

(5) “Independent agent” means a person who represents a seller of travel by soliciting persons on its behalf, who has a written contract with a seller of travel that is operating in compliance with this part and any rules promulgated thereunder, who does not receive a fee, commission, or other valuable consideration directly from the purchaser for the sale of travel, who does not at any time have any unissued ticket stock or travel documents in his or her possession, and who does not have the ability to issue tickets, vacation certificates, or any other travel documents.

(6) “Offer for sale” means direct or indirect representation, claim, or statement or making an offer or undertaking, by any means or method, to arrange for, provide, or acquire travel reservations or accommodations, tickets for domestic or foreign travel by air, rail, ship, or other medium of transportation, or hotel and motel accommodations or sightseeing tours by a seller of travel who maintains a business location in Florida or who offers to sell to persons in Florida.

(7) “Prearranged travel or tourist-related services” includes, but is not limited to, car rentals, lodging, transfers, and all other such services that 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 before or after departure. This term also includes services for which a purchaser, whose legal residence is outside the United States, contracts or pays before departure, and any arrangement by which a purchaser prepays for, receives a reservation or any other commitment to provide services before departure for, or otherwise arranges for travel directly to a terrorist state and which originates in Florida.

(8) “Purchaser” means the purchaser of, or person otherwise entitled to receive, prearranged travel or tourist-related services for a fee or commission, or who has acquired a vacation certificate for personal use.

(9) “Registrant” means any person registered as a seller of travel.

(10) “Satisfactory consumer complaint history” means no unresolved complaints regarding prearranged travel or tourist-related services are on file with the department. A complaint is unresolved when a seller of travel does not respond to the department’s efforts to mediate the complaint or a complaint where the department has determined that a violation of this part has occurred and the complaint has not been satisfied by the seller of travel.

(11) “Seller of travel” means any resident or nonresident person, firm, corporation, or business entity that offers, directly or indirectly, prearranged travel or tourist-related services for individuals or groups, including, but not limited to, vacation packages, or vacation certificates in exchange for a fee, commission, or other valuable consideration. The term includes such person, firm, corporation, or business entity who sells a vacation certificate to third-party merchants for a fee, or in exchange for a commission, or who offers such certificates to consumers in exchange for attendance at sales presentations. The term also includes any business entity offering membership in a travel club or travel services for an advance fee or payment, even if no travel contracts or certificates or vacation or tour packages are sold by the business entity. The term does not include third parties who may offer prearranged travel or tourist-related services, but do not participate in travel fulfillment or vacation certificate redemption.

(12) “Student tour operator” means any resident or nonresident person, firm, corporation, or business entity that offers, directly or indirectly, prearranged travel or tourist-related services for groups within the educational community, school districts, educators, and students and their families, in exchange for a fee, a commission, or any other valuable consideration.

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

(14) “Vacation certificate” means any arrangement, plan, program, vacation package, or advance travel purchase that promotes, discusses, or discloses a destination or itinerary or type of travel, whereby a purchaser is entitled to the use of travel, accommodations, or facilities for any number of days, whether certain or uncertain, during the period in which the certificate can be exercised, and no specific date or dates for its use are designated. A vacation certificate

does not include prearranged travel or tourist-related services when a seller of travel remits full payment for the cost of such services to the provider or supplier within 10 business days of the purchaser's initial payment to the seller of travel. The term does not include travel if exact travel dates are selected, guaranteed, and paid for at the time of the purchase.

**History.**—ss. 1, 2, ch. 88-363; s. 6, ch. 89-296; s. 6, ch. 90-231; s. 14, ch. 91-236; s. 4, ch. 91-429; s. 1, ch. 92-160; s. 88, ch. 92-291; s. 1, ch. 93-107; s. 211, ch. 94-218; s. 7, ch. 94-298; s. 5, ch. 95-314; s. 31, ch. 97-250; s. 1, ch. 2008-214; s. 27, ch. 2016-166.

#### **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 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 this state, and business tax receipt 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; 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 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 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.

(c) The department shall waive the initial registration fee for an honorably discharged veteran of the United States Armed Forces, the spouse or surviving spouse of such a veteran, a current member of the United States Armed Forces who has served on active duty, the spouse of such a member, the surviving spouse of a member of the United States Armed Forces if the member died while serving on active duty, or a business entity that has a majority ownership held by such a veteran or spouse or surviving spouse if the department receives an application, in a format prescribed by the department. The application format must include the applicant's signature, under penalty of perjury, and supporting documentation. To qualify for the waiver:

1. A veteran must provide to the department a copy of his or her DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs;
2. The spouse or surviving spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or
3. A business entity must provide to the department proof that a veteran or the spouse or surviving spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse or surviving spouse of the veteran was lawfully married to the veteran at the time of discharge.

(d) The department shall waive the registration renewal fee for a registrant who:

1. Is an active duty member of the United States Armed Forces or the spouse of such member;

2. Is or was a member of the United States Armed Forces and served on active duty within the 2 years preceding the renewal date. To qualify for the fee waiver under this subparagraph, a registrant who is a former member of the United States Armed Forces who served on active duty within the 2 years preceding the annual registration renewal date must have received an honorable discharge upon separation or discharge from the United States Armed Forces; or
3. Is the surviving spouse of a member of the United States Armed Forces if the member was serving on active duty at the time of death and died within the 2 years preceding the renewal.

A registrant seeking such waiver must apply in a format prescribed by the department, including the applicant's signature, under penalty of perjury, and supporting documentation.

(3) Each independent agent shall annually file an application with the department before engaging in business in this state. This application must include the independent agent's full name, legal business or trade name, mailing address, business address, telephone number, and the name and address of each seller of travel represented by the independent agent. A letter evidencing proof of filing must be issued by the department and must be prominently displayed in the independent agent's primary place of business. Each independent agent must also submit an annual registration fee of \$50. All moneys collected pursuant to the imposition of the fee shall be deposited by the Chief Financial Officer into the General Inspection Trust Fund of the Department of Agriculture and Consumer Services for the sole purpose of administering this part. As used in this subsection, the term "independent agent" means a person who represents a seller of travel by soliciting persons on its behalf; who has a written contract with a seller of travel which is operating in compliance with this part and any rules adopted thereunder; who does not receive a fee, commission, or other valuable consideration directly from the purchaser for the seller of travel; who does not at any time have any unissued ticket stock or travel documents in his or her possession; and who does not have the ability to issue tickets, vacation certificates, or any other travel document. The term "independent agent" does not include an affiliate of the seller of travel, as that term is used in s. 559.935(3), or the employees of the seller of travel or of such affiliates.

(4) A person applying for or renewing a local business tax receipt to engage in business as a seller of travel must exhibit a current registration certificate from the department before the local business tax receipt may be issued or reissued.

(5) Each contract, advertisement, certificate, or travel document of a seller of travel must include the phrase "(NAME OF FIRM) is registered with the State of Florida as a Seller of Travel. Registration No. \_\_\_\_."

(6) A registration is not valid for any seller of travel transacting business at any place other than that designated in its application, unless the department is first notified in writing in advance of any change of location. A registration is not valid for an affiliate of the seller of travel who engages in the prearranged travel and tourist business. A registration issued under this part may not be assignable, and the seller of travel may not be permitted to conduct business under more than one name except as registered. A seller of travel desiring to change its registered name or location or designated agent for service of process at a time other than upon renewal of registration shall notify the department of such change.

(7) Applications under this section are subject to s. 120.60.

(8) The department may deny, refuse to renew, or revoke the registration of any seller of travel based upon a determination that the seller of travel, or any of its directors, officers, owners, or general partners while acting on behalf of the seller of travel:

- (a) Has failed to meet the requirements for registration as provided in this part;
- (b) Has been convicted of a crime involving fraud, theft, embezzlement, dishonest dealing, or any other act of moral turpitude or any other act arising out of conduct as a seller of travel;
- (c) Has not satisfied a civil fine or penalty arising out of any administrative or enforcement action brought by any governmental agency or private person based upon conduct involving fraud, theft, embezzlement, dishonest dealing, or any violation of this part; or
- (d) Has had a judgment entered against her or him in any action brought by the department or the Department of Legal Affairs pursuant to ss. 501.201-501.213 or this act.

(9) The department may deny or refuse to renew the registration of any seller of travel based upon a determination by the department that the seller of travel or any of the seller's directors, officers, owners, or general partners has pending against him or her while acting on behalf of the seller of travel any criminal, administrative, or enforcement proceedings in any jurisdiction, based upon conduct involving fraud, theft, embezzlement, or dishonest dealing, or any other act of moral turpitude.

**History.**—ss. 1, 2, ch. 88-363; s. 6, ch. 89-296; s. 4, ch. 91-429; s. 88, ch. 92-291; s. 5, ch. 95-314; s. 833, ch. 97-103; s. 32, ch. 97-250; s. 684, ch. 2003-261; s. 6, ch. 2008-107; s. 2, ch. 2008-214; s. 37, ch. 2012-67; s. 28, ch. 2016-166; s. 40, ch. 2018-7.

**Note.**—Former s. 599.927(2), (3).

#### **559.9281 Student tour operators.—**

(1) The Department of Agriculture and Consumer Services shall establish a process for sellers of travel to apply to be, and be listed as, approved student tour operators to serve students in all primary and secondary school districts within the state.

(2) The department shall adopt rules to implement this section, including the establishment of the application procedures and minimum standards for those persons wishing to be approved as student tour operators under this section. At a minimum, a student tour operator must be registered and approved by the department as a seller of travel under s. 559.928, maintain security requirements provided under s. 559.929, and be current on all state and local business taxes.

(3) The department shall maintain a list of approved student tour operators to serve students in all primary and secondary school districts within the state. The department shall update this list at least annually and shall provide, as created and updated, a current version of the list to the Department of Education.

(4) The Department of Education shall publish and maintain a current version of the list in a prominent location on its website.

**History.**—s. 29, ch. 2016-166.

#### **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 or tourist-related 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 or tourist-related 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 or tourist-related 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(8).

(d) The type of all prearranged travel or tourist-related 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.

**History.**—s. 3, ch. 2008-214; s. 38, ch. 2012-67; s. 42, ch. 2016-166.

#### **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). The surety on such bond must be a surety company authorized to do business in the state.

(a) Each seller of travel which certifies its business activities under s. 559.9285(1)(a) shall provide a performance bond in an amount up to \$25,000, or in the amount of \$50,000 if the seller of travel is offering vacation certificates.

(b) Each seller of travel which certifies its business activities under s. 559.9285(1)(b) shall provide a performance bond in an amount up to \$100,000, or in the amount of \$150,000 if the seller of travel is offering vacation certificates.

(c) Each seller of travel which certifies its business activities under s. 559.9285(1)(c) shall provide a performance bond in an amount up to \$250,000, or in the amount of \$300,000 if the seller of travel is offering vacation certificates.

(2) The bond must be filed with the department on a form adopted by department rule and must be in favor of the department for the use and benefit of a consumer who is injured by the fraud, misrepresentation, breach of contract, or financial failure, or any other violation of this part by the seller of travel. Such liability may be enforced by proceeding in an administrative action as specified in subsection (3) or by filing a civil action. The bond must be open to successive claims, but the aggregate amount awarded may not exceed the amount of the bond. 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) must be in favor of the department, with payment in the following order of priority:

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

(b) The costs and expenses of investigation before the commencement of an administrative or civil action under this part.

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

(d) Damages or compensation for a consumer injured as provided in this subsection.

(3) A consumer may file a claim against the bond. Such claim, which must be submitted in writing on an affidavit form adopted by department rule, must be submitted to the department within 120 days after an alleged injury has occurred or is discovered to have occurred or a judgment has been entered. The proceedings shall be conducted pursuant to chapter 120. For proceedings conducted pursuant to ss. 120.569 and 120.57, the agency shall act only as a nominal party.

(4) A consumer who is injured by the seller of travel, or the department or another governmental agency acting on behalf of the injured consumer, may bring and maintain an action to recover against the bond.

(5) Any indebtedness determined by final order of the department shall be paid by the seller of travel to the department within 30 days after the order is entered for disbursement to the consumer. If the seller of travel fails to make payment within 30 days, the agency shall make a demand for payment upon the surety which includes an institution issuing a letter of credit or depository on a certificate of deposit. Upon failure of a surety to comply with a demand for payment pursuant to a final order, the department may file an action in circuit court to recover payment,

up to the amount of the bond or other form of security, pursuant to s. 120.69. If the department prevails, the department may recover court costs and reasonable attorney fees.

(6) If the seller of travel is currently the subject of an administrative, civil, or criminal action by the department, the Department of Legal Affairs, or the state attorney relating to compliance with this part, the right to proceed against the bond as provided in subsection (3) is suspended until any enforcement action becomes final.

(7) The department may waive the bond 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 this state in compliance with this part, has not had a civil, criminal, or administrative action instituted against the seller of travel in the vacation and travel business by a governmental agency or an action involving fraud, theft, misappropriation of property, violation of a statute pertaining to business or commerce with a terrorist state, moral turpitude, or other violation of this part 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 this part. A seller of travel which certifies its business activities under s. 559.9285(1)(b) or (c) is not entitled to the waiver provided in this subsection.

**History.**—s. 5, ch. 95-314; s. 251, ch. 96-410; s. 33, ch. 97-250; s. 10, ch. 2003-132; s. 4, ch. 2008-214; s. 18, ch. 2014-147; s. 30, ch. 2016-166.

**559.9295 Submission of vacation certificate documents.**—Sellers of travel who offer vacation certificates must submit and disclose to the department with the application for registration, and any time such document is changed, but prior to the sale of any vacation certificate, the following materials:

(1) A copy of the contract by which the rights, obligations, benefits, and privileges resulting from purchase of a vacation certificate are established.

(2) A copy of each promotional brochure, pamphlet, form letter, registration form, or any other written material disseminated in connection with the advertising, promotion, or sale of any vacation certificate. Any such promotional materials that include terms such as “free,” “awarded,” “prize,” “absolutely without charge,” and “free of charge,” or similar words or groups of words, which might reasonably lead a person to believe that he or she may receive, or has been selected to receive, something of value without making full or partial compensation in any form from the recipient must:

(a) Clearly and conspicuously display the following disclosure in at least 12-point type: “(NAME OF FIRM) is registered with the State of Florida as a seller of travel, Registration No \_\_\_\_\_. THIS IS NOT A FREE OFFER. SEE TERMS AND CONDITIONS VIA WWW.(OFFER WEBSITE).COM. RESPONSE TO THIS OFFER DOES NOT GUARANTEE TRAVEL.” The offer website referred to in the disclosure must include, and clearly indicate, the terms and conditions for such a vacation certificate offer.

(b) Disclose the number of individuals who actually traveled pursuant to the vacation certificate, as opposed to the number of individuals who submitted or otherwise activated the vacation certificate, in the 12 months preceding issuance of the promotional material.

(3) A verbatim script of each radio, television, or movie, or other similar advertisement, broadcast to the public in connection with the advertising, promotion, or sale of any vacation certificates.

(4) A transcript of any standard verbal sales presentation utilized in connection with the advertising, promotion, or sale of vacation certificates.

(5) A copy of all rules, regulations, conditions, or limitations upon the use of, or obtaining reservations for the use of, accommodations or facilities available pursuant to the vacation certificate.

(6) A copy of a written authorization for the use of any registered trademark, trade name, or trade logo utilized in promotional brochures, pamphlets, form letters, registration forms, or other written materials disseminated in connection with the advertising, promotion, or sale of vacation certificates from the holder of each trademark, trade name, or trade logo so used.

(7) A complete copy of the original of each testimonial letter from previous vacation certificate purchasers utilized in advertisements disseminated in connection with advertising, promotion, or sale of vacation certificates.

(8) Where discount or complimentary coupons or tickets are to be provided to purchasers, a copy of such ticket or coupon which shall include a statement of the names and addresses of businesses where honored, the goods, services,

or amenities provided, and any additional charges, limitations, or conditions.

(9) Where other goods, services, or amenities are provided to the purchaser in addition to the right to use accommodations or facilities, a description of such goods, services, or amenities, including any charges, limitations, or conditions, and a statement of the names and addresses of business entities which are to provide or honor them.

(10) A statement of the number of certificates to be issued and the date of their expiration.

(11) A copy of the vacation certificate and its component parts, including, but not limited to, any registration card, form letter, reservation form, confirmation form, and lodging directory.

(12) A copy of any agreement between the seller and business entities providing accommodations or facilities to purchasers.

(13) A copy of any agreement between the seller and each business entity providing or honoring discount or complimentary coupons or tickets, or providing other goods, services, or amenities to the purchaser.

(14) A listing of the full name, address, and telephone number of each person through which the distribution and sale of vacation certificates is to be carried out, including the number of vacation certificates allocated or sold to each such person and the name and address of a Florida registered agent for service of process.

(15) A financial statement prepared by an independent certified public accountant in accordance with generally accepted accounting principles or the most recently filed federal income tax return. Such statement or return shall be submitted annually at the close of each fiscal year. A seller which has not yet begun operations shall submit a balance sheet prepared by an independent certified public accountant in accordance with generally accepted auditing principles in lieu of an initial financial statement, thereafter annually submitting a financial statement or federal income tax return at the close of the fiscal year.

(16) An annual submission fee not to exceed \$100.

Neither the submission of these materials nor the department's response implies approval, recommendation, or endorsement by the department or that the contents of said materials have been verified by the department.

**History.**—ss. 1, 2, ch. 88-363; s. 6, ch. 89-296; s. 4, ch. 91-429; s. 88, ch. 92-291; s. 1, ch. 93-107; s. 5, ch. 95-314; s. 34, ch. 97-250; s. 31, ch. 2016-166.

**Note.**—Former s. 559.927(4).

**559.931 Vacation certificate recordkeeping.**—Sellers of travel who offer vacation certificates must keep and maintain among their business records, for a period of 3 years, the following documents and information:

(1) A copy of each item required to be submitted to the department under s. 559.9295.

(2) All records required by s. 607.1601, when applicable, whether a corporation or other business entity.

(3) A list consisting of the name and address of every certificate purchaser making further purchase from the seller of travel pursuant to solicitation at the time of use of accommodations or facilities, which shall be retained for a period of at least 3 years after the date of such further purchase.

(4) A list consisting of the name and last known mailing addresses of all employees engaged in the solicitation of vacation certificate purchasers for further purchase at the time of use of accommodations or facilities, including those whose employment has been terminated within the preceding 3 years.

**History.**—ss. 1, 2, ch. 88-363; s. 6, ch. 89-296; s. 4, ch. 91-429; s. 88, ch. 92-291; s. 1, ch. 93-107; s. 5, ch. 95-314.

**Note.**—Former s. 559.927(6).

**559.932 Vacation certificate disclosure.**—

(1) A seller of travel must provide each person solicited with a contract that includes the following information, which shall be in 12-point type, unless otherwise specified:

(a) A space for the date, name, address, and signature of the purchaser.

(b) The expiration date of the vacation certificate and the terms and conditions of its extension or renewal, if available.

(c) The name and business address of any seller of travel who may solicit vacation certificate purchasers for further purchases, and a full and complete statement as to the nature and method of that solicitation.

(d) The total financial obligation of the purchaser which shall include the initial purchase price and any additional charges to which the purchaser may be subject, including, but not limited to, any per diem, seasonal, reservation, or recreational charge.

(e) The name and street address of any person who has the right to alter, amend, or add to the charges to which the purchaser may be subject and the terms and conditions under which such charges may be imposed.

(f) If any accommodation or facility which a purchaser acquires the right to use pursuant to the vacation certificate is not completed at the time the certificate is offered for sale, the date of availability of each component of the accommodation or facility.

(g) By means of a section entitled "terms and conditions":

1. All eligibility requirements for use of the vacation certificate, including, but not limited to, age, sex, marital status, group association, residency, or geographic limitations.

2. All eligibility requirements for use of any discount or complimentary coupon or ticket.

3. A statement as to whether transportation and meals are provided pursuant to use of the certificate.

4. Any room deposit requirement, including all conditions for its return or refund.

5. The manner in which reservation requests are to be made and the method by which they are to be confirmed.

6. Any identification, credential, or other means by which a purchaser must establish her or his entitlement to the rights, benefits, or privileges of the vacation certificate.

7. Any restriction or limitation upon transfer of the vacation certificate or any right, benefit, or privilege thereunder.

8. Any other term, limitation, condition, or requirement material to use of the vacation certificate or any right, benefit, or privilege thereunder.

(h) In immediate proximity to the space reserved in the contract for the date and the name, address, and signature of the purchaser, the following statement in boldfaced type of a size of 10 points:

**"YOU MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR OBLIGATION WITHIN 30 DAYS FROM THE DATE OF PURCHASE OR RECEIPT OF THE VACATION CERTIFICATE, WHICHEVER OCCURS LATER."**

**"YOU MAY ALSO CANCEL THIS CONTRACT IF ACCOMMODATIONS OR FACILITIES ARE NOT AVAILABLE PURSUANT TO A REQUEST FOR USE AS PROVIDED IN THE CONTRACT."**

**"TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A STATEMENT THAT YOU ARE CANCELING THE AGREEMENT SHOULD BE MAILED AND POSTMARKED, OR DELIVERED TO \_(NAME)\_ AT \_(ADDRESS)\_ NO LATER THAN MIDNIGHT OF \_(DATE)\_."**

(i) In immediate proximity to the statement required in paragraph (h), the following statement in boldfaced type of a size of 12 points:

**"NO PURCHASER SHOULD RELY UPON REPRESENTATIONS OTHER THAN THOSE INCLUDED IN THIS CONTRACT."**

However, inclusion of this statement shall not impair any purchaser's right to bring legal action based on verbal statements.

(j) In immediate proximity to the statement required in paragraph (i), the following statement:

**"This contract is for the purchase of a vacation certificate and puts all assignees on notice of the consumer's right to cancel under section 559.933, Florida Statutes."**

(2) If a sale or agreement to purchase a vacation certificate is completed over the telephone, the seller shall inform the purchaser over the telephone that:

(a) The purchaser may cancel the contract without any penalty or obligation within 30 days from the date of purchase or receipt of the vacation certificate, whichever occurs later.

(b) The purchaser may also cancel the contract if accommodations or facilities are not available upon request for use as provided in the contract.

(3) Upon receipt of a copy of a vacation certificate or contract required pursuant to s. 559.9295, the department shall review the vacation certificate or contract for compliance with the disclosures required under this section. The submission of the vacation certificate or contract and the department's response do not imply approval, recommendation, or endorsement by the department or that the contents of the vacation certificate or contract have been verified by the department.

**History.**—s. 1, ch. 93-107; s. 5, ch. 95-314; s. 834, ch. 97-103; s. 32, ch. 2016-166.

**Note.**—Former s. 559.927(7).

#### **559.933 Vacation certificate cancellation and refund provisions.—**

(1) A seller of travel or an assignee must honor a purchaser's request to cancel a vacation certificate if such request is made:

- (a) Within 30 days after the date of purchase or receipt of the vacation certificate, whichever occurs later; or
- (b) At any time accommodations or facilities are not available pursuant to a request for use as provided in the contract, provided that:

- 1. The contract may not require notice greater than 60 days in advance of the date requested for use.
- 2. If acceptable to the purchaser, comparable alternate accommodations or facilities in a city, or reservations for a date different than that requested, may be provided.

(2) A seller of travel or an assignee must refund any and all payments made by the vacation certificate purchaser within 30 days after receipt of the certificate and notice of cancellation made pursuant to this section, if the purchaser has not received any benefits pursuant to the vacation certificate.

(3) A seller of travel or an assignee must, if the purchaser has received any benefits pursuant to the vacation certificate, refund within 30 days after receipt of the certificate and notice of cancellation made pursuant to this section any and all payments made by the purchaser which exceed a pro rata portion of the total price, representing the portion of any benefits actually received by the vacation certificate purchaser during the time preceding cancellation.

(4) If any purchaser has received confirmation of reservations in advance and is refused accommodations upon arrival, a seller of travel or an assignee must procure comparable alternate accommodations for the purchaser in the same city at no expense to the purchaser, or fully compensate the purchaser for the room rate incurred in securing comparable alternate accommodations himself or herself.

(5) A seller of travel or an assignee may not collect more than the full contract price from the purchaser.

(6) A seller of travel or an assignee may not sell, assign, or otherwise transfer any interest in a seller of travel business, or sell, assign, or otherwise transfer to a third party any interest in any vacation certificate unless:

(a) The third party agrees in writing to fully honor the rights of vacation certificate purchasers to cancel and to receive an appropriate refund or reimbursement as provided in this section.

(b) The third party agrees in writing to comply with all other provisions of this part for as long as the third party continues the sale of vacation certificates or for the duration of the period of validity of outstanding vacation certificates, whichever is longer in time.

(c) The seller of travel agrees to be liable for and fully indemnify a purchaser from any loss occasioned by the failure of the third party to honor the purchaser's right to cancel and failure to make prompt and complete refund to the purchaser of all sums paid to the third party, or occasioned by the third party's failure to comply with the provisions of this part.

(7) A seller of travel or an assignee must fulfill the terms of a vacation certificate within 18 months after the initial payment of any consideration by the purchaser to a seller of travel or third party.

**History.**—s. 1, ch. 93-107; s. 5, ch. 95-314; s. 835, ch. 97-103; s. 33, ch. 2016-166.

**Note.**—Former s. 559.927(8).

**559.9335 Violations.—**It is a violation of this part for any seller of travel, independent agent, assignee, or other person:

- (1) To conduct business as a seller of travel without registering annually with the department unless exempt pursuant to s. 559.935.
- (2) To conduct business as a seller of travel without an annual purchase of a performance bond in the amount set by the department unless exempt pursuant to s. 559.935.
- (3) Knowingly to make any false statement, representation, or certification in any application, document, or record required to be submitted or retained under this part or in any response to an inquiry or investigation conducted by the department or any other governmental agency.
- (4) Knowingly to sell or market any vacation certificates that exceed the number disclosed to the department pursuant to this section.
- (5) Knowingly to sell or market vacation certificates with an expiration date of more than 18 months from the date of issuance.
- (6) Knowingly to state, represent, indicate, suggest, or imply, directly or indirectly, that the travel contract, certificate, or vacation package being offered by the seller of travel cannot be purchased at some later time or may not otherwise be available after the initial contact, or that callbacks by the prospective purchaser are not accepted, when no such restrictions or limitations in fact exist.
- (7) To misrepresent the purchaser's right to cancel and to receive an appropriate refund or reimbursement as provided by this part.
- (8) To sell any vacation certificate the duration of which exceeds the duration of any agreement between the seller and any business entity obligated thereby to provide accommodations or facilities pursuant to the vacation certificate.
- (9) To misrepresent or deceptively represent:
  - (a) The amount of time or period of time accommodations or facilities will be available.
  - (b) The location of accommodations or facilities offered.
  - (c) The price, size, nature, extent, qualities, or characteristics of accommodations or facilities offered.
  - (d) The nature or extent of other goods, services, or amenities offered.
  - (e) A purchaser's rights, privileges, or benefits.
  - (f) The conditions under which the purchaser may obtain a reservation for the use of offered accommodations or facilities.
- (g) That the recipient of an advertisement or promotional materials is a winner, or has been selected, or is otherwise being involved in a select group for receipt, of a gift, award, or prize, unless this fact is the truth.
- (10) To fail to inform a purchaser of a nonrefundable cancellation policy before the seller of travel accepting any fee, commission, or other valuable consideration.
- (11) To fail to include, when offering to sell a vacation certificate, in any advertisement or promotional material, the following statement: "This is an offer to sell travel."
- (12) To fail to honor and comply with all provisions of the vacation certificate regarding the purchaser's rights, benefits, and privileges thereunder.
- (13)(a) To include in any vacation certificate or contract any provision purporting to waive or limit any right or benefit provided to purchasers under this part; or
  - (b) To seek or solicit such waiver or acceptance of limitation from a purchaser concerning rights or benefits provided under this part.
- (14) To offer vacation certificates for any accommodation or facility for which there is no contract with the owner of the accommodation or facility securing the purchaser's right to occupancy and use, unless the seller is the owner.
- (15) To use a local mailing address, registration facility, drop box, or answering service in the promotion, advertising, solicitation, or sale of vacation certificates, unless the seller's fixed business address is clearly disclosed during any telephone solicitation and is prominently and conspicuously disclosed on all solicitation materials and on the contract.
- (16) To use any registered trademark, trade name, or trade logo in any promotional, advertising, or solicitation materials without written authorization from the holder of such trademark, trade name, or trade logo.
- (17) To represent, directly or by implication, any affiliation with, or endorsement by, any governmental, charitable, educational, medical, religious, fraternal, or civic organization or body, or any individual, in the promotion,

advertisement, solicitation, or sale of vacation certificates without express written authorization.

(18) To sell a vacation certificate to any purchaser who is ineligible for its use.

(19) To sell any vacation certificates in excess of the number of available accommodations.

(20) During the period of a vacation certificate's validity, in the event, for any reason whatsoever, of lapse or breach of an agreement for the provision of accommodations or facilities to purchasers, to fail to procure similar agreement for the provision of comparable alternate accommodations or facilities in the same city or surrounding area.

(21) To offer to sell, at wholesale or retail, prearranged travel or tourist-related 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).

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

(23) To engage in any other act that constitutes fraud, misrepresentation, or failure to disclose a material fact, or to commit any other violation of, or fail to comply with, this part.

(24) To refuse or fail, or for any of its principal officers to refuse or fail, after notice, to produce any document or record or disclose any information required to be produced or disclosed.

(25) Knowingly to make a material false statement in response to any request or investigation by the department, the Department of Legal Affairs, or the state attorney.

**History.**—ss. 1, 2, ch. 88-363; s. 6, ch. 89-296; s. 6, ch. 90-231; s. 4, ch. 91-429; s. 88, ch. 92-291; s. 1, ch. 93-107; s. 5, ch. 95-314; s. 35, ch. 97-250; s. 1, ch. 2006-105; s. 5, ch. 2008-214; s. 34, ch. 2016-166.

**Note.**—Former s. 559.927(10).

**559.934 Deceptive and unfair trade practice.**— Acts, conduct, practices, omissions, failings, misrepresentations, or nondisclosures which constitute a violation of this part also constitute a deceptive and unfair trade practice for the purpose of s. 501.201 and administrative rules promulgated thereunder.

**History.**—s. 1, ch. 93-107; s. 5, ch. 95-314.

**Note.**—Former s. 559.927(11).

#### **559.935 Exemptions.**—

(1) This part does not apply to:

(a) A bona fide employee of a seller of travel who is engaged solely in the business of her or his employer;

(b) Any direct common carrier of passengers or property regulated by an agency of the Federal Government or employees of such carrier when engaged solely in the transportation business of the carrier as identified in the carrier's certificate;

(c) An intrastate common carrier of passengers or property selling only transportation as defined in the applicable state or local registration or certification, or employees of such carrier when engaged solely in the transportation business of the carrier;

(d) Hotels, motels, or other places of public accommodation selling public accommodations, or employees of such hotels, motels, or other places of public accommodation, when engaged solely in making arrangements for lodging, accommodations, or sightseeing tours within the state, or taking reservations for the traveler with times, dates, locations, and accommodations certain at the time the reservations are made, provided that hotels and motels registered with the Department of Business and Professional Regulation pursuant to chapter 509 are excluded from the provisions of this chapter;

(e) Persons involved solely in the rental, leasing, or sale of residential property;

(f) Persons involved solely in the rental, leasing, or sale of transportation vehicles;

(g) Persons who make travel arrangements for themselves; for their employees or agents; for distributors, franchisees, or dealers of the persons' products or services; for entities which are financially related to the persons; or for the employees or agents of the distributor, franchisee, or dealer or financially related entity;

(h) A developer of a timeshare plan or an exchange company approved by the Division of Florida Condominiums, Timeshares, and Mobile Homes pursuant to chapter 721, but only to the extent that the developer or exchange

company engages in conduct regulated under chapter 721; or

(i) Persons or entities engaged solely in offering diving services, including classes and sales or rentals of equipment, when engaged in making any prearranged travel-related or tourist-related services in conjunction with a primarily dive-related event.

(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, who do not offer vacation certificates, and who annually certify their business activities under s. 559.9285(1)(a).

(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 also do 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) If 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) is liable for the actions of the affiliate, subject to the remedies provided in ss. 559.9355 and 559.936.

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

(c) 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.

(d) This subsection does not apply to:

1. An affiliate that independently qualifies for another exemption under this section.
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).

(e) For purposes of this section, the term "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, embezzlement, 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, embezzlement, misappropriation of property, deceptive or unfair trade practices, or moral turpitude.

(5) This section shall be subject to the provisions of chapter 120.

(6) The department shall request from the Airlines Reporting Corporation any information necessary to implement the provisions of subsection (2). Persons claiming an exemption under subsection (2) or subsection (3) must show a letter of exemption from the department before a local business tax receipt to engage in business as a seller of travel may be issued or reissued. If the department fails to issue a letter of exemption on a timely basis, the seller of travel shall submit to the department, through certified mail, an affidavit containing her or his name and address and an explanation of the exemption sought. Such affidavit may be used in lieu of a letter of exemption for the purpose of obtaining a business tax receipt. In any civil or criminal proceeding, the burden of proving an exemption under this section is on the person claiming such exemption. A letter of exemption issued by the department may not be used in, and has no bearing on, such proceedings.

**History.**—ss. 1, 2, ch. 88-363; s. 6, ch. 89-296; s. 14, ch. 91-236; s. 4, ch. 91-429; s. 1, ch. 92-160; s. 88, ch. 92-291; s. 1, ch. 93-107; s. 211, ch. 94-218; s. 7, ch. 94-298; s. 5, ch. 95-314; s. 836, ch. 97-103; s. 6, ch. 2008-214; s. 44, ch. 2008-240; s. 39, ch. 2012-67; s. 35, ch. 2016-166.

**Note.**—Former s. 559.927(12).

#### **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 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 in the Class II category pursuant to s. 570.971 for each act or omission.
- (c) Directing that the person cease and desist specified activities.
- (d) Refusing to register or canceling or suspending a registration.
- (e) Placing the registrant on probation, subject to such conditions as the department may specify.
- (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.

**History.**—s. 1, ch. 93-107; s. 5, ch. 95-314; s. 36, ch. 97-250; s. 7, ch. 2008-214; s. 57, ch. 2014-150.

**Note.**—Former s. 559.927(13).

#### **559.936 Civil penalties; remedies.—**

(1) The department may institute a civil action in a court of competent jurisdiction to recover any penalties or damages allowed in this part and for injunctive relief to enforce compliance with this part.

(2) The department may seek a civil penalty in the Class II category pursuant to s. 570.971 for each violation of this part.

(3) The department may seek a civil penalty in the Class III category pursuant to s. 570.971 for each act or omission in violation of s. 559.9335(21) or (22).

(4) The department may bring an action for restitution for and on behalf of any purchaser of travel services aggrieved or injured by a violation of this part.

(5) Any provision in a travel contract, certificate, vacation package, or other brochure or travel material from a seller of travel that purports to waive, limit, restrict, or avoid any of the duties, obligations, or prescriptions of the seller of travel, as herein provided, is void and unenforceable and against public policy, unless it is necessitated by contractual arrangements with travel service suppliers and fully disclosed.

(6) The remedies provided in this part are in addition to any other remedies available for the same conduct.

(7) Upon motion of the department in any action brought under this part, the court may make appropriate orders, including appointment of a general or special magistrate or receiver or sequestration of assets, to reimburse consumers found to have been damaged, to carry out a consumer transaction in accordance with the consumer's reasonable expectations, or to grant other appropriate relief.

**History.**—ss. 1, 2, ch. 88-363; s. 6, ch. 89-296; s. 4, ch. 91-429; s. 88, ch. 92-291; s. 1, ch. 93-107; s. 5, ch. 95-314; s. 91, ch. 2004-11; s. 8, ch. 2008-214; s. 58, ch. 2014-150; s. 36, ch. 2016-166.

**Note.**—Former s. 559.927(14).

#### **559.937 Criminal penalties.—** Any person or business that 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 or tourist-related 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.

**History.**—ss. 1, 2, ch. 88-363; s. 6, ch. 89-296; s. 6, ch. 90-231; s. 4, ch. 91-429; s. 88, ch. 92-291; s. 1, ch. 93-107; s. 5, ch. 95-314; s. 9, ch. 2008-214; s. 43, ch. 2016-166.

**Note.**— Former s. 559.927(15).

**559.938 General Inspection Trust Fund; payments.**— Any moneys recovered by the department as a penalty under this part shall be deposited in the General Inspection Trust Fund.

**History.**—ss. 1, 2, ch. 88-363; s. 6, ch. 89-296; s. 4, ch. 91-429; s. 88, ch. 92-291; s. 1, ch. 93-107; s. 5, ch. 95-314.

**Note.**— Former s. 559.927(16).

**559.939 State preemption.**— No municipality or county or other political subdivision of this state shall have authority to levy or collect any registration fee or tax, as a regulatory measure, or to require the registration or bonding in any manner of any seller of travel who is registered or complies with all applicable provisions of this part, unless that authority is provided for by special or general act of the Legislature. Any ordinance, resolution, or regulation of any municipality or county or other political subdivision of this state which is in conflict with any provision of this part is preempted by this part. The provisions of this section do not apply to any local business tax levied pursuant to chapter 205.

**History.**—ss. 1, 2, ch. 88-363; s. 6, ch. 89-296; s. 4, ch. 91-429; s. 88, ch. 92-291; s. 1, ch. 93-107; s. 5, ch. 95-314; s. 130, ch. 2007-5.

**Note.**— Former s. 559.927(17).

## PART XII MISCELLANEOUS PROVISIONS

559.951 Internet sales; prohibited practices.

559.952 Financial Technology Sandbox.

559.955 Home-based businesses; local government restrictions.

### **559.951 Internet sales; prohibited practices.**—

(1) As used in this section, the term:

(a) “Initial merchant” means a person who obtains a consumer’s billing information directly from the consumer through an Internet transaction initiated by the consumer.

(b) “Posttransaction third-party seller” means a person who:

1. Sells or offers for sale any good or service over the Internet; and
2. Solicits the purchase of such good or service over the Internet through an initial merchant after the consumer has initiated a transaction with the initial merchant.

The term does not include the initial merchant, a subsidiary or corporate affiliate of the initial merchant, or a successor of the initial merchant.

(2) A posttransaction third-party seller may not charge or attempt to charge a consumer’s credit card, debit card, bank account, or other account for any good or service sold in a transaction conducted over the Internet, unless:

(a) Before obtaining the consumer’s billing information, the posttransaction third-party seller clearly and conspicuously discloses to the consumer all material terms of the transaction, including:

1. A description of the goods or services being offered.
2. A statement that the posttransaction third-party seller is not affiliated with the initial merchant. Such statement must include the disclosure of the posttransaction third-party seller’s name in a manner that clearly differentiates the posttransaction third-party seller from the initial merchant.

3. The cost of such goods or services.

4. How and when the charges will be processed by the posttransaction third-party seller.

(b) The posttransaction third-party seller receives the express informed consent for the charge from the consumer whose credit card, debit card, bank account, or other account will be charged by:

1. Obtaining from the consumer:
  - a. The full account number of the account to be charged or other account information necessary to complete the transaction.

- b. The consumer's name and address.
  - c. A means to contact the consumer.
2. Requiring the consumer to perform an additional affirmative action, such as selecting a confirmation button or checking a box, which clearly and conspicuously indicates the consumer's consent to be charged the amount disclosed.
- (c) Before processing the consumer's credit card or otherwise charging the consumer or soon thereafter, the posttransaction third-party seller sends written notice confirming the transaction to the consumer by first-class United States mail or e-mail. Such notice must clearly and conspicuously disclose the following:
- 1. The good or service purchased.
  - 2. The amount that the consumer will be charged.
  - 3. The timing and frequency of charges.
  - 4. A short and plain statement disclosing the posttransaction third-party seller's cancellation and refund policy.
  - 5. A telephone number, mailing address, Internet website address, and e-mail address where the posttransaction third-party seller may be contacted.
  - 6. The name of the initial merchant or fictitious name under which the initial merchant is doing business, if known.
  - 7. The name of the posttransaction third-party seller or fictitious name under which the posttransaction third-party seller is doing business.
  - 8. A statement that the posttransaction third-party seller is an unaffiliated and separate entity from the initial merchant.
  - 9. A statement that the consumer is being charged by the posttransaction third-party seller for a transaction that is separate from the consumer's transaction with the initial merchant.

If the posttransaction third-party seller sends the notice required under this paragraph by e-mail, the only words appearing in the e-mail's subject line shall be "Notice that \_(name or fictitious name of the posttransaction third-party seller)\_ is charging your \_(type of account)\_ account."

- (3) An initial merchant may not disclose a consumer's credit card number, debit card number, bank account number, or other account number, or disclose other consumer billing information, to a posttransaction third-party seller.
- (4) A posttransaction third-party seller may not:
- (a) Charge a consumer without providing a simple mechanism for the consumer to cancel the good or service and stop charges within a reasonable time after delivery of the written notice confirming the transaction; or
  - (b) Change its vendor code, or otherwise materially change the way the posttransaction third-party seller is identified on the consumer's account, more than once per year, unless the posttransaction third-party seller provides the consumer with written notice of the change.
- (5) A violation of this section is deemed an unfair or deceptive trade practice within the meaning of part II of chapter 501. A person who violates this section is subject to the penalties and remedies provided therein.

**History.**—s. 1, ch. 2011-156.

#### **559.952 Financial Technology Sandbox.—**

- (1) **SHORT TITLE.**—This section may be cited as the "Financial Technology Sandbox."
- (2) **CREATION OF THE FINANCIAL TECHNOLOGY SANDBOX.**—There is created the Financial Technology Sandbox within the Office of Financial Regulation to allow financial technology innovators to test new products and services in a supervised, flexible regulatory sandbox using exceptions to specified general law and waivers of the corresponding rule requirements under defined conditions. The creation of a supervised, flexible regulatory sandbox provides a welcoming business environment for technology innovators and may lead to significant business growth.
- (3) **DEFINITIONS.**—As used in this section, the term:
- (a) "Business entity" means a domestic corporation or other organized domestic entity with a physical presence, other than that of a registered office or agent or virtual mailbox, in this state.

(b) “Commission” means the Financial Services Commission.

(c) “Consumer” means a person in this state, whether a natural person or a business organization, who purchases, uses, receives, or enters into an agreement to purchase, use, or receive an innovative financial product or service made available through the Financial Technology Sandbox.

(d) “Control person” means an individual, a partnership, a corporation, a trust, or other organization that possesses the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or through other means. A person is presumed to control a company if, with respect to a particular company, that person:

1. Is a director, a general partner, or an officer exercising executive responsibility or having similar status or functions;
2. Directly or indirectly may vote 10 percent or more of a class of a voting security or sell or direct the sale of 10 percent or more of a class of voting securities; or
3. In the case of a partnership, may receive upon dissolution or has contributed 10 percent or more of the capital.

(e) “Corresponding rule requirements” means the commission rules, or portions thereof, which implement the general laws enumerated in paragraph (4)(a).

(f) “Financial product or service” means a product or service related to a consumer finance loan, as defined in s. 516.01, or a money transmitter or payment instrument seller, as those terms are defined in s. 560.103, including mediums of exchange that are in electronic or digital form, which is subject to the general laws enumerated in paragraph (4)(a) and corresponding rule requirements and which is under the jurisdiction of the office.

(g) “Financial Technology Sandbox” means the program created by this section which allows a licensee to make an innovative financial product or service available to consumers during a sandbox period through exceptions to general laws and waivers of corresponding rule requirements.

(h) “Innovative” means new or emerging technology, or new uses of existing technology, which provide a product, service, business model, or delivery mechanism to the public and which are not known to have a comparable offering in this state outside the Financial Technology Sandbox.

(i) “Licensee” means a business entity that has been approved by the office to participate in the Financial Technology Sandbox.

(j) “Office” means, unless the context clearly indicates otherwise, the Office of Financial Regulation.

(k) “Sandbox period” means the initial 24-month period in which the office has authorized a licensee to make an innovative financial product or service available to consumers, and any extension granted pursuant to subsection (7).

(4) EXCEPTIONS TO GENERAL LAW AND WAIVERS OF RULE REQUIREMENTS.—

(a) Notwithstanding any other law, upon approval of a Financial Technology Sandbox application, the following provisions and corresponding rule requirements are not applicable to the licensee during the sandbox period:

1. Section 516.03(1), except for the application fee, the investigation fee, the requirement to provide the social security numbers of control persons, evidence of liquid assets of at least \$25,000, and the office’s authority to investigate the applicant’s background. The office may prorate the license renewal fee for an extension granted under subsection (7).

2. Section 516.05(1) and (2), except that the office shall investigate the applicant’s background.

3. Section 560.109, only to the extent that the section requires the office to examine a licensee at least once every 5 years.

4. Section 560.118(2).

5. Section 560.125(1), only to the extent that the subsection would prohibit a licensee from engaging in the business of a money transmitter or payment instrument seller during the sandbox period.

6. Section 560.125(2), only to the extent that the subsection would prohibit a licensee from appointing an authorized vendor during the sandbox period. Any authorized vendor of such a licensee during the sandbox period remains liable to the holder or remitter.

7. Section 560.128.

8. Section 560.141, except for s. 560.141(1)(a)1., 3., 7.-10. and (b), (c), and (d).

9. Section 560.142(1) and (2), except that the office may prorate, but may not entirely eliminate, the license renewal fees in s. 560.143 for an extension granted under subsection (7).

10. Section 560.143(2), only to the extent necessary for proration of the renewal fee under subparagraph 9.

11. Section 560.204(1), only to the extent that the subsection would prohibit a licensee from engaging in, or advertising that it engages in, the selling or issuing of payment instruments or in the activity of a money transmitter during the sandbox period.

12. Section 560.205(2).

13. Section 560.208(2).

14. Section 560.209, only to the extent that the office may modify, but may not entirely eliminate, the net worth, corporate surety bond, and collateral deposit amounts required under that section. The modified amounts must be in such lower amounts that the office determines to be commensurate with the factors under paragraph (5)(c) and the maximum number of consumers authorized to receive the financial product or service under this section.

(b) The office may approve a Financial Technology Sandbox application if one or more of the general laws enumerated in paragraph (a) currently prevent the innovative financial product or service from being made available to consumers and if all other requirements of this section are met.

(c) A licensee may conduct business through electronic means, including through the Internet or a software application.

(5) FINANCIAL TECHNOLOGY SANDBOX APPLICATION; STANDARDS FOR APPROVAL. —

(a) Before filing an application for licensure under this section, a substantially affected person may seek a declaratory statement pursuant to s. 120.565 regarding the applicability of a statute, a rule, or an agency order to the petitioner's particular set of circumstances or a variance or waiver of a rule pursuant to s. 120.542.

(b) Before making an innovative financial product or service available to consumers in the Financial Technology Sandbox, a business entity must file with the office an application for licensure under the Financial Technology Sandbox. The commission shall, by rule, prescribe the form and manner of the application and how the office will evaluate and apply each of the factors specified in paragraph (c).

1. The application must specify each general law enumerated in paragraph (4)(a) which currently prevents the innovative financial product or service from being made available to consumers and the reasons why those provisions of general law prevent the innovative financial product or service from being made available to consumers.

2. The application must contain sufficient information for the office to evaluate the factors specified in paragraph (c).

3. An application submitted on behalf of a business entity must include evidence that the business entity has authorized the person to submit the application on behalf of the business entity intending to make an innovative financial product or service available to consumers.

4. The application must specify the maximum number of consumers, which may not exceed the number of consumers specified in paragraph (f), to whom the applicant proposes to provide the innovative financial product or service.

5. The application must include a proposed draft of the statement or statements meeting the requirements of paragraph (6)(b) which the applicant proposes to provide to consumers.

(c) The office shall approve or deny in writing a Financial Technology Sandbox application within 60 days after receiving the completed application. The office and the applicant may jointly agree to extend the time beyond 60 days. Consistent with this section, the office may impose conditions on any approval. In deciding whether to approve or deny an application for licensure, the office must consider each of the following:

1. The nature of the innovative financial product or service proposed to be made available to consumers in the Financial Technology Sandbox, including all relevant technical details.

2. The potential risk to consumers and the methods that will be used to protect consumers and resolve complaints during the sandbox period.

3. The business plan proposed by the applicant, including company information, market analysis, and financial projections or pro forma financial statements, and evidence of the financial viability of the applicant.

4. Whether the applicant has the necessary personnel, adequate financial and technical expertise, and a sufficient plan to test, monitor, and assess the innovative financial product or service.

5. Whether any control person of the applicant, regardless of adjudication, has pled no contest to, has been convicted or found guilty of, or is currently under investigation for fraud, a state or federal securities violation, a property-based offense, or a crime involving moral turpitude or dishonest dealing, in which case the application to the Financial Technology Sandbox must be denied.

6. A copy of the disclosures that will be provided to consumers under paragraph (6)(b).

7. The financial responsibility of the applicant and any control person, including whether the applicant or any control person has a history of unpaid liens, unpaid judgments, or other general history of nonpayment of legal debts, including, but not limited to, having been the subject of a petition for bankruptcy under the United States Bankruptcy Code within the past 7 calendar years.

8. Any other factor that the office determines to be relevant.

(d) The office may not approve an application if:

1. The applicant had a prior Financial Technology Sandbox application that was approved and that related to a substantially similar financial product or service;

2. Any control person of the applicant was substantially involved in the development, operation, or management with another Financial Technology Sandbox applicant whose application was approved and whose application related to a substantially similar financial product or service; or

3. The applicant or any control person has failed to affirmatively demonstrate financial responsibility.

(e) Upon approval of an application, the office shall notify the licensee that the licensee is exempt from the provisions of general law enumerated in paragraph (4)(a) and the corresponding rule requirements during the sandbox period. The office shall post on its website notice of the approval of the application, a summary of the innovative financial product or service, and the contact information of the licensee.

(f) The office, on a case-by-case basis, shall specify the maximum number of consumers authorized to receive an innovative financial product or service, after consultation with the Financial Technology Sandbox applicant. The office may not authorize more than 15,000 consumers to receive the financial product or service until the licensee has filed the first report required under subsection (8). After the filing of that report, if the licensee demonstrates adequate financial capitalization, risk management processes, and management oversight, the office may authorize up to 25,000 consumers to receive the financial product or service.

(g) A licensee has a continuing obligation to promptly inform the office of any material change to the information provided under paragraph (b).

(h)1. The following information provided to and held by the office in a Financial Technology Sandbox application under this subsection is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. The reasons why a general law enumerated in paragraph (4)(a) prevents the innovative financial product or service from being made available to consumers.

b. The information provided for evaluation of the factors specified in subparagraphs (c)1. and 3.

c. The information provided for evaluation of whether the applicant has a sufficient plan to test, monitor, and assess the innovative financial product or service, under subparagraph (c)4.

However, the confidential and exempt information may be released to appropriate state and federal agencies for the purposes of investigation. Nothing in this paragraph shall be construed to prevent the office from disclosing a summary of the innovative financial product or service.

2. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

(6) OPERATION OF THE FINANCIAL TECHNOLOGY SANDBOX.—

(a) A licensee may make an innovative financial product or service available to consumers during the sandbox period.

(b)1. Before a consumer purchases, uses, receives, or enters into an agreement to purchase, use, or receive an innovative financial product or service through the Financial Technology Sandbox, the licensee must provide a written statement of all of the following to the consumer:

- a. The name and contact information of the licensee.
- b. That the financial product or service has been authorized to be made available to consumers for a temporary period by the office, under the laws of this state.
- c. That the state does not endorse the financial product or service.
- d. That the financial product or service is undergoing testing, may not function as intended, and may entail financial risk.
- e. That the licensee is not immune from civil liability for any losses or damages caused by the financial product or service.
- f. The expected end date of the sandbox period.
- g. The contact information for the office and notification that suspected legal violations, complaints, or other comments related to the financial product or service may be submitted to the office.
- h. Any other statements or disclosures required by rule of the commission which are necessary to further the purposes of this section.

2. The written statement under subparagraph 1. must contain an acknowledgment from the consumer, which must be retained for the duration of the sandbox period by the licensee.

(c) The office may enter into an agreement with a state, federal, or foreign regulatory agency to allow licensees under the Financial Technology Sandbox to make their products or services available in other jurisdictions. The commission shall adopt rules to implement this paragraph.

(d) The office may examine the records of a licensee at any time, with or without prior notice.

(7) EXTENSION AND CONCLUSION OF SANDBOX PERIOD. —

(a) A licensee may apply for one extension of the initial 24-month sandbox period for 12 additional months for a purpose specified in subparagraph (b)1. or subparagraph (b)2. A complete application for an extension must be filed with the office at least 90 days before the conclusion of the initial sandbox period. The office shall approve or deny the application for extension in writing at least 35 days before the conclusion of the initial sandbox period. In determining whether to approve or deny an application for extension of the sandbox period, the office must, at a minimum, consider the current status of the factors previously considered under paragraph (5)(c).

(b) An application for an extension under paragraph (a) must cite one of the following reasons as the basis for the application and must provide all relevant supporting information:

1. Amendments to general law or rules are necessary to offer the innovative financial product or service in this state permanently.
2. An application for a license that is required in order to offer the innovative financial product or service in this state permanently has been filed with the office and approval is pending.

(c) At least 30 days before the conclusion of the initial 24-month sandbox period or the extension, whichever is later, a licensee shall provide written notification to consumers regarding the conclusion of the initial sandbox period or the extension and may not make the financial product or service available to any new consumers after the conclusion of the initial sandbox period or the extension, whichever is later, until legal authority outside of the Financial Technology Sandbox exists for the licensee to make the financial product or service available to consumers. After the conclusion of the sandbox period or the extension, whichever is later, the business entity formerly licensed under the Financial Technology Sandbox may:

1. Collect and receive money owed to the business entity or pay money owed by the business entity, based on agreements with consumers made before the conclusion of the sandbox period or the extension.
2. Take necessary legal action.
3. Take other actions authorized by commission rule which are not inconsistent with this section.

(8) REPORT. — A licensee shall submit a report to the office twice a year as prescribed by commission rule. The report must, at a minimum, include financial reports and the number of consumers who have received the financial product or service.

(9) CONSTRUCTION.— A business entity whose Financial Technology Sandbox application is approved under this section:

(a) Is licensed under chapter 516, chapter 560, or both chapters 516 and 560, as applicable to the business entity's activities.

(b) Is subject to any provision of chapter 516 or chapter 560 not specifically excepted under paragraph (4)(a), as applicable to the business entity's activities, and must comply with such provisions.

(c) May not engage in activities authorized under part III of chapter 560, notwithstanding s. 560.204(2).

(10) VIOLATIONS AND PENALTIES.—

(a) A licensee who makes an innovative financial product or service available to consumers in the Financial Technology Sandbox remains subject to:

1. Civil damages for acts and omissions arising from or related to any innovative financial product or services provided or made available by the licensee or relating to this section.

2. All criminal and consumer protection laws and any other statute not specifically excepted under paragraph (4)(a).

(b)1. The office may, by order, revoke or suspend a licensee's approval to participate in the Financial Technology Sandbox if:

a. The licensee has violated or refused to comply with this section, any statute not specifically excepted under paragraph (4)(a), a rule of the commission that has not been waived, an order of the office, or a condition placed by the office on the approval of the licensee's Financial Technology Sandbox application;

b. A fact or condition exists that, if it had existed or become known at the time that the Financial Technology Sandbox application was pending, would have warranted denial of the application or the imposition of material conditions;

c. A material error, false statement, misrepresentation, or material omission was made in the Financial Technology Sandbox application; or

d. After consultation with the licensee, the office determines that continued testing of the innovative financial product or service would:

(I) Be likely to harm consumers; or

(II) No longer serve the purposes of this section because of the financial or operational failure of the financial product or service.

2. Written notice of a revocation or suspension order made under subparagraph 1. must be served using any means authorized by law. If the notice relates to a suspension, the notice must include any condition or remedial action that the licensee must complete before the office lifts the suspension.

(c) The office may refer any suspected violation of law to an appropriate state or federal agency for investigation, prosecution, civil penalties, and other appropriate enforcement action.

(d) If service of process on a licensee is not feasible, service on the office is deemed service on the licensee.

(11) RULES AND ORDERS.—

(a) The commission shall adopt rules to administer this section before approving any application under this section.

(b) The office may issue all necessary orders to enforce this section and may enforce these orders in accordance with chapter 120 or in any court of competent jurisdiction. These orders include, but are not limited to, orders for payment of restitution for harm suffered by consumers as a result of an innovative financial product or service.

**History.**—s. 12, ch. 2020-161; s. 1, ch. 2020-162.

#### **559.955 Home-based businesses; local government restrictions.—**

(1) Local governments may not enact or enforce any ordinance, regulation, or policy or take any action to license or otherwise regulate a home-based business in violation of this section.

(2) A home-based business that operates from a residential property as provided in subsection (3):

(a) May operate in an area zoned for residential use.

(b) May not be prohibited, restricted, regulated, or licensed in a manner that is different from other businesses in a local government's jurisdiction, except as otherwise provided in this section.

(c) Is only subject to applicable business taxes under chapter 205 in the county and municipality in which the home-based business is located.

(3) For purposes of this section, a business is considered a home-based business if it operates, in whole or in part, from a residential property and meets the following criteria:

(a) The employees of the business who work at the residential dwelling must also reside in the residential dwelling, except that up to a total of two employees or independent contractors who do not reside at the residential dwelling may work at the business. The business may have additional remote employees that do not work at the residential dwelling.

(b) Parking related to the business activities of the home-based business complies with local zoning requirements and the need for parking generated by the business may not be greater in volume than would normally be expected at a similar residence where no business is conducted. Local governments may regulate the use of vehicles or trailers operated or parked at the business or on a street right-of-way, provided that such regulations are not more stringent than those for a residence where no business is conducted. Vehicles and trailers used in connection with the business must be parked in legal parking spaces that are not located within the right-of-way, on or over a sidewalk, or on any unimproved surfaces at the residence. Local governments may regulate the parking or storage of heavy equipment at the business which is visible from the street or neighboring property. For purposes of this paragraph, the term "heavy equipment" means commercial, industrial, or agricultural vehicles, equipment, or machinery.

(c) As viewed from the street, the use of the residential property is consistent with the uses of the residential areas that surround the property. External modifications made to a residential dwelling to accommodate a home-based business must conform to the residential character and architectural aesthetics of the neighborhood. The home-based business may not conduct retail transactions at a structure other than the residential dwelling; however, incidental business uses and activities may be conducted at the residential property.

(d) The activities of the home-based business are secondary to the property's use as a residential dwelling.

(e) The business activities comply with any relevant local or state regulations with respect to signage and equipment or processes that create noise, vibration, heat, smoke, dust, glare, fumes, or noxious odors. Any local regulations on a business with respect to noise, vibration, heat, smoke, dust, glare, fumes, or noxious odors may not be more stringent than those that apply to a residence where no business is conducted.

(f) All business activities comply with any relevant local, state, and federal regulations with respect to the use, storage, or disposal of any corrosive, combustible, or other hazardous or flammable materials or liquids. Any local regulations on a business with respect to the use, storage, or disposal of any corrosive, combustible, or other hazardous or flammable materials or liquids may not be more stringent than those that apply to a residence where no business is conducted.

(4) Any adversely affected current or prospective home-based business owner may challenge any local government action in violation of this section. The prevailing party in a challenge may recover reasonable attorney fees and costs incurred in challenging or defending the action, including reasonable appellate attorney fees and costs.

(5) The application of this section does not supersede:

(a) Any current or future declaration or declaration of condominium adopted pursuant to chapter 718, cooperative document adopted pursuant to chapter 719, or declaration or declaration of covenant adopted pursuant to chapter 720.

(b) Local laws, ordinances, or regulations related to transient public lodging establishments, as defined in s. 509.013(4)(a)1., that are not otherwise preempted under chapter 509.

**History.**—s. 1, ch. 2021-202.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes.

