1988

Session Law 88-363

Florida Senate & House of Representatives

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<table>
<thead>
<tr>
<th>H/S Committee</th>
<th>Year</th>
<th>Record Series: Folder Title, etc.</th>
<th>Location Cite</th>
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*Senate/House Journals*

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<th>Date</th>
<th>#pp</th>
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<th>Date</th>
<th>#pp</th>
</tr>
</thead>
</table>

Tape Recordings

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<th>Committee/subcommittee</th>
<th>Date</th>
<th># Tapes</th>
<th>Location Cite</th>
<th>#pp</th>
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</table>

Other Documentation

Record series title, folder title, etc. | Location Cite | #pp |
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Previous versions: SB 368, HB 356

LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT
A bill to be entitled
An act relating to Business Regulation;
creating s. 559.927, F.S., defining the term
"sellers of travel"; requiring such sellers of
travel to annually register with the Division
of Hotels and Restaurants of the Department of
Business Regulation; providing registration
fees; requiring performance bonds; providing
for suspension or revocation; providing
penalties; providing for review and repeal;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 559.927, Florida Statutes, is
created to read:

559.927 Sellers of travel registration; enforcement;
violation; penalties.--

1. (a) For the purposes of this section, the term:
1. "Sellers of travel" means any retail travel agency
or other retail travel business, maintaining a business
location or branch office in the State of Florida, other than
a common carrier, hotel, motel, auto rental, cruise line,
restaurant or attraction, which prearranges travel, or
tourist-related or tour guide services for individuals or
groups, including, but not limited to transportation, hotel
and motel accommodations, sight-seeing or tours.
2. "Prearranged travel or tourist-related or tour
guide services" means those services for which a tourist
contracts or pays prior to departure.

CODING: Words stricken are deletions; words underlined are additions.
(2)(a) Each seller of travel shall annually register with the Division of Hotels and Restaurants, the seller of travel providing its legal business name, mailing address, and business location; the names, addresses, and social security numbers of all owners; and proof of purchase of adequate bond as required in this section. A certificate evidencing proof of registration shall be issued by the division and must be prominently displayed in the seller of travel's primary place of business.

(b) Each advertisement or contract of a seller of travel shall include the phrase "(NAME OF FIRM) is registered and bonded with the State of Florida as a Seller of Travel. Registration No. ___."

(3) Registration fees shall be in an amount equal to the costs of the division to implement and enforce the provisions of this section. However, such fee shall not be greater than $300 per year per registrant. All amounts collected shall be deposited by the Treasurer to the credit of the Hotel and Restaurant Trust Fund pursuant to s. 509.072.

(4)(a) The division may suspend or revoke the certificate of any seller of travel that has operated or is operating in violation of any of the provisions of this section or the rules of the division. Such seller of travel shall not engage in business while the certificate is revoked or suspended. The division is authorized to proceed by injunction to prevent any seller of travel from doing business subject to the provisions of this section until a performance bond or certificate of deposit is posted with the division.

(b) The division may employ investigators and conduct investigations of violations of this section.

The Department of Business Regulation may adopt reasonable rule necessary to carry out the provisions of section.

(5)(a) It is a violation of this section for any

Conduct business as a seller of travel without
with the division.

Conduct business as a seller of travel without
a performance bond in the amount set by the which amount shall be no less than $10,000 nor more $25,000. The surety on such bond shall be a surety authorized to do business in the state, and the bond conditioned on the performance of the contracted

In lieu of the performance bond required in this registrant or applicant for registration may certificate of deposit in a Florida banking in the amount of the performance bond, which of deposit shall be available for satisfying The Division of Hotels and Restaurants shall be made to this certificate of deposit; and such funds thereby shall not be encumbered or pledged in any nor withdrawn, without prior written approval of the Any encumbrance or pledging of such funds without prior division approval is void.

b. Any claim against the bond or certificate of deposit shall be made in writing to the division within 30 days after an alleged violation of a contract and shall be disposed of pursuant to s. 120.57. In the alternative, claims against a bond or certificate of deposit may be made in the circuit court or county court in the county where the

CODING: Words stricken are deletions; words underlined are additions.
(c) The Department of Business Regulation may adopt any reasonable rule necessary to carry out the provisions of this section.

(5)(a) It is a violation of this section for any person to:

1. Conduct business as a seller of travel without registering with the division.

2. Conduct business as a seller of travel without purchase of a performance bond in the amount set by the division, which amount shall be no less than $10,000 nor more than $25,000. The surety on such bond shall be a surety company authorized to do business in the state, and the bond shall be conditioned on the performance of the contracted services.

a. In lieu of the performance bond required in this section, a registrant or applicant for registration may establish a certificate of deposit in a Florida banking institution in the amount of the performance bond, which certificate of deposit shall be available for satisfying claims. The Division of Hotels and Restaurants shall be made a coparty to this certificate of deposit; and such funds represented thereby shall not be encumbered or pledged in any fashion, nor withdrawn, without prior written approval of the division. Any encumbrance or pledging of such funds without prior division approval is void.

b. Any claim against the bond or certificate of deposit shall be made in writing to the division within 30 days after an alleged violation of a contract and shall be disposed of pursuant to s. 120.57. In the alternative, claims against a bond or certificate of deposit may be made in the circuit court or county court in the county where the
registrant maintains an office or where prearranged tourist-related services were rendered or were to be rendered.

3. Knowingly make any false statement, representation, or certification in any application or registration form required by division rule.

4. Violate or fail to comply with any rule or order adopted or issued by the division pursuant to its lawful authority in carrying out the intent of this section.

(b)1. The division may impose a civil penalty of up to $5,000 for a violation described in paragraph (a) by appropriate administrative action as provided by rule. All amounts collected shall be deposited by the Treasurer to the credit of the Hotel and Restaurant Trust Fund pursuant to s. 509.072.

2. The division may institute a civil action in a court of competent jurisdiction to recover any penalties or damages allowed in this section and for injunctive relief to enforce compliance with this section or any rule or order of the division.

3. Whoever commits a violation described in paragraph (a) is liable to the state for any damage caused and for civil penalties imposed by the division or by a court of competent jurisdiction.

(6) Any person or business which violates this section or any rule adopted under this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Section 559.927, Florida Statutes, as created by this act, is repealed on January 1, 1995, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.
Section 3. This act shall take effect January 1, 1985, unless Congress enacts legislation which continues the federal accredited travel agency systems, and unless a federal agency assumes jurisdiction over the accredited travel agency system prior to January 1, 1985.

HOUSE SUMMARY

Requires travel agencies to register annually with the Division of Hotels and Restaurants of the Department of Business Regulation. Requires posting of a performance bond or alternative certificate of deposit. Provides for civil and misdemeanor penalties. See bill for details.
A bill to be entitled
An act relating to Business Regulation;
creating section 559.927, Florida Statutes,
defining the term "sellers of travel";
requiring such sellers of travel to annually
register with the Division of Hotels and
Restaurants of the Department of Business
Regulation; providing registration fees;
requiring performance bonds; providing for
suspension or revocation; providing penalties;
providing for review and repeal in accordance
with the Regulatory Sunset Act; providing an
effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 559.927, Florida Statutes, is
created to read:

559.927 Sellers of travel registration; enforcement;
violation; penalties. --

(1)(a) For the purposes of this section, the term:
1. "Sellers of travel" means any retail travel agency
or other retail travel business, maintaining a business
location or branch office in the State of Florida, other than
a common carrier, hotel, motel, auto rental, cruise line,
restaurant or attraction, which prearranges travel, or
tourist-related or tour guide services for individuals or
groups, including but not limited to transportation, hotel and
motel accommodations, sight-seeing or tours.

CODING: Words stricken are deletions; words underlined are additions.
2. "Prearranged travel or tourist-related or tour guide services" means those services for which a tourist contracts or pays prior to departure.

(2)(a) Each seller of travel shall annually register with the Division of Hotels and Restaurants, the seller of travel providing its legal business name, mailing address, and business location; the names, addresses, and social security numbers of all owners; and proof of purchase of adequate bond as required in this section. A certificate evidencing proof of registration shall be issued by the division and must be prominently displayed in the seller of travel's primary place of business.

(b) Each advertisement or contract of a seller of travel shall include the phrase "[NAME OF FIRM] is registered and bonded with the State of Florida as a Seller of Travel. Registration No. _____."

(3) Registration fees shall be in an amount equal to the costs of the division to implement and enforce the provisions of this section. However, such fee shall not be greater than $300 per year per registrant. All amounts collected shall be deposited by the Treasurer to the credit of the Hotel and Restaurant Trust Fund pursuant to s. 509.072.

(4)(a) The Division may suspend or revoke the certificate of any seller of travel that has operated or is operating in violation of any of the provisions of this section or the rules of the division. Such seller of travel shall not engage in business while the certificate is revoked or suspended. The division is authorized to proceed by injunction to prevent any seller of travel from doing business subject to the provisions of this section until a performance bond or certificate of deposit is posted with the division.

CODING: Words **struck** are deletions; words **underlined** are additions.
(b) The division may employ investigators and conduct investigations of violations of this section.

(c) The Department of Business Regulation may adopt any reasonable rule necessary to carry out the provisions of this section.

(5)(a) It is a violation of this section for any person to:

1. Conduct business as a seller of travel without registering with the division.

2. Conduct business as a seller of travel without purchase of a performance bond in the amount set by the division, which amount shall be no less than $10,000 nor more than $25,000. The surety on such bond shall be a surety company authorized to do business in the state, and the bond shall be conditioned on the performance of the contracted services.

   a. In lieu of the performance bond required in this section, a registrant or applicant for registration may establish a certificate of deposit in a Florida banking institution in the amount of the performance bond, which certificate of deposit shall be available for satisfying claims. The Division of Hotels and Restaurants shall be made a coparty to this certificate of deposit; and such funds represented thereby shall not be encumbered or pledged in any fashion, nor withdrawn, without prior written approval of the division. Any encumbrance or pledging of such funds without prior division approval is void.

   b. Any claim against the bond or certificate of deposit shall be made in writing to the division within 30 days after an alleged violation of a contract and shall be disposed of pursuant to s. 120.57. In the alternative, claims...
against a bond or certificate of deposit may be made in the
circuit court or county court in the county where the
registrant maintains an office or where prearranged tourist-
related services were rendered or were to be rendered.

3. Knowingly make any false statement, representation,
or certification in any application or registration form
required by division rule.

4. Violate or fail to comply with any rule or order
adopted or issued by the division pursuant to its lawful
authority in carrying out the intent of this section.

(b) The division may impose a civil penalty of up to
$5,000 for a violation described in paragraph (a) by
appropriate administrative action as provided by rule. All
amounts collected shall be deposited by the Treasurer to the
credit of the Hotel and Restaurant Trust Fund pursuant to s.
509.072.

2. The division may institute a civil action in a
court of competent jurisdiction to recover any penalties or
damages allowed in this section and for injunctive relief to
enforce compliance with this section or any rule or order of
the division.

3. Whoever commits a violation described in paragraph
(a) is liable to the state for any damage caused and for civil
penalties imposed by the division or by a court of competent
jurisdiction.

(5) Any person or business which violates this section
or any rule adopted under this section is guilty of a
misdemeanor of the second degree, punishable as provided in s.
775.082, s. 775.083, or s. 775.084.

Section 2. Section 559.927, Florida Statutes, as
created by this act, is repealed on January 1, 1995, and shall

CODING: Words stricken are deletions; words underlined are additions.
be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 3. This act shall take effect January 1, 1985, unless Congress enacts legislation which continues the federal accredited travel agency systems, and unless a federal agency assumes jurisdiction over the accredited travel agency system prior to January 1, 1985.

CODING: Words stricken are deletions; words underlined are additions.
A BILL relating to
(Brief statement of subject)

Business Regulation;

By

[Signature]
(Chairman or Vice Chairman)

and

[Signature]

(Repeating signature below if also a sponsor)

Form H 66
(Additional Co-sponsors on reverse side)
A bill to be entitled

An act relating to Business Regulation;
creating s. 559.927, F.S., defining the term
"sellers of travel"; requiring such sellers of
tavel to annually register with the Division
of Hotels and Restaurants of the Department of
Business Regulation; providing registration
fees; requiring performance bonds; providing
for suspension or revocation; providing
penalties; providing for review and repeal;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 559.927, Florida Statutes, is
created to read:

559.927 Sellers of travel registration; enforcement;
violation; penalties.—

(1)(a) For the purposes of this section, the term:

1. "Sellers of travel" means any retail travel agency
or other retail travel business, maintaining a business
location or branch office in the State of Florida, other than
a common carrier, hotel, motel, auto rental, cruise line,
restaurant or attraction, which prearranges travel, or
tourist-related or tour guide services for individuals or
groups, including, but not limited to transportation, hotel
and motel accommodations, sight-seeing or tours.

2. "Prearranged travel or tourist-related or tour
guide services" means those services for which a tourist
contracts or pays prior to departure.

CODING: Words striken are deletions; words underlined are additions.
(2)(a) Each seller of travel shall annually register with the Division of Hotels and Restaurants, the seller of travel providing its legal business name, mailing address, and business location; the names, addresses, and social security numbers of all owners; and proof of purchase of adequate bond as required in this section. A certificate evidencing proof of registration shall be issued by the division and must be prominently displayed in the seller of travel's primary place of business.

(b) Each advertisement or contract of a seller of travel shall include the phrase "[NAME OF FIRM] is registered and bonded with the State of Florida as a Seller of Travel. Registration No. _____ ."

(3) Registration fees shall be in an amount equal to the costs of the division to implement and enforce the provisions of this section. However, such fee shall not be greater than $300 per year per registrant. All amounts collected shall be deposited by the Treasurer to the credit of the Hotel and Restaurant Trust Fund pursuant to s. 509.072.

(4)(a) The division may suspend or revoke the certificate of any seller of travel that has operated or is operating in violation of any of the provisions of this section or the rules of the division. Such seller of travel shall not engage in business while the certificate is revoked or suspended. The division is authorized to proceed by injunction to prevent any seller of travel from doing business subject to the provisions of this section until a performance bond or certificate of deposit is posted with the division.

(b) The division may employ investigators and conduct investigations of violations of this section.

CODING: Words stricken are deletions; words underlined are additions.
(c) The Department of Business Regulation may adopt any reasonable rule necessary to carry out the provisions of this section.

(5)(a) It is a violation of this section for any person to:

1. Conduct business as a seller of travel without registering with the division.

2. Conduct business as a seller of travel without purchase of a performance bond in the amount set by the division, which amount shall be no less than $10,000 nor more than $25,000. The surety on such bond shall be a surety company authorized to do business in the state, and the bond shall be conditioned on the performance of the contracted services.

   a. In lieu of the performance bond required in this section, a registrant or applicant for registration may establish a certificate of deposit in a Florida banking institution in the amount of the performance bond, which certificate of deposit shall be available for satisfying claims. The Division of Hotels and Restaurants shall be made a coparty to this certificate of deposit; and such funds represented thereby shall not be encumbered or pledged in any fashion, nor withdrawn, without prior written approval of the division. Any encumbrance or pledging of such funds without prior division approval is void.

   b. Any claim against the bond or certificate of deposit shall be made in writing to the division within 30 days after an alleged violation of a contract and shall be disposed of pursuant to s. 120.57. In the alternative, claims against a bond or certificate of deposit may be made in the circuit court or county court in the county where the

CODING: Words \textit{struck}en are deletions; words \textit{underlined} are additions.
1. The registrant maintains an office or where prearranged tourist-related services were rendered or were to be rendered.

3. Knowingly make any false statement, representation, or certification in any application or registration form required by division rule.

4. Violate or fail to comply with any rule or order adopted or issued by the division pursuant to its lawful authority in carrying out the intent of this section.

(b)1. The division may impose a civil penalty of up to $5,000 for a violation described in paragraph (a) by appropriate administrative action as provided by rule. All amounts collected shall be deposited by the Treasurer to the credit of the Hotel and Restaurant Trust Fund pursuant to s. 509.072.

2. The division may institute a civil action in a court of competent jurisdiction to recover any penalties or damages allowed in this section and for injunctive relief to enforce compliance with this section or any rule or order of the division.

3. Whoever commits a violation described in paragraph (a) is liable to the state for any damage caused and for civil penalties imposed by the division or by a court of competent jurisdiction.

(6) Any person or business which violates this section or any rule adopted under this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Section 559.927, Florida Statutes, as created by this act, is repealed on January 1, 1995, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

CODING: Words stricken are deletions; words underlined are additions.
Section 3. This act shall take effect January 1, 1985, unless Congress enacts legislation which continues the federal accredited travel agency systems, and unless a federal agency assumes jurisdiction over the accredited travel agency system prior to January 1, 1985.

CODING: Words stricken are deletions; words underlined are additions.
A bill to be entitled
An act relating to Business Regulation;
creating s. 559.927, F.S., providing
definitions; requiring sellers of travel to
annually register with the Division of Hotels
and Restaurants of the Department of Business
Regulation; providing registration fees;
requiring performance bonds; providing for
suspension or revocation; providing penalties;
providing exceptions; preempting local
government control over sellers of travel;
providing for review and repeal; providing an
effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 559.927, Florida Statutes, is
created to read:

559.927 Sellers of travel, registration; enforcement;
violation; penalties; exceptions; preemption.--
(1) For the purposes of this section, the term:
(a) "Sellers of travel" means any resident or nonresident person, firm or corporation maintaining a business location or branch office in the State of Florida, who offers for sale, directly or indirectly, at wholesale or retail, prearranged travel or tourist-related services for individuals or groups in exchange for a fee, commission or other valuable consideration.
(b) "Prearranged travel or tourist-related services" includes, but is not limited to, car rentals, lodging, transfers, 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
traveler contracts or pays prior to departure.

(c) "Offer for sale" means directly or indirectly
holding out an ability 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.

(d) "Division" means the Division of Hotels and
Restaurants of the Department of Business Regulation.
(e) "Registrant" means any person registered as a
seller of travel pursuant to this act.
(f) "Traveler" means the purchaser of, or person
otherwise entitled to receive, prearranged travel or tourist-
related services.

(2)(a) Each seller of travel shall annually register
with the Division of Hotels and Restaurants, the seller of
travel providing its legal business name, mailing address, and
business location; the names, addresses, and social security
numbers of all owners; and proof of purchase of adequate bond
as required in this section. A certificate evidencing proof
of registration shall be issued by the division and must be
prominently displayed in the seller of travel's primary place
of business.

(b) Each advertisement or contract of a seller of
travel shall include the phrase "(NAME OF FIRM) is registered
and bonded with the State of Florida as a Seller of Travel.
Registration No. ____ ."

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(3) Registration fees shall be in an amount equal to the costs of the division to implement and enforce the provisions of this section. However, such fee shall not be greater than $300 per year per registrant. All amounts collected shall be deposited by the Treasurer to the credit of the Hotel and Restaurant Trust Fund pursuant to s. 509.072.

(4)(a) The division may suspend or revoke the certificate of any seller of travel that has operated or is operating in violation of any of the provisions of this section or the rules of the division. Such seller of travel shall not engage in business while the certificate is revoked or suspended. The division is authorized to proceed by injunction to prevent any seller of travel from doing business subject to the provisions of this section until a performance bond or certificate of deposit is posted with the division.

(b) The division may employ investigators and conduct investigations of violations of this section.

(c) The Department of Business Regulation may adopt any reasonable rule necessary to carry out the provisions of this section.

(5)(a) It is a violation of this section for any person to:

1. Conduct business as a seller of travel without registering with the division.

2. Conduct business as a seller of travel without purchase of a performance bond in the amount set by the division, which amount shall be no less than $10,000 nor more than $25,000. The surety on such bond shall be a surety company authorized to do business in the state, and the bond shall be conditioned on the performance of the contracted services.

CODING: Words struck are deletions; words underlined are additions.
a. In lieu of the performance bond required in this section, a registrant or applicant for registration may establish a certificate of deposit in a Florida banking institution in the amount of the performance bond, which certificate of deposit shall be available for satisfying claims. The Division of Hotels and Restaurants shall be made a coparty to this certificate of deposit, and such funds represented thereby shall not be encumbered or pledged in any fashion, nor withdrawn, without prior written approval of the division. Any encumbrance or pledging of such funds without prior division approval is void.

b. Any claim against the bond or certificate of deposit shall be made in writing to the division within 30 days after an alleged violation of a contract and shall be disposed of pursuant to s. 120.57. In the alternative, claims against a bond or certificate of deposit may be made in the circuit court or county court in the county where the registrant maintains an office or where prearranged tourist-related services were rendered or were to be made.

c. The bond or certificate of deposit shall be payable to the state for the use and benefit of any traveler who is injured by the fraud, misrepresentation, or financial failure of the seller of travel, and conditioned that the registrant will pay any judgment recovered by any traveler in any suit for actual damages, including reasonable attorney's fees, resulting from a cause of action involving the registrant's activities as a seller of travel. This bond shall be open to successive claims but the aggregate amount may not exceed the penalty of the bond.
3. Knowingly make any false statement, representation, or certification in any application or registration form required by division rule.

4. Violate or fail to comply with any rule or order adopted or issued by the division pursuant to its lawful authority in carrying out the intent of this section.

(b)1. The division may impose a civil penalty of up to $5,000 for a violation described in paragraph (a) by appropriate administrative action as provided by rule. All amounts collected shall be deposited by the Treasurer to the credit of the Hotel and Restaurant Trust Fund pursuant to s. 509.072.

2. The division may institute a civil action in a court of competent jurisdiction to recover any penalties or damages allowed in this section and for injunctive relief to enforce compliance with this section or any rule or order of the division.

3. Whoever commits a violation described in paragraph (a) is liable to the state for any damage caused and for civil penalties imposed by the division or by a court of competent jurisdiction.

6. Any person or business which violates this section or any rule adopted under this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

7. The provisions of this act shall not apply to:

(a) A bona fide employee of a seller of travel who is engaged solely in the business of 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

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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 local sightseeing tours;

(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; or

(g) A person engaged in making travel arrangements for himself, a financially related entity or employees thereof, for which no fee, commission, or other valuable consideration is received, directly or indirectly, from the supplier of such travel arrangements.

(f8) No municipality, county or other political subdivision of this state shall have authority, after the effective date of this act, to levy or collect any registration fee or tax, as a regulatory measure, or to require the registration in any manner of any seller of travel who is registered and complies with all applicable provisions of this act, unless same is provided for by special or general act of the Legislature. Any ordinance, resolution, or regulation as enacted by any municipality, county or other political subdivision of this state which is in conflict with

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any provision of this act shall be deemed preempted by this act.

Section 2. Section 559.927, Florida Statutes, as created by this act, is repealed on January 1, 1996, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 3. This act shall take effect October 1, 1986.

*************************************************************************

HOUSE SUMMARY

Requires sellers of travel to register annually with the Division of Hotels and Restaurants of the Department of Business Regulation. Defines "sellers of travel" and "prearranged travel or tourist-related services" for purposes of the act. Sets registration fees and specifies violations of the act. Requires posting of a performance bond or alternative certificate of deposit. Provides for civil and misdemeanor penalties. Provides for state preemption of local government control over sellers of travel. Provides for future review and repeal of the act.

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A bill to be entitled

An act relating to Business Regulation;
creating s. 559.927, F.S., providing
definitions; requiring sellers of travel to
annually register with the Division of Hotels
and Restaurants of the Department of Business
Regulation; providing registration fees;
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suspension or revocation; providing penalties;
providing exceptions; preempting local
government control over sellers of travel;
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effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 559.927, Florida Statutes, is
created to read:

559.927 Sellers of travel; registration; enforcement;
violation; penalties; exceptions; preemption;--

(a) For the purposes of this section, the term:

"Sellers of travel" means any resident or
nonresident person, firm or corporation maintaining a business
location or branch office in the State of Florida, who offers
for sale, directly or indirectly, at wholesale or retail,
prearranged travel or tourist-related services for individuals
or groups in exchange for a fee, commission or other valuable
consideration.

"Prearranged travel or tourist-related services" includes, but is not limited to, car rentals, lodging,
transfers, sightseeing tours and all other such services which

CODING: Words in struck-through type are deletions from existing law, words underlined are additions.
are reasonably related to air, sea, rail, motor coach, or
other medium of transportation or accommodations for which a
traveler contracts or pays prior to departure.

(c) "Offer for sale" means directly or indirectly
holding out an ability 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.

(d) "Division" means the Division of Hotels and
Restaurants of the Department of Business Regulation.

(e) "Registrant" means any person registered as a
seller of travel pursuant to this act.

(f) "Traveler" means the purchaser of, or person
otherwise entitled to receive, prearranged travel or tourist-
related services.

(2)(a) Each seller of travel shall annually register
with the Division of Hotels and Restaurants, the seller of
tavel providing its legal business name, mailing address, and
business location; the names, addresses, and social security
numbers of all owners; and proof of purchase of adequate bond
as required in this section. A certificate evidencing proof
of registration shall be issued by the division and must be
prominently displayed in the seller of travel’s primary place
of business.

(b) Each advertisement or contract of a seller of
tavel shall include the phrase "(NAME OF FIRM) is registered
with the State of Florida as a Seller of Travel, Registration
No._______.

CODING: Words stricken are deletions; words underlined are additions.
(3) Registration fees shall be in an amount equal to the costs of the division to implement and enforce the provisions of this section. However, such fee shall not be greater than $300 per year per registrant. All amounts collected shall be deposited by the Treasurer to the credit of the Hotel and Restaurant Trust Fund pursuant to s. 509.072. No funds collected under this section shall be expended by the department in connection with any expenses incurred with the regulation and enforcement of any other regulation or licensing under any other section.

(4)(a) The division may suspend or revoke the certificate of any seller of travel that has operated or is operating in violation of any of the provisions of this section or the rules of the division. Such seller of travel shall not engage in business while the certificate is revoked or suspended. The division is authorized to proceed by injunction to prevent any seller of travel from doing business subject to the provisions of this section until a performance bond, letter of credit, or certificate of deposit is posted with the division.

(b) The division may employ investigators and conduct investigations of violations of this section.

(c) The Department of Business Regulation may adopt any reasonable rule necessary to carry out the provisions of this section.

(5)(a) It is a violation of this section for any person to:

1. Conduct business as a seller of travel without registering with the division.
2. Conduct business as a seller of travel without purchase of a performance bond in the amount set by the
1. In lieu of the performance bond required in this section, a registrant or applicant for registration may establish a letter of credit or certificate of deposit in a Florida banking institution in the amount of the performance bond, which letter of credit or certificate of deposit shall be available for satisfying claims. The Division of Hotels and Restaurants shall be made a coparty to this letter of credit or certificate of deposit, and such funds represented thereby shall not be encumbered or pledged in any fashion, nor withdrawn, without prior written approval of the division. Any encumbrance or pledging of such funds without prior division approval is void.

2. Any claim against the bond, letter of credit, or certificate of deposit shall be made in writing to the division within 30 days after an alleged violation of a contract and shall be disposed of pursuant to s. 120.57. In the alternative, claims against a bond, letter of credit, or certificate of deposit may be made in the circuit court or county court where the registrant maintains an office or where prearranged tourist-related services were rendered or were to be made.

3. The bond or certificate of deposit shall be payable to the state for the use and benefit of any traveler who is injured by the fraud, misrepresentation, or financial failure of the seller of travel, and conditioned that the registrant will pay any judgment recovered by any traveler in any suit.

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for actual damages, including reasonable attorney's fees,
resulting from a cause of action involving the registrant's
activities as a seller of travel. This bond shall be open to
successive claims, but the aggregate amount may not exceed the
penalty of the bond.

3. Knowingly make any false statement, representation,
or certification in any application or registration form
required by division rule.

4. Violate or fail to comply with any rule or order
adopted or issued by the division pursuant to its lawful
authority in carrying out the intent of this section.

(b)1. The division may impose a civil penalty of up to
$5,000 for a violation described in paragraph (a) by
appropriate administrative action as provided by rule. All
amounts collected shall be deposited by the Treasurer to the
credit of the Hotel and Restaurant Trust Fund pursuant to s.
509.072.

2. The division may institute a civil action in a
court of competent jurisdiction to recover any penalties or
damages allowed in this section and for injunctive relief to
enforce compliance with this section or any rule or order of
the division.

3. Whoever commits a violation described in paragraph
(a) is liable to the state for any damage caused and for civil
penalties imposed by the division or by a court of competent
jurisdiction.

(6) Any person or business which violates this section
or any rule adopted under this section is guilty of a
misdemeanor of the second degree, punishable as provided in s.
775.082, s. 775.083, or s. 775.084.

(7) The provisions of this act shall not apply to:

CODING: Words stricken are deletions; words underlined are additions.
(a) A bona fide employee of a seller of travel who is engaged solely in the business of 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;

(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; or

(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, dealer, or a financially related entity.

(h) Persons directly issuing airline tickets who have contracted with the Airlines Reporting Corporation or the Passenger Network Service Corporation.
(1) Persons who have contracted with flag or domestic carriers certified pursuant to 14 C.F.R. part 121 and who directly issue airline tickets on behalf of those carriers.

However, a person covered under paragraph (h) or paragraph (i) must annually register with the Division of Hotels and Restaurants by providing to the division the legal business name, mailing address, and business location of such person; and the names and addresses of all proprietors of the business or, if a corporation, the name and mailing address of the corporate headquarters office and the names and mailing addresses of the corporate officers and pay a registration fee not to exceed $100. Every person registered pursuant to the provisions of this section shall include their registration number in all advertisements, contracts or other printed material offered to the public.

(8) No municipality, county or other political subdivision of this state shall have authority, after the effective date of this act, to levy or collect any registration fee or tax, as a regulatory measure, or to require the registration in any manner of any seller of travel who is registered and complies with all applicable provisions of this act, unless same is provided for by special or general act of the Legislature. Any ordinance, resolution, or regulation as enacted by any municipality, county or other political subdivision of this state which is in conflict with any provision of this act shall be deemed preempted by this act. The provisions of this subsection shall not apply to any local occupational tax levied pursuant to chapter 205.

Section 2. Section 559.927, Florida Statutes, as created by this act, is repealed on January 1, 1996, and shall

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be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 3. This act shall take effect October 1, 1986.

CODING: Words stricken are deletions; words underlined are additions.
I. SUMMARY:

A. Present Situation:

The Division of Hotels and Restaurants of the Department of Business Regulation regulates tour operators under section 509.925, Florida Statutes. A "receptive tour operator" is any person or business, other than a hotel or motel already registered with the division, who prearranges tourist-related or tour guide services for individuals or groups visiting the state, whose point of origin or departure is a foreign country.

B. Effect of Proposed Changes:

The bill would create s. 559.927, F. S., and require annual registration and regulation of specified sellers of travel with the Division of Hotels and Restaurants. A certificate evidencing proof of registration would be issued by the division and displayed in the seller of travel's primary place of business. The division may suspend or revoke the certificate if the seller of travel operates in violation of the provisions of the bill. The bill provides for state preemption of local government control over sellers of travel.

The bill further provides that the sellers of travel must purchase a performance bond in an amount set by the division, to be no less than $10,000 nor more than $25,000. The bond would be conditioned upon the performance of the contracted services. In lieu of purchasing a performance bond, the seller of travel may establish a certificate of deposit, to which the division will be a coparty. Claims against the bond or certificate of deposit shall be made within 30 days of an alleged violation of a contract, or claims may be made in circuit or county court. The division may impose a civil penalty of up to $5,000 for a
violation of the bill. Any person or business which violates provisions of the bill is guilty of a second degree misdemeanor.

II. ECONOMIC IMPACT:

A. Public:

There are approximately 2,288 "sellers of travel" in Florida. Registration fees, not to exceed $300 per year per registrant, will be charged to sellers of travel required to be registered with the division.

B. Government:

The division recommends the establishment of a bureau for regulation under this bill. The bureau would consist of a bureau chief, administrative secretary located in Tallahassee, and nine investigator specialist II positions located in five district offices throughout the state. The division estimates expenses for the first 3 years as a result of the bill at $440,160; $379,276; and $396,820, respectively. The revenues projected for the first 3 years are $482,600; $506,400; and $516,400, respectively.

III. STATE COMPREHENSIVE PLAN IMPACT:

None

IV. COMMENTS:

None

V. AMENDMENTS:

None

VI. PREPARED BY: Dee Hopkins Crusoe

VII. STAFF DIRECTOR: Craig A. Meyer

STANDARD FORM - 1/24/86
I. SUMMARY:

A. Present Situation:

The Division of Hotels and Restaurants of the Department of Business Regulation regulates tour operators under section 559.925, Florida Statutes. A "receptive tour operator" is any person or business, other than a hotel or motel already registered with the division, who prearranges tourist-related or tour guide services for individuals or groups visiting the state, whose point of origin or departure is a foreign country.

B. Effect of Proposed Changes:

The bill would create s. 559.927, F. S., and require annual registration and regulation of specified sellers of travel with the Division of Hotels and Restaurants. A certificate evidencing proof of registration would be issued by the division and displayed in the seller of travel's primary place of business. The division may suspend or revoke the certificate if the seller of travel operates in violation of the provisions of the bill. The bill provides for state preemption of local government control over sellers of travel.

The bill further provides that the sellers of travel must purchase a performance bond in an amount set by the division, to be no less than $10,000 nor more than $25,000. The bond would be conditioned upon the performance of the contracted services. In lieu of purchasing a performance bond, the seller of travel may establish a certificate of deposit, to which the division will be a coparty. Claims against the bond or certificate of deposit must be made with the division within 30 days of an alleged violation of a contract, or claims may be made in circuit or county court. The division may impose a civil penalty of up to $5,000 under the bill. Any person or business which violates
certain provisions of the bill is guilty of a second degree misdemeanor.

The bill provides for the exception of certain persons and businesses from the provisions of the bill.

II. ECONOMIC IMPACT:

A. Public:

There are approximately 2,388 "sellers of travel" in Florida. Registration fees, not to exceed $300 per year per registrant, will be charged to sellers of travel required to be registered with the division.

B. Government:

The division recommends the establishment of a bureau for regulation under this bill. The bureau would consist of a bureau chief, administrative secretary located in Tallahassee, and nine investigator specialist II positions located in five district offices throughout the state. The division estimates expenses for the first 3 years as a result of the bill at $440,160; $379,276; and $396,820; respectively. The revenues projected for the first 3 years are $482,600; $506,400; and $516,400; respectively.

III. STATE COMPREHENSIVE PLAN IMPACT:

None

IV. COMMENTS:

None

V. AMENDMENTS:

Amendment 1 - Provides that the provisions of the bill shall not apply to (1) persons who make internal travel arrangements; (2) persons directly issuing airline tickets who have contracted with the Airlines Reporting Corporation or the International Airlines Travel Agent Network; (3) persons who have contracted with flag or domestic carriers and who directly issue airline tickets on behalf of those carriers. However, the latter two categories must register annually with the division, pay a registration fee not to exceed $100, and include their registration number in all printed material offered to the public.
The exemptions noted in the above paragraph would significantly diminish the yield from registration fees collected by the division. The division estimates that the exclusions would eliminate all but approximately 355 sellers of travel. Only those 355 would be required to pay a fee of up to $300. The remaining 2,033 would only be required to pay a registration fee of up to $100. The combination of registration fees would result in a possible total of $309,800.

VI. PREPARED BY: Dee Hopkins Crusoe

VII. STAFF DIRECTOR: Craig A. Meyer
A bill to be entitled
An act relating to Business Regulation;
creating s. 559.927, F.S., providing
definitions; requiring sellers of travel to
annually register with the Division of Hotels
and Restaurants of the Department of Business
Regulation; providing registration fees;
requiring performance bonds; providing for
suspension or revocation; providing penalties;
providing exceptions; preempting local
government control over sellers of travel,
providing for review and repeal; providing an
effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 559.927, Florida Statutes, is
created to read.

559.927 Sellers of travel, registration; enforcement;
violation; penalties, exceptions; preemption.--

(1) For the purposes of this section, the term:

(a) "Sellers of travel" means any resident or
nonresident person, firm or corporation maintaining a business
location or branch office in the State of Florida, who offers
for sale, directly or indirectly, at wholesale or retail,
prearranged travel or tourist-related services for individuals
or groups in exchange for a fee, commission or other valuable
consideration.

(b) "Prearranged travel or tourist-related services"
includes, but is not limited to, car rentals, lodging,
transfers, sightseeing tours and all other such services which

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are reasonably related to air, sea, rail, motor coach, or other medium of transportation or accommodations for which a traveler contracts or pays prior to departure.

(c) "Offer for sale" means directly or indirectly holding out an ability 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.

(d) "Division" means the Division of Hotels and Restaurants of the Department of Business Regulation.

(e) "Registrant" means any person registered as a seller of travel pursuant to this act.

(f) "Traveler" means the purchaser of, or person otherwise entitled to receive, prearranged travel or tourist-related services.

(2)(a) Each seller of travel shall annually register with the Division of Hotels and Restaurants, the seller of travel providing its legal business name, mailing address, and business location; the names, addresses, and social security numbers of all owners; and proof of purchase of adequate bond as required in this section. A certificate evidencing proof of registration shall be issued by the division and must be prominently displayed in the seller of travel's primary place of business.

(b) Each advertisement or contract of a seller of travel shall include the phrase "(NAME OF FIRM) is registered and bonded with the State of Florida as a Seller of Travel. Registration No. _____."
(3) Registration fees shall be in an amount equal to the costs of the division to implement and enforce the provisions of this section. However, such fee shall not be greater than $300 per year per registrant. All amounts collected shall be deposited by the Treasurer to the credit of the Hotel and Restaurant Trust Fund pursuant to s. 509.072.

(4)(a) The division may suspend or revoke the certificate of any seller of travel that has operated or is operating in violation of any of the provisions of this section or the rules of the division. Such seller of travel shall not engage in business while the certificate is revoked or suspended. The division is authorized to proceed by injunction to prevent any seller of travel from doing business subject to the provisions of this section until a performance bond or certificate of deposit is posted with the division.

(b) The division may employ investigators and conduct investigations of violations of this section.

(c) The Department of Business Regulation may adopt any reasonable rule necessary to carry out the provisions of this section.

(5)(a) It is a violation of this section for any person to:

1. Conduct business as a seller of travel without registering with the division.

2. Conduct business as a seller of travel without purchase of a performance bond in the amount set by the division, which amount shall be no less than $10,000 nor more than $25,000. The surety on such bond shall be a surety company authorized to do business in the state, and the bond shall be conditioned on the performance of the contracted services.

CODING: Words struck are deletions; words underlined are additions.
a. In lieu of the performance bond required in this section, a registrant or applicant for registration may establish a certificate of deposit in a Florida banking institution in the amount of the performance bond, which certificate of deposit shall be available for satisfying claims. The Division of Hotels and Restaurants shall be made a coparty to this certificate of deposit, and such funds represented thereby shall not be encumbered or pledged in any fashion, nor withdrawn, without prior written approval of the division. Any encumbrance or pledging of such funds without prior division approval is void.

b. Any claim against the bond or certificate of deposit shall be made in writing to the division within 30 days after an alleged violation of a contract and shall be disposed of pursuant to s. 120.57. In the alternative, claims against a bond or certificate of deposit may be made in the circuit court or county court in the county where the registrant maintains an office or where prearranged tourist-related services were rendered or were to be made.

c. The bond or certificate of deposit shall be payable to the state for the use and benefit of any traveler who is injured by the fraud, misrepresentation, or financial failure of the seller of travel, and conditioned that the registrant will pay any judgment recovered by any traveler in any suit for actual damages, including reasonable attorney's fees, resulting from a cause of action involving the registrant's activities as a seller of travel. This bond shall be open to successive claims, but the aggregate amount may not exceed the penalty of the bond.

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3. Knowingly make any false statement, representation, or certification in any application or registration form required by division rule.

4. Violate or fail to comply with any rule or order adopted or issued by the division pursuant to its lawful authority in carrying out the intent of this section.

   (b)1. The division may impose a civil penalty of up to $5,000 for a violation described in paragraph (a) by appropriate administrative action as provided by rule. All amounts collected shall be deposited by the Treasurer to the credit of the Hotel and Restaurant Trust Fund pursuant to s. 509.072.

2. The division may institute a civil action in a court of competent jurisdiction to recover any penalties or damages allowed in this section and for injunctive relief to enforce compliance with this section or any rule or order of the division.

3. Whoever commits a violation described in paragraph (a) is liable to the state for any damage caused and for civil penalties imposed by the division or by a court of competent jurisdiction.

(6) Any person or business which violates this section or any rule adopted under this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) The provisions of this act shall not apply to:

   (a) A bona fide employee of a seller of travel who is engaged solely in the business of 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...
transitio"n 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 local sightseeing tours;

(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; or

(g) A person engaged in making travel arrangements for himself, a financially related entity or employees thereof, for which no fee, commission, or other valuable consideration is received, directly or indirectly, from the supplier of such travel arrangements.

(8) No municipality, county or other political subdivision of this state shall have authority, after the effective date of this act, to levy or collect any registration fee or tax, as a regulatory measure, or to require the registration in any manner of any seller of travel who is registered and complies with all applicable provisions of this act, unless same is provided for by special or general act of the Legislature. Any ordinance, resolution, or regulation as enacted by any municipality, county or other political subdivision of this state which is in conflict with

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any provision of this act shall be deemed preempted by this act

Section 2. Section 559.927, Florida Statutes, as created by this act, is repealed on January 1, 1996, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 3. This act shall take effect October 1, 1986.

*** House Summary

Requires sellers of travel to register annually with the Division of Hotels and Restaurants of the Department of Business Regulation. Defines "sellers of travel" and "prearranged travel or tourist-related services" for purposes of the act. Sets registration fees and specifies violations of the act. Requires posting of a performance bond or alternative certificate of deposit. Provides for civil and misdemeanor penalties. Provides for state preemption of local government control over sellers of travel. Provides for future review and repeal of the act.

Coding: Words strikeen are deletions; words underlined are additions.
A bill to be entitled
An act relating to Business Regulation;
creating s. 559.927, F.S., providing
definitions; requiring sellers of travel to
annually register with the Division of Hotels
and Restaurants of the Department of Business
Regulation; providing registration fees,
requiring posting of security; providing for
suspension or revocation; providing penalties;
providing exceptions; preempting local
government control over sellers of travel;
providing for review and repeal; providing an
effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 559.927, Florida Statutes, is
created to read:

559.927 Sellers of travel; registration; enforcement;
violation; penalties; exceptions; preemption.--

(1) For the purposes of this section, the term:

(a) "Sellers of travel" means any resident or
nonresident person, firm or corporation maintaining a business
location or branch office in the State of Florida, who offers
for sale, directly or indirectly, at wholesale or retail,
prearranged travel or tourist-related services for individuals
or groups in exchange for a fee, commission or other valuable
consideration.

(b) "Prearranged travel or tourist-related services"
includes, but is not limited to, car rentals, lodging,
transfers, 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
traveler contracts or pays prior to departure.

(c) "Offer for sale" means directly or indirectly
holding out an ability 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.

(d) "Division" means the Division of Hotels and
Restaurants of the Department of Business Regulation.

(e) "Registrant" means any person registered as a
seller of travel pursuant to this act.

(f) "Traveler" means the purchaser of, or person
otherwise entitled to receive, prearranged travel or tourist-
related services.

(2)(a) Each seller of travel shall annually register
with the Division of Hotels and Restaurants, the seller of
travel providing its legal business name, mailing address, and
business location; the names, addresses, and social security
numbers of all owners; and proof of purchase of adequate bond
as required in this section. A certificate evidencing proof
of registration shall be issued by the division and must be
prominently displayed in the seller of travel's primary place
of business.

(b) Each advertisement or contract of a seller of
travel shall include the phrase "(NAME OF FIRM) is registered
and bonded with the State of Florida as a Seller of Travel.
Registration No. _____."

CODING: Words stricken are deletions; words underlined are additions.
(3) Registration fees shall be in an amount equal to the costs of the division to implement and enforce the provisions of this section. However, such fee shall not be greater than $300 per year per registrant. All amounts collected shall be deposited by the Treasurer to the credit of the Hotel and Restaurant Trust Fund pursuant to s. 509.072.

(4)(a) The division may suspend or revoke the certificate of any seller of travel that has operated or is operating in violation of any of the provisions of this section or the rules of the division. Such seller of travel shall not engage in business while the certificate is revoked or suspended. The division is authorized to proceed by injunction to prevent any seller of travel from doing business subject to the provisions of this section until a performance bond, letter of credit, or certificate of deposit is posted with the division.

(b) The division may employ investigators and conduct investigations of violations of this section.

(c) The Department of Business Regulation may adopt any reasonable rule necessary to carry out the provisions of this section.

(5)(a) It is a violation of this section for any person to:

1. Conduct business as a seller of travel without registering with the division.

2. Conduct business as a seller of travel without purchase of a performance bond in the amount set by the division, which amount shall be no less than $10,000 nor more than $25,000. The surety on such bond shall be a surety company authorized to do business in the state, and the bond

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shall be conditioned on the performance of the contracted services.

a. In lieu of the performance bond required in this section, a registrant or applicant for registration may establish a letter of credit or certificate of deposit in a Florida banking institution in the amount of the performance bond, which letter of credit or certificate of deposit shall be available for satisfying claims. The Division of Hotels and Restaurants shall be made a coparty to this letter of credit or certificate of deposit, and such funds represented thereby shall not be encumbered or pledged in any fashion, nor withdrawn, without prior written approval of the division. Any encumbrance or pledging of such funds without prior division approval is void.

b. Any claim against the bond, letter of credit, or certificate of deposit shall be made in writing to the division within 30 days after an alleged violation of a contract and shall be disposed of pursuant to s. 120.57. In the alternative, claims against a bond, letter of credit, or certificate of deposit may be made in the circuit court or county court in the county where the registrant maintains an office or where prearranged tourist-related services were rendered or were to be made.

c. The bond, letter of credit, or certificate of deposit shall be payable to the state for the use and benefit of any traveler who is injured by the fraud, misrepresentation, or financial failure of the seller of travel, and conditioned that the registrant will pay any judgment recovered by any traveler in any suit for actual damages, including reasonable attorney's fees, resulting from a cause of action involving the registrant's activities as a
seller of travel. This bond shall be open to successive
claims, but the aggregate amount may not exceed the penalty of
the bond.

3. Knowingly make any false statement, representation,
or certification in any application or registration form
required by division rule.

4. Violate or fail to comply with any rule or order
adopted or issued by the division pursuant to its lawful
authority in carrying out the intent of this section.

(b)1. The division may impose a civil penalty of up to
$5,000 for a violation described in paragraph (a) by
appropriate administrative action as provided by rule. All
amounts collected shall be deposited by the Treasurer to the
credit of the Hotel and Restaurant Trust Fund pursuant to s.
509.072.

2. The division may institute a civil action in a
court of competent jurisdiction to recover any penalties or
damages allowed in this section and for injunctive relief to
enforce compliance with this section or any rule or order of
the division.

3. Whoever commits a violation described in paragraph
(a) is liable to the state for any damage caused and for civil
penalties imposed by the division or by a court of competent
jurisdiction.

(6) Any person or business which violates this section
or any rule adopted under this section is guilty of a
misdemeanor of the second degree, punishable as provided in s.
775.082, s. 775.083, or s. 775.084.

(7) The provisions of this act shall not apply to:
(a) A bona fide employee of a seller of travel who is
engaged solely in the business of his employer;

CODING: Words stricken are deletions; words underlined are additions.
(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 local sightseeing tours;

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

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

(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, dealer, or a financially related entity.

(h) Persons directly issuing airline tickets who have contracted with the Airlines Reporting Corporation or the Passenger Network Service Corporation.

CODING: Words strucken are deletions; words underlined are additions.
(1) Persons who have contracted with flag or domestic air carriers certified pursuant to 14 C.F.R. part 121 and who directly issue airline tickets on behalf of those carriers.

However, a person covered under paragraph (h) or paragraph (l) must annually register with the Division of Hotels and Restaurants by providing to the division the legal business name, mailing address, and business location of such person; and the names and addresses of all proprietors of the business or, if a corporation, the name and mailing address of the corporate office and the names and mailing addresses of the corporate officers.

(8) No municipality, county or other political subdivision of this state shall have authority, after the effective date of this act, to levy or collect any registration fee or tax, as a regulatory measure, or to require the registration in any manner of any seller of travel who is registered and complies with all applicable provisions of this act, unless same is provided for by special or general act of the Legislature. Any ordinance, resolution, or regulation as enacted by any municipality, county or other political subdivision of this state which is in conflict with any provision of this act shall be deemed preempted by this act.

Section 2. Section 559.927, Florida Statutes, as created by this act, is repealed on January 1, 1996, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 3. This act shall take effect October 1, 1986.

CODING: Words stricken are deletions; words underlined are additions
STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR Senate Bill 148

CS/SB 148 provides additional exceptions, modifies registration requirements, and authorizes the establishment of a letter of credit in lieu of other specified security.
I. SUMMARY:

A. Present Situation:

The Division of Hotel and Restaurants, Department of Business Regulation, currently regulates a limited part of the tour industry under section 559.925, Florida Statutes, relating to receptive tour operators. This statute was enacted in 1982 and was designed to protect foreign tourists from unethical practices of tour operators who fail to fulfill their commitments in arranging for food, lodging, and entertainment which has been prepaid by the tourist.

B. Effect of Proposed Changes:

The bill would extend regulation to specified sellers of travel by requiring annual registration with the Division of Hotels and Restaurants. The bill further provides for the sellers of travel to purchase a performance bond in an amount set by the division, to be no less than $10,000 nor more than $25,000. Rather than purchasing a performance bond, the seller of travel may establish a certificate of deposit, to which the division will be a party. If an individual is damaged by a seller of travel, a judgment for resulting damages must be sought in circuit court or county court. If the judgment is unsatisfied, the bond or certificate of deposit shall be paid through the state to the injured party for actual damages and reasonable attorney's fees. Apparently, in addition to filing a claim in court, an individual must also file a claim with the division within 30 days after an alleged violation of the bill in order to protect the ability to receive payment from the bond or certificate of deposit.

The division may impose civil penalties up to $5,000 for violating provisions relating to the maintenance of a certificate of deposit, and institute civil action to recover damages or penalties incurred as a result from enforcing this section or rule of the division. Any person violating this section is guilty of a second degree misdemeanor.

The bill would take effect on October 1, 1986, and would Sunset on January 1, 1996.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Registration fees, not to exceed $300 per year per registrant, will be charged to sellers of travel who are required to register with the division.

B. Government:
The division recommends the establishment of a Bureau for regulating the tourist industry. The Bureau would consist of a Bureau Chief, Administrative Secretary located in Tallahassee, and nine Investigator Specialist II positions located in five district offices throughout the state. The division estimates that expenses for the first 3 years as a result of the bill will be $440,160, $379,276, and $396,820, respectively. The revenues projected for the first 3 years are $482,600, $506,400, and $516,400, respectively.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.
STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 148

CS/SB 148 provides additional exceptions, modifies registration requirements, and authorizes the establishment of a letter of credit in lieu of other specified security.

Committee on Commerce

Staff Director

(FILE TWO COPIES WITH THE SECRETARY OF THE SENATE)
I. SUMMARY:

A. Present Situation:

The Division of Hotels and Restaurants, Department of Business Regulation, currently regulates a limited part of the tour industry under section 559.925, Florida Statutes, relating to receptive tour operators. This statute was enacted in 1982 and was designed to protect foreign tourists from unethical practices of tour operators who fail to fulfill their commitments in arranging for food, lodging, and entertainment which has been prepaid by the tourist.

B. Effect of Proposed Changes:

The bill would extend regulation to specified sellers of travel by requiring annual registration with the Division of Hotels and Restaurants. The bill further provides for the sellers of travel to purchase a performance bond in an amount set by the division, to be no less than $10,000 nor more than $25,000. Rather than purchasing a performance bond, the seller of travel may establish a letter of credit or a certificate of deposit, to which the division will be a party. If an individual is damaged by a seller of travel, a judgment for resulting damages must be sought in circuit court or county court. If the judgment is unsatisfied, the bond or certificate of deposit shall be paid through the state to the injured party for actual damages and reasonable attorney's fees. Apparently, in addition to filing a claim in court, an individual must also file a claim with the division within 30 days after an alleged violation of the bill in order to protect the ability to receive payment from the bond or certificate of deposit.

Subsection (7) of the new s.559.927, F.S., created by the bill, exempts from the provisions of the act certain sellers of travel. Of those sellers exempted, only those who directly issue airline tickets who have contracted with the Airlines Reporting Corporation or the Passenger Network Service Corporation and those who have contracted with flag or domestic air carriers certified pursuant to 14 C.F.R. part 121 and who directly issue tickets on behalf of those carriers would be required to register with the division.

The division may impose civil penalties up to $5,000 for violating provisions relating to the maintenance of a certificate of deposit, and institute civil action to recover damages or penalties incurred as a result from enforcing this section or rule of the division. Any person violating this section is guilty of a second degree misdemeanor.
The bill would take effect on October 1, 1986, and would Sunset on January 1, 1996.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Registration fees, not to exceed $100 per year per registrant, will be charged to sellers of travel who are required to register with the division.

B. Government:

The division recommends the establishment of a Bureau for regulating the tourist industry. The Bureau would consist of a Bureau Chief, Administrative Secretary located in Tallahassee, and nine Investigator Specialist II positions located in five district offices throughout the state. The division estimates that expenses for the first 3 years as a result of the bill will be $440,160, $379,276, and $396,820, respectively. The revenues projected for the first 3 years are $482,600, $506,400, and $516,400, respectively.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.
Journals
of the
SENATE
State of Florida

TABLE OF CONTENTS

Regular Session .......................... April 8 through June 7, 1986

Special Session B .......................... June 19, 1986

Lobbyists Registration and Withdrawals  ........ October 22, 1984 through July 16, 1986
requirements for employment purposes. Nothing herein shall preclude the State Board of Education from approving a plan which authorizes more than 30 areas of certification.

(6) The Education Standards Commission shall submit a progress report annually to the Legislature concerning the efficacy of subject area councils as provided in this section.

(Renumber subsequent sections.)

Amendment 13—On page 31, between lines 6 and 7, insert:

Section 4 Subsection (5) of section 236.02, Florida Statutes, is amended to read:

(5) SALARY SCHEDULES—Expend funds for salaries in accordance with a salary schedule or schedules adopted by the school board in accordance with the provisions of law and regulations of the state board. Notwithstanding any other provisions of law to the contrary, salary schedules for a school year which are negotiated under authority of chapter 447 shall not be finalised or ratified until after the effective date of the General Appropriations Act for that school year.

(Renumber subsequent section.)

Senator Margolis moved that the Senate reconsider the vote by which Amendment 13 was adopted. The motion failed. The vote was:

Yeas—10

Nays—17

Beard
Childers, D
Childers, W D
Crenshaw
Deratany

Frank

Mr President

Crawford

Crawford

Gradle

Hill

Jennings

Kiser

Kiser

Meek

Meck

McPherson

Myers

Plummer

Scott

Yeats

10

Senator Peterson moved the following amendments which were adopted:

Amendment 16—In title, on page 1, line 13, after the semicolon (;) insert, amending § 236.02, F.S., providing for agreement on salary schedules;

Amendment 18—In title, on page 1, line 13, after the semicolon (;) insert, creating § 231.548, F.S., requiring subject area councils covering teacher certification areas to serve as pilot projects; providing duties of the Education Standards Commission; providing duties of subject area councils, requiring the State Board of Education to approve a plan for reducing the number of areas of teacher certification, requiring an annual progress report;

Amendment 17—In title, on page 1, line 13, after the semicolon (;) insert, amending § 229.551, F.S., revising criteria under which a student in a job preparatory program is to be considered a "placement" for purposes of computing placement rates of vocational education programs, providing for follow-up procedures to determine placement status, amending § 230.645, F.S., classifying certain postsecondary students as residents for tuition purposes;

Senators Peterson and Hill offered the following amendment which was moved by Senator Peterson and adopted:

Amendment 18—In title, on page 1, line 13, after the semicolon (;) insert, requiring school districts to report annually to the Department of Education regarding the number of teachers in the district teaching outside their field of certification, requiring notice to parents or guardians of students in classes taught by such teachers, requiring each school district to have a plan to assist teachers teaching out-of-field, requiring that certain teachers be given priority, requiring an annual report to the Legislature.

On motion by Senator Peterson, by two-thirds vote SB 727 as amended was read the third time by title, passed, ordered engrossed and then certified to the House. The vote on passage was:

Yeas—27

Nays—None

Senator Crawford presiding

Senator Weinstein moved the following amendment which failed:

Amendment 1—On page 1, line 17, strike everything after the enacting clause and insert:

Section 1 Section 559.927, Florida Statutes, is created to read:

559.927 Sellers of travel, registration, enforcement; violation, penalties, exceptions; preemption—

(1) For the purposes of this section, the term "Sellers of travel" means any resident or nonresident person, firm or corporation maintaining a business location or branch office in the...
State of Florida, who offers for sale, directly or indirectly, at wholesale or retail, prearranged travel or tour-related services for individuals or groups in exchange for a fee, commission or other valuable consideration

(b) "Prearranged travel or tour-related services" includes, but is not limited to, car rentals, lodging, transfers, sightseeing tours and all other services which are reasonably related to air, sea, rail, motor coach, or other medium of transportation or accommodations for which a traveler contracts or pays prior to departure

(c) "Offer for sale" means directly or indirectly holding out an ability 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

(d) "Division" means the Division of Hotels and Restaurants of the Department of Business Regulation

(e) "Registrant" means any person registered as a seller of travel pursuant to this act

(f) "Traveler" means the purchaser of, or person otherwise entitled to receive, prearranged travel or tour-related services

(2)(a) Each seller of travel shall annually register with the Division of Hotels and Restaurants, the seller of travel providing its legal business name, mailing address, and business location, the names, addresses, and social security numbers of all owners, and proof of purchase of adequate bond as required in this section. A certificate evidencing proof of registration shall be issued by the division and must be prominently displayed in the seller of travel's primary place of business

(b) Each advertisement or contract of a seller of travel shall include the phrase "(NAME OF FIRM) is registered with the State of Florida as a Seller of Travel. Registration No "

(3) Registration fees shall be in an amount equal to the costs of the division to implement and enforce the provisions of this section. However, such fee shall not be greater than $500 per year per registrant. All amounts collected shall be deposited by the Treasurer to the credit of the Hotel and Restaurant Trust Fund pursuant to s 509.072. No funds collected under this section shall be expended by the department in connection with any expense incurred with the regulation and enforcement of any other regulation or licensing under any other section

(4)(a) The division may suspend or revoke the certificate of any seller of travel that has operated or is operating in violation of any of the provisions of this section or the rules of the division. Such seller of travel shall not remain in business while the certificate is revoked or suspended. The division is authorized to proceed by injunction to prevent any seller of travel from doing business subject to the provisions of this section until a performance bond, letter of credit, or certificate of deposit is posted with the division

(b) The division may employ investigators and conduct investigations of violations of this section

(c) The Department of Business Regulation may adopt any reasonable rule necessary to carry out the provisions of this section

(5)(a) It is a violation of this section for any person to

1. Conduct business as a seller of travel without registering with the division.

2. Conduct business as a seller of travel without purchase of a performance bond in the amount set by the division, which amount shall be no less than $10,000 nor more than $25,000. The surety on such bond shall be a surety company authorized to do business in the state, and the bond shall be conditioned on the performance of the contracted services

(a) In lieu of the performance bond required in this section, a registrant or applicant for registration may establish a letter of credit or certificate of deposit in a Florida banking institution in the amount of the performance bond, which letter of credit or certificate of deposit shall be available for satisfying claims. The Division of Hotels and Restaurants shall be made a party to this letter of credit or certificate of deposit, and such funds represented thereby shall not be encumbered or pledged in any fashion, nor withdrawn, without prior written approval of the division. Any encumbrance or pledging of such funds without prior division approval is void

(b) Any claim against the bond, letter of credit, or certificate of deposit shall be made in writing to the division within 30 days after an alleged violation of a contract and shall be disposed of pursuant to s 120.57. In the alternative, claims against a bond, letter of credit, or certificate of deposit may be made in the circuit court or county court where the registrant maintains an office or where prearranged tour-related services were rendered or were to be made

c. The bond or certificate of deposit shall be payable to the state for the use and benefit of any traveler who is injured by the fraud, misrepresentation, or financial failure of the seller of travel, and conditioned that the registrant will pay any judgment recovered by any traveler in any suit for actual damages, including reasonable attorney's fees, resulting from a cause of action involving the registrant's activities as a seller of travel. This bond shall be open to successive claims, but the aggregate amount may not exceed the penalty of the bond

3. Knowingly make any false statement, representation, or certification in any application or registration form required by division rule.

4. Violate or fail to comply with any rule or order adopted or issued by the division pursuant to its lawful authority in carrying out the intent of this section

(b) The division may adopt a civil penalty of up to $5,000 for a violation described in paragraph (a) by appropriate administrative action as provided by rule. All amounts collected shall be deposited by the Treasurer to the credit of the Hotel and Restaurant Trust Fund pursuant to s 509.072

2. The division may institute a civil action in a court of competent jurisdiction to recover any penalties or damages allowed in this section and for injunctive relief to enforce compliance with this section or any rule or order of the division

3. Whoever commits a violation described in paragraph (a) is liable to the state for any damage caused and for civil penalties imposed by the division or by a court of competent jurisdiction

(6) Any person or business which violates this section or any rule adopted under this section is guilty of a misdemeanor of the second degree, punishable as provided in s 775.082, s 775.083, or s 775.084

(7) The provisions of this act shall not apply to

(a) A bona fide employee of a seller of travel who is engaged solely in the business of 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,

(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, or

(g) Persons who make travel arrangements for themselves, for their employees or agents, for distributors, franchisers, 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, franchiser, dealer, or a financially related entity,

(h) Persons directly issuing airline tickets who have contracted with the Airlines Reporting Corporation or the Passenger Network Service Corporation.

(i) Persons who have contracted with flag or domestic carriers certified pursuant to 14 CFR part 121 and who directly issue airline tickets on behalf of those carriers
However, a person covered under paragraph (h) or paragraph (i) must annually register with the Division of Hotels and Restaurants by providing to the division the legal business name, mailing address, and business location of such person, and the names and addresses of all proprietors of the business or, if a corporation, the name and mailing address of the corporate headquarters office and the names and mailing addresses of the corporate officers and pay a registration fee not to exceed $100 Every person registered pursuant to the provisions of this section shall include their registration number in all advertisements, contracts or other printed material offered to the public.

(8) No municipality, county or other political subdivision of this state shall have authority, after the effective date of this act, to levy or collect any registration fee or tax, as a regulatory measure, or to require the registration in any manner of any seller of travel who is registered and complies with all applicable provisions of this act, unless same is provided for by special or general act of the Legislature. Any ordinance, resolution, or regulation as enacted by any municipality, county or other political subdivision of this state which is in conflict with any provision of this act shall be deemed preempted by this act. The provisions of this subsection shall not apply to any local occupational tax levied pursuant to chapter 205

Section 2. Section 559.927, Florida Statutes, as created by this act, is repealed on January 1, 1996, and shall be reviewed by the Legislature pursuant to s 11.61, Florida Statutes.

Section 3. This act shall take effect October 1, 1986

Further consideration of SB 148 was deferred

Consideration of Resolution

On motion by Senator Gersten—

SM 1064—A memorial urging the Congress of the United States to disclose the details of the Kennedy-Khrushchev Accord and take certain actions with respect thereto.

WHEREAS, in 1962, the President of the United States of America negotiated an agreement with the Chairman of the Council of Ministers of the Union of Soviet Socialist Republics, commonly referred to as the Kennedy-Khrushchev Accord, and

WHEREAS, some of the pertinent and surrounding details of the Kennedy-Khrushchev Accord have never been disclosed to the people of the United States of America, and

WHEREAS, the Kennedy-Khrushchev Accord has never been ratified by the United States Senate, nor submitted to the Senate for ratification by any United States President, and

WHEREAS, the Kennedy-Khrushchev Accord assured the continuation of a totalitarian regime in Cuba and established a beach head for communist expansionism in Latin America, and

WHEREAS, communist expansionism in Latin America undermines the security, economy, and social welfare of the United States of America and has a disproportionate impact on the people, economy, and public resources of the State of Florida, and

WHEREAS, the maintenance of a safe haven for communism in Cuba and the resulting impact on the United States of America are matters of great public concern in the State of Florida, NOW, THEREFORE,

Be It Resolved by the Legislature of the State of Florida

1. That all details surrounding the Kennedy-Khrushchev Accord, except any that may compromise the national interest, be disclosed to the people of the United States of America.

2. That Congress conduct public hearings to determine whether the Kennedy-Khrushchev Accord and its implementation violates Article II, Section 2, of the Constitution of the United States of America, which requires treaties negotiated by the President to be ratified by the United States Senate

3. That Congress conduct public hearings to determine whether the Kennedy-Khrushchev Accord violates the Charter of the Organization of American States, which requires the United States of America to support popular sovereignty and representative democracy in Cuba and elsewhere in Latin America

4. That Congress conduct public hearings to determine whether any provision of the Kennedy-Khrushchev Accord is still being honored by the President and Executive Branch of the United States of America.

5. That the United States of America formally repudiate any provision of the Kennedy-Khrushchev Accord and of any other instrument entered into by its government that allows for the recognition, protection or continuation of a communist regime in Cuba.

6. That the United States of America reaffirm its right under international law to encourage, aid and assist through all appropriate means the establishment of a representative democracy in Cuba

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress

—was taken up out of order by unanimous consent, read the second time in full, unanimously adopted and certified to the House

On motion by Senator Fox, by two-thirds vote HB 1282 was withdrawn from the Committees on Natural Resources and Conservation and Appropriations

On motion by Senator Fox, by unanimous consent—

HB 1282—A bill to be entitled An act relating to the Biscayne Bay Aquatic Preserve, amending s 258.397, F.S., providing for further protection and improvement of water quality in Biscayne Bay and its major tributaries, providing for further protection and management of resources of the bay, modifying the dredge and fill permitting process in the bay area, amending s. 403.814, F.S., to conform, providing appropriations; providing an effective date

—was taken up out of order and read the second time by title. On motion by Senator Fox, by two-thirds vote HB 1282 was read the third time by title, passed and certified to the House. The vote on passage was

Yeas—27

Mr. President Frank Jennings Meek
Barron Gersten Johnson Myers
Castor Girardeau Kirkpatrick Neal
Childers, D. Gordon Kiser Peterson
Crawford Grant Langley Stuart
Crenshaw Hair Malchon Vogt
Fox Hill Margolis

Nays—2

Grizzle Plummer

On motion by Senator Neal, the rules were waived and the Senate reverted to—

MOTIONS RELATING TO COMMITTEE REFERENCE

On motion by Senator Neal, by two-thirds vote SB 813 was withdrawn from the Committee on Appropriations

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

The Honorable Harry A. Johnston, II, President

I am directed to inform the Senate that the House of Representatives has accepted the Conference Committee Report as an entirety and passed CS for HB 1307 as amended by the Conference Committee Report

Allen Morris, Clerk
A bill to be entitled
An act relating to Business Regulation;
creating s. 559.927, P.S., providing
definitions; requiring sellers of travel to
annually register with the Division of Hotels
and Restaurants of the Department of Business
Regulation; providing registration fees;
requiring performance bonds; providing for
suspension or revocation; providing penalties;
providing exceptions; preempting local
government control over sellers of travel;
providing for review and repeal; providing an
effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 559.927, Florida Statutes, is
created to read:

559.927 Sellers of travel; registration; enforcement;
violation; penalties; exceptions; preemption.--

(1) For the purposes of this section, the term:
(a) "Sellers of travel" means any resident or
nonresident person, firm or corporation maintaining a business
location or branch office in the State of Florida, who offers
for sale, directly or indirectly, at wholesale or retail,
prearranged travel or tourist-related services for individuals
or groups in exchange for a fee, commission or other valuable
consideration.

(b) "Prearranged travel or tourist-related services" includes, but is not limited to, car rentals, lodging,
transfers, sightseeing tours and all other such services which

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
are reasonably related to air, sea, rail, motor coach, or
other medium of transportation, or accommodations for which a
traveler contracts or pays prior to departure.

(c) "Offer for sale" means directly or indirectly
holding out an ability 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.

(d) "Division" means the Division of Hotels and
Restaurants of the Department of Business Regulation.

(e) "Registrant" means any person registered as a
seller of travel pursuant to this act.

(f) "Traveler" means the purchaser of, or person
otherwise entitled to receive, prearranged travel or tourist-
related services.

(2)(a) Each seller of travel shall annually register
with the Division of Hotels and Restaurants, the seller of
tavel providing its legal business name, mailing address, and
business location; the names, addresses, and social security
numbers of all owners; and proof of purchase of adequate bond
as required in this section. A certificate evidencing proof
of registration shall be issued by the division and must be
prominently displayed in the seller of travel's primary place
of business.

(b) Each advertisement or contract of a seller of
tavel shall include the phrase "(NAME OF FIRM) is registered
with the State of Florida as a Seller of Travel. Registration
No. ____________ ."

CODING: Words stricken are deletions; words underlined are additions.
(3) Registration fees shall be in an amount equal to the costs of the division to implement and enforce the provisions of this section. However, such fee shall not be greater than $300 per year per registrant. All amounts collected shall be deposited by the Treasurer to the credit of the Hotel and Restaurant Trust Fund pursuant to s. 509.072. No funds collected under this section shall be expended by the department in connection with any expenses incurred with the regulation and enforcement of any other regulation or licensing under any other section.

(4)(a) The division may suspend or revoke the certificate of any seller of travel that has operated or is operating in violation of any of the provisions of this section or the rules of the division. Such seller of travel shall not engage in business while the certificate is revoked or suspended. The division is authorized to proceed by injunction to prevent any seller of travel from doing business subject to the provisions of this section until a performance bond, letter of credit, or certificate of deposit is posted with the division.

(b) The division may employ investigators and conduct investigations of violations of this section.

(c) The Department of Business Regulation may adopt any reasonable rule necessary to carry out the provisions of this section.

(5)(a) It is a violation of this section for any person to:

1. Conduct business as a seller of travel without registering with the division.
2. Conduct business as a seller of travel without purchase of a performance bond in the amount set by the

CODING: Words strucken are deletions; words underlined are additions
division, which amount shall be no less than $10,000 nor more
than $25,000. The surety on such bond shall be a surety
company authorized to do business in the state, and the bond
shall be conditioned on the performance of the contracted
services.

a. In lieu of the performance bond required in this
section, a registrant or applicant for registration may
establish a letter of credit or certificate of deposit in a
Florida banking institution in the amount of the performance
bond, which letter of credit or certificate of deposit shall
be available for satisfying claims. The Division of Hotels
and Restaurants shall be made a coparty to this letter of
credit or certificate of deposit, and such funds represented
thereby shall not be encumbered or pledged in any fashion, nor
withdrawn, without prior written approval of the division.
Any encumbrance or pledging of such funds without prior
division approval is void.

b. Any claim against the bond, letter of credit, or
certificate of deposit shall be made in writing to the
division within 30 days after an alleged violation of a
contract and shall be disposed of pursuant to s. 120.57. In
the alternative, claims against a bond, letter of credit, or
certificate of deposit may be made in the circuit court or
county court where the registrant maintains an office or where
prearranged tourist-related services were rendered or were to
be made.

C. The bond or certificate of deposit shall be payable
to the state for the use and benefit of any traveler who is
injured by the fraud, misrepresentation, or financial failure
of the seller of travel, and conditioned that the registrant
will pay any judgment recovered by any traveler in any suit.

CODING: Words stricken are deletions; words underlined are additions.
for actual damages, including reasonable attorney's fees, resulting from a cause of action involving the registrant's activities as a seller of travel. This bond shall be open to successive claims, but the aggregate amount may not exceed the penalty of the bond.

3. Knowingly make any false statement, representation, or certification in any application or registration form required by division rule.

4. Violate or fail to comply with any rule or order adopted or issued by the division pursuant to its lawful authority in carrying out the intent of this section.

(b)1. The division may impose a civil penalty of up to $5,000 for a violation described in paragraph (a) by appropriate administrative action as provided by rule. All amounts collected shall be deposited by the Treasurer to the credit of the Hotel and Restaurant Trust Fund pursuant to s. 509.072.

2. The division may institute a civil action in a court of competent jurisdiction to recover any penalties or damages allowed in this section and for injunctive relief to enforce compliance with this section or any rule or order of the division.

3. Whoever commits a violation described in paragraph (a) is liable to the state for any damage caused and for civil penalties imposed by the division or by a court of competent jurisdiction.

(6) Any person or business which violates this section or any rule adopted under this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) The provisions of this act shall not apply to:

CODING: Words struck are deletions; words underlined are additions.
(a) A bona fide employee of a seller of travel who is engaged solely in the business of 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;

(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; or

(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, dealer, or a financially related entity.

(h) Persons directly issuing airline tickets who have contracted with the Airlines Reporting Corporation or the Passenger Network Service Corporation.
Persons who have contracted with flag or domestic carriers certified pursuant to 14 C.F.R. part 121 and who directly issue airline tickets on behalf of those carriers.

However, a person covered under paragraph (h) or paragraph (i) must annually register with the Division of Hotels and Restaurants by providing to the division the legal business name, mailing address, and business location of such person; and the names and addresses of all proprietors of the business or, if a corporation, the name and mailing address of the corporate headquarters office and the names and mailing addresses of the corporate officers and pay a registration fee not to exceed $100. Every person registered pursuant to the provisions of this section shall include their registration number in all advertisements, contracts or other printed material offered to the public.

(8) No municipality, county or other political subdivision of this state shall have authority, after the effective date of this act, to levy or collect any registration fee or tax, as a regulatory measure, or to require the registration in any manner of any seller of travel who is registered and complies with all applicable provisions of this act, unless same is provided for by special or general act of the Legislature. Any ordinance, resolution, or regulation as enacted by any municipality, county or other political subdivision of this state which is in conflict with any provision of this act shall be deemed preempted by this act. The provisions of this subsection shall not apply to any local occupational tax levied pursuant to chapter 205.

Section 2 Section 559.927, Florida Statutes, as created by this act, is repealed on January 1, 1997, and shall

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be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 3. This act shall take effect October 1, 1987.

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HOUSE SUMMARY

Requires sellers of travel to register annually with the Division of Hotels and Restaurants of the Department of Business Regulation. Defines "sellers of travel" and "prearranged travel or tourist-related services" for purposes of the act. Sets registration fees and specifies violations of the act. Requires posting of a performance bond, letter of credit, or alternative certificate of deposit. Provides for civil and misdemeanor penalties. Specifies those exempt from the provisions of the act. Provides for state preemption of local government control over sellers of travel. Provides for future review and repeal of the act.

CODING: Words struck are deletions; words underlined are additions.
A bill to be entitled

An act relating to Business Regulation;
creating s. 559.927, P.S., providing
definitions; requiring sellers of travel to
annually register with the Division of Hotels
and Restaurants of the Department of Business
Registration; providing registration fees;
requiring performance bonds; providing for
suspension or revocation; providing penalties;
providing exceptions; preempting local
government control over sellers of travel;
providing for review and repeal; providing an
effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 559.927, Florida Statutes, is
created to read:

559.927 Sellers of travel; registration; enforcement;
violation; penalties; exceptions; preemption.--

(1) For the purposes of this section, the term:

(a) "Sellers of travel" means any resident or
nonresident person, firm or corporation maintaining a business
location or branch office in the State of Florida, who offers
for sale, directly or indirectly, at wholesale or retail,
prearranged travel or tourist-related services for individuals
or groups in exchange for a fee, commission or other valuable
consideration.

(b) "Prearranged travel or tourist-related services"
includes, but is not limited to, car rentals, lodging,
transfers, 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
traveler contracts or pays prior to departure.

(c) "Offer for sale" means directly or indirectly
holding out an ability 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.

(d) "Division" means the Division of Hotels and
Restaurants of the Department of Business Regulation.

(e) "Registrant" means any person registered as a
seller of travel pursuant to this act.

(f) "Traveler" means the purchaser of, or person
otherwise entitled to receive, prearranged travel or tourist-
related services.

(2)(a) Each seller of travel shall annually register
with the Division of Hotels and Restaurants, the seller of
travel providing its legal business name, mailing address, and
business location; the names, addresses, and social security
numbers of all owners; and proof of purchase of adequate bond
as required in this section. A certificate evidencing proof
of registration shall be issued by the division and must be
prominently displayed in the seller of travel's primary place
of business.

(b) Each advertisement or contract of a seller of
travel shall include the phrase "(NAME OF FIRM) is registered
with the State of Florida as a Seller of Travel. Registration
No.____."
(3) Registration fees shall be in an amount equal to the costs of the division to implement and enforce the provisions of this section. However, such fee shall not be greater than $300 per year per registrant. All amounts collected shall be deposited by the Treasurer to the credit of the Hotel and Restaurant Trust Fund pursuant to s. 509.072.

No funds collected under this section shall be expended by the department in connection with any expenses incurred with the regulation and enforcement of any other regulation or licensing under any other section.

(4)(a) The division may suspend or revoke the certificate of any seller of travel that has operated or is operating in violation of any of the provisions of this section or the rules of the division. Such seller of travel shall not engage in business while the certificate is revoked or suspended. The division is authorized to proceed by injunction to prevent any seller of travel from doing business subject to the provisions of this section until a performance bond, letter of credit, or certificate of deposit is posted with the division.

(b) The division may employ investigators and conduct investigations of violations of this section.

(c) The Department of Business Regulation may adopt any reasonable rule necessary to carry out the provisions of this section.

(5)(a) It is a violation of this section for any person to:

1. Conduct business as a seller of travel without registering with the division.

2. Conduct business as a seller of travel without purchase of a performance bond in the amount set by the

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division, which amount shall be no less than $10,000 nor more
than $25,000. The surety on such bond shall be a surety
company authorized to do business in the state, and the bond
shall be conditioned on the performance of the contracted
services.

a. In lieu of the performance bond required in this
section, a registrant or applicant for registration may
establish a letter of credit or certificate of deposit in a
Florida banking institution in the amount of the performance
bond, which letter of credit or certificate of deposit shall
be available for satisfying claims. The Division of Hotels
and Restaurants shall be made a coparty to this letter of
credit or certificate of deposit, and such funds represented
thereby shall not be encumbered or pledged in any fashion, nor
withdrawn, without prior written approval of the division.
Any encumbrance or pledging of such funds without prior
division approval is void.

b. Any claim against the bond, letter of credit, or
certificate of deposit shall be made in writing to the
division within 30 days after an alleged violation of a
contract and shall be disposed of pursuant to s. 120.57. In
the alternative, claims against a bond, letter of credit, or
certificate of deposit may be made in the circuit court or
county court where the registrant maintains an office or where
prearranged tourist-related services were rendered or were to
be made.

c. The bond or certificate of deposit shall be payable
to the state for the use and benefit of any traveler who is
injured by the fraud, misrepresentation, or financial failure
of the seller of travel, and conditioned that the registrant
will pay any judgment recovered by any traveler in any suit.
for actual damages, including reasonable attorney's fees, resulting from a cause of action involving the registrant's activities as a seller of travel. This bond shall be open to successive claims, but the aggregate amount may not exceed the penalty of the bond.

3. Knowingly make any false statement, representation, or certification in any application or registration form required by division rule.

4. Violate or fail to comply with any rule or order adopted or issued by the division pursuant to its lawful authority in carrying out the intent of this section.

(b)1. The division may impose a civil penalty of up to $5,000 for a violation described in paragraph (a) by appropriate administrative action as provided by rule. All amounts collected shall be deposited by the Treasurer to the credit of the Hotel and Restaurant Trust Fund pursuant to s. 509.072.

2. The division may institute a civil action in a court of competent jurisdiction to recover any penalties or damages allowed in this section and for injunctive relief to enforce compliance with this section or any rule or order of the division.

3. Whoever commits a violation described in paragraph (a) is liable to the state for any damage caused and for civil penalties imposed by the division or by a court of competent jurisdiction.

(6) Any person or business which violates this section or any rule adopted under this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) The provisions of this act shall not apply to:

CODING: Words struck are deletions; words underlined are additions.
(a) A bona fide employee of a seller of travel who is engaged solely in the business of 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;

(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; or

(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, dealer, or a financially related entity.

(h) Persons directly issuing airline tickets who have contracted with the Airlines Reporting Corporation or the Passenger Network Service Corporation.
(i) Persons who have contracted with flag or domestic carriers certified pursuant to 14 C.F.R. part 121 and who directly issue airline tickets on behalf of those carriers.

(j) Persons who have professional liability, errors and omissions insurance in the amount of $1,000,000 annually.

However, a person covered under paragraph (h), paragraph (i) or paragraph (j) must annually register with the Division of Hotels and Restaurants by providing to the division the legal business name, mailing address, and business location of such person; and the names and addresses of all proprietors of the business or, if a corporation, the name and mailing address of the corporate headquarters office and the names and mailing addresses of the corporate officers and pay a registration fee not to exceed $100. Every person registered pursuant to the provisions of this section shall include their registration number in all advertisements, contracts or other printed material offered to the public.

(8) No municipality, county or other political subdivision of this state shall have authority, after the effective date of this act, to levy or collect any registration fee or tax, as a regulatory measure, or to require the registration in any manner of any seller of travel who is registered and complies with all applicable provisions of this act, unless same is provided for by special or general act of the Legislature. Any ordinance, resolution, or regulation as enacted by any municipality, county or other political subdivision of this state which is in conflict with any provision of this act shall be deemed preempted by this act. The provisions of this subsection shall not apply to any local occupational tax levied pursuant to chapter 205.
Section 2. Section 559.927, Florida Statutes, as created by this act, is repealed on January 1, 1997, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 3. This act shall take effect October 1, 1987.

**HOUSE SUMMARY**

Requires sellers of travel to register annually with the Division of Hotels and Restaurants of the Department of Business Regulation. Defines "sellers of travel" and "prearranged travel or tourist-related services" for purposes of the act. Sets registration fees and specifies violations of the act. Requires posting of a performance bond, letter of credit, or alternative certificate of deposit. Provides for civil and misdemeanor penalties. Specifies those exempt from the provisions of the act. Provides for state preemption of local government control over sellers of travel. Provides for future review and repeal of the act.

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HOUSE OF REPRESENTATIVES
COMMITTEE ON REGULATORY REFORM
STAFF ANALYSIS

BILL #: HB 356

RELATING TO: Travel Agencies/Annual Registration

SPONSOR(S): Representative Tobin

EFFECTIVE DATE: October 1, 1987

COMPANION BILL(S): SB 368

OTHER COMMITTEES OF REFERENCE: (1) Finance & Taxation
(2) Appropriations

I. SUMMARY:

A. Present Situation:

The Division of Hotels and Restaurants of the Department of Business Regulation currently regulates a limited part of the tour industry under section 559.925, Florida Statutes, relating to receptive tour operators. A "receptive tour operator" is any person or business, other than a hotel or motel already registered with the division, who prearranges tourist-related or tour guide services for individuals or groups visiting the state, whose point of origin or departure is a foreign country.

Section 817.554, Florida Statutes, provides for penalties for sellers of travel who fraudulently offer for sale tour or travel-related services.

B. Effect of Proposed Changes:

The bill creates s. 559.927, F. S., and requires annual registration and regulation of specified sellers of travel with the Division of Hotels and Restaurants. Each registrant is required to pay a fee, not to exceed $300 per year. A certificate evidencing proof of registration would be issued by the division and displayed in the seller of travel's primary place of business. The division may suspend or revoke the certificate if the seller of travel operates in violation of the provisions of the bill. The bill provides for state preemption of local government control over sellers of travel.

The bill further provides that the sellers of travel must purchase a performance bond in an amount set by the division, to be no less than $10,000 nor more than $25,000. In lieu of purchasing a performance bond, the seller of travel may establish a letter of credit or a certificate of deposit, in which the

STANDARD FORM - 1/24/86
division will be named along with the registant or applicant for registration. Claims against the bond, letter of credit, or certificate of deposit must be made with the division within 30 days of an alleged violation of a contract, or claims may be made in circuit or county court. The division may impose a civil penalty of up to $5,000 for violating provisions relating to the maintenance of a performance bond, a certificate of deposit or letter of credit, and may institute civil action to recover damages or penalties incurred as a result from enforcing this section or rules of the division. Any person or business which violates certain provisions of the bill is guilty of a second degree misdemeanor.

The bill provides for the exception of certain persons and businesses from the regulatory program provided for in the bill, including (1) a bona fide employee of a seller of travel who is engaged solely in the business of his employer; (2) persons who make travel arrangements for themselves, their employees or agents, distributors, or entities which are financially related to the persons; (3) persons directly issuing airline tickets who have contracted with the Airlines Reporting Corporation or the Passenger Network Service Corporation; and (4) persons who have contracted with flag or domestic carriers and who directly issue airline tickets on behalf of those carriers. However, the latter two categories must register annually with the division, pay a registration fee not to exceed $100, and include their registration number in all printed material offered to the public.

II. ECONOMIC IMPACT:

A. Public:

There are approximately 900 sellers of travel who would be required to register with the Division of Hotels and Restaurants and who will be regulated by this bill. Each registrant will be charged an annual fee of up to $300. Approximately 2,388 registrants would be exempted from regulatory provisions of the bill but would be charged a fee not to exceed $100. It is generally assumed that the cost of regulation is passed on to consumers in the form of higher fees for services.

B. Government:

HB 356 requires the division to set, by rule, registration fees in an amount necessary to implement and enforce this act.
The Division of Hotels and Restaurants estimates the start up cost for the first year of operation as follows:

<table>
<thead>
<tr>
<th>F.T.E.</th>
<th>Salaries</th>
<th>OCO</th>
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<th>Data processing</th>
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<td>5</td>
<td>$120,365</td>
<td>27,932</td>
<td>26,341</td>
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**TOTAL** $216,320

The Division estimates that a total of 3,288 tour operators would be required to register during the first year of operation; 2,388 would be exempted from the regulatory provisions and 900 would be subject to regulation. The fee charged to these registrants is set by rule; however, this fee cannot exceed $100 for the sellers of travel exempted from regulation and $300 for those who must be regulated. The division has estimated that these fees would most likely be set at $25 and $200, respectively, which would generate approximately $239,700 in revenue. The division estimates $5,000 will be collected in civil penalties, bringing total revenues collected to $244,700. The division has stated that funding at this level should be adequate to administer the program as established in this bill.

**III. STATE COMPREHENSIVE PLAN IMPACT:**

HB 356 is consistent with the policy for the goal related to governmental efficiency which provides for the elimination of needless duplication of governmental activities within the various governmental limits. The bill provides for state preemption of local government control over sellers of travel.

**IV. COMMENTS:**

None.

**V. AMENDMENTS:**

Amendment 1. Adds persons who have professional liability, errors and omissions insurance in the amount of $1,000,000 annually to the list of individuals exempted from the regulatory program.

Amendment 2. Requires persons exempted by amendment 1 to register with the Division of Hotels and Restaurants and pay a registration fee not to exceed $100.

**VI. PREPARED BY:** Susan Turner, Legislative Analyst

**VII. STAFF DIRECTOR:** Cliff Nilson
I. SUMMARY:

A. Present Situation:

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The bill further provides that the sellers of travel must purchase a performance bond in an amount set by the division, to be no less than $10,000 nor more than $25,000. In lieu of purchasing a performance bond, the seller of travel may establish a letter of credit or a certificate of deposit, in which the
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The bill provides for the exception of certain persons and businesses from the regulatory program provided for in the bill, including (1) a bona fide employee of a seller of travel who is engaged solely in the business of his employer; (2) persons who make travel arrangements for themselves, their employees or agents, distributors, or entities which are financially related to the persons; (3) persons directly issuing airline tickets who have contracted with the Airlines Reporting Corporation or the Passenger Network Service Corporation; (4) persons who have contracted with flag or domestic carriers and who directly issue airline tickets on behalf of those carriers; and (5) persons who have professional liability, errors and omissions insurance in the amount of $1,000,000 annually. However, the last three categories must register annually with the division, pay a registration fee not to exceed $100, and include their registration number in all printed material offered to the public.

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HB 356 is consistent with the policy for the goal related to governmental efficiency which provides for the elimination of needless duplication of governmental activities within the various governmental limits. The bill provides for state preemption of local government control over sellers of travel.

IV. COMMENTS:

None.

V. AMENDMENTS:

None.

VI. PREPARED BY: Susan Turner, Legislative Analyst

VII. STAFF DIRECTOR: Cliff Nilson
A bill to be entitled

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(1) For the purposes of this section, the term:

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(d) "Division" means the Division of Hotels and
Restaurants of the Department of Business Regulation.

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travel shall include the phrase "(NAME OF FIRM) is registered
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(3) Registration fees shall be in an amount equal to the costs of the division to implement and enforce the provisions of this section. However, such fee shall not be greater than $300 per year per registrant. All amounts collected shall be deposited by the Treasurer to the credit of the Hotel and Restaurant Trust Fund pursuant to s. 509.072. No funds collected under this section shall be expended by the department in connection with any expenses incurred with the regulation and enforcement of any other regulation or licensing under any other section.

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a. In lieu of the performance bond required in this section, a registrant or applicant for registration may establish a letter of credit or certificate of deposit in a Florida banking institution in the amount of the performance bond, which letter of credit or certificate of deposit shall be available for satisfying claims. The Division of Hotels and Restaurants shall be made a coparty to this letter of credit or certificate of deposit, and such funds represented thereby shall not be encumbered or pledged in any fashion, nor withdrawn, without prior written approval of the division. Any encumbrance or pledging of such funds without prior division approval is void.

b. Any claim against the bond, letter of credit, or certificate of deposit shall be made in writing to the division within 30 days after an alleged violation of a contract and shall be disposed of pursuant to s. 120.57. In the alternative, claims against a bond, letter of credit, or certificate of deposit may be made in the circuit court or county court where the registrant maintains an office or where prearranged tourist-related services were rendered or were to be made.

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3. Knowingly make any false statement, representation, or certification in any application or registration form required by division rule.

4. Violate or fail to comply with any rule or order adopted or issued by the division pursuant to its lawful authority in carrying out the intent of this section.

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2. The division may institute a civil action in a court of competent jurisdiction to recover any penalties or damages allowed in this section and for injunctive relief to enforce compliance with this section or any rule or order of the division.

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(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;

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CODING: Words stricken are deletions; words underlined are additions.
(1) Persons who have contracted with flag or domestic carriers certified pursuant to 14 C.F.R. part 121 and who directly issue airline tickets on behalf of those carriers.

However, a person covered under paragraph (h) or paragraph (i) must annually register with the Division of Hotels and Restaurants by providing to the division the legal business name, mailing address, and business location of such person; and the names and addresses of all proprietors of the business or, if a corporation, the name and mailing address of the corporate headquarters office and the names and mailing addresses of the corporate officers and pay a registration fee not to exceed $100. Every person registered pursuant to the provisions of this section shall include their registration number in all advertisements, contracts or other printed material offered to the public.

(8) No municipality, county or other political subdivision of this state shall have authority, after the effective date of this act, to levy or collect any registration fee or tax, as a regulatory measure, or to require the registration in any manner of any seller of travel who is registered and complies with all applicable provisions of this act, unless same is provided for by special or general act of the Legislature. Any ordinance, resolution, or regulation as enacted by any municipality, county or other political subdivision of this state which is in conflict with any provision of this act shall be deemed preempted by this act. The provisions of this subsection shall not apply to any local occupational tax levied pursuant to chapter 205.

Section 2. Section 559.927, Florida Statutes, as created by this act, is repealed on January 1, 1997, and shall.

CODING: Words struck are deletions; words underlined are additions.
be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 3. This act shall take effect October 1, 1987.

*******************************************************************************

HOUSE SUMMARY

Requires sellers of travel to register annually with the Division of Hotels and Restaurants of the Department of Business Regulation. Defines "sellers of travel" and "prearranged travel or tourist-related services" for purposes of the act. Sets registration fees and specifies violations of the act. Requires posting of a performance bond, letter of credit, or alternative certificate of deposit. Provides for civil and misdemeanor penalties. Specifies those exempt from the provisions of the act. Provides for state preemption of local government control over sellers of travel. Provides for future review and repeal of the act.

CODING: Words struck are deletions; words underlined are additions.
April 3, 1987

Ms. Susan Turner
House Office Building
Room 40
Tallahassee, Florida 32301

Dear Ms. Turner:

Enclosed are the impact statements which were presented last year in regards to Sellers of Travel. It should hold pretty well true except possibly some changes in the figures. At least it will give you some idea of what this year's impact statement will reflect.

I will be in touch.

Sincerely,

R. Hugh Snow, Director
Division of Hotels & Restaurants

RHS/is

Enclosure

cc: John Cochrane
    Marnie Law
MEMORANDUM

TO: Representative Jack N. Tobin
Florida House of Representatives
Room J20 Capitol
Tallahassee, Florida 32301

FROM: R. Hugh Snow, Director
The Division of Hotels and Restaurants

As requested I have revised the Division impact statement on HB 147 to reflect the amendments to the bill and to also show the impact of the proposed maximum $150 per registrant fee.

SUMMARY OF BILL PURPOSES:

House Bill 147 requires all sellers of travel maintaining a business location or branch office in the State of Florida, to annually register with the Division of Hotels and Restaurants of the Department of Business Regulation. Sellers of travel means directly or indirectly making an offer or undertaking, by any means or method to arrange or acquire travel reservations or accommodations, tickets for domestic or foreign travel.

The Bill would establish a regulatory program requiring sellers of travel to annually register with the Division of Hotels and Restaurants. The Division is given the power to suspend or revoke the registration, to impose civil penalties of up to $5,000 and may institute a civil action in a court of competent jurisdiction. The bill, however, exempts from the regulatory provisions of the bill those sellers of travel who have contracted with "Airlines Reporting Corporation", the "International Airlines Travel Agent Network" or with flag or domestic carriers certified pursuant to 49 C.F.R. part 121 and who directly issue airline tickets on behalf of those carriers. Those sellers of travel who are not exempted are required to purchase a performance bond not to exceed $25,000 or provide a certificate of deposit in the amount of the required performance bond.

AGENCY REQUIREMENTS TO ADMINISTER THE BILL PROVISIONS
PERSONNEL AND FINANCIAL, AND SOURCE OF FUNDS:

The Division recommends the establishment of a Bureau for regulating this program. The following represents an estimate of the start up cost for the first year of operation.
The fee that is charged is developed by rule of the

Brand Total

ALL sellers of travel not otherwise exempted

Registrants Subject to Regulation by the Division:

Airline Reporting Corporation (a)

That all members of this network would also be member of the
Agent Network are not included in the total as it is assumed
Note that the members of the International Airline Travel

Other contracts with flag or domestic carriers

International Airlines Travel Agent Network

Airline Reporting Corporation

Registrants Exempted from Regulatory Provisions:

Following:

deposits to the hotels and restaurants trust fund includes the
depositors registered with the Division, Total Revenue for
the first year of operation there will be 7,288 Tour

The Division of Hotels and Restaurants estimate that during

COLLECTION:

Amount and disposition of any anticipated revenues

Expenditures are from the Hotel and Restaurant Trust Fund.

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>1,997,700</td>
<td>440,160</td>
<td>2,437,860</td>
</tr>
<tr>
<td>11,962</td>
<td></td>
<td></td>
</tr>
<tr>
<td>27,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>27,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>61,450</td>
<td></td>
<td></td>
</tr>
<tr>
<td>106,450</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

From Regulation

Subject to Regulation

Exempting Majority

Amended Bill

Assumes 411

Regulation
travel would likely be at the maximum due to the need for the Division to respond to citizen complaints. The revenue collected would be:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2,388 Registrations @ $25</td>
<td>$59,700</td>
</tr>
<tr>
<td>900 Registrations @ $150</td>
<td>135,000</td>
</tr>
<tr>
<td>Civil Penalties</td>
<td>5,000</td>
</tr>
<tr>
<td><strong>Total Revenue</strong></td>
<td><strong>$199,700</strong></td>
</tr>
</tbody>
</table>

**EFFECT OF THE BILL ON LOCAL GOVERNMENT UNITS OF THE STATE:**

There will be no impact to local government units.

**OTHER COMMENTS OR SUGGESTIONS CONCERNING THE BILL:**

The Department suggest that all sellers of travel be subject to the regulation that is provided for in the bill. The Division will have to respond to any citizen complaint against a registrant. However, on complaints against the vast majority of the sellers of travel, the only response the Division would have would be to advise the citizens that there only recourse is through the civil courts. The fact that these sellers of travel are registered with State and required to include their registration number on their letterheads and advertisements would seem to imply to the citizens of the State that these travel agents are regulated by the State. Further, the General Counsel of the Department advises that the bill does not specify why sellers of travel affiliated with the specified organizations are exempted from regulation. Without a rational basis for these exceptions, the bill suffers from severe constitutional problems. If passed in its present form, the unequal treatment of the sellers of travel would likely be challenged and the law struck down by the Courts. The bill also exempts from regulation "a bona fide employee of a seller of travel". Since most business actions of sellers' of travel are taken by their employees, this provision could be interpreted to exempt from regulation nearly every business transaction of any seller of travel.

If all sellers of travel were subject to regulation, the estimated cost per registrant would be approximately $135 per registrant.
DEPARTMENT OF BUSINESS REGULATION
THE JOHNS BUILDING
TALLAHASSEE, FLORIDA

MEMORANDUM

TO: Joe Neely, Analyst
   Florida House of Representatives
   Committee on Appropriations
   Tallahassee, Florida 32301

FROM: John Cochran

May 26, 1986

As requested I have revised the Division impact statement on HB 147 to reflect the amendments to the bill.

SUMMARY OF BILL PURPOSES:

House Bill 147 requires all sellers of travel maintaining a business location or branch office in the State of Florida, to annually register with the Division of Hotels and Restaurants of the Department of Business Regulation. Sellers of travel means directly or indirectly making an offer or undertaking, by any means or method to arrange or acquire travel reservations or accommodations, tickets for domestic or foreign travel.

The Bill would establish a regulatory program requiring sellers of travel to annually register with the Division of Hotels and Restaurants. The Division is given the power to suspend or revoke the registration, to impose civil penalties of up to $5,000 and may institute a civil action in a court of competent jurisdiction. The bill, however, exempts from the regulatory provisions of the bill those sellers of travel who have contracted with "Airlines Reporting Corporation", the "International Airlines Travel Agent Network" or with flag or domestic carriers certified pursuant to 49 C.F.R. part 121 and who directly issue airline tickets on behalf of those carriers. Those sellers of travel who are not exempted are required to purchase a performance bond not to exceed $25,000 or provide a certificate of deposit in the amount of the required performance bond.

AGENCY REQUIREMENTS TO ADMINISTER THE BILL PROVISIONS
PERSONNEL AND FINANCIAL, AND SOURCE OF FUNDS:

The Division recommends the establishment of a Bureau for regulating this program. The following represents an estimate of the start up cost for the first year of operation.
AMOUNT AND DISPOSITION OF ANY ANTICIPATED REVENUES COLLECTIONS:

The Division of Hotels and Restaurants estimate that during the first year of operation there will be 3,288 Tour Operators registered with the Division. Total revenue for deposit to the Hotels and Restaurants trust fund includes the following:

Registrants Exempted from Regulatory Provisions:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Airline Reporting Corporation</td>
<td>2,033</td>
</tr>
<tr>
<td>International Airlines Travel Agent Network</td>
<td>1,846</td>
</tr>
<tr>
<td>Other contractee with flag or domestic carriers</td>
<td>355</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>2,238</strong></td>
</tr>
</tbody>
</table>

(Note that the members of the International Airlines Travel Agent Network are not included in the total as it is assumed that all members of this Network would also be member of the Airline Reporting Corporation.)

Registrants Subject to Regulation by the Division:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>All sellers of travel not otherwise exempted</td>
<td>900</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td><strong>3,288</strong></td>
</tr>
</tbody>
</table>

The fee that is charged is developed by rule of the Department, however, this fee cannot exceed $100 for the sellers of travel exempted from regulation and $300 for those who are not members of one of the named associations. The Division must justify the charges against each class of
registrant when developing fees. As the bill provides for no regulation whatsoever for those exempted registrants, the Division would be unable to justify any substantial fee for the majority of the sellers of travel in Florida. The fee for the registrants exempted from regulation would probably not exceed $25 per year. The fee for the other sellers of travel would likely be at $200, which is $100 below the $300 maximum fee allowed. Funding at this level would allow for 5 positions which should be adequate to administer the regulatory program on just those sellers of travel who are not exempted. The revenue collected would be:

<table>
<thead>
<tr>
<th>Registrations</th>
<th>Fee</th>
<th>Total Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>2,386</td>
<td>$25</td>
<td>$59,700</td>
</tr>
<tr>
<td>900</td>
<td>$200</td>
<td>180,000</td>
</tr>
<tr>
<td>Civil Penalties</td>
<td></td>
<td>5,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$244,700</strong></td>
</tr>
</tbody>
</table>

**EFFECT OF THE BILL ON LOCAL GOVERNMENT UNITS OF THE STATE:**

There will be no impact to local government units.

**OTHER COMMENTS OR SUGGESTIONS CONCERNING THE BILL:**

The Department suggest that all sellers of travel be subject to the regulation that is provided for in the bill. The Division will have to respond to any citizen complaint against a registrant. However, on complaints against the vast majority of the sellers of travels, the only response the Division would have would be to advise the citizens that there is only recourse is through the civil courts. The fact that these sellers of travels are registered with State and required to include their registration number on their letterheads and advertisements would seem to imply to the citizens of the State that these travel agents are regulated by the State. Further, the General Counsel of the Department advises that the bill does not specify why sellers of travel affiliated with the specified organizations are exempted from regulation. Without a rational basis for these exceptions, the bill suffers from severe constitutional problems. If passed in its present form, the unequal treatment of the sellers of travel would likely be challenged and the law struck down by the Courts. The bill also exempts from regulation "a bona fide employee of a seller of travel". Since most business actions of sellers of travel are taken by their employees, this provision could be interpreted to exempt from regulation nearly every business transaction of
any seller of travel.

If all sellers of travel were subject to regulation, the estimated cost per registrant would be approximately $125 per registrant.
SUMMARY OF BILL PURPOSES:

House Bill 356 requires certain sellers of travel maintaining a business location or branch office in the State of Florida, to annually register with the Division of Hotels and Restaurants of the Department of Business Regulation. Sellers of travel means "any resident or nonresident person, firm or corporation maintaining a business location or branch office in the State of Florida, who offers for sale, directly or indirectly, at wholesale or retail, prearranged travel or tourist-related services for individuals or groups in exchange for a fee, commission or other valuable consideration." Excluded are:

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

(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, dealer, or a financially related entity.

(h) Persons directly issuing airline tickets who have contracted with the Airlines Reporting Corporation or the Passenger Network Service Corporation.

(i) Persons who have contracted with flag or domestic carriers certified pursuant to 14 C.F.R. part 121 and who directly issue airline tickets on behalf of those carriers.

However, a person covered under paragraph (h) or paragraph (i) must annually register with the Division of Hotels and Restaurants. Other regulatory provisions of the act do not apply to those persons. Every person registered pursuant to the provisions of this section shall include their registration number in all advertisements, contracts or other printed material offered to the public.

The Bill would establish a regulatory program requiring the non-exempt sellers of travel to annually register with the Division of Hotels and Restaurants. The Division is given the power to suspend or revoke the registration, to impose civil penalties of up to $5,000 and may institute a civil action in a court of competent jurisdiction. Those sellers of travel who are not exempted are required to purchase a performance bond not to exceed $25,000 or provide a certificate of deposit in the amount of the required performance bond.

No municipality, county or other political subdivision of this state shall have authority, after the effective date of this act, to levy or collect any registration fee or tax, as a regulatory measure, or to require the registration in any manner of any seller of travel who is registered.

The act is "sunsetted" on January 1, 1997.
The following represents an estimate of the start up cost for the first year of operation:

<table>
<thead>
<tr>
<th>F.T.E.</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries</td>
<td>$120,365</td>
</tr>
<tr>
<td>OCO</td>
<td>27,932</td>
</tr>
<tr>
<td>Expenses</td>
<td>26,341</td>
</tr>
<tr>
<td>Data processing</td>
<td>27,000</td>
</tr>
<tr>
<td>Service chg to General Revenue</td>
<td>14,682</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$216,320</strong></td>
</tr>
</tbody>
</table>

Expenditures are from the Hotel and Restaurant Trust Fund.

**AMOUNT AND DISPOSITION OF ANY ANTICIPATED REVENUES COLLECTIONS:**

The Division of Hotels and Restaurants estimate that during the first year of operation there will be 3,288 Tour Operators registered with the Division. Total revenue for deposit to the Hotels and Restaurants trust fund includes the following:

Registrants Exempted from Regulatory Provisions:

- Airline Reporting Corporation or Passenger Network Service Corporation 2,033
- Other contractee with flag or domestic carriers 355

**Total** 2,388

Registrants Subject to Regulation by the Division:

- All sellers of travel not otherwise exempted 900

**Grand Total** 3,288

The fee that is charged is developed by rule of the Department, however, this fee cannot exceed $100 for the sellers of travel exempted from regulation and $300 for those who are not members of one of the named associations. The Division must justify the charges against each class of registrant when developing fees. As the bill provides for no regulation whatsoever for those exempted registrants, the Division would be unable to justify any substantial fee for the majority of the sellers of travel in Florida. The fee for the registrants exempted from
regulation would probably not exceed $25 per year. The fee for the other sellers of travel would likely be at $200, which is $100 below the $300 maximum fee allowed. Funding at this level would allow for 5 positions which should be adequate to administer the regulatory program on just those sellers of travel who are not exempted. The revenue collected would be:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2,388 Registrations @ $25</td>
<td>$ 59,700</td>
</tr>
<tr>
<td>900 Registrations @$200</td>
<td>180,000</td>
</tr>
<tr>
<td>Civil Penalties</td>
<td>5,000</td>
</tr>
<tr>
<td><strong>Total Revenue</strong></td>
<td><strong>$244,700</strong></td>
</tr>
</tbody>
</table>

EFFECT OF THE BILL ON LOCAL GOVERNMENT UNITS OF THE STATE:

Unknown, local government cannot levy or collect any registrant fees or taxes on persons covered under the Act.
May 8, 1987

Honorable Toni Jennings, Senator
348 Senate Office Building
Tallahassee, FL 32399-1100

Dear Senator Jennings:

Thank you for seeing us in your office on Tuesday, May 5. As requested, I am enclosing a Position Paper setting out our reasons for requesting the defeat of Senate Bill 368. I am sending copies of this letter and the Position Paper to each member of your Committee for their consideration.

If I can be of further assistance or if you wish testimony at some future hearing, please contact me or Mr. Robert Perkins, our lobbyist in Tallahassee.

Very truly yours,

[Signature]

ROLFE H. DUGGAR, CTC

RDD/bh
Enc.
This Bill requires registration of all sellers of travel as defined by the Act. Its purpose is essentially to stop consumer losses by acts of sellers of travel, principally through scams and con artists, failure to deliver the requested product and we presume also the bankruptcy of a supplier or travel agent.

BILL REQUIRES:
1. All sellers of travel to register and pay some kind of registration fee.
2. All sellers of travel must put a registration number in their advertising.
3. Certain sellers of travel will have to put up a bond to protect the consumer.

FACTS:
1. About 80% or more of all travel agents would be exempt from posting a consumer bond as proposed by drafter of Bill.
2. Great majority of consumer losses in the travel field are from the bankruptcy of travel suppliers (airlines, tour operators, etc.).
3. Scams are not being conducted by travel agents.
4. Scams are generally conducted by con artists who take advantage of a gullible public looking for an impossible deal and will move from one area and one field of business to another quickly to stay ahead of the law.

QUESTIONS:
1. Whether a travel club is a seller of travel or a provider of travel to its members. If the latter, then it would not come under Senate Bill 368. Should there be a separate statute governing operations of this sort by clubs?
2. Those offering prizes consisting of travel and which is a scam could be prosecuted under F.S. Chapter 849 governing the giving of prizes and, if that law is not sufficient, it should be expanded to include such travel prizes. This is a registration act that obviously the scammers giving prizes have not paid any attention to. Are the State Attorneys prosecuting those scammers for failing to have a license number?
3. Scam artists and con men do not register in other areas where regulation has been tried. They pull their scam, collect their money and leave before authorities can usually act.
4. Travel agents are agents of the suppliers and are generally held not to be responsible for the acts or failure to act of their suppliers except when the travel agent has committed some act to take them out of the principal/agent relationship. Thus, if a supplier goes broke or otherwise out of business, it is not the agent's fault nor liability. Would it not be more appropriate to work towards making suppliers more responsible to the consuming public such as by having to post large bonds, etc.?
5. There is a receptive tour act known as Florida Statutes §59.925 which applies only to those tour operators bringing in travelers from foreign destinations. If there is a problem with bringing in domestic travelers and not
providing the promised hotel room and other services, should not the easiest way be to expand this statute that is already on the books to include the tour operators dealing with domestic in-bound travelers.

6. There are powers given under the Florida "Deceptive And Unfair Trade Practices Act" (F.S. 501.201, etc.) which, if not sufficient, could easily be expanded to prohibit these scams without requiring all travel agents to come under a new government bureaucracy.

7. A great majority of the travel agents are small "mom and pop" agencies who work on small commission amounts and are, at best, marginally profitable. Additional costs to them, particularly having to obtain another bond would force some or even many small businesses to close or seek mergers with larger agencies. We believe the exemption from bonding for ARC appointed agents will be struck by the Courts as discriminatory to non-ARC appointed agents. This possibility is admitted by Dave Miller of the Attorney General's staff, who expressed the feeling that, if that is the case, it would be too bad but it might then be necessary in order to protect the consuming public through this proposed law.

8. Act creates another arm of government to govern independent businesses where additional regulations is not necessary and gives rule making power to the Hotel And Restaurant Commission to carry out the intent of the act. Once government has its foot in the door, it generally continues to expand its power over that segment of the business community.

ADMITTED:

There is a problem with scam operators and con men, along with unscrupulous travel club operators. We support action taken to strengthen the laws against these segments but do not feel that 2,500 to 3,000 travel agents should be penalized for matters by individuals who are not travel agents and who should be controlled by laws specifically set to govern those troublesome areas.
A bill to be entitled
An act relating to regulation of sellers of travel; creating s. 559.927, F.S.; providing definitions; providing for registration of sellers of travel; providing registration fees; providing for submission of documents by sellers of travel and by promoters; providing for recordkeeping; providing for suspension or revocation of registration; prescribing acts or omissions which constitute violations; prescribing criminal and civil penalties; providing for bonds by registrants; providing exemptions; providing for disposition of moneys recovered; providing for state preemption of the subject matter; providing for future review and repeal; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 559.927, Florida Statutes, is created to read:

559.927  Sellers of travel, registration; disclosures; bonding; violations; penalties; exemptions; preemption; enforcement.--

(1) DEFINITIONS.--For the purposes of this section, the term:

(a) "Seller of travel" means any resident or nonresident person, firm, corporation, or business entity maintaining or purporting to maintain a business location or branch office in this state who offers for sale, directly or indirectly, at wholesale or retail, prearranged travel or

CODING: Words stricken are deletions; words underlined are additions.
tourist-related services for individuals or groups, through 
vacation or tour packages, or through lodging or travel 
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.

(b) "Prearranged travel or tourist-related 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 traveler receives a premium or contracts or pays prior to 
departure.

(c) "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.

(d) "Division" means the Division of Consumer Services 
of the Department of Agriculture and Consumer Services.

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

(f) "Enforcing authority" means the Department of 
Legal Affairs, Consumer Litigation Section.

(g) "Traveler" means the purchaser of, or person 
otherwise entitled to receive, prearranged travel or tourist-

CODING: Words stricken are deletions; words underlined are additions.
related services for a fee or commission, or who has acquired
a lodging or travel certificate for personal use.

(h) "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.

(i) "Certificate" means any "lodging certificate" or
"travel certificate" or any other document, tour service
arrangement, plan, program, or vacation package, whether by
contract, certificate, reservation or confirmation form,
membership application or use agreement, or any other means
whereby a traveler for consideration paid in advance is
entitled to the use of accommodations or facilities for any
number of days, whether certain or uncertain, during the
period in which the certificate can be exercised, although no
specific date or dates for its use are designated.

(j) "Contract" means any contract, certificate,
reservation request form, use agreement, license, or
reservation confirmation whereby the traveler obtains the
right to benefits and privileges of the prearranged travel or
tourist service, or to a lodging or travel 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.

(k) "Promoter" means any person or business entity
that solicits travelers, at the time of use of accommodations
or facilities, for the sale of any investments, goods,
products, or services, or any business entity that provides
travel or tour benefits in conjunction with promotional
opportunities, including, but not limited to, land, and
interest in land, time-share plans, housing, commodities, or securities.

(1) "Telemarketing" or "mass marketing" means contact or discussions with a prospective purchaser of travel services interested by a seller of travel as part of a mass marketing sales program, including mail solicitation or phone solicitation for sale and the use of credit transfer for payment.

(2) REGISTRATION OF SELLERS OF TRAVEL. --

(a) Each seller of travel shall annually register with the division, 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; and proof of purchase of adequate bond as required in this section. A certificate evidencing proof of registration shall be issued by the division and must be prominently displayed in the seller of travel's primary place of business.

(b) Each advertisement or contract of a seller of travel shall include the phrase "(NAME OF FIRM) is registered with the State of Florida as a Seller of Travel. Registration No. ______.

(3)(a) Registration fees shall be in an amount equal to the costs to the division of implementing and enforcing this section. However, such fee may not be greater than $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 administration of this section.

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(b) The application form shall also require the seller of travel to indicate whether it is a domestic or foreign corporation, give 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; or if the seller of travel is operating under a fictitious or trade name, the applicant shall also indicate the date and county in which its fictitious name is registered; and 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.

(c) No registration shall be valid for any seller of travel transacting business at any place other than that designated in its application, unless the division 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 section 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 division of such change.

(d) In the event the seller of travel conducts business through one or more branch offices, it shall file an application in a form prescribed by the department stating the business location and address of each branch office and the name and address of the manager or supervisor.
(e) The division shall have up to 90 days in which to examine any original application and to investigate the information contained therein. If it approves the application, the department shall issue a certificate evidencing proof of registration along with any requested branch office permits. When the division has not acted upon an original application for registration after 90 days, the seller of travel shall be automatically approved and the division shall issue a certificate of registration upon the request of the seller of travel. For all sellers of travel whose registration is active, their registration shall automatically be renewed upon filing timely renewal application and paying all necessary fees attendant thereto.

(f) The division may deny or refuse to renew registration to any seller of travel based upon a determination that the seller of travel, or any of its directors, officers, owners, or general partners, has been convicted of a crime involving fraud, dishonest dealing, or any other act of moral turpitude, 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 section; has pending against 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 has had a judgment entered against him in any action brought by the Department of Legal Affairs pursuant to ss. 501.201-501.213.

(4) SUBMISSION OF DOCUMENTS BY SELLERS OF TRAVEL.--All sellers of travel must annually submit and disclose to the

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division prior to the sale of or within 30 days of performance, any prearranged travel or tourist service, vacation package, travel contract or certificate, those documents required pursuant to Rule 2-22, F.A.C., along with an annual submission fee not to exceed $100.

(5) SUBMISSION OF DOCUMENTS BY PROMOTERS.--Each business entity defined as a promoter must, pursuant to Rule 2-22, F.A.C., file with the division all documents required along with the annual submission fee not to exceed $100, unless these documents have already been filed with the Division of Florida Land Sales, Condominiums, and Mobile Homes, pursuant to chapter 721.

(6) RECORDKEEPING.--Sellers of travel and promoters must keep and maintain among their business records, for a period of 3 years, the following documents and information:

(a) A copy of each item required to be submitted to the division under subsection (4).

(b) A copy of each item required to be disclosed to a traveler pursuant to subsection (5).

(c) All records required by s. 607.157, when applicable, whether a corporation or other business entity.

(7)(a) The division may suspend or revoke the registration of any seller of travel that has operated or is operating in violation of any of the provisions of this section or the rules of the division. Such seller of travel may not engage in business while the registration is revoked or suspended. The division may proceed by injunction to prevent any seller of travel from doing business subject to the provisions of this section until a performance bond, letter of credit, or certificate of deposit is posted with the division.

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(b) The division may employ investigators and conduct investigations of violations of this section.

(c) The division may adopt any reasonable rule necessary to carry out the provisions of this section.

(b) It is a violation of this section for any person:

(a) To conduct business as a seller of travel without registering annually with the division.

(b) To conduct business as a seller of travel without an annual purchase of a performance bond in the amount set by the division, which amount shall be not less than $10,000 or more than $25,000. The surety on such bond shall be a surety company authorized to do business in the state, and the bond shall be conditioned on the performance of the contracted services. An act, conduct, practice, omission, failing, misrepresentation, or nondisclosure which constitutes a violation of this section, also constitutes a deceptive and unfair trade practice for the purpose of s. 501.201, and administrative rules promulgated thereunder.

1. In lieu of the performance bond required in this section, a registrant or applicant for registration may establish a letter of credit or certificate of deposit in a Florida banking institution in the amount of the performance bond, which letter of credit or certificate of deposit shall be available for satisfying claims. The division shall be the beneficiary to this letter of credit or certificate of deposit, and the original shall be filed with the division.

2. Any traveler may file a claim against the bond, letter of credit, or certificate of deposit which shall be made in writing to the division within 60 days after an alleged violation of a contract and shall be disposed of pursuant to s. 120.57. In the alternative, claims against a

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bond, letter of credit, or certificate of deposit may be made in the circuit court or county court where the registrant maintains an office or where prearranged tourist-related services were rendered or were to be made.

3. The bond or certificate of deposit shall be payable to the state for the use and benefit of any traveler who is injured by the fraud, misrepresentation, or financial failure of the seller of travel and conditioned that the registrant will pay any judgment recovered by any traveler in any suit for actual damages, including reasonable attorney's fees, resulting from a cause of action involving the registrant's activities as a seller of travel. This bond shall be open to successive claims, but the aggregate amount may not exceed the penalty of the bond.

4. In any situation in which the seller of travel is currently under investigation by either the division or the Department of Legal Affairs concerning compliance with this act, the right to proceed against the bond, as provided in subparagraph 2., shall be suspended, until after that investigation is completed, or until any enforcement action is brought pursuant thereto, and becomes final.

[c] Knowingly to make any false statement,
representation, or certification in any application or registration form required by division rule.

[d] Knowingly to violate or fail to comply with any rule or order adopted or issued by the division pursuant to its lawful authority in carrying out the intent of this section.

[e] Knowingly to sell or market any number of travel certificates that exceed the number disclosed to the division pursuant to this section.
(f). In telemarketing or mass marketing, where contact or discussions with a prospective purchaser of travel services are initiated by a seller of travel by phone or otherwise, as part of a mass marketing or telemarketing sales program, to require, request, encourage, or suggest, directly or indirectly, that payment for the right to obtain a travel contract, certificate, or a 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.

2. When contact or discussions with a prospective purchaser of travel service are initiated by a seller of travel by phone as part of a mass marketing or telemarketing sales program, or otherwise, 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.

(9) EXEMPTIONS.--This section does not apply to:

(a) A bona fide employee of a seller of travel who is engaged solely in the business of 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

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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, except as regulated under chapter 721;

   (e) Persons involved solely in the rental, leasing, or

sale of residential property, except as regulated under

chapter 721;

   (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) Persons directly issuing airline tickets who have

contracted with the Airlines Reporting Corporation or the

Passenger Network Service Corporation;

   (i) Persons who have contracted with flag or domestic

 carriers certified pursuant to 14 C.F.R. part 121 and who

directly issue airline tickets on behalf of those carriers; or

   (j) Persons who have professional liability, errors

and omissions insurance in the amount of $1 million annually.
However, a person covered under paragraph (1) or paragraph (11) must, and a person covered under paragraph (h) may, annually register with the division by providing to the division the legal business name, mailing address, and business locations of such person and the names and addresses of all proprietors of the business or, if a corporation, the name and mailing address of the corporate office and branches and the names and mailing addresses of the corporate officers and the Florida agent of the corporation and by paying a registration fee not to exceed $100. Every person registered pursuant to the provisions of this subsection shall include his registration number in all advertisements, contracts, or other printed material offered to the public.

(10) CIVIL PENALTIES; REMEDIES.--

(a) The division or the Department of Legal Affairs may institute a civil action in a court of competent jurisdiction to recover any penalties or damages allowed in this section and for injunctive relief to enforce compliance with this section or any rule or order of the division.

(b) The enforcing authority may seek a civil penalty of up to $5,000 for each violation of this section and may proceed by administrative proceeding or court action to assess such penalties and to enforce this section.

(c) The enforcing authority may bring an action for restitution for and on behalf of any traveler or purchaser of travel services aggrieved or injured by a violation of this section. In any such action, the enforcing authority may establish the nature and types of violations by a seller of travel from the testimony of one or more aggrieved purchasers concerning the practices in question, and may then rely on testimony by investigators, receivers, or financial analysts.

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corroborated by summaries, financial records, and purchaser affidavits, in order to establish the commonality of the practices giving rise to the alleged violations and the amount of restitution owed.

(d) 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.

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

(11) CRIMINAL PENALTIES.—Any person or business which violates this section or any rule adopted pursuant to this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(12) CONSUMER FRAUDS TRUST FUND; PAYMENTS.—Any moneys recovered by the enforcing authority as a penalty under this section, or pursuant to ss. 501.201-501.213, shall be deposited as provided in s. 501.2101, except that the general Division of Consumer Services Trust Fund shall be reimbursed, for those amounts paid to the enforcing authority, the amount of any costs awarded.

(13) STATE PREEMPTION.—No municipality or county or other political subdivision of this state shall have authority, after the effective date of this section, to levy or collect any registration fee or tax, as a regulatory measure, or to require the registration in any manner of any...
seller of travel who is registered and complies with all applicable provisions of this section, 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 section is preempted by this section. The provisions of this subsection do not apply to any local occupational tax levied pursuant to chapter 205.

Section 2. Section 559.927, Florida Statutes, is repealed on January 1, 1998, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 3. This act shall take effect October 1, 1988.

LEGISLATIVE SUMMARY

Requires "sellers of travel," as defined, to register annually with the Division of Consumer Services of the Department of Agriculture and Consumer Services. Requires registrants to include a statement acknowledging their registration in their advertising. Prescribes registration fees and provides for their deposit in the General Inspection Trust Fund of the department. Prescribes information which must be disclosed by registrants. Prescribes grounds upon which registration may be denied or revoked. Requires certain records to be kept. Describes conduct which constitutes a violation of this act. Requires registrants to obtain a performance bond or adequate substitute and authorizes aggrieved travelers to proceed against the bond. Prescribes exemptions from registration and bonding requirements. Provides civil and criminal penalties for violations. Provides that this act preempts local ordinances regulating the same subject matter. Provides for future review and repeal.

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A bill to be entitled
An act relating to regulation of sellers of travel; creating s. 559.927, F.S.; providing definitions; providing for registration of sellers of travel; providing registration fees; providing for submission of documents by sellers of travel and by promoters; providing for recordkeeping; providing for suspension or revocation of registration; prescribing acts or omissions which constitute violations; prescribing criminal and civil penalties; providing for bonds by registrants; providing exemptions; providing for disposition of moneys recovered; providing for state preemption of the subject matter; providing for future review and repeal; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 559.927, Florida Statutes, is created to read:

559.927. Seller of travel; registration; disclosures; bonding; violation; penalties; exemptions; preemption; enforcement.--

(1) DEFINITIONS.--For the purposes of this section, the term:

(a) "Seller of travel" means any resident or nonresident person, firm, corporation, or business entity maintaining or purporting to maintain a business location or branch office in this state who offers for sale, directly or indirectly, at wholesale or retail, prearranged travel or

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tourist-related services for individuals or groups, through
vacation or tour packages, or through lodging or travel
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.

(b) "Prearranged travel or tourist-related 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 traveler receives a premium or contracts or pays prior to
departure.

(c) "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.

(d) "Division" means the Division of Consumer Services
of the Department of Agriculture and Consumer Services.

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

(f) "Enforcing authority" means the Department of
Legal Affairs, Consumer Litigation Section.

(g) "Traveler" means the purchaser of, or person
otherwise entitled to receive, prearranged travel or tourist-

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related services for a fee or commission, or who has acquired
a lodging or travel certificate for personal use.

(b) "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.

(i) "Certificate" means any "lodging certificate" or
"travel certificate" or any other document, tour service
arrangement, plan, program, or vacation package, whether by
contract, certificate, reservation or confirmation form;
memorandum application or use agreement, or any other means
whereby a traveler for consideration paid in advance is
entitled to the use of accommodations or facilities for any
number of days, whether certain or uncertain, during the
period in which the certificate can be exercised, although no
specific date or dates for its use are designated.

(1) "Contract" means any contract, certificate,
reservation request form, use agreement, license, or
reservation confirmation whereby the traveler obtains the
right to benefits and privileges of the prearranged travel or
tourist service, or to a lodging or travel 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.

(k) "Promoter" means any person or business entity
that solicits travelers at the time of use of accommodations
or facilities, for the sale of any investments, goods,
products, or services, or any business entity that provides
travel or tour benefits in conjunction with promotional
opportunities, including, but not limited to, land, and

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interest in land, time-share plans, housing, commodities, or
securities.

(1) "Telemarketing" or "mass marketing" means contact
or discussions with a prospective purchaser of travel services
interested by a seller of travel as part of a mass marketing
sales program, including mail solicitation or phone
solicitation for sale and the use of credit transfer for
payment.

(2) REGISTRATION OF SELLERS OF TRAVEL.--

(a) Each seller of travel shall annually register with
the division, 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; and proof of purchase of adequate
bond as required in this section. A certificate evidencing
proof of registration shall be issued by the division and must
be prominently displayed in the seller of travel's primary
place of business.

(b) Each advertisement or contract of a seller of
travel shall include the phrase "(NAME OF FIRM) is registered
with the State of Florida as a Seller of Travel. Registration
No._________ ."

(3)(a) Registration fees shall be in an amount equal
to the costs to the division of implementing and enforcing
this section. However, such fee may not be greater than $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
administration of this section.

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(b) The application form shall also require the seller of travel to indicate whether it is a domestic or foreign corporation, give 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; or if the seller of travel is operating under a fictitious or trade name, the applicant shall also indicate the date and county in which its fictitious name is registered; and 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.

(c) No registration shall be valid for any seller of travel transacting business at any place other than that designated in its application, unless the division 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 section 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 division of such change.

(d) In the event the seller of travel conducts business through one or more branch offices, it shall file an application in a form prescribed by the department stating the business location and address of each branch office and the name and address of the manager or supervisor.

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(e) The division shall have up to 90 days in which to examine any original application and to investigate the information contained therein. If it approves the application, the department shall issue a certificate evidencing proof of registration along with any requested branch office permits. When the division has not acted upon an original application for registration after 90 days, the seller of travel shall be automatically approved and the division shall issue a certificate of registration upon the request of the seller of travel. For all sellers of travel whose registration is active, their registration shall automatically be renewed upon filing timely renewal application and paying all necessary fees attendant thereto.

(f) The division may deny or refuse to renew registration to any seller of travel based upon a determination that the seller of travel, or any of its directors, officers, owners, or general partners, has been convicted of a crime involving fraud, dishonest dealing, or any other act of moral turpitude; 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 section; has pending against 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 has had a judgment entered against him in any action brought by the Department of Legal Affairs pursuant to §§ 501.201-

30 501.213.

(4) Submission of documents by sellers of travel.--All sellers of travel must annually submit and disclose to the

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division prior to the sale of or within 30 days of
performance, any prearranged travel or tourist service;
vacation package, travel contract or certificate, those
documents required pursuant to Rule 2-22, F.A.C., along with
an annual submission fee not to exceed $100.

(5) SUBMISSION OF DOCUMENTS BY PROMOTERS.—Each
business entity defined as a promoter must, pursuant to Rule
2-22, F.A.C., file with the division all documents required
along with the annual submission fee not to exceed $100,
unless these documents have already been filed with the
Division of Florida Land Sales, Condominiums, and Mobile
Homes, pursuant to chapter 721.

(6) RECORDKEEPING.—Sellers of travel and promoters
must keep and maintain among their business records, for a
period of 3 years, the following documents and information:
(a) A copy of each item required to be submitted to
the division under subsection (4).
(b) A copy of each item required to be disclosed to a
traveler pursuant to subsection (5).
(c) All records required by s. 607.157, when
applicable, whether a corporation or other business entity.

(7)(a) The division may suspend or revoke the
registration of any seller of travel that has operated or is
operating in violation of any of the provisions of this
section or the rules of the division. Such seller of travel
may not engage in business while the registration is revoked
or suspended. The division may proceed by injunction to
prevent any seller of travel from doing business subject to
the provisions of this section until a performance bond,
letter of credit, or certificate of deposit is posted with the
division.

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(b) The division may employ investigators and conduct investigations of violations of this section.

(c) The division may adopt any reasonable rule necessary to carry out the provisions of this section.

(e) It is a violation of this section for any person:
(a) To conduct business as a seller of travel without registering annually with the division.
(b) To conduct business as a seller of travel without an annual purchase of a performance bond in the amount set by the division, which amount shall be not less than $10,000 or more than $25,000. The surety on such bond shall be a surety company authorized to do business in the state, and the bond shall be conditioned on the performance of the contracted services. An act, conduct, practice, omission, failing, misrepresentation, or nondisclosure which constitutes a violation of this section, also constitutes a deceptive and unfair trade practice for the purpose of s. 501.201, and administrative rules promulgated thereunder.

1. In lieu of the performance bond required in this section, a registrant or applicant for registration may establish a letter of credit or certificate of deposit in a Florida banking institution in the amount of the performance bond, which letter of credit or certificate of deposit shall be available for satisfying claims. The division shall be the beneficiary to this letter of credit or certificate of deposit, and the original shall be filed with the division.

2. Any traveler may file a claim against the bond, letter of credit, or certificate of deposit which shall be made in writing to the division within 60 days after an alleged violation of a contract and shall be disposed of pursuant to s. 120.57. In the alternative, claims against a
bond, letter of credit, or certificate of deposit may be made
in the circuit court or county court where the registrant
maintains an office or where prearranged tourist-related
services were rendered or were to be made.

2. The bond or certificate of deposit shall be payable
to the state for the use and benefit of any traveler who is
injured by the fraud, misrepresentation, or financial failure
of the seller of travel and conditioned that the registrant
will pay any judgment recovered by any traveler in any suit
for actual damages, including reasonable attorney's fees,
resulting from a cause of action involving the registrant's
activities as a seller of travel. This bond shall be open to
successive claims, but the aggregate amount may not exceed the
penalty of the bond.

4. In any situation in which the seller of travel is
currently under investigation by either the division or the
Department of Legal Affairs concerning compliance with this
act, the right to proceed against the bond, as provided in
subparagraph 2., shall be suspended, until after that
investigation is completed, or until any enforcement action is
brought pursuant thereto, and becomes final.

(c) Knowingly to make any false statement,
representation, or certification in any application or
registration form required by division rule.

(d) Knowingly to violate or fail to comply with any
rule or order adopted or issued by the division pursuant to
its lawful authority in carrying out the intent of this
section.

(e) Knowingly to sell or market any number of travel
certificates that exceed the number disclosed to the division
pursuant to this section.

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In telemarketing or mass marketing, where
contact or discussions with a prospective purchaser of travel
services are initiated by a seller of travel by phone or
otherwise, as part of a mass marketing or telemarketing sales
program, to require, request, encourage, or suggest, directly
or indirectly, that payment for the right to obtain a travel
contract, certificate, or a 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.

When contact or discussions with a prospective
purchaser of travel services are initiated by a seller of
travel by phone as part of a mass marketing or telemarketing
sales program, or otherwise, 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.

(9) EXCEPTIONS.—This section does not apply to:
(a) A bona fide employee of a seller of travel who is
engaged solely in the business of 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

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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, except as regulated under chapter 721;

(e) Persons involved solely in the rental, leasing, or sale of residential property, except as regulated under chapter 721;

(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, franchisors, 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, franchisor, or dealer or financially related entity;

(h) Persons directly issuing airline tickets who have contracted with the Airlines Reporting Corporation or the Passenger Network Service Corporation;

(i) Persons who have contracted with flag or domestic carriers certified pursuant to 14 C.F.R. part 121 and who directly issue airline tickets on behalf of those carriers; or

(j) Persons who have professional liability, errors and omissions insurance in the amount of $1 million annually.
However, a person covered under paragraph (1) or paragraph (11)
must, and a person covered under paragraph (11) may, annually
register with the division by providing to the division the
legal business name, mailing address, and business locations
of such person and the names and addresses of all proprietors
of the business or, if a corporation, the name and mailing
address of the corporate office and branches and the names and
mailing addresses of the corporate officers and the Florida
agent of the corporation and by paying a registration fee not
to exceed $100.

(10) CIVIL PENALTIES; REMEDIES.--
(a) The division or the Department of Legal Affairs
may institute a civil action in a court of competent
jurisdiction to recover any penalties or damages allowed in
this section and for injunctive relief to enforce compliance
with this section or any rule or order of the division.

(b) The enforcing authority may seek a civil penalty
of up to $5,000 for each violation of this section and may
proceed by administrative proceeding or court action to assess
such penalties and to enforce this section.

(c) The enforcing authority may bring an action for
restitution for and on behalf of any traveler or purchaser of
tavel services aggrieved or injured by a violation of this
section. In any such action, the enforcing authority may
establish the nature and types of violations by a seller of
tavel from the testimony of one or more aggrieved purchasers
concerning the practices in question, and may then rely on
testimony by investigators, receivers, or financial analysts;
corborated by summaries, financial records, and purchaser
affidavits, in order to establish the commonality of the

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practices giving rise to the alleged violations and the amount
of restitution owed.

(d) 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.

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

(11) CRIMINAL PENALTIES.—Any person or business which
violates this section or any rule adopted pursuant to this
section is guilty of a misdemeanor of the second degree,
punishable as provided in s. 775.082, s. 775.083, or s.
775.084.

(12) CONSUMER FRAUDS TRUST FUND; PAYMENTS.—Any money
recovered by the enforcing authority as a penalty under this
section, or pursuant to ss. 501.201-501.213, shall be
deposited as provided in s. 501.2101, except that the General
Inspection Trust Fund shall be reimbursed, for those amounts
paid to the enforcing authority, the amount of any costs
awarded.

(13) STATE PREEMPTION.—No municipality or county or
other political subdivision of this state shall have
authority, after the effective date of this section, to levy
or collect any registration fee or tax, as a regulatory
measure, or to require the registration in any manner of any
seller of travel who is registered and complies with all
applicable provisions of this section, unless that authority

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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 section is preempted by this section. The provisions of this subsection do not apply to any local occupational tax levied pursuant to chapter 205.

Section 2. Section 559.927, Florida Statutes, is repealed on January 1, 1988, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 3. This act shall take effect October 1, 1988.

LEGISLATIVE SUMMARY
Requires "sellers of travel," as defined, to register annually with the Division of Consumer Services of the Department of Agriculture and Consumer Services. Requires registrants to include a statement acknowledging their registration in their advertising. Prescribes registration fees and provides for their deposit in the General Inspection Trust Fund of the department. Prescribes information which must be disclosed by registrants. Prescribes grounds upon which registration may be denied or revoked. Requires certain records to be kept. Describes conduct which constitutes a violation of this act. Requires registrants to obtain a performance bond or adequate substitute and authorizes aggrieved travelers to proceed against the bond. Prescribes exemptions from registration and bonding requirements. Provides civil and criminal penalties for violations. Provides that this act preempts local ordinances regulating the same subject matter. Provides for future review and repeal.

This publication was produced at an average cost of 1.12 cents per single page in compliance with the Rules and for the information of members of the Legislature and the public.

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I. SUMMARY:

A. PRESENT SITUATION:

The Division of Hotels and Restaurants of the Department of Business Regulation currently regulates a limited part of the tour industry under section 559.925, Florida Statutes, relating to receptive tour operators. A "receptive tour operator" is any person or business, other than a hotel or motel already registered with the division, who prearranges tourist-related or tour guide services for individuals or groups visiting the state, whose point of origin or departure is a foreign country.

Section 817.554, Florida Statutes, provides a second degree misdemeanor penalty for sellers of travel who fraudulently offer for sale tour or travel-related services.

B. EFFECT OF PROPOSED CHANGES:

This bill regulates specified sellers of travel through the Division of Consumer Services in the Department of Agriculture. Sellers of travel are subject to:

- registration (including a fee up to $300 per year),
- recordkeeping requirements (including submission of certain records with a fee up to $100 annually),
- performance bonds (between $10,000 and $25,000), and
- penalties (including fines, a second degree misdemeanor penalty, and attorney fees).

A certificate evidencing proof of registration would be issued by the division and displayed in the seller of travel's primary place of business. The division may suspend or revoke the certificate if the seller of travel operates in violation of the provisions of the bill. The bill provides for state preemption of local government control over sellers of travel.
The division must automatically renew registrations that are timely filed. However, the division may deny or refuse to renew a registration to any seller of travel who has been convicted of, or has pending certain criminal charges, who has an unpaid civil fine, or who has had a judgement entered against him under the Deceptive and Unfair Trade Practices Act. Further violations under this bill may also be violations of that Act and subject to its various civil and criminal penalties.

Sellers of travel must purchase a performance bond in an amount set by the division, to be no less than $10,000 nor more than $25,000. In lieu of purchasing a performance bond, the seller of travel may establish a letter of credit or a certificate of deposit, in which the division will be named along with the registrant or applicant for registration. Claims against the bond, letter of credit, or certificate of deposit must be made with the division within 120 days of an alleged violation of a contract, or claims may be made in circuit or county court. The Department of Legal Affairs may seek a civil penalty of up to $5,000 for violations, and may institute civil action for restitution for injured travelers.

Sellers of travel, when telemarketing or mass marketing, may not request the purchaser to use a credit card, and may not state that the offer is only valid on the initial contact if that is untrue. Travel contracts may not waive any responsibilities of sellers of travel under this bill.

The bill provides for the exception of certain persons and businesses including: (1) a bonafide employee of a seller of travel; (2) persons who make travel arrangements for themselves, their employees or agents, distributors, or entities which are financially related to the persons; (3) persons directly issuing airline tickets who have contracted with the Airlines Reporting Corporation or the Passenger Network Service Corporation; (4) persons who have contracted with flag or domestic carriers and who directly issue airline tickets on behalf of those carriers; and (5) persons with professional liability insurance of $1 million annually. However, the latter two categories must register annually with the division, pay a registration fee not to exceed $100, and include their registration number in all printed material offered to the public.

C. SECTION-BY-SECTION ANALYSIS:

See I.B. above.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT: FY 88-89 FY 89-90 FY 90-91

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

EXPENDITURES:

Department of Agriculture & Consumer Services
Operating Capital Outlay $ 26,849 $ 0 $ 0
2. Recurring or Annualized Continuation Effects:

EXPENDITURES:

Department of Agriculture & Consumer Services
Salaries and Benefits (5 FTE) 92,893 92,893 92,893
Expenses 15,044 15,044 15,044
Data Processing 35,000 35,000 35,000
Total $142,937 $142,937 $142,937

REVENUES: Indeterminate (see fiscal comments)

3. Long Run Effects Other Than Normal Growth:

Indeterminate (see fiscal comments)

4. Appropriations Consequences:

EXPENDITURES:

Department of Agriculture & Consumer Services
General Inspection Trust Fund $169,786 $142,937 $142,937

REVENUES: Indeterminate (see fiscal comments)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Sellers of travel who would be required to register and who would be regulated under the bill would be charged an annual fee of up to $300.

2. Direct Private Sector Benefits:

Individual citizens will benefit financially by having reduced risk and by having the Department of Legal Affairs available to carry on legal actions when an injury occurs.
3. **Effects on Competition, Private Enterprise, and Employment Markets:**

Competition may be reduced, but presumably, most sellers who leave the market will do so because their practice did not adequately protect the public. Some sellers may move to markets outside this state to avoid the regulation, fees, and potential penalties.

D. **FISCAL COMMENTS:**

The Department of Business Regulation (DBR) has estimated that approximately 900 tour operators would be subject to regulation. The fee charged to those registrants would be set by rule. It is estimated that the Department would assess fees sufficient to fund the provisions of the bill.

If private individuals used this mechanism to enforce their rights pursuant to contracts they entered into, the state's role could expand. This would require additional resources to enforce what were previously private rights.

The Committee on Appropriations amended the bill to increase the amount of time an individual can submit claims against bond after an alleged violation of a contract.

III. **LONG RANGE CONSEQUENCES:**

CS/HB 1031 is consistent with the policy for the state comprehensive plan goal related to governmental efficiency which provides for the elimination of needless duplication of governmental activities within the various governmental limits. The bill provides for state preemption of local government control over sellers of travel.

IV. **COMMENTS:**

The division may deny or refuse to renew a registration if the seller of travel has pending against him any legal action based on fraud, dishonest dealing, or moral turpitude. The holder of the registration may have a legal interest in that registration that will create a very difficult burden for the department in trying to enforce such a provision.

V. **AMENDMENTS:**

None.

VI. **SIGNATURES:**

SUBSTANTIVE COMMITTEE:
Prepared by:

Susan Turner

FINANCE & TAXATION:
Prepared by:

Staff Director:

Cliff Nilson

Staff Director:
Bill #:  CS/HB 1031 (As Amended)
Date:  5-19-88

Appropriations:
Prepared by:

John R. Johnston

Staff Director:

Dr. James A. Zingale

2012
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penalty, and attorney fees).

A certificate evidencing proof of registration will be issued by
the division and displayed in the seller of travel's primary
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of travel may establish a letter of credit or a certificate of
deposit, in which the division will be named along with the
registrant or applicant for registration. Claims against the
bond, letter of credit, or certificate of deposit must be made
with the division within 120 days of an alleged violation of a
contract, or claims may be made in circuit or county court. The
Department of Legal Affairs may seek a civil penalty of up to
$5,000 for violations, and may institute civil action for
restitution for injured travelers.

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Sellers of travel, when telemarketing or mass marketing, may not
request the purchaser to use a credit card, and may not state
that the offer is only valid on the initial contact if that is
untrue. Travel contracts may not waive any responsibilities of
sellers of travel under this bill. A written copy of the terms
and conditions of the contract as well as any disclaimers must
be furnished to the buyer prior to the buyer's payment of any
funds. If such information is not provided, the contract shall
be declared null and void.

The bill provides for the exception of certain persons and
businesses including: (1) a bona fide employee of a seller of
travel; (2) persons who make travel arrangements for themselves,
their employees or agents, distributors, or entities which are
financially related to the persons; (3) persons directly issuing
airline tickets who have contracted with the Airlines Reporting
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persons who have contracted with flag or domestic carriers and
who directly issue airline tickets on behalf of those carriers; and (5) persons with professional liability insurance of $1 million annually. However, the latter two categories must register annually with the division, pay a registration fee not to exceed $100, and include their registration number in all printed material offered to the public.

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1. Non-recurring or First Year Start-Up Effects:

   Department of Agriculture & Consumer Services
   Operating Capital Outlay $26,849 $0 $0

2. Recurring or Annualized Continuation Effects:

   EXPENDITURES:

   Department of Agriculture & Consumer Services
   Salaries & Benefits (5 FTE) 92,893 92,893 92,893
   Expenses 15,044 15,044 15,044
   Data Processing 35,000 35,000 35,000
   Total $142,937 $142,937 $142,937

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3. Long Run Effects Other Than Normal Growth:

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4. Appropriations Consequences:

   EXPENDITURES:

   Department of Agriculture & Consumer Services
   General Inspection Trust Fund $169,786 $142,937 $142,937

   REVENUES: Indeterminate (see fiscal comments)
B FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:
   None

2. Recurring or Annualized Continuation Effects:
   None

3. Long Run Effects Other Than Normal Growth:
   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   Sellers of travel who would be required to register and who would be regulated under the bill would be charged an annual fee of up to $300.

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   The Committee on Appropriations amended the bill to increase the amount of time an individual can submit claims against bond after an alleged violation of a contract.

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elimination of needless duplication of governmental activities within the various governmental limits. The bill provides for state preemption of local government control over sellers of travel.

IV. COMMENTS:

The division may deny or refuse to renew a registration if the seller of travel has pending against him any legal action based on fraud, dishonest dealing, or moral turpitude. The holder of the registration may have a legal interest in that registration that will create a very difficult burden for the department in trying to enforce such a provision.

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by: ____________________________

Susan Turner ____________________________

Staff Director: ____________________________

Cliff Nilson ____________________________

APPROPRIATIONS:
Prepared by: ____________________________

John R. Johnston ____________________________

Staff Director: ____________________________

Dr. James A. Zingale ____________________________
A bill to be entitled
An act relating to regulation of sellers of travel; creating s. 559.927, F.S.; providing definitions; providing for registration of sellers of travel; providing registration fees; providing for submission of documents by sellers of travel and by promoters; providing for recordkeeping; providing for suspension or revocation of registration; prescribing acts or omissions which constitute violations; prescribing criminal and civil penalties; providing for bonds by registrants; providing exemptions; providing for disposition of moneys recovered; providing for state preemption of the subject matter; providing for future review and repeal; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 559.927, Florida Statutes, is created to read:

559.927 Sellers of travel; registration; disclosures; bonding; violation; penalties; exceptions; preemption; enforcement.—

(a) "Seller of travel" means any resident or nonresident person, firm, corporation, or business entity maintaining or purporting to maintain a business location or branch office in this state who offers for sale, directly or indirectly, at wholesale or retail, prearranged travel or

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tourist-related services for individuals or groups, through vacation or tour packages, or through lodging or travel 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.

(b) "Prearranged travel or tourist-related 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 traveler receives a premium or contracts or pays prior to departure.

(c) "Offer for sale" means direct or indirect representation, claim, or statements 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.

(d) "Division" means the Division of Consumer Services of the Department of Agriculture and Consumer Services.

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

(f) "Enforcing authority" means the Department of Legal Affairs, Consumer Litigation Section.

(g) "Traveler" 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 lodging or travel certificate for personal use.

(h) "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.

(1) "Certificate" means any "lodging certificate" or
"travel certificate" or any other document, tour service
arrangement, plan, program, or vacation package, whether by
contract, certificate, reservation or confirmation form,
memorandum application or use agreement, or any other means
whereby a traveler for consideration paid in advance is
entitled to the use of accommodations or facilities for any
number of days, whether certain or uncertain, during the
period in which the certificate can be exercised, although no
specific date or dates for its use are designated.

(j) "Contract" means any contract, certificate,
reservation request form, use agreement, license, or
reservation confirmation whereby the traveler obtains the
right to benefits and privileges of the prearranged travel or
tourist service, or to a lodging or travel 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.

(k) "Promoter" means any person or business entity
that solicits travelers, at the time of use of accommodations
or facilities, for the sale of any investments, goods,
products, or services, or any business entity that provides
travel or tour benefits in conjunction with promotional
opportunities, including, but not limited to, land, and

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interest in land, time-share plans, housing, commodities, or securities.

(1) "Telemarketing" or "mass marketing" means contact or discussions with a prospective purchaser of travel services interested by a seller of travel as part of a mass marketing sales program, including mail solicitation or phone solicitation for sale and the use of credit transfer for payment.

(2) REGISTRATION OF SELLERS OF TRAVEL.--

(a) Each seller of travel shall annually register with the division, 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; and proof of purchase of adequate bond as required in this section. A certificate evidencing proof of registration shall be issued by the division and must be prominently displayed in the seller of travel's primary place of business.

(b) Each advertisement or contract of a seller of travel shall include the phrase "(NAME OF FIRM) is registered with the State of Florida as a Seller of Travel. Registration No. ."

(3)(a) Registration fees shall be in an amount equal to the costs to the division of implementing and enforcing this section. However, such fee may not be greater than $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 administration of this section.
(b) The application form shall also require the seller of travel to indicate whether it is a domestic or foreign corporation, give 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; or if the seller of travel is operating under a fictitious or trade name, the applicant shall also indicate the date and county in which its fictitious name is registered; and 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.

(c) No registration shall be valid for any seller of travel transacting business at any place other than that designated in its application, unless the division 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 section 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 division of such change.

(d) In the event the seller of travel conducts business through one or more branch offices, it shall file an application in a form prescribed by the department stating the business location and address of each branch office and the name and address of the manager or supervisor.

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(e) The division shall have up to 90 days in which to examine any original application and to investigate the information contained therein. If it approves the application, the department shall issue a certificate evidencing proof of registration along with any requested branch office permits. When the division has not acted upon an original application for registration after 90 days, the seller of travel shall be automatically approved and the division shall issue a certificate of registration upon the request of the seller of travel. For all sellers of travel whose registration is active, their registration shall automatically be renewed upon filing timely renewal application and paying all necessary fees attendant thereto.

(f) The division may deny or refuse to renew registration to any seller of travel based upon a determination that the seller of travel, or any of its directors, officers, owners, or general partners, has been convicted of a crime involving fraud, dishonest dealing, or any other act of moral turpitude; 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 section; has pending against 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 has had a judgment entered against him in any action brought by the Department of Legal Affairs pursuant to ss. 501.201-501.213.

(4) SUBMISSION OF DOCUMENTS BY SELLERS OF TRAVEL.—All sellers of travel must annually submit and disclose to the
division prior to the sale of or within 30 days of
performance, any prearranged travel or tourist service,
vacation package, travel contract or certificate, those
documents required pursuant to Rule 2-22, F.A.C., along with
an annual submission fee not to exceed $100.

(5) SUBMISSION OF DOCUMENTS BY PROMOTERS.--Each
business entity defined as a promoter must, pursuant to Rule
2-22, F.A.C., file with the division all documents required
along with the annual submission fee not to exceed $100,
unless these documents have already been filed with the
Division of Florida Land Sales, Condominiums, and Mobile
Homes, pursuant to chapter 721.

(6) RECORDKEEPING.--Sellers of travel and promoters
must keep and maintain among their business records, for a
period of 3 years, the following documents and information:
(a) A copy of each item required to be submitted to
the division under subsection (4).
(b) A copy of each item required to be disclosed to a
traveler pursuant to subsection (5).
(c) All records required by s. 607.157, when
applicable, whether a corporation or other business entity.

(7)(a) The division may suspend or revoke the
registration of any seller of travel that has operated or is
operating in violation of any of the provisions of this
section or the rules of the division. Such seller of travel
may not engage in business while the registration is revoked
or suspended. The division may proceed by injunction to
prevent any seller of travel from doing business subject to
the provisions of this section until a performance bond,
letter of credit, or certificate of deposit is posted with the
division.

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(b) The division may employ investigators and conduct investigations of violations of this section.

(c) The division may adopt any reasonable rule necessary to carry out the provisions of this section.

(e) It is a violation of this section for any person:

(a) To conduct business as a seller of travel without registering annually with the division.

(b) To conduct business as a seller of travel without an annual purchase of a performance bond in the amount set by the division, which amount shall be not less than $10,000 or more than $25,000. The surety on such bond shall be a surety company authorized to do business in the state, and the bond shall be conditioned on the performance of the contracted services. An act, conduct, practice, omission, failing, misrepresentation, or nondisclosure which constitutes a violation of this section, also constitutes a deceptive and unfair trade practice for the purpose of s. 501.201, and administrative rules promulgated thereunder.

1. In lieu of the performance bond required in this section, a registrant or applicant for registration may establish a letter of credit or certificate of deposit in a Florida banking institution in the amount of the performance bond, which letter of credit or certificate of deposit shall be available for satisfying claims. The division shall be the beneficiary to this letter of credit or certificate of deposit, and the original shall be filed with the division.

2. Any traveler may file a claim against the bond, letter of credit, or certificate of deposit which shall be made in writing to the division within 60 days after an alleged violation of a contract and shall be disposed of pursuant to s. 120.57. In the alternative, claims against a

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bond, letter of credit, or certificate of deposit may be made in the circuit court or county court where the registrant maintains an office or where prearranged tourist-related services were rendered or were to be made.

3. The bond or certificate of deposit shall be payable to the state for the use and benefit of any traveler who is injured by the fraud, misrepresentation, or financial failure of the seller of travel and conditioned that the registrant will pay any judgment recovered by any traveler in any suit for actual damages, including reasonable attorney's fees, resulting from a cause of action involving the registrant's activities as a seller of travel. This bond shall be open to successive claims, but the aggregate amount may not exceed the penalty of the bond.

4. In any situation in which the seller of travel is currently under investigation by either the division or the Department of Legal Affairs concerning compliance with this act, the right to proceed against the bond, as provided in subparagraph 2., shall be suspended, until after that investigation is completed, or until any enforcement action is brought pursuant thereto, and becomes final.

   c. Knowingly to make any false statement, representation, or certification in any application or registration form required by division rule.

   d. Knowingly to violate or fail to comply with any rule or order adopted or issued by the division pursuant to its lawful authority in carrying out the intent of this section.

   e. Knowingly to sell or market any number of travel certificates that exceed the number disclosed to the division pursuant to this section.

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(f)1. In telemarketing or mass marketing, where contact or discussions with a prospective purchaser of travel services are initiated by a seller of travel by phone or otherwise, as part of a mass marketing or telemarketing sales program, to require, request, encourage, or suggest, directly or indirectly, that payment for the right to obtain a travel contract, certificate, or a 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.

2. When contact or discussions with a prospective purchaser of travel service are initiated by a seller of travel by phone as part of a mass marketing or telemarketing sales program, or otherwise, 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.

(9) EXEMPTIONS.--This section does not apply to:

(a) A bona fide employee of a seller of travel who is engaged solely in the business of 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

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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, except as regulated under chapter 721;

(e) Persons involved solely in the rental, leasing, or
sale of residential property, except as regulated under
chapter 721;

(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) Persons directly issuing airline tickets who have
contracted with the Airlines Reporting Corporation or the
Passenger Network Service Corporation;

(i) Persons who have contracted with flag or domestic
carriers certified pursuant to 14 C.F.R. part 121 and who
directly issue airline tickets on behalf of those carriers; or

(j) Persons who have professional liability, errors
and omissions insurance in the amount of $1 million annually.
However, a person covered under paragraph (1) or paragraph (j) must, and a person covered under paragraph (h) may, annually register with the division by providing to the division the legal business name, mailing address, and business locations of such person and the names and addresses of all proprietors of the business or, if a corporation, the name and mailing address of the corporate office and branches and the names and mailing addresses of the corporate officers and the Florida agent of the corporation and by paying a registration fee not to exceed $100. Every person registered pursuant to the provisions of this subsection shall include his registration number in all advertisements, contracts, or other printed material offered to the public.

(10) CIVIL PENALTIES; REMEDIES.—

(a) The division or the Department of Legal Affairs may institute a civil action in a court of competent jurisdiction to recover any penalties or damages allowed in this section and for injunctive relief to enforce compliance with this section or any rule or order of the division.

(b) The enforcing authority may seek a civil penalty of up to $5,000 for each violation of this section and may proceed by administrative proceeding or court action to assess such penalties and to enforce this section.

(c) The enforcing authority may bring an action for restitution for and on behalf of any traveler or purchaser of travel services aggrieved or injured by a violation of this section. In any such action, the enforcing authority may establish the nature and types of violations by a seller of travel from the testimony of one or more aggrieved purchasers concerning the practices in question, and may then rely on testimony by investigators, receivers, or financial analysts.
corroborated by summaries, financial records, and purchaser affidavits, in order to establish the commonality of the practices giving rise to the alleged violations and the amount of restitution owed.

(d) 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.

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

(11) CRIMINAL PENALTIES.--Any person or business which violates this section or any rule adopted pursuant to this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(12) CONSUMER FRAUDS TRUST FUND; PAYMENTS.--Any moneys recovered by the enforcing authority as a penalty under this section, or pursuant to ss. 501.201-501.213, shall be deposited as provided in s. 501.2101, except that the general Division of Consumer Services Trust Fund shall be reimbursed, for those amounts paid to the enforcing authority, the amount of any costs awarded.

(13) STATE PREEMPTION.--No municipality or county or other political subdivision of this state shall have authority, after the effective date of this section, to levy or collect any registration fee or tax, as a regulatory measure, or to require the registration in any manner of any

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seller of travel who is registered and complies with all applicable provisions of this section, 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 section is preempted by this section. The provisions of this subsection do not apply to any local occupational tax levied pursuant to chapter 205.

Section 2. Section 559.927, Florida Statutes, is repealed on January 1, 1998, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 3. This act shall take effect October 1, 1988.

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LEGISLATIVE SUMMARY

Requires "sellers of travel," as defined, to register annually with the Division of Consumer Services of the Department of Agriculture and Consumer Services. Requires registrants to include a statement acknowledging their registration in their advertising. Prescribes registration fees and provides for their deposit in the General Inspection Trust Fund of the department. Prescribes information which must be disclosed by registrants. Prescribes grounds upon which registration may be denied or revoked. Requires certain records to be kept. Describes conduct which constitutes a violation of this act. Requires registrants to obtain a performance bond or adequate substitute and authorizes aggrieved travelers to proceed against the bond. Prescribes exemptions from registration and bonding requirements. Provides civil and criminal penalties for violations. Provides that this act preempts local ordinances regulating the same subject matter. Provides for future review and repeal.

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CS for SB 560

A bill to be entitled
An act relating to regulation of sellers of
travel; creating s. 559.927, F.S.; providing
definitions; providing for registration of
sellers of travel; providing registration fees;
providing for submission of documents by
sellers of travel and by promoters; providing
for recordkeeping; providing for suspension or
revocation of registration; prescribing acts or
omissions which constitute violations;
prescribing criminal and civil penalties;
providing for bonds by registrants; providing
exemptions; providing for disposition of moneys
recovered; providing for state preemption of
the subject matter; providing for future review
and repeal; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 559.927, Florida Statutes, is
created to read:

559.927 Sellers of travel; registration; disclosures;
bonding; violation; penalties; exceptions; preemption;
enforcement.--

(1) DEFINITIONS.--For the purposes of this section,
the term:

(a) "Seller of travel" means any resident or
nonresident person, firm, corporation, or business entity
maintaining or purporting to maintain a business location or
branch office in this state who offers for sale, directly or
indirectly, at wholesale or retail, prearranged travel or

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tourist-related services for individuals or groups, through
vacation or tour packages, or through lodging or travel
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. This section does not apply to a corporation
incorporated with the Secretary of State's office under
chapter 617 prior to 1985.

(b) "Prearranged travel or tourist-related 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 traveler receives a premium or contracts or pays prior to
departure.

(c) "Offer for sale" means direct or indirect
representation, claim, or statements 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.

(d) "Division" means the Division of Consumer Services
of the Department of Agriculture and Consumer Services.

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

(f) "Enforcing authority" means the Department of
Legal Affairs, Consumer Litigation Section.
(g) "Traveler" 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 lodging or travel certificate for personal use.

(h) "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.

(i) "Certificate" means any "lodging certificate" or "travel certificate" or any other document, tour service arrangement, plan, program, or vacation package, whether by contract, certificate, reservation or confirmation form, membership application or use agreement, or any other means whereby a traveler for consideration paid in advance is entitled to the use of accommodations or facilities for any number of days, whether certain or uncertain, during the period in which the certificate can be exercised, although no specific date or dates for its use are designated.

(j) "Contract" means any contract, certificate, reservation request form, use agreement, license, or reservation confirmation whereby the traveler obtains the right to benefits and privileges of the prearranged travel or tourist service, or to a lodging or travel 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.

(k) "Promoter" means any person or business entity that solicits travelers, at the time of use of accommodations or facilities, for the sale of any investments, goods, products, or services, or any business entity that provides
travel or tour benefits in conjunction with promotional
opportunities, including, but not limited to, land, and
interest in land, time-share plans, housing, commodities, or
securities.

(1) "Telemarketing" or "mass marketing" means contact
or discussions with a prospective purchaser of travel services
interested by a seller of travel as part of a mass marketing
sales program, including mail solicitation or phone
solicitation for sale and the use of credit transfer for
payment.

(2) REGISTRATION OF SELLERS OF TRAVEL.--

(a) Each seller of travel shall annually register with
the division, 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; and proof of purchase of adequate
bond as required in this section. A certificate evidencing
proof of registration shall be issued by the division and must
be prominently displayed in the seller of travel's primary
place of business.

(b) Each advertisement or contract of a seller of
travel shall include the phrase "(NAME OF FIRM) is registered
with the State of Florida as a Seller of Travel. Registration
No. ."

(3)(a) Registration fees shall be in an amount equal
to the costs to the division of implementing and enforcing
this section. However, such fee may not be greater than $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

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(b) The application form shall also require the seller of travel to indicate whether it is a domestic or foreign corporation, give 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; or if the seller of travel is operating under a fictitious or trade name, the applicant shall also indicate the date and county in which its fictitious name is registered; and 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.

(c) No registration shall be valid for any seller of travel transacting business at any place other than that designated in its application, unless the division 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 section 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 division of such change.

(d) In the event the seller of travel conducts business through one or more branch offices, it shall file an application in a form prescribed by the department stating the

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business location and address of each branch office and the
name and address of the manager or supervisor.

(e) The division shall have up to 90 days in which to
examine any original application and to investigate the
information contained therein. If it approves the
application, the department shall issue a certificate
evidencing proof of registration along with any requested
branch office permits. When the division has not acted upon
an original application for registration after 90 days, the
seller of travel shall be automatically approved and the
division shall issue a certificate of registration upon the
request of the seller of travel. For all sellers of travel
whose registration is active, their registration shall
automatically be renewed upon filing timely renewal
application and paying all necessary fees attendant thereto.

(f) The division may deny or refuse to renew
registration to any seller of travel based upon a
determination that the seller of travel, or any of its
directors, officers, owners, or general partners, has been
convicted of a crime involving fraud, dishonest dealing, or
any other act of moral turpitude; 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 section; has pending against
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 has
had a judgment entered against him in any action brought by
the Department of Legal Affairs pursuant to ss. 501.201-
501.213.

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(4) SUBMISSION OF DOCUMENTS BY SELLERS OF TRAVEL.--All sellers of travel must annually submit and disclose to the division prior to the sale of or within 30 days of performance, any prearranged travel or tourist service, vacation package, travel contract or certificate, those documents required pursuant to Rule 2-22, F.A.C., along with an annual submission fee not to exceed $100.

(5) SUBMISSION OF DOCUMENTS BY PROMOTERS.--Each business entity defined as a promoter must, pursuant to Rule 2-22, F.A.C., file with the division all documents required along with the annual submission fee not to exceed $100, unless these documents have already been filed with the Division of Florida Land Sales, Condominiums, and Mobile Homes, pursuant to chapter 721.

(6) RECORDKEEPING.--Sellers of travel and promoters must keep and maintain among their business records, for a period of 3 years, the following documents and information:

(a) A copy of each item required to be submitted to the division under subsection (4).
(b) A copy of each item required to be disclosed to a traveler pursuant to subsection (5).
(c) All records required by s. 607.157, when applicable, whether a corporation or other business entity.

(7)(a) The division may suspend or revoke the registration of any seller of travel that has operated or is operating in violation of any of the provisions of this section or the rules of the division. Such seller of travel may not engage in business while the registration is revoked or suspended. The division may proceed by injunction to prevent any seller of travel from doing business subject to the provisions of this section until a performance bond,
(b) The division may employ investigators and conduct investigations of violations of this section.

(c) The division may adopt any reasonable rule necessary to carry out the provisions of this section.

(b) It is a violation of this section for any person:

(a) To conduct business as a seller of travel without registering annually with the division.

(b) To conduct business as a seller of travel without an annual purchase of a performance bond in the amount set by the division, which amount shall be not less than $10,000 or more than $25,000. The surety on such bond shall be a surety company authorized to do business in the state, and the bond shall be conditioned on the performance of the contracted services. An act, conduct, practice, omission, failing, misrepresentation, or nondisclosure which constitutes a violation of this section, also constitutes a deceptive and unfair trade practice for the purpose of s. 501.201, and administrative rules promulgated thereunder.

1. In lieu of the performance bond required in this section, a registrant or applicant for registration may establish a letter of credit or certificate of deposit in a Florida banking institution in the amount of the performance bond, which letter of credit or certificate of deposit shall be available for satisfying claims. The division shall be the beneficiary to this letter of credit or certificate of deposit, and the original shall be filed with the division.

2. Any traveler may file a claim against the bond, letter of credit, or certificate of deposit which shall be made in writing to the division within 60 days after an

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alleged violation of a contract and shall be disposed of pursuant to s. 120.57. In the alternative, claims against a bond, letter of credit, or certificate of deposit may be made in the circuit court or county court where the registrant maintains an office or where prearranged tourist-related services were rendered or were to be made.

3. The bond or certificate of deposit shall be payable to the state for the use and benefit of any traveler who is injured by the fraud, misrepresentation, or financial failure of the seller of travel and conditioned that the registrant will pay any judgment recovered by any traveler in any suit for actual damages, including reasonable attorney's fees, resulting from a cause of action involving the registrant's activities as a seller of travel. This bond shall be open to successive claims, but the aggregate amount may not exceed the penalty of the bond.

4. In any situation in which the seller of travel is currently under investigation by either the division or the Department of Legal Affairs concerning compliance with this act, the right to proceed against the bond, as provided in subparagraph 2., shall be suspended, until after that investigation is completed, or until any enforcement action is brought pursuant thereto, and becomes final.

c. Knowingly to make any false statement, representation, or certification in any application or registration form required by division rule.

d. Knowingly to violate or fail to comply with any rule or order adopted or issued by the division pursuant to its lawful authority in carrying out the intent of this section.
e. Knowingly to sell or market any number of travel certificates that exceed the number disclosed to the division pursuant to this section.

(f)1. In telemarketing or mass marketing, where contact or discussions with a prospective purchaser of travel services are initiated by a seller of travel by phone or otherwise, as part of a mass marketing or telemarketing sales program, to require, request, encourage, or suggest, directly or indirectly, that payment for the right to obtain a travel contract, certificate, or a 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.

2. When contact or discussions with a prospective purchaser of travel service are initiated by a seller of travel by phone as part of a mass marketing or telemarketing sales program, or otherwise, 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.

(9) EXEMPTIONS.--This section does not apply to:

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

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(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
accommodations 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, except as regulated under chapter 721;

(e) Persons involved solely in the rental, leasing, or
sale of residential property, except as regulated under
chapter 721;

(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) Persons directly issuing airline tickets who have
contracted with the Airlines Reporting Corporation or the
Passenger Network Service Corporation;

(i) Persons who have contracted with flag or domestic
carriers certified pursuant to 14 C.F.R. part 121 and who
directly issue airline tickets on behalf of those carriers; or
(j) Persons who have professional liability, errors
and omissions insurance in the amount of $1 million annually.

However, a person covered under paragraph (1) or paragraph (j)
must, and a person covered under paragraph (h) may, annually
register with the division by providing to the division the
legal business name, mailing address, and business locations
of such person and the names and addresses of all proprietors
of the business or, if a corporation, the name and mailing
address of the corporate office and branches and the names and
mailing addresses of the corporate officers and the Florida
agent of the corporation and by paying a registration fee not
to exceed $100.

(10) CIVIL PENALTIES; REMEDIES.--

(a) The division or the Department of Legal Affairs
may institute a civil action in a court of competent
jurisdiction to recover any penalties or damages allowed in
this section and for injunctive relief to enforce compliance
with this section or any rule or order of the division.

(b) The enforcing authority may seek a civil penalty
of up to $5,000 for each violation of this section and may
proceed by administrative proceeding or court action to assess
such penalties and to enforce this section.

(c) The enforcing authority may bring an action for
restitution for and on behalf of any traveler or purchaser of
travel services aggrieved or injured by a violation of this
section. In any such action, the enforcing authority may
establish the nature and types of violations by a seller of
travel from the testimony of one or more aggrieved purchasers
concerning the practices in question, and may then rely on
testimony by investigators, receivers, or financial analysts,
corroborated by summaries, financial records, and purchaser affidavits, in order to establish the commonality of the practices giving rise to the alleged violations and the amount of restitution owed.

(d) 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.

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

(11) CRIMINAL PENALTIES.--Any person or business which violates this section or any rule adopted pursuant to this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(12) CONSUMER FRAUDS TRUST FUND; PAYMENTS.--Any moneys recovered by the enforcing authority as a penalty under this section, or pursuant to ss. 501.201-501.213, shall be deposited as provided in s. 501.2101, except that the General Inspection Trust Fund shall be reimbursed, for those amounts paid to the enforcing authority, the amount of any costs awarded.

(13) STATE PREEMPTION.--No municipality or county or other political subdivision of this state shall have authority, after the effective date of this section, to levy or collect any registration fee or tax, as a regulatory measure, or to require the registration in any manner of any

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seller of travel who is registered and complies with all applicable provisions of this section, 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 section is preempted by this section. The provisions of this subsection do not apply to any local occupational tax levied pursuant to chapter 205.

Section 2. Section 559.927, Florida Statutes, is repealed on January 1, 1998, and shall be reviewed by the Legislature pursuant to s. 11.01, Florida Statutes.

Section 3. This act shall take effect October 1, 1998.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR Senate Bill 560

Committee Substitute for Senate Bill 560 excludes not-for-profit corporations (ch. 617, F.S.) incorporated before December 31, 1994, from its provisions. The bill also deletes language requiring certain parties to include their registration number on all printed material offered to the public.

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A bill to be entitled
An act relating to regulation of sellers of travel; creating s. 559.927, F.S.; providing definitions; providing for registration of sellers of travel; providing registration fees; providing for submission of documents by sellers of travel and by promoters; providing for recordkeeping; providing for suspension or revocation of registration; prescribing acts or omissions which constitute violations; prescribing criminal and civil penalties; providing for bonds by registrants; providing exemptions; providing for disposition of moneys recovered; providing for state preemption of the subject matter; providing for future review and repeal; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 559.927, Florida Statutes, is created to read: 559.927 Sellers of travel; registration; disclosures; bonding; violation; penalties; exceptions; preemption; enforcement.--

(1) DEFINITIONS.--For the purposes of this section, the term:

(a) "Seller of travel" means any resident or nonresident person, firm, corporation, or business entity maintaining or purporting to maintain a business location or branch office in this state who offers for sale, directly or indirectly, at wholesale or retail, prearranged travel or

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tourist-related services for individuals or groups, through vacation or tour packages, or through lodging or travel 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. This section does not apply to a corporation incorporated with the Secretary of State's office under chapter 617 prior to 1985.

(b) "Prearranged travel or tourist-related 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 traveler receives a premium or contracts or pays prior to departure.

(c) "Offer for sale" means direct or indirect representation, claim, or statements 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.

(d) "Division" means the Division of Consumer Services of the Department of Agriculture and Consumer Services.

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

(f) "Enforcing authority" means the Department of Legal Affairs, Consumer Litigation Section.

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(g) "Traveler" 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 lodging or travel certificate for personal use.

(h) "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.

(i) "Certificate" means any "lodging certificate" or "travel certificate" or any other document, tour service arrangement, plan, program, or vacation package, whether by contract, certificate, reservation or confirmation form, membership application or use agreement, or any other means whereby a traveler for consideration paid in advance is entitled to the use of accommodations or facilities for any number of days, whether certain or uncertain, during the period in which the certificate can be exercised, although no specific date or dates for its use are designated.

(j) "Contract" means any contract, certificate, reservation request form, use agreement, license, or reservation confirmation whereby the traveler obtains the right to benefits and privileges of the prearranged travel or tourist service, or to a lodging or travel 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.

(k) "Promoter" means any person or business entity that solicits travelers, at the time of use of accommodations or facilities, for the sale of any investments, goods, products, or services, or any business entity that provides

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travel or tour benefits in conjunction with promotional opportunities, including, but not limited to, land, and interest in land, time-share plans, housing, commodities, or securities.

(1) "Telemarketing" or "mass marketing" means contact or discussions with a prospective purchaser of travel services included by a seller of travel as part of a mass marketing sales program, including mail solicitation or phone solicitation for sale and the use of credit transfer for payment.

(2) REGISTRATION OF SELLERS OF TRAVEL.--

(a) Each seller of travel shall annually register with the division, 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; and proof of purchase of adequate bond as required in this section. A certificate evidencing proof of registration shall be issued by the division and must be prominently displayed in the seller of travel's primary place of business.

(b) Each advertisement or contract of a seller of travel shall include the phrase "(NAME OF FIRM) is registered with the State of Florida as a Seller of Travel. Registration No. . . . ."

(3)(a) Registration fees shall be in an amount equal to the costs to the division of implementing and enforcing this section. However, such fee may not be greater than $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

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Consumer Services pursuant to s. 570.20, for the
administration of this section.

(b) The application form shall also require the seller
of travel to indicate whether it is a domestic or foreign
corporation, give 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; or if the seller of travel is operating
under a fictitious or trade name, the applicant shall also
indicate the date and county in which its fictitious name is
registered; and 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.

(c) No registration shall be valid for any seller of
travel transacting business at any place other than that
designated in its application, unless the division 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 section 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 division of such change.

(d) In the event the seller of travel conducts
business through one or more branch offices, it shall file an
application in a form prescribed by the department stating the

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business location and address of each branch office and the
name and address of the manager or supervisor.

(e) The division shall have up to 90 days in which to
examine any original application and to investigate the
information contained therein. If it approves the
application, the department shall issue a certificate
evidencing proof of registration along with any requested
branch office permits. When the division has not acted upon
an original application for registration after 90 days, the
seller of travel shall be automatically approved and the
division shall issue a certificate of registration upon the
request of the seller of travel. For all sellers of travel
whose registration is active, their registration shall
automatically be renewed upon filing timely renewal
application and paying all necessary fees attendant thereto.

(f) The division may deny or refuse to renew
registration to any seller of travel based upon a
determination that the seller of travel, or any of its
directors, officers, owners, or general partners, has been
convicted of a crime involving fraud, dishonest dealing, or
any other act of moral turpitude; 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 section; has pending against
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 has
had a judgment entered against him in any action brought by
the Department of Legal Affairs pursuant to ss. 501.201-
501.213.

CODING: Words struck are deletions; words underlined are additions.
(4) SUBMISSION OF DOCUMENTS BY SELLERS OF TRAVEL.--All sellers of travel must annually submit and disclose to the division prior to the sale of or within 30 days of performance, any prearranged travel or tourist service, vacation package, travel contract or certificate, those documents required pursuant to Rule 2-22, F.A.C., along with an annual submission fee not to exceed $100.

(5) SUBMISSION OF DOCUMENTS BY PROMOTERS.--Each business entity defined as a promoter must, pursuant to Rule 2-22, F.A.C., file with the division all documents required along with the annual submission fee not to exceed $100, unless these documents have already been filed with the Division of Florida Land Sales, Condominiums, and Mobile Homes, pursuant to chapter 721.

(6) RECORDKEEPING.--Sellers of travel and promoters must keep and maintain among their business records, for a period of 3 years, the following documents and information:

(a) A copy of each item required to be submitted to the division under subsection (4).

(b) A copy of each item required to be disclosed to a traveler pursuant to subsection (5).

(c) All records required by s. 607.157, when applicable, whether a corporation or other business entity.

(7)(a) The division may suspend or revoke the registration of any seller of travel that has operated or is operating in violation of any of the provisions of this section or the rules of the division. Such seller of travel may not engage in business while the registration is revoked or suspended. The division may proceed by injunction to prevent any seller of travel from doing business subject to the provisions of this section until a performance bond,
letter of credit, or certificate of deposit is posted with the division.

(b) The division may employ investigators and conduct investigations of violations of this section.

(c) The division may adopt any reasonable rule necessary to carry out the provisions of this section.

(b) It is a violation of this section for any person:

(a) To conduct business as a seller of travel without registering annually with the division.

(b) To conduct business as a seller of travel without an annual purchase of a performance bond in the amount set by the division, which amount shall be not less than $10,000 or more than $25,000. The surety on such bond shall be a surety company authorized to do business in the state, and the bond shall be conditioned on the performance of the contracted services. An act, conduct, practice, omission, failing, misrepresentation, or nondisclosure which constitutes a violation of this section, also constitutes a deceptive and unfair trade practice for the purpose of s. 501.201, and administrative rules promulgated thereunder.

1. In lieu of the performance bond required in this section, a registrant or applicant for registration may establish a letter of credit or certificate of deposit in a Florida banking institution in the amount of the performance bond, which letter of credit or certificate of deposit shall be available for satisfying claims. The division shall be the beneficiary to this letter of credit or certificate of deposit, and the original shall be filed with the division.

2. Any traveler may file a claim against the bond, letter of credit, or certificate of deposit which shall be made in writing to the division within 120 days after an

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alleged violation of a contract and shall be disposed of pursuant to s. 120.57. In the alternative, claims against a bond, letter of credit, or certificate of deposit may be made in the circuit court or county court where the registrant maintains an office or where prearranged tourist-related services were rendered or were to be made.

3. The bond or certificate of deposit shall be payable to the state for the use and benefit of any traveler who is injured by the fraud, misrepresentation, or financial failure of the seller of travel and conditioned that the registrant will pay any judgment recovered by any traveler in any suit for actual damages, including reasonable attorney's fees, resulting from a cause of action involving the registrant's activities as a seller of travel. This bond shall be open to successive claims, but the aggregate amount may not exceed the penalty of the bond.

4. In any situation in which the seller of travel is currently under investigation by either the division or the Department of Legal Affairs concerning compliance with this act, the right to proceed against the bond, as provided in subparagraph 2., shall be suspended, until after that investigation is completed, or until any enforcement action is brought pursuant thereto, and becomes final.

   c. Knowingly to make any false statement, representation, or certification in any application or registration form required by division rule.

   d. Knowingly to violate or fail to comply with any rule or order adopted or issued by the division pursuant to its lawful authority in carrying out the intent of this section.
e. Knowingly to sell or market any number of travel
certificates that exceed the number disclosed to the division
pursuant to this section.

(f) In telemarketing or mass marketing, where
contact or discussions with a prospective purchaser of travel
services are initiated by a seller of travel by phone or
otherwise, as part of a mass marketing or telemarketing sales
program, to require, request, encourage, or suggest, directly
or indirectly, that payment for the right to obtain a travel
contract, certificate, or a 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.

2. When contact or discussions with a prospective
purchaser of travel service are initiated by a seller of
travel by phone as part of a mass marketing or telemarketing
sales program, or otherwise, 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. A
written copy of the terms and conditions of the contract to be
used by the seller as well as any disclaimers used by the
seller must be furnished to the buyer prior to the buyer's
payment of any funds. If such information is not provided by
the seller, the contract shall be declared null and void and
any funds obtained from the buyer by the seller must be
returned to the buyer.

(9) EXEMPTIONS.--This section does not apply to:

CODING: Words stricken are deletions; words underlined are additions.
(a) A bona fide employee of a seller of travel who is engaged solely in the business of 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, except as regulated under chapter 721;
(e) Persons involved solely in the rental, leasing, or sale of residential property, except as regulated under chapter 721;
(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;

CODING: Words stricken are deletions; words underlined are additions.
(h) Persons directly issuing airline tickets who have contracted with the Airlines Reporting Corporation or the Passenger Network Service Corporation;

(i) Persons who have contracted with flag or domestic carriers certified pursuant to 14 C.F.R. part 121 and who directly issue airline tickets on behalf of those carriers; or

(j) Persons who have professional liability, errors and omissions insurance in the amount of $1 million annually.

However, a person covered under paragraph (i) or paragraph (j) must, and a person covered under paragraph (h) may, annually register with the division by providing to the division the legal business name, mailing address, and business locations of such person and the names and addresses of all proprietors of the business or, if a corporation, the name and mailing address of the corporate office and branches and the names and mailing addresses of the corporate officers and the Florida agent of the corporation and by paying a registration fee not to exceed $100.

(10) CIVIL PENALTIES; REMEDIES.--

(a) The division or the Department of Legal Affairs may institute a civil action in a court of competent jurisdiction to recover any penalties or damages allowed in this section and for injunctive relief to enforce compliance with this section or any rule or order of the division.

(b) The enforcing authority may seek a civil penalty of up to $5,000 for each violation of this section and may proceed by administrative proceeding or court action to assess such penalties and to enforce this section.

(c) The enforcing authority may bring an action for restitution for and on behalf of any traveler or purchaser of
travel services aggrieved or injured by a violation of this section. In any such action, the enforcing authority may establish the nature and types of violations by a seller of travel from the testimony of one or more aggrieved purchasers concerning the practices in question, and may then rely on testimony by investigators, receivers, or financial analysts, corroborated by summaries, financial records, and purchaser affidavits, in order to establish the commonality of the practices giving rise to the alleged violations and the amount of restitution owed.

(d) 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.

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

(11) CRIMINAL PENALTIES.--Any person or business which violates this section or any rule adopted pursuant to this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(12) CONSUMER FRAUDS TRUST FUND; PAYMENTS.--Any moneys recovered by the enforcing authority as a penalty under this section, or pursuant to ss. 501.201-501.213, shall be deposited as provided in , 501.2101, except that the General Inspection Trust Fund shall be reimbursed, for those amounts

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paid to the enforcing authority, the amount of any costs
awarded.

(13) STATE PREEMPTION.--No municipality or county or
other political subdivision of this state shall have
authority, after the effective date of this section, to levy
or collect any registration fee or tax, as a regulatory
measure, or to require the registration in any manner of any
seller of travel who is registered and complies with all
applicable provisions of this section, 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 section is preempted
by this section. The provisions of this subsection do not
apply to any local occupational tax levied pursuant to chapter
205.

Section 2. Section 559.927, Florida Statutes, is
repealed on January 1, 1998, and shall be reviewed by the
Legislature pursuant to section 11.61, Florida Statutes.

Section 3. This act shall take effect October 1, 1988.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR
Senate Bill 560

The length of time a traveler has for filing a claim against
the bond, letter of credit, or certificate of deposit with
the Division of Consumer Services, is increased from 60 days
to 120 days.

A written copy of the terms and conditions of the contract as
well as any disclaimers must be furnished to the buyer by the
seller prior to the buyer's payment of any funds. If such
information is not provided, the contract shall be declared
null and void.

CODING: Words struck are deletions; words underlined are additions.
A bill to be entitled
An act relating to regulation of sellers of
travel; creating s. 559.927, F.S.; providing
definitions; providing for registration of
sellers of travel; providing registration fees;
providing for submission of documents by
sellers of travel and by promoters; providing
for recordkeeping; providing for suspension or
revocation of registration; prescribing acts or
omissions which constitute violations;
prescribing criminal and civil penalties;
providing for bonds by registrants; providing
exemptions; providing for disposition of moneys
recovered; providing for state preemption of
the subject matter; providing for future review
and repeal; providing an appropriation;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 559.927, Florida Statutes, is
created to read:

559.927 Sellers of travel; registration; disclosures;
bonding; violation; penalties; exceptions; preemption;
enforcement.--

(1) DEFINITIONS.--For the purposes of this section,
the term:

(a) "Seller of travel" means any resident or
nonresident person, firm, corporation, or business entity
maintaining or purporting to maintain a business location or
branch office in this state who offers for sale, directly or

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indirectly, at wholesale or retail, prearranged travel or

tourist-related services for individuals or groups, through

vacation or tour packages, or through lodging or travel

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. This section does not apply to a corporation

incorporated with the Secretary of State's office under

chapter 617 prior to 1985.

(b) "Prearranged travel or tourist-related 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 traveler receives a premium or contracts or pays prior to

departure.

(c) "Offer for sale" means direct or indirect

representation, claim, or statements 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.

(d) "Division" means the Division of Consumer Services

of the Department of Agriculture and Consumer Services.

(e) "Registrant" means any person registered as a

seller of travel.

(f) "Enforcing authority" means the Department of

Legal Affairs, Consumer Litigation Section.

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(g) "Traveler" 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 lodging or travel certificate for personal use.

(h) "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.

(i) "Certificate" means any "lodging certificate" or "travel certificate" or any other document, tour service arrangement, plan, program, or vacation package, whether by contract, certificate, reservation or confirmation form, membership application or use agreement, or any other means whereby a traveler for consideration paid in advance is entitled to the use of accommodations or facilities for any number of days, whether certain or uncertain, during the period in which the certificate can be exercised, although no specific date or dates for its use are designated.

(j) "Contract" means any contract, certificate, reservation request form, use agreement, license, or reservation confirmation whereby the traveler obtains the right to benefits and privileges of the prearranged travel or tourist service, or to a lodging or travel 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.

(k) "Promoter" means any person or business entity that solicits travelers, at the time of use of accommodations or facilities, for the sale of any investments, goods, products, or services, or any business entity that provides
travel or tour benefits in conjunction with promotional opportunities, including, but not limited to, land, and interest in land, time-share plans, housing, commodities, or securities.

(1) "Telemarketing" or "mass marketing" means contact or discussions with a prospective purchaser of travel services initiated by a seller of travel as part of a mass marketing sales program, including mail solicitation or phone solicitation for sale and the use of credit transfer for payment.

(2) REGISTRATION OF SELLERS OF TRAVEL.--

(a) Each seller of travel shall annually register with the division, 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; and proof of purchase of adequate bond as required in this section. A certificate evidencing proof of registration shall be issued by the division and must be prominently displayed in the seller of travel's primary place of business.

(b) Each advertisement or contract of a seller of travel shall include the phrase "(NAME OF FIRM) is registered with the State of Florida as a Seller of Travel. Registration No. ."

(3)(a) Registration fees shall be in an amount equal to the costs to the division of implementing and enforcing this section. However, such fee may not be greater than $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 CODING: Words stricken are deletions; words underlined are additions.
Consumer Services pursuant to s. 570.20, for the
administration of this section.

(b) The application form shall also require the seller
of travel to indicate whether it is a domestic or foreign
corporation, give 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; or if the seller of travel is operating
under a fictitious or trade name, the applicant shall also
indicate the date and county in which its fictitious name is
registered; and 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.

(c) No registration shall be valid for any seller of
travel transacting business at any place other than that
designated in its application, unless the division 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 section 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 division of such change.

(d) In the event the seller of travel conducts
business through one or more branch offices, it shall file an
application in a form prescribed by the department stating the

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business location and address of each branch office and the
name and address of the manager or supervisor.

(e) The division shall have up to 90 days in which to
examine any original application and to investigate the
information contained therein. If it approves the
application, the department shall issue a certificate
evidencing proof of registration along with any requested
branch office permits. When the division has not acted upon
an original application for registration after 90 days, the
seller of travel shall be automatically approved and the
division shall issue a certificate of registration upon the
request of the seller of travel. For all sellers of travel
whose registration is active, their registration shall
automatically be renewed upon filing timely renewal
application and paying all necessary fees attendant thereto.

(f) The division may deny or refuse to renew
registration to any seller of travel based upon a
determination that the seller of travel, or any of its
directors, officers, owners, or general partners, has been
convicted of a crime involving fraud, dishonest dealing, or
any other act of moral turpitude; 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 section; has pending against
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 has
had a judgment entered against him in any action brought by
the Department of Legal Affairs pursuant to ss. 501.201-
501.213.

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(4) SUBMISSION OF DOCUMENTS BY SELLERS OF TRAVEL.--All sellers of travel must annually submit and disclose to the division prior to the sale of or within 30 days of performance, any prearranged travel or tourist service, vacation package, travel contract or certificate, those documents required pursuant to Rule 2-22, F.A.C., along with an annual submission fee not to exceed $100.

(5) SUBMISSION OF DOCUMENTS BY PROMOTERS.--Each business entity defined as a promoter must, pursuant to Rule 2-22, F.A.C., file with the division all documents required along with the annual submission fee not to exceed $100, unless these documents have already been filed with the Division of Florida Land Sales, Condominiums, and Mobile Homes, pursuant to chapter 721.

(6) RECORDKEEPING.--Sellers of travel and promoters must keep and maintain among their business records, for a period of 3 years, the following documents and information:

(a) A copy of each item required to be submitted to the division under subsection (4).

(b) A copy of each item required to be disclosed to a traveler pursuant to subsection (5).

(c) All records required by s. 607.157, when applicable, whether a corporation or other business entity.

(7)(a) The division may suspend or revoke the registration of any seller of travel that has operated or is operating in violation of any of the provisions of this section or the rules of the division. Such seller of travel may not engage in business while the registration is revoked or suspended. The division may proceed by injunction to prevent any seller of travel from doing business subject to the provisions of this section until a performance bond,

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letter of credit, or certificate of deposit is posted with the division.

(b) The division may employ investigators and conduct investigations of violations of this section.

(c) The division may adopt any reasonable rule necessary to carry out the provisions of this section.

(b) It is a violation of this section for any person:

(a) To conduct business as a seller of travel without registering annually with the division.

(b) To conduct business as a seller of travel without an annual purchase of a performance bond in the amount set by the division, which amount shall be not less than $10,000 or more than $25,000. The surety on such bond shall be a surety company authorized to do business in the state, and the bond shall be conditioned on the performance of the contracted services. An act, conduct, practice, omission, failing, misrepresentation, or nondisclosure which constitutes a violation of this section, also constitutes a deceptive and unfair trade practice for the purpose of s. 501.201, and administrative rules promulgated thereunder.

1. In lieu of the performance bond required in this section, a registrant or applicant for registration may establish a letter of credit or certificate of deposit in a Florida banking institution in the amount of the performance bond, which letter of credit or certificate of deposit shall be available for satisfying claims. The division shall be the beneficiary to this letter of credit or certificate of deposit, and the original shall be filed with the division.

2. Any traveler may file a claim against the bond, letter of credit, or certificate of deposit which shall be made in writing to the division within 120 days after an
alleged violation of a contract and shall be disposed of pursuant to s. 120.57. In the alternative, claims against a bond, letter of credit, or certificate of deposit may be made in the circuit court or county court where the registrant maintains an office or where prearranged tourist-related services were rendered or were to be made.

3. The bond or certificate of deposit shall be payable to the state for the use and benefit of any traveler who is injured by the fraud, misrepresentation, or financial failure of the seller of travel and conditioned that the registrant will pay any judgment recovered by any traveler in any suit for actual damages, including reasonable attorney's fees, resulting from a cause of action involving the registrant's activities as a seller of travel. This bond shall be open to successive claims, but the aggregate amount may not exceed the penalty of the bond.

4. In any situation in which the seller of travel is currently under investigation by either the division or the Department of Legal Affairs concerning compliance with this act, the right to proceed against the bond, as provided in subparagraph 2., shall be suspended, until after that investigation is completed, or until any enforcement action is brought pursuant thereto, and becomes final.

c. Knowingly to make any false statement, representation, or certification in any application or registration form required by division rule.

d. Knowingly to violate or fail to comply with any rule or order adopted or issued by the division pursuant to its lawful authority in carrying out the intent of this section.

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e. Knowingly to sell or market any number of travel
certificates that exceed the number disclosed to the division
pursuant to this section.

(f)1. In telemarketing or mass marketing, where
contact or discussions with a prospective purchaser of travel
services are initiated by a seller of travel by phone or
otherwise, as part of a mass marketing or telemarketing sales
program, to require, request, encourage, or suggest, directly
or indirectly, that payment for the right to obtain a travel
contract, certificate, or a 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.

2. When contact or discussions with a prospective
purchaser of travel service are initiated by a seller of
travel by phone as part of a mass marketing or telemarketing
sales program, or otherwise, 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,
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written copy of the terms and conditions of the contract to be
used by the seller as well as any disclaimers used by the
seller must be furnished to the buyer prior to the buyer's
payment of any funds. If such information is not provided by
the seller, the contract shall be declared null and void and
any funds obtained from the buyer by the seller must be
returned to the buyer.

(9) EXEMPTIONS.--This section does not apply to:

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(a) A bona fide employee of a seller of travel who is engaged solely in the business of 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, except as regulated under chapter 721;

(e) Persons involved solely in the rental, leasing, or sale of residential property, except as regulated under chapter 721;

(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;

CODING: Words stricken are deletions; words underlined are additions.
(h) Persons directly issuing airline tickets who have contracted with the Airlines Reporting Corporation or the Passenger Network Service Corporation;

(i) Persons who have contracted with flag or domestic carriers certified pursuant to 14 C.F.R. part 121 and who directly issue airline tickets on behalf of those carriers; or

(j) Persons who have professional liability, errors and omissions insurance in the amount of $1 million annually.

However, a person covered under paragraph (i) or paragraph (j) must, and a person covered under paragraph (h) may, annually register with the division by providing to the division the legal business name, mailing address, and business locations of such person and the names and addresses of all proprietors of the business or, if a corporation, the name and mailing address of the corporate office and branches and the names and mailing addresses of the corporate officers and the Florida agent of the corporation and by paying a registration fee not to exceed $100.

(10) CIVIL PENALTIES; REMEDIES.—

(a) The division or the Department of Legal Affairs may institute a civil action in a court of competent jurisdiction to recover any penalties or damages allowed in this section and for injunctive relief to enforce compliance with this section or any rule or order of the division.

(b) The enforcing authority may seek a civil penalty of up to $5,000 for each violation of this section and may proceed by administrative proceeding or court action to assess such penalties and to enforce this section.

(c) The enforcing authority may bring an action for restitution for and on behalf of any traveler or purchaser of
travel services aggrieved or injured by a violation of this section. In any such action, the enforcing authority may establish the nature and types of violations by a seller of travel from the testimony of one or more aggrieved purchasers concerning the practices in question, and may then rely on testimony by investigators, receivers, or financial analysts, corroborated by summaries, financial records, and purchaser affidavits, in order to establish the commonality of the practices giving rise to the alleged violations and the amount of restitution owed.

(d) 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.

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

(11) CRIMINAL PENALTIES.--Any person or business which violates this section or any rule adopted pursuant to this section is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(12) CONSUMER FRAUDS TRUST FUND; PAYMENTS.--Any moneys recovered by the enforcing authority as a penalty under this section, or pursuant to ss. 501.201-501.213, shall be deposited as provided in s. 501.2101, except that the General Inspection Trust Fund shall be reimbursed, for those amounts

CODING: Words strucken are deletions; words underlined are additions.
paid to the enforcing authority, the amount of any costs awarded.

(13) STATE PREEMPTION.--No municipality or county or other political subdivision of this state shall have authority, after the effective date of this section, to levy or collect any registration fee or tax, as a regulatory measure, or to require the registration in any manner of any seller of travel who is registered and complies with all applicable provisions of this section, 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 section is preempted by this section. The provisions of this subsection do not apply to any local occupational tax levied pursuant to chapter 205.

Section 2. Section 559.927, Florida Statutes, is repealed on January 1, 1998, and shall be reviewed by the Legislature pursuant to section 11.61, Florida Statutes.

Section 3. There is hereby appropriated from the General Inspection Trust Fund to the Department of Agriculture and Consumer Services for Fiscal Year 1988-1989 the sum of $179,344, and five additional positions are authorized, to carry out the provisions of this act.

Section 4. This act shall take effect October 1, 1988.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR CS/CS/SB 560

Provides an appropriation from the General Inspection Trust Fund to the Department of Agriculture and Consumer Services for Fiscal Year 1988-89 in the amount of $179,344, and five additional positions are authorized, to carry out the provisions of this act.

CODING: Words struck are deletions; words underlined are additions.
I. SUMMARY:

A. Present Situation:

The Division of Hotels and Restaurants of the Department of Business Regulation currently regulates a limited part of the tour industry under s. 559.925, F.S., relating to receptive tour operators. A "receptive tour operator" is any person or business, other than a hotel or motel already registered with the division, who prearranges tourist-related or tour guide services for individuals or groups visiting the state, whose point of origin or departure is a foreign country.

Section 817.554, F.S., provides a second degree misdemeanor penalty for sellers of travel who fraudulently offer for sale tour or travel-related services.

B. Effect of Proposed Changes:

This bill regulates specified sellers of travel through the Division of Consumer Services in the Department of Agriculture. Sellers of travel are subject to:

- registration (including a fee up to $300 per year),
- recordkeeping requirements (including submission of certain records with a fee up to $100 annually),
- performance bonds (between $10,000 and $25,000), and
- penalties (including fines, a second degree misdemeanor penalty, and attorney fees).

A certificate evidencing proof of registration would be issued by the division and displayed in the seller's primary place of business. The division may suspend or revoke the certificate if the seller of travel operates in violation of the provisions of the bill. The bill also provides for state preemption of local government control over sellers of travel.

The division must automatically renew registrations that are timely filed. However, the division may deny or refuse to renew a registration to any seller of travel who has been convicted of, or has pending certain criminal charges, who has an unpaid civil fine, or who has had a judgment entered against him under the Deceptive and Unfair Trade Practices Act. Further violations under this bill may also be violations of that act and subject to its various civil and criminal penalties.

Sellers of travel must purchase a performance bond in an amount set by the division, to be no less than $10,000 nor more than $25,000. In lieu of purchasing a performance bond, the seller of travel may establish a letter of credit or a certificate of
deposit, in which the division will be named along with the registrant or applicant for registration. Claims against the bond, letter of credit, or certificate of deposit must be made with the division within 60 days of an alleged violation of a contract, or claims may be made in circuit or county court.

The Department of Legal Affairs may seek a civil penalty of up to $5,000 for violations, and may institute civil action for restitution for injured travelers.

Sellers of travel, when telemarketing or mass marketing, may not request the purchaser to use a credit card, and may not state that the offer is only valid on the initial contract if that is untrue. Travel contracts may not waive any responsibilities of sellers of travel under this bill.

The bill also provides for the exception of certain persons and businesses including:

1. a bona fide employee of a seller of travel;

2. persons who make travel arrangements for themselves, their employees or agents, distributors, or entities which are financially related to the persons;

3. persons directly issuing airline tickets who have contracted with the Airlines Reporting Corporation or the Passenger Network Service Corporation;

4. persons who have contracted with flag or domestic carriers and who directly issue airline tickets on behalf of those carriers; and

5. persons with professional liability insurance of $1 million annually.

However, the latter two categories must register annually with the division, pay a registration fee not to exceed $100, and include their registration number in all printed material offered to the public.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Sellers of travel may benefit from a more professional and honorable image by being regulated, especially if the practices prohibited in this bill are eliminated.

Competition may be reduced, but presumably, most sellers who leave the market will do so because their practice did not adequately protect the public. Some sellers may move to markets outside this state to avoid the regulation, fees, and potential penalties.

Individual citizens might face slightly higher fees for travel services. It is generally assumed that some portion of the costs of regulation will be passed on to the consumer.

B. Government:

The Department of Agriculture has not provided a fiscal projection for this bill. However, in the 1987 legislative session, the Department of Business Regulation (DBR) provided a fiscal impact statement on a substantially similar bill, HB 356.
In 1987, DBR estimated the start up cost for the first year of operation under similar provisions as follows:

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TOTAL $216,320

DBR estimated that a total of 3,288 tour operators would be required during the first year of operation; 2,388 would be exempted from the regulatory provisions; and 900 would be subject to regulation. The fee charged to those registrants would be set by rule, however, it could not exceed $100 for the sellers of travel exempted from regulation and $300 for those who must be regulated. DBR had estimated that those fees would most likely be set at $25 and $200, respectively, which would generate approximately $239,700 in revenue. DBR also estimated $5,000 would be collected in civil penalties, bringing total revenue projected to $244,700. DBR stated that funding at that level should be adequate to administer the program as established in last year's bill.

If fees were set at their caps under this bill, using last year's DBR estimates of registrants, 900 sellers would pay an annual registration fee of $300, 2,388 would pay an annual registration fee of $100, and each seller or promoter would pay an annual document submission fee of $100. Total revenues, not including fines or other penalties, could thus reach $837,600. This estimate should be somewhat high because the types of persons required to pay the $100 fee in this bill is reduced from last year's bill.

Furthermore, if private individuals used this mechanism to enforce their rights pursuant to contracts they entered into, the state's role, particularly in bringing civil actions on behalf of such persons, could expand, requiring more staff and other resources to enforce what were previously private rights.

### III. COMMENTS:

None.

### IV. AMENDMENTS:

None.
I. SUMMARY:

A. Present Situation:

The Division of Hotels and Restaurants of the Department of Business Regulation currently regulates a limited part of the tour industry under s. 559.925, F.S., relating to receptive tour operators. A "receptive tour operator" is any person or business, other than a hotel or motel already registered with the division, who prearranges tourist-related or tour guide services for individuals or groups visiting the state, whose point of origin or departure is a foreign country.

Section 817.554, F.S., provides a second degree misdemeanor penalty for sellers of travel who fraudulently offer for sale tour or travel-related services.

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Sellers of travel, when telemarketing or mass marketing, may not request the purchaser to use a credit card, and may not state that the offer is only valid at the initial point of contact if that is untrue. Travel contracts may not waive any responsibilities of sellers of travel under this bill.

The bill also provides for the exception of certain persons, businesses, and corporations including:

1. a not-for-profit corporation (ch. 617, F.S.) incorporated before December 31, 1984;
2. a bona fide employee of a seller of travel;
3. persons who make travel arrangements for themselves, their employees or agents, distributors, or entities which are financially related to the persons;
4. persons directly issuing airline tickets who have contracted with the Airlines Reporting Corporation or the Passenger Network Service Corporation;
5. persons who have contracted with flag or domestic carriers and who directly issue airline tickets on behalf of those carriers; and
6. persons with professional liability insurance of $1 million annually.

However, the latter two categories must register annually with the division, and pay a registration fee not to exceed $100.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Sellers of travel may benefit from a more professional and honorable image by being regulated, especially if the practices prohibited in this bill are eliminated.

Competition may be reduced, but presumably, most sellers who leave the market will do so because their practice did not adequately protect the public. Some sellers may move to markets outside this state to avoid the regulation, fees, and potential penalties.

Individual citizens might face slightly higher fees for travel services. It is generally assumed that some portion of the costs of regulation will be passed on to the consumer.

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If fees were set at their caps under this bill, using last year's DBR estimates of registrants, 900 sellers would pay an annual registration fee of $300, 2,388 would pay an annual registration fee of $100, and each seller or promoter would pay an annual document submission fee of $100. Total revenues, not including fines or other penalties, could thus reach $837,600. This estimate should be somewhat high because the types of persons required to pay the $100 fee in this bill is reduced from last year's bill.

Furthermore, if private individuals used this mechanism to enforce their rights pursuant to contracts they entered into, the state's role, particularly in bringing civil actions on behalf of such persons, could expand, requiring more staff and other resources to enforce what were previously private rights.

### III. COMMENTS:

None.

### IV. AMENDMENTS:

None.
STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 560

Committee Substitute for Senate Bill 560 excludes not-for-profit corporations (ch. 617, F.S.) incorporated before December 31, 1984, from its provisions. The bill also deletes language requiring certain parties to include their registration number on all printed material offered to the public.

Committee on Commerce

[Signature]
Staff Director

(FILE THREE COPIES WITH THE SECRETARY OF THE SENATE)
I. SUMMARY:

A. Present Situation:

The Division of Hotels and Restaurants of the Department of Business Regulation currently regulates a limited part of the tour industry under s. 559.925, F.S., relating to receptive tour operators. A "receptive tour operator" is any person or business, other than a hotel or motel already registered with the division, who prearranges tourist-related or tour guide services for individuals or groups visiting the state, whose point of origin or departure is a foreign country.

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of travel may establish a letter of credit or a certificate of deposit, in which the division will be named along with the registrant or applicant for registration. Claims against the bond, letter of credit, or certificate of deposit must be made with the division within 120 days of an alleged violation of a contract, or claims may be made in circuit or county court.

The Department of Legal Affairs may seek a civil penalty of up to $5,000 for violations, and may institute civil action for restitution for injured travelers.

Sellers of travel, when telemarketing or mass marketing, may not request the purchaser to use a credit card, and may not state that the offer is only valid at the initial point of contact if that is untrue. Travel contracts may not waive any responsibilities of sellers of travel under this bill. A written copy of the terms and conditions of the contract as well as any disclaimers must be furnished to the buyer prior to the buyer's payment of any funds. If such information is not provided, the contract shall be declared null and void.

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However, the latter two categories must register annually with the division, and pay a registration fee not to exceed $100.

The bill provides an appropriation from the General Inspection Trust Fund to the Department of Agriculture and Consumer Services for Fiscal Year 1988-89 the sum of $179,344, and five additional positions are authorized, to carry out the provisions of the act.

II. ECONOMIC IMPACT AND FISCAL NOTE:

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Furthermore, if private individuals used this mechanism to enforce their rights pursuant to contracts they entered into, the state's role, particularly in bringing civil actions on behalf of such persons, could expand, requiring more staff and other resources to enforce what were previously private rights.

III. COMMENTS:
This bill will take effect October 1, 1988.

IV. AMENDMENTS:
None.
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<th>TYPE OF BILL</th>
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<td>Jamerson</td>
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**PRIME BILL TITLE (short title)**

Travel Agencies / Regulation

**SIMILAR/IDENTICAL BILL SUBSTITUTED BY PRIME BILL:** 88/S10560

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**Analysis**

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**NOTE:** Consult the Final Legislative Bill Information (from Joint Legislative Management Committee, Division of Legislative Information, 1988) for more detailed bill history data. If prime bill number above is followed by an asterisk (*), it was amended on the floor, and the staff analysis for that bill may not be in accordance with the enacted law. The analyses reproduced here were supplied by the appropriate committee, who is solely responsible for their accuracy and completeness.

**ADDITIONAL INFORMATION:**