

Business & Professions Subcommittee

Wednesday, November 6, 2019
1:00 PM – 3:00 PM
Webster Hall (212 Knott)

Meeting Packet

Jose Oliva
Speaker

Heather Fitzenhagen
Chair

The Florida House of Representatives

Commerce Committee

Business & Professions Subcommittee

Jose Oliva
Speaker

Heather Fitzenhagen
Chair

AGENDA

Wednesday, November 6, 2019
Webster Hall (212 Knott)
1:00 PM – 3:00 PM

I. Call to Order & Roll Call

II. Welcoming Remarks

III. Consideration of the following bills(s):

HB 65 by *Rep. Rodriguez, A.M.*
Fireworks

HB 101 by *Rep. Andrade*
Public Construction

HB 115 by *Rep. Duran*
Keep Our Graduates Working Act

HB 307 by *Rep. LaMarca*
Law Enforcement Vehicles

IV. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4873 Fax: (850) 413-0419

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

(AMENDED 11/1/2019 4:24:24PM)

Amended(1)

Business & Professions Subcommittee

Start Date and Time:	Wednesday, November 06, 2019 01:00 pm
End Date and Time:	Wednesday, November 06, 2019 03:00 pm
Location:	Webster Hall (212 Knott)
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 65 Fireworks by Rodriguez, A. M.
HB 101 Public Construction by Andrade
HB 115 Keep Our Graduates Working Act by Duran
HB 307 Law Enforcement Vehicles by LaMarca

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Tuesday, November 5, 2019.

By Request of Chair Fitzenhagen, all Business & Professions Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, November 5, 2019.

NOTICE FINALIZED on 11/01/2019 4:24PM by Rigas.Amanda

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 65 Fireworks
SPONSOR(S): Rodriguez, A. M. and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 140

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Brackett DB	Anstead
2) Local, Federal & Veterans Affairs Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Federal laws regulate the manufacture, sale and use of fireworks. The U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) as well as the U.S. Consumer Product Safety Commission (CPSC) have general jurisdiction over what types of fireworks may be legally sold in the United States. Federal law sets the minimum standard. States are permitted to enact laws that are more stringent.

In Florida, the sale and use of fireworks are generally prohibited.

However, many exceptions to the prohibition exist. The most commonly used exceptions allow approved fireworks to be sold by a licensed retailer to a buyer who:

- has obtained a permit for a public display from a municipality or a board of county commissioners;
- is using the fireworks to scare birds away from agricultural works or fish hatcheries.

The bill creates an additional exception to the prohibition of the sale and use of fireworks.

The bill provides that federally approved consumer fireworks may be imported, sold, purchased, and used solely and exclusively for the following holidays:

- New Year's Day, January 1st;
- Memorial day, the last Monday in May; and
- Independence Day, July 4th.

The bill also requires the State Fire Marshal to:

- adopt rules for the use of fireworks during the designated holidays; and
- prescribe the use of such fireworks in the same manner prescribed in rules previously promulgated by DACS for the use of fireworks to scare birds.

The bill is not expected to have a fiscal impact on state and local governments.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Background

Chapter 791, F.S., regulates the sale and use of fireworks and sparklers in Florida. No person may offer for sale, sell at retail, or use or explode any fireworks unless they meet the provisions or exceptions in Florida law.[1] Sparklers are permitted under Florida law under certain conditions.

According to the American Pyrotechnics Association, 46 states plus the District of Columbia allow some or all types of consumer fireworks, three states (Ohio, Illinois, and Vermont) allow only wire or wood stick sparklers, and one state (Massachusetts) bans all consumer fireworks.[2]

Federal Regulation of Fireworks

Fireworks are regulated by the federal government though the ATF, and the CPSC.

Federal explosives laws categorize fireworks into three types - display fireworks, consumer fireworks, and articles pyrotechnic.[3]

Display Fireworks

"Display fireworks" are defined as "large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation." The ATF requires anyone engaging in the business of manufacturing, importing, or dealing in display fireworks to have an ATF explosive license, and anyone importing for their own use or receiving or transporting display fireworks to have an ATF permit.[4]

"Display fireworks" include but are not limited to:

- Aerial shells containing more than 2 grains of explosive materials;
- Aerial shells containing more than 40 grams of pyrotechnic compositions;
- Other display pieces that exceed the limits of explosive materials for consumer fireworks; and
- Fused set pieces containing components which together exceed 50 milligrams of salute powder.[5]

Consumer Fireworks

"Consumer fireworks" are defined as "any small firework device designed to produce visible effects by combustion and which must comply with the construction, chemical composition, and labeling regulations of the U.S. Consumer Product Safety Commission." Manufacturers of "consumer fireworks"

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[1] *See* ch. 791, F.S.

[2] The American Pyrotechnics Association was found in 1948, represents the entire fireworks industry, and works toward the responsible regulation of the fireworks industry. APA, *2019 State Fireworks Control Laws*, https://www.americanpyro.com/assets/docs/FactsandFigures/Rev2019%20State%20Laws%20Firework%20Map.pdf (last visited on Oct. 29, 2019).

[3] 27 C.F.R. § 555 (2019) & 27 C.F.R. § 555.11 (2019).

[4] 27 C.F.R. § 555.26 (2019) & 27 U.S.C. § 555.41 (2019).

[5] 27 C.F.R. § 555.11 (2019).

must have an ATF license. However, the ATF generally does not regulate the importation, distribution, and storage of consumer fireworks.

The definition also includes "some small devices designed to produce audible effects...such as":

- whistling devices,
- ground devices containing 50 mg or less of explosive materials, and
- aerial devices containing 130 mg or less of explosive materials."[6]

Articles Pyrotechnic

"Articles pyrotechnic" are defined as "pyrotechnic devices for professional use similar to consumer fireworks in chemical composition and construction but not intended for consumer use."[7] A manufacturer of articles pyrotechnics must have an ATF manufacturer's license.[8]

The Federal Hazardous Substances Act (FHSA)

The CPSC regulates the use of consumer fireworks under the FHSA.[9] The FHSA prohibits the sale to consumers of the most dangerous types of fireworks including:

- Large reloadable mortar shells;
- Cherry bombs;
- Aerial bombs;
- M-80 aerials; and
- Larger firecrackers containing more than 2 grains of explosive materials.[10]

Any person who imports, distributes, or sells a prohibited firework under the FHSA to a consumer is guilty of a misdemeanor and subject to a fine of not more than $500 and/or imprisonment for not more than 90 days. For second or subsequent offenses, or if the person intended to defraud or mislead, the person is subject to a fine of up to $250,000 and/or imprisonment for not more than 5 years. Any person who imports, distributes, or sells a prohibited firework under the FHSA to a consumer may also be subject to a civil penalty up to $100,000 for each violation and up to $15,000,000 for any series of violations.[11]

The determination of who may purchase and use consumer fireworks is left up to the states. However, the CPSC advises that young children should not be allowed to use consumer fireworks and older children should only be allowed to use consumer fireworks under the close supervision of an adult.[12]

The CPSC provides an annual report on the number of non-occupational, fireworks-related deaths and injuries in the U.S. The CPSC reported that in 2018 there were an estimated 9,100 injuries involving fireworks in the U.S. The CPSC also reported that there were at least five deaths including a 16 year old male in Florida who died after a mortar tube exploded in his hand.[13]

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[6] 27 C.F.R. § 555.11 (2019).
[7] *Id.*
[8] 27 C.F.R. § 555.11 (2019); 27 C.F.R. § 555.141 (2019); ATF Bureau of Alcohol, Tobacco, Firearms, and Explosives, *Are 'consumer fireworks' subject to regulation under the Federal explosive laws?*, https://www.atf.gov/explosives/qa/are-%E2%80%9Cconsumer-fireworks%E2%80%9D-subject-regulation-under-federal-explosives-laws (last visited on Oct. 29, 2019); ATF Bureau of Alcohol, Tobacco, Firearms, and Explosives, *Are "Articles Pyrotechnic" subject to the requirements of the Federal explosive regulations?*, https://www.atf.gov/explosives/qa/are-%E2%80%9Carticles-pyrotechnic%E2%80%9D-subject-requirements-federal-explosives-regulations (last visited Oct. 29, 2019).
[9] 15 U.S.C. § 1261 (2019).
[10] 16 C.F.R. § 1500.17 (2019).
[11] *See* 15 U.S.C. § 1263 (2017); 15 U.S.C. § 1264 (2019); 18 U.S.C. § 3571 (2019).
[12] U.S. Consumer Product Safety Commission, *Fireworks Fact Sheet*, https://www.cpsc.gov/s3fs-public/Fireworks%20Fact%20Sheet%202019.pdf (last visited on Oct. 29, 2019).
[13] Tu, Yongling, *2018 Fireworks Annual Report: Fireworks-Related Deaths and Emergency Department-Treated Injuries During 2018*, 1 & 8 https://www.cpsc.gov/s3fs-public/Fireworks_Report_2018.pdf?5kZ4zdr9jPFyhPmeg3MoL35mGX8fB0s7 (June 2019).

Florida Regulation of Fireworks and Sparklers

In Florida, the sale, purchase, and use of fireworks is prohibited unless the seller, buyer, or user falls under an exemption. Fireworks are defined as "any combustible or explosive composition or substance or combination of substances or, except as hereinafter provided, any article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation."

Fireworks include:

- Blank cartridges and toy cannons in which explosives are used;
- Balloons which require fire underneath to propel them;
- Firecrackers;
- Torpedoes;
- Skyrockets;
- Roman candles;
- Dago bombs; and
- Any fireworks containing any explosives or flammable compound or any tablets or other device containing any explosive substance.[14]

Fireworks do not include the following, which the sale and use of is permitted under certain conditions:

- Sparklers[15] approved by the State Fire Marshal;
- Toy pistols, toy canes, toy guns, or other devices in which paper caps containing twenty-five hundredths grains or less of explosive compound are used, providing that a person's hand cannot come into contact with the cap when in place for the explosion;
- Toy pistol paper caps which contain less than twenty hundredths grains of explosive mixture; and
- A trick noisemaker, which is a device that produces a small report intended to surprise a user, including a:
    - Party popper;
    - Booby trap;
    - Snapper;
    - Trick match;
    - Cigarette load; and
    - Auto burglar alarm.
- The following novelties:
    - A snake or glow worm, which is a pressed pellet of not more than 10 grams of pyrotechnic composition that produces a large, snakelike ash which expands in length as the pellet burns and that does not contain mercuric thiocyanate; and
    - A smoke device, which is a tube or sphere containing not more than 10 grams of pyrotechnic composition that, upon burning, produces white or colored smoke as the primary effect.[16]

Any person who illegally purchases, uses, or sells fireworks commits a first-degree misdemeanor.[17]

Sparklers

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[14] Ss. 791.01(4)(a) & 791.02(1), F.S.

[15] S. 791.01(8), F.S. (Sparklers are hand-held or ground-based devices that emit showers of sparks when they are burned. Sparklers do not explode, detonate, contain explosive compounds, are not self-propelled, and have a limited number of combustible chemicals.)

[16] S. 791.01(4)(b) & (c), F.S.

[17] S. 791.06, F.S.

All sparklers sold in Florida must be approved by the State Fire Marshal. Sparklers not approved by the State Fire Marshal are considered fireworks. Any person wishing to sell a product as a sparkler in Florida must first submit the product to the State Fire Marshal for testing to determine if the product meets the definition of a sparkler. On February 1 of each year, the State Fire Marshal must publish a list of the approved sparklers. All approved sparklers may be sold until January 31st of the following year.[18]

Any person who alters an approved sparkler, so that it is no longer a sparkler, and subsequently sells the altered sparkler as an approved sparkler commits a first-degree misdemeanor. Any person who fraudulently represents a product that is not an approved sparkler as an approved sparkler commits a first-degree misdemeanor.[19]

Public Displays of Fireworks

Pursuant to s. 791.012, F.S, the outdoor display of fireworks is governed by the National Fire Protection Association (NFPA) 1121, Code for Fireworks Display, 1995 Edition, approved by the American National Standards Institute.[20] Any state, county, or municipal law, rule, or ordinance may provide for more stringent regulations, but in no event may any such law, rule, or ordinance provide for less stringent regulations for the outdoor display of fireworks. However, the Code for Fireworks Display does not govern the display of any fireworks on private residential property.[21]

Florida allows the public display of fireworks in municipalities if police and fire chiefs have determined that the display is done by a competent supervisor, and the display does not endanger any person and is not hazardous to property.[22]

The supervised public display of fireworks is permitted outside municipalities by fair associations, amusement parks, and other organizations or groups of individuals if the person doing the display obtains a bond of not less than $500. The bond is for the payment of damages that may be caused to a person or property by the fireworks display, any acts of the person doing the display, his or her agents, employees, or subcontractors.[23]

Municipalities and the boards of county commissioners have the power to adopt reasonable rules and regulations for the granting of permits for supervised public displays of fireworks. Application for a permit must be made in writing at least 15 days in advance of the display. Upon obtaining a permit a person may engage in the lawful sale, possession, and distribution of fireworks for the display. Permits may not be transferred.[24]

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[18] Ss. 791.01(8) & 791.013(1), F.S.
[19] S. 791.013(2), F.S.
[20] The National Fire Protection Association was founded in 1896 and delivers information and knowledge through more than 300 consensus codes and standards, research, training, education, outreach and advocacy; and by partnering with others who share an interest in furthering the mission. The American National Standards Institute is a non-profit organization that aims to strengthen the U.S. market place and assure the safety and health of consumers by creating and promulgating thousands of standards and guidelines. NFPA, *About NFPA*, http://www.nfpa.org/about-nfpa (last visited on Oct. 29, 2019); ANSI, *About ANSI*, https://www.ansi.org/about_ansi/overview/overview?menuid=1 (last visited on Oct. 29, 2019).
[21] S. 791.012, F.S.
[22] S. 791.02(1), F.S.
[23] *Id.* & S. 791.03, F.S.
[24] S. 791.02(1), F.S.

Distributors, Manufacturers, Wholesalers, and Retailers

In order to be a retailer, manufacturer, wholesaler, or distributor[25] a person must register annually with the State Fire Marshal. Depending on the type of registration, the registrant is able to manufacture, construct, or sell sparklers and **may also sell fireworks**:

- To other registered wholesalers, manufacturers, and distributors;
- That are to be shipped out of Florida;
- To anyone holding a public firework display permit from municipality or a board of county commissioners; and
- To a buyer who is using the fireworks to scare birds away from agricultural works or fish hatcheries.[26]

Retailers and seasonal retailers may not sell sparklers, fireworks, or any other product authorized for sale by ch. 791, F.S., unless the retailer or seasonal retailer obtained the product from a registered manufacturer, distributor, or wholesaler.

Retailers and seasonal retailers are also required to keep, at every location where sparklers are sold, evidence of purchases from manufacturers, distributors, or wholesalers. The evidence must have the manufacturer, distributor, or wholesaler's registration number, and the specific items purchased by the retailor or seasonal retailor. Each seasonal retailer must also display a copy of his or her registration at each seasonal location.[27]

There are two types of retailers in Florida:

- A retailer, who is any person at a fixed place of business who sells sparklers to consumers at retail; and
- A seasonal retailer, who is any person engaged in the business of selling sparklers to consumers at retail from June 20th through July 5th and December 10th through January 2nd.[28]

A retailer who sells sparklers at multiple locations may submit one registration form as long as the retailer lists every location on the registration form.[29] The registration form must include the business name, address, telephone number, corporate officers (if a corporation), and a contact person. Annual registration fees are:

- $1,000 for registration as a manufacturer, distributor, or wholesaler;
- $200 for registration as a seasonal retailer; and
- $15 for each location registered by a non-seasonal retailer.[30]

Agricultural Exception to Fireworks Prohibition

Pursuant to s. 791.07, F.S., nothing shall prohibit the importation, purchase, sale, or use of fireworks to be used solely and exclusively to scare birds from agricultural works and fish hatcheries. Such use is governed by rules prescribed by the Department of Agriculture and Consumer Services (DACS).

Current law does not provide for an age restriction for the purchase of fireworks to scare birds from agricultural works and fish hatcheries. However, on February 13, 2018, testimony was offered during the regular meeting of the Florida House of Representatives' Commerce Committee indicating that it is

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[25] S. 791.01(1), (5), & (9), F.S. (A distributor is defined as any person who sells sparklers to a wholesaler. A manufacturer is defined as any person engaged in the manufacture or construction of sparklers in Florida. A wholesaler is defined as any person engaged in the business of selling sparklers to a retailer.)

[26] Ss. 791.04 & 791.07, F.S.

[27] S. 791.02(2), F.S.

[28] S. 791.01(6) & (7), F.S.

[29] S. 791.015(1), F.S.

[30] S. 791.015(3), F.S. & Rule 69A-50.005, F.A.C.

standard practice for retailers to refuse to sell fireworks to minors under the agricultural exception because minors cannot legally sign the legal form required by the retailers.[31]

DACS has adopted rules that require any person who wishes to use firecrackers to scare birds first file a written statement, with the sheriff in the county where the agricultural work or fish hatchery is located, attesting that he or she intends to use the firecrackers solely for the purpose of scaring birds.[32] A person may purchase firecrackers from an authorized seller upon presenting the seller a copy of the written statement he or she has filed with the sheriff.[33]

Local news stations have reported that the ability to buy fireworks in order to scare birds is a "loophole" to the prohibition of the purchase of fireworks by people who are not registered with the State Fire Marshal. According to the local news stations, retailers require a person to sign a form attesting that they are purchasing fireworks to scare birds from agricultural works or fish hatcheries in order to purchase the fireworks.[34] In 2002, the Third District Court of Appeal held that it is not the responsibility of a seller to check the veracity of a buyer's form attesting that the fireworks are to be used to scare birds.[35]

Consumer Fireworks Task Force/Limits on Retail Sales Facilities

The 2007 Legislature[36] found that:

- The state regulation of consumer fireworks in Florida provides an insufficient definition of consumer fireworks and related products used by consumers;
- There is a need for better training and education concerning the safe use of consumer fireworks;
- There should be a mechanism to help local governments fund the cleanup following the use of consumer fireworks on public property;
- Local government regulation of the agricultural uses authorized by s. 791.07, F.S., may be inconsistent with legitimate agricultural purposes;
- There is a need for consumer education relating to safety standards in the use of consumer fireworks;
- There is need for standards concerning tents and other temporary retail facilities selling consumer fireworks; and
- The state would benefit from additional funding for the training and education of fire officials.

The Consumer Fireworks Task Force (Task Force), housed within DACS, was established for the purpose of studying issues concerning consumer fireworks, including the:

- Proper use of consumer fireworks;
- The regulation of sales and temporary sale facilities;
- Regulation of the hours and location of use;
- Property zoning classifications for sale facilities;
- Funding options for fire official training and education; and

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[31] *See* The Florida Channel, *2/13/2018 House Commerce Committee.*
[32] Rule 5A-3.001, F.A.C.
[33] Rule 5A-3.002, F.A.C.
[34] Jenna Bourne, *Loophole in Florida fireworks law can lead to injuries, death*, Action News Jax (Jul. 4, 2019), https://www.actionnewsjax.com/news/local/loophole-in-florida-fireworks-law-can-lead-to-injuries-death/963975096; Nicki Ross, *Fireworks are big business – and illegal in Florida,* The Daytona Beach News-Journal (Jul. 3, 2019), https://www.news-journalonline.com/news/20190703/fireworks-are-big-business---and-illegal-in-florida; WFTX Digital Team, *Police: Most fireworks are illegal in Florida*, Fox4 Southwest Florida (Jul. 4, 2019) https://www.fox4now.com/news/local-news/police-most-fireworks-are-illegal-in-florida.
[35] *See State v. Miketa*, 824 So. 2d 970 (Fla. 3d DCA 2002).
[36] Ch. 2007-67, Laws of Fla. (In 2007, the Legislature passed and the Governor signed into law Senate Bill 1372.)

- Funding options for cleanup of expended consumer fireworks products.[37]

In 2007, limits on the number of retail sales facilities for the sale of consumer fireworks were established:

- A new permanent fireworks retail sales facility may not be opened in Florida after March 8, 2007, for the purpose of selling fireworks in accordance with the agricultural exception, unless construction for the permanent retail sales facility received site plan approval and construction began on or before March 8, 2007; and
- The number of permits for temporary fireworks retail sales facilities, such as tents, issued after March 8, 2007, by a county, municipality, or other unit of local government, may not exceed the number of permits the governmental entity issued for facilities selling fireworks in accordance with the agricultural exception during the 2006 calendar year.[38]

Although the above limitations were enacted pending the Legislature's review of the Task Force's recommendations, the limitations remain in effect today. No changes were made to these provisions after the Task Force completed its report and submitted it to the Legislature on January 15, 2008.[39]

In June 2016, the City of Altamonte Springs requested an advisory opinion from the Florida Office of the Attorney General because the City wanted to know if it could issue a new permit for the sale of fireworks. The AG determined that local governments are prohibited from allowing new facilities to be opened for the sale of fireworks, and local governments may only issue as many permits allowing temporary facilities for the sale of fireworks as they had issued in 2006.[40]

State Fire Marshal

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety and has the responsibility to minimize the loss of life and property in this state due to fire. Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and fire safety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts fire safety inspections of state property; and operates the Florida State Fire College.[41]

In addition to these duties, the State Fire Marshal adopts by rule the Florida Fire Prevention Code (FFPC), which contains all fire safety rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C. The State Fire Marshal adopts a new edition of the FFPC every three years. The FFPC includes national fire safety and life safety standards set forth by the NFPA, including the NFPA's Fire Code (1), Life Safety Code (101) and Guide on Alternative Approaches to Life Safety (101A).[42]

According to DFS, last year there were 108 fires in Florida where fireworks were the reported cause. Those fires resulted in an estimated $287,751 in property damage. In 2017, there were 173 fires in Florida where fireworks were the reported cause. Those fires resulted in one death and $500,660 in property damage.[43]

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[37] *Id.*
[38] *Id.*
[39] 2016-05 Fla. Op. Att'y Gen. 37 (2016).
[40] *Id.*
[41] S. 633.104, F.S.
[42] S. 633.202(2), F.S.
[43] Florida Department of Financial Services, Agency Analysis of 2020 House Bill 65, p. 4 (Sep. 20, 2019).

Effect of the Bill

The bill creates an exception to the prohibition on the sale and use of fireworks.

The bill provides that fireworks are not prohibited from being imported, sold, purchased, or used, or to be used, if they are solely and exclusively for the following holidays:

- New Year's Day, January 1st;
- Memorial day, the last Monday in May; and
- Independence Day, July 4th.

The bill requires the State Fire Marshal to adopt rules for the use of fireworks during the three designated holidays. The rules must prescribe such use in the same manner as the rules promulgated by DACS for the use of fireworks to scare birds.

The bill takes effect upon becoming law.

B. SECTION DIRECTORY:

Section 1. Creating s. 791.08, F.S., authorizing the purchase, sale, and use of fireworks on certain holidays.

Section 2. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments

D. FISCAL COMMENTS:

A potential increase in the purchase and use of fireworks may have a positive economic impact on the private sector.

According to DFS, last year there were 108 fires in Florida where fireworks were the reported cause. Those fires resulted in an estimated $287,751 in property damage. In 2017, there were 173 fires in

Florida where fireworks were the reported cause. Those fires resulted in one death and $500,660 in property damage.[44]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Yes. DFS must adopt rules for the importation, purchase, sale, and use of fireworks that are to be used on certain holidays.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not specify the age that a person must be in order to qualify got the exception allowing the purchase and use fireworks. This may allow minors to purchase fireworks for use during the three designated holidays.

Current language granting rule making authority to the State Fire Marshal may not be clear and should be clarified to specifically instruct the DACS or the State Fire Marshal.[45]

The bill does not state when consumers may purchase fireworks for use during the three designated holidays. This could allow retailers to sell fireworks to consumers during any time of the year as long as the consumer provides that they are going to use the fireworks during one of the designated holidays.

The definition of "seasonal retailer" may need to be updated to include Memorial Day because the current definition only includes "any person engaged in the business of selling sparklers to consumers at retail from June 20th through July 5th and December 10th through January 2nd."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[44] Florida Department of Financial Services, Agency Analysis of 2020 House Bill 65, p. 4 (Sep. 20, 2019).
[45] *Id.*

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BUSINESS & PROFESSIONS SUBCOMMITTEE

HB 65 by Rep. Rodriguez, A.M.
Fireworks

AMENDMENT SUMMARY
November 6, 2019

Amendment 1 by Rep. Rodriguez, A.M. (Strike-all amendment):
The strike-all amendment:

- Includes New Year's Eve as a designated holiday;
- Includes Memorial Day in the list of dates "seasonal retailers" are permitted to sell fireworks;
- Provides that a person must be at least 18 years of age to purchase fireworks;
- Provides an affirmative defense for a retailer who acts in good faith and inadvertently sells fireworks to a minor; and
- Removes the rule-making requirement.

The remainder of the bill's provisions are unchanged by the strike-all amendment. The remaining provisions provide that:

- Fireworks may be sold, purchased, and used solely and exclusively for the following holidays:
    - New Year's Eve, December 31st;
    - New Year's Day, January 1st;
    - Memorial day, the last Monday in May; and
    - Independence Day, July 4th.

Amendment No. 1.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Business & Professions Subcommittee

Representative Rodriguez, A. M. offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (7) of section 791.01, Florida Statutes, is amended to read:

791.01 Definitions.—As used in this chapter, the term:

(7) "Seasonal retailer" means any person engaged in the business of selling sparklers at retail in this state from May 12 through June 1, from June 20 through July 5, and from December 10 through January 2 of each year.

Section 2. Section 791.08, Florida Statutes, is created to read:

791.08 Use during designated holidays; exemption.--

Amendment No. 1.

(1) As used in this section, the term "designated holiday" means:

(a) New Year's Eve, December 31;

(b) New Year's Day, January 1;

(c) Memorial Day, the last Monday in May; or

(d) Independence Day, July 4.

(2) This chapter does not prohibit the offer for sale, sale, purchase, or use of fireworks that are to be used or used solely and exclusively during a designated holiday.

(3) Any person who purchases fireworks must be 18 years of age or older.

(4) A retailer or seasonal retailer charged with unlawfully selling fireworks to a person under 18 years of age has a complete defense if, at the time the fireworks were sold, the retailer, seasonal retailer, or an employee or agent of the retailer or seasonal retailer carefully checked a driver license or an identification card issued by this state or another state of the United States, a passport, or a United States Armed Services identification card presented by the buyer, and acted in good faith and in reliance upon the representation and appearance of the buyer in the belief that the buyer was 18 years of age or older.

Section 3. This act shall take effect upon becoming law.

Amendment No. 1.

T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert:
An act relating to fireworks; amending s. 791.01, F.S.; amending the definition of "seasonal retailer"; creating s. 791.08, F.S.; defining the term "designated holiday"; providing an exemption for the purchase, sale, or use of fireworks used or to be used solely and exclusively during a designated holiday; providing an age requirement to purchase fireworks; providing an affirmative defense; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 101 Public Construction
SPONSOR(S): Andrade and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 246

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Brackett DB	Anstead
2) Oversight, Transparency & Public Management Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Retainage is a common construction practice that allows a portion of an agreed upon contract price to be withheld until the work is substantially complete to assure that a contractor or subcontractor will complete the construction project.

Current law sets limits on how much retainage can be withheld on state and local government contracts. For construction contracts with the state *for $200,000 or less,* the state may withhold up to ten percent of a payment to a contractor. For construction contracts with the state or local governments that are for *more than $200,000*, the maximum amount that may be retained in a payment is:

- Ten percent of a payment to a contractor before half of the work is completed;
- Five percent of a payment to a contractor after half of the work is completed; and
- Ten percent of a payment to a contractor for the entire project, if the government entity is a municipality with a population of 25,000 or less or a county with a population of 100,000 or less.

The bill changes the limits on retainage permitted to be withheld on state and local government contracts.

For contracts more than $200,000, the bill reduces the maximum amount that may be retained:

- *From ten percent* before half of the work is complete, and five percent after half of the work is complete
  - *To five percent* for the entire project; and
- *From ten percent* for the entire project if the government entity is a municipality with a population of 25,000 or less or a county with a population of 100,000 or less
  - *To five percent* for the entire project.

The bill repeals:

- The ability of a contractor to make a request the government entity release up to half of the retained amount after half of the project is completed; and
- The ability of a contractor to withhold more than five percent of each progress payment to his or her subcontractors after half of a project for a government entity is completed.

For contracts less than $200,000, the bill reduces the amount that the state may retain from a progress payment to a contractor *from ten percent to five percent.*

The provisions of the bill do not apply to FDOT construction projects authorized by ch. 337, F.S., or any contract for construction services entered into, pending approval, or advertised by a government entity, on or before October 1, 2020.

The bill may have a fiscal impact on state government and local governments. See Fiscal Comments.

The bill provides for an effective date of October 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Construction Contractors

Construction contractors are certified or registered by the Construction Industry Licensing Board (CILB) housed within the Department of Business and Professional Regulation (DBPR). The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate.[1] Certified construction contractors are licensed and regulated by the CILB and can practice statewide. Registered contractors are those that choose to practice only within the specific locality where they have chosen to apply for licensure and may only practice within that locality.[2]

Retainage

Payments for construction services are usually made incrementally as progress is made. Retainage is a construction practice whereby a project owner withholds a certain percentage of a payment from the contractor who in turn withholds a certain percentage from the subcontractors until the project is completed. The retained funds are generally paid out when the project is completed.[3]

The purpose of retainage is provide leverage for the property owner and the contractor to ensure the project is completed in a timely fashion. Retainage also serves as a safeguard against possible overpayment to a contractor or subcontractor when the estimated percentage of project completion, used for periodic progress payments, exceeds the actual percentage completed.[4]

Florida Retainage Rates for Construction Contracts with Government Entities

Section 218.72, F.S., defines a "local government entity" to mean a county or municipal government, school board, school district, authority, special taxing district, other political subdivision, or any office, board, bureau, commission, department, branch, division, or institution thereof.

Section 255.072, F.S., defines a "public entity" to mean the state, or any office, board, bureau, commission, department, branch, division, or institution thereof, but the term does not include a local government entity as defined above.

Current law provides that for any construction service contract with a local government entity or a public entity (government entities) that is worth more than $200,000:

- the maximum amount that a government entity may withhold from a progress payment to a contractor is ten percent, until half of the project is completed.
- the maximum amount that a government entity may withhold from a progress payment to a contractor is reduced to five percent, after half of the project is completed.

However, a municipality with a population of 25,000 or less and a county with a population of 100,000 or less may withhold ten percent until the project is completed.[5]

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[1] S. 489.107, F.S.

[2] *See generally* s. 489.105, F.S.

[3] OPPAGA, *Inflexibility in Contracting and Retainage Practices Could Hurt Construction Industry*, p. 1 (Dec. 2000) http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0026rpt.pdf (last visited on Oct. 20, 2019).

[4] *Id.*; Bausman, Dennis C. *Retainage Practice In The Construction Industry*, Foundation of the American Subcontractors Association, Inc., p. 1 (Nov. 2004) https://www.asacolorado.com/images/stories/documents/legislation/retainageclemsonstudy.pdf (last visited on Oct. 20, 2019).

[5] Ss. 218.735 & 255.078, F.S.

After half of the project is completed, a contractor may request the government entity to release up to half of the retained amount. The government entity must release the requested amount unless the amount is subject to a dispute.[6]

After a contractor completes a project, he or she may submit a request to the government entity for all remaining retained funds. The government entity must release the funds unless there is a good faith dispute that the contractor has not completed an item or items on the government entity's list of items required to complete the project. If there is a good faith dispute, the government entity may withhold an amount not to exceed 150% of the cost to complete the item or items.[7]

When a contractor receives payment from a government entity for work or materials provided by a subcontractor, the contractor must provide the payment to the subcontractor within 10 days of receiving the payment. However, after half of a project with a government entity is completed, a contractor may withhold more than five percent of each progress payment to a subcontractor even though the government entity may not retain more than five percent of each payment to a contractor for work and materials provided by the contractor and his or her subcontractors.[8]

A contractor may withhold more than five percent of each payment based on the contractor's assessment of a subcontractor's past performance, the likelihood that such performance will continue, and the contractor's ability to rely on other safeguards such as a performance bond. If a contractor elects to retain more than five percent, the contractor must notify the subcontractor in writing of his or her determination to withhold more than five percent and the reasons for making that determination, and the contractor may not request the release of such retained funds from the government entity.[9]

For contracts for construction services with the state that are for $200,000 or less, current law requires the Department of Management Services (DMS) to establish rules that allow the state to retain up to ten percent of each payment made to the contractor. In order to comply, DMS enacted Rule 60D-5.0041, F.A.C., which provides that for public works contracts with the state that are worth more than $100,000 but not more than $200,000, a state agency may request DMS to exempt the requirement for a performance and payment bond as long as the state agency retains ten percent of each payment made to the contractor. If the contractor defaults, the agency will use the retained payments to pay any claims of unpaid bills made by laborers, materialmen, and subcontractors.[10]

Chapter 337, F.S., provides that when the Department of Transportation (DOT) uses flexible start and finish times for construction projects, DOT may retain ten percent when a contractor fails to timely commence work or falls behind at any time prior to completion of the contract.[11]

Additional Requirements for Construction Contracts with Government Entities

Current law requires a contractor who contracts with the state, a local government, or another public authority to construct a public building or complete some other public works project that is worth more than $200,000 to obtain a payment bond with an authorized surety insurer equal to the contract price, and a performance bond with an authorized surety insurer. In lieu of a bond, a contractor may file an alternative form of security in the form of cash, a money order, a certified check, a cashier's check, or an irrevocable letter of credit.[12]

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[6] Ss. 218.735 & 255.078, F.S.
[7] Ss. 218.735 & 255.077, F.S.
[8] Ss. 218.735, 255.073, & 255.078, F.S
[9] Ss. 218.735 & 255.078, F.S.
[10] S. 255.05(1)(f), F.S.; Rule. 60D-5.0041, F.A.C.
[11] S. 337.015(5), F.S.
[12] S. 255.05(1), (7), F.S.

A performance bond issued by a surety guarantees that the contractor or principal will complete the work required under the bonded contract.[13] A payment bond issued by a surety guarantees that the contractor or principal will pay the subcontractors, suppliers, and materialmen associated with the construction project.[14]

Before beginning work, a contractor must execute and record both bonds in the public records of the county where the improvement is located and provide a certified copy of the bonds to the public body commissioning the project. A contractor cannot receive payment until the contractor has provided a certified copy of the bonds.[15]

OPPAGA Study of Retainage in December 2000

During the 2000 Legislative Session, the Legislature directed the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) to conduct a study to evaluate retainage and other construction practices to determine if Florida construction law needed to be revised.[16] At the time, the only contracts that had a statutory cap on retainage were contracts with the state that were worth $200,000 or less, which was set at ten percent.[17]

OPPAGA determined that putting a statutory cap on the amount a property owner could retain could become unfavorable to contractors and subcontractors because property owners and contractors may:

- Seek to protect their property by using alternate forms of leverage that are less favorable than the current system of retainage;
- Be less willing to take the risk associated with working with a new contractor or subcontractor; and
- Not allow an existing contractor or subcontractor to take on a project of an increased size.[18]

Proponents for lower retainage rates argue that requiring a performance bond is a reasonable substitute for retainage because a performance bond ensures the contractor will complete the project to the property owner's satisfaction, and will screen out contractors who are unable to perform a project.

OPPAGA found that a performance bond was not a reasonable substitute for retainage because retainage served as an incentive for a contractor or subcontractor to complete their work in a timely fashion, and a performance bond only guarantees that a project will eventually be completed if a contractor defaults.[19]

OPPAGA also found that a greater portion of risk associated with contracting had shifted from the contractor to the subcontractor. If a subcontractor performed work on a construction project, there could be delays, entirely outside of the subcontractor's control, which prevented the subcontractor from receiving retained money. This could result in the subcontractor waiting for an unreasonable amount of time to receive payment for work the subcontractor completed.[20]

OPPAGA indicated that subcontractors could try to mitigate this risk by planning for these funds not being immediately available or requiring that retained funds be placed in an interest bearing account.

However, proponents for lower retainage rates argue that this reduces competition because smaller subcontractors cannot compete for projects because even though they might be capable of doing a project, they do not have the funds to plan for a high percentage of their earned money being retained.

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[13] *American Home Assurance Co. v. Larkin General Hospital, Ltd.*, 593 So. 2d 195, 198 (Fla. 1992).
[14] *Everett Painting Company, Inc. v. Padula & Wadsworth Construction, Inc.*, 856 So. 2d 1059, 1062 (Fla. 4th DCA 2003).
[15] S. 255.05(1), F.S.
[16] OPPAGA *supra* note 3, at 1; Ch. 2000-372, Laws of Florida.
[17] *See generally* Ch. 255, F.S. (2000).
[18] OPPAGA *supra* note 3, at 3.
[19] Bausman *supra* note 4 at 9; OPPAGA *supra* note 3, at 4.
[20] OPPAGA *supra* note 3, at 3.

Proponents also argue that high retainage rates increase the cost of construction projects because contractors and subcontractors are required to charge more in order to ensure they can finance a project.[21]

After the OPPAGA study was completed, the 2005 Legislature passed and the Governor signed into law the current rate of retainage for government entities. The maximum amount a government entity could retain from a progress payment was set at ten percent because that was the industry norm at that time.[22]

Retainage Rates for Other States

According to the American Subcontractors Association, 44 states specify the maximum retainage percentage that the government may withhold from a payment to a contractor.[23] At least ten states, including Florida, Pennsylvania, and Georgia, cap the retainage percentage at ten percent.[24] At least twenty states, including North Carolina, New York, and Virginia, cap the retainage percentage at five percent.[25] South Carolina caps the retainage percentage rate at 3.5 percent. [26]

Retainage Rate for the Federal Government

Federal law requires the federal government to pay a contractor the full amount of a progress payment. Retainage is not used without cause. However, a contracting officer may withhold a percentage of payment based on the officer's assessment of a contractor's past performance and the likelihood such performance will continue. If the officer determines a contractor has not made satisfactory progress then the officer may retain a maximum of 10 percent of a payment or payments.[27]

Effect of the Bill

The bill reduces the amount that a government entity may retain from a progress payment to a contractor for contracts worth *more than $200,000*:

- *from ten percent,* when less than 50 percent of the project is complete, *and five percent,* when 50 percent or more of the project is complete,
- *to five percent* for the entire project.

The bill reduces the amount that the state may retain from a progress payment to a contractor, for contracts worth $200,000 or less, *from ten percent to five percent.*

The bill reduces the amount that a municipality with a population of 25,000 or less and a county with a population of 100,000 or less may retain from a progress payment to a contractor, for contracts worth more than $200,000, *from ten percent to five percent.*

The bill repeals:

- The ability of a contractor to request the government entity to release up to half of the retained amount after half of the project is completed; and
- The ability of a contractor to withhold more than five percent of each progress payment to his or her subcontracts after half of a project with a government entity is completed.

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[21] *Id.* at 2; Bausman *supra* note 4 at 3.
[22] *See* House Analysis of 2005 House Bill 509 (April 22, 2005).
[23] American Subcontractors Association, Inc., *Retainage Law in the 50 States*, https://olis.leg.state.or.us/liz/2013R1/Downloads/CommitteeMeetingDocument/21969 (last visited Oct. 20, 2019).
[24] *Id.*; 62 Pa. Cons. Stat. § 3921(a); Ga. Code Ann. § 13-10-80(b)(2)(A).
[25] *Id.*; N.C. Gen. Stat. § 143-134.1(b1); N.Y. State. Fin. Law § 9-139(f) (New York caps the retainage rate at 5% if the contractor obtains a performance bond); Va. Code Ann. § 2.2-4301 & 4333.
[26] *Id.*; S.C. Code Ann. § 11-35-3030(4).
[27] 48 C.F.R. § 32.103.

The bill specifies that the provisions do not apply to:

- DOT construction contracts authorized under ch. 337, F.S.; and
- Any contract for construction services entered into, pending approval, or advertised by a government entity, on or before October 1, 2020.

B. SECTION DIRECTORY:

Section 1. Amends s. 218.735, F.S., relating to public construction retainage.

Section 2. Amends s. 255.05, F.S., relating to public construction retainage.

Section 3. Amends s. 255.077, F.S., amending a cross-reference.

Section 4. Amends 255.078, F.S., relating to public construction retainage.

Section 5. Provides that the bill does not apply to certain public construction contracts.

Section 6. Provides an effective date of October 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The bill may result in contractors and subcontractors who provide services in the construction of public projects for the state and local governments receiving more money in progress payments, which could result in more competition for public works projects and lower costs for the state and local governments.

According to DMS, there is no expected financial impact on the state because construction projects under $100,000 would still require the state to retain 5% and DMS will still require contractors to obtain a performance bond for construction projects over $100,000.[28]

[28] Florida Department of Management Services, Agency Analysis of 2020 House Bill 101, p. 4 (Oct. 5, 2020).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 115 Keep Our Graduates Working Act
SPONSOR(S): Duran
TIED BILLS: **IDEN./SIM. BILLS:** SB 356

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Wright	Anstead
2) Health Quality Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Currently, the Florida Department of Health (DOH) is authorized to discipline a healthcare practitioner's license for failing to repay a government-backed student loan. Every month, DOH must obtain a list of healthcare practitioners in Florida who have defaulted on their government-backed student loans from the United States Department of Health and Human Services (USHHS). Upon learning that a healthcare practitioner has defaulted on such a loan, DOH must notify the practitioner that he or she has 45 days to provide DOH with proof of a new repayment plan, or DOH will issue an emergency order suspending the practitioner's license.

If DOH finds that a healthcare practitioner has defaulted on a such loan, DOH, at a minimum, must take the following disciplinary action:

- Suspend the practitioner's license until he or she agrees to new payment terms;
- Place the licensee on probation for the duration of the student loan period; and
- Impose a fine equal to 10 percent of the defaulted loan amount.

The bill:

- Prohibits any state authority, including DOH, from suspending or revoking a professional license based solely on the licensee being delinquent on a payment of or defaulting on his or her student loans;
- Removes the specific provision allowing DOH to discipline a healthcare practitioner for failing to repay a student loan and the associated mandatory discipline;
- Repeals the requirement that DOH must issue an emergency order suspending a healthcare practitioner's license for a student loan default, absent timely proof of a new repayment plan; and
- Repeals the requirement that DOH must obtain a monthly list from the USHHS of the healthcare practitioners who have defaulted on their student loans.

The bill has an indeterminate fiscal impact on state government. The bill is not expected to have a fiscal impact on local governments.

The bill provides for an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Student Loans

Student loans are funds that are lent to students or parents to pay for higher education. Student loans may come from private sources, such as banks or other financial institutions, or from a state or the federal government.[1]

The Office of Student Financial Assistance (OSFA) within the Florida Department of Education (DOE) is responsible for administering state and federally funded programs and serves as the guarantor agency for certain federally-backed student loans.[2] The DOE is directed to exert every lawful and reasonable effort to collect all delinquent unpaid and uncanceled student loans.[3]

Increase in Defaults on Student Loans

An estimated 41.5 million Americans owe more than $1.2 trillion in outstanding federal loan debt. This is more than triple the $340 billion in student loan debt owed by Americans in 2001.[4] With this increase in student loan debt owed by Americans, there has been an increase in the number of people who are defaulting on or failing to pay their student loans. For most federal loans, default generally occurs when a payment has not been made for 270 days.[5] In 2018, 41,013 borrowers who attended Florida schools had defaulted on their federal student loans used to attend institutions ranging from universities to trade schools.[6]

Professional Licenses

An occupational or professional license is a form of regulation that requires individuals who want to perform certain types of work, such as contracting and cosmetology, to obtain permission from the government.[7] Generally, an individual obtains such permission and is granted a license by demonstrating that they have the designated knowledge, skills, and abilities to perform the work by meeting pre-determined criteria established by the government, such as successfully completing certain education and exams.[8]

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[1] Libby Nelson, *Everything you need to know about student debt*, Vox, https://www.vox.com/2014/10/1/18088762/student-debt (last visited Oct. 29, 2019).
[2] Office of Student Financial Assistance, *Mission Statement*, http://www.floridastudentfinancialaid.org/FFELP/mission_statement/mission_statement_052606.html (last visited on Oct. 29, 2019).
[3] S. 1009.95, F.S.
[4] Laura Feiveson, Alvaro Mezza, and Kamila Sommer, *Student Loan Debt and Aggregate Consumption Growth*, Board of Governors of the Federal Reserve System, (February 21, 2018), https://www.federalreserve.gov/econres/notes/feds-notes/student-loan-debt-and-aggregate-consumption-growth-20180221.htm (last visited on Oct. 29, 2019).
[5] United States Department of Education, Federal Student Aid, *Glossary, Default,* https://studentaid.ed.gov/sa/glossary#letter_d (last visited Oct. 30, 2019).
[6] Florida Business Daily, *41,013 borrrowers in default on student loans after attending Florida schools,* May 17, 2018, https://flbusinessdaily.com/stories/511416784-41-013-borrowers-in-default-on-student-loans-after-attending-florida-schools (last visited Oct. 30, 2019).
[7] The White House, *Occupational Licensing: A Framework for Policymakers*, 6 (July 2015) https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf (last visited on Oct 29, 2019).
[8] Bureau of Labor Statistics, *Frequently asked questions about data on certifications and licenses*, https://www.bls.gov/cps/certifications-and-licenses-faqs.htm, (last visited on Oct. 29, 2019).

Approximately one-quarter of workers nationwide require a license to practice their profession, and an estimated 28.7 percent of the Florida workforce requires a license from the state.[9]

Disciplining Professional Licenses for Defaulting on Student Loans

In the 1990s, as a result of a rising number of students defaulting on their federally-backed student loans, the federal government urged state legislators to send a message to students, postsecondary institutions, and lenders that high levels of default would not be tolerated. The federal government recommended that states take the following steps to curb student loan default:[10]

- Enact a state tax-refund offset program;
- Enact a wage garnishment program;
- Deny professional licenses to defaulters until they take steps towards repayment;
- Screen potential applicants for state jobs to prevent the hiring of loan defaulters who have not entered into repayment agreements; and
- Ensure that information available to state agencies such as the Department of Motor Vehicles, the tax department, and the unemployment commission is available to the state's guarantee agency.

As a result, many states, including Florida, began adopting various forms of disciplinary licensing laws for defaulting on government-backed student loans. By 2010, about half of the states had some form of disciplinary licensing laws for defaulting on government-backed student loans. Since then, based on shifting concerns, there has been a trend to reduce or eliminate such laws. Currently, approximately 15 states, including Florida, still have some form of such laws.[11]

Proponents of such disciplinary licensing laws argue that:

- The threat of losing a professional license is powerful tool to ensure borrowers stay current on their student loans, and as a result, these laws reduce the number borrowers who default;
- It is in the taxpayers' interest to ensure borrowers are repaying their government-backed student loans because the state or federal government foots the bill if borrowers default; and
- Disciplinary licensing laws do not require people who have defaulted on their student loans to repay their loans to prevent their licenses from being suspended, only that they enter into a new repayment plan.[12]

Opponents of such disciplinary licensing laws argue that states are using their licensing authority as a punitive debt collection tool. Opponents also argue that the purpose of licensing laws is to protect the health and safety of the public, not to operate as defacto debt collectors.[13]

Federal Attempts to Prohibit State Disciplinary Licensing Laws

Recently, there have been attempts at the national level to prohibit state disciplinary licensing laws for defaulting on government-backed student loans. Bills were introduced in the United States Congress in 2018 and 2019 that would prohibit states from disciplining or denying state issued licenses for defaulting on government-backed student loans.[14]

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[9] White House, *supra* note 7 at 3.

[10] Mary Farrell, *Reducing Student Loan Defaults: A Plan for Action*, Department of Education at 63 (March 21, 1991) https://files.eric.ed.gov/fulltext/ED323879.pdf (last visited Oct. 29, 2019).

[11] Andrew Wagner, *Licensing Suspension for Student Loan Forgiveness*, NCSL (Oct. 1, 2018) http://www.ncsl.org/research/labor-and-employment/license-suspension-for-student-loan-defaulters.aspx (last visited Oct. 29, 2019).

[12] *Id.* Jessica Silver-Greenberg, Stacey Cowley, & Natalie Kitroeff, *When Unpaid Student Loan Bills Mean You Can No Longer Work*, The New York Times (Nov. 18, 2017) https://www.nytimes.com/2017/11/18/business/student-loans-licenses.html?_r=0 (last visited on Oct. 29, 2019).

[13] *Id.*

[14] Protecting JOBs Act, S.3065, 115th Congress (2017-2018); Protecting JOBs Act, H.R.6156 115th Congress (2017-2018); Protecting JOBs Act, S.609, 116th Congress (2019-2020).

DOH Disciplinary Licensing Laws

In 2002, Florida passed a law allowing the Florida Department of Health (DOH) to discipline a healthcare practitioner's license for defaulting on a government-backed student loan. The law was founded on the United States Department of Health and Human Services (USHHS) report that there were 9,454 healthcare practitioners in the nation who defaulted on their student loans, 556 of them being in Florida. Those loan defaults were costing taxpayers over $694 million, of which $45.6 million was attributable to Florida healthcare practitioners.[15]

Section 456.072(1)(k), F.S., provides that DOH may discipline a healthcare practitioner for failing to perform any statutory or legal obligation placed upon a healthcare practitioner, which specifically includes failing to repay a government-backed student loan or comply with a service scholarship obligation. If DOH finds that a healthcare practitioner has defaulted on his or her student loans or failed to comply with a service scholarship, at a minimum, DOH must:

- Suspend the practitioner's license until he or she agrees to new loan repayment terms or resumes the scholarship obligation;
- Place the practitioner on probation for the duration of the student loan or scholarship obligation period; and
- Impose a fine equal to 10 percent of the defaulted loan amount.

Every month, DOH must obtain a list from the United States Department of Health and Human Services (USHHS) through DOE as it relates to Florida healthcare practitioners who have defaulted on government-backed student loans.[16] Upon learning that a healthcare practitioner has defaulted on such a student loan, DOH must notify the practitioner that he or she has 45 days to provide DOH with proof of a new repayment plan, or such practitioner will be subject to an emergency order suspending the practitioner's license. Also, DOH may proceed with additional disciplinary action against the practitioner, regardless if he or she provides proof of entering a new repayment plan.[17]

During the 2017-2018 Fiscal Year, DOH handled 247 cases against healthcare practitioners for defaulting on student loans, and during the 2018-2019 Fiscal Year, DOH handled 722 cases.[18]

Case Status	2017-18 FY	2018-19 FY
Mediated	88	332
Dismissed	27	75
Discipline Imposed	23	36
No Probable Cause Found	9	41
Licensee is No Longer Licensed	54	55
Licensee is Deceased	3	2
Still Open	43	160
Complaint Withdrawn by DOE	0	21
Total	**247**	**722**

Healthcare Practitioner Licensing

The Division of Medical Quality Assurance (MQA) within the DOH is responsible for the licensing and regulation of healthcare practitioners in the state. The MQA works in conjunction with 22 boards and four councils to license and regulate seven types of health care facilities and more than 200 license types in over 40 health care professions. Each profession is regulated by an individual practice act and

[15] Ch. 2002-254, Laws of Fla.
[16] S. 456.0721, F.S.
[17] S. 456.074(4), F.S.
[18] Gary Landry, Office of Legislative Planning, Department of Health, Student Loan information as promised (Oct. 30, 2019).

by ch. 456, F.S., which provides general regulatory and licensure authority for the MQA. The MQA regulates the following profession categories:[19]

- Acupuncturists,
- Athletic Trainers,
- Chiropractors,
- Clinical Laboratory Personnel,
- Clinical Social Workers, Marriage and Family Counselors, and Mental Health Counselors,
- Dentists,
- Hearing Aid Specialists,
- Massage Therapists,
- Medical Doctors,
- Nurses,
- Nursing Home Administrators,
- Occupational Therapists,
- Opticians,
- Optometrists,
- Orthotists and Prosthetists
- Osteopathic Doctors,
- Pharmacists,
- Physical Therapists,
- Podiatrists,
- Psychologists,
- Respiratory Care Practitioners,
- Speech-Language Pathologists and Audiologists,
- Dietetics and Nutrition Practitioners,
- Electrologists,
- Licensed Midwifes,
- Physician Assistants,
- Certified Master Social Workers,
- Emergency Medical Technicians,
- Medical Physicists,
- Paramedics,
- Radiologic Technicians, and
- School Psychologists.

Department of Business and Professional Regulation

The Department of Business and Professional Regulation (DBPR), through several divisions, regulates and licenses various businesses and professionals in Florida. DBPR has authority over licensees under the following professional boards and programs:

- Board of Architecture and Interior Design,
- Board of Auctioneers,
- Barbers' Board,
- Building Code Administrators and Inspectors Board,
- Construction Industry Licensing Board,
- Board of Cosmetology,
- Electrical Contractors' Licensing Board,
- Board of Employee Leasing Companies,
- Board of Landscape Architecture,

[19] S. 456.001(4), F.S; Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2018-2019*, 7, http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/annual-report-1819.pdf (last visited on Oct. 30, 2019).

- Board of Pilot Commissioners,
- Board of Professional Geologists.
- Board of Veterinary Medicine,
- Home inspection services licensing program;
- Mold-related services licensing program,
- Florida Board of Professional Engineers.
- Board of Accountancy,
- Florida Real Estate Commission, and
- Florida Real Estate Appraisal Board.[20]

DBPR licenses and regulates each of the above professions in accordance with that profession's practice act, and ch. 455, F.S., which provides general regulatory and licensure authority for DBPR.

Section 455.227, F.S., provides that DBPR may discipline a licensee for failing to perform any statutory or legal obligation placed upon a licensee. However, 455.227, F.S., does not specifically state that DBPR may discipline a licensee for defaulting on a student loan. According to DBPR, they have never disciplined a licensee for defaulting on a student loan.[21]

Department of Agriculture and Consumer Services

In addition to regulating agriculture in Florida, the Department of Agriculture and Consumer Services (DACS) protects consumers from unfair and deceptive business practices and provides consumer information.[22] DACS achieves this, in part, through licensing and registering various professionals, including:

- Professional Surveyors and Mappers;
- Private Investigative, Private Security, and Repossession Services;
- Health Studios;
- Telemarketing Services;
- Intrastate Movers and Brokers;
- Sellers of Liquefied Petroleum Gas;
- Pawnbrokers;
- Motor Vehicle Repair Shops; and
- Sellers of Travel.

DACS licenses and regulates each of the above professionals in accordance with that profession's practice act. According to DACS, they do not have authority to discipline a licensee for defaulting on student loans.[23]

Department of Financial Services

The Department of Financial Services (DFS) is the state agency responsible for regulation and licensure of professions related to insurance, fire safety, and funeral and cemetery services.[24]

According to DFS, they do not consider the status of student loans when issuing or regulating licenses, and do not believe they have statutory authority to deny or discipline a license for defaulting on a government issued student loan.[25]

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[20] S. 20.165, F.S.
[21] Colton Madill, Office of Legislative Affairs, Department of Business and Professional Regulation, RE: HB 115 (Oct. 30, 2019).
[22] S. 20.14(2), F.S.
[23] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2020 House Bill 115, p. 2 (Sept. 9, 2019).
[24] Chs. 497, 626, 633, and 648, F.S.
[25] Email from Greg Thomas, Director of Insurance Agent & Agency Services, Department of Financial Services, Student Loan Default and DFS Agent and Agency Licensing, (Mar. 18, 2019).

Effect of the Bill

The bill provides definitions for the following terms as they relate to a broad prohibition on licensing discipline for student loans defaults:

- "Default" means the failure to repay a student loan according to the terms agreed to in the promissory note.
- "Delinquency" means the failure to make a student loan payment when it is due.
- "License" means any professional license, certificate, registration, or permit granted by the applicable state authority.
- "State authority" means any department, board, or agency with the authority to grant a license to any person in this state.
- "Student loan" means a federal-guaranteed or state-guaranteed loan for the purposes of postsecondary education.

The bill prohibits any state authority from suspending or revoking a license that it issued to a person who is in default on or delinquent in the payment of his or her student loans based solely on such default or delinquency. The bill requires DOE to comply with this provision when making an effort to collect on student loans.

The bill related to health practitioners:

- Specifically states that failing to repay a government-backed student loan is not a basis for DOH finding that a health practitioner has committed a punishable offense by failing to perform a statutory or legal obligation placed on the licensee;
- Removes the specific provision allowing DOH to discipline a practitioner for failing to comply with a scholarship obligation and the associated mandatory disciplinary action;
- Repeals the requirement that DOH must issue an emergency order suspending a healthcare practitioner's license for a student loan default absent timely proof of a new repayment plan; and
- Repeals the requirement that DOH must obtain a monthly list from the USHHS of the Florida healthcare practitioners who have defaulted on their student loans.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1 Creates s. 1009.951, F.S., prohibiting the state from disciplining a professional license in certain situations.

Section 2 Amends s. 456.072, F.S., prohibiting DOH from disciplining a healthcare practitioner's license in certain situations.

Section 3 Repeals s. 456.0721, F.S., relating to an obligation to receive a report of practitioners in default of student loans.

Section 4 Amends s. 456.074, F.S., relating to DOH's ability to immediately suspend a healthcare practitioner's license in certain situations.

Section 5 Amends s. 1009.95, F.S., requiring DOE to comply s. 1009.951, F.S.

Section 6 Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Healthcare practitioners will no longer be subject to suspension, revocation, or emergency suspension orders solely for defaulting on their student loans, which may allow them to obtain gainful employment.

D. FISCAL COMMENTS:

According to DOH, they will experience a recurring decrease in revenue due to the loss of the mandated 10% fine imposed on student loan default cases. However, DOH will experience a recurring reduction in workload and cost due to fewer investigations and prosecutions. Additionally, the Compliance Management Unit will no longer have to track licensees on probation due to discipline imposed by a board.[26]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[26] Department of Health, Agency Analysis of 2020 House Bill 115, p. 4 (Oct. 11, 2019).

BUSINESS & PROFESSIONS SUBCOMMITTEE

HB 115 by Rep. Duran
KEEP OUR GRADUATES WORKING ACT

AMENDMENT SUMMARY
November 6, 2019

Amendment 1 by Rep. Duran (Strike-all):
The technical and clarifying changes in the strike-all amendment:

- Move certain provisions in the bill to a different chapter;
- Clarify the general purpose contained in the bill; and
- Conform a cross-reference.

The remainder of the bill's provisions are unchanged by the strike-all amendment. The remaining provisions:

- Generally prohibit any state authority from suspending or revoking a professional license based solely on the licensee defaulting on a student loan; and
- Remove the authority of the Department of Health to discipline a healthcare practitioner for failing to repay a student loan.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Business & Professions Subcommittee

Representative Duran offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 120.82, Florida Statutes, is created to read:

120.82 Keep Our Graduates Working Act.—

(1) SHORT TITLE.—This section may be cited as the "Keep Our Graduates Working Act of 2020."

(2) PURPOSE.—The purpose of this act is to ensure that Floridians who graduate from an accredited college or university can maintain their occupational licenses, as defined in subsection (3), and remain in the workforce while they attempt to pay off their student loan debt.

(3) DEFINITIONS.—As used in this section, the term:

(a) "Default" means the failure to repay a student loan according to the terms agreed to in the promissory note.

(b) "Delinquency" means the failure to make a student loan payment when it is due.

(c) "License" means any professional license, certificate, registration, or permit granted by the applicable state authority.

(d) "State authority" means any department, board, or agency with the authority to grant a license to any person in this state.

(e) "Student loan" means a federal-guaranteed or state-guaranteed loan for the purposes of postsecondary education.

(4) STUDENT LOAN DEFAULT; DELINQUENCY.—A state authority may not suspend or revoke a license that it has issued to a person who is in default on or delinquent in the payment of his or her student loans solely on the basis of such default or delinquency.

Section 2. Paragraph (k) of subsection (1) of section 456.072, Florida Statutes, is amended to read:

456.072 Grounds for discipline; penalties; enforcement.—

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

(k) Failing to perform any statutory or legal obligation placed upon a licensee. For purposes of this section, failing to repay a student loan issued or guaranteed by the state or the Federal Government in accordance with the terms of the loan is not ~~or failing to comply with service scholarship obligations shall be~~ considered a failure to perform a statutory or legal obligation~~, and the minimum disciplinary action imposed shall be a suspension of the license until new payment terms are agreed upon or the scholarship obligation is resumed, followed by probation for the duration of the student loan or remaining scholarship obligation period, and a fine equal to 10 percent of the defaulted loan amount~~. Fines collected shall be deposited into the Medical Quality Assurance Trust Fund.

Section 3. Section 456.0721, Florida Statutes, is repealed.

Section 4. Subsection (4) of section 456.074, Florida Statutes, is amended to read:

456.074 Certain health care practitioners; immediate suspension of license.—

~~(4) Upon receipt of information that a Florida-licensed health care practitioner has defaulted on a student loan issued or guaranteed by the state or the Federal Government, the department shall notify the licensee by certified mail that he or she shall be subject to immediate suspension of license unless, within 45 days after the date of mailing, the licensee~~

~~provides proof that new payment terms have been agreed upon by all parties to the loan. The department shall issue an emergency order suspending the license of any licensee who, after 45 days following the date of mailing from the department, has failed to provide such proof. Production of such proof shall not prohibit the department from proceeding with disciplinary action against the licensee pursuant to s. 456.073.~~

Section 5. Subsection (1) of s. 1009.95, Florida Statutes, is amended to read:

1009.95 Delinquent accounts.—

(1) The Department of Education is directed to exert every lawful and reasonable effort to collect all delinquent unpaid and uncanceled scholarship loan notes, student loan notes, and defaulted guaranteed loan notes; however, in all such efforts, the department shall comply with s. 120.82.

Section 6. This act shall take effect July 1, 2020.

T I T L E A M E N D M E N T

Remove line 3 and insert:

creating s. 120.82, F.S.; providing a short title;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 307 Law Enforcement Vehicles
SPONSOR(S): LaMarca and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 476

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Brackett DB	Anstead
2) Civil Justice Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Condominium associations, homeowners' associations, and cooperatives are allowed to create and enforce restrictive covenants that limit the use of association property. Owners, tenants, and guests must comply with these restrictions or they could be subject to monetary fines or suspensions of the right to use the common elements of the association.

A common restrictive covenant created by such associations includes the restriction or prohibition on parking certain vehicles such as commercial vehicles in certain location within the association property.

The bill prohibits condominium associations, homeowners' associations, and cooperatives from preventing law enforcement officers who are owners, tenants, guests, or invitees of an owner from parking their law enforcement vehicles in an area where the owner, tenant, guest, or invitee of the owner has a right to park.

The bill does not have a fiscal impact on state and local governments.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Community Associations

The Florida Division of Condominiums, Timeshares and Mobile Homes (Division), within the Department of Business and Professional Regulation (DBPR), provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure. The Division has regulatory authority over the following business entities and individuals:

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowners' Associations (limited to arbitration of election and recall disputes).

Condominiums

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., the Condominium Act, comprised of units which may be owned by one or more persons along with an undivided right of access to common elements.[1] A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.[2] A declaration governs the relationships among condominium unit owners and the condominium association. Specifically, a declaration of condominium may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property. All unit owners are members of the condominium association, an entity responsible for the operation and maintenance of the common elements owned by the unit owners. The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration." The board enacts bylaws which govern the administration of the association.

Cooperatives

A cooperative is a form of property ownership created pursuant to ch. 719, F.S., the Cooperative Act. The real property is owned by the cooperative association, and individual units are leased to the residents who own shares in the cooperative association.[3] The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are in many instances nearly identical to those regulating condominiums.

Homeowners' Associations

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners, in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.[4] Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S., the Homeowners' Association Act. Like a condominium or cooperative, an HOA is created by an HOA is administered by an elected board of directors. The powers and duties of an HOA

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[1] S. 718.103(11), F.S.
[2] S. 718.104(2), F.S.
[3] S. 719.103(2)(26), F.S.
[4] S. 720.301(9), F.S.

includes the powers and duties provided in the Homeowners' Association Act, and in the governing documents of the association, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents. No state agency has direct oversight of HOAs. Florida law provides procedures and minimum requirements for operating and provides for a mandatory binding arbitration program, administered by the Division, only for certain election disputes.

Community Association Fines and Suspensions

Owners, tenants, and guests must comply with a condominium, cooperative, or HOA's declaration, bylaws, and rules. Condominium associations, cooperatives, and HOAs (community associations) may levy fines against or suspend the right of an owner, occupant, or a guest of an owner or occupant, to use the common elements or any other association property for failing to comply with any provision in the association's governing documents. A suspension for failing to comply with the community association's declaration, bylaws, or rules may not be for an unreasonable amount of time.[5]

No fine may exceed $100 per violation although a fine may be levied on the basis of each day of a continuing violation provided that fine does not exceed $1,000. However, a fine levied by an HOA may exceed a $1,000 if the governing documents authorize it. Fines levied by condominium associations and cooperatives may not become a lien on the property. Fines levied by an HOA that do not exceed $1,000 may not become a lien on the property.[6]

A community association may suspend an owner, tenant, or guest's ability to use the association's common elements or any other association property, if the owner is more than 90 days delinquent in paying a monetary obligation including a fine. The suspension may remain in effect until the fine is paid.[7]

A community association may also suspend an owner's voting rights for any monetary obligation that exceeds $1,000 and is more than 90 days delinquent.[8]

Restrictive Covenants

Community Associations may enact and enforce covenants as a condition for living in the association. A covenant is an agreement or contract, which grants a right or imposes a liability. Covenants can range from requiring owners to pay a portion of the common expenses to restrictions on the age of permanent residents.[9]

A restrictive covenant limits the use of community association property. Restrictive covenants imposed by a community association's declaration are valid unless they are clearly ambiguous, wholly arbitrary, or violate a public policy or a constitutional right. Restrictions imposed by a community association's board of directors must also be reasonable.[10]

Commercial Vehicles

A common restrictive covenant in community associations is restricting or prohibiting the parking of certain vehicles such as commercial vehicles. However, many times the community association's

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[5] Ss. 718.303, 719.303, & 720.305, F.S.
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] Ss. 718.104(5), 718.112(3), 719.1035, 719.106(2), 720.301(4), & 720.304(1), F.S.; Peter Dunbar, The Condominium Concept, 10-11 (15th ed. 2017-18).
[10] *Beachwood Villas Condominium v. Poor*, 448 So. 2d 1143, 1144 (Fla. 4th DCA 1984); *Hidden Harbour Estates, Inc. v. Basso*, 393 So. 2d 637, 639-40 (Fla. 3rd DCA 1981).

governing documents do not define the term "commercial vehicle," which can lead to confusion about what constitutes a commercial vehicle.[11]

Florida Courts have upheld HOA provisions restricting the parking of commercial vehicles even where the HOA has failed to define "commercial vehicle."[12]

In June 2005, the Town of Davie requested an advisory opinion from the Florida Office of the Attorney General on the definition of commercial vehicle. Specifically, the town inquired whether a marked law enforcement vehicle is a commercial vehicle for the purposes of parking in a community association. An HOA within the town prohibited commercial vehicles from parking in the driveways within the HOA. The HOA had informed an owner that their law enforcement vehicle was a commercial vehicle and could not be parked in the driveway. The Attorney General determined that a law enforcement vehicle is not a commercial vehicle because a commercial vehicle is used by a business for the purpose of economic gain, and law enforcement services are an integral part of government and are not provided for economic gain.[13]

Recently, the media reported that a Clearwater police officer may be subject to hundreds of dollars in fines by an HOA if the officer continued to park a marked police cruiser in the driveway instead of the garage.[14] The police officer's HOA's declaration prohibits owners from parking commercial vehicles and marked law enforcement vehicles in driveways.[15] According to the media reports, the HOA has changed their position and now lets the police officer park a marked cruiser in the driveway. However, media reports indicate that the exception only applies to that specific police officer and all future owners that have law enforcement vehicles may not park them in the driveways.[16]

Effect of the Bill

The bill prohibits HOAs, condominium associations, and cooperatives from preventing law enforcement officers who are either owners, tenants, guests, or invitees of an owner, from parking their law enforcement vehicles in an area where the owner, tenant, guest, or invitee of an owner has a right to park.

The bill takes effect upon becoming law.

B. SECTION DIRECTORY:

Section 1: Creating s. 718.129, F.S., prohibiting condominium associations from preventing law enforcement officers from parking in certain areas.

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[11] Mike Antich, *Discrimination Against Vocational Vehicles*, Automotive Fleet (Dec. 22, 2017) https://www.automotive-fleet.com/160128/discrimination-against-vocational-vehicles (last visited Oct. 28, 2019); Clinton Morrell, *Are law enforcement vehicles subject to Community Association "commercial vehicle" bans?*, The Condo & HOA Law Bulletin (Feb. 8, 2016) https://thecondoandhoalawbulletin.com/2016/02/08/are-law-enforcement-vehicles-subject-to-community-association-commercial-vehicle-bans/ (last visited Oct. 28, 2019).

[12] *Cottrell v. Miskove*, 605 So. 2d 572, 573 (Fla. 2nd DCA 1992) (The terms "commercial" and "vehicle" are well defined terms and when combined the term is not vague, ambiguous, or unclear.).

[13] 05-36 Fla. Op. Att'y Gen.

[14] Heather Leigh, *HOA tells Clearwater officer to move her police cruiser into her garage or face legal action*, ABC Action News Tampa Bay, (Aug. 27, 2019) https://www.abcactionnews.com/news/region-pinellas/hoa-tells-clearwater-officer-to-move-her-police-cruiser-into-her-garage-or-face-legal-action (last visited Oct. 28, 2019); WFTS Staff, *HOA tells Florida officer to move her police cruiser off her driveway or face legal action*, News Channel 5 Nashville (Sep. 1, 2019) https://www.newschannel5.com/news/national/hoa-tells-florida-officer-to-move-her-police-cruiser-into-off-her-driveway-or-face-legal-action (last visited on Oct. 28, 2019).

[15] Amended and Restated Master Declaration of Covenants and Restrictions for Cross Pointe http://crosspointehoa.com/wp-content/uploads/2013/06/Cross-Pointe-Declaration-Final-031813.pdf (last visited Oct. 28, 2019).

[16] Heather Leigh, *HOA now allowing Clearwater police officer to park cruiser in driveway*, ABC Action News Tampa Bay, (Sep. 11, 2019) https://www.abcactionnews.com/news/region-pinellas/hoa-now-allowing-clearwater-police-officer-to-park-cruiser-in-driveway (last visited Oct. 28, 2019).

Section 2: Creating s. 719.131, F.S., prohibiting cooperatives from preventing law enforcement officers from parking in certain areas.

Section 3. Creating s. 720.318, F.S., prohibiting homeowners' associations from preventing law enforcement officers from parking in certain areas.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not provide a definition for "law enforcement officer," and the Condominium Act, Cooperative Act, and the Homeowners' Association Act, do not define the term. However, "law enforcement officer" is defined in multiple places in current law with different interpretations of who is a law enforcement officer. For example, s. 943.10(1), F.S., defines "law enforcement officer" and the definition does not include a correctional officer. However, s. 496.404(14), F.S. also defines "law enforcement officer" and the definition does include a correctional officer. It is recommended that in

order to prevent confusion the bill be amended to include a definition of "law enforcement officer" or refer to an existing definition.

It is also unclear what types of law enforcement vehicles community associations must allow since there is no definition of "law enforcement vehicle" in the bill. Clarification may be needed to indicate that only the officers' assigned vehicle is included.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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BUSINESS & PROFESSIONS SUBCOMMITTEE

HB 307 by Rep. LaMarca
Law Enforcement Vehicles

AMENDMENT SUMMARY
November 6, 2019

Amendment 1 by Rep. LaMarca (Strike-all amendment):
The strike-all amendment makes two changes to the bill:

- Defines "law enforcement officer" by adopting the definition of "law enforcement officer" under the Department of Law Enforcement Act.
- Clarifies that a law enforcement officer may only park his or her "assigned" law enforcement vehicle in an area the officer has a right to park.

The remainder of the bill's provisions are unchanged by the strike-all amendment. The remaining provisions:

- Prohibit condominium associations, homeowners' associations, and cooperatives from preventing law enforcement officers who are owners, tenants, guests, or invitees of an owner, from parking their assigned law enforcement vehicles in an area where the owner, tenant, guest, or invitee of the owner has a right to park.

Amendment No. 1.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Business & Professions Subcommittee

Representative LaMarca offered the following:

Amendment

Remove everything after the enacting clause and insert:

Section 1. Section 718.129, Florida Statutes, is created to read:

718.129 Law enforcement Vehicles.--An association may not prohibit a law enforcement officer, as defined in s. 943.10(1), who is a unit owner, or a tenant, guest, or invitee of a unit owner, from parking his or her assigned law enforcement vehicle in an area where the unit owner, or tenant, guest, or invitee of the unit owner, otherwise has a right to park.

Section 2. Section 719.131, Florida Statutes, is created to read:

Amendment No. 1.

719.131 Law enforcement vehicles.--An association may not prohibit a law enforcement officer, as defined in s. 943.10(1), who is a unit owner, or a tenant, guest, or invitee of a unit owner, from parking his or her assigned law enforcement vehicle in an area where the unit owner, or tenant, guest, or invitee of the unit owner, otherwise has a right to park.

Section 3. Section 720.318, Florida Statutes, is created to read:

720.318 Law enforcement vehicles.--An association may not prohibit a law enforcement officer, as defined in s. 943.10(1), who is a parcel owner, or a tenant, guest, or invitee of a parcel owner, from parking his or her assigned law enforcement vehicle in an area where the parcel owner, or tenant, guest, or invitee of the parcel owner, otherwise has a right to park.

Section 4. This act shall take effect upon becoming law.