

# Florida's Dirty Dozen

Twelve Repealers  
That Can Boost Business,  
Create Jobs,  
and Change Florida's  
Economic Policy  
for the Better



IJ

By Ari Bargil and Claudia Murray Edenfield

Foreword by J. Robert McClure, Ph.D.  
President and CEO, The James Madison Institute



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## FOREWORD

J. Robert McClure, Ph.D.  
President and CEO, The James  
Madison Institute

Governments too often go well beyond what's required to protect the public's health and safety. Nowhere is this more evident than in business regulations that stifle industries. Frequently, public officials use "safeguarding the public health" or "protecting consumers" merely as a pretext for allowing entrenched special interests to create obstacles for potential competitors, thereby gaining an unfair advantage in what ought to be a free marketplace. This study identifies 12 instances in which the Legislature has relied on these empty justifications—often provided by industry insiders—and suggests that repeal of these laws would make Florida a more welcoming place for consumers and small businesses.

Consider, for instance, a would-be entrepreneur whose goal in life leans less toward college and more toward pursuing a craft that she has learned to love: doing hairstyling and makeup. She is a recent high-school graduate. She is ambitious, as well; her goals include eventually opening a salon of her own.

But she is also realistic. Even though she has practiced her craft, cutting hair and giving makeup tips to friends and family, she understands that she'll need some additional training. Imagine her surprise, however, when she discovers that she will be required to undergo 1,200 hours of instruction at a "beauty school" where the cost for tuition, fees, book,

and supplies—at one of Florida's least expensive providers—currently tops \$16,425. So to enter her chosen field will mean going into debt with student loans to pay for "training" far in excess of what reasonably should be required. And all this not because of any legitimate concern for public health and safety, but merely because industry insiders have gone to the government as a means of protecting themselves from competition or protecting their profits, neither of which is a proper use of government power.

Unfortunately, in Florida these kinds of government-imposed barriers to entering a career are not unique to cosmetology. In fact, they extend across a wide array of occupations. This study highlights a "dirty dozen" of these kinds of obstacles that the Institute for Justice (IJ) regards as among the worst. The James Madison Institute (JMI), which for many years has battled against the kinds of regulatory overkill marring Florida's otherwise excellent business climate and quality of life, agrees that the issue deserves immediate attention from the Legislature.

Of course it should come as no surprise that JMI and IJ have a mutual interest in this issue. Indeed, these groups have a great history of cooperation in the fight for liberty. Both organizations share a devotion to the principles of limited government, individual liberty, and personal responsibility.

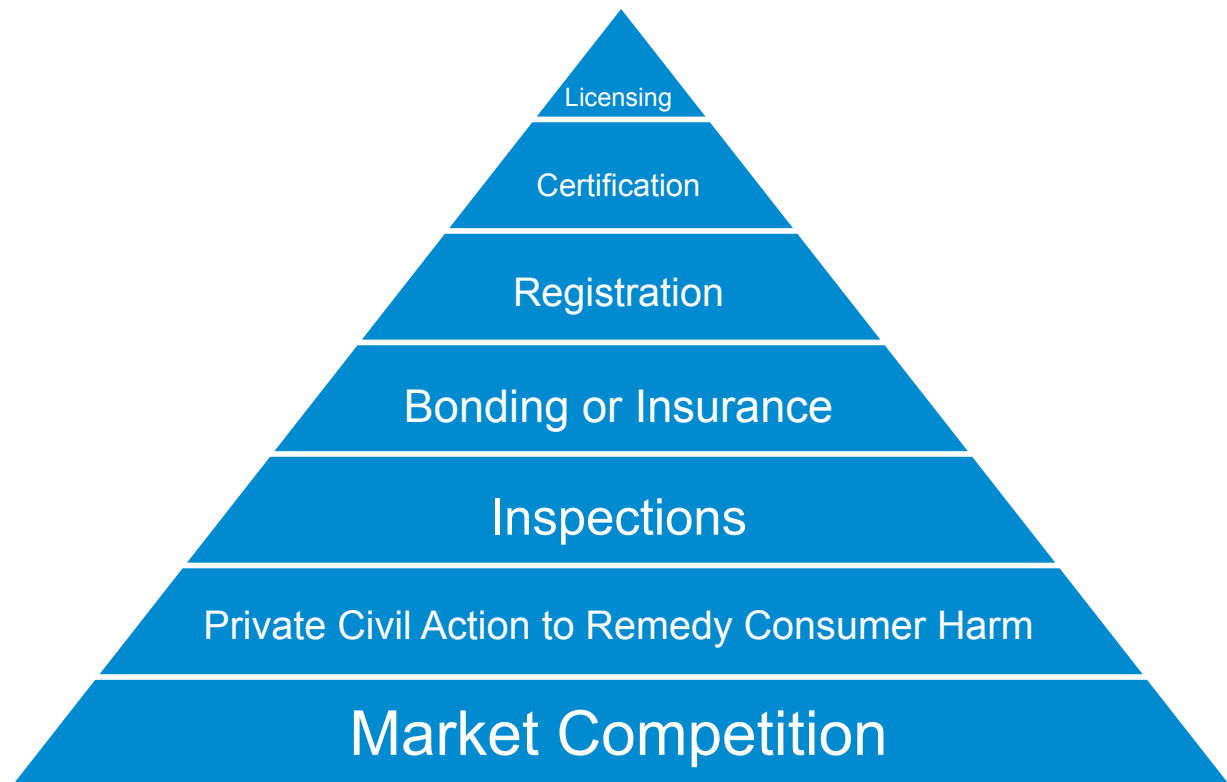
Florida's current system of occupational licensing and regulation should be reassessed because it is clear that the current outcome—often overreaching regulations—is a problem that stifles our economy, raises the cost of living, and makes it much more difficult for ambitious young people, such as our hypothetical entrepreneur, from achieving their goals.

IJ deserves tremendous credit for conducting the in-depth research required to bring these situations to the attention of Floridians and their elected officials. The next move will be up to those officials.

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# Occupational Regulations



This graphic depicts different types of occupational regulations, from least burdensome (at the base) to most burdensome (at the top). Many of the laws discussed in this publication overregulate in that they unnecessarily occupy levels too close to the top of the pyramid. Legislators should regulate occupations in the least intrusive manner, starting from the bottom of the pyramid and moving up only if they can demonstrate it is actually necessary.



## Introduction

Road signs welcoming visitors to Florida boast that the Sunshine State is “Open for Business.” But is it? The state’s focus on building businesses has fallen short. Endless and unnecessary regulations plague small businesses statewide, and artificial barriers to entry make it difficult—sometimes impossible—to start and grow viable businesses. But there is a solution. To strip away pointless, problematic legislation that stands in the way of economic growth, legislators have a valuable tool at their disposal: repealers.

### Burdensome Regulations: Shields Against Competition

Many of these arbitrary regulations are passed at the request of professional associations and government boards that want to protect the pocketbooks of their members by shutting out new competition. In 2012, the Institute for Justice (IJ) published a study on the burdens of occupational licensing and found licensing laws stall job growth and economic development across the country.<sup>1</sup> The study found Florida has the fourth-most-burdensome licensing requirements in the country, often imposing restrictions on occupations that most other states do not even bother to regulate—like interior designers and travel agents—because they pose no harm to consumers.<sup>2</sup>

Occupational-licensing laws are not the only burdensome restrictions hurting small businesses in Florida. Nonsensical state laws also restrict whole Florida industries from competing effectively with other states. For example, the state bans the

sale of malt beverages in standard-sized containers, hurting a growing industry by outlawing something that is legal in most states.

In 2011, legislators proposed a bill to deregulate 20 occupations, some of which—talent agents, auctioneers, travel agencies—are discussed in this report. However, “the bill eventually failed in the face of stiff resistance from industry pressure.”<sup>3</sup> To combat anticompetitive regulations, Florida legislators need to focus on eliminating laws and use the mechanism known as the “repealer bill” to get rid of unnecessary laws that harm the state’s small businesses.

### Repealers: A Built-in Solution to Overregulation

Every year, the Florida legislature passes about 300 new laws.<sup>4</sup> And every year, the new regulations pile onto the already-existing ones, reinforcing the barriers to entry that prevent or dissuade entrepreneurs from starting new businesses. In fact, so many new laws are proposed each session that representatives are, by rule, prohibited from introducing more than six bills per session.<sup>5</sup> Representatives may also introduce “[b]ills that only repeal or delete, without substantive replacement, at least a paragraph of the Florida Statutes or Laws of Florida.” These “freebies” are known as “repealers,” and they do not count toward the limit on the number of bills a representative may introduce.<sup>6</sup>

Oftentimes, the best way for government to help create jobs and boost the economy is simply to get out of the way.<sup>7</sup> If Florida legislators are



Photo by Steve Bousquet of the Tampa Bay Times

serious about helping jumpstart new business and helping small businesses survive, they should start employing the tools they have available and use repealers to cut away the red tape that is binding Florida businesses.

The offending regulations concern:

1. Interior designers
2. Barbers
3. Auctioneers
4. Cosmetologists: Generally
5. Cosmetologists: Makeup Artists
6. Non-Traditional Lodging Rentals
7. Travel Agents
8. Midwives
9. Funeral Directors
10. Growlers
11. Talent Agents
12. Household Movers

## Shifting Legislative Paradigms

Too little emphasis is placed on eliminating laws that are no longer good for Florida or, worse yet, were never good in the first place. The time has come to concentrate on scrapping laws that are bad for Florida's businesses, big or small, instead of compounding already-burdensome and anticompetitive regulations.

Legislators should think of repealers as economy-boosting, job-creating bills; if used correctly, that is exactly what they are. Using repealers to remove needlessly onerous restrictions on Florida businesses would generate opportunities for entrepreneurs (and would-be entrepreneurs) to create jobs and stimulate the state's economy. It is time to change the conversation in Tallahassee from "What can we enact to stimulate businesses?" to "What can we repeal to enable small businesses and entrepreneurs to propel our economy?"

In this report, IJ discusses 12 regulations that arbitrarily and senselessly violate Florida entrepreneurs' right to earn an honest living.

For each of these regulations, IJ suggests the repeal of at least one paragraph of a statute without suggesting any additions to the text, making each regulation ripe for elimination. These "dirty dozen" regulations exemplify the varied landscape of overregulation.

Too often, special interests or entrenched businesses encourage legislators to pass unnecessary laws to protect these groups from competition—and they succeed. These laws end up hurting small businesses, erecting barriers to entry, and arbitrarily restricting Floridians' rights to earn an honest living under the guise of "helping businesses" or "protecting health and safety." But if legislators truly want to open the door for businesses in Florida, they should shift their focus from enacting to redacting. What follows in this report are but 12 among countless anticompetitive, senseless, and arbitrary restrictions that hold back businesses in Florida. If Florida is to actually *be* the business-friendly state it claims to be, then these 12 repealers are a great way to start.



## Interior Designers

*In what should be the inspiration for a punchline, not legislation, the interior-design cartel convinced Florida that unlicensed interior designers would contribute to 88,000 deaths a year.*

For many interior designers, the job is more than a career; it is a passion. But in Florida, the skill to design and create must be accompanied by something else: compliance with some of the toughest occupational-licensing regulations in the nation.<sup>8</sup>

Interior design is the practice of planning and designing interior spaces.<sup>9</sup> And thanks to the lobbying efforts of special-interest groups like the American Society of Interior Designers, 24 states and the District of Columbia have passed some form of legislation regulating interior designers.<sup>10</sup> But Florida is one of only three states, in addition to the District of Columbia, to go so far as to require formal education and a license to work in the field of interior design.<sup>11</sup>

Under the empty guise of “health and safety,” Florida has some of the strictest licensing rules in America, requiring six years of education and experience simply to be called an interior designer.<sup>12</sup> Inexplicably, the state regulates interior designers and architects virtually identically.<sup>13</sup> In total, a prospective designer must attain 2,190 days of education, plus experience, before even being eligible to sit for a licensing exam.<sup>14</sup> And each step of the licensure process, of course, carries with it an additional fee.<sup>15</sup> Florida’s interior-design regulations also include a so-called “titling law,”<sup>16</sup> through which the state actually dictates who may call themselves an “interior designer” and who may not.

These regulations were brought to the public’s attention in 2009, when the Institute for Justice filed suit in federal court on behalf of a pair of talented

interior designers who were being pushed out of the occupation for refusing to comply with the state’s onerous regulations.<sup>17</sup> Because of a highly deferential legal standard favoring the government, the courts ultimately upheld Florida’s burdensome interior-design laws. Even the person charged with enforcing the interior-design statute, David Minacci, could not make heads or tails of the ruling, and he recognized that the law is both incomprehensible and indefensible. In emails to an industry insider and outspoken supporter of the interior-design regulations, Minacci said “things are more confusing after [the] opinion than before” and “I do not agree with the Judge’s ruling and I cannot defend it.”<sup>18</sup> As a result, undoing these protectionist barriers to entry will require repealing the restrictions altogether.

To justify the onerous regulations on interior designers, industry insiders employ scare tactics. During one committee hearing in 2011, an industry representative actually testified that repealing the licensing requirement could contribute to 88,000 deaths.<sup>19</sup> But contrary to lobbyist scare tactics, the practice of interior design is not a matter of life and death. In fact, every state that has studied the need for titling or licensure of interior designers has determined that there is no need for these laws, and even when pressed, interior-design trade groups cannot produce any real evidence of a danger.<sup>20</sup> Nonetheless, the interior-design lobby has convinced 24 states to regulate interior design in some way, usually through titling laws but in four cases through licensure. The reality is that these regulations—which are supposedly intended to protect public health and safety—serve another purpose altogether: preventing people from becoming interior designers and competing with established businesses.

Florida’s interior-design license requirement protects the inflated profits of government-licensed interior designers but does nothing to protect the

public. In *Designing Cartels: How Industry Insiders Cut Out Competition*, the Institute for Justice examined the regulation of interior designers and found that there is little health or safety benefit to these regulations.<sup>21</sup> Further, the study concluded that the public does not seek out these laws—industry insiders do. In fact, interior-design lobbyists spent several years and hundreds of thousands of dollars trying to convince states to require interior-design licenses.<sup>22</sup> These industry insiders use regulation as a means for monopolizing the market by preventing prospective designers from pursuing their passion.

The state should repeal its restrictions on interior designers to allow for fair competition in the marketplace. Repealing these restrictions would create opportunities for would-be entrepreneurs who aspire to practice interior design but do not have the means to jump through the current senseless bureaucratic hoops designed by their competition.

**Potential repealer:** Last sentence of Fla. Stat. § 481.201; Fla. Stat. §§ 481.203(8), (9); 481.209(2); 481.2131; 481.2551; 481.229(6)–(8); various mentions of “interior designers.”<sup>23</sup>



Eva Locke



## How Repealers Can Help Real Floridians: Eva Locke

Eva Locke teamed up with the Institute for Justice in 2009 to sue the state of Florida and ask the federal courts to strike down Florida's interior-design law as unconstitutional. Citing violations of the First Amendment, the court struck down Florida's titling act but upheld its onerous licensing laws. This means that, in Florida, commercial interior designers still must jump through years of arbitrary hoops to practice their occupation.

Eva is an extremely creative person with a passion for design. She went to school to be an interior designer and completed her associate's degree in interior design at Palm Beach Community College. Although she already had a bachelor's degree from Tulane in addition to the two years at PBCC, Florida requires Eva to spend *four years* completing an apprenticeship in interior design before starting her own business as an interior designer. "You're allowed to design in people's homes," she said. "But if you want to design even a small office, you're required to have a state-issued license. And it is difficult in the interior-design business to focus *only* on homes."

Adding insult to injury, Eva learned close to nothing from her ill-fated and short-lived apprenticeship. "I would have had to spend four years of my life in an apprenticeship that was teaching me nothing. After 18 months, I had had enough," said Eva. Through her court case, she fought for years for the rights of Florida's interior designers. But in upholding the law, the courts cemented the arbitrary and onerous hurdle facing would-be interior designers. She could not design commercial spaces, so Eva shifted her focus away from interior design.

What's more, the unconstitutional titling act is still preventing Eva's former colleagues from truthfully calling themselves interior designers. Even though the court struck down Florida's titling act, the legislature has not repealed it. This, says Eva, is confusing interior designers across the state.

"I have friends who are non-licensed interior designers, and they don't call themselves interior designers because the titling law is still on the books," says Eva. "Even though we won an important victory for free speech, the fact that the titling law is still on the books is stifling speech. I tell interior designers across the state that they are allowed to call themselves interior designers, but I constantly receive the same feedback: People are unwilling to put themselves out there when the law is still on the books. Their business cards and their websites remain unchanged because they are scared that the state will threaten their livelihoods. They live in fear that if they say 'interior designer' they'll be prosecuted."

Florida should repeal its interior-design laws altogether because they are thwarting the efforts of small-business entrepreneurs like her. "I would love to build my business, but the existing laws prevent me from designing commercial spaces," said Eva. "Florida is still an overly-restricted marketplace for interior designers. People shouldn't have to jump through hoops to start a business just because their competition wants it that way. These laws just hurt small businesses like mine and hurt consumers, who would benefit from the competition provided through an open market."

## Barbers

*Florida's requirements for aspiring barbers are pretty hairy. To foster entrepreneurship and competition, Florida should trim its restrictions.*

Barbering is one of America's most celebrated trades. But what was once learned through practice has been regulated for the benefit of entrenched interests who are cashing in on government-imposed restrictions in the field. These regulations act as both barriers to entry and a boon to the many barbering schools that have cropped up across the state to meet this artificial, government-created demand.

Becoming a licensed barber in Florida is no small task. Before being eligible for a license, would-be barbers must undergo 1,200 hours of training at specialty schools,<sup>24</sup> which can cost between \$10,000 and \$15,000 to complete.<sup>25</sup> And that's before accounting for the cost of expensive licensing examinations and administrative licensure fees, which cost aspiring barbers hundreds of dollars.<sup>26</sup>

For many, barbering school is simply a necessary evil that enables an individual to lawfully practice a skill that he or she has already mastered. If the unlicensed practice of barbering posed any actual threat to public safety, a set of clippers would not be available at nearly every general store in the state. And cost-conscious parents would not be permitted to trim their own child's hair whenever they could use a haircut.<sup>27</sup>

For many barbers, the trade is their first step up the economic ladder. As a ubiquitous trade, barbering provides the opportunity for entrepreneurship and small-business ownership, which can be especially valuable and important in low-income communities. And the expensive, time-consuming educational requirements are redundant with Florida's separate requirement that barbers pass a competency exam

demonstrating their mastery of the basic barbering skill-set. Even if one thinks that consumers need protection from under-skilled barbers, the current regulatory system, by imposing educational requirements even on those who can already pass the competency exam, is needlessly redundant. Florida, unfortunately, is not unique. But even in comparison to the other states that regulate barbers, Florida's financial burdens are almost twice the national average, assessing a total of \$242 per barber in licensing fees alone.<sup>28</sup>

Florida could require basic health and sanitation training, but instead it has chosen to require aspiring barbers to spend excessive amounts of time on schooling. Aspiring barbers should be free to take the state-mandated examination without being subjected to excessive educational requirements.

Greatly reducing the regulatory burden will open the door for many who have been driven away by the time and expense of licensure. Floridians could see an increase in competition in the marketplace through the influx of capable barbers, which would improve quality and lower costs.

This is a win for skilled individuals who lack the means to finance an expensive—and often unnecessary—education. By repealing educational requirements for barbers, the Florida Legislature can reaffirm its commitment to fostering a business-friendly state and regulating “in a manner which will not unreasonably affect the competitive market.”<sup>29</sup> When it comes to occupational regulation, “a little dab’ll do ya.”

**Potential repealer:** Fla. Stat. § 476.114(2)(c).<sup>30</sup>



## Auctioneers

*Freedom of speech: Going once, going twice,  
SOLD!*

Can the government prohibit citizens from communicating information that helps bring together willing sellers with potential buyers? The state of Florida thinks so. In Florida, it is illegal to engage in auctioneering without a valid license.<sup>31</sup>

Under the First Amendment to the U.S. Constitution, the government cannot prohibit or impede Floridians from communicating truthful information related to lawful transactions. The U.S. Supreme Court agrees.<sup>32</sup>

As Florida's auctioneering law makes clear, however, commercial speech remains under constant threat. Restrictions similar to Florida's auctioneering licensing requirement have come under attack.<sup>33</sup> Laws that prevent people from conveying truthful information about items and property for sale inhibit commerce—and they're unconstitutional.

The state's licensing requirements also prevent many entrepreneurs from becoming successful auctioneers. Would-be auctioneers are forced either to work as apprentices under already-licensed auctioneers or complete a minimum of 80 hours of classroom instruction.<sup>34</sup>

Once those requirements have been met, a potential auctioneer must pass a special exam, which focuses on subjects that have little to do with auctioneering, like advertising, law, and finance.<sup>35</sup> But an auctioneer should not need to master the finer points of finance or law just to be able to offer items for sale. In fact, the state already has laws that prohibit the fraud, dishonesty, false advertising,

and improper accounting that the state seeks to prevent by requiring licensure.<sup>36</sup>

All of this to combat the phantom evil of nefarious auctioneering: In Fiscal Year 2012–13, out of the nearly 3,000 auctioneers licensed in Florida, only 14 disciplinary actions were taken by the state.<sup>37</sup> Likewise, a South Carolina study reported that in a five-year span, only five claims for unethical or incompetent auctioneering were deemed worthy of compensation, a figure that amounted to just 0.0004 percent of the state's auctioneering economy in that span.<sup>38</sup> Perhaps that's why, in the 21 years since the South Carolina study, only two states have added licensing requirements for auctioneers.<sup>39</sup> And Illinois

is set to repeal their licensing requirement in 2020.<sup>40</sup>

Like many forms of mandatory licensure passed under the pretense of ensuring quality or protecting the public, these regulations were actually put in place to limit competition for those already practicing in the field. Even after completing an apprenticeship or coursework and passing the required examination, a potential auctioneer still has one last hurdle: the Florida Board of Auctioneers. Composed of five members, the self-governing Board decides who gets a license.<sup>41</sup> It is all the more troubling, then, that three of the five members of the Board are in the auctioneering business.<sup>42</sup> This system empowers established industry insiders to select their own competitors.

Florida itself recognizes that licensing auctioneers is a useless and inefficient endeavor that benefits only entrenched interests. In 2011, a study conducted by the Florida House of Representatives Subcommittee on Business and Consumer Affairs made several compelling findings with respect to

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the regulation of auctioneers and auctioneer apprentices, determining that:

- The regulations are not indispensable to public health or safety;
- No significant disciplinary actions have been taken against auctioneers and auctioneer apprentices;
- Auctioneering does not require profession-specific examination or continuing education;
- The regulations were designed only to limit competition;
- Auctioneers and auctioneer apprentices are already regulated by other entities; and
- Consumers can be protected by other means.<sup>43</sup>

Florida's legislature should eliminate this unconstitutional and admittedly needless licensing requirement once and for all.

**Potential repealer:** Fla. Stat. §§ 468.381–468.399.<sup>44</sup>

## Cosmetologists: Generally & Cosmetologists: Makeup Artists

*The face of a cartel: Florida's regulation of cosmetology needs a makeover.*

For many working-class Floridians, the cosmetology industry can be a means for channeling a personal hobby into a viable career. But there is an ugly side to the beauty business. That's because Florida's regulation of cosmetologists is not designed to protect the health or safety of consumers; rather, the regulatory scheme is wielded by entrenched interests as a barrier to entry for outsiders.

Through a combination of sweeping regulations, extensive schooling requirements, and a hodgepodge of protectionist exceptions and exemptions, Florida's cosmetology regulations erect significant hurdles for potential workers and entrepreneurs.

### *The General Practice of Cosmetology*

Under the state's expansive definition of the term "cosmetology," even the simplest beauty services—like shampooing, hair arranging, and applying makeup—often require a license.<sup>45</sup> That means that even the smallest start-ups and service providers are swept up into the state's broad regulatory machine.

Extensive formal education is not necessary when public health is not directly at issue. To the extent that cosmetology warrants basic knowledge of health and sanitation, the current regulations go much too far. For example, cosmetologists must train *eight times* more than is required of EMTs—who require a mere 34 days of education to obtain a license and capably perform their jobs.<sup>46</sup> These disparities underscore the protectionist motives behind Florida's cosmetology regulations. Florida could require basic health and sanitation training, but instead it has chosen to require aspiring cosmetologists to spend excessive amounts of time training in skills they may never need.

Obtaining a cosmetology license is no small feat. Before an individual may work as a cosmetologist, he or she must complete a minimum of 1,200 hours of coursework and training and earn a passing grade on a licensing examination.<sup>47</sup> In addition to the cost of school, which nationally averages around \$17,000<sup>48</sup> but can cost as much as \$50,000,<sup>49</sup> applicants must pay an application fee of \$50,<sup>50</sup> an examination fee of \$50,<sup>51</sup> and an initial licensing fee of \$50.<sup>52</sup>

Florida's cosmetology schools have a direct interest in the maintenance and expansion of

onerous educational prerequisites for licensure in the cosmetology field. The Florida Association of Cosmetology and Technical School boasts that it “lobbies against the deregulation of [the] industry”<sup>53</sup> and discusses in depth its lobbyist’s successful campaign to eliminate cosmetology from deregulation discussions.<sup>54</sup> Additionally, the group conducts “annual visit[s] . . . designed to maintain a close relationship with legislators.”<sup>55</sup>

The state’s extensive licensing regime, which prohibits even the most basic cosmetology practices until an individual has completed the lengthy process of schooling and examination,<sup>56</sup> is a barrier to entry of the first order. To benefit a select few, many Floridians who would prefer to enter the beauty industry are forced to turn to other fields because they simply do not have time or money to devote to compliance with such onerous and anticompetitive regulations.

### *Makeup Artistry*

To debunk the purported health-and-safety rationales for these laws, one only has to look at the text of the cosmetology statute itself, which exempts various instances of the practice of cosmetology. The statute contains a separate section of exceptions, in which it sets forth a lengthy list of beauty services falling squarely within the state’s broad definition of “cosmetology” but, for one reason or another, do not require a license.<sup>57</sup>

One example of an exemption that shows the irrationality of the regulatory scheme is makeup artistry. Makeup artists must be licensed like other cosmetologists unless they are doing makeup on an “actor, stunt double, musician, extra, or other talent” for a movie or TV show.<sup>58</sup> Nor do makeup artists need a license if they are doing makeup in a theme park—even for the general public. Lastly, makeup artists do not need to be licensed if they are applying a product in order to sell you that product and do not

charge you for applying it.<sup>59</sup>

The exact same service that a makeup artist would provide to an actor, in a theme park, or at a cosmetics counter is illegal if provided in a salon without a cosmetology license.<sup>60</sup> But if applying makeup really posed a threat to public health and safety, are those hazards any less for actors? Is applying makeup less dangerous in a theme park? Or if done to sell a product? These logical inconsistencies show that applying makeup is not truly dangerous. Rather, industry insiders are trying to keep competition out by requiring a license to compete.

Florida would be wise to lessen or altogether repeal its onerous educational requirements for cosmetologists. Likewise, the exemption provisions should eliminate false distinctions that dictate whether a service requires a license. With sensible, limited regulation, Florida can become a more attractive place for entrepreneurs and practitioners in the business of beauty.

**Potential repealer:** Fla. Stat. §477.019(1)(c).<sup>61</sup> Fla. Stat. §§ 477.0135(1)(f) (everything after “cosmetic products”); 477.0135(5)–(6).<sup>62</sup>

Florida’s regulation of cosmetologists is not designed to protect the health or safety of consumers; rather, the regulatory scheme is wielded by entrenched interests as a barrier to entry for outsiders.

## Non-Traditional Lodging Rentals

*Florida's overbroad regulation of hotels proves that "all-inclusive" is not always a good thing.*

Visitors from all over the world come to Florida for our beaches, weather, and a seemingly limitless variety of attractions and activities. Much of Florida's allure is that there is something here for everyone. With so many different types of travelers visiting the Sunshine State, a variety of lodging establishments are necessary to meet their demands.

In the last few years, the tourism industry has shifted away from traditional hotels to more traveler-friendly arrangements.<sup>63</sup> With the help of the Internet, cost-conscious travelers can connect with entrepreneurial property owners to arrange accommodations on a daily, weekly, or even monthly basis. Rather than staying in a hotel, these travelers can stay in a privately owned home or condo, an option that is quite often less costly<sup>64</sup> and better tailored to individual needs.

In Florida, however, such arrangements are illegal unless the homeowner has obtained a license to run a hotel.<sup>65</sup> According to state law, an individual who rents his or her own property any more than three times in a single year, for 30 days or less, is operating an unlawful "vacation rental" business.<sup>66</sup> That means that under the state's broad definition of "public lodging establishments," a property owner must obtain a license from the Department of Hotels and Restaurants and agree to submit to regular inspections for compliance with Department regulations.<sup>67</sup>

Much to the dismay of the hotel and restaurant lobby, the state has elected not to pursue these "unlicensed hoteliers." In fact, the state has taken action to prevent local governments from doing the same by banning them from enacting such laws.<sup>68</sup> And although similar restrictions still exist at the

state level, Florida has actually chosen to ignore its own laws in order to avoid a bureaucratic headache. With these laws still on the books, however, a quick policy shift is all that separates many property owners from enforcement and fines.<sup>69</sup>

For now, the state's hollow position of non-enforcement is certainly preferable to the alternative. In other states with similar laws, property owners have not been nearly as lucky.<sup>70</sup> But even in Florida, which has yet to see a crackdown like those in New York or San Francisco, property owners are not in the clear. Until the state repeals its current definition of "vacation rentals," property owners are just one successful lobbying effort away from being put out of business for good.

Overbroad laws, like Florida's sweeping definition of what constitutes a "vacation rental," epitomize a separate class of regulations that should be repealed: unenforced laws. They serve no useful purpose other than to frustrate property owners from using their properties to earn income. Florida's across-the-board regulation of hotels—even in spite of the state's position of non-enforcement—chills the growth of an otherwise-viable economy in Florida because property owners are hesitant to offer services where legality is unclear.

The state should not punish individuals for exercising their constitutional right to invite people onto their property. The Florida Legislature should recognize when its own state agencies have identified instances of inadvertent or nonsensical regulatory overreach. Laws of questionable legality and applicability have no place on the books.

**Proposed Repealer: Fla. Stat. § 509.242(1)(c)–(e).<sup>71</sup>**



## How Repealers Can Help Real Consumers: Alejandra and Geoff Silvera

Alejandra and Geoff Silvera may live in North Carolina, but Florida will always be the state they call home. The newlyweds, who first met as classmates at Monsignor Pace High School in Miami before continuing on to the University of Florida, both maintain strong personal and familial ties to Florida. And although graduate school and career opportunities may have lured them away, their roots remain firmly planted in the Sunshine State. They return to visit friends and family as often as possible.



Photo by Jovy Reyes

### Alejandra & Geoff Silvera

But frequent trips from North Carolina to Florida can be both costly and stressful. “Both of our families are in Miami, and most of our friends are scattered throughout the state,” said Alejandra. “We love to see them as much as we can, but hotels can be expensive and inconvenient.” And while the couple’s friends and family are always very welcoming, they prefer not to impose. “Sleeping on a pull-out couch is free, but it’s not the exactly the most comfortable arrangement,” said Geoff.

Luckily, there is a solution for them. Alejandra and Geoff, like many others, have found a perfect compromise in the developing “sharing economy” of nontraditional vacation rentals. For an agreed fee, homeowners with extra space or unused property allow travelers like Alejandra and Geoff to use their home for a limited period of time. These travelers and homeowners typically connect through one of several increasingly popular websites. By cutting out the middle man, travelers who do not need a traditional hotel, like Alejandra and Geoff, have found a way to land better deals by staying in smaller, privately owned properties.

The Silveras can also negotiate the terms of their stay directly with the property owner, which ensures a more personalized experience. Finding a pet-friendly location is important to Alejandra and Geoff, who like to travel with their two dogs, Maverick and Dalí. “It’s much less expensive to travel with the dogs than to board them for the entire time we’re gone,” said Geoff. “Maverick is diabetic and requires special care, so the boarding fees for the dogs can cost hundreds of dollars, even for a short trip.”

The savings certainly add up. Alejandra and Geoff, along with their loyal roadies Maverick and Dalí, make the trek to Florida almost half a dozen times a year, for holidays, numerous friends’ weddings, and other gatherings. “We save tons of money by using services like Airbnb to locate places to stay,” said Alejandra. “With all of the trips we make to Florida, we save thousands by avoiding traditional hotels.” And the dogs love it too. “You don’t usually find an enclosed back yard for the dogs to run around at a typical hotel.”

If the state elects to enforce its already-existing law and shut down these sorts of establishments,

Florida will become a much less convenient destination for people like Alejandra and Geoff, who have unique needs when they travel. "Road trips are pretty much the only way we can afford an actual vacation," said Geoff. "By avoiding hotels, everything is easier. We can select a place that meets our needs, suits our personalities, and costs less."

For a state that prides itself on being welcoming to its visitors, shuttering up this small segment of the economy is anything but Southern hospitality.

## Alejandra & Geoff Silvera

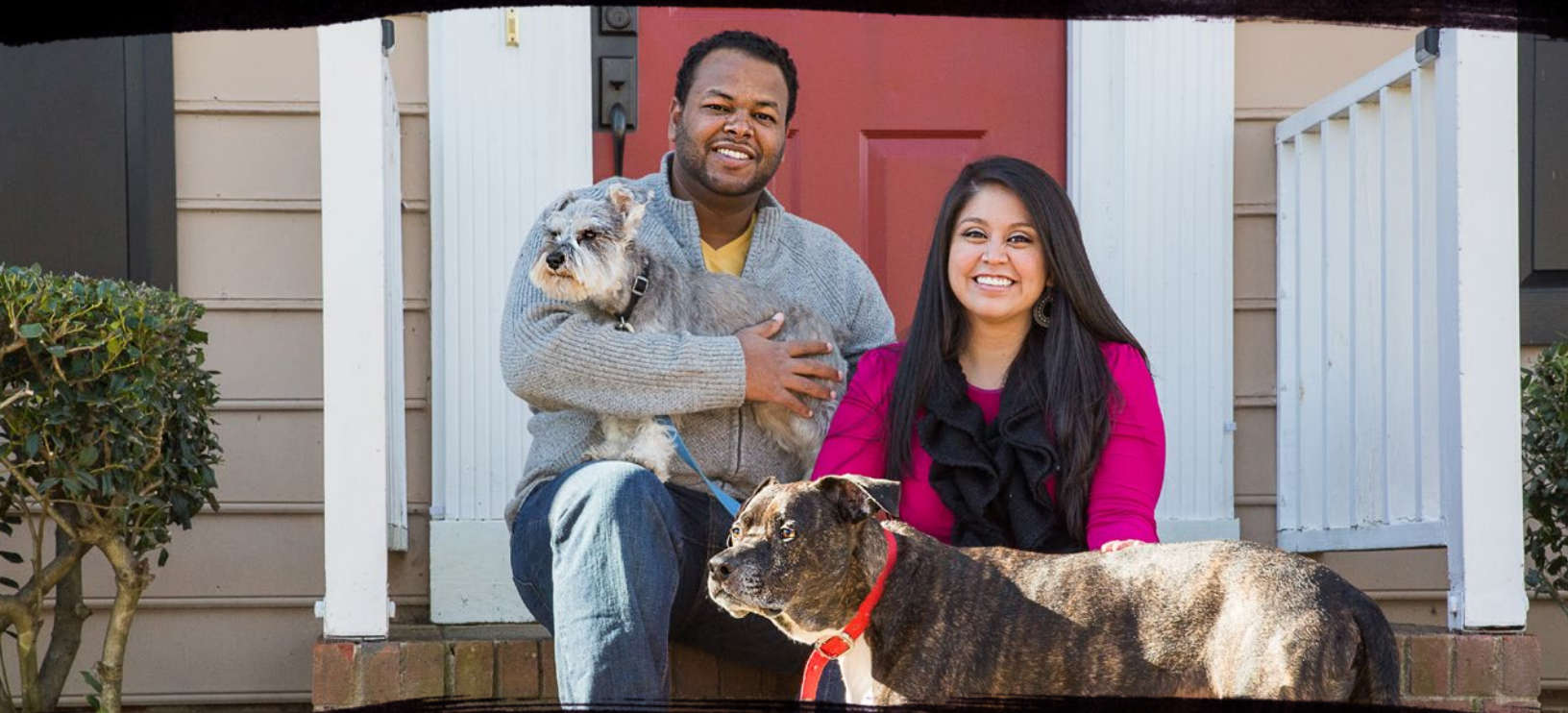


Photo by Jovy Reyes



## Travel Agents

*Unnecessary regulations on travel agents mean neither business nor pleasure.*

Florida is among the top tourist destinations in the world.<sup>72</sup> And although tourism is a robust industry in the state—generating \$71 billion in 2012—Florida makes it more difficult than necessary for travel agents to facilitate tourism. By requiring travel agents to post onerous bonds and charging them unnecessary fees, the state has established needless barriers to entry that prevent entrepreneurs from benefiting from the state’s most profitable industry. The Division of Consumer Services suggests that purchasers of travel “exercis[e] discretion and common sense” when choosing a travel agent.<sup>73</sup> Unfortunately, the state failed to take its own advice when it enacted nonsensical, onerous, and unnecessary restrictions on travel agencies.

Travel agents assist travelers in planning trips. There is no one blueprint for a successful travel agency, as they range widely in size, price, and specialty. Most state legislatures have refrained from regulating travel agencies because there is no need. Florida, on the other hand, has enacted a host of complicated regulations, known as the Florida Sellers of Travel Act, which requires “sellers of travel” to post tens of thousands of dollars’ worth of bonds, pay annual fees (for the agency as well as for each individual travel agent), and report their business dealings in excruciating detail to the state.<sup>74</sup> Depending on the type of vacation packages they offer, some agencies are required to submit to the government: copies of business contracts; copies of any brochure or advertisement they disseminate; verbatim scripts of any radio or TV advertisement; transcripts of standard sales presentations; copies of rules and regulations for the use of vacation facilities; the complete version of any letter

from previous customers used in advertisements; and much more. The Florida Sellers of Travel Act regulates travel clubs—which are merely groups of people with a shared interest in travel—as if they were travel agencies, as well.<sup>75</sup>

Florida’s regulations are so extensive that the legislature repealed the requirement that travel agents provide their Social Security number with registration every year, and parts of the regulations have even been found to violate federal law.<sup>76</sup> In a 2009 lawsuit, several travel agencies successfully argued that the state exceeded its authority in enacting regulations that conflicted with federal laws governing travel outside the United States.<sup>77</sup> In striking down several sections of the Florida Sellers of Travel Act, District Judge Alan S. Gold admonished the state for attempting to unconstitutionally create its own foreign policy using the Florida Sellers of Travel Act.<sup>78</sup> But that is not enough. Large bond requirements, yearly registration fees, and a confusing framework of regulations are unnecessary barriers for small businesses. Such restrictions are particularly needless given that Florida already has laws that prohibit fraud, dishonesty, and false advertising.<sup>79</sup>

The state is not regulating quality; rather, its intent is to require potential travel agents to pay before they play. And given that only eight states regulate travel agencies at all, Florida’s requirements are extraordinarily burdensome. Of the few states that do regulate travel agencies, Florida’s registration fees are among the highest (outdone only by Pennsylvania and California). The legislature should scrap this licensing scheme altogether. In a state that encourages robust tourism, it is ludicrous to impose such useless restrictions on the companies that are working to expand and improve Florida’s largest industry.

**Potential repealer:** Fla. Stat. §§ 559.926–559.939.<sup>80</sup>

## Midwives

*Florida recognized the shortage of prenatal caregivers in the state—then enacted the most onerous regulations in the nation on prenatal caregivers.*

Midwives provide prenatal and birthing assistance and care to pregnant women. “[T]he midwife’s role is to identify problems, provide information, give options and support the woman to make the best decisions.”<sup>81</sup> Midwives are a much-sought-after alternative to traditional medical care during pregnancy. Unfortunately, Florida prevents traditional midwives from practicing without meeting onerous restrictions and succumbing to the state’s excessive regulations.

Midwife-assisted births cost substantially less than obstetrician-assisted births,<sup>82</sup> and studies show that they are just as safe.<sup>83</sup> There are two types of midwives. Nurse-midwives have a health-care background, provide primary and postnatal care to expectant mothers, and prescribe medication. Traditional midwives help pregnant women care for themselves and assist with childbirth. But Florida lumps both of these types of midwives together in its licensing scheme.<sup>84</sup>

According to the Legislature, there is an “inadequate number of providers of [prenatal care and delivery services]” in Florida.<sup>85</sup> Instead of finding a way to increase the number of providers, Florida enacted the most onerous restrictions in the country on midwives.<sup>86</sup> Aspiring midwives must be 21 years old and are required to pay \$1,200 in fees, complete three years of education and training, take college-level math and writing courses, and pass two exams.<sup>87</sup>

There is no need for such burdensome restrictions on midwives. In fact, only about half the states require midwives to be licensed at all.<sup>88</sup> Ac-

cording to the Midwives Alliance of North America (an organization referred to by Florida Statute as a benchmark for midwifery<sup>89</sup>), many midwives:

for religious, personal, and philosophical reasons . . . choose not to become certified or licensed. Typically they are called traditional or community-based midwives. They believe that they are ultimately accountable to the communities they serve; or that midwifery is a social contract between the midwife and client/patient, and should not be legislated at all; or that women have a right to choose qualified care providers regardless of their legal status.<sup>90</sup>

Even among the other states that do regulate midwives, none requires three full years of education and training.<sup>91</sup> Florida’s education requirement is a full year longer than the next-longest requirement.<sup>92</sup> And although the statute gives some discretion to the Department of Health to credit past experience, any person seeking a license must submit to an education/training course of study for at least two years.<sup>93</sup> This means that even a traditional, non-licensed midwife with experience must spend a minimum of two years on unnecessary education and training and pay exorbitant fees before being granted a license.

Why would a state that has made a point of noting a deficiency of prenatal and delivery services choose to heavily regulate the very people who will help solve the deficiency? Simple: Medical-industry groups lobbied to keep out competition.<sup>94</sup> Far from achieving any real benefits for health and safety, these restrictions serve only to make it difficult for aspiring midwives to get a license.

Especially considering the shortage in prenatal care, pregnant women should have access to mid-



wives without arbitrary governmental interference. As such, Florida should eliminate the three-year minimum education and training requirement and the college-courses requirement.<sup>95</sup> By reducing the onerous—and nationally unmatched—restrictions on midwives, Florida will eliminate some of the barriers that prevent aspiring midwives from assisting pregnant women statewide.

**Potential repealer:** Fla. Stat. §§ 467.009(2)–(3).<sup>96</sup>

## Funeral Directors

*To close the lid on competition, the death-care industry exploits Florida's love for occupational licensing.*

A funeral is an opportunity to celebrate a person's life and honor their passing. Funeral directors assist by offering advice, preparing bodies, signing death certificates, and preparing gravesites. Individuals hoping to open a funeral home, however, face restrictive regulations that make it difficult to operate a funeral home or obtain a funeral director's license. At their worst, these regulations operate as a complete bar to new competition. For Floridians in need of these services, many of whom are already in the disadvantageous position of having to make hasty decisions, these regulations lead to additional grief in the form of limited choices and exorbitant prices.

Funeral-home owners and employees cannot engage in ordinary business activities—like offering services for sale, negotiating financial terms, or coordinating logistical issues—without a funeral director license.<sup>97</sup> That means it is legal for a funeral home to offer products such as caskets, but it is illegal for anyone other than a funeral director to discuss a payment plan for the casket if funeral

services are part of the transaction.<sup>98</sup>

The law even punishes non-licensed employees with fines of up to \$10,000 if they offer advice or services that only a licensed funeral-service manager may offer, like ushering guests from room to room or making an announcement during the service.<sup>99</sup> Given the emotional nature of funerals, one can easily understand how a patron may confuse support staff with a supervisor; yet the state prohibits unlicensed employees from providing even the most basic information to guests of a funeral or wake by threatening major financial consequences. And the state can impose severe penalties—including fines of up to \$5,000 or license revocation—on the employer as well.<sup>100</sup>

Restrictive regulations that mandate burdensome educational requirements further stifle competition in the funeral-directing market. Before obtaining a funeral license, an individual must earn an associate's degree, sit for a licensing exam, and complete a year-long apprenticeship.<sup>101</sup> But a two-year degree does not make a candidate more qualified to practice funeral directing; instead it prevents individuals with limited financial means from accessing the occupation. Other states have more reasonable requirements. For example, Alaska accepts one year of college credits.<sup>102</sup>

Worse still, the law violates the constitutional right to earn an honest living by preventing funeral homes from hiring full-time directors unless the candidate has an embalmer license.<sup>103</sup> This is yet another ill-conceived requirement because many funeral homes do not even offer embalming services. Even if a funeral home does offer embalming services, it can just as easily hire a licensed embalmer or contract with an embalming service.

An embalming-license requirement does not make a person better equipped to practice funeral directing. Instead, it impedes access to the occupation because it makes it illegal for qualified fu-

neral directors to work unless they have acquired a completely arbitrary and often useless skill. To obtain an embalmer license, one must pass the licensing exam, take mortuary-science courses and complete a year-long apprenticeship.<sup>104</sup> But an individual who does not want to embalm bodies should not be forced by the government to spend time and money acquiring a license to perform a service she has no interest in offering. The public does not benefit when the person planning their relative's funeral has additional knowledge about an unrelated subject that is irrelevant to funeral directing.

The grandfather clause in the embalming license requirement highlights the law's arbitrariness and exposes its protectionist motives. The law does not apply to funeral directors who obtained their license before September 30, 2010.<sup>105</sup> Other than the inconvenience and expense, there is no difference between a funeral director who was licensed before the exemption date and a funeral director with the mandatory embalmer license. Moreover, these regulations were not enacted until 2010. If the presence of a licensed embalmer was necessary to protect health and safety, the state would have regulated this issue long ago.

Given the challenges created by these stringent regulations, which have no discernable benefits to the public at large, the legislature simply cannot justify these anticompetitive laws. All of the funeral-director regulations purportedly protect the public health and safety.<sup>106</sup> But laws requiring an embalmer license to guide patrons through a showroom or restricting who may sell a casket have no connection to public welfare.

Another harmful aspect of this law is its regulation of funeral attendants. Funeral attendants are responsible for ensuring that funerals and memorial services run smoothly, and they perform a number of tasks in that regard. Typically, they coordinate

floral arrangements, organize memorial services, and greet and usher guests. In Florida, however, a funeral attendant must also be a licensed funeral director.<sup>107</sup> As a result, each attendant must have an associate's degree in mortuary science and complete a one-year apprenticeship.<sup>108</sup> Likewise, each attendant must also pay all necessary fees and pass the same state-administered examination taken by a funeral director.<sup>109</sup>

These requirements make no sense. One should not need to go to school or have served an apprenticeship to be a memorial-service planner. That is obvious from the way the statute is written: Funeral directors do not even have to be present for memorial services, and they may delegate funeral-attendant duties to someone who does not have a license.<sup>110</sup> That means that, in order to be a funeral attendant, one must either have a license or work for a funeral director.

Funeral attendants provide an important service. But the scope of a funeral attendant's responsibilities is far narrower than that of a funeral director. That is why regulations that treat funeral attendants as funeral directors are unreasonable. The public interest is not served by regulations that force an individual to obtain an expensive education that he or she does not need.

Florida must refrain from using the public welfare as a pretext for enacting protectionist measures. To the contrary, eliminating the sections that regulate basic administrative activities would enable small funeral homes to operate more efficiently without breaking the law. Likewise, repealing the educational and embalming license requirements would give more individuals an opportunity to branch into funeral directing.

Access to the death-care industry should not be reserved for a politically powerful select few. Instead, individuals with the capacity and willingness to help families organize a final tribute should

have the opportunity to be of service. Accordingly, the law should not require an expensive three-year commitment to lend a helping hand.

**Potential repealer:** Fla. Stat. §§ 497.372(1)(a), (d)–(h); 497.380(7).<sup>111</sup>

## Talent Agents

*Florida's frivolous restrictions on talent agents leave would-be entrepreneurs on the cutting-room floor.*

Navigating through the entertainment industry can be a daunting task. Fortunately, talent agents can ease some of those difficulties by helping performers land gigs and attracting new acts to the state.<sup>112</sup> And in Florida, the opportunities for those in the entertainment business are on the rise. In 2011, the film and entertainment industry employed nearly 21,454 Floridians.<sup>113</sup> The following year, the Florida Office of Film and Entertainment reported 68,183 jobs by the end of 2012.<sup>114</sup> The last thing the state should do is jeopardize this growth with onerous regulations.

Florida's restrictions on talent agents are the epitome of pointless and wasteful occupational regulations. Since 1986, when the regulations were first imposed, the costs of regulating talent agents has always far exceeded the funds collected.<sup>115</sup> And during the past two decades, that deficit has grown astronomically, reaching \$701,167 as of June 30, 2013.<sup>116</sup> In the past five years alone, it has cost taxpayers more than \$2,100 for each new active talent agent.<sup>117</sup>

To make matters worse, regulation of talent agents does not provide taxpayers with any positive return on investment. Given Florida's low rate of disciplinary actions taken against unlicensed talent

agents, the state cannot justify the exorbitant regulation costs as a public safety measure.<sup>118</sup> During Fiscal Year 2011–2012, there was only one final order that resulted in any disciplinary action being taken against a talent agent.<sup>119</sup> In fact, from 2009 to 2013, there were only 39 disciplinary actions.<sup>120</sup>

Not only are these regulations a waste of taxpayer dollars, but they are also unduly burdensome. Unless acting on behalf of oneself, a family member, or a single artist, the law requires a license to be a talent agent.<sup>121</sup> Under these regulations, an unlicensed talent agent is inexplicably rendered unqualified the instant he or she acquires a second client. And even those individuals who fall within these irrational exceptions are subject to the licensing requirements if they choose to advertise.<sup>122</sup>

Applying for a talent-agency license is an expensive and time-consuming process. The regulations impede entrepreneurs with limited startup capital from entering the market. In addition to the \$300 application fee, the law requires a \$5,000 surety bond.<sup>123</sup> Additionally, the law requires proof of one year of previous experience in the industry, making it difficult for would-be entrepreneurs to break into the industry.<sup>124</sup>

Applicants must also prove good moral character.<sup>125</sup> Specifically, the law mandates the attestation of five people other than artists who have known the applicant for at least three years.<sup>126</sup> However, talent-agency-complaint statistics from Fiscal Year 2012–2013 reveal that Florida does not have a rampant problem with dishonest talent agents.<sup>127</sup> Out of all of the complaints against licensed talent agents, only one resulted in disciplinary action.<sup>128</sup> Consequently, the moral character provision is unnecessary.

These laws are not only inefficient and nonsensical, but they are also redundant. The Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") already protects consumers from

unlawful trade or commerce practices by prohibiting deceptive and misleading conduct.<sup>129</sup> For instance, under FDUTPA, a salesperson may not induce a customer purchase by making false or misleading statements.<sup>130</sup> Similarly, talent agents may not intentionally mislead consumers with false promises.<sup>131</sup> Accordingly, talent-agency regulations are redundant because FDUTPA regulates the same type of unlawful practices.

Given that restrictive talent-agency regulations have created increasing deficits and redundancy in the law, the state should repeal these unnecessary and protectionist laws.

**Potential repealer:** Fla. Stat. §§ 468.401–468.415.<sup>132</sup>

## Growlers

*Onerous packaging laws cause a booming new industry to fizzle.*

History has seen beer packaged and served in a number of creative ways. Whether in a barrel or keg, affixed to a helmet, or even in a boot-shaped glass, there is one thing most Americans can agree on: We like our beer. Benjamin Franklin is famously said to have quipped, “Beer is proof that God loves us and wants us to be happy.” If that is the case, then Ben Franklin would probably have a thing or two to say about Florida’s prohibition on growlers.

A growler is any large, opaque canister with a tight cap or gasket. Due to its impermeable seal and resistance to light, growlers are the ideal container for the beer aficionado who wants to consume draft-quality beer in the comfort of his or

her own home.<sup>133</sup> Offering growlers for sale is the perfect way for local and small-scale breweries to capitalize on America’s exploding demand for craft beer.<sup>134</sup> Unless your brewery is in Florida, where growlers are illegal.<sup>135</sup>

Florida’s arcane restriction applies not just to growlers, but also to all malt beverages sold in packaged containers between 32 and 64 ounces.<sup>136</sup> For large beer producers, which limit their retail sales to cans or bottles, the law has no impact. But for smaller and local producers, like craft breweries, sales often take place on the premises. In most states, an individual can bring or purchase a growler from a local brewery or tavern and then consume their favorite craft brew in the comfort of their own home. Not in the Sunshine State.

By prohibiting a form of commerce heavily relied upon by a developing sector of the economy, Florida is closing its doors to one of the nation’s few booming industries. That doesn’t make much sense in a state that prides itself on being “open for business.” Instead, it smacks of economic protectionism, benefitting large producers—who offer cans and bottles through retail distribution—at the expense of smaller brewers who would prefer to interact more intimately with their customers. As a result, Floridians who want to buy beer for home consumption are limited to brewers who can afford the necessary in-house canning or bottling operations.

Bans that needlessly stifle growth to benefit big business are unconstitutional. The Florida Supreme Court has ruled that regulations that operate to the detriment of one specific sector of the alcohol industry are unlawful exercises of the police power.<sup>137</sup> By prohibiting growlers, the state has outlawed an important tool that developing businesses rely on to reach new customers. But without any reasonable justification, even restrictions related to the alcohol





Growler photo by Wikimedia user Sarah McD

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industry cannot survive judicial scrutiny.<sup>138</sup>

A growler is just a jug. And a ban on growlers serves no legitimate purpose. If the purpose of the packaging restrictions were to curtail excessive drinking, then there would be no reason to outlaw something specifically made to facilitate modest home consumption. Moreover, a ban on 64-ounce containers is even more irrational in light of the fact that it remains perfectly legal to purchase two 32-ounce containers.

It should come as no surprise, then, that efforts to reform or repeal this law have been brought before the Florida Legislature several times.<sup>139</sup> But each attempt was ultimately foiled by industry insiders who stood to lose market share with the introduction of newer, different offerings

for Florida's beer aficionados.<sup>140</sup>

This session, a similar bill has been proposed that would do away with this inane regulation.<sup>141</sup> This time around, the Legislature should stand up to the entrenched business interests that insist on keeping Florida's tavern doors shut to small-scale breweries and pubs. It should not be illegal in Florida to provide customers with a unique product in a slightly different package. Indeed, it is time that the Legislature finally announces “last call” for this burdensome regulation and cuts it off once and for all.

**Potential repealer:** Fla. Stat. § 563.06(6).<sup>142</sup>

## How Repealers Can Help Real Floridians: Tipple's Brews

Cale Flage and Matt Feagin opened their beer and wine store in 2009, after the economic downturn left the two Gainesville natives—both in the construction business at the time—searching for new opportunities. Cale is interested in beer, and Matt is a wine enthusiast. They decided to combine their expertise to open a specialty craft beer and boutique-wine store called Tipple's Brews in Gainesville. They

often carry beer that is hard to find and attract customers from all over the state to buy rare beers from the 200-plus brands they carry. Unfortunately, Florida's ridiculous restriction on beer containers makes it difficult for Tipple's to keep up with trends in the craft-beer industry.

The popularity of craft beer is undeniable. The craft-beer industry has shown tremendous growth throughout the recent recession,<sup>143</sup> and craft breweries currently provide about 108,440 jobs in the United States.<sup>144</sup> But Florida lags behind because of its hostility toward small breweries and stores like Tipple's.

One example of this is the state's ban on growlers. Growlers are reusable containers that bars and breweries fill with draft beer and seal for customers to take home. The industry standard for growlers is 64 ounces, but unlike most states, Florida bans the sale of any beer container, regardless of purpose, that is larger than 32 ounces but smaller than a gallon (128 ounces). So while kegs, barrels, and other large quantities of beer are legal, Florida beer sellers cannot sell, and Florida beer lovers cannot buy, a 64-ounce growler.

"I've seen stores in other states that have up to 60 types of beer on tap that customers can buy and take home in growlers to drink over time," said Cale. "Growler sales are common in other states, but Florida is lagging far behind in the craft-brewing industry. And it's particularly affecting us because we're close to the interstate, so we get a lot of people in here who are travelling through and come in to fill their standard growlers with some of the rare beers we carry. We have to turn them away."

Tipple's started selling growlers in 2010, but state agents threatened to shut down the store if they kept selling them. Recently, they started selling 32-ounce growlers with the Tipple's logo on it. "In the very first



Photo by Mike Yost

Cale Flage

week that we started selling the 32-ounce growlers again, almost 20 people came in with 64-ounce growlers trying to fill them up,” said Cale. “We’ve had to explain to them that Florida doesn’t allow that size. So we try to convince them to buy two 32-ounce growlers, which is not easy to do.”

For businesses like Tipple’s and the start-up breweries that want to introduce their product to customers, growler sales are important. “The greatest opportunity for [craft breweries] is in reducing packaging costs,”<sup>145</sup> and “[t]he cost-per-ounce for craft beer in kegs is roughly 40-45 percent less than the same beer in bottles.”<sup>146</sup> Kegs are much cheaper to produce, keep beer fresher, and are ounce-for-ounce cheaper for consumers.<sup>147</sup> In other states, smaller breweries are able to break into the market selling kegs to businesses that sell growlers. By shipping kegs to stores like Tipple’s, smaller breweries are able to compete with bigger brewers for a space in the customer’s refrigerator. “And they’re environmentally friendly,” says Cale. “Growlers prevent the waste created by bottles because they’re larger and reusable.”

Larger breweries that already have a large market share don’t have a problem bottling. “It’s the smaller breweries that are hurt by the size restrictions because they can’t afford expensive bottling machines,” said Cale. “In our store, we only have around five brands of Florida beer because a lot of local breweries can’t afford to bottle yet. I’d love to carry more local brews, and growlers are a great way for Florida breweries to build their customer base.”

Florida’s ban on 64-ounce growlers hurts small businesses like Tipple’s, whose owners want to expand to other stores in the Gainesville market and beyond, bringing rare and new beers to more customers. “We try to be progressive as a business,” said Cale. “We want to find rare craft beers and make them available to our clients. We want to help small breweries grow and succeed. But this ban on growlers hurts our business by not letting us innovate—and it makes no sense.”

## 32-ounce growlers



Photo by Mike Yost

## Household Movers

*Florida's burdensome restrictions leave household movers boxed in.*

Starting a home-moving company should require little more than a truck and a strong back. In Florida, however, entrepreneurs might also need to add an attorney to that list. That is because starting a home-moving business in Florida requires compliance with a complicated and unnecessary jumble of statutory and administrative regulations.<sup>148</sup>

On top of a \$300 annual registration fee, household movers must also provide the state with proof of good moral character.<sup>149</sup> And if the regulatory authority—the Department of Agriculture and Consumer Services—is not satisfied with the showing, it has the authority to deny, refuse to renew, or even revoke a mover's registration.<sup>150</sup> Only after those requirements are met, and the mover has shown proof of the requisite insurance policy, may an individual operate as a household mover.<sup>151</sup>

While the barriers to entry for household movers are not as substantial as in other fields, the extent and nature of the restrictions imposed on household movers are problematic for another reason. Though not unabashedly protectionist, they are nonetheless emblematic of an equally worrisome legislative trend: paternalism. For example, the state dictates to movers and their customers, in minute detail, how their agreements must be

drafted, how service shall be provided, and how payment must be rendered.<sup>152</sup> But regulations that establish required contractual language, and then dictate how the parties must perform their obligations under that contract, violate the most basic principles of the freedom to contract.

The state's regulatory scheme goes to great lengths to ensure that shippers are not duped by unscrupulous movers.<sup>153</sup> The state even imposes severe penalties, including jail time, for those who violate its rules.<sup>154</sup> Yet each of these potential evils

is already accounted for under Florida law, by way of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA").<sup>155</sup> In fact, the state even explicitly recognizes the redundancy of its regulations in light of FDUTPA.<sup>156</sup> Simple regulations, like the statute's already-existing ban on holding a client's possessions hostage to demand a higher fee<sup>157</sup> and the anti-fraud language of FDUTPA, accomplish the state's goal of consumer protection.

Floridians do not need the government to protect them from hardworking laborers. Individuals should be able to enter into legal contracts with whomever they choose, however they choose, without the government inserting itself to act as scrivener. Therefore, the legislature should eliminate every component of Chapter 507 that infringes on the movers' and shippers' constitutionally protected right to enter into a contract with one another. Dozens of pages of regulations are unnecessary where a handshake used to suffice.

**Potential repealer:** Fla. Stat. § 507.05.<sup>158</sup>

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## Conclusion

The pointless laws outlined in this publication restrict opportunity, create waste, and increase costs that are ultimately passed on to consumers. Repealing these laws would benefit Florida by eliminating unnecessary hurdles for small businesses and entrepreneurs.

The Legislature should help small businesses help themselves because small businesses create jobs. In fact, one study that compared “micro-businesses” to other sectors found that “[v]ery small businesses create the jobs. Period.”<sup>159</sup> Indeed, those businesses were the only sector that created net jobs in 2009–2010, and they created 5.5 million jobs from 2004–2010.<sup>160</sup>

Requiring unnecessary licenses and prohibiting safe business practices for the benefit of entrenched businesses hurts small businesses and, ultimately, hurts Florida’s economy. This needs to stop. When proposing legislation, legislators should focus on respecting the rights of entrepreneurs—makeup artists, household movers, midwives, and the others mentioned here—not handing out favors to industry insiders who can afford to organize and pay lobbyists. What those small-business entrepreneurs need is less regulation.

Repealers are a great way for legislators to create good economic policy without creating new laws. Removing laws, rather than adding them, will help simplify the process for start-ups and small businesses. The dirty dozen laws featured here are just 12 among many whose repeal would help to boost business and create jobs. Only after eliminating these barriers to entry will Florida truly be “open for business.”

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- 98 *Id.* §§ 497.372(1)(c); 497.391(1).
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- 151 Fla. Stat. § 507.04 (requiring an insurance policy and/or bonds in varying amounts, which depend on the size of the company and the nature of the work performed).
- 152 *See, e.g.*, Fla. Stat. § 507.06 (dictating how service and payment are to be rendered); Fla. Stat. §§ 507.05 (1)(5) (describing in detail all information that must be included in a contract between a mover and shipper); (6) (establishing the acceptable forms of payment for services).
- 153 *See* Fla. Stat. § 507.02(3) ("This chapter is intend to secure the satisfaction and confidence of shippers and members of the public when using a mover.").
- 154 Fla. Stat. §§ 507.03(8) (empowering the state to deny, refuse to renew, or revoke a permit); 507.09(1)(b) (providing for a civil fine of up to \$5,000); 507.11(2) (providing for criminal fines of up to \$1,000 and up to a year in jail).
- 155 *See* Fla. Stat. §§ 501.201–.213.
- 156 Fla. Stat. § 507.08 ("Acts . . . committed in violation of this chapter are deceptive and unfair trade practices under . . . [FDUTPA].").
- 157 *Id.* § 507.07(4) ("It is a violation of this chapter . . . [t]o fail to honor and comply with all provisions of the contract for services or bill of lading regarding the purchaser's rights, benefits, and privileges thereunder."); § 507.07(5) (It is a violation of this chapter . . . [t]o withhold delivery of household goods or in any way hold goods in storage against the expressed wishes of the shipper if payment has been made as delineated in the estimate or contract for services.").
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- 159 Claudia Viek, *Micro-Business Is the Backbone of the U.S.*, HUFFINGTON POST (Nov. 6, 2013 10:56 AM), [http://www.huffingtonpost.com/claudia-viek/microbusiness-is-the-back\\_b\\_4215562.html](http://www.huffingtonpost.com/claudia-viek/microbusiness-is-the-back_b_4215562.html). "Micro-businesses" are defined as businesses with 1–4 workers. *Id.*
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This appendix contains the text of statutes discussed, with the suggested repealers identified with strikethroughs.

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## Appendix: Suggested Repeals

*This appendix contains the text of statutes discussed, with the suggested repealers identified with strikethroughs.*

## INTERIOR DESIGNERS

### Fla. Stat. § 481.201. Purpose

The primary legislative purpose for enacting this part is to ensure that every architect practicing in this state meets minimum requirements for safe practice. It is the legislative intent that architects who fall below minimum competency or who otherwise present a danger to the public shall be prohibited from practicing in this state. ~~The Legislature further finds that it is in the interest of the public to limit the practice of interior design to interior designers or architects who have the design education and training required by this part or to persons who are exempted from the provisions of this part.~~

### Fla. Stat. § 481.203. Definitions

As used in this part:

- (1) "Board" means the Board of Architecture and Interior Design.
- (2) "Department" means the Department of Business and Professional Regulation.
- (3) "Architect" or "registered architect" means a natural person who is licensed under this part to engage in the practice of architecture.
- (4) "Certificate of registration" means a license issued by the department to a natural person to engage in the practice of architecture or interior design.
- (5) "Certificate of authorization" means a certificate issued by the department to a corporation or partnership to practice architecture or interior design.
- (6) "Architecture" means the rendering or offering to render services in connection with the design and construction of a structure or group of structures which have as their principal purpose human habitation or use, and the utilization of space within and surrounding such structures. These services include planning, providing preliminary study designs, drawings and specifications, job-site inspection, and administration of construction contracts.
- (7) "Townhouse" is a single-family dwelling unit not exceeding three stories in height which is constructed in a series or group of attached units with property lines separating such units. Each townhouse shall be considered a separate building and shall be separated from adjoining townhouses by the use of separate exterior walls meeting the requirements for zero clearance from property lines as required by the type of construction and fire protection requirements; or shall be separated by a party wall; or may be separated by a single wall meeting the following requirements:
  - (a) Such wall shall provide not less than 2 hours of fire resistance. Plumbing, piping, ducts, or electrical or other building services shall not be installed within or through the 2-hour wall unless such materials and methods of penetration have been tested in accordance with the Standard Building Code.
  - (b) Such wall shall extend from the foundation to the underside of the roof sheathing, and the underside of the roof shall have at least 1 hour of fire resistance for a width not less than 4 feet on each side of the wall.
  - (c) Each dwelling unit sharing such wall shall be designed and constructed to maintain its structural integrity independent of the unit on the opposite side of the wall.
- (8) "Interior design" means designs, consultations, studies, drawings, specifications, and administration of design construction contracts relating to nonstructural interior elements of a building or structure. "Interior design" includes, but is not limited to, reflected ceiling plans, space planning, furnishings,

ings, and the fabrication of nonstructural elements within and surrounding interior spaces of buildings. "Interior design" specifically excludes the design of or the responsibility for architectural and engineering work, except for specification of fixtures and their location within interior spaces. As used in this subsection, "architectural and engineering interior construction relating to the building systems" includes, but is not limited to, construction of structural, mechanical, plumbing, heating, air-conditioning, ventilating, electrical, or vertical transportation systems, or construction which materially affects life safety systems pertaining to fire safety protection such as fire-rated separations between interior spaces, fire-rated vertical shafts in multistory structures, fire-rated protection of structural elements, smoke evacuation and compartmentalization, emergency ingress or egress systems, and emergency alarm systems.

(9) "Registered interior designer" or "interior designer" means a natural person who is licensed under this part.

(10) "Nonstructural element" means an element which does not require structural bracing and which is something other than a load-bearing wall, load-bearing column, or other load-bearing element of a building or structure which is essential to the structural integrity of the building.

(11) "Reflected ceiling plan" means a ceiling design plan which is laid out as if it were projected downward and which may include lighting and other elements.

(12) "Space planning" means the analysis, programming, or design of spatial requirements, including preliminary space layouts and final planning.

(13) "Common area" means an area that is held out for use by all tenants or owners in a multiple-unit dwelling, including, but not limited to, a lobby, elevator, hallway, laundry room, clubhouse, or swimming pool.

(14) "Diversified interior design experience" means experience which substantially encompasses the various elements of interior design services set forth under the definition of "interior design" in subsection (8).

(15) "Interior decorator services" includes the selection or assistance in selection of surface materials, window treatments, wall coverings, paint, floor coverings, surface-mounted lighting, surface-mounted fixtures, and loose furnishings not subject to regulation under applicable building codes.

(16) "Responsible supervising control" means the exercise of direct personal supervision and control throughout the preparation of documents, instruments of service, or any other work requiring the seal and signature of a licensee under this part.

### Fla. Stat. § 481.209. Examinations

(1) A person desiring to be licensed as a registered architect by initial examination shall apply to the department, complete the application form, and remit a nonrefundable application fee. The department shall license any applicant who the board certifies:

- (a) Has passed the licensure examination prescribed by board rule; and
- (b) Is a graduate of a school or college of architecture with a program accredited by the National Architectural Accreditation Board.

(2) ~~A person desiring to be licensed as a registered interior designer shall apply to the department for licensure. The department shall administer the licensure examination for interior designers to each applicant who has completed the application form and remitted the application and examination fees specified in s. 481.207 and who the board certifies:~~

- ~~(a) Is a graduate from an interior design program of 5 years or more and has completed 1 year of diversified interior design experience;~~
- ~~(b) Is a graduate from an interior design program of 4 years or more and has completed 2 years of diversified interior design experience;~~
- ~~(c) Has completed at least 3 years in an interior design curriculum and has completed 3 years of diversified interior design experience; or~~
- ~~(d) Is a graduate from an interior design program of at least 2 years and has~~

completed 4 years of diversified interior design experience. Subsequent to October 1, 2000, for the purpose of having the educational qualification required under this subsection accepted by the board, the applicant must complete his or her education at a program, school, or college of interior design whose curriculum has been approved by the board as of the time of completion. Subsequent to October 1, 2003, all of the required amount of educational credits shall have been obtained in a program, school, or college of interior design whose curriculum has been approved by the board, as of the time each educational credit is gained. The board shall adopt rules providing for the review and approval of programs, schools, and colleges of interior design and courses of interior design study based on a review and inspection by the board of the curriculum of programs, schools, and colleges of interior design in the United States, including those programs, schools, and colleges accredited by the Foundation for Interior Design Education Research. The board shall adopt rules providing for the review and approval of diversified interior design experience required by this subsection.

### **Fla. Stat. § 481.2131. Interior design; practice requirements; disclosure of compensation for professional services**

(1) A registered interior designer is authorized to perform "interior design" as defined in s. 481.203. Interior design documents prepared by a registered interior designer shall contain a statement that the document is not an architectural or engineering study, drawing, specification, or design and is not to be used for construction of any load-bearing columns, load-bearing framing or walls of structures, or issuance of any building permit, except as otherwise provided by law. Interior design documents that are prepared and sealed by a registered interior designer may, if required by a permitting body, be submitted for the issuance of a building permit for interior construction excluding design of any structural, mechanical, plumbing, heating, air-conditioning, ventilating, electrical, or vertical transportation systems or that materially affect lifesafety systems pertaining to firesafety protection such as fire-rated separations between interior spaces, fire-rated vertical shafts in multistory structures, fire-rated protection of structural elements, smoke evacuation and compartmentalization, emergency ingress or egress systems, and emergency alarm systems.

(2) An interior designer shall, before entering into a contract, verbal or written, clearly determine the scope and nature of the project and the method or methods of compensation. The interior designer may offer professional services to the client as a consultant, specifier, or supplier on the basis of a fee, percentage, or markup. The interior designer shall have the responsibility of fully disclosing to the client the manner in which all compensation is to be paid. Unless the client knows and agrees, the interior designer shall not accept any form of compensation from a supplier of goods and services in cash or in kind.

### **Fla. Stat. § 481.2251. Disciplinary proceedings against registered interior designers**

(1) The following acts constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

- (a) Attempting to obtain, obtaining, or renewing, by bribery, by fraudulent misrepresentation, or through an error of the board, a license to practice interior design;
- (b) Having a license to practice interior design revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another jurisdiction for any act which would constitute a violation of this part or of chapter 455;
- (c) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the provision of interior design

services or to the ability to provide interior design services. A plea of nolo contendere shall create a rebuttable presumption of guilt to the underlying criminal charges. However, the board shall allow the person being disciplined to present any evidence relevant to the underlying charges and the circumstances surrounding her or his plea;

- (d) False, deceptive, or misleading advertising;
  - (e) Failing to report to the board any person who the licensee knows is in violation of this part or the rules of the board;
  - (f) Aiding, assisting, procuring, or advising any unlicensed person to use the title "interior designer" contrary to this part or to a rule of the board;
  - (g) Failing to perform any statutory or legal obligation placed upon a registered interior designer;
  - (h) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, or willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records shall include only those which are signed in the capacity as a registered interior designer;
  - (i) Making deceptive, untrue, or fraudulent representations in the provision of interior design services;
  - (j) Accepting and performing professional responsibilities which the licensee knows or has reason to know that she or he is not competent or licensed to perform;
  - (k) Violating any provision of this part, any rule of the board, or a lawful order of the board previously entered in a disciplinary hearing;
  - (l) Conspiring with another licensee or with any other person to commit an act, or committing an act, which would tend to coerce, intimidate, or preclude another licensee from lawfully advertising her or his services;
  - (m) Acceptance of compensation or any consideration by an interior designer from someone other than the client without full disclosure of the compensation or consideration amount or value to the client prior to the engagement for services, in violation of s. 481.2131(2);
  - (n) Rendering or offering to render architectural services; or
  - (o) Committing an act of fraud or deceit, or of negligence, incompetency, or misconduct, in the practice of interior design, including, but not limited to, allowing the preparation of any interior design studies, plans, or other instruments of service in an office that does not have a full-time Florida-registered interior designer assigned to such office or failing to exercise responsible supervisory control over services or projects, as required by board rule.
- (2) When the board finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order taking the following action or imposing one or more of the following penalties:
- (a) Refusal to approve an application for licensure;
  - (b) Refusal to renew an existing license;
  - (c) Revocation or suspension of a license;
  - (d) Imposition of an administrative fine not to exceed \$1,000 for each violation or separate offense and a fine of up to \$5,000 for matters pertaining to a material violation of the Florida Building Code as reported by a local jurisdiction; or
  - (e) Issuance of a reprimand.

### **Fla. Stat. § 481.229. Exceptions; exemptions from licensure**

- (1) No person shall be required to qualify as an architect in order to make plans and specifications for, or supervise the erection, enlargement, or alteration of:
  - (a) Any building upon any farm for the use of any farmer, regardless of the cost of the building;
  - (b) Any one-family or two-family residence building, townhouse, or domestic outbuilding appurtenant to any one-family or two-family residence, regardless of cost; or
  - (c) Any other type of building costing less than \$25,000, except a school,

auditorium, or other building intended for public use, provided that the services of a registered architect shall not be required for minor school projects pursuant to s. 1013.45.

(2) Nothing contained in this part shall be construed to prevent any employee of an architect from acting in any capacity under the instruction, control, or supervision of the architect or to prevent any person from acting as a contractor in the execution of work designed by an architect.

(3) Notwithstanding the provisions of this part, a general contractor who is certified or registered pursuant to the provisions of chapter 489 is not required to be licensed as an architect when negotiating or performing services under a design-build contract as long as the architectural services offered or rendered in connection with the contract are offered and rendered by an architect licensed in accordance with this chapter.

(4) Notwithstanding the provisions of this part or of any other law, no registered engineer whose principal practice is civil or structural engineering, or employee or subordinate under the responsible supervision or control of the engineer, is precluded from performing architectural services which are purely incidental to his or her engineering practice, nor is any registered architect, or employee or subordinate under the responsible supervision or control of such architect, precluded from performing engineering services which are purely incidental to his or her architectural practice. However, no engineer shall practice architecture or use the designation "architect" or any term derived therefrom, and no architect shall practice engineering or use the designation "engineer" or any term derived therefrom.

(5)(a) Nothing contained in this part shall prevent a registered architect or a partnership, limited liability company, or corporation holding a valid certificate of authorization to provide architectural services from performing any interior design service or from using the title "interior designer" or "registered interior designer."

(b) Notwithstanding any other provision of this part, all persons licensed as architects under this part shall be qualified for interior design licensure upon submission of a completed application for such license and a fee not to exceed \$30. Such persons shall be exempt from the requirements of s. 481.209(2). For architects licensed as interior designers, satisfaction of the requirements for renewal of licensure as an architect under s. 481.215 shall be deemed to satisfy the requirements for renewal of licensure as an interior designer under that section. Complaint processing, investigation, or other discipline-related legal costs related to persons licensed as interior designers under this paragraph shall be assessed against the architects' account of the Regulatory Trust Fund.

(c) Notwithstanding any other provision of this part, any corporation, partnership, or person operating under a fictitious name which holds a certificate of authorization to provide architectural services shall be qualified, without fee, for a certificate of authorization to provide interior design services upon submission of a completed application therefor. For corporations, partnerships, and persons operating under a fictitious name which hold a certificate of authorization to provide interior design services, satisfaction of the requirements for renewal of the certificate of authorization to provide architectural services under s. 481.219 shall be deemed to satisfy the requirements for renewal of the certificate of authorization to provide interior design services under that section.

(6) This part shall not apply to:

~~(a) A person who performs interior design services or interior decorator services for any residential application; provided that such person does not advertise as, or represent himself or herself as, an interior designer. For purposes of this paragraph, "residential applications" includes all types of residences, including, but not limited to, residence buildings, single-family homes, multifamily homes, townhouses, apartments, condominiums, and domestic outbuildings appurtenant to one-family or two-family residences. However, "residential applications" does not include common areas associated with~~

~~instances of multiple-unit dwelling applications:~~

~~(b) An employee of a retail establishment providing "interior decorator services" on the premises of the retail establishment or in the furtherance of a retail sale or prospective retail sale, provided that such employee does not advertise as, or represent himself or herself as, an interior designer.~~

~~(7) Nothing in this part shall be construed as authorizing or permitting an interior designer to engage in the business of, or to act as, a contractor within the meaning of chapter 489, unless registered or certified as a contractor pursuant to chapter 489.~~

~~(8) A manufacturer of commercial food service equipment or the manufacturer's representative, distributor, or dealer or an employee thereof, who prepares designs, specifications, or layouts for the sale or installation of such equipment is exempt from licensure as an architect or interior designer, if:~~

~~(a) The designs, specifications, or layouts are not used for construction or installation that may affect structural, mechanical, plumbing, heating, air conditioning, ventilating, electrical, or vertical transportation systems.~~

~~(b) The designs, specifications, or layouts do not materially affect lifesafety systems pertaining to firesafety protection, smoke evacuation and compartmentalization, and emergency ingress or egress systems.~~

~~(c) Each design, specification, or layout document prepared by a person or entity exempt under this subsection contains a statement on each page of the document that the designs, specifications, or layouts are not architectural, interior design, or engineering designs, specifications, or layouts and not used for construction unless reviewed and approved by a licensed architect or engineer.~~

## BARBERS

### Fla. Stat. § 476.114. Examination; Prerequisites

(1) A person desiring to be licensed as a barber shall apply to the department for licensure.

(2) An applicant shall be eligible for licensure by examination to practice barbering if the applicant:

(a) Is at least 16 years of age;

(b) Pays the required application fee; and

(c) 1. ~~Holds an active valid license to practice barbering in another state, has held the license for at least 1 year, and does not qualify for licensure by endorsement as provided for in s. 476.144(5); or~~

2. Has received a minimum of 1,200 hours of training as established by the board, which shall include, but shall not be limited to, the equivalent of completion of services directly related to the practice of barbering at one of the following:

a. A school of barbering licensed pursuant to chapter 1005;

b. A barbering program within the public school system; or

c. A government-operated barbering program in this state.

The board shall establish by rule procedures whereby the school or program may certify that a person is qualified to take the required examination after the completion of a minimum of 1,000 actual school hours. If the person passes the examination, she or he shall have satisfied this requirement; but if the person fails the examination, she or he shall not be qualified to take the examination again until the completion of the full requirements provided by this section.

(3) An applicant who meets the requirements set forth in subparagraphs

(2)(c)1. and 2. who fails to pass the examination may take subsequent examinations as many times as necessary to pass, except that the board may specify by rule reasonable timeframes for rescheduling the examination and additional training requirements for applicants who, after the third attempt, fail to pass the examination. Prior to reexamination, the applicant must file the



appropriate form and pay the reexamination fee as required by rule.

## AUCTIONEERS

### Fla. Stat. § 468.381. Purpose

The Legislature finds that unqualified auctioneers and apprentices and unreliable auction businesses present a significant threat to the public. It is the intent of the Legislature to protect the public by creating a board to regulate auctioneers, apprentices, and auction businesses and by requiring a license to operate:

### Fla. Stat. § 468.382. Definitions

As used in this act, the term:

- (1) "Auction business" means a sole proprietorship, partnership, or corporation which in the regular course of business arranges, manages, sponsors, advertises, promotes, or carries out auctions; employs auctioneers to conduct auctions in its facilities; or uses or allows the use of its facilities for auctions;
- (2) "Auctioneer" means any person licensed pursuant to this part who holds a valid Florida auctioneer license;
- (3) "Apprentice" means any person who is being trained as an auctioneer by a licensed auctioneer;
- (4) "Board" means the Florida Board of Auctioneers;
- (5) "Department" means the Department of Business and Professional Regulation;
- (6) "Livestock" means any animal included in the definition of "livestock" by s. 585.01 or s. 588.13;
- (7) "Agricultural product" means the natural products from a farm, nursery, grove, orchard, vineyard, garden, or apiary, including livestock, tobacco, and vegetables and includes those agricultural products as defined in chapter 618;
- (8) "Absolute auction" means an auction that requires no minimum opening bid that limits the sale other than to the highest bidder.

### Fla. Stat. § 468.383. Exemptions

This act does not apply to the following:

- (1) Auctions conducted by the owner, or the owner's attorney, of any part of the property being offered, unless the owner acquired the goods to resell;
- (2) Auctions conducted under a judicial or an administrative order, or sales required by law to be at auction;
- (3) Auctions conducted by a charitable, civic, or religious organization, or for such organization by a person who receives no compensation;
- (4) Auctions of livestock if conducted by a person who specializes in the sale of livestock and the auction is conducted under the supervision of a livestock trade association, a governmental agency, or an owner of the livestock. The act does not apply to the auction of agricultural products as defined in s. 618.01(1) or the equipment or tools used to produce or market such products, if the auction is conducted at a farm or ranch where the products are produced or where the equipment and tools are used or at an auction facility that sells primarily agricultural products;
- (5) Auctions conducted by a trustee pursuant to a power of sale contained in a deed of trust on real property;
- (6) Auctions of collateral, sales conducted to enforce carriers' or warehousemen's liens, sales of the contents of self-contained storage units, bulk sales, sales of goods by a presenting bank following dishonor of a documentary draft, resales of rightfully rejected goods, or resales conducted pursuant to law, if the auction is conducted by the owner or agent of the lien on or interest in such goods;

(7) Auctions conducted as a part of the sale of real property by a real estate broker, as defined in s. 475.01(1)(a);

(8) Auctions of motor vehicles among motor vehicle dealers if conducted by an auctioneer;

(9) Auctions conducted by a person enrolled in a class at an approved school of auctioneering, for the purpose of training and receiving instruction, under the direct supervision of an auctioneer who is also an instructor in the school and who further assumes full and complete responsibility for the activities of the student.

### Fla. Stat. § 468.384. Florida Board of Auctioneers

- (1) There is created in the department the Florida Board of Auctioneers. The board shall be composed of five members appointed by the Governor and confirmed by the Senate, two of whom shall have been actively and principally engaged as auctioneers for a period of not less than 5 years preceding their appointment, one of whom shall be a principal of an auction company, and two of whom shall be laypersons. Members shall serve for terms of 4 years;
- (2) The board has authority to adopt rules pursuant to ss. 420.536(1) and 420.54 to implement the provisions of this act conferring duties upon it;
- (3) The board shall receive and act upon applications for auctioneer, apprentice, and auction business licenses and shall have the power to issue, suspend, and revoke such licenses and to take such other action as is necessary to carry out the provisions of this act.

### Fla. Stat. § 468.385. Licenses Required; Qualifications, Examination

- (1) The department shall license any applicant who the board certifies is qualified to practice auctioneering;
- (2) No person shall auction or offer to auction any property in this state unless he or she is licensed by the department or is exempt from licensure under this act;
- (3) No person shall be licensed as an auctioneer or apprentice if he or she:
  - (a) Is under 18 years of age; or
  - (b) Has committed any act or offense in this state or any other jurisdiction which would constitute a basis for disciplinary action under s. 468.389;
- (4) Any person seeking a license as an auctioneer must pass a written examination approved by the board which tests his or her general knowledge of the laws of this state relating to provisions of the Uniform Commercial Code that are relevant to auctions, the laws of agency, and the provisions of this act;
- (5) Each apprentice application and license shall name a licensed auctioneer who has agreed to serve as the supervisor of the apprentice. No apprentice may conduct, or contract to conduct, an auction without the express approval of his or her supervisor. The supervisor shall regularly review the apprentice's records, which are required by the board to be maintained, to determine if such records are accurate and current;
- (6) No person shall be licensed as an auctioneer unless he or she:
  - (a) Has held an apprentice license and has served as an apprentice for 1 year or more, or has completed a course of study, consisting of not less than 80 classroom hours of instruction, that meets standards adopted by the board;
  - (b) Has passed the required examination; and
  - (c) Is approved by the board;
- (7)(a) Any auction that is subject to the provisions of this part must be conducted by an auctioneer who has an active license or an apprentice who has an active apprentice auctioneer license and who has received prior written sponsor consent;
- (b) No business shall auction or offer to auction any property in this state unless it is licensed as an auction business by the board or is exempt from licensure under this act. Each application for licensure shall include the names

of the owner and the business, the business mailing address and location, and any other information which the board may require. The owner of an auction business shall report to the board within 30 days of any change in this required information:

(8) A license issued by the department to an auctioneer, apprentice, or auction business is not transferable.

### **Fla. Stat. § 468.3851. Renewal of License**

(1) The department shall renew a license upon receipt of the renewal application and fee:

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses:

### **Fla. Stat. § 468.3852. Reactivation of License; Fee**

The board shall prescribe by rule a fee not to exceed \$250 for the reactivation of an inactive license. The fee shall be in addition to the current biennial renewal fee:

### **Fla. Stat. § 468.3855. Apprenticeship Training Requirements**

(1) An auctioneer may not sponsor more than three apprentices at one time. Any auctioneer who serves as a sponsor must have held an active, valid license for 3 consecutive years preceding the date on which that auctioneer is named as sponsor of the apprentice:

(2) Any auctioneer who undertakes the sponsorship of an apprentice shall ensure that the apprentice receives training as required by board rule:

(3) An apprentice must actively participate in auction sales as required by board rule, and a record of each auction for which participation credit is claimed must be made as required by board rule:

(4) Apprentices are prohibited from conducting any auction without the prior express written consent of the sponsor. The apprentice's sponsor must be present at the auction site at any time the apprentice is actively participating in the conduct of the auction. If the apprentice's sponsor cannot attend a particular auction, the sponsor may appoint a qualified auctioneer who meets the requirements of board rule to attend the auction in his or her place. Prior written consent must be given by the apprentice's sponsor for each substitution:

(5) Each apprentice and sponsor shall file reports as required by board rule:

(6) A sponsor may not authorize an apprentice to conduct an auction or act as principal auctioneer unless the sponsor has determined that the apprentice has received adequate training to do so:

(7) The sponsor shall be responsible for any acts or omissions of the apprentice which constitute a violation of law in relation to the conduct of an auction:

(8) All apprentice applications shall be valid for a period of 6 months after board approval. Any applicant who fails to complete the licensure process within that time shall be required to make application as a new applicant:

(9) Any licensed apprentice who wishes to change the sponsor under whom he or she is licensed must submit a new application and application fee. However, a new license fee shall not be required and credit shall be awarded for training received or any period of apprenticeship served under the previous sponsor:

(10) Credit for training received or any period of apprenticeship served shall not be allowed unless it occurred under the supervision of the sponsor under whose supervision the apprentice is licensed:

### **Fla. Stat. § 468.386. Fees; Local Licensing Requirements**

(1) The board by rule may establish application, examination, licensure, renewal, and other reasonable and necessary fees, based upon the department's estimate of the costs to the board in administering this act:

(2) An auctioneer shall obtain a local occupational license, if required, in the

jurisdiction in which his or her permanent business or branch office is located. However, no local government or local agency may charge any other fee for the practice of auctioneering or require any auctioneer's license in addition to the license required by this part:

### **Fla. Stat. § 468.387. Licensing of Nonresidents; Endorsement; Reciprocity**

The department shall issue a license by endorsement to practice auctioneering to an applicant who, upon applying to the department and remitting the required fee, set by the board, demonstrates to the board that he or she satisfies the requirements of s. 468.385(3) and holds a valid license to practice auctioneering in another state, provided that the requirements for licensure in that state are substantially equivalent to or more stringent than those existing in this state. The endorsement and reciprocity provisions of this section shall apply to auctioneers only and not to professions or occupations regulated by other statutes:

### **Fla. Stat. § 468.388. Conduct of an Auction**

(1) Prior to conducting an auction in this state, an auctioneer or auction business shall execute a written agreement with the owner, or the agent of the owner, of any property to be offered for sale, stating:

(a) The name and address of the owner of the property;

(b) The name and address of the person employing the auctioneer or auction business, if different from the owner; and

(c) The terms or conditions upon which the auctioneer or auction business will receive the property for sale and remit the sales proceeds to the owner:

(2) The auctioneer or auction business shall give the owner one copy of the agreement and shall keep one copy for 2 years after the date of the auction:

(3) Each auctioneer or auction business shall maintain a record book of all sales. The record book shall be open to inspection by the board at reasonable times:

(4) Each auction must be conducted by an auctioneer who has an active license or by an apprentice who has an active apprentice auctioneer license and who has received prior written sponsor consent. Each auction must be conducted under the auspices of a licensed auction business. Any auctioneer or apprentice auctioneer conducting an auction, and any auction business under whose auspices such auction is held, shall be responsible for determining that any auctioneer, apprentice, or auction business with whom they are associated in conducting such auction has an active Florida auctioneer, apprentice, or auction business license:

(5) The principal auctioneer shall prominently display at the auction site the licenses of the principal auctioneer, the auction business, and any other licensed auctioneers or apprentices who are actively participating in the auction. If such a display is not practicable, then an oral announcement at the beginning of the auction or a prominent written announcement that these licenses are available for inspection at the auction site must be made:

(6) If a buyer premium or any surcharge is a condition to sale at any auction, the amount of the premium or surcharge must be announced at the beginning of the auction and a written notice of this information must be conspicuously displayed or distributed to the public at the auction site:

(7) At the beginning of an auction must be announced the terms of bidding and sale and whether the sale is with reserve, without reserve, or absolute or if a minimum bid is required. If the sale is absolute and has been announced or advertised as such, an article or lot may not be withdrawn from sale once a bid has been accepted. If no bid is received within a reasonable time, the item or lot may be withdrawn:

(8) If an auction has been advertised as absolute, no bid shall be accepted from the owner of the property or from someone acting on behalf of the owner unless the right to bid is specifically permitted by law:



(9) The auction business under which the auction is conducted is responsible for all other aspects of the auction as required by board rule. The auction business may delegate in whole, or in part, different aspects of the auction only to the extent that such delegation is permitted by law and that such delegation will not impede the principal auctioneer's ability to ensure the proper conduct of his or her independent responsibility for the auction. The auction business under whose auspices the auction is conducted is responsible for ensuring compliance as required by board rule:

(10)(a) When settlement is not made immediately after an auction, all sale proceeds received for another person must be deposited in an escrow or trust account in an insured bank or savings and loan association located in this state within 2 working days after the auction. A maximum of \$100 may be kept in the escrow account for administrative purposes:

(b) Each auction business shall maintain, for not less than 2 years, a separate ledger showing the funds held for another person deposited and disbursed by the auction business for each auction. The escrow or trust account must be reconciled monthly with the bank statement. A signed and dated record shall be maintained for a 2-year period and be available for inspection by the department or at the request of the board:

(c) Any interest which accrues to sale proceeds on deposit shall be the property of the seller for whom the funds were received unless the parties have agreed otherwise by written agreement executed prior to the auction:

(d) Unless otherwise provided by written agreement executed prior to the auction, funds received by a licensee from the seller or his or her agent for expenses, including advertising, must be expended for the purposes advanced or refunded to the seller at the time of final settlement. Any funds so received shall be maintained in an escrow or trust account in an insured bank or savings and loan association located in this state. However, this does not prohibit advanced payment of a flat fee:

(11)(a) All advertising by an auctioneer or auction business shall include the name and Florida license number of such auctioneer and auction business. The term "advertising" shall not include articles of clothing, directional signs, or other promotional novelty items:

(b) No licensed auctioneer, apprentice, or auction business may disseminate or cause to be disseminated any advertisement or advertising which is false, deceptive, misleading, or untruthful. Any advertisement or advertising shall be deemed to be false, deceptive, misleading, or untruthful if it:

1. Contains misrepresentations of facts:
2. Is misleading or deceptive because, in its content or in the context in which it is presented, it makes only a partial disclosure of relevant facts:
3. Creates false or unjustified expectations of the services to be performed:
4. Contains any representation or claim which the advertising licensee fails to perform:
5. Fails to include the name and license number of the principal auctioneer and the auction business:
6. Fails to include the name and license number of the sponsor if an apprentice is acting as the principal auctioneer:
7. Advertises an auction as absolute without specifying any and all items to be sold with reserve or with minimum bids:
8. Fails to include the percentage amount of any buyer's premium or surcharge which is a condition to sale:

(c) The provisions of this subsection apply to media exposure of any nature, regardless of whether it is in the form of paid advertising:

(d) The auction business shall be responsible for the content of all advertising disseminated in preparation for an auction:

## Fla. Stat. § 468.389. Prohibited Acts; Penalties

(1) The following acts shall be grounds for the disciplinary activities provided in subsections (2) and (3):

(a) A violation of any law relating to trade or commerce of this state or of the state in which an auction is conducted:

(b) Misrepresentation of property for sale at auction or making false promises concerning the use, value, or condition of such property by an auctioneer or auction business or by anyone acting as an agent of or with the consent of the auctioneer or auction business:

(c) Failure to account for or to pay or return, within a reasonable time not to exceed 30 days, money or property belonging to another which has come into the control of an auctioneer or auction business through an auction:

(d) False, deceptive, misleading, or untruthful advertising:

(e) Any conduct in connection with a sales transaction which demonstrates bad faith or dishonesty:

(f) Using or permitting the use of false bidders, cappers, or shills:

(g) Making any material false statement on a license application:

(h) Commingling money or property of another person with his or her own. Every auctioneer and auction business shall maintain a separate trust or escrow account in an insured bank or savings and loan association located in this state in which shall be deposited all proceeds received for another person through an auction sale:

(i) Refusal or neglect of any auctioneer or other receiver of public moneys to pay the moneys so received into the State Treasury at the times and under the regulations prescribed by law:

(j) Violating a statute or administrative rule regulating practice under this part or a lawful disciplinary order of the board or the department:

(k) Having a license to practice a comparable profession revoked, suspended, or otherwise acted against by another state, territory, or country:

(l) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice or the ability to practice the profession of auctioneering:

(2) When the board finds any person guilty of any of the prohibited acts set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Refusal to certify to the department an application for licensure:

(b) Revocation or suspension of a license:

(c) Imposition of an administrative fine not to exceed \$1,000 for each count or separate offense:

(d) Issuance of a reprimand:

(e) Placement of the auctioneer on probation for a period of time and subject to conditions as the board may specify, including requiring the auctioneer to successfully complete the licensure examination:

(f) Requirement that the person in violation make restitution to each consumer affected by that violation. Proof of such restitution shall be a signed and notarized release executed by the consumer or the consumer's estate:

(3)(a) Failure to pay a fine within a reasonable time, as prescribed by board rule, may be grounds for disciplinary action:

(b) The department may file for an injunction or bring any other appropriate civil action against anyone who violates this part:

## Fla. Stat. § 468.391. Penalty

Any auctioneer, apprentice, or auction business or any owner or manager thereof, or, in the case of corporate ownership, any substantial stockholder of the corporation owning the auction business, who operates without an active license or violates s. 468.389(1)(c), (e), (f), (h), or (i) commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083:

## Fla. Stat. § 468.392. Auctioneer Recovery Fund

There is created the Auctioneer Recovery Fund as a separate account in the Professional Regulation Trust Fund. The fund shall be administered by the Florida Board of Auctioneers:

(1) The Chief Financial Officer shall invest the money not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited to the credit of the Auctioneer Recovery Fund and shall be available for the same purposes as other moneys deposited in the Auctioneer Recovery Fund.

(2) All payments and disbursements from the Auctioneer Recovery Fund shall be made by the Chief Financial Officer upon a voucher signed by the Secretary of Business and Professional Regulation or the secretary's designee.

(3) If at any time the moneys in the Auctioneer Recovery Fund are insufficient to satisfy any valid claim or portion thereof, the board shall satisfy such unpaid claim or portion thereof as soon as a sufficient amount has been deposited in or transferred to the fund. When there is more than one unsatisfied claim outstanding, such claims shall be paid in the order in which the claims were made.

(4) Upon the payment of any amount from the Auctioneer Recovery Fund in settlement of a claim in satisfaction of a judgment against an auctioneer or auction business as described in s. 468.395, the license of such auctioneer or auction business shall be automatically suspended until the licensee has complied with s. 468.398. A discharge of bankruptcy shall not relieve a person from the penalties and disabilities provided in this section.

(5) Moneys in the fund at the end of a fiscal year shall be retained in the fund and shall accrue for the benefit of auctioneers and auction businesses. When the fund exceeds the amount as set forth in s. 468.393(2), all surcharges shall be suspended until such time as the fund is reduced below the amount as set forth in s. 468.393(3):

### **Fla. Stat. § 468.393. Surcharge to License Fee; Assessments**

(1) At the time of licensure under s. 468.385, s. 468.3851, or s. 468.3852, each licensee shall pay, in addition to an application and license fee, a surcharge in an amount to be determined by the board, not to exceed \$300, which shall be deposited in the Auctioneer Recovery Fund.

(2) If the total amount in the Auctioneer Recovery Fund, including principal and interest, exceeds \$500,000 at the end of the state fiscal year after the payment of all claims and expenses, the amount in excess of \$500,000 shall remain in the fund for benefit of the licensees in tolling the surcharge until such time as the surcharge shall need replenishing.

(3) After October 1, 1995, if the total amount in the Auctioneer Recovery Fund, including principal and interest, is less than \$200,000 at the end of the fiscal year after the payment of all claims and expenses, the board shall assess, in addition to any other fees under s. 468.3852, a surcharge against a licensee at the time of initial licensure or at the time of license renewal, according to the following formula in order to maintain the fund at \$500,000:

(a) Determine the amount remaining in the fund at the end of the state fiscal year after all expenses and claims have been paid.

(b) Subtract the amount determined under paragraph (a) from \$500,000.

(c) Determine the number of initial licenses and license renewals in the fiscal year that precedes the current fiscal year.

(d) Divide the amount determined under paragraph (b) by the number determined under paragraph (c):

(4) The board shall assess the surcharge described in subsection (3) against each licensee who receives an initial license or receives a renewal license during the fiscal year that follows the year in which the amount remaining in the fund was less than \$200,000:

### **Fla. Stat. § 468.394. Interest Credited; Payment of Expenses**

Any interest earned or investment of money in the Auctioneer Recovery Fund shall be credited at least semiannually to the fund. No money may be appropri-

ated from the General Revenue Fund for payment of any expenses incurred under this part, and none of these expenses may be charged against the state:

### **Fla. Stat. § 468.395. Conditions of Recovery; Eligibility**

(1) Recovery from the Auctioneer Recovery Fund may be obtained as follows:

(a) Any aggrieved person is eligible to receive recovery from the Auctioneer Recovery Fund if the Florida Board of Auctioneers has issued a final order directing an offending licensee to pay restitution to the claimant as the result of the licensee violating, within this state, any provision of s. 468.389 or any rule adopted by the board and if the board determined that the order of restitution cannot be enforced; or

(b) Any aggrieved person who obtains a final judgment in any court against any licensee to recover damages for any actual loss that results from the violation, within this state, by a licensee of any provision of s. 468.389 or any rule adopted by the board may, upon termination of all proceedings, including appeals and proceedings supplemental to judgment for collection purposes, file a verified application to the board for an order directing payment out of the Auctioneer Recovery Fund of the amount of actual loss in the transaction that remains unpaid upon the judgment. The amount of actual loss may include court costs, but shall not include attorney's fees or punitive damages awarded.

(2) The amount paid from the Auctioneer Recovery Fund may not exceed \$50,000 per claim or claims arising out of the same transaction or auction or an aggregate lifetime limit of \$400,000 with respect to any one licensee. For purposes of this subsection, auctions conducted under a single contract, agreement, or consignment shall be considered a single transaction or auction even though conducted at more than one time or place.

(3) A claim for recovery from the Auctioneer Recovery Fund shall be made within 2 years from the time of the act giving rise to the claim or within 2 years from the time the act is discovered or should have been discovered with the exercise of due diligence; however, in no event may a claim for recovery be made more than 4 years after the date of the act giving rise to the claim.

(4) The board shall not issue an order for payment of a claim from the Auctioneer Recovery Fund unless the claimant has reasonably established to the board that she or he has taken proper and reasonable action to collect the amount of her or his claim from the licensee responsible for the loss and that any recovery made has been applied to reduce the amount of the claim on the Auctioneer Recovery Fund.

(5) Notwithstanding any other provision of this part, no claim based on any act or omission that occurred outside this state or that occurred before October 1, 1991, shall be payable from the Auctioneer Recovery Fund.

(6) In case of payment of loss from the Auctioneer Recovery Fund, the fund shall be subrogated, to the extent of the amount of the payment, to all the rights of the claimant against any licensee with respect to the loss:

### **Fla. Stat. § 468.396. Claims against a single licensee in excess of dollar limitation; joinder of claims, payment; insufficient funds**

(1) If the payment in full of two or more pending valid claims that have been filed by aggrieved persons against a single licensee would exceed the \$50,000 limit as set forth in s. 468.395, the \$50,000 shall be distributed among the aggrieved persons in the ratio that their respective claims bear to the aggregate of all valid claims or in any other manner that a court of record may determine to be equitable. Such money shall be distributed among the persons entitled to share in it without regard to the order of priority in which their respective judgments have been obtained or their claims have been filed.

(2) Upon petition of the board, the court may require all claimants and pro-



spective claimants against one licensee to be joined in one action, to the end that the respective rights of all the claimants to the board may be equitably adjudicated and settled.

(3) On June 30 and December 31 of each year, the board shall identify each claim that the court orders to be paid during the 6-month period that ended on that day. The board shall pay the part of each claim that is so identified within 15 days after the end of the 6-month period in which the claim is ordered paid. However, if the balance in the fund is insufficient to pay the full payable amount of each claim that is ordered to be paid during a 6-month period, the board shall pay a prorated portion of each claim that is ordered to be paid during the period. Any part of the payable amount of a claim left unpaid due to the prorating of payments under this subsection shall be paid, subject to the \$50,000 limit described in s. 468.395, before the payment of claims ordered to be paid during the following 6 months.

### **Fla. Stat. § 468.397. Payment of Claim**

Upon a final order of the court directing that payment be made out of the Auctioneer Recovery Fund, the board shall, subject to the provisions of this part, make the payment out of the Auctioneer Recovery Fund as provided in s. 468.395.

### **Fla. Stat. § 468.398. Suspension of judgment debtor's license; repayment by licensee; interest**

If the board is required to make any payment from the Auctioneer Recovery Fund in settlement of a claim or toward the satisfaction of a judgment under this part, the board shall suspend the judgment debtor's license. The licensee is not eligible to be licensed again as either an auctioneer or auction business until the licensee has repaid in full the amount paid from the Auctioneer Recovery Fund, with interest at the current applicable rate.

### **Fla. Stat. § 468.399. Expenditure of Excess Funds**

Subject to the approval of the board with the concurrence of the department, the board may expend excess moneys from the Auctioneer Recovery Fund to fund publications that provide:

- (1) Information concerning the board's activities and administrative rulings;
- (2) Distribution of laws, rules, and educational information concerning the practice of auctioneering;

## **COSMETOLOGISTS**

### **Fla. Stat. § 477.019. Cosmetologists; qualifications; licensure; supervised practice; license renewal; endorsement; continuing education**

- (1) A person desiring to be licensed as a cosmetologist shall apply to the department for licensure.
- (2) An applicant shall be eligible for licensure by examination to practice cosmetology if the applicant:
  - (a) Is at least 16 years of age or has received a high school diploma;
  - (b) Pays the required application fee, which is not refundable, and the required examination fee, which is refundable if the applicant is determined to not be eligible for licensure for any reason other than failure to successfully complete the licensure examination; and
  - (c) 1. Is authorized to practice cosmetology in another state or country, has been so authorized for at least 1 year, and does not qualify for licensure by endorsement as provided for in subsection (5); or  
2. Has received a minimum of 1,200 hours of training as established by the board, which shall include, but shall not be limited to, the equivalent of

completion of services directly related to the practice of cosmetology at one of the following:

- a. A school of cosmetology licensed pursuant to chapter 1005.
- b. A cosmetology program within the public school system.
- c. The Cosmetology Division of the Florida School for the Deaf and the Blind, provided the division meets the standards of this chapter.
- d. A government-operated cosmetology program in this state.

The board shall establish by rule procedures whereby the school or program may certify that a person is qualified to take the required examination after the completion of a minimum of 1,000 actual school hours. If the person then passes the examination, he or she shall have satisfied this requirement; but if the person fails the examination, he or she shall not be qualified to take the examination again until the completion of the full requirements provided by this section.

(3) Upon an applicant receiving a passing grade, as established by board rule, on the examination and paying the initial licensing fee, the department shall issue a license to practice cosmetology.

(4) If an applicant passes all parts of the examination for licensure as a cosmetologist, he or she may practice in the time between passing the examination and receiving a physical copy of his or her license if he or she practices under the supervision of a licensed cosmetologist in a licensed salon. An applicant who fails any part of the examination may not practice as a cosmetologist and may immediately apply for reexamination.

(5) Renewal of license registration shall be accomplished pursuant to rules adopted by the board.

(6) The board shall certify as qualified for licensure by endorsement as a cosmetologist in this state an applicant who holds a current active license to practice cosmetology in another state. The board may not require proof of educational hours if the license was issued in a state that requires 1,200 or more hours of precensure education and passage of a written examination. This subsection does not apply to applicants who received their license in another state through an apprenticeship program.

(7)(a) The board shall prescribe by rule continuing education requirements intended to ensure protection of the public through updated training of licensees and registered specialists, not to exceed 16 hours biennially, as a condition for renewal of a license or registration as a specialist under this chapter. Continuing education courses shall include, but not be limited to, the following subjects as they relate to the practice of cosmetology: human immunodeficiency virus and acquired immune deficiency syndrome; Occupational Safety and Health Administration regulations; workers' compensation issues; state and federal laws and rules as they pertain to cosmetologists, cosmetology, salons, specialists, specialty salons, and booth renters; chemical makeup as it pertains to hair, skin, and nails; and environmental issues. Courses given at cosmetology conferences may be counted toward the number of continuing education hours required if approved by the board.

(b) Any person whose occupation or practice is confined solely to hair braiding, hair wrapping, or body wrapping is exempt from the continuing education requirements of this subsection.

(c) The board may, by rule, require any licensee in violation of a continuing education requirement to take a refresher course or refresher course and examination in addition to any other penalty. The number of hours for the refresher course may not exceed 48 hours.

### **Fla. Stat. § 477.0135. Exemptions**

- (1) This chapter does not apply to the following persons when practicing pursuant to their professional or occupational responsibilities and duties:
  - (a) Persons authorized under the laws of this state to practice medicine, surgery, osteopathic medicine, chiropractic medicine, massage, naturopathy, or podiatric medicine.

- (b) Commissioned medical or surgical officers of the United States Armed Forces hospital services.
- (c) Registered nurses under the laws of this state.
- (d) Persons practicing barbering under the laws of this state.
- (e) Persons employed in federal, state, or local institutions, hospitals, or military bases as cosmetologists whose practices are limited to the inmates, patients, or authorized military personnel of such institutions, hospitals, or bases.
- (f) Persons whose practice is limited to the application of cosmetic products to another person in connection with the sale, or attempted sale, of such products at retail without compensation from such other person other than the regular retail price of such merchandise:
- (2) A license is not required of any person whose occupation or practice is confined solely to shampooing.
- (3) A license or registration is not required of any person whose occupation or practice is confined solely to cutting, trimming, polishing, or cleansing the finger-nails of any person when said cutting, trimming, polishing, or cleansing is done in a barbershop licensed pursuant to chapter 476 which is carrying on a regular and customary business of barbering, and such individual has been practicing the activities set forth in this subsection prior to October 1, 1985.
- (4) A photography studio salon is exempt from the licensure provisions of this chapter. However, the hair-arranging services of such salon must be performed under the supervision of a licensed cosmetologist employed by the salon. The salon must use disposable hair-arranging implements or use a wet or dry sanitizing system approved by the federal Environmental Protection Agency.
- (5) A license is not required of any individual providing makeup, special effects, or cosmetology services to an actor, stunt person, musician, extra, or other talent during a production recognized by the Office of Film and Entertainment as a qualified production as defined in s. 288.1254(1). Such services are not required to be performed in a licensed salon. Individuals exempt under this subsection may not provide such services to the general public.
- (6) A license is not required of any individual providing makeup or special effects services in a theme park or entertainment complex to an actor, stunt person, musician, extra, or other talent, or providing makeup or special effects services to the general public. The term "theme park or entertainment complex" has the same meaning as in s. 509.013(9).

## NON-TRADITIONAL LODGING RENTALS

### Fla. Stat. § 509.242. Public lodging establishments; classifications.

- (1) A public lodging establishment shall be classified as a hotel, motel, non-transient apartment, transient apartment, bed and breakfast inn, or vacation rental if the establishment satisfies the following criteria:
  - (a) **Hotel.**—A hotel is any public lodging establishment containing sleeping room accommodations for 25 or more guests and providing the services generally provided by a hotel and recognized as a hotel in the community in which it is situated or by the industry.
  - (b) **Motel.**—A motel is any public lodging establishment which offers rental units with an exit to the outside of each rental unit, daily or weekly rates, offstreet parking for each unit, a central office on the property with specified hours of operation, a bathroom or connecting bathroom for each rental unit, and at least six rental units, and which is recognized as a motel in the community in which it is situated or by the industry.
  - (c) **Vacation rental.**—A vacation rental is any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling

unit that is also a transient public lodging establishment.

- (d) **Nontransient apartment.**—A nontransient apartment is a building or complex of buildings in which 75 percent or more of the units are available for rent to nontransient tenants.
- (e) **Transient apartment.**—A transient apartment is a building or complex of buildings in which more than 25 percent of the units are advertised or held out to the public as available for transient occupancy.
- (f) **Bed and breakfast inn.**—A bed and breakfast inn is a family home structure, with no more than 15 sleeping rooms, which has been modified to serve as a transient public lodging establishment, which provides the accommodation and meal services generally offered by a bed and breakfast inn, and which is recognized as a bed and breakfast inn in the community in which it is situated or by the hospitality industry.
- (2) If 25 percent or more of the units in any public lodging establishment fall within a classification different from the classification under which the establishment is licensed, such establishment shall obtain a separate license for the classification representing the 25 percent or more units which differ from the classification under which the establishment is licensed.
- (3) A public lodging establishment may advertise or display signs which advertise a specific classification, if it has received a license which is applicable to the specific classification and it fulfills the requirements of that classification.

## TRAVEL AGENTS

### Fla. Stat. § 559.926. Short Title

This part may be cited as the "Florida Sellers of Travel Act."

### Fla. Stat. § 559.927. Definitions

For the purposes of this part, the term:

- (1) "Accommodations" means any hotel or motel room, condominium or cooperative unit, cabin, lodge, or apartment; any other commercial structure designed for occupancy by one or more individuals; or any lodging establishment as provided by law.
- (2) "Certifying party" means a seller of travel registering under s. 559.928 or a seller of travel who is exempt under s. 559.935(2) or (3).
- (3) "Contract" means any contract, certificate, reservation request or confirmation form, membership application or use agreement, license, or reservation confirmation whereby the purchaser obtains the right to benefits and privileges of the prearranged travel or tourist service, or to a vacation certificate, or any such other document, writing, or form committing the seller of travel to provide travel services or privileges pertaining to reservations, tour or travel arrangements, and accommodations.
- (4) "Department" means the Department of Agriculture and Consumer Services.
- (5) "Independent agent" means a person who represents a seller of travel by soliciting persons on its behalf, who has a written contract with a seller of travel that is operating in compliance with this part and any rules promulgated thereunder, who does not receive a fee, commission, or other valuable consideration directly from the purchaser for the sale of travel, who does not at any time have any unissued ticket stock or travel documents in his or her possession, and who does not have the ability to issue tickets, vacation certificates, or any other travel documents.
- (6) "Offer for sale" means direct or indirect representation, claim, or statement or making an offer or undertaking, by any means or method, to arrange for, provide, or acquire travel reservations or accommodations, tickets for domestic or foreign travel by air, rail, ship, or other medium of transportation, or hotel and motel accommodations or sightseeing tours by a seller of travel who maintains a business location in Florida or who offers to sell to persons in Florida.

(7) "Prearranged travel, tourist-related services, or tour-guide services" includes, but is not limited to, car rentals, lodging, transfers, and sightseeing tours and all other such services which are reasonably related to air, sea, rail, motor coach, or other medium of transportation, or accommodations for which a purchaser receives a premium or contracts or pays prior to or after departure. These terms also include services for which a purchaser, whose legal residence is outside the United States, contracts or pays prior to departure, and any arrangement by which a purchaser prepays for, receives a reservation or any other commitment to provide services prior to departure for, or otherwise arranges for travel directly to a terrorist state and which originates in Florida.

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

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

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

(11) "Seller of travel" means any resident or nonresident person, firm, corporation, or business entity who offers for sale, directly or indirectly, at wholesale or retail, prearranged travel, tourist-related services, or tour-guide services for individuals or groups, including, but not limited to, vacation or tour packages, or vacation certificates in exchange for a fee, commission, or other valuable consideration. The term includes any business entity offering membership in a travel club or travel services for an advance fee or payment, even if no travel contracts or certificates or vacation or tour packages are sold by the business entity.

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

(13) "Vacation certificate" means any arrangement, plan, program, or vacation package that promotes, discusses, or discloses a destination or itinerary or type of travel, whereby a purchaser for consideration paid in advance is entitled to the use of travel, accommodations, or facilities for any number of days, whether certain or uncertain, during the period in which the certificate can be exercised, and no specific date or dates for its use are designated. A vacation certificate does not include prearranged travel, tourist-related services, or tour-guide services when a seller of travel remits full payment for the cost of such services to the provider or supplier within 10 business days of the purchaser's initial payment to the seller of travel.

## Fla. Stat. § 559.928. Registration

(1) Each seller of travel shall annually register with the department, providing: its legal business or trade name, mailing address, and business locations; the full names, addresses, and telephone numbers of its owners or corporate officers and directors and the Florida agent of the corporation; a statement whether it is a domestic or foreign corporation, its state and date of incorporation, its charter number, and, if a foreign corporation, the date it registered with this state, and business tax receipt where applicable; the date on which a seller of travel registered its fictitious name if the seller of travel is operating under a fictitious or trade name; the name of all other corporations, business entities, and trade names through which each owner of the seller of travel operated, was known, or did business as a seller of travel within the preceding 5 years; a list of all authorized independent agents, including the agent's trade name, full name, mailing address, business address, and telephone numbers; the business location and address of each branch office and full

name and address of the manager or supervisor; the certification required under s. 559.9285; and proof of purchase of adequate bond as required in this part. A certificate evidencing proof of registration shall be issued by the department and must be prominently displayed in the seller of travel's primary place of business.

(2)(a) Registration fees shall be as follows:

1. Three hundred dollars per year per registrant certifying its business activities under s. 559.9285(1)(a);
2. One thousand dollars per year per registrant certifying its business activities under s. 559.9285(1)(b);
3. Twenty-five hundred dollars per year per registrant certifying its business activities under s. 559.9285(1)(c);

(b) All amounts collected shall be deposited by the Chief Financial Officer to the credit of the General Inspection Trust Fund of the Department of Agriculture and Consumer Services pursuant to s. 570.20, for the sole purpose of administration of this part.

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

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

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

(6) Each advertisement of a seller of travel must include the phrase "Fla. Seller of Travel Reg. No. \_\_\_\_\_."

(7) No registration shall be valid for any seller of travel transacting business at any place other than that designated in its application, unless the department is first notified in writing in advance of any change of location. Nor shall the registration be valid for an affiliate of the seller of travel who engages in the prearranged travel and tourist business. A registration issued under this part shall not be assignable, and the seller of travel shall not be permitted to conduct business under more than one name except as registered. A seller of travel desiring to change its registered name or location or designated agent for service of process at a time other than upon renewal of registration shall notify the department of such change.

(8) Applications under this section shall be subject to the provisions of s. 420.60:



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

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

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

(c) Has not satisfied a civil fine or penalty arising out of any administrative or enforcement action brought by any governmental agency or private person based upon conduct involving fraud, dishonest dealing, or any violation of this part;

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

(e) Has had a judgment entered against her or him in any action brought by the department or the Department of Legal Affairs pursuant to ss. 501.201-501.213 or this part.

## **Fla. Stat. § 559.9285. Certification of Business Activities**

(1) Each certifying party, as defined in s. 559.927(2):

(a) Which does not offer for sale, at wholesale or retail, prearranged travel, tourist-related services, or tour-guide services for individuals or groups directly to any terrorist state and which originate in Florida;

(b) Which offers for sale, at wholesale or retail, only prearranged travel, tourist-related services, or tour-guide services for individuals or groups directly to any terrorist state and which originate in Florida, but engages in no other business dealings or commerce with any terrorist state; or

(c) Which offers for sale, at wholesale or retail, prearranged travel, tourist-related services, or tour-guide services for individuals or groups directly to any terrorist state and which originate in Florida, and also engages in any other business dealings or commerce with any terrorist state, shall annually certify its business activities by filing a disclosure statement with the department which accurately represents the scope of the seller's business activities according to the criteria provided in paragraph (a), paragraph (b), or paragraph (c):

(2)(a) If a certifying party changes the scope of the business activities certified pursuant to subsection (1), the certifying party shall file the following with the department no later than 15 days following the change in activities:

1. An amended certificate pursuant to subsection (1); and

2. The applicable registration fee pursuant to s. 559.928:

(b) Within 15 days after filing the amended certificate, the certifying party shall provide to the department a bond in the proper amount for the certified business activity pursuant to s. 559.929:

(3) The department shall specify by rule the form of each certification under this section which shall include the following information:

(a) The legal name, any trade names or fictitious names, mailing address, physical address, telephone number or numbers, facsimile number or numbers, all Internet and electronic contact information, and registration number, if applicable, of the certifying party;

(b) Each terrorist state with which the certifying party engages in any business or commerce;

(c) The legal name, any trade names or fictitious names, mailing address, physical address, telephone number or numbers, facsimile number or numbers, and all Internet and electronic contact information of every other commercial entity with which the certifying party engages in business or commerce that is related in any way to the certifying party's business or commerce with any terrorist state. The information disclosed pursuant to this paragraph does not constitute customer lists, customer names, or trade secrets protected under s. 570.544(8):

(d) The type of all prearranged travel, tourist-related services, or tour-guide services that the certifying party offers for sale to individuals or groups traveling directly to any terrorist state and that originate in Florida, and the frequency with which such services are offered:

## **Fla. Stat. § 559.929. Security Requirements**

(1) An application must be accompanied by a performance bond in an amount set by the department under paragraph (a), paragraph (b), or paragraph (c). The surety on such bond shall be a surety company authorized to do business in the state:

(a) Each seller of travel that certifies its business activities under s.

559.9285(1)(a) shall provide a performance bond in an amount not to exceed \$25,000, or in the amount of \$50,000 if the seller of travel is offering vacation certificates:

(b) Each seller of travel that certifies its business activities under s.

559.9285(1)(b) shall provide a performance bond in an amount not to exceed \$100,000, or in the amount of \$150,000 if the seller of travel is offering vacation certificates:

(c) Each seller of travel that certifies its business activities under s.

559.9285(1)(c) shall provide a performance bond in an amount not to exceed \$250,000, or in the amount of \$300,000 if the seller of travel is offering vacation certificates:

(2) The bond shall be in favor of the department for the use and benefit of any traveler who is injured by the fraud, misrepresentation, breach of contract, financial failure, or violation of any provision of this part by the seller of travel. Such liability may be enforced either by proceeding in an administrative action as specified in subsection (3) or by filing a judicial suit at law in a court of competent jurisdiction. However, in such court suit the bond posted with the department shall not be amenable or subject to any judgment or other legal process issuing out of or from such court in connection with such lawsuit, but such bond shall be amenable to and enforceable only by and through administrative proceedings before the department. It is the intent of the Legislature that such bond shall be applicable and liable only for the payment of claims duly adjudicated by order of the department. The bond shall be open to successive claims, but the aggregate amount may not exceed the amount of the bond. In addition to the foregoing, a bond provided by a registrant or applicant for registration which certifies its business activities under s. 559.9285(1)(b) or (c) shall be in favor of the department, with payment in the following order of priority:

(a) All expenses for prosecuting the registrant or applicant in any administrative or civil action under this part, including fees for attorneys and other professionals, court costs or other costs of the proceedings, and all other expenses incidental to the action;

(b) All costs and expenses of investigation prior to the commencement of an administrative or civil action under this part;

(c) Any unpaid administrative fine imposed by final order or any unpaid civil penalty imposed by final judgment under this part;

(d) Damages or compensation for any traveler injured as provided in this subsection;

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

(4) In any situation in which the seller of travel is currently the subject of an administrative, civil, or criminal action by the department, the Department of Legal Affairs, or the state attorney concerning compliance with this part, the right to proceed against the bond as provided in subsection (3) shall be suspended until after any enforcement action becomes final:

(5) The department may waive the bond requirement on an annual basis if the



seller of travel has had 5 or more consecutive years of experience as a seller of travel in Florida in compliance with this part, has not had any civil, criminal, or administrative action instituted against the seller of travel in the vacation and travel business by any governmental agency or any action involving fraud, theft, misappropriation of property, violation of any statute pertaining to business or commerce with any terrorist state, or moral turpitude, and has a satisfactory consumer complaint history with the department, and certifies its business activities under s. 559.9285. Such waiver may be revoked if the seller of travel violates any provision of this part. A seller of travel that certifies its business activities under s. 559.9285(1)(b) or (c) is not entitled to the waiver provided in this subsection.

### **Fla. Stat. § 559.9295. Submission of Vacation Certificate Documents**

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

- (1) A copy of the contract by which the rights, obligations, benefits, and privileges resulting from purchase of a vacation certificate are established.
- (2) A copy of each promotional brochure, pamphlet, form letter, registration form, or any other written material disseminated in connection with the advertising, promotion, or sale of any vacation certificate.
- (3) A verbatim script of each radio, television, or movie, or other similar advertisement, broadcast to the public in connection with the advertising, promotion, or sale of any vacation certificates.
- (4) A transcript of any standard verbal sales presentation utilized in connection with the advertising, promotion, or sale of vacation certificates.
- (5) A copy of all rules, regulations, conditions, or limitations upon the use of, or obtaining reservations for the use of, accommodations or facilities available pursuant to the vacation certificate.
- (6) A copy of a written authorization for the use of any registered trademark, trade name, or trade logo utilized in promotional brochures, pamphlets, form letters, registration forms, or other written materials disseminated in connection with the advertising, promotion, or sale of vacation certificates from the holder of each trademark, trade name, or trade logo so used.
- (7) A complete copy of the original of each testimonial letter from previous vacation certificate purchasers utilized in advertisements disseminated in connection with advertising, promotion, or sale of vacation certificates.
- (8) Where discount or complimentary coupons or tickets are to be provided to purchasers, a copy of such ticket or coupon which shall include a statement of the names and addresses of businesses where honored, the goods, services, or amenities provided, and any additional charges, limitations, or conditions.
- (9) Where other goods, services, or amenities are provided to the purchaser in addition to the right to use accommodations or facilities, a description of such goods, services, or amenities, including any charges, limitations, or conditions, and a statement of the names and addresses of business entities which are to provide or honor them.
- (10) A statement of the number of certificates to be issued and the date of their expiration.
- (11) A copy of the vacation certificate and its component parts, including, but not limited to, any registration card, form letter, reservation form, confirmation form, and lodging directory.
- (12) A copy of any agreement between the seller and business entities providing accommodations or facilities to purchasers.
- (13) A copy of any agreement between the seller and each business entity providing or honoring discount or complimentary coupons or tickets, or providing other goods, services, or amenities to the purchaser.
- (14) A listing of the full name, address, and telephone number of each per-

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

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

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

(17) Within 10 working days after receipt of any materials submitted subsequent to filing an initial registration application or any annual renewal thereof, the department shall determine whether such materials are adequate to meet the requirements of this section. The department shall notify the seller of travel that materials submitted are in substantial compliance, or shall notify the seller of travel of any specific deficiencies. If the department fails to notify the seller of travel of its determination within the period specified in this subsection, the materials shall be deemed in compliance; however, the failure of the department to send notification in either case will not relieve the seller of travel from the duty of complying with this section. Neither the submission of these materials nor the department's response implies approval, recommendation, or endorsement by the department or that the contents of said materials have been verified by the department.

### **Fla. Stat. § 559.931. Vacation Certificate Record-keeping**

Sellers of travel who offer vacation certificates must keep and maintain among their business records, for a period of 3 years, the following documents and information:

- (1) A copy of each item required to be submitted to the department under s. 559.9295.
- (2) All records required by s. 607.1601, when applicable, whether a corporation or other business entity.
- (3) A list consisting of the name and address of every certificate purchaser making further purchase from the seller of travel pursuant to solicitation at the time of use of accommodations or facilities, which shall be retained for a period of at least 3 years after the date of such further purchase.
- (4) A list consisting of the name and last known mailing addresses of all employees engaged in the solicitation of vacation certificate purchasers for further purchase at the time of use of accommodations or facilities, including those whose employment has been terminated within the preceding 3 years.

### **Fla. Stat. § 559.932. Vacation certificate disclosure**

- (1) It shall be unlawful for any seller of travel to fail to provide each person solicited with a contract which shall include the following:
  - (a) A space for the date, name, address, and signature of the purchaser.
  - (b) The expiration date of the vacation certificate and the terms and conditions of its extension or renewal, if available.
  - (c) The name and business address of any seller of travel who may solicit vacation certificate purchasers for further purchases, and a full and complete statement as to the nature and method of that solicitation.
  - (d) The total financial obligation of the purchaser which shall include the initial purchase price and any additional charges to which the purchaser may be subject, including, but not limited to, any per diem, seasonal, reservation, or recreational charge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Fla. Stat. § 559.933. Vacation certificate cancellation and refund provisions

It shall be unlawful for any seller of travel or assignee:

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

(a) Within 30 days from the date of purchase or receipt of the vacation certificate, whichever occurs later; or

(b) At any time accommodations or facilities are not available pursuant to a request for use as provided in the contract, provided that:

1. The contract shall not require notice greater than 60 days in advance of the date requested for use;

2. If acceptable to the purchaser, comparable alternate accommodations or facilities in a city, or reservations for a date different than that requested, may be provided.

(2) To fail to refund any and all payments made by the vacation certificate purchaser within 30 days after receipt of the certificate and notice of cancellation made pursuant to this section, if the purchaser has not received any benefits pursuant to the vacation certificate.

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

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

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

(6) To sell, assign, or otherwise transfer any interest in a seller of travel business, or to sell, assign, or otherwise transfer to a third party any interest in any vacation certificate unless:

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

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

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

(7) To fail to fulfill the terms of a vacation certificate within 18 months of the initial payment of any consideration by the purchaser to a seller of travel or third party.

## Fla. Stat. § 559.935. Violations

It is a violation of this part for any person:

(1) To conduct business as a seller of travel without registering annually with the department unless exempt pursuant to s. 559.935.

(2) To conduct business as a seller of travel without an annual purchase of a performance bond in the amount set by the department unless exempt pursuant to s. 559.935.

(3) Knowingly to make any false statement, representation, or certification in any application, document, or record required to be submitted or retained under this part.

(4) Knowingly to sell or market any number of vacation certificates that ex-

ceed the number disclosed to the department pursuant to this section:

(5) Knowingly to sell or market vacation certificates with an expiration date of more than 18 months from the date of issuance:

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

(7) Knowingly to state, represent, indicate, suggest, or imply, directly or indirectly, that the travel contract, certificate, or vacation package being offered by the seller of travel cannot be purchased at some later time or may not otherwise be available after the initial contact, or that callbacks by the prospective purchaser are not accepted, when no such restrictions or limitations in fact exist:

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

(9) To sell any vacation certificate the duration of which exceeds the duration of any agreement between the seller and any business entity obligated thereby to provide accommodations or facilities pursuant to the vacation certificate:

(10) To misrepresent or deceptively represent:

(a) The amount of time or period of time accommodations or facilities will be available:

(b) The location of accommodations or facilities offered:

(c) The price, size, nature, extent, qualities, or characteristics of accommodations or facilities offered:

(d) The nature or extent of other goods, services, or amenities offered:

(e) A purchaser's rights, privileges, or benefits:

(f) The conditions under which the purchaser may obtain a reservation for the use of offered accommodations or facilities:

(g) That the recipient of an advertisement or promotional materials is a winner, or has been selected, or is otherwise being involved in a select group for receipt, of a gift, award, or prize, unless this fact is the truth:

(11) To fail to inform a purchaser of a nonrefundable cancellation policy prior to the seller of travel accepting any fee, commission, or other valuable consideration:

(12) To fail to include, when offering to sell a vacation certificate, in any advertisement or promotional material, the following statement: "This is an offer to sell travel."

(13) To fail to honor and comply with all provisions of the vacation certificate regarding the purchaser's rights, benefits, and privileges thereunder:

(14)(a) To include in any vacation certificate or contract any provision purporting to waive or limit any right or benefit provided to purchasers under this part; or

(b) To seek or solicit such waiver or acceptance of limitation from a purchaser concerning rights or benefits provided under this part:

(15) To offer vacation certificates for any accommodation or facility for which there is no contract with the owner of the accommodation or facility securing the purchaser's right to occupancy and use, unless the seller is the owner:

(16) To use a local mailing address, registration facility, drop box, or answering service in the promotion, advertising, solicitation, or sale of vacation certificates, unless the seller's fixed business address is clearly disclosed during any telephone solicitation and is prominently and conspicuously disclosed on all solicitation materials and on the contract:

(17) To use any registered trademark, trade name, or trade logo in any promotional, advertising, or solicitation materials without written authorization from the holder of such trademark, trade name, or trade logo:

(18) To represent, directly or by implication, any affiliation with, or endorsement by, any governmental, charitable, educational, medical, religious, fraternal, or civic organization or body, or any individual, in the promotion, advertisement, solicitation, or sale of vacation certificates without express written authorization:

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

(20) To sell any number of vacation certificates exceeding the number disclosed pursuant to this part:

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

(22) To offer to sell, at wholesale or retail, prearranged travel, tourist-related services, or tour-guide services for individuals or groups directly to any terrorist state and which originate in Florida, without disclosing such business activities in a certification filed under s. 559.9285(1)(b) or (c):

(23) To violate any state or federal law restricting or prohibiting commerce with terrorist states:

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

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

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

## **Fla. Stat. § 559.934. Deceptive and unfair trade practice**

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

## **Fla. Stat. § 559.935. Exemptions**

(1) This part does not apply to:

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

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

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

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

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

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

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

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

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

(2) Sections 559.928, 559.929, 559.9295, 559.931, and 559.932 shall not apply to:

(a) Sellers of travel directly issuing airline tickets who have contracted with the Airlines Reporting Corporation for the most recent consecutive 3 years or more under the same ownership and control; who do not offer vacation certificates; and who annually certify their business activities under s. 559.9285(1)(a);

(b) Sellers of travel offering vacation certificates who have contracted with the Airlines Reporting Corporation for the most recent consecutive 5 years or more under the same ownership and control and who annually certify their business activities under s. 559.9285(1)(a). This exemption does not apply to sellers of travel certifying their business activities under s. 559.9285(1)(b) or (c);

(3) Sections 559.928, 559.929, 559.9295, 559.931, and 559.932 shall also not apply to a seller of travel that is an affiliate of an entity exempt pursuant to subsection (2) subject to the following conditions:

(a) In the event the department finds the affiliate does not have a satisfactory consumer complaint history or the affiliate fails to respond to a consumer complaint within 30 days, the related seller of travel exempt pursuant to subsection (2) shall be liable for the actions of the affiliate, subject to the remedies provided in ss. 559.9355 and 559.936;

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

(c) In order to obtain an exemption under this subsection, the affiliate shall file an affidavit of exemption on a form prescribed by the department and shall certify its business activities under s. 559.9285(1)(a). The affidavit of exemption shall be executed by a person who exercises identical control over the seller of travel exempt pursuant to subsection (2) and the affiliate. Failure to file an affidavit of exemption or certification under s. 559.9285(1)(a) prior to engaging in seller of travel activities shall subject the affiliate to the remedies provided in ss. 559.9355 and 559.936;

(d) Revocation by the department of an exemption provided to a seller of travel under subsection (2) shall constitute automatic revocation by law of an exemption obtained by an affiliate under the subsection;

(e) This subsection shall not apply to:

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

2. An affiliate that sells, or offers for sale, vacation certificates;

3. An affiliate that certifies its business activities under s. 559.9285(1)(b) or (c);

(f) For purposes of this section, an "affiliate" means an entity that meets the following:

1. The entity has the identical ownership as the seller of travel that is exempt under subsection (2);

2. The ownership controlling the seller of travel that is exempt under subsection (2) also exercises identical control over the entity;

3. The owners of the affiliate hold the identical percentage of voting shares as they hold in the seller of travel that is exempt under subsection (2);

(4) The department may revoke the exemption provided in subsection (2) or subsection (3) if the department finds that the seller of travel does not have a satisfactory consumer complaint history, has been convicted of a crime

involving fraud, theft, misappropriation of property, deceptive or unfair trade practices, or moral turpitude, or has not complied with the terms of any order or settlement agreement arising out of an administrative or enforcement action brought by a governmental agency or private person based on conduct involving fraud, theft, misappropriation of property, deceptive or unfair trade practices, or moral turpitude;

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

(6) The department shall request from the Airlines Reporting Corporation any information necessary to implement the provisions of subsection

(2). Persons claiming an exemption under subsection (2) or subsection

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

## **Fla. Stat. § 559.9355. Administrative remedies; penalties**

(1) The department may enter an order doing one or more of the following if the department finds that a person has violated or is operating in violation of any of the provisions of this part or the rules or orders issued thereunder:

(a) Issuing a notice of noncompliance pursuant to s. 120.695;

(b) Imposing an administrative fine not to exceed \$5,000 for each act or omission;

(c) Imposing an administrative fine not to exceed \$10,000 for each act or omission in violation of s. 559.9335(22) or (23);

(d) Directing that the person cease and desist specified activities;

(e) Refusing to register or canceling or suspending a registration;

(f) Placing the registrant on probation for a period of time, subject to such conditions as the department may specify;

(g) Canceling an exemption granted under s. 559.935;

(2) The administrative proceedings which could result in the entry of an order imposing any of the penalties specified in subsection (1) are governed by chapter 120;

(3) The department has the authority to adopt rules pursuant to chapter 120 to implement this section and ss. 559.928, 559.929, 559.934, and 559.935.

## **Fla. Stat. § 559.936. Civil penalties; remedies**

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

(2) The department may seek a civil penalty of up to \$5,000 for each violation of this part;

(3) The department may seek a civil penalty of up to \$10,000 for each act or omission in violation of s. 559.9335(22) or (23);

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

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

(6) The remedies provided in this part are in addition to any other remedies

available for the same conduct.

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

### **Fla. Stat. § 559.938. General Inspection Trust Fund; payments**

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

### **Fla. Stat. § 559.938. General Inspection Trust Fund; payments**

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

### **Fla. Stat. § 559.939. State preemption**

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

## **MIDWIVES**

### **Fla. Stat. § 467.009. Midwifery programs; education and training requirements**

(1) The department shall adopt standards for midwifery programs. The standards shall encompass clinical and classroom instruction in all aspects of prenatal, intrapartal, and postpartal care, including obstetrics; neonatal pediatrics; basic sciences; female reproductive anatomy and physiology; behavioral sciences; childbirth education; community care; epidemiology; genetics; embryology; neonatology; applied pharmacology; the medical and legal aspects of midwifery; gynecology and women's health; family planning; nutrition during pregnancy and lactation; breastfeeding; and basic nursing skills; and any other instruction determined by the department and council to be necessary. The standards shall incorporate the core competencies established by the American College of Nurse-Midwives and the Midwives Alliance of North America, including knowledge, skills, and professional behavior in the following areas: primary management, collaborative management, referral, and medical consultation; antepartal, intrapartal, postpartal, and neonatal care; family planning and gynecological care; common complications; and professional responsibilities. The standards shall include noncurriculum matters under this section, including, but not limited to, staffing and teacher qualifications.

(2) An approved midwifery program shall include a course of study and clinical training for a minimum of 3 years. If the applicant is a registered nurse or a licensed practical nurse or has previous nursing or midwifery education, the required period of training may be reduced to the extent of the applicant's qualifications, as determined under rules adopted by the department. In no case shall the training be reduced to a period of less than 2 years.

(3) To be accepted into an approved midwifery program, an applicant shall have:

(a) A high school diploma or its equivalent.

(b) Taken three college-level credits each of math and English or demonstrated competencies in communication and computation.

(4) A student midwife, during training, shall undertake, under the supervision of a preceptor, the care of 50 women in each of the prenatal, intrapartal, and postpartal periods, but the same women need not be seen through all three periods.

(5) The student midwife shall observe an additional 25 women in the intrapartal period before qualifying for a license.

(6) The training required under this section shall include training in either hospitals or alternative birth settings, or both, with particular emphasis on learning the ability to differentiate between low-risk pregnancies and high-risk pregnancies. A hospital or birthing center receiving public funds shall be required to provide student midwives access to observe labor, delivery, and postpartal procedures, provided the woman in labor has given informed consent. The Department of Health shall assist in facilitating access to hospital training for approved midwifery programs.

(7) The Department of Education shall adopt curricular frameworks for midwifery programs conducted within public educational institutions pursuant to this section.

(8) Nonpublic educational institutions that conduct approved midwifery programs shall be accredited by a member of the Commission on Recognition of Postsecondary Accreditation and shall be licensed by the Commission for Independent Education.

## **FUNERAL DIRECTORS**

### **Fla. Stat. § 497.372. Funeral directing; conduct constituting practice of funeral directing.**

(1) The practice of funeral directing shall be construed to consist of the following functions, which may be performed only by a licensed funeral director:

(a) ~~Selling or offering to sell funeral services, embalming, cremation, or other services relating to the final disposition of human remains, including the removal of such remains from the state, on an at-need basis.~~

(b) Planning or arranging, on an at-need basis, the details of funeral services, embalming, cremation, or other services relating to the final disposition of human remains, including the removal of such remains from the state, with the family or friends of the decedent or any other person responsible for such services; setting the time of the services; establishing the type of services to be rendered; acquiring the services of the clergy; and obtaining vital information for the filing of death certificates and obtaining of burial transit permits.

(c) Making, negotiating, or completing the financial arrangements for funeral services, embalming, cremation, or other services relating to the final disposition of human remains, including the removal of such remains from the state, on an at-need basis, except that nonlicensed personnel may assist the funeral director in performing such tasks.

(d) ~~Directing, being in charge or apparent charge of, or supervising, directly or indirectly, a visitation or viewing. Such functions shall not require that a licensed funeral director be physically present throughout the visitation or viewing, provided that the funeral director is readily available by telephone for consultation.~~

(e) ~~Directing, being in charge or apparent charge of, or supervising, directly or indirectly, any funeral service held in a funeral establishment, cemetery, or elsewhere.~~

(f) ~~Directing, being in charge or apparent charge of, or supervising, directly or indirectly, any memorial service held prior to or within 72 hours of the burial or cremation, if such memorial service is sold or arranged by a licensee.~~

(g) ~~Using in connection with one's name or employment the words or~~



terms "funeral director," "funeral establishment," "undertaker," "mortician," or any other word, term, title, or picture, or combination of any of the above, that when considered in the context in which used would imply that such person is engaged in the practice of funeral directing or that such person is holding herself or himself out to the public as being engaged in the practice of funeral directing; provided, however, that nothing in this paragraph shall prevent using the name of any owner, officer, or corporate director of a funeral establishment, who is not a licensee, in connection with the name of the funeral establishment with which such individual is affiliated, so long as such individual's affiliation is properly specified:

(h)—Managing or supervising the operation of a funeral establishment, except for administrative matters such as budgeting, accounting and personnel, maintenance of buildings, equipment and grounds, and routine clerical and recordkeeping functions:

## TALENT AGENTS

### Fla. Stat. § 468.401. Regulation of talent agencies; definitions.

As used in this part or any rule adopted pursuant hereto:

- (1)—"Talent agency" means any person who, for compensation, engages in the occupation or business of procuring or attempting to procure engagements for an artist.
- (2)—"Owner" means any partner in a partnership, member of a firm, or principal officer or officers of a corporation, whose partnership, firm, or corporation owns a talent agency, or any individual who is the sole owner of a talent agency.
- (3)—"Compensation" means any one or more of the following:
  - (a)—Any money or other valuable consideration paid or promised to be paid for services rendered by any person conducting the business of a talent agency under this part;
  - (b)—Any money received by any person in excess of that which has been paid out by such person for transportation, transfer of baggage, or board and lodging for any applicant for employment; or
  - (c)—The difference between the amount of money received by any person who furnishes employees, performers, or entertainers for circus, vaudeville, theatrical, or other entertainments, exhibitions, engagements, or performances and the amount paid by him or her to such employee, performer, or entertainer.
- (4)—"Engagement" means any employment or placement of an artist, where the artist performs in his or her artistic capacity. However, the term "engagement" shall not apply to procuring opera, music, theater, or dance engagements for any organization defined in s. 504(c)(3) of the Internal Revenue Code or any nonprofit Florida arts organization that has received a grant from the Division of Cultural Affairs of the Department of State or has participated in the state touring program of the Division of Cultural Affairs.
- (5)—"Department" means the Department of Business and Professional Regulation.
- (6)—"Operator" means the person who is or who will be in actual charge of a talent agency.
- (7)—"Buyer" or "employer" means a person, company, partnership, or corporation that uses the services of a talent agency to provide artists.
- (8)—"Artist" means a person performing on the professional stage or in the production of television, radio, or motion pictures; a musician or group of musicians; or a model.
- (9)—"Person" means any individual, company, society, firm, partnership, association, corporation, manager, or any agent or employee of any of the foregoing:

(10)—"License" means a license issued by the Department of Business and Professional Regulation to carry on the business of a talent agency under this part.

(11)—"Licensee" means a talent agency which holds a valid unrevoked and unforfeited license issued under this part.

### Fla. Stat. § 468.402. Duties of the department; authority to issue and revoke license; adoption of rules.

- (1)—The department may take any one or more of the actions specified in subsection (5) against any person who has:
  - (a)—Obtained or attempted to obtain any license by means of fraud, misrepresentation, or concealment;
  - (b)—Violated any provision of this part, chapter 455, any lawful disciplinary order of the department, or any rule of the department;
  - (c)—Been found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime involving moral turpitude or dishonest dealings under the laws of this state or any other state or government;
  - (d)—Made, printed, published, distributed, or caused, authorized, or knowingly permitted the making, printing, publication, or distribution of any false statement, description, or promise of such a character as to reasonably induce any person to act to his or her damage or injury, if such statement, description, or promises were purported to be performed by the talent agency and if the owner or operator then knew, or by the exercise of reasonable care and inquiry, could have known, of the falsity of the statement, description, or promise;
  - (e)—Knowingly committed or been a party to any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person lawfully relying upon the work, representation, or conduct of the talent agency acts or has acted to his or her injury or damage;
  - (f)—Failed or refused upon demand to disclose any information, as required by this part, within his or her knowledge, or failed or refused to produce any document, book, or record in his or her possession for inspection to the department or any authorized agent thereof acting within its jurisdiction or by authority of law;
  - (g)—Established the talent agency within any place where intoxicating liquors are sold, any place where gambling is permitted, or any house of prostitution;
  - (h)—Charged, collected, or received compensation for any service performed by the talent agency greater than specified in its schedule of maximum fees, charges, and commissions previously filed with the department;
  - (i)—Had a license to operate a talent agency revoked, suspended, or otherwise acted against, including, but not limited to, having been denied a license for good cause by the licensing authority of any state, territory, or country;
  - (j)—Willfully made or filed a report or record that the licensee knew to be false, failed to file a report or record required by state or federal law, impeded or obstructed such filing, or induced another person to impede or obstruct such filing. Such reports or records shall include only those that are signed in the licensee's capacity as a licensed talent agency;
  - (k)—Advertised goods or services in a manner that was fraudulent, false, deceptive, or misleading in form or content;
  - (l)—Advertised, operated, or attempted to operate under a name other than the name appearing on the license;
  - (m)—Been found guilty of fraud or deceit in the operation of a talent agency;
  - (n)—Operated with a revoked, suspended, inactive, or delinquent license;
  - (o)—Permitted, aided, assisted, procured, or advised any unlicensed person to operate a talent agency contrary to this part or to a rule of the department;
  - (p)—Failed to perform any statutory or legal obligation placed on a licensed talent agency;
  - (q)—Practiced or offered to practice beyond the scope permitted by law or

has accepted and performed professional responsibilities that the licensee knows or has reason to know that he or she is not competent to perform.

(r) — Conspired with another licensee or with any other person to commit an act, or has committed an act, that would tend to coerce, intimidate, or preclude another licensee from advertising his or her services.

(s) — Solicited business, either personally or through an agent or through any other person, through the use of fraud or deception or by other means; through the use of misleading statements; or through the exercise of intimidation or undue influence.

(t) — Exercised undue influence on the artist in such a manner as to exploit the artist for financial gain of the licensee or a third party, which includes, but is not limited to, the promoting or selling of services to the artist.

(2) — The department may revoke any license that is issued as a result of the mistake or inadvertence of the department.

(3) — The department has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part.

(4) — A revoked or suspended license must be returned to the department within 7 days after the time for appeal has elapsed.

(5) — Upon a finding of a violation of any one or more of the grounds enumerated in subsection (1) or any other section of this part, the department may take the following actions:

(a) — Deny an application for licensure as a talent agency.

(b) — Permanently revoke or suspend the license of a talent agency.

(c) — Impose an administrative fine, not to exceed \$5,000, for each count or separate offense.

(d) — Require restitution.

(e) — Issue a public reprimand.

(f) — Place the licensee on probation, subject to such conditions as the department may specify.

(6) — A person shall be subject to the disciplinary actions specified in subsection (5) for violations of subsection (1) by that person's agents or employees in the course of their employment with that person.

(7) — The department may deny a license if any owner or operator listed on the application has been associated with a talent agency whose license has been revoked or otherwise disciplined.

### **Fla. Stat. § 468.403. License requirements.**

(1) — A person may not own, operate, solicit business, or otherwise engage in or carry on the occupation of a talent agency in this state unless the person first procures a license for the talent agency from the department. A license is not required for a person who acts as an agent for herself or himself, a family member, or exclusively for one artist. However, a person may not advertise or otherwise hold herself or himself out as a "talent agency" or "talent agent" unless the person is licensed under this section as a talent agency.

(2) — Each application for a license must be accompanied by an application fee set by the department not to exceed \$300, plus the actual cost for fingerprint analysis for each owner application, to cover the costs of investigating the applicant. Each application for a change of operator must be accompanied by an application fee of \$150. These fees are not refundable.

(3)(a) — Each owner of a talent agency if other than a corporation and each operator of a talent agency shall submit to the department with the application for licensure of the agency a full set of fingerprints and a photograph of herself or himself taken within the preceding 2 years. The department shall conduct an examination of fingerprint records and police records.

(b) — Each owner of a talent agency that is a corporation shall submit to the department, with the application for licensure of the agency, a full set of fingerprints of the principal officer signing the application form and the bond form, and a full set of fingerprints of each operator, and a photograph of each taken within the preceding 2 years. The department shall conduct an exami-

nation of fingerprint records and police records.

(4) — Each application must include:

(a) — The name and address of the owner of the talent agency.

(b) — Proof of at least 1 year of direct experience or similar experience of the operator of such agency in the talent agency business or as a subagent, casting director, producer, director, advertising agency, talent coordinator, or musical booking agent.

(c) — The street and number of the building or place where the talent agency is to be located.

(5) — The department shall investigate the owner of an applicant talent agency only to determine her or his ability to comply with this part and shall investigate the operator of an applicant talent agency to determine her or his employment experience and qualifications.

(6) — If the applicant is other than a corporation, the application shall also include the names and addresses of all persons, except bona fide employees on stated salaries, financially interested, either as partners, associates, or profit sharers, in the operation of the talent agency in question, together with the amount of their respective interest.

(7) — If the applicant is a corporation, the application shall include the corporate name and the names, residential addresses, and telephone numbers of all persons actively participating in the business of the corporation and shall include the names of all persons exercising managing responsibility in the applicant's or licensee's office.

(8) — The application must be accompanied by affidavits of at least five reputable persons, other than artists, who have known or have been associated with the applicant for at least 3 years, stating that the applicant is a person of good moral character or, in the case of a corporation, has a reputation for fair dealing.

(9) — If any information in the application supplied to the department by the applicant or licensee changes in any manner whatsoever, the applicant or licensee shall submit such changes to the department within 30 days after the date of such change or after the date such change is known or should have been known to the applicant or licensee.

### **Fla. Stat. § 468.404. License; fees; renewals.**

(1) — The department by rule shall establish biennial fees for initial licensing, renewal of license, and reinstatement of license, none of which fees shall exceed \$400. The department may by rule establish a delinquency fee of no more than \$50. The fees shall be adequate to proportionately fund the expenses of the department which are allocated to the regulation of talent agencies and shall be based on the department's estimate of the revenue required to administer this part.

(2) — If one or more individuals on the basis of whose qualifications a talent agency license has been obtained cease to be connected with the agency for any reason, the agency business may be carried on for a temporary period, not to exceed 90 days, under such terms and conditions as the department provides by rule for the orderly closing of the business or the replacement and qualifying of a new owner or operator. The licensee's good standing under this part shall be contingent upon the department's approval of any such new owner or operator.

(3) — No license shall be valid to protect any business transacted under any name other than that designated in the license, unless consent is first obtained from the department, unless written consent of the surety or sureties on the original bond required by s. 468.403 is filed with the department, and unless the license is returned to the department for the recording thereon of such changes. A charge of \$25 shall be made by the department for the recording of authorization for each change of name or change of location.

(4) — No license issued under this part shall be assignable.

### **Fla. Stat. § 468.405. Qualification for talent agency license.**

- (1) Each person designated in an application under this part as an owner or operator shall be of good moral character as determined by the department.
- (2) In addition to the foregoing qualification, each application shall show whether or not the agency, any person, or any owner of the agency is financially interested in any other business of like nature and, if so, shall specify such interest or interests:

### **Fla. Stat. § 468.406. Fees to be charged by talent agencies; rates; display.**

- (1) Each applicant for a license shall file with the application an itemized schedule of maximum fees, charges, and commissions which it intends to charge and collect for its services. This schedule may thereafter be raised only by filing with the department an amended or supplemental schedule at least 30 days before the change is to become effective. The schedule shall be posted in a conspicuous place in each place of business of the agency and shall be printed in not less than a 30-point boldfaced type, except that an agency that uses written contracts containing maximum fee schedules need not post such schedules.
- (2) All money collected by a talent agency from an employer for the benefit of an artist shall be paid to the artist, less the talent agency's fee, within 5 business days after the receipt of such money by the talent agency. No talent agency is required to pay money to an artist until the talent agency receives payment from the employer or buyer.

### **Fla. Stat. § 468.407. License; content; posting.**

- (1) The talent agency license shall be valid for the biennial period in which issued and shall be in such form as may be determined by the department, but shall at least specify the name under which the applicant is to operate, the address of the place of business, the expiration date of the license, the full names and titles of the owner and the operator, and the number of the license.
- (2) The talent agency license shall at all times be displayed conspicuously in the place of business in such manner as to be open to the view of the public and subject to the inspection of all duly authorized officers of the state and county.
- (3) If a licensee desires to cancel his or her license, he or she must notify the department and forthwith return to the department the license so canceled. No license fee may be refunded upon cancellation of the license.

### **Fla. Stat. § 468.408. Bond required.**

- (1) There shall be filed with the department for each talent agency license a bond in the form of a surety by a reputable company engaged in the bonding business and authorized to do business in this state. The bond shall be for the penal sum of \$5,000, with one or more sureties to be approved by the department, and be conditioned that the applicant conform to and not violate any of the duties, terms, conditions, provisions, or requirements of this part:
- (a) If any person is aggrieved by the misconduct of any talent agency, the person may maintain an action in his or her own name upon the bond of the agency in any court having jurisdiction of the amount claimed. All such claims shall be assignable, and the assignee shall be entitled to the same remedies, upon the bond of the agency or otherwise, as the person aggrieved would have been entitled to if such claim had not been assigned. Any claim or claims so assigned may be enforced in the name of such assignee.
- (b) The bonding company shall notify the department of any claim against such bond, and a copy of such notice shall be sent to the talent agency against which the claim is made.
- (2) Any remedies provided in this section shall not be exclusive of any other

remedy. This relief shall be cumulative to any other remedies the aggrieved person may have:

### **Fla. Stat. § 468.409. Records required to be kept.**

Each talent agency shall keep on file the application, registration, or contract of each artist. In addition, such file must include the name and address of each artist, the amount of the compensation received, and all attempts to procure engagements for the artist. No such agency or employee thereof shall knowingly make any false entry in applicant files or receipt files. Each card or document in such files shall be preserved for a period of 1 year after the date of the last entry thereon. Records required under this section shall be readily available for inspection by the department during reasonable business hours at the talent agency's principal office. A talent agency must provide the department with true copies of the records in the manner prescribed by the department.

### **Fla. Stat. § 468.410. Prohibition against registration fees; referral.**

- (1) A talent agency may not charge a registration fee.
- (2) No talent agency shall, as a condition to registering or obtaining employment for any applicant or artist, require the applicant or artist to subscribe to, purchase, or attend any publication, postcard service, advertisement, resume service, photography service, school, acting school, workshop, acting workshop, or video or audiotapes.
- (3) A talent agency shall give each applicant a copy of a contract, within 24 hours after the contract's execution, which lists the services to be provided and the fees to be charged. The contract shall state that the talent agency is regulated by the department and shall list the address and telephone number of the department.

### **Fla. Stat. § 468.411. Labor disputes; statements required.**

No talent agency shall knowingly send any person who has received a motion picture or videotape engagement or any other engagement to any place where a strike, lockout, or other labor dispute is in active progress, without first notifying that person of such conditions:

### **Fla. Stat. § 468.413. Legal requirements; penalties.**

- (1) Each of the following acts constitutes a felony of the third degree, punishable as provided in s. ~~775.082~~, s. ~~775.083~~, or s. ~~775.084~~:
- (a) Owning or operating, or soliciting business as, a talent agency in this state without first procuring a license from the department.
- (b) Obtaining or attempting to obtain a license by means of fraud, misrepresentation, or concealment.
- (2) Each of the following acts constitutes a misdemeanor of the second degree, punishable as provided in s. ~~775.082~~ or s. ~~775.083~~:
- (a) Relocating a business as a talent agency, or operating under any name other than that designated on the license, unless written notification is given to the department and to the surety or sureties on the original bond, and unless the license is returned to the department for the recording thereon of such changes.
- (b) Assigning or attempting to assign a license issued under this part.
- (c) Failing to show on a license application whether or not the agency or any owner of the agency is financially interested in any other business of like nature and, if so, failing to specify such interest or interests.
- (d) Failing to maintain the records required by s. ~~468.409~~ or knowingly making false entries in such records:

(e) Requiring as a condition to registering or obtaining employment or placement for any applicant that the applicant subscribe to, purchase, or attend any publication, postcard service, advertisement, resume service, photography service, school, acting school, workshop, or acting workshop;

(f) Failing to give each applicant a copy of a contract which lists the services to be provided and the fees to be charged, which states that the talent agency is regulated by the department, and which lists the address and telephone number of the department;

(g) Failing to maintain a record sheet as required by s. 468.412(1);

(h) Knowingly sending or causing to be sent any artist to a prospective employer or place of business, the character or operation of which employer or place of business the talent agency knows to be in violation of the laws of the United States or of this state;

(3) The court may, in addition to other punishment provided for in subsection (2), suspend or revoke the license of any licensee under this part who has been found guilty of any misdemeanor listed in subsection (2);

(4) In the event the department or any state attorney shall have probable cause to believe that a talent agency or other person has violated any provision of subsection (1), an action may be brought by the department or any state attorney to enjoin such talent agency or any person from continuing such violation, or engaging therein or doing any acts in furtherance thereof, and for such other relief as to the court seems appropriate. In addition to this remedy, the department may assess a penalty against any talent agency or any person in an amount not to exceed \$5,000.

### **Fla. Stat. § 468.414. Collection and deposit of moneys; appropriation.**

Proceeds from the fines, fees, and penalties imposed pursuant to this part shall be deposited in the Professional Regulation Trust Fund, created by s. 215.37.

### **Fla. Stat. § 468.415. Sexual misconduct in the operation of a talent agency.**

The talent agent-artist relationship is founded on mutual trust. Sexual misconduct in the operation of a talent agency means violation of the talent agent-artist relationship through which the talent agent uses the relationship to induce or attempt to induce the artist to engage or attempt to engage in sexual activity. Sexual misconduct is prohibited in the operation of a talent agency. If any agent, owner, or operator of a licensed talent agency is found to have committed sexual misconduct in the operation of a talent agency, the agency license shall be permanently revoked. Such agent, owner, or operator shall be permanently disqualified from present and future licensure as owner or operator of a Florida talent agency.

## **GROWLERS**

### **Fla. Stat. § 563.06(6). Malt beverages; imprint on individual container; size of containers; exemptions.**

All malt beverages packaged in individual containers sold or offered for sale by vendors at retail in this state shall be in individual containers containing no more than 32 ounces of such malt beverages; provided, however, that nothing contained in this section shall affect malt beverages packaged in bulk or in kegs or in barrels or in any individual container containing 1 gallon or more of such malt beverage regardless of individual container type.

## **HOUSEHOLD MOVERS**

### **Fla. Stat. § 507.05. Estimates and contracts for service.**

Before providing any moving or accessorial services, a contract and estimate must be provided to a prospective shipper in writing, must be signed and dated by the shipper and the mover, and must include:

(1) The name, telephone number, and physical address where the mover's employees are available during normal business hours;

(2) The date the contract or estimate is prepared and any proposed date of the move;

(3) The name and address of the shipper, the addresses where the articles are to be picked up and delivered, and a telephone number where the shipper may be reached;

(4) The name, telephone number, and physical address of any location where the goods will be held pending further transportation, including situations where the mover retains possession of goods pending resolution of a fee dispute with the shipper;

(5) An itemized breakdown and description and total of all costs and services for loading, transportation or shipment, unloading, and accessorial services to be provided during a household move or storage of household goods;

(6) Acceptable forms of payment. A mover shall accept a minimum of two of the three following forms of payment:

(a) Cash, cashier's check, money order, or traveler's check;

(b) Valid personal check, showing upon its face the name and address of the shipper or authorized representative; or

(c) Valid credit card, which shall include, but not be limited to, Visa or MasterCard.

A mover must clearly and conspicuously disclose to the shipper in the estimate and contract for services the forms of payments the mover will accept, including the forms of payment described in paragraphs (a)-(c).





## Ari Bargil

Ari Bargil is an attorney with the Institute for Justice Florida Chapter (IJ-FL). He joined the Institute in September 2012 and litigates cutting-edge constitutional cases protecting property rights, economic liberty, and other individual rights in federal and state courts.

Prior to joining IJ-FL, Ari practiced civil litigation with Cole, Scott & Kissane, P.A. in their West Palm Beach office. Before entering private practice, Ari worked as a trial court law clerk in Florida's Fifteenth Judicial Circuit.

A native Floridian, Ari attended The Florida State University College of Law, where he was a member of the law school's *Business Review*, and worked as a Research Assistant with *The James Madison Institute*, Florida's premier free market think tank. Ari received his undergraduate degree from the University of Florida in 2006.




## Claudia Murray Edenfield

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A Miami native, Claudia graduated *summa cum laude* from the University of Florida in 2007 with a Bachelor of Arts in English, a concentration in Creative Fiction Writing, and a minor in Philosophy. During college, Claudia taught LSAT, SAT and ACT courses for Kaplan Test Prep. She was the President of the College Libertarians and the Executive Fiction Editor of the *Mangrove Literary Review's* 2006 *Mélange* edition.





## About IJ

The Institute for Justice is a nonprofit, public interest law firm that litigates to secure economic liberty, school choice, private-property rights, freedom of speech and other vital individual liberties and to restore constitutional limits on the power of government. Founded in 1991, IJ is the nation's only libertarian public interest law firm, pursuing cutting-edge litigation in the courts of law and in the court of public opinion on behalf of individuals whose most basic rights are denied by the government.