

## Notice of Proposed Rule

### **DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

#### **Division of Marketing and Development**

RULE NO: RULE TITLE

[5H-26.001](#): Purpose

[5H-26.002](#): Definitions

[5H-26.003](#): General Requirements Relating to the Sale or Purchase of Horses

[5H-26.004](#): Bill of Sale

**PURPOSE AND EFFECT:** The purpose and effect of these proposed rules is to prevent unfair or deceptive trade practices relating to the sale and purchase of horses in Florida.

**SUMMARY:** Section 1 of 535.16, Florida Statute requires rule adoption to prevent unfair or deceptive trade practices relating to the sale of horses. The proposed Rule was developed with the input of a variety of groups, and although there was an expressed interest in including those issues such as drug testing for use of steroids or other drugs; licensing of agents; enforcement of Rule, and penalties for violations. We did not include them in the Rule proposal as we believe they are beyond the scope of the legislation. The Legislature would need to appropriate funding for drug testing, chain of command of tests, costs of tests, staff and a laboratory to provide results of tests. Challenges to tests would also be expensive and time consuming and would require additional legal staff. We did provide a definition of horse, eliminate dual agents unless both the owner and buyer are made aware of the arrangement; require a bill of sale and provide a means to obtain medical information. We determined that ownership would not be required since it would not create a deceptive or unfair trade practices.

**SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS:** No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

**SPECIFIC AUTHORITY:** [535.16 F.S.](#)

**LAW IMPLEMENTED:** [535.16 F.S.](#)

**IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN FAW.**

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

**THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: KERRY FLACK, ASSISTANT DIVISION DIRECTOR OF MARKETING AND DEVELOPMENT**

AT 407 SOUTH CALHOUN STREET, M9, TALLAHASSEE, FL 32399-0800.

THE FULL TEXT OF THE PROPOSED RULE IS:

**5H-26.001 Purpose.**

The purpose of this rule chapter is to address unfair and deceptive trade practices surrounding the sale and purchase of horses in Florida. This rule enhances consumer protection by implementation of minimum requirements relating to the sale and purchase of horses in Florida.

Specific Authority 535.16, F.S. Law Implemented 535.16, F.S. History-New.

**5H-26.002 Definitions.**

As used in this rule, the following definitions shall apply:

- (1) "Dual Agent" means a person who knowingly agrees with the Owner and the Purchaser of a horse, either individually or jointly, to act in a fiduciary capacity on behalf of both the Owner and the Purchaser in exchange for the promise of compensation. Auction companies or persons licensed to conduct public sales of thoroughbred horses under Chapter 535, F.S., shall not be deemed to be dual agents under this rule.
- (2) "Horse" means an equine as defined in Section 773.01(2), F.S.

Specific Authority 535.16, F.S. Law Implemented 535.16, F.S. History-New.

**5H-26.003 General Requirements Relating To the Sale or Purchase of Horses.**

- (1) Any sale or purchase of a horse or any interest therein in Florida shall be accompanied by a written bill of sale described in Rule 5H-26.004, F.A.C., except as provided in subsection (8).
- (2) A person shall not act as a dual agent in a transaction involving the sale or purchase of an interest in a horse without:
  - (a) The prior knowledge of both the Purchaser and the Owner; and
  - (b) Written consent of both the Purchaser and the Owner.
- (3) No person acting as an agent for a Purchaser or an Owner, or acting as a dual agent, in a transaction involving the sale or purchase of a horse or any interest therein, may receive consideration, compensation, fees, a gratuity, or any other item of value in excess of five hundred dollars (\$500), related directly or indirectly to such transaction, from an individual or entity, including any consignor involved in the transaction, other than the agent's principal, unless:
  - (a) The agent receiving, and the person or entity making, the payment disclose in writing the payment to both the Purchaser and Owner; and

(b) Each principal for whom the agent is acting consents in writing to the payment.

(4) Any person acting as an agent for a Purchaser or an Owner or acting as a dual agent in a transaction involving the sale or purchase of a horse or any interest therein shall, upon request by his or her principal or principals, furnish copies of all financial records and financial documents in the possession or control of the agent pertaining to the transaction to the principal or principals. For purposes of this section, financial records shall not include the agent's or Owner's work product used to internally evaluate the horse.

(5) A violation of any provision of Chapter 5H-26, F.A.C., resulting in actual damages to a person, shall be considered an unfair and deceptive trade practice pursuant to chapter 501, Part II, F.S.

(6) Except as provided in subsection (4), nothing in this rule chapter shall require disclosure of compensation arrangements between a principal and an agent where no dual agency exists, where the agent is acting solely for the benefit of his or her principal, and where the agent is being compensated solely by his or her principal. Further, for any sale or purchase of a horse or any interest therein in Florida through a public auction or a public sale of thoroughbred horses licensed under Chapter 535, F.S., nothing in this rule chapter shall require disclosure of the reserves, the identity of the Owner or Purchaser, or the auctioneer's commissions.

(7) No contract or agreement for payment of a commission, fee, gratuity, or any other form of compensation to a dual agent in connection with any sale or purchase of a horse or any interest therein shall be enforceable by way of an action or defense unless the contract or agreement is in writing and is signed by the party against whom enforcement is sought.

(8) For any sale or purchase of a horse or any interest therein in Florida through either a public auction or a public sale of thoroughbred horses licensed under Chapter 535, F.S., any bill of sale requirement contained in Chapter 5H-26, F.A.C., may be satisfied by the issuance of an auction receipt or acknowledgement of purchase, generated by the auction house or licensee, stating the date of purchase and the purchase price of the horse, signed by the Purchaser or the Purchaser's agent. The auction receipt or acknowledgement of purchase shall expressly state or incorporate by reference all conditions of the sale, including the terms of any warranties.

Specific Authority 535.16, F.S. Law Implemented 535.16, F.S. History-New.

#### **Rule 5H-26.004 Bill of Sale.**

Except as provided in Rule 5H-26.003(8), the sale or purchase of a horse or any interest therein in Florida must be accompanied by a written bill of sale that must include at a minimum the following:

(1) The name, address, and signature of the Purchaser, the Owner, or their duly authorized agents. In a transaction solely relating to a stallion season, breeding right, or fractional

interest in a horse, the syndicate manager or horse manager may serve as an acceptable agent in response to this requirement.

(2) The date of the sale.

(3) The purchase price of the horse.

(4) The following statement: "As the person signing below on behalf of the Owner, I hereby confirm that I am the lawful Owner of this horse or the Owner's duly authorized agent, and I am authorized to convey legal title to the horse pursuant to this bill of sale."

(5) The following statement: "As the person signing below on behalf of the Purchaser, I understand that any warranties or representations from the Owner or the Owner's agent that I am relying upon in acquiring this horse, including warranties or representations with respect to the horse's age, medical condition, prior medical treatments, and the existence of any liens or encumbrances, should be stated in writing as part of this bill of sale."

Specific Authority 535.16, F.S. Law Implemented 535.16, F.S. History-New.

NAME OF PERSON ORIGINATING PROPOSED RULE: Kerry Flack

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE:

Kerry Flack

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 15, 2008

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW:

November 30, 2007