

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.
- (2) "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.
- (3) "Department" means the Department of Agriculture and Consumer Services.
- (4) "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.
- (5) "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.
- (6) "Prearranged travel, tourist-related services, or tour-guide services" includes, but is not limited to, car rentals, lodging, transfers, and sightseeing tours and all other such services which 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 prior to or after departure. These terms also include services for which a purchaser, whose legal residence is outside the United States, contracts or pays prior to departure.
- (7) "Purchaser" means the purchaser of, or person otherwise entitled to receive, prearranged travel, tourist-related services, or tour-guide services, for a fee or commission, or who has acquired a vacation certificate for personal use.

(8) "Registrant" means any person registered as a seller of travel.

(9) "Satisfactory consumer complaint history" means no unresolved complaints regarding prearranged travel, tourist-related services, or tour-guide 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.

(10) "Seller of travel" means any resident or nonresident person, firm, corporation, or business entity who offers for sale, directly or indirectly, at wholesale or retail, prearranged travel, tourist-related services, or tour-guide services for individuals or groups, including, but not limited to, vacation or tour packages, or vacation certificates in exchange for a fee, commission, or other valuable consideration. The term 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.

(11) "Vacation certificate" means any arrangement, plan, program, or vacation package that promotes, discusses, or discloses a destination or itinerary or type of travel, whereby a purchaser for consideration paid in advance 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, tourist-related services, or tour-guide 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.

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.

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, telephone numbers, and social security 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 the State of Florida, and occupational license 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, telephone numbers, and social security number; the business location and address of each branch office and full

name and address of the manager or supervisor; and proof of purchase of adequate bond or establishment of a letter of credit or certificate of deposit 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) Registration fees shall be \$300 per year per registrant. All amounts collected shall be deposited by the Treasurer 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.

(3) Each independent agent shall annually file an affidavit with the department prior to engaging in business in this state. This affidavit must include the independent agent's full name, legal business or trade name, mailing address, business address, telephone number, social security number, and the name or names and addresses 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. 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) Any person applying for or renewing a local occupational license to engage in business as a seller of travel must exhibit a current registration certificate from the department before the local occupational license may be issued or reissued.

(5) Each contract 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) Each advertisement of a seller of travel must include the phrase "Fla. Seller of Travel Reg. No. _____."

(7) No registration shall be 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. Nor shall the registration be valid for an affiliate of the seller of travel who engages in the prearranged travel and tourist business. A registration issued under this part shall not be assignable, and the seller of travel shall 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.

(8) Applications under this section shall be subject to the provisions of s. 120.60.

(9) The department may deny or refuse to renew 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:

(a) Has failed to meet the requirements for registration as provided in this part;

(b) Has been convicted of a crime involving fraud, dishonest dealing, or any other act of moral turpitude;

(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, dishonest dealing, or any violation of this part;

(d) Has pending against her or him any criminal, administrative, or enforcement proceedings in any jurisdiction, based upon conduct involving fraud, dishonest dealing, or any other act of moral turpitude; or

(e) 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 part.

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.

Note.--Former s. 599.927(2), (3).

559.929 Security requirements.--

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

(2) In lieu of the performance bond required in this part, a registrant or applicant for registration may establish a certificate of deposit or an irrevocable letter of credit in a Florida banking institution in the amount of the performance bond. The department shall be the beneficiary to this certificate of deposit, and the original shall be filed with the department. Any such letter of credit shall provide that the issuer will give the department not less than 120 days written notice prior to terminating or refusing to renew the letter of credit.

(3) The bond, letter of credit, or certificate of deposit shall be in favor of the department for the use and benefit of any traveler who is injured by the fraud, misrepresentation, breach of contract, financial failure, or violation of any provision of this part by the seller of travel. Such liability may be enforced either by proceeding in an administrative action

as specified in subsection (4) or by filing a judicial suit at law in a court of competent jurisdiction. However, in such court suit the bond, letter of credit, or certificate of deposit posted with the department shall not be amenable or subject to any judgment or other legal process issuing out of or from such court in connection with such lawsuit, but such bond, letter of credit, or certificate of deposit shall be amenable to and enforceable only by and through administrative proceedings before the department. It is the intent of the Legislature that such bond, letter of credit, or certificate of deposit shall be applicable and liable only for the payment of claims duly adjudicated by order of the department. The bond, letter of credit, or certificate of deposit shall be open to successive claims, but the aggregate amount may not exceed the amount of the bond, letter of credit, or certificate of deposit.

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

(5) In any situation in which the seller of travel is currently the subject of an administrative, civil, or criminal action by either the department, the Department of Legal Affairs, or the state attorney concerning compliance with this part, the right to proceed against the bond, letter of credit, or certificate of deposit, as provided in subsection (4), shall be suspended until after any enforcement action becomes final.

(6) The department may waive the bond, letter of credit, or certificate of deposit 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 Florida in compliance with this part, can demonstrate financial responsibility in the submission of audited financial statements or the prior year's federal income tax return, has not had any civil, criminal, or administrative action instituted against the seller of travel in the vacation and travel business by any governmental agency or any action involving fraud, theft, misappropriation of property, or moral turpitude, and has a satisfactory consumer complaint history with the department. Such waiver may be revoked if the seller of travel violates any provision of this part.

History.--s. 5, ch. 95-314; s. 251, ch. 96-410; s. 33, ch. 97-250.

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.

- (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.

(17) Within 10 working days after receipt of any materials submitted subsequent to filing an initial registration application or any annual renewal thereof, the department shall determine whether such materials are adequate to meet the requirements of this section. The department shall notify the seller of travel that materials submitted are in substantial compliance, or shall notify the seller of travel of any specific deficiencies. If the department fails to notify the seller of travel of its determination within the period specified in this subsection, the materials shall be deemed in compliance; however, the failure of the department to send notification in either case will not relieve the seller of travel from the duty of complying with this section. 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.

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) It shall be unlawful for any seller of travel to fail to provide each person solicited with a contract which shall include the following:

- (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."

"IF YOU DECIDE TO CANCEL, YOU MUST NOTIFY THE SELLER IN WRITING OF YOUR INTENT TO CANCEL BY RETURNING THE CERTIFICATE AND SENDING NOTICE TO: (NAME OF SELLER) AT (SELLER'S ADDRESS)."

(i) In immediate proximity to the statement required in paragraph (h), the following statement in boldfaced type of a size of 10 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.

History.--s. 1, ch. 93-107; s. 5, ch. 95-314; s. 834, ch. 97-103.

Note.--Former s. 559.927(7).

559.933 Vacation certificate cancellation and refund provisions.--It shall be unlawful for any seller of travel or assignee:

(1) To fail or refuse to honor a purchaser's vacation certificate request to cancel if such request is made:

(a) Within 30 days from 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 shall 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) To fail to 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) If the purchaser has received any benefits pursuant to the vacation certificate, to fail to 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) Where any purchaser has received confirmation of reservations in advance and is refused accommodations upon arrival, to fail to procure comparable alternate accommodations for the purchaser in the same city at no expense to the purchaser, or to

fail to fully compensate the purchaser for the room rate incurred in securing comparable alternate accommodations himself or herself.

(5) To collect more than the full contract price from the purchaser.

(6) To sell, assign, or otherwise transfer any interest in a seller of travel business, or to 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) To fail to fulfill the terms of a vacation certificate within 18 months of 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.

Note.--Former s. 559.927(8).

559.9335 Violations.--It is a violation of this part for any 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 or establishment of a letter of credit or certificate of deposit 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.

(4) Knowingly to sell or market any number of 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 require, request, encourage, or suggest, directly or indirectly, that payment for the right to obtain a travel contract, certificate, or vacation package must be by credit card authorization or to otherwise announce a preference for that method of payment over any other when no correct and true explanation for such preference is likewise stated.

(7) 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.

(8) Knowingly to sell or market admissions tickets to theme or amusement parks, sporting events, concerts, theater productions, or other entertainment events, in excess of \$1 above the retail admission price charged by the original seller of said tickets, unless said tickets are part of a prearranged travel package which includes transportation or accommodations services, are being resold on behalf of the original seller of said tickets, and the seller of travel provides either a Florida seller of travel registration number or an Airlines Reporting Corporation agency code number in each advertisement that is placed in newspapers circulated primarily in Florida. When any original seller of tickets provides a seller of travel with tickets in bulk, the seller of travel shall be deemed to be reselling the tickets on behalf of the original seller.

(9) To misrepresent in any manner the purchaser's right to cancel and to receive an appropriate refund or reimbursement as provided by this part.

(10) 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.

(11) 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.
- (12) To fail to inform a purchaser of a nonrefundable cancellation policy prior to the seller of travel accepting any fee, commission, or other valuable consideration.
- (13) 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."
- (14) To fail to honor and comply with all provisions of the vacation certificate regarding the purchaser's rights, benefits, and privileges thereunder.
- (15)(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.
- (16) 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.
- (17) 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.
- (18) 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.
- (19) 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.
- (20) To sell a vacation certificate to any purchaser who is ineligible for its use.
- (21) To sell any number of vacation certificates exceeding the number disclosed pursuant to this part.
- (22) 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.

(23) To do any other act which constitutes fraud, misrepresentation, or failure to disclose a material fact.

(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.

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 Land Sales, Condominiums, 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 and who do not offer vacation certificates; or
 - (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.
- (3) Sections 559.928, 559.929, 559.9295, 559.931, and 559.932 shall also 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) In the event 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) shall be liable for the actions of the affiliate, subject to the remedies provided in ss. 559.9355 and 559.936.
 - (b) In the event the department is unable to locate an affiliate, the related seller of travel exempt pursuant to subsection (2) shall be fully liable for the actions of the affiliate, subject to the remedies provided in ss. 559.9355 and 559.936.
 - (c) In order to obtain an exemption under this subsection, the affiliate shall file an affidavit of exemption on a form prescribed by the department. The affidavit of exemption shall be executed by a person who exercises identical control over the seller of travel exempt pursuant to subsection (2) and the affiliate. Failure to file an affidavit of

exemption prior to engaging in seller of travel activities shall subject the affiliate to the remedies provided in ss. 559.9355 and 559.936.

(d) 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.

(e) This subsection shall not apply to:

1. An affiliate that independently qualifies for another exemption under s. 559.935.
2. An affiliate that sells, or offers for sale, vacation certificates.

(f) For purposes of this section, an "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 the seller of travel does not have a satisfactory consumer complaint history, has been convicted of a crime involving fraud, theft, 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, 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 occupational license 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 an occupational license. In any civil or criminal proceeding, the burden of proving an exemption under this section shall be on the person claiming such exemption.

A letter of exemption issued by the department shall not be used in, and shall have 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.

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 any of the provisions 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 not to exceed \$5,000 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 for a period of time, 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.

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 of up to \$5,000 for each violation of this part.

(3) 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.

(4) 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.

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

(6) Upon motion of the department in any action brought under this part, the court may make appropriate orders, including appointment of a master 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.

Note.--Former s. 559.927(14).

559.937 Criminal penalties.--Any person or business which violates this part commits a misdemeanor of the first 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.

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 occupational tax levied pursuant to chapter 205.