

Business & Professions Subcommittee

Tuesday, January 28, 2020
12:00 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

Tuesday, January 28, 2020
Webster Hall (212 Knott)
12:00 PM – 3:00 PM

I. Call to Order & Roll Call

II. Welcoming Remarks

III. Consideration of the following bills(s):

HB 1153 by *Rep. DiCeglie*
Beverage Law

HB 1165 by *Rep. Raschein*
Beverage Law

HB 1257 by *Rep. Tomkow*
Community Associations

HB 1275 by *Rep. Pritchett*
Amusement Rides

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

Business & Professions Subcommittee

Start Date and Time:	Tuesday, January 28, 2020 12:00 pm
End Date and Time:	Tuesday, January 28, 2020 03:00 pm
Location:	Webster Hall (212 Knott)
Duration:	3.00 hrs

Consideration of the following bill(s):

HB 1153 Beverage Law by DiCeglie
HB 1165 Beverage Law by Raschein
HB 1257 Community Associations by Tomkow
HB 1275 Amusement Rides by Pritchett

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Monday, January 27, 2020.

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., Monday, January 27, 2020.

NOTICE FINALIZED on 01/24/2020 4:08PM by Rigas.Amanda

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1153 Beverage Law
SPONSOR(S): DiCeglie
TIED BILLS: **IDEN./SIM. BILLS:** SB 1584

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Willson MW	Anstead La
2) Government Operations & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

In Florida, the Beverage Law regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors, as well as the business relations between beer distributors and manufacturers. Generally, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail, and manufacturers, distributors, and exporters are generally prohibited from holding a vendor's license. There are limited exceptions, subject to certain conditions, including the ability for a craft brewery to hold a vendor's license, a restaurant to hold a manufacturer's license (brew pub), and a winery to hold up to three vendor's licenses.

Florida's "Tied House Evil Law," s. 561.42, F.S., prohibits a manufacturer or distributor of alcoholic beverages from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and prohibits a manufacturer or distributor from giving gifts, loans, property, or rebates to retail vendors. The bill amends the Tied House Evil Law.

The bill allows a brewer whose total production volume is less than 60,000 barrels (1,860,000 gallons) per year to sell, transport, and deliver (distribute) its own beer from its licensed premises to vendors in a standard keg or similar container, if the brewer does not have an existing franchise agreement with a distributor.

The bill provides for limited exemptions to the current regulations regarding agreements between beer distributors and manufacturers, as follows:

- Exempts breweries that produce 60,000 barrels or less of malt beverages per year from the requirements imposed under the Franchise Law.
- Allows any brewer to provide 120 days written notice and terminate their distributor franchise agreement, but only if the beer manufacturer accounts for 5% or less of the distributors total sales.

The bill reduces certain minimum inventory, warehouse, and sales requirements that a distributor must maintain for licensure.

The bill may have an insignificant, indeterminate fiscal impact on the Department of Business and Professional Regulation. See the Fiscal Analysis section of this analysis for more information.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Beverage Law

In Florida, the Beverage Law[1] regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.[2]

"Alcoholic beverages" are defined in s. 561.01, F.S., as "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume." "Malt beverages" are brewed alcoholic beverages containing malt.[3] As a unit of measurement, a "barrel" means 31 gallons and a "keg" is equal to one-half of a barrel, or 15.5 gallons.[4]

Section 561.14, F.S., specifies license and registration classifications used in the Beverage Law:

- "Manufacturers" are those "licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute."
- "Distributors" are those "licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages."
- "Importers" are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state.[5]
- "Vendors" are those "licensed to sell alcoholic beverages at retail only" and may not "purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law."

Three-Tier System and Tied House Evil

Since the repeal of Prohibition in 1933, regulation of alcohol in the United States has traditionally been based upon what is termed the "three-tier system." The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.[6]

Generally, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail, and manufacturers, distributors, and exporters[7] are generally prohibited from holding a vendor's license.[8] Manufacturers, distributors, and vendors are generally prohibited from being licensed or having an interest in more than one tier. Limited exceptions exist, subject to certain conditions, such as the ability for a craft brewery to hold a vendor's license, a restaurant to hold a manufacturer's license (brew pub), and a winery to hold up to three vendor's licenses.[9]

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[1] Section 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.
[2] S. 561.02, F.S.
[3] S. 563.01, F.S.
[4] *See* U.S. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, *Conversion Tables*, https://www.ttb.gov/distilled-spirits/conversion-tables (last visited Jan. 21, 2020).
[5] S. 561.01(5), F.S.
[6] S. 561.14, F.S.
[7] S. 561.01(16), F.S. "Exporter" means any person that sells alcoholic beverages to persons for use outside the state and includes a ship's chandler and a duty-free shop
[8] S. 561.22(1), F.S.; s. 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.
[9] *See* ss. 561.22, F.S.; 561.24, F.S.; 561.14(1), F.S.; and 563.022(14), F.S.

The three-tier system is deeply rooted in the perceived evils of the "tied house" in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.[10]

Florida's "Tied House Evil Law," s. 561.42, F.S., prohibits a manufacturer or distributor of alcoholic beverages from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and prohibits a manufacturer or distributor from giving gifts, loans, property, or rebates to retail vendors.

Florida's Tied House Evil Law prohibits a licensed manufacturer or distributor from:

- having any direct or indirect financial interest in any vendor;
- assisting any vendor using gifts, loans, money or property of any description (except for bottles, barrels or other containers necessary for the transportation of beverages);
- giving any rebates of any kind whatsoever;
- engaging in cooperative advertising with a vendor;
- naming a vendor in any advertisement for a malt beverage tasting; and
- paying for particular placement, signage, or other brand promotion within a vendor premises for malt beverages produced by the manufacturer. [11]

However, the Tied House Evil Law authorizes a manufacturer or distributor of malt beverage to:

- Sell, at not less than cost, **branded expendable retailer advertising specialties** to a vendor (trays, coasters, mats, menu cards, napkins, cups, glassware, thermometers, etc.).
- Lend without charge, rent, or sell **durable retailer advertising specialties** which bear advertising matter to a vendor (clocks, pool table lights, etc.).
- Sell, at not less than cost, **consumer advertising specialties** to a vendor (ashtrays, T-shirts, bottle openers, shopping bags, etc.).[12]

Additionally, a distributor of malt beverages is allowed to:

- sell, at not less than cost, draft equipment and tapping accessories to a vendor;
- exchange, or provide without charge, any parts that are not compatible with a competitor's system and are necessary to dispense the distributor's brands;
- provide, without charge, replacement parts of nominal intrinsic value (washers, gaskets, tail pieces, hoses, hose connections, clamps, plungers, and tap markers, etc.); and
- provide, without charge, up to ten cases of glassware to a vendor licensed to sell malt beverages for on-premises consumption, subject to certain conditions.[13]

A vendor is prohibited from displaying any sign advertising any brand of alcoholic beverages outside of or on the outside of their establishment, and a manufacturer or distributor may not directly or indirectly give, lend, rent, sell or furnish a vendor with any outside sign. However, a vendor is allowed to display

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[10] *See* Andrew Tamayo, *What's Brewing in the Old North State: An Analysis of the Beer Distribution Laws Regulating North Carolina's Craft Breweries*, 88 N.C. L. REV. 2198 (2010), http://scholarship.law.unc.edu/nclr/vol88/iss6/6.

[11] S. 561.42, F.S.

[12] S. 561.42(14), F.S.

[13] *Id.* Specifically, a distributor that receives glassware at no charge on a no-charge invoice from a malt beverage manufacturer or importer may give such glassware to a vendor licensed to sell malt beverages for on-premises consumption. Each piece of glassware given to a vendor by a distributor must bear a permanent brand name intended to prominently advertise the brand. A distributor may not give a vendor more than 10 cases of glassware per calendar year per licensed premises. A vendor that receives a gift of glassware from a distributor may not sell the glassware or return it to a distributor for cash, credit, or replacement. A manufacturer or importer who sells or gives glassware to a distributor, a distributor who sells or gives glassware to a vendor, and such vendor, must maintain records of such sale or gift of glassware.

signs and other advertising materials for brands that are sold by the vendor on the interior of their licensed premises.[14]

The Division is authorized to adopt rules and require reports in order to enforce the limitations established under the Tied House Evil Law relating to credits, coupons, and other forms of assistance.[15]

Craft Breweries

Section 561.221(2), F.S., allows a brewery to receive up to eight vendor's licenses for the sale of alcoholic beverages on property consisting of a single complex that includes a brewery, which may be divided by no more than one public street or highway. These vendor's licenses are an exception to the three-tier system described in ss. 561.14 and 561.22, F.S., and to the tied house evil restrictions in s. 561.42, F.S.

A craft brewery with multiple manufacturing licenses may transfer malt beverages that it produces between its breweries, up to 100 percent of the yearly production of the receiving brewery. Alcoholic beverages that the craft brewery does not make must be obtained through a distributor, an importer, sales agent, or broker.

Distributor Qualifications

Section 561.411, F.S., requires that a distributor meet and maintain certain minimum qualifications with respect to warehouse inventory and sales. A distributor's warehouse must be owned or leased by the distributor or in public warehouse space dedicated to the distributor's use.

A distributor is required to maintain warehouse space sufficient to store an inventory of alcoholic beverages:

- equal to at least 10% of the distributor's annual case sales, or
- for which the cost of acquisition is not less than $100,000.

A distributor is required to own and maintain an inventory of alcoholic beverages:

- equal to at least 5% of the distributor's annual sales, or
- for which the cost of acquisition is not less than $100,000.

Current law requires distributors to sell alcoholic beverages to licensed vendors generally rather than a selected few licensed vendors. A distributor is considered to be selling to licensed vendors generally, if:

- the distributor sells to at least 25% of the licensed vendors in either the county where the distributor's warehouse is located or in the distributor's exclusive sales territory; or
- the distributor's total volume of sales to licensed vendors within the state or within the malt beverage distributor's exclusive sales territory during any 12-month period consists of at least 50% of individual sales which are in quantities of 10 cases or less.

Come-to-Rest Requirement

Section 561.5101, F.S., requires, for purposes of inspection and tax-revenue control, all malt beverages to come to rest at the licensed premises of an alcoholic beverage wholesaler in this state before being sold to a vendor by the wholesaler. The come-to-rest requirement does not apply to malt beverages that a craft brewery manufacturers and sells to consumers as a vendor, or to malt beverages manufactured and sold by a brew pub. It is a felony of the third degree[16] for any person in

[14] S. 561.42(10)-(12), F.S. However, only one neon, electric, or similar sign per manufacturer may be displayed in a window.
[15] S. 561.42(8), F.S.
[16] Punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

the business of selling alcoholic beverages to knowingly and intentionally sell malt beverages in a manner inconsistent with the come-to-rest requirement.

Alcoholic Beverage Deliveries

Vendors, but not manufacturers or distributors, are allowed to make deliveries away from their place of business for sales actually made at their licensed place of business. Telephone, electronic, and mail orders received at a vendor's licensed place of business are construed as a sale actually made at the vendor's licensed place of business. Deliveries may be made in vehicles that are owned or leased by the vendor, or in a third-party vehicle pursuant to a contract with a third party with whom the vendor has contracted to make deliveries, including, but not limited to, common carriers.[17]

Manufacturers and distributors are allowed to make deliveries in vehicles that they own or lease.

For compliance purposes, all licensees' vehicles are subject to search and inspection without a search warrant by authorized employees of the Division, sheriffs, deputy sheriffs, and police officers during business hours or other times the vehicle is being used to transport or deliver alcoholic beverages.[18]

Craft breweries that also hold a vendor's licenses are specifically prohibited from making deliveries under this law.[19]

Business Relations between Beer Distributors and Manufacturers (Franchise Law)

Section 563.022, F.S., governs the relationship between manufacturers of malt beverages and their distributors. This relationship is highly regulated, and apart from the limited exceptions mentioned previously, Florida brewers are required[20] to enter into a "beer distribution agreement" or "franchise agreement" with a distributor to sell their product in this state. The agreement must be in writing, filed with the state, and conform to statutory requirements.[21]

The Franchise Law specifies that distributors, but not brewers, are prohibited from waiving any of the rights granted to them under the Franchise Law.[22] Section 563.021, F.S., requires an exclusive sales territory agreement for each brand that the distributor sells for a brewer, which must be filed with the Division. A brewer may not enter into more than one distribution agreement for a given brand in a given territory.

Under the Franchise Law, brewers:

- May provide good faith, written notice that the distributor is in default of any agreement.[23]
- May terminate, cancel or refuse to renew the distribution agreement for "good cause."
- May not terminate, cancel, or fail to renew a distribution agreement without "good cause," regardless of the time period specified in the franchise agreement.[24]
    - "Good cause" exists if:
        - The distributor fails to comply with a reasonable and material provision of the agreement;
        - The brewery provided written notice to the distributor within 18 months of the failure;

[17] S. 561.57(1)–(2), F.S.
[18] *Id.*
[19] Ss. 561.221 (2)(d), F.S.; 565.57(1), F.S.
[20] S. 563.022(15), F.S. The Franchise Law applies to all written or oral agreements between a manufacturer and beer distributor in existence on June 4, 1987, as well as agreements entered into or renewed after June 4, 1987.
[21] *See* Brewer's Law, *Florida Distribution Agreement Guide,* http://brewerslaw.com/wp-content/uploads/2014/06/Florida-Beer-Distribution-Guide.pdf (last visited Jan. 21, 2020).
[22] S. 563.022(13), F.S.
[23] S. 563.022(5)(b)3., F.S.
[24] S. 563.022(5)(b)4., F.S.

- The distributor was given a reasonable opportunity to make a good faith effort to comply with the agreement; and
- The distributor was given 30 days to submit a corrective action plan, and an additional 90 days to cure in accordance with the plan.[25]

A brewer may terminate for cause, upon 15 days' notice, if the distributor:

- Files for bankruptcy, is insolvent, or is otherwise unable to remain in business.
- Has their state or federal license revoked for more than 60 days.
- Is convicted of a felony, but only if it has an adverse effect on the good will or interest of the distributor or brewer.
- Commits fraudulent conduct on a matter material to the brewer.
- Intentionally sells the brewer's products outside of their exclusive sales territory.
- Fails to pay for products 15 business days after receiving a demand for immediate payment.
- Sells, transfers, or assigns their interest in the distributorship without the written consent of the brewer.[26]

The burden is on the brewery to show that it has acted in good faith, that the notice requirements have been complied with, and that there was good cause for the termination, cancellation, nonrenewal, or discontinuance.[27]

A brewer is required to pay reasonable compensation for the diminished value of the distributor's business if the brewer cancels, terminates or fails to renew their agreement, or refuses to consent to the sale of a distributor's interest in the distributorship, without good cause.[28]

If a brewer sells or transfers their interest in the brewery, their successor is also bound by the terms and conditions of the distribution agreement.[29] The Franchise Law allows a brewer to get out of a distribution agreement if they go out of business or stop making the products covered by the agreement, upon not less than 30 days' prior written notice.[30]

In the event of a dispute arising under the Franchise Law, the prevailing party is entitled to recover costs and attorney fees.[31]

Violations and Penalties

Section 562.45(1), F.S., provides that the false entry of any record required under the Beverage Law or violation of the excise tax provisions, when done intentionally, is a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S. For violations of the Beverage Law where no penalty is provided, first-time offenses are punishable as a misdemeanor of the second degree and a felony of the third degree for any subsequent offenses thereafter.

Section 561.29, F.S., authorizes the Division to issue civil penalties for violations of the Beverage Law and rules issued thereto. Such penalties may not exceed $1,000 per transaction. The Division is also authorized to suspend the license of a licensee that fails to pay a civil penalty.

Effect of the Bill

Limited Self-Distribution for Certain Brewers

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[25] S. 563.022(7), F.S.
[26] S. 563.022(10), F.S.
[27] S. 563.022(8), F.S.
[28] S. 563.022(17), F.S.
[29] S. 563.022(16), F.S.
[30] S. 563.022(11), F.S.
[31] S. 563.022(18)(c), F.S.

The bill:

- Defines the term "barrel" as 31 gallons. (A term not previously defined in the Beverage Law)
- Allows a brewery whose annual total production volume is less than 60,000 barrels (1,860,000 gallons) per year to sell, transport, and deliver (distribute) its own beer from its licensed premises to vendors in one of the standard keg sizes or similar containers.
    - However, a brewery with an existing franchise agreement with a distributor to distribute its product anywhere in the state is not eligible for this exemption.
- Requires that the brewer comply with certain distribution-specific laws when acting as a distributor, and exempts the craft brewer from the "come-to-rest requirement."

Distributor Qualifications

The bill:

- Reduces the inventory and warehouse space minimums that a distributor must maintain for licensure, from not less than 10% of annual case sales and a cost of acquisition of not less than $100,000 respectively, to not less than 5% and not less than $50,000.
- Reduces the percentage of licensed vendors to which a distributor must sell in order to be considered "selling to licensed vendors generally", from 25% to 10%.

Franchise Law - Termination Exemption for Small Accounts

The bill allows any brewery to terminate a franchise agreement with their distributor, after 120 days written notice, but only if the brewer accounts for 5% or less of the distributor's total sales. This provision is available to any brewer, regardless of size or annual production volume.

Franchise Law - Brewery Exemption

The bill exempts breweries that produce 60,000 barrels or less of malt beverages a year from the requirements imposed under the Franchise Law.

Sale or Purchase of Merchandise

The bill amends s. 561.42, F.S., to specify that a manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant, or any broker, sales agent, or sales person thereof, may not "directly or indirectly" assist any vendor by "furnishing, supplying, selling, renting, lending, buying for, or giving to any vendor any vehicles, equipment, furniture, fixtures, signs, supplies, credit, fees, slotting fees of any kind, advertising or cooperative advertising, or services" unless the manufacturer, distributor, etc., "regularly sells merchandise to vendors" and the sale or purchase is:

- equal to or greater than the fair market value of the merchandise;
- not combined with any sale or purchase of alcoholic beverages;
- separately itemized from the sale or purchase of alcoholic beverages; and
- both the seller and purchaser maintain records.

The bill defines the term "merchandise" as commodities, supplies, fixtures, furniture, or equipment. The term does not include alcoholic beverages or a motor vehicle or trailer requiring registration under ch. 320, F.S.

Written Agreements for Brand-Naming Rights and Associated Cooperative Advertising

The bill provides that, notwithstanding any other provision of the Tied House Evil Law, a manufacturer or importer of malt beverages and a vendor may enter into a written agreement for brand-naming rights and associated cooperative advertising if:

- The agreement is negotiated at arm's length for no more than fair market value;

- The vendor operates places of business where consumption on the premises is permitted, which premises are located within a theme park complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually through a controlled entrance to and exit;
- The agreement does not involve the sale or distribution of malt beverages;
- The vendor does not give preferential treatment to the alcoholic beverage brand(s) of the manufacturer or importer;
- The agreement does not limit, directly or indirectly, the sale of alcoholic beverages of another manufacturer, importer or distributor; and
- Within 10 days after execution of the agreement, the vendor files with the division a description of the written agreement for brand naming rights which includes the location, dates, and the name of the manufacturer or importer that entered into the agreement.

The bill prohibits a manufacturer or importer from soliciting or receiving, and prohibits a distributor from paying, any portion of the brand-naming rights or cooperative advertising agreement. The bill also specifies that such an agreement may not in any way obligate or place responsibility, financial or otherwise, on a distributor.

The bill defines "negotiated at arm's length" as the negotiation of a business transaction by independent parties acting in each party's own individual self-interest and conducted as if the parties were strangers, so that no conflict of interest may arise.

The bill provides that a manufacturer, importer or vendor that violates the written agreement for brand-naming rights and associated cooperative advertising provisions is subject to:

- First violation: A civil penalty up to $25,000 or the financial value of the brand-naming rights agreement, whichever is greater.
- Second violation: A civil penalty up to $100,000 or the financial value of the brand-naming rights agreement, whichever is greater.
- At the discretion of the division, in lieu of or in addition to the second civil penalty, suspension or revocation of the alcoholic beverage license for a third or subsequent violation occurring within 36 months after the date of the first violation.

The bill provides that a violation occurring more than 36 months after a first violation is deemed a first violation.

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

B. SECTION DIRECTORY:

Section 1 Amends s. 561.221, F.S., authorizing a manufacturer who possesses a vendor's license to sell, transport, and deliver to vendors under certain circumstances; providing applicability; and revising requirements for a vendor to be licensed as a manufacturer.

Section 2 Amends s. 561.411, F.S., revising alcoholic beverage inventory requirements for warehouse space owned or leased by certain distributors; and revising the percentage of licensed vendors a distributor must sell to in certain locations to be presumed to be selling to licensed vendors generally.

Section 3 Amends s. 561.42, F.S., revising terms; creating exemptions and penalties relating to the Tied House Evil Law.

Section 4 Amends s. 561.5101, F.S., revising construction related to come-to-rest requirements.

Section 5 Amends s. 561.57, F.S., authorizing certain manufacturers to transport malt beverages in vehicles owned or leased by certain persons other than the manufacturer.

Section 6 Amends s. 563.022, F.S., revising the definition of the term "manufacturer"; revising construction; authorizing a manufacturer to terminate a contract with a distributor under certain circumstances.

Section 7 Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill provides for an indeterminate positive fiscal impact through the creation of new civil penalties as listed above.

2. Expenditures:

   The bill will require DBPR to modify information technology systems to manage the new agreements and possible violations. These modifications can be made with existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Manufacturers and importers of malt beverages and qualified vendors will no longer be prohibited from entering into agreements for brand naming rights under certain circumstances. This relaxation of the Tied House Evil Law may allow certain licensees to benefit financially while negatively impacting other licensees.

D. FISCAL COMMENTS:

The bill may have a positive economic impact on new or small breweries by providing relief from certain regulatory constraints, which will allow them to operate more freely and develop during their early growth stages.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None.

2. Other:

The bill amends the Franchise Law to allow any brewery to terminate a franchise agreement with their distributor, after 120 days written notice, but only if the brewer accounts for 5% or less of the distributor's total sales.

Additionally, the bill exempts breweries whose production volume does not exceed 60,000 barrels of malt beverages a year from the requirements imposed under the Franchise Law.

Article I, section 10 of the Florida Constitution prohibits the passage of any law which impairs the obligation of contracts. Cases interpreting Florida law have held that the application of the Franchise Law, and similar statutes, to contracts existing prior to the enactment of the statutes to be unconstitutional.[32]

However, the Florida Supreme Court has held that, relating to the interpretation of substantive changes to statutory law, the general rule is that in the absence of clear legislative intent to the contrary, a law affecting substantive rights, liabilities and duties is presumed to apply prospectively but not retroactively.[33] Florida courts have also held that "Even where the Legislature has expressly stated that a statute will have retroactive application, this Court will reject such an application if the statute impairs a vested right, creates a new obligation, or imposes a new penalty."[34]

Thus, the provisions in the bill affecting the Franchise Law may be interpreted to apply only prospectively.

B. RULE-MAKING AUTHORITY:

DBPR has sufficient rule-making authority to modify current rules to reflect the modifications provided for in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[32] *Gulfside Distributors, Inc. v. Becco, Ltd.*, 985 F.2d 513, 515 (11th Cir. 1993).

[33] *Smiley v. State*, 966 So. 2d 330, 336 (Fla. 2007). *See also* Eric Glazer and Louis Goetz, *Florida Community Association Law: Contracts Clause Application In An Ever-Changing Legislative Landscape*, Florida Bar Journal, Vol. 89, No. 8 (Sept./Oct. 2015). "In Florida, all laws are presumed to apply prospectively, unless they are remedial in nature, or designed to clarify law already in effect, and the legislature clearly expresses its intention that the law is to apply retroactively."

[34] *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So.3d 873 (Fla. 2010).

A bill to be entitled

An act relating to the Beverage Law; amending s. 561.221, F.S.; authorizing a manufacturer who possesses a vendor's license to sell, transport, and deliver malt beverages to vendors under certain circumstances; providing applicability; revising requirements for a vendor to be licensed as a manufacturer; amending s. 561.411, F.S.; revising alcoholic beverage inventory requirements for warehouse space owned or leased by certain distributors; revising the percentage of licensed vendors a distributor must sell to in certain locations to be presumed to be selling to licensed vendors generally; amending s. 561.42, F.S.; prohibiting certain entities and persons from directly or indirectly assisting or providing specified items, monies, or services to a licensed vendor; prohibiting a licensed vendor from accepting specified items, monies, or services from certain entities or persons; authorizing the Division of Alcoholic Beverages and Tobacco adopt rules and require reports to enforce, and to impose administrative sanctions for a violation of limitations established under the Beverage Law on specified items, monies, or services; prohibiting a vendor from displaying certain signs in the window or

windows of his or her licensed premises; authorizing certain entities and persons to furnish, supply, sell, rent, lend, or give certain advertising material to certain vendors; defining the term "decalcomania"; providing exemptions relating to tied house evil for certain sales and purchases of merchandise; providing conditions for the exemptions; defining the term "merchandise"; prohibiting the sale of certain advertising specialties at a price higher than the actual cost to the industry member; authorizing a manufacturer or importer of malt beverages and a vendor to enter into a written agreement for certain purposes; providing requirements for such agreement; defining the term "negotiated at arm's length"; specifying that a brand-naming rights agreement does not obligate or place responsibility upon a distributor; providing civil penalties; prohibiting the division from imposing certain civil penalties; amending s. 561.5101, F.S.; revising construction; amending s. 561.57, F.S.; authorizing certain manufacturers to transport malt beverages in vehicles owned or leased by certain persons other than the manufacturer; amending s. 563.022, F.S.; revising the definition of the term "manufacturer"; revising construction; authorizing a manufacturer to terminate

a contract with a distributor under certain circumstances; providing an effective date.

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

Section 1. Paragraph (d) of subsection (2) and paragraph (a) of subsection (3) of section 561.221, Florida Statutes, are amended, and paragraph (f) is added to subsection (2) of that section, to read:

561.221 Licensing of manufacturers and distributors as vendors and of vendors as manufacturers; conditions and limitations.—

(2)

(d) A manufacturer possessing a vendor's license under this subsection is not permitted to make deliveries under s. 561.57(1), except as provided in paragraph (f).

(f) Notwithstanding other provisions of the Beverage Law, any manufacturer possessing a vendor's license under this subsection may sell, transport, and deliver to vendors, from the manufacturer's licensed premises, malt beverages that have been manufactured on its licensed premises if the manufacturer complies with applicable requirements of ss. 561.42 and 561.423 to the same extent as if the manufacturer were a distributor.

1. The sale, transport, and delivery of malt beverages is limited to kegs or similar containers that hold 5.16 gallons,

7.75 gallons, or 15.5 gallons.

2. A delivery by a manufacturer to a vendor under this paragraph is subject to s. 561.57(2).

3. This paragraph does not apply to a manufacturer who:

a. Has a franchise agreement with a distributor pursuant to s. 563.022; or

b. Has a total production volume of more than 60,000 barrels of malt beverages per year.

(3)(a) Notwithstanding other provisions of the Beverage Law, any vendor licensed in this state may be licensed as a manufacturer of malt beverages upon a finding by the division that:

1. The vendor will be engaged in brewing malt beverages at a single location and in an amount which will not exceed 5,000 barrels of malt beverages ~~10,000 kegs~~ per year. For purposes of this section ~~subsection~~, the term "barrel" ~~"keg"~~ means 31 ~~15.5~~ gallons.

2. The malt beverages so brewed will be sold to consumers for consumption on the vendor's licensed premises or on contiguous licensed premises owned by the vendor.

Section 2. Section 561.411, Florida Statutes, is amended to read:

561.411 Qualifications for distributors.—A ~~No~~ distributor's license may not ~~shall~~ be issued to or held by any person or business that ~~which~~ does not meet and maintain the

following qualifications with respect to its warehouse inventory and sales:~~.~~

(1) The distributor must maintain warehouse space which is either owned or leased by the distributor, or dedicated to the distributor's use in a public warehouse, which is sufficient to store at one time:

(a) An inventory of alcoholic beverages which is equal to at least 5 ~~10~~ percent of the distributor's annual case sales to licensed vendors within this state or to licensed vendors within the malt beverage distributor's exclusive sales territory; or

(b) An inventory for which the cost of acquisition is not less than $50,000 ~~$100,000~~.

(2) The distributor must maintain at all times, in a warehouse which is either owned or leased by the distributor or in public warehouse space dedicated to the distributor's use, an inventory of alcoholic beverages:

(a) Which consists of not less than 5 percent of the distributor's annual sales to licensed vendors within this state or within the malt beverage distributor's exclusive sales territory; or

(b) For which the cost of acquisition is not less than $50,000 ~~$100,000~~. Such ~~The~~ inventory must ~~required herein shall~~ be owned by the distributor, not held on consignment, and not acquired pursuant to a prior agreement to sell it to a specific licensee or licensees.

(c) For purposes of calculating inventory or percentage of annual sales as required by paragraphs (a) and (b), the calculation shall not include private label inventory whose label is owned by a vendor.

(3) The distributor must sell alcoholic beverages to licensed vendors generally rather than a selected few licensed vendors. For purposes of this section, a distributor shall be conclusively presumed to be selling to licensed vendors generally, if:

(a) The distributor sells to at least 10 ~~25~~ percent of the licensed vendors in the county wherein the distributor's warehouse is located or sells to at least 10 ~~25~~ percent of the licensed vendors in the malt beverage distributor's exclusive sales territory; or

(b) The distributor's total volume of sales to licensed vendors within the state or within the malt beverage distributor's exclusive sales territory during any ongoing 12-month period consists of at least 50 percent of individual sales which are in quantities of 10 cases or less.

Section 3. Subsections (13) and (14) of section 561.42, Florida Statutes, are renumbered as subsections (14) and (15), respectively, subsections (1), (8), (11), and (12) and paragraph (b) of present subsection (14) are amended, and new subsections (13) and (16) are added to that section, to read:

561.42 Tied house evil; financial aid and assistance to

vendor by manufacturer, distributor, importer, primary American source of supply, brand owner or registrant, or any broker, sales agent, or sales person thereof, prohibited; procedure for enforcement; exception.—

(1) A ~~No~~ manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant of any of the beverages herein referred to, whether licensed or operating in this state or out-of-state, or ~~nor~~ any broker, sales agent, or sales person thereof, may not ~~shall~~ have any financial interest, directly or indirectly, in the establishment or business of any vendor licensed under the Beverage Law; nor may ~~shall~~ such manufacturer, distributor, importer, primary American source of supply, brand owner or brand registrant, or any broker, sales agent, or sales person thereof, directly or indirectly, assist any vendor by furnishing, supplying, selling, renting, lending, buying for, or giving to any vendor any vehicles, equipment, furniture, fixtures, signs, supplies, credit, fees, slotting fees of any kind, advertising or cooperative advertising, services, ~~any~~ gifts or loans of money or property of any description, or ~~by the giving of any~~ rebates of any kind whatsoever. A ~~No~~ licensed vendor may not ~~shall~~ accept, directly or indirectly, any vehicles, equipment, furniture, fixtures, signs, supplies, credit, fees, slotting fees of any kind, advertising or cooperative advertising, services, gifts ~~any gift~~ or loans ~~loan~~ of money or property of

any description, or ~~any~~ rebates of any kind whatsoever from any such manufacturer, distributor, importer, primary American source of supply, brand owner or brand registrant, or any broker, sales agent, or sales person thereof; provided, however, that this does not apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages or to advertising materials and does not apply to the extension of credit, for liquors sold, made strictly in compliance with ~~the provisions of~~ this section. A brand owner is a person who is not a manufacturer, distributor, importer, primary American source of supply, brand registrant, or broker, sales agent, or sales person thereof, but who directly or indirectly owns or controls any brand, brand name, or label of alcoholic beverage. ~~Nothing in~~ This section does not ~~shall~~ prohibit the ownership by vendors of any brand, brand name, or label of alcoholic beverage.

(8) The division may adopt rules and require reports to enforce, and may impose administrative sanctions for any violation of, the limitations established under the Beverage Law on any vehicles, equipment, furniture, fixtures, signs, supplies, credit, fees, slotting fees of any kind, advertising or cooperative advertising, services, gifts or loans of money or property of any description, rebates of any kind whatsoever ~~in this section on credits~~, coupons, and other forms of assistance.

(11) A vendor may display in the interior of his or her

licensed premises, including the window or windows thereof, neon, electric, or other signs that require a power source; ~~,~~ ~~including~~ window painting and decalcomanias applied to the surface of the interior or exterior of such windows; ~~,~~ and posters, placards, and other advertising material advertising the brand or brands of alcoholic beverages sold by him or her, whether visible or not from the outside of the licensed premises. However, a~~, but no~~ vendor may not ~~shall~~ display in the window or windows of his or her licensed premises more than one neon, electric, or similar sign that requires a power source~~,~~ advertising the product of any one brand of alcoholic beverage ~~manufacturer~~.

(12) Any manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant, or any broker, sales agent, or sales person thereof, may give, lend, furnish, or sell to a vendor who sells the products of such manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant any of the following: neon, ~~or~~ electric, or other signs requiring a power source; ~~signs,~~ window painting and decalcomanias applied to the surface of the interior or exterior of windows; and~~,~~ posters, placards, and other advertising material ~~herein~~ authorized to be used or displayed by the vendor in the interior of his or her licensed premises. As used in this section, the term "decalcomania" means a picture, design, print, engraving, or label made to be

transferred onto a glass surface.

(13) Any manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant, or any broker, sales agent, or sales person thereof, who regularly sells merchandise to vendors, or any vendor who purchases merchandise from such manufacturer, distributor, importer, primary American source of supply, or brand owner or registrant, or any broker, sales agent, or sales person thereof, does not violate subsection (1) if:

(a) Such sale or purchase is equal to or greater than the fair market value of the merchandise; not combined with any sale or purchase of alcoholic beverages; separately itemized from the sale or purchase of alcoholic beverages; and

(b) Both the seller and purchaser maintain records of any such sale or purchase, including the price and any conditions associated with such sale or purchase of the merchandise.

For purposes of this subsection, the term "merchandise" means commodities, supplies, fixtures, furniture, or equipment. The term does not include alcoholic beverages or a motor vehicle or trailer requiring registration under chapter 320.

(15)~~(14)~~ The division shall adopt reasonable rules governing promotional displays and advertising. Such rules may not conflict with or be more stringent than the federal regulations pertaining to such promotional displays and

advertising furnished to vendors by distributors, manufacturers, importers, primary American sources of supply, or brand owners or registrants, or any broker, sales agent, or sales person thereof; however:

(b) Without limitation in total dollar value of such items provided to a vendor, a manufacturer, distributor, importer, primary American sources of supply, or brand owner~~,~~ or ~~brand~~ registrant of malt beverage, or any broker, sales agent, or sales person thereof, may rent, loan without charge for an indefinite duration, or sell durable retailer advertising specialties such as clocks, pool table lights, and the like, which bear advertising matter. If sold, such items may not be sold at a price less than the actual cost to the industry member who initially purchased the items.

(16)(a) Notwithstanding other provisions of this section, a manufacturer or importer of malt beverages and a vendor may enter into a written agreement for brand-naming rights and associated cooperative advertising, negotiated at arm's length, for no more than fair market value if all of the following conditions are met:

1. The vendor operates places of business where consumption on the premises is permitted and the premises:

a. Are located within a theme park complex consisting of at least 25 contiguous acres owned and controlled by the same business entity;

b. Contain permanent exhibitions and a variety of recreational activities; and

c. Has a minimum of 1 million visitors annually with a controlled entrance to, and exit from, the enclosed area.

2. Such agreement does not involve, either in whole or in part, the sale or distribution of malt beverages between the manufacturer or importer, or the manufacturer's or importer's distributor, and a vendor.

3. The vendor, as a result of such agreement, does not give preferential treatment to the alcoholic beverage brand or brands of the manufacturer or importer with whom the vendor has entered into such agreement.

4. Such agreement does not directly or indirectly limit the sale of alcoholic beverages of another manufacturer or importer, or distributor.

5. Within 10 days after execution of such agreement, the vendor files with the division a description of the agreement which includes the location, dates, and the name of the manufacturer or importer that entered into the agreement.

As used in this paragraph, the term "negotiated at arm's length" means the negotiation of a business transaction by independent parties acting in each party's own individual self-interest and conducted as if the parties were strangers, so that no conflict of interest may arise.

(b) A manufacturer or importer of malt beverages who is a party to a brand-naming rights agreement may not, directly or indirectly, solicit or receive from any of its distributors any portion of the payment due from the manufacturer or importer of malt beverages to the vendor pursuant to such agreement. Such agreement exists solely between the manufacturer and the vendor and does not, directly or indirectly, in any way obligate or place responsibility, financial or otherwise, upon a distributor.

(c) Notwithstanding s. 561.29(3) and (4), a manufacturer of malt beverages, an importer of malt beverages, or a vendor who violates this subsection is subject to:

1. A civil penalty of not more than $25,000, for a first violation.

2. A civil penalty of not more than $100,000 for a second violation occurring within 36 months after the date of the first violation.

3. At the discretion of the division, in lieu of or in addition to the penalty imposed under subparagraph 2., suspension or revocation of the alcoholic beverage license for a third or subsequent violation occurring within 36 months after the date of the first violation.

A violation occurring more than 36 months after a first violation is deemed a first violation under this paragraph. When

imposing a civil penalty within the ranges provided in subparagraphs 1. and 2., the division may not impose a civil penalty in an amount greater than the financial value of the brand-naming rights agreement.

Section 4. Subsection (1) of section 561.5101, Florida Statutes, is amended to read:

561.5101 Come-to-rest requirement; exceptions; penalties.—

(1) For purposes of inspection and tax-revenue control, all malt beverages, except those manufactured and sold by the same licensee, pursuant to s. 561.221(2) or (3), must come to rest at the licensed premises of an alcoholic beverage wholesaler in this state before being sold to a vendor by the wholesaler. The prohibition contained in this subsection does not apply to the shipment of malt beverages commonly known as private labels. The prohibition contained in this subsection shall not prevent a manufacturer from shipping malt beverages for storage at a bonded warehouse facility, provided that such malt beverages are distributed as provided in this subsection or to an out-of-state entity. This subsection does not prohibit a manufacturer from delivering alcoholic beverages to a licensed vendor as provided in s. 561.221(2)(f).

Section 5. Subsection (2) of section 561.57, Florida Statutes, is amended to read:

561.57 Deliveries by licensees.—

(2) Deliveries made by a manufacturer or distributor away

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

from his or her place of business may be made only in vehicles that are owned or leased by the licensee. However, a manufacturer authorized to make deliveries under s. 561.221(2)(f) to the licensed premises of a vendor may transport malt beverages in a vehicle owned or leased by the manufacturer or any person who has been disclosed on a license application filed by the manufacturer and approved by the division. By acceptance of an alcoholic beverage license and the use of such vehicles, the licensee agrees that such vehicle shall always be subject to be inspected and searched without a search warrant, for the purpose of ascertaining that all provisions of the alcoholic beverage laws are complied with, by authorized employees of the division and also by sheriffs, deputy sheriffs, and police officers during business hours or other times the vehicle is being used to transport or deliver alcoholic beverages.

Section 6. Paragraph (h) of subsection (2) and paragraph (d) of subsection (14) of section 563.022, Florida Statutes, are amended, and subsection (22) is added to that section, to read:

563.022 Relations between beer distributors and manufacturers.—

(2) DEFINITIONS.—In construing this section, unless the context otherwise requires, the word, phrase, or term:

(h) "Manufacturer" means any person who manufactures more than 60,000 barrels of malt beverage a year or imports beer for

distribution to distributors licensed in Florida.

(14) MANUFACTURER; PROHIBITED INTERESTS.—

(d) ~~Nothing in~~ The Beverage Law does not ~~shall be construed to~~ prohibit a manufacturer from shipping products to or between its breweries, or between its breweries and the licensed premises of a vendor as provided in s. 561.221(2)(f), without a distributor's license.

(22) TERMINATION OF CONTRACTS.—Notwithstanding this section, a manufacturer may terminate a contract with a distributor after at least 120 days' written notice if the sale of products to the distributor by the manufacturer does not exceed 5 percent of the distributor's total alcoholic beverage sales in the prior calendar year.

Section 7. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1165 Beverage Law
SPONSOR(S): Raschein
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Willson MW	Anstead
2) Government Operations & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

In Florida, the Beverage Law regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation administers and enforces the Beverage Law.

Relating to alcoholic beverage container sizes, the bill:

- Repeals s. 564.05, F.S., relating to wine container size limitations.
- Repeals s. 564.055, F.S., relating to cider container size limitations.
- Amends s. 564.09, F.S., to specify that a restaurant patron may take home a partially consumed bottle of wine with the purchase of "a meal."

Relating to craft distilleries, the bill:

- Clarifies that a craft distiller may blend their product with other distilled spirits.
- Increases the maximum production threshold for craft distilleries from 75,000 to 250,000 gallons.
- Authorizes the issuance of up to 3 vendor's licenses for the sale of alcoholic beverages on a craft distillery's licensed premises.
- Specifies that a craft distillery that does not have a vendor's license may not ship its product to consumers located in Florida.
- Allows a craft distillery to sell, from its souvenir gift shop, up to 75,000 gallons of branded product per year. The craft distillery may not be licensed as a vendor, and such sales must be made in either a face-to-face transaction from the gift shop or as a shipment to a consumer located outside the state.
- Allows a craft distillery to be licensed as a distributor or exporter if the distillery is open to the public for tours, tastings, and sales at least 30 hours per week.
- Allows a craft distillery to receive a permit to conduct tastings and sales of its liquor products at fairs, trade shows, exhibitions, and festivals, subject to certain conditions.
- Authorizes a craft distillery to conduct liquor tastings anywhere that liquor may be sold.

The bill also authorizes the owner of certain establishments licensed under the Beverage Law to allow dogs in designated areas, subject to certain conditions.

The bill may have a positive fiscal impact for certain entities involved in the production or sale of wine, cider and distilled spirits. See *Fiscal Analysis & Economic Impact Statement.*

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Beverage Law – Background

In Florida, the Beverage Law[1] regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.[2]

"Alcoholic beverages" are defined in s. 561.01, F.S., as "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume." "Malt beverages" are brewed alcoholic beverages containing malt.[3]

Since the repeal of Prohibition, regulation of alcohol in the United States has traditionally been based upon what is termed the "three-tier system." The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.[4]

Generally, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail, and manufacturers, distributors, and exporters[5] are generally prohibited from holding a vendor's license.[6] Manufacturers, distributors, and vendors are generally prohibited from being licensed or having an interest in more than one tier. Limited exceptions, subject to certain conditions, include the ability for a craft brewery to hold a vendor's license (tap room), a restaurant to hold a manufacturer's license (brew pub), and a winery to hold up to three vendor's licenses.[7]

Exceptions to the three-tier regulatory system allow certain in-state wineries,[8] craft breweries,[9] and craft distilleries to sell directly to consumers.[10] Further, certain restaurants may be granted a vendor's license to manufacture a limited quantity of malt beverages which can be sold to consumers for consumption on premises.[11]

Wineries may receive up to 3 vendor's licenses on property contiguous to the manufacturing premises of the winery.[12] Section 599.004, F.S., establishes the Florida Farm Winery Program within the Department of Agriculture and Consumer Services. The requirements for certification include that a winery produce or sell less than 250,000 gallons of wine annually of which 60% is made from state agricultural products, maintain a minimum of 5 acres of owned or managed land in Florida which produces commodities used in the production of wine, be open to the public for tours, tastings, and sales at least 30 hours each week, and pay an annual application and registration fee of $100.

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[1] Section 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.
[2] S. 561.02, F.S.
[3] S. 563.01, F.S.
[4] S. 561.14, F.S.
[5] S. 561.01(16), F.S. "Exporter" means any person that sells alcoholic beverages to persons for use outside the state.
[6] S. 561.22(1), F.S.; s. 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.
[7] *See* ss. 561.22, F.S.; 561.24, F.S.; 561.14(1), F.S.; and 563.022(14), F.S.
[8] *See* s. 561.221(1), F.S.
[9] *See* s. 561.221(2), F.S.
[10] *See* s. 565.03, F.S.
[11] *See* s. 561.221(3), F.S.
[12] See s. 561. 221(1), F.S.

Section 565.17, F.S., provides an exemption to the Tied-House Evil Laws, authorizing vendors and liquor distributors to conduct liquor tastings at any location that is allowed to sell liquor by the package or for consumption on premises. The tastings must be directed toward the of-age general public.

Section 561.24, F.S., prohibits the licensing of a manufacturer as a distributor or exporter. Wineries that qualify as a certified Florida Farm Winery are the sole exception to this prohibition. Additionally, the Division may issue permits for a certified Florida Farm Winery to conduct tasting and sales of its wines at Florida fairs, trade shows, expositions, and festivals. The permit is limited to the length of the event. The certified Florida Farm Winery is required to pay all entry fees and must have a winery representative present during the event.

Vendors, but not manufacturers or distributors, are allowed to make deliveries away from their place of business for sales actually made at their licensed place of business. Telephone, electronic, and mail orders received at a vendor's licensed place of business are construed as a sale actually made at the vendor's licensed place of business. Deliveries may be made in vehicles that are owned or leased by the vendor, or in a third-party vehicle pursuant to a contract with a third party with whom the vendor has contracted to make deliveries, including, but not limited to, common carriers.[13]

A craft brewery which also holds a vendor's license is specifically prohibited from making deliveries under this law.[14]

Distilleries and Craft Distilleries – Current Situation

Section 565.01, F.S., defines the terms "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" to mean "that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced."

A "distillery" is a manufacturer of distilled spirits, and a "craft distillery" is a licensed distillery that produces 75,000 or fewer gallons of distilled spirits per calendar year on its premises. A craft distillery must notify the Division in writing of its decision to qualify as a craft distillery.[15]

A distillery engaged solely in the business of manufacturing distilled spirits, or a person engaged in the business of blending and rectifying distilled spirits must pay a state license tax of $4,000 for each plant or branch operating in Florida. The license tax for a craft distillery is $1,000. Persons who engage in the business of distilling spirits may also rectify and blend spirituous liquors without paying an additional license tax.[16]

According to the Division, 61 of the 64 licensed distilleries operating in Florida produce less than 75,000 gallons of distilled spirits.[17]

A craft distillery is allowed to sell to consumers branded products,[18] distilled on the licensed premises, in factory-sealed containers that are filled at the distillery and sold for off-premises consumption only. The sales must occur at the distillery's souvenir gift shop located on private property contiguous to the licensed distillery premises, and included on the sketch submitted with the license application. Sales must be in face-to-face transactions with consumers who are making a purchase of no more than six

[13] S. 561.57(1) & (2), F.S.
[14] Ss. 561.221 (2)(d), and 565.57(1), F.S.
[15] Ss. 565.03(1)(b) & (c), F.S.
[16] S. 565.03(2)(b), F.S.
[17] Department of Business and Professional Regulation, Agency Analysis of 2020 HB 583, p. 5-6 (Dec. 6, 2019).
[18] Section 565.03(1)(a), F.S., defines "branded product" to mean "any distilled spirits product manufactured on site, which requires a federal certificate and label approval by the Federal Alcohol Administration Act or federal regulations."

individual containers of each branded product.[19] The craft distillery is not required to obtain a vendor's license to sell to consumers from their souvenir gift shop.

The Division must approve any subsequent revisions to a craft distillery's sketch to verify that the souvenir gift shop location operated by the craft distillery is "owned or leased by the craft distillery and on property contiguous to the craft distillery's production building."[20]

Section 565.03, F.S., imposes the following requirements and prohibitions for craft distilleries:

- A craft distillery may not ship, arrange to ship, or deliver distilled spirits to consumers, but may ship, arrange to ship, or deliver distilled spirits to manufacturers of distilled spirits, wholesale distributors of distilled spirits, state or federal bonded warehouses, and exporters.
- A craft distillery may not transfer its license or any ownership interest to any individual or entity with a direct or indirect interest in another distillery licensed in any other state, territory, or country. However, a craft distillery may be affiliated with another distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises or in any other state, territory, or country.
- A craft distillery must report to the Division within 5 business days after it has reached the 75,000-gallon production limit and cease making sales to consumers on the day after it reaches the production limit.
- A craft distillery must submit beverage excise taxes on distilled spirits sold to consumers in its monthly report to the Division.
- Containers must comply with the container limits in s. 565.10, F.S., which prohibits the sale and distribution of distilled spirits in any size container in excess of 1.75 liters or 59.18 ounces.

Distilleries and Craft Distilleries – Effect of the Bill

The bill amends s. 561.221, F.S., to:

- Authorize the issuance of up to three vendor's licenses to a craft distillery for the sale of alcoholic beverages on the distillery's licensed premises.
- Allow a craft distillery to conduct tastings and sales of their product at fairs, trade shows, expos, and festivals.

The bill also amends s. 565.17, F.S., to allow craft distilleries to conduct liquor tastings at any licensed premises authorized to sell liquor.

The bill amends s. 561.24, F.S., to allow a craft distillery to be licensed as a distributor or exporter if the craft distillery is open to the public for tours, tastings, and sales at least 30 hours a week.

The bill amends s. 565.03, F.S., to:

- Clarify the definition of "branded product" to allow craft distillers to blend their product with distilled spirits that are not manufactured on site.
- Increase the maximum production threshold for craft distilleries from 75,000 to 250,000 gallons.
- Allow a craft distillery to sell up to 75,000 gallons of branded product per year from its souvenir gift shop and removes the limitations on the number of bottles per brand per consumer that may be sold per year.
    - For sales made from the craft distillery's souvenir gift shop, the craft distillery may not be licensed as a vendor under s. 561.221, F.S., and such sales must be made in either a face-to-face transaction from the gift shop or as a shipment to a consumer located outside the state, subject to the laws of the receiving state.
- Specify that a craft distillery can transfer up to 75,000 gallons of its product from its federal bonded space, nonbonded space, or storage areas to its souvenir gift shop, per year.

[19] S. 565.03(1)(c), F.S.
[20] *Id.*

- Prohibit a craft distillery that does not have a vendor's license under s. 561.221, F.S., from shipping its distilled spirits to consumers located in the state.
- Remove restrictions relating to the sale, transfer, or ownership affiliation for craft distilleries.

Wine and Cider Container Limitations – Current Situation

Section 564.05, F.S., prohibits the sale of wine in an individual container that holds more than one gallon of wine, unless it is in a reusable container of 5.16 gallons, which may also be sold. Distributors and manufacturers may sell wine to other distributors and manufacturers in containers of any size. Any person who violates the prohibition in s. 564.05, F.S., commits a second degree misdemeanor.[21]

Section 564.055, F.S., prohibits the sale of cider by vendors at retail in any individual container of more than 32 ounces. However, cider may be packaged and sold in bulk, in kegs or barrels, or in any individual container of one gallon or more, regardless of container type. The Beverage Law does not provide for the sale of cider in growlers.

Wine and Cider Container Limitations – Effect of the Bill

The bill repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers.

The bill repeals s. 564.055, F.S., relating to the retail sale of individual cider containers.

Merlot to Go – Current Situation

Restaurants licensed to sell wine on the premises may permit patrons to remove one bottle of wine for consumption off the licensed premises under the following conditions:

- The patron must have purchased a full-course meal consisting of a salad or vegetable, entrée, a beverage, and bread and consumed a portion of the bottle of wine with the meal;
- Before the partially-consumed bottle of wine is removed from the premises, the bottle must be securely resealed by the licensee, or the licensee's employee, and placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been opened or tampered with after having been sealed;
- A dated receipt for the wine and meal must be attached to the container; and
- The container must be placed in a locked glove compartment, trunk, or other area behind the last upright seat of a motor vehicle that does not have a trunk.[22]

Merlot to Go – Effect of the Bill

The bill amends 564.09, F.S., simplifying the requirement that a patron's meal be a "full course meal consisting of salad or vegetable, entrée, a beverage, and bread" to just "a meal."

Dogs in Bars and Restaurants – Current Situation

The Division of Hotels and Restaurants (Division) within DBPR is authorized to administer laws and rules relating to the inspection and regulation of food service establishments for the purpose of safeguarding the public health, safety and welfare, in accordance with ch. 509, F.S. [23] The law

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[21] Section 775.082, F.S., provides the penalty for a misdemeanor of the second degree is a term of imprisonment not exceeding 60 days. Section 775.083, F.S., provides the penalty for a misdemeanor of the second degree is a fine not to exceed $500.

[22] S. 564.09, F.S.

[23] The Florida Department of Health is responsible for regulations related to food service protection and environmental health. Current regulations prohibit live animals inside food service establishments, vehicles used to transport food, and any other area or facility used to conduct food service operations. R. 64E-11.003(6)(c), F.A.C. An exception exists for service animals, as provided under s. 413.08, F.S. *See also* ss. 381.006 and 381.0072, F.S.

expressly limits the general home rule powers of a local government as it relates to the regulation of such businesses.[24]

Pursuant to its rulemaking authority, the Division has adopted the 2017 Food Code (Code) published by the U.S. Food and Drug Administration (FDA).[25] The Code prohibits live animals on the premises of food service establishments.[26] "Premises" is defined to mean the physical facility, its contents, and the contiguous land or property under the control of the permit holder.[27] There are limited exceptions to this prohibition including those for patrol dogs accompanying police or security officers, and service animals controlled by persons with disabilities.[28]

The service animal law authorizes an individual with a disability the right to be accompanied by a trained service animal (a dog) in all areas of public accommodations that the public is normally allowed to occupy.[29] A public accommodation is required to modify its policies, practices, and procedures to permit use of a service animal by an individual with a disability.

The service animal law defines a "service animal" as an animal that is trained to do work or perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The work done or tasks performed must be directly related to the individual's disability. A service animal is not a pet. It is also not a comfort animal.

Generally, only service animals are permitted to be inside bars and restaurants in Florida. However, Florida law allows local governments to establish a local exemption to the prohibition on having live animals inside food service establishments. Specifically, local governments may authorize local food service establishments to decide whether to designate outdoor portions of the establishment for "patrons' dogs." Participating establishments are required to apply for and receive a permit from the governing body of the local government. Local governments are authorized to include additional regulations and limitations to protect the health, safety and general welfare of the public.[30]

The local ordinances must include the following requirements:

- All public food service establishment employees must wash their hands promptly after touching, petting, or otherwise handling dogs. Employees shall be prohibited from touching, petting, or otherwise handling dogs while serving food or beverages or handling tableware or before entering other parts of the public food service establishment.
- Patrons in a designated outdoor area must be advised that they should wash their hands before eating. Waterless hand sanitizer shall be provided at all tables in the designated outdoor area.
- Employees and patrons must be instructed that dogs are prohibited from contact with serving dishes, utensils, tableware, linens, paper products, or any other items involved in food service operations;
- Patrons must keep their dogs on a leash and under reasonable control at all times;
- Dogs are prohibited on chairs, tables, or other furnishings;
- All table and chair surfaces must be cleaned and sanitized with an approved product between seating of patrons. Spilled food and drink must be removed from the floor or ground between seating of patrons;

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[24] S. 509.032(7), F.S.

[25] U.S. Department of Health and Human Services, Public Health Service, Food & Drug Administration, *Food Code*, (2017), https://www.fda.gov/media/110822/download (last visited Jan. 8, 2019). According to the FDA, "the purpose of maintaining an updated model food code is to assist food control jurisdictions at all levels of government by providing them with a scientifically sound technical and legal basis for regulating the retail segment of the food industry."

[26] *Id.* at s. 6-501.115(A).

[27] *Id.* at s. 1-201.10(B).

[28] *Id.* at s. 6-501.115(B).

[29] S. 413.08(3), F.S.

[30] S. 509.233, F.S.

- Accidents involving dog waste must be cleaned immediately and the area sanitized with an approved product. A kit with the appropriate materials for this purpose must be kept near the designated outdoor area;
- A sign or signs reminding employees of the applicable rules must be posted on premises in a manner and place as determined by the local permitting authority;
- A sign or signs reminding patrons of the applicable rules must be posted on premises in a manner and place as determined by the local permitting authority; and
- A sign or signs must be posted in a manner and place as determined by the local permitting authority that places the public on notice that the designated outdoor area is available for the use of patrons and patrons' dogs.[31]

Regarding where dogs are allowed to travel or pass through, the local ordinances must include the following requirements:

- Dogs are prohibited from traveling through indoor portions of the public food service establishment;
- Dogs are prohibited from traveling through nondesignated outdoor portions of the public food service establishment; and
- Access to the designated outdoor portions of the public food service establishment must not require entrance into or passage through any indoor area of the food establishment.[32]

Dogs in Bars and Restaurants – Effect of the Bill

The bill creates s. 562.65, F.S., authorizing the owner of a certain premises licensed under the Beverage Law to allow dogs in designated areas, including certain indoor areas, subject to the following conditions:

- No more than 10% of gross revenues are derived from the sale of food that is consumed on the licensed premises. For the purpose of the bill, ice is not considered food.
- Dogs must be kept on a leash and under control at all times.
- Dogs are not allowed on tables, bar tops, or other furnishings.
- Dogs are not allowed in any area where food is stored or prepared.
- Dog waste must be cleaned immediately and the area sanitized.

An individual may be held liable for failure to comply with the dog-related conditions if such failure results in injury or damage. The bill also authorizes the Division to adopt rules to administer this law.

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

B. SECTION DIRECTORY:

Section 1 Amends s. 561.221, F.S.; authorizing the division to issue vendor's licenses to certain craft distilleries for the sale of alcoholic beverages on the distillery's licensed premises; requiring certain information be included on sketches approved by the division; requiring the division to issue permits to craft distilleries for conducting tastings and sales at certain events; requiring craft distilleries to pay entry fees for such events and have a representative of the distillery present at each event.

Section 2 Amends s. 561.24, F.S.; authorizing a craft distillery to be licensed as a distributor under certain circumstances.

Section 3 Creates s. s. 562.65, F.S.; providing definitions; authorizing certain licensed vendors of alcoholic beverages to allow dogs in certain designated areas on licensed premises;

[31] S. 509.233(3)(c), F.S.
[32] *Id.*

providing requirements; providing for liability; authorizing the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to adopt rules.

Section 4 Repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers.

Section 5 Repeals s. 564.055, F.S., relating to limitations on the size of individual cider containers.

Section 6 Amends s. 564.09, F.S.; revising provisions that authorize a restaurant to allow patrons to remove partially consumed bottles of wine from a restaurant for off-premises consumption.

Section 7 Amends s. 565.03, F.S., redefining the terms "branded product" and "craft distillery"; revising the requirements for the sale of branded products by a licensed craft distillery to consumers; deleting a provision that prohibits a craft distillery from selling more than six individual containers of a branded product to a consumer; etc.

Section 8 Amends s. 565.17, F.S.; authorizing a craft distillery to conduct spirituous beverage tastings on specified licensed premises under certain circumstances.

Section 9 Provides for 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:

The bill may have a positive economic impact on certain entities in the wine and cider industry, due to the reduction or elimination of regulatory constraints relating to container sizes.

The bill may have a positive economic impact for many craft distilleries, due to the removal of many current regulatory constraints, resulting in enhanced brand recognition, increased sales volume, opportunities for collaboration, and access to new markets and consumers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Division to adopt rules to administer s. 562.65, F.S., relating to the discretionary authority to allow dogs at certain licensed premises under certain conditions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating the Beverage Law; amending s. 561.221, F.S.; authorizing the division to issue vendor's licenses to certain craft distilleries for the sale of alcoholic beverages on the distillery's licensed premises; requiring that the licensed vendor premises be included on certain sketches and diagrams under certain circumstances; requiring that all revisions to sketches or diagrams be approved by the division; requiring the division to issue permits to craft distilleries for conducting tastings and sales at certain events; requiring craft distilleries to pay entry fees for such events and have a representative of the distillery present at each event; amending s. 561.24, F.S.; authorizing a craft distillery to be licensed as a distributor under certain circumstances; creating s. 562.65, F.S.; providing definitions; authorizing certain licensed vendors of alcoholic beverages to allow dogs in certain designated areas on licensed premises; providing requirements; providing for liability; authorizing the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to adopt rules; repealing ss. 564.05 and 564.055, F.S., relating to limitations on the size of individual wine containers and

individual cider containers; amending s. 564.09, F.S.; revising provisions that authorize a restaurant to allow patrons to remove partially consumed bottles of wine from the restaurant for off-premises consumption; amending s. 565.03, F.S.; redefining the terms "branded product" and "craft distillery"; revising the requirements for the sale of branded products by a licensed craft distillery to consumers; deleting a provision that prohibits a craft distillery from selling more than six individual containers of a branded product to a consumer; revising requirements relating to the shipping of distilled spirits to consumers by a craft distillery; deleting requirements relating to the transfer of certain distillery licenses and ownership therein; deleting a prohibition against certain affiliations; authorizing a craft distillery to transfer specified quantities of specified distilled spirits from certain locations to its souvenir gift shop; requiring a craft distillery making such transfers to submit certain excise taxes with its monthly report to the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation; amending s. 565.17, F.S.; authorizing a craft distillery to conduct spirituous beverage tastings on specified licensed premises under

certain circumstances; providing an effective date.

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

Section 1. Subsection (4) is added to section 561.221, Florida Statutes, to read:

561.221 Licensing of manufacturers and distributors as vendors and of vendors as manufacturers; conditions and limitations.—

(4)(a) Notwithstanding s. 561.22, s. 561.42, or any other provision of the Beverage Law, the division may issue up to three vendor's licenses to a craft distillery licensed under s. 565.03, even if such distillery is also licensed as a distributor, for the sale of alcoholic beverages on a craft distillery's licensed premises.

(b) If a vendor's license is for the sale of alcoholic beverages on a craft distillery's licensed premises, the licensed vendor premises must be included on the sketch or diagram defining the licensed premises submitted with the distillery's license application. All sketch or diagram revisions by the craft distillery must be approved by the division and must verify that the vendor premises operated by the licensed distillery is owned or leased by the craft distillery and is located on the licensed distillery premises.

(c) The division shall, upon request, issue permits to a

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

craft distillery to conduct tastings and sales of distilled spirits produced by the distillery at fairs, trade shows, expositions, and festivals in this state. The craft distillery shall pay all entry fees for such events and shall have a representative present during each event. A permit is limited to the length of the event for which the permit is issued.

Section 2. Subsection (9) is added to section 561.24, Florida Statutes, to read:

561.24 Licensing manufacturers as distributors or registered exporters prohibited; procedure for issuance and renewal of distributors' licenses and exporters' registrations.—

(9) This section does not apply to a craft distillery, as defined in s. 565.03, which is open to the public for tours, tastings, and sales at least 30 hours each week.

Section 3. Section 562.65, Florida Statutes, is created to read:

562.65 Licensed premises of vendors; dogs allowed in designated areas.—

(1) As used in this section, the term:

(a) "Division" means the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation.

(b) "Dog" means a dog that is domesticated and kept as a household pet.

(c) "Licensed premises" has the same meaning as provided

in s. 561.01(11).

(d) "Vendor" means a person who is licensed under the Beverage Law.

(2) A vendor may allow dogs in designated areas, including certain indoor areas, of the licensed premises under the following conditions:

(a) No more than 10 percent of the gross revenue of the vendor's business may be from the sale of food consumed on the licensed premises. Ice may not be considered food.

(b) Dogs must be kept on a leash and under control at all times.

(c) Dogs may not be permitted on tables, bar tops, or other furnishings.

(d) Dogs may not be permitted in any area of the licensed premises in which food is stored or prepared.

(e) Dog waste must be cleaned immediately and the area must be sanitized.

(3) An individual may be held liable for failure to comply with the conditions under paragraphs (2)(b)-(e) if such failure causes injury or damage.

(4) The division may adopt rules to administer this section.

Section 4. Section 564.05, Florida Statutes, is repealed.

Section 5. Section 564.055, Florida Statutes, is repealed.

Section 6. Section 564.09, Florida Statutes, is amended to

read:

564.09 Restaurants; off-premises consumption of wine.—Notwithstanding any other provision of law, a restaurant licensed to sell wine on the premises may permit a patron to remove one unsealed bottle of wine for consumption off the premises if the patron has purchased a ~~full course~~ meal ~~consisting of a salad or vegetable, entree, a beverage, and bread~~ and consumed a portion of the bottle of wine ~~with such meal~~ on the restaurant premises. A partially consumed bottle of wine that is to be removed from the premises must be securely resealed by the licensee or its employees before removal from the premises. The partially consumed bottle of wine shall be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with, and a dated receipt for the bottle of wine and ~~full course~~ meal shall be provided by the licensee and attached to the container. If transported in a motor vehicle, the container with the resealed bottle of wine must be placed in a locked glove compartment, a locked trunk, or the area behind the last upright seat of a motor vehicle that is not equipped with a trunk.

Section 7. Paragraphs (a) and (b) of subsection (1), paragraphs (b) and (c) of subsection (2), and subsection (5) of section 565.03, Florida Statutes, are amended to read:

565.03 License fees; manufacturers, distributors, brokers,

sales agents, and importers of alcoholic beverages; vendor licenses and fees; distilleries and craft distilleries.—

(1) As used in this section, the term:

(a) "Branded product" means any distilled spirits product manufactured on site, or manufactured on site and blended on site with other distilled spirits, which requires a federal certificate and label approval by the Federal Alcohol Administration Act or federal regulations.

(b) "Craft distillery" means a licensed distillery that produces 250,000 ~~75,000~~ or fewer gallons per calendar year of distilled spirits on its premises and is designated as a craft distillery by ~~has notified~~ the division upon notification in writing of its decision to qualify as a craft distillery.

(2)

(b) A licensed distillery or craft distillery may ~~Persons licensed under this section who are in the business of distilling spirituous liquors may also~~ engage in the business of rectifying and blending spirituous liquors without the payment of an additional license tax.

(c) A craft distillery licensed under this section which is not licensed as a vendor under s. 561.221 may sell to consumers under its craft distillery license, at its souvenir gift shop, up to 75,000 gallons per calendar year of branded products ~~distilled on its premises in this state~~ in factory-sealed containers that are filled at the distillery for off-

premises consumption by consumers. Such sales are authorized only on ~~private~~ property owned or leased by the craft distillery which is contiguous to the craft distillery's licensed ~~distillery~~ premises approved by the division ~~in this state and included on the sketch or diagram defining the licensed premises submitted with the distillery's license application. All sketch or diagram revisions by the distillery shall require the division's approval verifying that the souvenir gift shop location operated by the licensed distillery is owned or leased by the distillery and on property contiguous to the distillery's production building in this state~~.

1. A craft distillery may not sell under its craft distillery license any factory-sealed individual containers of spirits to consumers in this state except in face-to-face sales transactions with such consumers at the craft distillery's licensed premises. Such containers must be in compliance with the container limits in s. 565.10 ~~who are making a purchase of no more than six individual containers of each branded product~~.

~~2. Each container sold in face-to-face transactions with consumers must comply with the container limits in s. 565.10, per calendar year for the consumer's personal use and not for resale and who are present at the distillery's licensed premises in this state.~~

2.~~3.~~ A craft distillery must report to the division within 5 days after it reaches the production limitations provided in

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

paragraph (1)(b). Any retail sales to consumers under its craft distillery license ~~at the craft distillery's licensed premises~~ are prohibited beginning the day after it reaches the production limitation.

3.~~4.~~ A craft distillery that has not been issued a vendor's license under s. 561.221 may not ship or arrange to ship any of its distilled spirits to consumers in this state and may sell and deliver only to consumers within the state in a face-to-face transaction at the distillery property. However, a craft distillery ~~distiller~~ licensed under this section may ship, arrange to ship, or deliver such spirits to manufacturers of distilled spirits, wholesale distributors of distilled spirits, state or federal bonded warehouses, ~~and~~ exporters, or consumers located outside of this state; however, all such shipments must comply with the laws where such products are scheduled to be delivered for personal use.

4. A craft distillery may transfer up to 75,000 gallons per calendar year of distilled spirits that it manufactures from its federal bonded space, nonbonded space at its licensed premises, or storage areas to its souvenir gift shop.

~~5. Except as provided in subparagraph 6., it is unlawful to transfer a distillery license for a distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises or any ownership interest in such license to an individual or entity that has a direct or indirect ownership~~

~~interest in any distillery licensed in this state; another state, territory, or country; or by the United States government to manufacture, blend, or rectify distilled spirits for beverage purposes.~~

~~6. A craft distillery shall not have its ownership affiliated with another distillery, unless such distillery produces 75,000 or fewer gallons per calendar year of distilled spirits on each of its premises in this state or in another state, territory, or country.~~

(5) A craft distillery may transfer distilled spirits to any of its retail areas pursuant to paragraph (2)(c) or s. 561.221 and ~~making sales under paragraph (2)(c)~~ is responsible for submitting any excise taxes due to the state on distilled spirits ~~on beverages~~ under the Beverage Law with ~~in~~ its monthly report to the division ~~with any tax payments due to the state~~.

Section 8. Section 565.17, Florida Statutes, is amended to read:

565.17 Beverage tastings by distributors, craft distilleries, and vendors.—A licensed distributor of spirituous beverages, a craft distillery, as defined in s. 565.03, or any vendor, is authorized to conduct spirituous beverage tastings upon any licensed premises authorized to sell spirituous beverages by package or for consumption on premises without being in violation of s. 561.42, provided that the conduct of the spirituous beverage tasting shall be limited to and directed

toward the general public of the age of legal consumption.

Section 9. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1257 Community Associations
SPONSOR(S): Tomkow
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Wright	Anstead
2) Ways & Means Committee			
3) Judiciary Committee			

SUMMARY ANALYSIS

A condominium is a form of ownership of real property comprised of units which may be owned by one or more persons along with an undivided right of access to common elements. A cooperative is real property owned by the cooperative association, and individual units are leased to the residents, who own shares in the cooperative association. The Division of Florida Condominiums, Timeshares, and Mobile Homes, within the Department of Business and Professional Regulation (DBPR), investigates complaints related to financial issues, elections, and unit owner access to official records for condominium and cooperative associations.

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners, membership is a mandatory condition of parcel ownership, and is authorized to impose assessments.

Related to condominium and cooperative association legal challenges to tax assessments issued by the county property appraiser, the bill amends current law to clarify that where an association has filed a single joint petition to challenge a tax assessment, an association may continue to represent and defend the unit owners through any related subsequent proceeding in any tribunal on appeal. The association must provide unit owners with notice of its intent to respond to a complaint, and advise the unit owners that they may opt out.

Related to condominium association records, the bill provides that:
- associations must maintain official records in a manner determined by DBPR, and
- when a unit owner or renter requests to inspect the official records, the association must provide the owner or renter with a checklist of all the records that are and are not being made available for inspection.

Related to DBPR regulations, the bill:
- defines "financial issues," and allows DBPR to further define the term; and
- allows DBPR to adopt rules to establish requirements for training programs provided by DBPR.

Related to HOA swimming pools, the bill provides that pools for HOAs that have 32 parcels or less and are not being operated as public lodging establishments are exempt from Department of Health requirements for public pools, except for maintaining water quality standards.

The bill has an indeterminate fiscal impact on state and local governments.

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

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., 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. 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 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.

The building and land of a cooperative association are owned by a corporation, not the individual unit owners. A person who purchases a cooperative unit does not receive title to the unit or any portion of the cooperative's building or land. Instead, the purchaser receives shares of the cooperative association and leases a unit from the association. An interest in a corporation or cooperative is represented by the ownership of stock in the corporation.

An ownership interest in a corporation or cooperative is an interest in personal property, not real property.[4] Generally, personal property is any object or right that is not real property, such as automobiles, clothing, or stocks.[5]

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[1] "Common elements" means the portions of the condominium property not included in the units. S. 718.103(11), F.S.
[2] S. 718.104(2), F.S.
[3] S. 719.103(2)(26), F.S.
[4] *Downey v. Surf Club Apartments, Inc.*, 667 So.2d 414 (Fla. 1st DCA 1996).
[5] Am. Jur. 2d Property § 18.

Real property is anything that is permanent, fixed, and immovable, such as land or a building. At common law, a leasehold, even for as long as 99 years, was not considered an interest in real property. However, a long-term leasehold interest is taxed in the same manner as a fee interest, so courts generally regard long-term leaseholds to be an interest in real property for taxation purposes.[6]

In Florida, a cooperative is treated as real property for some homestead purposes. Even though the legal definition of homestead follows the common law and requires an interest in real property to qualify for the homestead exemption, the Florida Constitution specifically extends the exemption to a cooperative unit.[7] Florida's homestead laws govern the cooperative for purposes of exemption from forced sale by creditors[8] and for purposes of the exemption from ad valorem taxation. However, a cooperative is not subject to Florida's homestead protections and is not considered real property for purposes of devise and descent. Devise and descent is the transfer or conveyance of property by will or inheritance.[9]

In contrast, the Condominium Act specifically provides that "[a] condominium parcel created by the declaration is a separate parcel of real property, even though the condominium is created on a leasehold." Thus, an ownership interest in a condominium is expressly converted by statute into an interest in real property. There is no corresponding statute in the Cooperative Act.[10] Florida courts have recognized that there is some confusion in this area and that there is a need for clarification on whether a cooperative ownership interest is an interest in real property or personal property.[11]

Homeowners' Associations

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners, membership is a mandatory condition of parcel ownership, and is authorized to impose assessments that, if unpaid, may become a lien on the parcel.[12] Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S. Like a condominium or cooperative, an HOA is administered by an elected board of directors. The powers and duties of an HOA includes the powers and duties provided in ch. 720, F.S., 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.

Tax Assessments

Background

Condominium association unit owners and cooperative associations unit owners are assessed yearly ad valorem[13] taxes by the county property appraiser.[14] For condominium unit owners, ad valorem taxes

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[6] *Williams v. Jones*, 326 So.2d 425, 433 (Fla. 1975); *See generally*, The Florida Bar, *Practice Under Florida Probate Code* Chapter 19 (9th ed. 2017).
[7] Art. VII, s. 6(a), Fla. Const. ("The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years.").
[8] Ss. 222.01, and 222.05, F.S.
[9] *Southern Walls, Inc. v. Stilwell Corp.*, 810 So. 2d 566, 572 (Fla. 2nd DCA 2002); *Phillips v. Hirshon*, 958 So. 2d 425, 430 (Fla. 3rd DCA 2007); *In re Estate of Wartels*, 357 So.2d 708 (Fla. 1978); Black's Law Dictionary (11th ed. 2019).
[10] S. 718.106(1), F.S; *See generally* Ch. 719, F.S.
[11] *Phillips*, 958 So.2d 425; *Levine v. Hirshon*, 980 So.2d 1053 (Fla. 2008).
[12] S. 720.301(9), F.S.
[13] "Ad valorem tax" means a tax based upon the assessed value of property." Section 192.001(1), F.S.
[14] S. 194.011, F.S.

for common elements are divided and levied proportionally among individual condominium parcel owners.[15]

Current law permits condominium and cooperative associations to file a single joint petition to the Value Adjustment Board ("VAB") contesting the tax assessment of all units within the condominium or cooperative.[16] The association must provide each unit owner notice of the petition and their right to opt out of the appeal, if desired.[17]

A decision by the VAB may be appealed to the circuit court.[18] While current law is clear that an association is authorized to act on behalf of all unit owners when filing a petition to the VAB and when initiating an appeal of the VAB's decision, it is unclear whether the association may defend, on behalf of unit owners, an appeal of the VAB's decision by the property appraiser.[19]

The court in *Central Carillon Beach Condominium v. Garcia* took up this issue in a case of first impression.[20] Petitioners were two condominium associations who had represented their unit owners in a tax assessment challenge before a VAB (Associations). Respondent was the property appraiser for Miami-Dade County (Appraiser).[21]

When the Associations initially challenged their tax assessment, the VAB substantially lowered their assessed property values.[22] As a result, the Appraiser challenged the decision in an appeal to the Miami-Dade Circuit Court, and named the individual unit owners, instead of the Associations.[23] In response, the Associations submitted a motion to dismiss the appeal and a motion for certification of the unit owners as a defense class. Both motions were denied by the circuit court, and the Associations appealed the denial of the motion to the Third District Court of Appeal.[24]

In response, the Appraiser argued that defense class certification should be denied, and the appeal should name individual unit owners, because statutes governing tax assessment challenge procedures require that individual unit owners be named on appeal.[25]

Section 194.181(2), F.S., states that in any case brought by the **taxpayer or association** contesting the assessment of any property, the county property appraiser shall be party. In any case brought by the property appraiser alleging specific legal violations in the VAB's decision or claiming a certain monetary variance between the assessed value of the property by the property appraiser and the VAB in the decision,[26] **the taxpayer shall be party defendant**. "Taxpayer" is defined as the person or other legal entity in whose name property is assessed, including an agent of a timeshare period titleholder.[27] In *Central Carillon*, the individual unit owners were assessed the taxes, not the associations.[28]

The Associations argued that this law conflicts with condominium association law which generally allows associations to represent unit owners through their rights of collective representation.[29]

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[15] S. 718.120(1), F.S.; Office of the Attorney General, Advisory Legal Opinion – AGO 99-12, Mar. 8, 1999.
[16] S. 194.011(3)(e), F.S.
[17] S. 194.171, F.S.
[18] S. 194.011(3)(e), F.S.
[19] *Id.*
[20] *Central Carillon Beach Condominium Association, Inc., et al., v. Garcia, etc, et al.,* 245 So. 3d 869 (Fla. 3d DCA 2018).
[21] *Id.* at 869.
[22] *Id.* at 870.
[23] *Id.* at 871.
[24] *Id.* at 869.
[25] *Id.* at 871.
[26] S. 194.036(1)(a), (b), F.S. In cases where the property appraiser is claiming a systematic violation of legal requirements, the VAB is the defendant.
[27] S. 192.001(13), F.S.
[28] *Central Carillon*, *supra* note 20, at 871.
[29] *Id.* at 871, 872.

Section 718.111(3), F.S., in pertinent part, states that:

> the association may institute... or appeal actions or hearings in its name on behalf of all unit owners **concerning matters of common interest to most or all unit owners, including, but not limited to,** the common elements; the roof and structural components of a building or other improvements; mechanical, electrical, and plumbing elements serving an improvement or a building; representations of the developer pertaining to any existing or proposed commonly used facilities; and **protesting ad valorem taxes on commonly used facilities and on units; and may defend actions in eminent domain** or bring inverse condemnation actions. If the association has the authority to maintain a class action, the association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the association could bring a class action. (Emphasis added).

The court found that the Associations' argument was unsupported, stating that the provision only addresses ad valorem taxes in one phrase: "protesting ad valorem taxes on commonly used facilities and on units." The Associations protested the ad valorem taxes on behalf of all units, but the lawsuits brought by the Appraiser against the unit owners are not "protests." Rather, they are judicial review proceedings in which the unit owners are defendants. The specific cases in which an association may defend on behalf of all unit owners are "actions in eminent domain."[30]

The Associations argued that because they could bring a class action if they were appealing a decision of the VAB, they "**may** be joined in an action as a representative of that class with reference to litigation...." However, the court found that s. 718.111(3), F.S., was not as precisely applied to the Appraiser's lawsuits against the unit owners as the ad valorem litigation provision, s. 194.181(2), F.S., which states that when an appraiser is the plaintiff seeking circuit court review of the VAB decision, "the **taxpayer shall be the party defendant**...."[31]

Based on this statutory interpretation, the court in *Central Carillon* found that current law does not allow such an association to act on behalf of unit owners on appeal where a VAB decision is appealed by the property appraiser.[32]

Effect of the Bill

The bill amends current law to clarify that where an association has filed a single joint petition to challenge a tax assessment, a condominium or cooperative association may continue to represent, prosecute, and defend the unit owners through any related subsequent proceeding in any tribunal and any appeals. This provision would apply to cases pending on July 1, 2020.

The bill provides that in any case brought by the property appraiser concerning a value adjustment board decision on a single joint petition filed by a condominium or cooperative association, the association and all unit owners included in the single joint petition are the party defendants.

In order to represent unit owners in such a proceeding, the condominium or cooperative association must provide unit owners with notice of its intent to respond to or answer the property appraiser's complaint, and advise the unit owners that they may elect to:

- retain their own counsel to defend the appeal;
- choose not to defend the appeal; or
- be represented together with other unit owners in the response or answer filed by the association.

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[30] *Id.* at 872.
[31] *Id.* at 872.
[32] *Id.* at 873.

Such notice must be mailed, delivered, or electronically transmitted to unit owners and posted conspicuously on the condominium or cooperative property in the same manner for notice of board meetings. Any unit owner who does not respond to the association's notice will be represented in the response or answer filed by the association.

Specific to the Condominium Act, the bill provides that a condominium association, in its own name or on behalf of some or all unit owners, may institute, file, protest, maintain, or defend any administrative challenge, lawsuit, appeal, or other challenge to ad valorem taxes assessed on units for commonly used facilities or common elements. The affected association members are not necessary or indispensable parties to such actions. This provision is intended to clarify existing law and would apply to cases pending on July 1, 2020.

Condominium Association Financial Issues

Background

The Division is the agency charged with ensuring that condominium associations comply with the requirements of the Condominium Act. The Division also handles complaints alleging violations of the Condominium Act. The Division has complete jurisdiction to investigate complaints and enforce compliance with the Condominium Act for associations that are controlled by a developer, a bulk buyer, or a bulk assignee.[33] Once a developer has turned control of the condominium to the association the Division only has jurisdiction to investigate complaints related to financial issues, elections, and unit owner access to official records.[34]

The term "financial issues" is not defined in the Condominium Act. According to DBPR, this can result in confusion for unit owners and associations for purposes of determining what types of complaints the Division can investigate. Defining "financial issues" will give unit owners and associations a better understanding of the types of financial issues that the Division may investigate.[35]

Effect of the Bill

The bill defines "financial issues" to mean an issue related to:

- operating budgets;
- reserve schedules;
- accounting records;
- notices of meetings;
- minutes of meetings discussing budget or financial issues;
- assessments for common expenses, fees, or fines;
- the commingling of funds; and
- any other record necessary to determine the revenues and expenses of the association.

The bill also provides that the Division may adopt rules to further define "financial issues."

[33] A bulk assignee is a person who buys more than seven units in a single condominium and receives assignment of any of the developer's rights. A bulk buyer is a person who buys more than seven units in a single condominium but does not receive any of the developer's rights. S. 718.703, F.S.
[34] Ss. 718.117, & 718.501, F.S.
[35] Email from Colton Madill, Deputy Legislative Affairs Director, Department of Business and Professional Regulation, RE: HB 1257 Community Associations (Jan. 22, 2020).

Condominium Association Records

Background

Condominium associations are required to maintain official records for at least 7 years. The official records must include:[36]

- a copy of the articles of incorporation, declaration, bylaws, and rules of the association;
- meeting minutes;
- a roster of all owners or members, including the electronic mailing addresses and fax numbers of unit owners consenting to receive notice by electronic transmission;
- a copy of any contracts to which the association is a party or under which the association or the unit owners or members have an obligation;
- accounting records for the association;
- all contracts for work to be performed, including bids for work, materials, and equipment;
    - cooperatives and HOAs are only required to maintain bids for one year;
- all ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners;
- a copy of the plans, permits, warranties, and other items provided by the developer; and
- all other written records which are related to the operation of the association.

An association must maintain the official records within the state of Florida and make them available for inspection within 45 miles of the association or within the county where the association is located.[37]

Associations must maintain accounting records in sufficient detail to permit determination of the revenues and expenses or receipts and disbursements attributable to separate units and operating and reserve funds.[38]

Unit owners and renters may request to inspect and make copies of an association's official records, and the association must make the records available for inspection within 10 business days of receiving a written inspection request.[39] Failure to provide an owner or renter the requested official records within 10 business days of receiving a written request creates a rebuttable presumption that the association willfully failed to provide the requested records. A unit owner who is denied access to the official records is entitled to damages and costs.[40]

An association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections. An association also has the option to make the official records available electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen. Additionally, associations with 150 or more units must maintain a website with digital copies of certain official records such as meeting notices, a copy of the articles of incorporation, declaration, bylaws, and rules of the association.[41]

Current law provides what records a condominium association must maintain, and where the condominium must maintain the records, but current law does not require associations to maintain the official records in a specific manner or format.[42]

According to DBPR, not having requirements for how associations must maintain official records can be frustrating and time consuming for unit owners. According to DBPR, this is because a unit owner may request to inspect the official records and an association may give them access to a room full of boxes

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[36] S. 718.111(12)(a), F.S.
[37] S. 718.111(12)(b), F.S.
[38] Rule 61B-22.002, F.A.C.
[39] S. 718.111(12)(c), F.S.
[40] *Id.*
[41] S. 718.111(12)(b),(g), F.S.
[42] *See* Ch. 718, F.S.

or filing cabinets, and the unit owner may not understand the association's organization of the records.[43]

Effect of the Bill

The bill provides that condominium associations must maintain the official records in a manner and format determined by the Division so that the records are easily accessible for inspection. The bill allows the Division to investigate complaints against condominiums that are related to the maintenance of the official records.

The bill also provides that when a unit owner or renter requests to inspect the official records, the association must provide the owner or renter with a checklist of all the records that are being made available for inspection. The checklist must also include a list of the requested official records that are not being made available for inspection. The association must provide a sworn affidavit by the person responding to the unit owner or renter's request attesting to the accuracy of the checklist along with the checklist. The association must keep a copy of the checklist and the affidavit for at least seven years.

The bill provides that delivery of the checklist and the sworn affidavit creates a rebuttable presumption that the association complied with the unit owner or renter's request to inspect the official records.

According to DBPR, requiring a checklist ensures that unit owners and renters will receive better access to a condominium association's official records, and it will also provide insurance for associations to show they complied with a unit owner or renter's request to inspect the official records.[44]

Condominium Educational Material Published by DBPR

Background

The Division provides training and educational programs for condominium association board directors and unit owners such as publishing educational brochures and holding seminars for board directors and unit owners, and maintains a toll-free hotline to assist unit owners. The Division may also approve board director and unit owner education and training programs offered by third party providers. The Division must maintain a current list of all approved programs and third party providers, and make the list available to board directors and unit owners.[45]

Effect of the Bill

The bill provides that the Division may adopt rules to establish requirements for the training and educational programs provided by the Division.

Homeowners' Association Swimming Pools

Background

The Department of Health (DOH) is responsible for the oversight and regulation of water quality and safety of public swimming pools in Florida under ch. 514, F.S. In order to operate or continue to operate a public swimming pool, a valid operating permit from DOH must be obtained. If DOH determines that the public swimming pool is, or may reasonably be expected to be, operated in compliance with state laws and rules, DOH will issue a permit. However, if it is determined that the pool is not in compliance with state laws and rules, the application for a permit will be denied. DOH is authorized to establish a

[43] DBPR, supra note 33.
[44] *Id.*
[45] S. 718.501(1)(j), F.S.

schedule of fees for plan approval and permitting.[46] Operating permits must be renewed annually and may be transferred from one name or owner to another.[47]

DOH may, at any reasonable time, enter any and all parts of a public swimming pool to examine and investigate the pool's sanitary and safety conditions.[48] County health departments are responsible for the routine surveillance of water quality in all public swimming pools.[49]

Pools that are used by condominiums or cooperatives with 32 units or less and which are not being operated as public lodging establishments are exempt from DOH's requirements for public pools. HOA pools are not exempt from DOH regulation, even where the HOA has 32 homes or less.[50]

Effect of the Bill

The bill provides that pools for HOAs, like current law for condominium and cooperative associations, that have 32 parcels or less and are not being operated as public lodging establishments are exempt from DOH's requirements for public pools, except for maintaining water quality standards.

B. SECTION DIRECTORY:

Section 1 Amends s. 194.011, F.S., allowing condominium and cooperative associations to represent unit owners in certain proceedings.

Section 2 Amends s. 194.181, F.S., allowing condominium and cooperative associations to represent unit owners in certain proceedings.

Section 3 Amends s. 514.0115, F.S., relating to Department of Health regulations of homeowners' association swimming pools.

Section 4 Amends s. 718.111, F.S., allowing condominium associations to represent unit owners in certain proceedings; relating to official records maintained by the condominium association.

Section 5 Amends s. 718.501, F.S., defining "financial issues" related to condominium associations; allowing DBPR to establish requirements for certain educational material.

Section 6 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate. DBPR may see a minor increase in expenditures due to adopting new rules to implement the bill.

[46] S. 514.033, F.S.
[47] Ss. 514.031(2) and (3), F.S.
[48] S. 514.04, F.S.
[49] S. 514.025, F.S.
[50] S. 514.0115(2). F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Indeterminate. See Fiscal Comments.

2. Expenditures:

   Indeterminate. See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Homeowners' associations may have less costs associated with maintaining swimming pools. Condominium unit owners may save money by being able to be represented through all phases of a tax assessment appeal.

D. FISCAL COMMENTS:

The fiscal impact is indeterminate. Local governments may have additional expenditures because of an increase in legal challenges to tax assessments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

DBPR will need to adopt rules related to establishing requirements for education programs, setting standards and definitions for financial issues, and establishing procedures for the maintenance and sharing of condominium association records. The rulemaking authority provided in the bill is sufficient.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to community associations; amending s. 194.011, F.S.; providing that certain associations may represent, prosecute, or defend owners in certain proceedings; providing applicability; amending s. 194.181, F.S.; providing and revising the parties considered as the defendant in a tax suit; requiring certain notice to be provided to unit owners in a specified way; providing unit owners options for defending a tax suit; imposing certain actions for unit owners who fail to respond to a specified notice; amending s. 514.0115, F.S.; providing that certain property association pools are exempt from Department of Health regulations; amending s. 718.111, F.S.; providing that a condominium association may take certain actions relating to a challenge to ad valorem taxes in its own name or on behalf of unit owners; providing applicability; requiring an association to provide a checklist and affidavit relating to certain records to certain persons; providing a timeframe for maintaining such checklist and affidavit; creating a rebuttable presumption; amending s. 718.501, F.S.; defining the term "financial issue"; authorizing the Division of Condominiums, Timeshares, and Mobile Homes to adopt rules; providing an effective date.

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

Section 1. Paragraph (e) of subsection (3) of section 194.011, Florida Statutes, is amended to read:

194.011 Assessment notice; objections to assessments.—

(3) A petition to the value adjustment board must be in substantially the form prescribed by the department. Notwithstanding s. 195.022, a county officer may not refuse to accept a form provided by the department for this purpose if the taxpayer chooses to use it. A petition to the value adjustment board must be signed by the taxpayer or be accompanied at the time of filing by the taxpayer's written authorization or power of attorney, unless the person filing the petition is listed in s. 194.034(1)(a). A person listed in s. 194.034(1)(a) may file a petition with a value adjustment board without the taxpayer's signature or written authorization by certifying under penalty of perjury that he or she has authorization to file the petition on behalf of the taxpayer. If a taxpayer notifies the value adjustment board that a petition has been filed for the taxpayer's property without his or her consent, the value adjustment board may require the person filing the petition to provide written authorization from the taxpayer authorizing the person to proceed with the appeal before a hearing is held. If the value adjustment board finds that a person listed in s.

194.034(1)(a) willfully and knowingly filed a petition that was not authorized by the taxpayer, the value adjustment board shall require such person to provide the taxpayer's written authorization for representation to the value adjustment board clerk before any petition filed by that person is heard, for 1 year after imposition of such requirement by the value adjustment board. A power of attorney or written authorization is valid for 1 assessment year, and a new power of attorney or written authorization by the taxpayer is required for each subsequent assessment year. A petition shall also describe the property by parcel number and shall be filed as follows:

(e)1. A condominium association, as defined in s. 718.103, a cooperative association, as defined in s. 719.103, or any homeowners' association, as defined in s. 723.075, with approval of its board of administration or directors, may file with the value adjustment board a single joint petition on behalf of any association members who own units or parcels of property which the property appraiser determines are substantially similar with respect to location, proximity to amenities, number of rooms, living area, and condition. The condominium association, cooperative association, or homeowners' association ~~as defined in s. 723.075~~ shall provide the unit or parcel owners with notice of its intent to petition the value adjustment board and shall provide at least 20 days for a unit or parcel owner to elect, in writing, that his or her unit or parcel not be

included in the petition.

2. A condominium association, as defined in s. 718.103, or a cooperative association, as defined in s. 719.103, that has filed a single joint petition under this subsection may continue to represent, prosecute, and defend the unit owners through any related subsequent proceeding in any tribunal, including judicial review under part II of this chapter and any appeals. This subparagraph is intended to clarify existing law and applies to cases pending on July 1, 2020.

Section 2. Subsection (2) of section 194.181, Florida Statutes, is amended to read:

194.181 Parties to a tax suit.—

(2)(a) In any case brought by a ~~the~~ taxpayer or a condominium or cooperative association, as defined in ss. 718.103 and 719.103 respectively, on behalf of some or all unit owners, contesting the assessment of any property, the county property appraiser is the ~~shall be~~ party defendant.

(b) In any case brought by the property appraiser under ~~pursuant to~~ s. 194.036(1)(a) or (b), the taxpayer is the ~~shall be~~ party defendant.

(c)1. In any case brought by the property appraiser under s. 194.036(1)(a) or (b) concerning a value adjustment board decision on a single joint petition filed by a condominium or cooperative association under s. 194.011(3), the association and all unit owners included in the single joint petition are the

party defendants.

2. The condominium or cooperative association must provide unit owners with notice of its intent to respond to or answer the property appraiser's complaint and advise the unit owners that they may elect to:

a. Retain their own counsel to defend the appeal;

b. Choose not to defend the appeal; or

c. Be represented together with other unit owners in the response or answer filed by the association.

3. The notice required in subparagraph 2. must be mailed, delivered, or electronically transmitted to unit owners and posted conspicuously on the condominium or cooperative property in the same manner for notice of board meetings under ss. 718.112(2) and 719.106(1). Any unit owner who does not respond to the association's notice will be represented in the response or answer filed by the association.

(d) In any case brought by the property appraiser under ~~pursuant to~~ s. 194.036(1)(c), the value adjustment board is the ~~shall be~~ party defendant.

Section 3. Paragraph (a) of subsection (2) of section 514.0115, Florida Statutes, is amended to read:

514.0115 Exemptions from supervision or regulation; variances.—

(2)(a) Pools serving condominium, cooperative, and homeowners' associations, as well as other property

associations, which have no more than 32 ~~condominium or cooperative~~ units or parcels and which are not operated as ~~a~~ public lodging establishments are ~~establishment shall be~~ exempt from supervision under this chapter, except for water quality.

Section 4. Paragraph (a) of subsection (1), subsection (3), and paragraphs (a), (b), (c), and (f) of subsection (12) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.—

(1) CORPORATE ENTITY.—

(a) The operation of the condominium shall be by the association, which must be a Florida corporation for profit or a Florida corporation not for profit. However, any association which was in existence on January 1, 1977, need not be incorporated. The owners of units shall be shareholders or members of the association. The officers and directors of the association have a fiduciary relationship to the unit owners. It is the intent of the Legislature that nothing in this paragraph shall be construed as providing for or removing a requirement of a fiduciary relationship between any manager employed by the association and the unit owners. An officer, director, or manager may not solicit, offer to accept, or accept any thing or service of value or kickback for which consideration has not been provided for his or her own benefit or that of his or her immediate family, from any person providing or proposing to provide goods or services to the association. Any such officer,

director, or manager who knowingly so solicits, offers to accept, or accepts any thing or service of value or kickback is subject to a civil penalty under s. 718.501(2)(d) ~~pursuant to s. 718.501(1)(d)~~ and, if applicable, a criminal penalty as provided in paragraph (d). However, this paragraph does not prohibit an officer, director, or manager from accepting services or items received in connection with trade fairs or education programs. An association may operate more than one condominium.

(3) POWER TO MANAGE CONDOMINIUM PROPERTY AND TO CONTRACT, SUE, AND BE SUED; CONFLICT OF INTEREST.—

(a) The association may contract, sue, or be sued with respect to the exercise or nonexercise of its powers. For these purposes, the powers of the association include, but are not limited to, the maintenance, management, and operation of the condominium property.

(b) After control of the association is obtained by unit owners other than the developer, the association may:

1. Institute, maintain, settle, or appeal actions or hearings in its name on behalf of all unit owners concerning matters of common interest to most or all unit owners, including, but not limited to, the common elements; the roof and structural components of a building or other improvements; mechanical, electrical, and plumbing elements serving an improvement or a building; representations of the developer pertaining to any existing or proposed commonly used facilities;

2. Protest and protesting ad valorem taxes on commonly used facilities and on units; ~~and may~~

3. Defend actions pertaining to ad valorem taxation of commonly used facilities or units or related to ~~in~~ eminent domain; or

4. Bring inverse condemnation actions.

(c) If the association has the authority to maintain a class action, the association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the association could bring a class action.

(d) The association, in its own name or on behalf of some or all unit owners, may institute, file, protest, maintain, or defend any administrative challenge, lawsuit, appeal, or other challenge to ad valorem taxes assessed on units for commonly used facilities or common elements. The affected association members are not necessary or indispensable parties to such actions. This paragraph is intended to clarify existing law and applies to cases pending on July 1, 2020.

(e) Nothing herein limits any statutory or common-law right of any individual unit owner or class of unit owners to bring any action without participation by the association which may otherwise be available.

(f) An association may not hire an attorney who represents the management company of the association.

(12) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain each of the following items, if applicable, which constitutes the official records of the association:

1. A copy of the plans, permits, warranties, and other items provided by the developer under ~~pursuant to~~ s. 718.301(4).

2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.

4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.

5. A copy of the current rules of the association.

6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the e-mail addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The e-mail addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission

is not provided in accordance with sub-subparagraph (c)3.e. However, the association is not liable for an inadvertent disclosure of the e-mail address or facsimile number for receiving electronic transmission of notices.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium that the association operates. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty under s. 718.501(2)(d) ~~pursuant to s. 718.501(1)(d)~~. The accounting records must include, but are not limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the

name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association or condominium.

d. All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association.

12. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

13. All rental records if the association is acting as agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described in s. 718.504.

15. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

16. A copy of the inspection report as described in s. 718.301(4)(p).

17. Bids for materials, equipment, or services.

(b) The official records specified in subparagraphs (a)1.-6. must be permanently maintained from the inception of the association. All other official records must be maintained

within the state for at least 7 years, unless otherwise provided by general law. All official records must be maintained in a manner and format determined by the division so that the records are easily accessible for inspection. The records of the association shall be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 10 working days after receipt of a written request by the board or its designee. However, such distance requirement does not apply to an association governing a timeshare condominium. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the condominium property or association property, or the association may offer the option of making the records available to a unit owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative pursuant to the compliance requirements of this chapter unless the association has an affirmative duty not to disclose such information pursuant to this chapter.

(c)1. The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right

to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member or authorized representative of such member. A renter of a unit has a right to inspect and copy the association's bylaws and rules. The association must provide a checklist to the member, authorized representative of such member, or renter of all records that are made available for inspection and copying in response to a written request. If any or all of the association's official records are not available, such records must be identified on the checklist provided to the person requesting the records. The association must also provide the person requesting the records a sworn affidavit attesting to the veracity of the checklist executed by the person responding to the written request on behalf of the association. The association must maintain a copy of the checklist and affidavit for at least 7 years. Delivery of the checklist and sworn affidavit to the person requesting the records creates a rebuttable presumption that the association complied with this paragraph. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled

to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records.

2. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty under s. 718.501(2)(d) ~~pursuant to s. 718.501(1)(d)~~.

3. The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those

requesting the documents. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records are not accessible to unit owners:

a. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including a record prepared by an association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

b. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

c. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll,

health, and insurance records. For purposes of this sub-subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

d. Medical records of unit owners.

e. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this sub-subparagraph, an association may print and distribute to unit ~~parcel~~ owners a directory containing the name, unit ~~parcel~~ address, and all telephone numbers of each unit ~~parcel~~ owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this sub-subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this sub-subparagraph if the information is included in an official

record of the association and is voluntarily provided by an owner and not requested by the association.

f. Electronic security measures that are used by the association to safeguard data, including passwords.

g. The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

(f) An outgoing board or committee member must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election. The division shall impose a civil penalty as set forth in s. 718.501(2)(d)6. ~~s. 718.501(1)(d)6.~~ against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

Section 5. Subsections (1) and (2) of section 718.501, Florida Statutes, are renumbered as subsections (2) and (3), respectively, paragraphs (h) and (j) of present subsection (1) of that section are amended, and a new subsection (1) is added to that section, to read:

718.501 Authority, responsibility, and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.—

(1) As used in this section, the term "financial issue" means an issue related to operating budgets; reserve schedules;

accounting records under s. 718.111(12)(a)11.; notices of meetings; minutes of meetings discussing budget or financial issues; assessments for common expenses, fees, or fines; the commingling of funds; and any other record necessary to determine the revenues and expenses of the association. The division may adopt rules to further define what a financial issue is under this section.

(2)~~(1)~~ The division may enforce and ensure compliance with the provisions of this chapter and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. In performing its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with respect to associations that are still under developer control or the control of a bulk assignee or bulk buyer pursuant to part VII of this chapter and complaints against developers, bulk assignees, or bulk buyers involving improper turnover or failure to turnover, pursuant to s. 718.301. However, after turnover has occurred, the division has jurisdiction to investigate complaints related only to financial issues, elections, and the maintenance of and unit owner access to association records under ~~pursuant to~~ s. 718.111(12).

(h) The division shall furnish each association that pays the fees required by paragraph (3)(a) ~~paragraph (2)(a)~~ a copy of this chapter, as amended, and the rules adopted thereto on an

annual basis.

(j) The division shall provide training and educational programs for condominium association board members and unit owners. The training may, in the division's discretion, include web-based electronic media, and live training and seminars in various locations throughout the state. The division may review and approve education and training programs for board members and unit owners offered by providers and shall maintain a current list of approved programs and providers and make such list available to board members and unit owners in a reasonable and cost-effective manner. The division may adopt rules to establish requirements for the training and educational programs required in this paragraph.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1275 Amusement Rides
SPONSOR(S): Pritchett
TIED BILLS: **IDEN./SIM. BILLS:** SB 1228

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Thompson	Anstead
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Department of Agriculture and Consumer Services (DACS) is required to inspect all amusement rides in Florida, except those at large parks with more than 1,000 employees and inspectors on staff. All temporary amusement rides are inspected each time they are moved or set up at a new location, and permanent rides are inspected semiannually. All amusement rides are required to be permitted annually, required to undergo nondestructive testing for structural integrity, and must have an annual inspection by a professional engineer or qualified inspector. DACS can investigate accidents, impose sanctions for violations, and close and impound amusement rides that are a danger to the public.

The bill:

- Includes amusement ride managers as a responsible party for ensuring compliance with state regulations;
- Exempts permanent rides from DACS inspection when inspected by an accredited trade organization;
- Separates the permitting process for permanent and temporary amusement rides, and streamlines the application process;
- Authorizes DACS to revise the 6-month inspection interval at permanent facilities;
- Requires ride documents to be submitted to DACS in electronic format;
- Broadens DACS rulemaking authority related to establishing certain exemptions;
- Removes an exemption for museums and other exhibition related institutions;
- Conforms state standards for testing, materials, electric, and fire protection to national standards;
- Requires signage containing DACS contact information to be displayed at ride events;
- Requires certification to DACS before a modified ride is placed back in operation;
- Grants subpoena powers to DACS;
- Criminalizes the refusal or failure to testify pursuant to a DACS subpoena;
- Increases the limit for administrative fines from "not to exceed $2,500" to "not to exceed $10,000" per violation; and
- Allows DACS to impose an additional $10,000 fine for violations resulting in serious injury or death.

The bill will have an insignificant fiscal impact on state government and the private sector. The bill is not expected to have a fiscal impact on local governments. See Fiscal Analysis.

The effective date of the bill is July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Department of Agriculture and Consumer Services (DACS) is required to inspect all amusement rides in Florida, except those at large parks with more than 1,000 employees and an inspector on staff. The Bureau of Fair Rides Inspection within DACS is required to inspect, investigate, and enforce the regulations related to amusement rides.[1]

Amusement rides regulated in the state of Florida fall into two categories:

- Temporary rides are those that are regularly relocated with or without assembly; and
- Permanent rides are those that are not regularly relocated.[2]

All temporary amusement rides are inspected each time they are moved or set up at a new location, and permanent rides are inspected semiannually. All amusement rides are required to be permitted annually, required to undergo nondestructive testing for structural integrity, and must have an annual inspection by a professional engineer or qualified inspector.[3]

DACS also inspects go-kart tracks, water-related amusement rides and zipline courses operating in the state.[4]

In addition, DACS investigates accidents involving amusement rides and has the authority to impose sanctions on amusement ride owners for violation of the law. DACS can close and impound amusement rides that pose an immediate serious danger to public health, safety and welfare.[5]

Adoption of Standards

DACS is required to adopt by rule standards for amusement rides which are the same as or similar to the following national standards:

- American Society for Testing and Materials Committee F-24 Standards on Amusement Rides and Devices.
- National Electric Code Handbook, Article 525.
- National Fire Protection Code 101 (chapters 8-4.6 and 9-4.6).
- ASTM Standards: E543 Practice for Determining the Qualification of Nondestructive Testing Agencies.
- ASNT Document Recommended Practice SNT-TC-1A Personnel Qualification and Certification in Nondestructive Testing.[6]

DACS is authorized to adopt rules necessary to effectuate its statutory duties in the interest of public health, safety, and welfare and to promote patron safety in the design, construction, assembly, disassembly, maintenance, and operation of amusement rides in this state.[7]

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[1] S. 616.242, F.S.
[2] *Id.*
[3] Florida Department of Agriculture and Consumer Services, Fair Rids Inspection, https://www.fdacs.gov/Business-Services/Fairs/Fair-Rides-Inspection (last visited Jan. 22, 2020).
[4] *Id.*
[5] *Id.*
[6] S. 616.242(4), F.S.
[7] *Id.*

There are no mandatory national safety standards for U.S. amusement rides, but the amusement ride industry has developed safety standards through the ASTM F-24 committee. The ASTM F-24 committee is responsible for standards related to amusement rides and devices. This includes waterslides, inflatables, go-karts, ziplines and challenge courses, trampoline courts, and a growing list of commercially-operated amusement experiences.[8]

Annual Permits

Amusement rides may not operate without an annual permit. To apply, an owner must submit to DACS a written application on a form prescribed by DACS rule, and include:

- The legal name, address, and primary place of business of the owner.
- A description, manufacturer's name, serial number, model number and, if previously assigned, the United States Amusement Identification Number of the amusement ride.
- A valid certificate of insurance for each amusement ride.
- An affidavit of compliance (AOC) that the amusement ride was inspected and in general conformance with the law and applicable rules.
    - The AOC must be executed by a professional engineer or a qualified inspector no earlier than 60 days before, but not later than, the date of filing of the application with DACS.
    - The owner is required to request inspection and permitting of the amusement ride within 60 days of the date of filing the application with DACS.
    - DACS is required to inspect and permit the amusement ride within 60 days after the filing of the application with DACS.
- If required, an affidavit of nondestructive testing dated and executed no earlier than 60 days before, but not later than, the date of the filing of the application with DACS.
    - The owner is required to request inspection and permitting of the amusement ride within 60 days of the date of filing the application with DACS.
    - DACS is required to inspect and permit the amusement ride within 60 days after the filing of the application with DACS.
- A request for inspection.[9]

Upon request, the owner must, at no cost to DACS, provide DACS with a copy of the manufacturer's current recommended operating instructions in the possession of the owner, the owner's operating fact sheet, and any written bulletins in the possession of the owner concerning the safety, operation, or maintenance of the amusement ride.[10]

An annual permit must be issued to the owner when a completed application has been received, the amusement ride has passed DACS inspection, and all applicable fees, as set by DACS rule,[11] have been paid.[12]

The annual permit:

- Is valid for 1 year from the date of issuance;
- Is not transferable; and
- Must be displayed on the amusement ride in a place that is visible to patrons.[13]

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[8] ASTM International, *Committee F24 on Amusement Rides and Devices*, https://www.astm.org/COMMITTEE/F24.htm (last visited Jan. 23, 2020).
[9] S. 616.242(5), F.S.
[10] *Id.*
[11] R. 5J-18.012, F.A.C.
[12] S. 616.242(5), F.S.
[13] *Id.*

Nondestructive Testing

In order to operate an amusement ride the owner must at all times have a current affidavit of nondestructive testing from a professional engineer or qualified inspector. The affidavit provides that the amusement ride has undergone nondestructive testing for metal fatigue at least annually.[14] Nondestructive testings must be performed by a technician who meets the national standards for amusement rides provided in DACS rule.[15]

Nondestructive testing for metal fatigue must include visual and nonvisual testing, and can be conducted more often than annually, if required by any rule adopted under this section, the manufacturer of the amusement ride, or the professional engineer or qualified inspector executing the affidavit of nondestructive testing.[16]

An affidavit of nondestructive testing must provide:

- That the amusement ride was inspected in person by the affiant.
- That all nondestructive testing requirements are current.
- That the nondestructive testing was performed by a qualified nondestructive testing technician.
- The components of the amusement ride for which the manufacturer has recommended or required nondestructive testing.
- The type of nondestructive testing required or recommended by the manufacturer.
- The frequency of the nondestructive testing required or recommended by the manufacturer.
- The components of the amusement ride for which the affiant has recommended or required nondestructive testing.
- The type of nondestructive testing required or recommended by the affiant.
- The frequency of the nondestructive testing as required or recommended by the affiant.
- That visual nondestructive testing is adequate for the amusement ride to be in general conformance with the requirements of this section, and all applicable rules, if only visual nondestructive testing is required or recommended by either the manufacturer or the affiant.[17]

Nondestructive testing is not required for:

- Fun houses;
- Houses of mirrors;
- Haunted houses;
- Mazes;
- Wave pools;
- Wave-making devices;
- Kiddie pools;
- Slides that are fully supported by an earthen mound;
- Nonmotorized playground equipment that requires a manager; or
- Lazy-river-type nonmotorized floating carriers propelled by water.[18]

Inspections

In order to obtain an annual permit, amusement rides must be inspected by DACS and receive an inspection certificate. In addition, the following requirements must be met:

- Permanent amusement rides must be inspected semiannually and receive an inspection certificate; and

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[14] S. 616.242(6), F.S.
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*

- Temporary amusement rides must be inspected and receive an inspection certificate each time the ride is set up or moved to a new location in this state unless the ride is:
  - Used at a private event;
  - A simulator, the capacity of which does not exceed 16 persons; or
  - A kiddie ride used at a public event, provided that there are no more than three amusement rides at the event, none of the kiddie rides at the event exceeds a capacity of 12 persons, and the ride has an inspection certificate that was issued within the preceding 6 months.[19]

To obtain a DACS inspection, the owner must submit a written request to DACS, on a DACS prescribed form, and provide the following information:

- The legal name, address, and primary place of business of the owner.
- A description, manufacturer's name, serial number, model number, and the United States Amusement Identification Number, if previously assigned, of the amusement ride.
- For a temporary amusement ride, for each time the amusement ride is set up or moved to a new location, the date of first intended use at the new location and the address or a description of the new location.[20]

For permanent amusement rides, a request for inspection must be received by DACS at least 15 days before the:

- Owner's planned opening date; or
- Expiration of the prior inspection certificate.[21]

For temporary amusement rides, the request for inspection must be received by DACS each time the amusement ride is set up or moved to a new location at least 14 days before the date of first intended use at the new location.[22]

In both cases, if the request for inspection is received late, DACS is authorized to inspect the amusement ride and charge a late fee. In addition, if the owner fails to timely cancel a Request for Inspection, requests holiday or weekend inspections, or is required to have a replacement United States Amusement ID Program (USAID) plate issued by DACS, the owner may be charged an appropriate fee.[23]

Inspections are assigned on a first come, first served basis, and overflow requests will be scheduled on the closest date to the date for which the inspection was requested. Upon failure of an amusement ride to pass an inspection, the owner may request in writing a reinspection. DACS is required to reinspect the ride as soon as practical following receipt of the:

- Written request; and
- Applicable reinspection fees.[24]

Upon passage of inspection and payment of the applicable fee, DACS must issue an inspection certificate containing the following information:

- Date of inspection;
- Site of the inspection; and
- Name of the inspector.[25]

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[19] S. 616.242(7), F.S.
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*

Inspection certificates are valid only for the site stated on the certificate, for a period of not more than 6 months from the date of issuance, are not transferable, and must be displayed on the amusement ride at a place readily visible to patrons.[26]

According to DACS, during fiscal year 2018-2019, it inspected 8,689 amusement rides, and identified 19,249 deficiencies.[27]

Fees

DACS is required by rule to establish fees to cover the costs and expenditures associated with the fair rides inspection program, including all direct and indirect costs. If there is not sufficient general revenue appropriated by the Legislature, the industry is required to pay for the remaining cost of the program.[28]

Fees must be deposited in the General Inspection Trust Fund. Any owner of an amusement ride who has not paid all the fees required under this section or who has any unpaid fine outstanding under this section are prohibited from operating any amusement ride in this state until the fees and fines have been paid to DACS.[29]

DACS has adopted the following fees:[30]

Annual permit for any amusement ride	$500.00
Annual permit for any bungy jump	$500.00
Inspection fee for each inspection of a kiddie amusement ride	$45.00
Inspection fee for each inspection of a non-kiddie amusement ride	$90.00
Inspection fee for each inspection of a super amusement ride	$175.00
Inspection fee per go kart, in addition to the track inspection fee	$10.00
Reinspection fee (return to site)	$500.00
Reinspection fee (return on-site)	$100.00
Fee to replace a lost U.S. Amusement Identification (USAID) plate	$100.00
Fee per amusement ride for late inspection request	$100.00
Fee per amusement ride for failure to cancel inspection request	$100.00
Additional fee per amusement ride for inspection on weekend or state holiday	$75.00

Insurance

In order to obtain a permit to operate an amusement ride in Florida, the ride owner must obtain injury liability insurance in the following amounts:

- One million dollars minimum per occurrence; and
- One million dollars in the aggregate.[31]

The policies must be procured from an insurer that is:

- Licensed to transact business in this state; or
- Approved as a surplus lines insurer.[32]

The insurance requirements do not apply to a governmental entity that is covered by the provisions of s. 768.28(16), F.S., which authorizes the state and its agencies and subdivisions to be:

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[26] *Id.*
[27] The Florida Department of Agriculture and Consumer Services, *Bureau of Fair Rides Inspection Statistical Data*, Inspection/Deficiency Statistics.
[28] S. 616.242(8), F.S.
[29] *Id.*
[30] R. 5J-18.012, F.A.C.
[31] S. 616.242(8), F.S.
[32] *Id.*

- Self-insured,
- Enter into risk management programs,
- Purchase liability insurance for whatever coverage they may choose, or
- Have any combination thereof.[33]

Exemptions

The regulations related to amusement rides do not apply to the following:

- Permanent facilities that employ at least 1,000 full-time employees and that maintain full-time, in-house safety inspectors;
- Any playground operated by a school, local government, or business licensed under chapter 509, F.S., if the playground is an incidental amenity and the operating entity is not primarily engaged in providing amusement, pleasure, thrills, or excitement;
- Museums or other institutions principally devoted to the exhibition of products of agriculture, industry, education, science, religion, or the arts;
- Conventions or trade shows for the sale or exhibit of amusement rides if there are a minimum of 15 amusement rides on display or exhibition, and if any operation of such amusement rides is limited to the registered attendees of the convention or trade show;
- Skating rinks, arcades, laser or paint ball war games, bowling alleys, miniature golf courses, mechanical bulls, inflatable rides, trampolines, ball crawls, exercise equipment, jet skis, paddle boats, airboats, helicopters, airplanes, parasails, hot air or helium balloons whether tethered or untethered, theatres, batting cages, stationary spring-mounted fixtures, rider-propelled merry-go-rounds, games, side shows, live animal rides, or live animal shows;
- Go-karts operated in competitive sporting events if participation is not open to the public;
- Nonmotorized playground equipment that is not required to have a manager;
- Coin-actuated amusement rides designed to be operated by depositing coins, tokens, credit cards, debit cards, bills, or other cash money and which are not required to have a manager, and which have a capacity of six persons or less;
- Motorsports facilities described in s. 549.09(1)(a), F.S., when such facilities are operating cars, trucks, or motorcycles only;
- Battery-powered cars or other vehicles that are designed to be operated by children seven years of age or under and that cannot exceed a speed of four miles per hour;
- Mechanically driven vehicles that pull train cars, carts, wagons, or other similar vehicles, that are not confined to a metal track or confined to an area but are steered by an operator and do not exceed a speed of 4 miles per hour;
- Water-related amusement rides operated by a business licensed under chapter 509, F.S., if the water-related amusement ride is an incidental amenity and the operating business is not primarily engaged in providing amusement, pleasure, thrills, or excitement and does not offer day rates;
- Amusement rides at a private, membership-only facility if the amusement ride is an incidental amenity and the facility is not open to the general public; is not primarily engaged in providing amusement, pleasure, thrills, or excitement; and does not offer day rates; and
- Nonprofit permanent facilities registered under chapter 496, F.S., which are not open to the general public.[34]

DACS is authorized to establish by rule exemptions from the regulations on amusement rides for "nonmotorized or human-powered amusement rides or coin-actuated amusement rides."[35]

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[33] *Id.*
[34] S. 616.242(10), F.S.
[35] *Id.*

Inspection Standards

Amusement rides are required to adhere to the following inspection standards:

- All mechanical, structural, and electrical components that affect patron safety must be in good working order.
- All control devices, speed-limiting devices, brakes, and safety equipment designated by the manufacturer must be in good working order.
- Parts must be properly aligned, and not be bent, distorted, cut, or otherwise injured to force a fit.
- Parts requiring lubrication must be lubricated in the course of assembly. Fastening and locking devices must be installed where required for safe operation.
- Before being used by the public, an amusement ride must be placed or secured with blocking, cribbing, outriggers, guys, or other means so as to be stable under all operating conditions.
- Areas in which patrons may be endangered by the operation of an amusement ride must be fenced, barricaded, or otherwise effectively guarded against inadvertent contact.
- Machinery used in or with an amusement ride must be enclosed, barricaded, or otherwise effectively guarded against inadvertent contact.
- An amusement ride powered so as to be capable of exceeding its maximum safe operating speed must be provided with a maximum-speed-limiting device.
- The interior and exterior parts of all patron-carrying amusement rides with which a patron may come in contact must be smooth and rounded and free from sharp, rough, or splintered edges and corners, with no projecting studs, bolts, screws, or other projections which might cause injury.
- Signs that advise or warn patrons of age restrictions, size restrictions, health restrictions, weight limitations, or any other special consideration or use restrictions required or recommended for the amusement ride by the manufacturer must be prominently displayed at the patron entrance of each amusement ride.
- All amusement rides must comply with the section of law governing amusement rides and related rules.[36]

Major Modifications

After an amusement ride has undergone a major modification, and prior to the time it is placed in operation, a Florida Licensed professional engineer must certify that the amusement ride is in compliance with the entire section of law governing amusement ride safety, and all related rules.[37]

Entry for Inspections

Authorized DACS employees may enter unannounced and inspect amusement rides at any time in a reasonable manner. Such employees are authorized to:

- Question any owner or manager;
- Inspect, investigate, photograph, and sample all pertinent places, areas, and devices; and
- Conduct all appropriate tests including nondestructive testing.[38]

DACS is authorized to impose fees for unannounced inspections and recover the cost of related tests.[39]

Reporting and Investigating Accidents and Defects

Accidents that the owner or manager have knowledge or, through the exercise of reasonable diligence should have knowledge, and for which a patron is transported to a hospital, as defined in chapter 395,

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[36] S. 616.242(11), F.S.
[37] S. 616.242(12), F.S.
[38] S. 616.242(13), F.S.
[39] *Id.*

F.S., must be reported by the owner or manager to DACS. Such reporting must be conducted by telephone within four hours after the accident, and followed up by a written report to DACS within 24 hours after the accident.

Any mechanical, structural, or electrical defects affecting patron safety for which an amusement ride is closed to patron use for more than four hours must be reported by the owner or manager to DACS by telephone or facsimile within eight hours after the closing of the ride. A written report of the closing must be filed by the owner or manager with DACS within 24 hours after the ride closes.

In addition, DACS is authorized to impound amusement rides that have:

- Been involved in an accident for which a patron is transported to a hospital as defined in chapter 395, F.S.;
- A mechanical, structural, or electrical defect affecting patron safety.

In cases of impoundment, DACS is authorized to impound any other amusement ride of a similar make and model, and perform all necessary tests to determine the cause of the accident, defect, or safety of the ride and any other ride of a similar make and model. The ride owners are responsible for the cost of impoundment and relating testing.[40]

According to DACS, in fiscal year 2018-2019, there were 191 amusement ride accidents reported.[41]

Owner/Manager Inspections

Prior to opening each day of operation, and before any inspection by DACS, the owner or manager of an amusement ride is required to inspect and test the ride to ensure compliance with all requirements of the law governing amusement rides. Each inspection must be recorded on a form prescribed by DACS rule and signed by the person who conducted the inspection. [42]

In lieu of using the DACS form, an owner or manager may request approval of an alternative form, which must include at least the information required on the DACS form. Inspection records of the last 14 daily inspections must be:

- Kept on site by the owner or manager; and
- Made immediately available to DACS upon request.[43]

Employee Training

Owners or managers of amusement rides are required to:

- Maintain a record of employee training for each employee who is authorized to operate, assemble, disassemble, transport, or conduct maintenance on an amusement ride; and
- Certify that each employee is trained on the amusement ride for which the employee is responsible.[44]

The training record must be kept on site by the owner or manager and made immediately available to DACS upon request. In lieu of using the DACS form, the owner or manager may request approval of an alternative form.[45]

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[40] S. 616.242(14), F.S.
[41] The Florida Department of Agriculture and Consumer Services, *Bureau of Fair Rides Inspection Statistical Data*, Inspection/Deficiency Statistics.
[42] S. 616.242(15), F.S.
[43] *Id.*
[44] S. 616.242(16), F.S.
[45] *Id.*

Training is prohibited when an amusement ride is open to the public, unless the training is conducted under the supervision of an employee who is trained in the operation of that ride.[46]

Enforcement and Penalties

DACS has the authority to deny, suspend for up to one year, or revoke, any permit or inspection certificate. In addition, DACS may impose an administrative fine pursuant to s. 570.971, F.S., not to exceed $2,500 per violation, for each day the violation exists, against the owner of the amusement ride if DACS finds that:

- An amusement ride has operated or is operating:
  - With a mechanical, structural, or electrical defect that affects patron safety, of which the owner or manager has knowledge, or, through the exercise of reasonable diligence, should have knowledge;
  - In a manner or circumstance that presents a risk of serious injury to patrons;
  - At a speed in excess of its maximum safe operating speed;
  - In violation of DACS rules or state law; or
  - In violation of an order of DACS or any court; or
- A manager in the course of his or her duties is under the influence of drugs or alcohol.[47]

DACS is required, in its order suspending a permit or inspection certificate, to specify the period during which the suspension is effective, which may not exceed 1 year. The permit or inspection certificate must remain suspended during the period, subject to any rescission or modification of the order by DACS, or modification or reversal by the court, prior to expiration of the suspension period.[48]

The owner of an amusement ride, whose permit or inspection certificate has been revoked by DACS, may not apply for another permit or inspection certificate for the amusement ride within 2 years after the date of the revocation. If judicial review is sought and a stay of the revocation is obtained, the owner may not apply for another permit or inspection certificate within two years after the final order of the court sustaining the revocation.[49]

During the period of suspension or revocation, the owner may not engage in or attempt to engage in any operation of the amusement ride for which a permit or inspection certificate is required.[50]

When a DACS imposed suspension period has expired, the owner may reapply for a new permit or inspection certificate by submitting a complete application to DACS.[51]

In addition, and notwithstanding the existence of any adequate remedy at law, DACS is authorized to bring an action to enjoin the violation of any provision, or rules adopted, under this section, in the circuit court of the county in which the violation occurs or is about to occur. Upon competent and substantial evidence presented by DACS, the court is required to immediately issue the temporary or permanent injunction sought by DACS without bond.[52]

In addition to the penalties, DACS is authorized to issue a letter of warning to the owner of the ride specifying the violation and requiring immediate corrective action.[53]

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[46] *Id.*
[47] S. 616.242(19), F.S.
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] *Id.*

Any person who knowingly violates any of the provisions of the regulations governing amusement rides commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, F.S.[54]

According to DACS, during fiscal year 2018-2019, it issued 169 stop operation orders, and 801 out-of-service tags.[55]

Consumer Product Safety Commission

The Consumer Product Safety Commission (Commission) is charged with protecting the public from unreasonable risks of injury or death associated with the use of the thousands of types of consumer products under the agency's jurisdiction. The Consumer Product Safety Act (Act)[56] authorizes the Commission to investigate serious accidents involving portable carnival rides, inflatables, and go-karts. Amusement rides operated at permanent parks ("permanently fixed to a site") are exempt from compliance with the Act.[57]

Ride manufacturers or owner/operators are required to notify the Commission if they obtain information which reasonably supports the conclusion that a portable amusement ride, inflatable device, go-kart or other non-exempt amusement device:

- Fails to comply with a consumer product safety standard or banning regulation established by the omission or a voluntary consumer product safety standard upon which the Commission has relied under section 9 of the CPSA;
- Contains a defect which could create a substantial product hazard described in section 15(a)(2) of the CPSA; or
- Creates an unreasonable risk of serious injury or death.[58]

The Commission does not provide for an inspection program.

Other States

According to a consumer safety organization, Safeparks.org, the research of amusement ride laws in 50 states found the following:[59]

Degree of Oversight	Number of States
Comprehensive Government Oversight	20 states (including Florida)
Partial Government Oversight	12 states
Private Sector Oversight	9 states
No State Agency with Jurisdiction	8 states
Electrical Inspections Only	1 state

Proposed Changes

The bill makes several changes to the framework of regulations that govern the safety standards for amusement rides in the state.

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[54] *Id.*

[55] The Florida Department of Agriculture and Consumer Services, *Bureau of Fair Rides Inspection Statistical Data*, Inspection/Deficiency Statistics.

[56] 15 U.S.C. ch. 47 § 2051 et seq.

[57] Safeparks, *United States Consumer Product Safety Commission*, https://saferparks.org/agency/united-states-consumer-product-safety-commission (last visited Jan. 22, 2020).

[58] *Id.*

[59] Safeparks, *U.S. Federal and State Amusement Ride Regulation*, https://saferparks.org/regulation/agencies (last visited Jan. 22, 2020).

Managers

The bill includes amusement ride "managers" as a responsible party for ensuring compliance with state law governing safety standards for amusement rides.

Inspection and Permitting Process

The bill streamlines the permitting application and issuance process, removes the requirement for an inspection certificate, and sets deadlines for inspections by DACS prior to the issuance of a permit for operation. Additionally, the bill adds an exemption from DACS inspection for permanent rides that prove they were inspected and certified by an accredited trade organization.

The bill separates the permitting process for permanent amusement rides from temporary amusement rides, and distinguishes the two by:

- Establishing that a permanent ride permit is valid for 1 year, and a temporary ride permit is valid for 6 months, or until the temporary ride is moved; and
- Requiring permanent ride and temporary ride applications for permit to be submitted 15 and 14 days prior to their opening dates, respectively.

The bill defines an "amusement ride event" as an event where an amusement ride is operated at a specific location and date as listed on an annual permit application or on a temporary amusement ride permit application.

The bill defines a "temporary amusement ride permit" as the United States Amusement Identification Number and the decal issued by DACS, which signify that the temporary amusement ride has been permitted by DACS.

In order to align inspection dates at permanent facilities, the bill authorizes DACS to shorten or extend the 6-month inspection interval. Fees for rides with shortened inspection intervals must be prorated, and extensions of inspection intervals may not exceed two months.

The bill requires a ride's operating instructions, fact sheet, and any bulletins concerning the ride to be submitted to DACS in electronic format as part of the permitting process.

Fees

The bill clarifies DACS authority to establish by rule fees to cover the costs and expenditures associated with the fair rides inspection program, and the requirement that the industry pay the remaining cost of the program if there is not sufficient general revenue appropriated by the Legislature.

Exemptions

The bill broadens DACS's rulemaking authority to establish exemptions for types of rides from the amusement ride regulations by deleting the restriction that such exemptions only apply to nonmotorized or human-powered amusement rides or coin-actuated amusement rides.

The bill removes a blanket exemption from the amusement ride regulations for museums or other institutions principally devoted to the exhibition of products of agriculture, industry, education, science, religion, or the arts. As a result, these institutions would be required to comply with applicable licensing and permitting requirements, including being subject to fees and fines.

Adoption of Standards

The bill conforms state standards that DACS is required to adopt by rule for testing and materials, electric code, and fire protection, to recently revised national standards.

Inspection Standards

The bill clarifies inspection standards and revises the requirement that an amusement ride be inspected by DACS in accordance with the statutory standards, and instead provides that rides presented for inspection as ready for operation must comply with the standards.

Operating Requirements

The bill requires ride owners and operators to display DACS's contact information for ride patrons' benefit. Specifically, a sign containing the DACS toll-free number and informing for patrons to contact DACS with complaints or concerns regarding the operation of amusement rides must be posted in a manner conspicuous to the public at each entrance of an amusement ride event, unless such facility or event is exempt. The bill requires DACS to prescribe by rule specifications for such signs.

After an amusement ride has undergone a major modification and before it is placed in operation, the bill requires upon request, the owner or manager of the amusement ride to provide to DACS a copy of the required certification and all evidence used by the professional engineer to prepare the certification.

The bill removes the four-hour threshold after which the owner or manager must report a mechanical, structural, or electrical defect, and includes "failures" to the types of electrical deficiencies that can trigger a reporting requirement.

In addition, the bill requires the affected ride to remain closed until repairs are reviewed and the ride is released for operation by DACS.

Enforcement

The bill increases the limit for administrative fines from "not to exceed $2,500" to "not to exceed $10,000" per violation. The bill adds as a violation the presentment of a ride for inspection by DACS that has a defect that is known, or should be known. The bill adds an additional administrative fine of $10,000, or more, for any violation resulting in serious injury or death to a patron.

Additionally, the bill provides DACS with certain investigative and subpoena powers for application in its investigations performed under the amusement ride law. A person's refusal or failure to testify pursuant to such subpoena is guilty of a second-degree misdemeanor, punishable as provided in s. 775.083.

Specifically, in any examination or investigation conducted by DACS or a DACS appointed examiner, DACS is authorized to:

- Administer oaths,
- Examine and cross-examine witnesses,
- Receive oral and documentary evidence,
- Subpoena witnesses,
- Compel witness attendance and testimony, and
- Require by subpoena the production of documents or other evidence that it deems relevant to the inquiry.

If any person refuses to comply with the subpoena or to testify as to any relevant matter, the Circuit Court of Leon County, or the circuit court of the county in which such examination or investigation is being conducted or the county in which such person resides pursuant to an application filed with DACS, is authorized to issue an order requiring such person to comply with the subpoena and to testify. Failure to obey an order may be punished by the court as contempt.

Subpoenas must be served, and proof of such service must be made, in the same manner as if issued by a circuit court. Witness fees and mileage, if claimed, must be allowed as they are for testimony in a

circuit court. Any person willfully testifying falsely under oath as to any matter material to any such examination, investigation, or hearing commits perjury will be punished accordingly.

Any person who asks to be excused from attending or testifying or from producing any documents or other evidence in connection with any examination, hearing, or investigation on the ground that the testimony or evidence required may tend to incriminate him or her or subject him or her to a penalty or forfeiture and who, nevertheless, is directed by DACS and the Department of Legal Affairs to give such testimony or produce such evidence must comply with that directive. The person may not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may have testified or produced evidence, and no testimony given or evidence produced may be received against him or her in any criminal action, investigation, or proceeding.

However, a person testifying is not exempt from prosecution or punishment for any perjury committed by him or her in such testimony, and the testimony or evidence given or produced is admissible against him or her in any criminal action, investigation, or proceeding concerning such perjury; and the person is not exempt from the refusal, suspension, or revocation of any license, permission, or authority conferred or to be conferred pursuant to this chapter.

Any such individual may execute, acknowledge, and file with DACS a statement expressly waiving such immunity or privilege with respect to any transaction, matter, or thing specified in such statement; and upon such filing, the testimony of such individual or such evidence in relation to such transaction, matter, or thing may be received or produced before any judge or justice, court, tribunal, grand jury, or otherwise; and, if so received or produced, such individual is not entitled to any immunity or privileges on account of any testimony he or she may so give or evidence so produced.

B. SECTION DIRECTORY:

Section 1. Amends s. 616.242, F.S., relating to amusement rides.

Section 2. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   According to DACS, it will receive revenue from approximately 21 facilities that will lose their exemption for inspections in a total amount of approximately $14,280.[60]

2. Expenditures:

   According to DACS, it will incur expenditures based on the cost of the safety signage at each event, including 1,622 events times three signs per event times $0.25 per sign, which would be a total cost to DACS of approximately $1,220.[61]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

[60] Florida Department of Agriculture and Consumer Services, agency Analysis of 2020 House Bill 1275, p. 2 (Jan. 17, 2020).
[61] *Id.*

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be a negative fiscal impact on the businesses that will no longer be exempt from the regulations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill revises the following provision relating to DACS rulemaking:

- Revises national standards that must be adopted by DACS;
- Creates a separate application and permitting process for permanent and temporary amusement ride permits;
- Requires DACS to adopt rules detailing signage to be posted at each amusement ride event;
- Requires DACS to adopt rules specifying acceptable trade organizations that may inspect certain permanent amusement rides;
- Deletes the inspection certificate process and all related rulemaking authority; and
- Broadens rulemaking authority to establish exemptions for types of rides from the amusement ride regulation.

There is sufficient rulemaking authority in the bill and current law.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to amusement rides; amending s. 616.242, F.S.; requiring amusement ride managers to meet certain requirements; defining and redefining terms; revising standards for rules adopted by the Department of Agriculture and Consumer Services relating to amusement rides; revising provisions for permanent amusement ride annual permits; providing for temporary amusement ride permits; revising provisions for nondestructive testing and department testing of amusement rides; removing the exemption from safety standards for certain museums and institutions; removing the limitation on the authority of the department to establish exemptions from safety standards; revising inspection standards for amusement rides; directing the department to prescribe by rule specified signage to be posted at amusement ride events; revising requirements for compliance certifications after major modifications to amusement rides; revising requirements for amusement ride inspections by owners and managers; providing procedures for the introduction and examination of witnesses and evidence in examinations and investigations conducted by the department; revising civil penalties; providing an effective date.

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

Section 1. Section 616.242, Florida Statutes, is amended to read:

616.242 Safety standards for amusement rides.—

(1) OWNER AND MANAGER RESPONSIBILITIES ~~RESPONSIBILITY~~.—The owner and the manager of an amusement ride, and each amusement ride, must meet at all times the requirements of this section and any rules adopted hereunder ~~thereunder~~.

(2) SCOPE.—This section applies to all amusement rides within this state unless exempt under subsection (11) ~~(10)~~.

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

(a) "Amusement ride" means any building, structure, or mechanical device or combination thereof through which a patron moves, walks, or is carried or conveyed on, along, around, over, or through a fixed or restricted course or within a defined area for the purpose of giving its patrons amusement, pleasure, thrills, or excitement.

(b) "Amusement ride event" means an event where an amusement ride is operated at a specific location and date as listed on an annual permit application or on a temporary amusement ride permit application.

(c) ~~(b)~~ "Annual permit" means the United States Amusement Identification Number and the ~~numbered and dated~~ decal issued by

the department, which signify that the permanent amusement ride has been permitted by the department.

(d) ~~(c)~~ "Bungy operation" means an amusement ride that uses ~~which utilizes~~ as a component a bungy cord, which is an elastic rope made of rubber, latex, or other elastic-type ~~elastic type~~ materials, whether natural or synthetic.

(e) ~~(d)~~ "Go-kart" means an amusement ride vehicle controlled or driven by patrons and specifically designed for and run on a fixed course.

~~(e) "Inspection certificate" means the document issued by the department, which indicates that the amusement ride has undergone a recurring inspection by the department as required by this section.~~

(f) "Kiddie ride" means an amusement ride designed primarily for use by patrons up to 12 years of age.

(g) "Kiddie train" means a train designed as a kiddie ride which is operated on a flat surface or flat track, carries no more than 14 patrons, and does not exceed a speed of 3 miles per hour.

(h) "Major modification" means any change in ~~either~~ the structural or operational characteristics of an ~~the~~ amusement ride which will alter its performance from that specified in the manufacturer's design criteria.

(i) "Manager" means a person having possession, custody, or managerial control of an amusement ride, whether as owner,

lessee, agent, operator, attendant, or otherwise.

(j) "Nondestructive testing" is the development and application of technical methods, including, but not limited to, radiographic, magnetic particle, ultrasonic, liquid penetrant, electromagnetic, neutron radiographic, acoustic emission, visual, and leak testing, to examine materials or components in ways that do not impair their future usefulness and serviceability in order to detect, locate, measure, and evaluate discontinuities, defects, and other imperfections; to assess integrity, properties, and composition; and to measure geometrical characters.

(k) "Owner" means the person exercising ultimate dominion and control over an amusement ride.

(l) "Patron" means any person who is in the immediate vicinity of an amusement ride, getting on or off, or entering or exiting an amusement ride, or using an amusement ride. The term does not include employees, agents, or servants of the owner while they are engaged in the duties of their employment.

(m) "Permanent amusement ride" means an amusement ride that is not regularly relocated.

(n) "Permanent facility" means a location or place from which amusement rides are not regularly relocated and at which such rides operate as a lasting part of the premises.

(o) "Private event" means an event that is not open to the general public and for which ~~where no~~ admission is not charged.

(p) "Professional engineer" means a person who holds a valid license as a professional engineer issued by the Department of Business and Professional Regulation or by an equivalent licensing body in another state.

(q) "Qualified inspector" means an employee or agent of an insurance underwriter of an amusement ride who documents to the department in a manner established by department rule ~~of the department~~ the following qualifications:

1. A minimum of 5 years' ~~years~~ experience in the amusement ride field, at least 2 years of which were involved in actual amusement ride inspection with a manufacturer, government agency, park, carnival, or insurance underwriter;

2. The completion of 32 hours per year of continuing education at a school approved by department rule ~~of the department~~, which includes inservice industry or manufacturer updates and seminars; and

3. At least 80 hours of formal education during the past 5 years from a school approved by department rule ~~of the department~~ for amusement ride safety. Nondestructive-testing training, as determined by department rule ~~of the department~~, may be substituted for up to one-half of the 80 hours of education.

(r) "Simulator" means any amusement ride that is a self-contained unit requiring little or no assembly and that uses a motion picture simulation, along with a mechanical movement, to

simulate activities that provide amusement or excitement for the patron.

(s) "Temporary amusement ride" means an amusement ride that is regularly relocated, with or without disassembly.

(t) "Temporary amusement ride permit" means the United States Amusement Identification Number and the decal issued by the department, which signify that the temporary amusement ride has been permitted by the department.

(u) ~~(t)~~ "Water park" means a permanent facility with one or more amusement rides that totally or partially immerse a patron in water.

(4) ADOPTION OF STANDARDS; RULES.—

(a) The department shall adopt by rule standards for amusement rides which are the same as or similar to the following national standards:

1. ASTM International ~~American Society for Testing and Materials~~ Committee F24 ~~F-24~~ Standards on Amusement Rides and Devices.

2. The National Electric Code Handbook~~, Article 525~~.

3. National Fire Protection Association standards ~~Code 101 (chapters 8-4.6 and 9-4.6)~~.

~~4. ASTM Standards: E543 Practice for Determining the Qualification of Nondestructive Testing Agencies.~~

~~5. ASNT Document Recommended Practice SNT-TC-1A Personnel Qualification and Certification in Nondestructive Testing.~~

(b) The department may adopt rules necessary to effectuate the statutory duties of the department in the interest of the public health, safety, and welfare and to promote patron safety in the design, construction, assembly, disassembly, maintenance, and operation of amusement rides in this state.

(c) The Legislature finds that go-karts, amusement rides at water parks, and bungy operations are amusement rides that, because of their unique nature, pose safety risks to patrons distinct from other amusement rides. Therefore, the department shall adopt rules regulating their safe use and operation and establish safety standards and inspection requirements in addition to those required by this section or other department rule ~~of the department~~.

(d) The Legislature finds that, as a result of accidents or other unforeseen events, circumstances may arise requiring additional safety standards for the protection of patrons of amusement rides.~~, and~~ Therefore, the department may adopt rules to address the circumstances that may arise following an accident or unforeseen event.

(5) PERMANENT AMUSEMENT RIDE ANNUAL PERMIT.—

(a) A permanent ~~An~~ amusement ride may not be operated without a current annual permit.

(b) To apply for an annual permit, an owner or manager must submit to the department a written application on a form prescribed by department rule ~~of the department~~, which must

include the following:

1. The legal name, address, and primary place of business of the owner or manager, as applicable.

2. A description, manufacturer's name, serial number, model number and, if previously assigned, the United States Amusement Identification Number of the amusement ride.

3. A valid certificate of insurance for each amusement ride.

4. If required under subsection (7), an annual affidavit of compliance and nondestructive testing certifying that the amusement ride was inspected in person by the affiant and that the amusement ride is in general conformance with the requirements of this section and all applicable department rules ~~adopted by the department~~. The affidavit must have been ~~be~~ executed by a professional engineer or a qualified inspector within the last calendar year ~~no earlier than 60 days before, but not later than, the date of the filing of the application with the department. The owner shall request inspection and permitting of the amusement ride within 60 days of the date of filing the application with the department. The department shall inspect and permit the amusement ride within 60 days after filing the application with the department~~.

~~5. If required by subsection (6), an affidavit of nondestructive testing dated and executed no earlier than 60 days before, but not later than, the date of the filing of the~~

~~application with the department. The owner shall request inspection and permitting of the amusement ride within 60 days of the date of filing the application with the department. The department shall inspect and permit the amusement ride within 60 days after filing the application with the department.~~

~~6. A request for inspection.~~

5.~~7.~~ ~~Upon request,~~ The owner or manager shall, at no cost to the department, provide the department an electronic ~~a~~ copy of the manufacturer's current recommended operating instructions ~~in the possession of the owner~~, the owner's operating fact sheet, and any written bulletins ~~in the possession of the owner~~ concerning the safety, operation, or maintenance of the amusement ride.

(c) An annual permit application must be received by the department at least 15 days before the planned opening date. If an application is received less than 15 days before the planned opening date or less than 15 days before the expiration of the previous permit, the department may inspect the amusement ride and charge a penalty as established by department rule.

(d)~~(c)~~ An annual permit must be issued by the department to the owner or manager of an amusement ride when a completed application has been received, the amusement ride has passed the department's inspection, and all applicable fees, as set by department rule ~~of the department~~, have been paid.

(e)~~(d)~~ The annual permit is valid for 1 year after ~~from~~

the date of issue and is not transferable.

(f) ~~(e)~~ The annual permit must be displayed in an accessible location on the amusement ride ~~in a place visible to patrons of the amusement ride~~.

(g) ~~(f)~~ Each go-kart track at the same permanent facility is considered a separate amusement ride.

(h) ~~(g)~~ Amusement rides at water parks which operate from the same deck or level are considered one amusement ride.

(6) TEMPORARY AMUSEMENT RIDE PERMIT.—

(a) A temporary amusement ride may not be operated without a current permit.

(b) To apply for a permit, an owner or manager must submit to the department a written application on a form prescribed by department rule, which must include the following:

1. The legal name, address, and primary place of business of the owner or manager, as applicable.

2. A description, manufacturer's name, serial number, model number and, if previously assigned, the United States Amusement Identification Number of the amusement ride.

3. A valid certificate of insurance for each amusement ride.

4. If required under subsection (7), an affidavit of compliance and nondestructive testing certifying that the amusement ride was inspected in person by the affiant and that the amusement ride is in general conformance with the

requirements of this section and all applicable department rules. The affidavit must be executed by a professional engineer or a qualified inspector.

5. The owner or manager shall, at no cost to the department, provide the department an electronic copy of the manufacturer's current recommended operating instructions, the operating fact sheet, and any written bulletins concerning the safety, operation, or maintenance of the amusement ride.

(c) A temporary amusement ride permit application must be received by the department each time the amusement ride is relocated, with or without disassembly, at least 14 days before the date of the ride's first intended use at the new location. If the permit application is received less than 14 days before the date of the ride's first intended use at the new location, the department may inspect the amusement ride and charge a penalty, as set by department rule.

(d) The department must issue a permit to the owner or manager of an amusement ride when a completed application has been received, the amusement ride has passed the department's inspection, and all applicable fees, as set by department rule, have been paid.

(e) The permit is valid for 6 months after the date of issue or until the ride is relocated, with or without disassembly, and is not transferable.

(f) The permit must be displayed in an accessible location

on the amusement ride.

(7)~~(6)~~ NONDESTRUCTIVE TESTING; ANNUAL AFFIDAVIT; EXEMPTIONS.—

(a) Except as provided in paragraph (d), an owner or manager may not operate an amusement ride unless the owner or manager ~~has~~ at all times has a current affidavit of nondestructive testing from a professional engineer or qualified inspector that the amusement ride has undergone nondestructive testing for metal fatigue at least annually. The nondestructive testing for metal fatigue must be conducted more often than annually~~,~~ if required by any rule adopted under this section, by the manufacturer of the amusement ride, or by the professional engineer or qualified inspector executing the affidavit of nondestructive testing. The nondestructive testing for metal fatigue must consist at least of visual nondestructive testing, as well as~~; in addition,~~ nonvisual nondestructive testing for metal fatigue, which must be conducted on the components of the amusement ride as required by any rule adopted under this section, by the manufacturer of the amusement ride, or by the professional engineer or qualified inspector executing the affidavit of nondestructive testing.

(b) Nondestructive testings must be performed by a technician who meets the requirements prescribed by department rule ~~of subparagraphs (4)(a)4. and 5~~.

(c) An affidavit of nondestructive testing must state:

1. That the amusement ride was inspected in person by the affiant.

2. That all nondestructive testing requirements are current.

3. That the nondestructive testing was performed by a qualified nondestructive testing technician.

4. The components of the amusement ride for which the manufacturer has recommended or required nondestructive testing.

5. The type of nondestructive testing required or recommended by the manufacturer.

6. The frequency of the nondestructive testing required or recommended by the manufacturer.

7. The components of the amusement ride for which the affiant has recommended or required nondestructive testing.

8. The type of nondestructive testing required or recommended by the affiant.

9. The frequency of the nondestructive testing as required or recommended by the affiant.

10. That visual nondestructive testing is adequate for the amusement ride to be in general conformance with the requirements of this section~~,~~ and all applicable rules, only~~,~~ if ~~only~~ visual nondestructive testing is required or recommended by ~~either~~ the manufacturer or the affiant.

(d) Nondestructive testing is not required for fun houses, houses of mirrors, haunted houses, mazes, wave pools, wave-

making devices, kiddie pools, slides that are fully supported by an earthen mound, nonmotorized playground equipment that requires a manager, or lazy-river-type nonmotorized floating carriers propelled by water.

(8) ~~(7)~~ DEPARTMENT INSPECTIONS.—

(a) Except as provided in subparagraphs 1. and 2., in order to obtain an annual or a temporary amusement ride permit, an amusement ride must be inspected by the department.

1. A ~~in accordance with subsection (11) and receive an inspection certificate. In addition, each permanent amusement ride must be inspected semiannually by the department in accordance with subsection (11) and receive an inspection certificate, and each temporary amusement ride must be inspected by the department in accordance with subsection (11), and must receive an inspection certificate each time the ride is set up or moved to a new location in this state unless the~~ temporary amusement ride is exempt from the required inspection if it is:

a. ~~1.~~ Used at a private event;

b. ~~2.~~ A simulator, the capacity of which does not exceed 16 persons; or

c. ~~3.~~ A kiddie ride used at a public event, provided that not ~~there are no~~ more than three amusement rides are at the event, ~~none of~~ the kiddie rides at the event do not exceed ~~exceeds~~ a capacity of 12 persons, and the kiddie ride passed a department inspection and was issued a permit ~~has an inspection~~

~~certificate that was issued~~ within the preceding 6 months. The capacity of a kiddie ride shall be determined by department rule ~~of the department~~, unless the capacity of the ride has been determined and specified by the manufacturer. Any owner or manager of a kiddie ride operating under this exemption is responsible for ensuring that not ~~no~~ more than three amusement rides are operated at the event.

2.~~(b)~~ The required inspection may be waived for a permanent amusement ride if it was inspected and certified by an accredited trade organization as defined by department rule ~~To obtain a department inspection for an amusement ride, the owner must submit to the department on a form prescribed by rule of the department a written Request for Inspection~~. ~~The owner must provide the following information to the department:~~

~~1. The legal name, address, and primary place of business of the owner.~~

~~2. A description, manufacturer's name, serial number, model number, and the United States Amusement Identification Number, if previously assigned, of the amusement ride.~~

~~3. For a temporary amusement ride, for each time the amusement ride is set up or moved to a new location, the date of first intended use at the new location and the address or a description of the new location.~~

~~(c) For permanent amusement rides, the request for inspection must be received by the department at least 15 days~~

~~before the owner's planned opening date or at least 15 days before the expiration of the prior inspection certificate. If the request for inspection is received less than 15 days before the owner's planned opening date or less than 15 days before the expiration of the prior inspection certificate, the department may nevertheless inspect the amusement ride and charge a late fee, as set by rule of the department.~~

~~(d) For temporary amusement rides, the request for inspection must be received by the department for each time the amusement ride is set up or moved to a new location at least 14 days before the date of first intended use at the new location. If the request for inspection is received less than 14 days before the date of first intended use at the new location, the department may nevertheless inspect the amusement ride and charge a late fee, as set by rule of the department.~~

(b) ~~(e)~~ Inspections must ~~will~~ be assigned on a first-come, first-served ~~first come, first served~~ basis, and overflow requests must ~~will~~ be scheduled on the closest date to the date for which the inspection was requested.

(c) ~~(f)~~ Upon failure of an amusement ride to pass any department inspection, the owner or manager may request reinspection, which must ~~shall~~ be submitted in writing to the department on a form prescribed by department rule ~~of the department~~. The department shall reinspect the amusement ride as soon as practicable after ~~practical following~~ receipt of the

written request for reinspection and any applicable reinspection fees set by department rule ~~of the department~~. Inspections must ~~will~~ be assigned on a first-come, first-served ~~first-come, first-served~~ basis, and the overflow requests must ~~will~~ be scheduled on the closest date to the date for which the inspection was requested.

~~(g) If the amusement ride passes inspection and the owner pays the applicable fee set by rule of the department, the department shall issue an inspection certificate on a form prescribed by rule of the department.~~

~~(h) The inspection certificate must contain the date of inspection, the site of the inspection, and the name of the inspector.~~

~~(i) The inspection certificate is valid only for the site stated on the inspection certificate. The inspection certificate is valid for a period of not more than 6 months from the date of issuance, and is not transferable.~~

~~(j) The inspection certificate must be displayed on the amusement ride at a place readily visible to patrons of the amusement ride.~~

(d) ~~(k)~~ If the owner or manager fails to timely cancel a scheduled ~~Request for~~ inspection, requests holiday or weekend inspections, or is required to have a replacement USAID plate issued by the department, the owner or manager may be charged an appropriate fee to be set by department rule ~~of the department~~.

(e) In order to align inspection dates at permanent facilities, the department may shorten or extend the 6-month inspection interval. Fees for rides with shortened inspection intervals must be prorated. Extensions of inspection intervals may not exceed 2 months.

(9) ~~(8)~~ FEES.—

(a) The department shall ~~by rule~~ establish by rule fees to cover the costs and expenditures associated with the fair rides inspection program, including all direct and indirect costs. If the Legislature does not appropriate ~~there is not sufficient~~ general revenue sufficient to cover such costs and expenditures ~~appropriated by the Legislature~~, the industry shall pay ~~for~~ the remainder ~~remaining cost of the program~~. The fees must be deposited in the General Inspection Trust Fund.

(b) An ~~Any~~ owner or manager of an amusement ride who has not paid ~~all~~ the fees required under this section or who has any unpaid fine outstanding under this section may not operate any amusement ride in this state until the fees or ~~and~~ fines have been paid to the department.

(10) ~~(9)~~ INSURANCE REQUIREMENTS.—

(a) An owner or manager may not operate an amusement ride unless the owner or manager has in effect at all times of operation an insurance policy in an amount of at least $1 million per occurrence, $1 million in the aggregate, which insures the owner or manager of the amusement ride against

liability for injury to persons arising out of the use of the amusement ride.

(b) The policy must be procured from an insurer that is licensed to transact business in this state or that is approved as a surplus lines insurer.

(c) ~~The insurance requirements imposed under~~ This subsection does ~~do~~ not apply to a governmental entity that is covered under ~~by the provisions of~~ s. 768.28(16).

(11)~~(10)~~ EXEMPTIONS.—

(a) This section does not apply to:

1. Permanent facilities that employ at least 1,000 full-time employees and that maintain full-time, in-house safety inspectors. However ~~Furthermore~~, the permanent facilities must file an affidavit of the annual inspection with the department~~,~~ on a form prescribed by department rule ~~of the department~~. ~~Additionally,~~ The department ~~of Agriculture and Consumer Services~~ may consult annually with the permanent facilities regarding industry safety programs.

2. Any playground operated by a school, a local government, or a business licensed under chapter 509, if the playground is an incidental amenity and the operating entity is not primarily engaged in providing amusement, pleasure, thrills, or excitement.

~~3. Museums or other institutions principally devoted to the exhibition of products of agriculture, industry, education,~~

~~science, religion, or the arts.~~

3.~~4.~~ Conventions or trade shows for the sale or exhibit of amusement rides, if there are a minimum of 15 amusement rides on display or exhibition~~,~~ and if any operation of such amusement rides is limited to the registered attendees of the convention or trade show.

4.~~5.~~ Skating rinks~~;~~ arcades~~;~~ laser or paint ball war games~~;~~ bowling alleys~~;~~ miniature golf courses~~;~~ mechanical bulls~~;~~ inflatable rides~~;~~ trampolines~~;~~ ball crawls~~;~~ exercise equipment~~;~~ jet skis~~;~~ paddle boats~~;~~ airboats~~;~~ helicopters~~;~~ airplanes~~;~~ parasails~~;~~ hot air or helium balloons, whether tethered or untethered~~;~~ theatres~~;~~ batting cages~~;~~ stationary spring-mounted fixtures~~;~~ rider-propelled merry-go-rounds~~;~~ games~~;~~ side shows~~;~~ live animal rides~~;~~ or live animal shows.

5.~~6.~~ Go-karts operated in competitive sporting events if participation is not open to the public.

6.~~7.~~ Nonmotorized playground equipment that is not required to have a manager.

7.~~8.~~ Coin-actuated amusement rides designed to be operated by depositing coins, tokens, credit cards, debit cards, bills, or other cash money and which are not required to have a manager, and which have a capacity of six persons or less.

8.~~9.~~ Facilities described in s. 549.09(1)(a), when such facilities are operating only cars, trucks, or motorcycles ~~only~~.

9.~~10.~~ Battery-powered cars or other vehicles that are

designed to be operated by children 7 years of age or younger ~~under~~ and that cannot exceed a speed of 4 miles per hour.

10.~~11.~~ Mechanically driven vehicles that pull train cars, carts, wagons, or other similar vehicles~~;~~ that are not confined to a metal track or confined to an area but are steered by an operator; and that cannot ~~do not~~ exceed a speed of 4 miles per hour.

11.~~12.~~ A water-related amusement ride operated by a business licensed under chapter 509, if the water-related amusement ride is an incidental amenity and the operating business is not primarily engaged in providing amusement, pleasure, thrills, or excitement and does not offer day rates.

12.~~13.~~ An amusement ride at a private, membership-only facility if the amusement ride is an incidental amenity, and the facility is not open to the general public; is not primarily engaged in providing amusement, pleasure, thrills, or excitement; and does not offer day rates.

13.~~14.~~ A nonprofit permanent facility registered under chapter 496 which is not open to the general public.

(b) The department may~~, by rule,~~ establish by rule exemptions from this section ~~for nonmotorized or human-powered amusement rides or coin-actuated amusement rides~~.

(12)~~(11)~~ INSPECTION STANDARDS.—An amusement ride must conform to ~~and must be inspected by the department in accordance with~~ the following standards:

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(a) All mechanical, structural, and electrical components that affect patron safety must be in good working order.

(b) All control devices, speed-limiting devices, brakes, and safety equipment ~~designated by the manufacturer~~ must be in good working order.

(c) Parts must be properly aligned~~,~~ and ~~they~~ may not be bent, distorted, cut, or otherwise injured to force a fit. Parts requiring lubrication must be lubricated in the course of assembly. Fastening and locking devices must be installed when ~~where~~ required for safe operation.

(d) ~~Before being used by the public,~~ An amusement ride must be placed or secured with blocking, cribbing, outriggers, guys, or other means so as to be stable under all operating conditions.

(e) Areas in which patrons may be endangered by the operation of an amusement ride must be fenced, barricaded, or otherwise effectively guarded against inadvertent contact.

(f) Machinery used in or with an amusement ride must be enclosed, barricaded, or otherwise effectively guarded against inadvertent contact.

(g) An amusement ride powered so as to be capable of exceeding its maximum safe operating speed must be provided with a maximum-speed-limiting device.

(h) The interior and exterior parts of all patron-carrying amusement rides with which a patron may come in contact must be

smooth and rounded and free from sharp, rough, or splintered edges and corners, and from ~~with no~~ projecting studs, bolts, and screws~~,~~ or other projections that ~~which~~ might cause injury.

(i) Signs that advise or warn patrons of age restrictions, size restrictions, health restrictions, weight limitations, or any other special consideration or use restrictions required or recommended for the amusement ride by the manufacturer must ~~shall~~ be prominently displayed at the patron entrance of each amusement ride.

(j) All amusement rides presented for inspection as ready for operation or in operation must comply with this section and department rule ~~the rules adopted hereunder~~.

(k) A sign containing the toll-free number of the department and informing patrons that they may contact the department with complaints or concerns regarding the operation of amusement rides must be posted in a manner conspicuous to the public at each entrance of an amusement ride event, unless such facility or event is exempt under subsection (11). The department shall prescribe by rule specifications for such signs.

(13)~~(12)~~ MAJOR MODIFICATION.—After an amusement ride has undergone a major modification, and before ~~prior to~~ the time it is placed in operation, a professional engineer licensed by the state in which the certification is performed must certify that the amusement ride is in compliance with this section and

department rule ~~all rules adopted pursuant thereto~~. Upon request, the owner or manager of the amusement ride shall provide to the department a copy of the required certification and all evidence used by the professional engineer to prepare the certification.

(14)~~(13)~~ ENTRY FOR INSPECTION OR INVESTIGATION.—Upon presentation of identification, an authorized employee of the department may enter unannounced and inspect amusement rides at any time and in a reasonable manner and has the right to question any owner or manager; to inspect, investigate, photograph, and sample all pertinent places, areas, and devices; and to conduct or have conducted all appropriate tests including nondestructive testing. The department may impose fees for unannounced inspections and recover the cost of tests authorized by this subsection.

(15)~~(14)~~ REPORTING AND INVESTIGATION OF ACCIDENTS AND DEFECTS; IMPOUNDMENTS.—

(a) Any accident of which the owner or manager has knowledge or, through the exercise of reasonable diligence should have knowledge, and for which a patron is transported to a hospital, as defined in chapter 395, must be reported by the owner or manager to the department by telephone within 4 hours after the occurrence of the accident and must be followed up by a written report to the department within 24 hours after the occurrence of the accident.

(b) Any mechanical, structural, or electrical defects or failures affecting patron safety for which an amusement ride is closed to patron use ~~for more than 4 hours~~ must be reported by the owner or manager to the department by telephone or facsimile within 8 hours after the closing of the ride. A written report of the closing of the ride, on a form prescribed by department rule ~~of the department~~, must be filed by the owner or manager with the department within 24 hours after the closing of the amusement ride. The affected ride must remain closed until repairs are reviewed and the ride is released for operation by the department.

(c) The department may impound an amusement ride involved in an accident for which a patron is transported to a hospital as defined in chapter 395 or which has a mechanical, structural, or electrical defect affecting patron safety;~~, and~~ may impound any other amusement ride of a similar make and model;~~,~~ and may perform all necessary tests to determine the cause of the accident or the mechanical, structural, or electrical defect~~,~~ or to determine the safety of the amusement ride and any other amusement ride of a similar make and model. The cost of impounding the amusement ride and performing the necessary tests must be borne by the owner of the amusement ride.

(16)~~(15)~~ INSPECTION BY OWNER OR MANAGER.—Before opening on each day of operation and before any inspection by the department, the owner or manager of an amusement ride must

inspect and test each ~~the~~ amusement ride to ensure compliance with ~~all requirements of~~ this section. Each inspection must be recorded on a form prescribed by department rule ~~of the department~~ and signed by the person who conducted the inspection. In lieu of the form prescribed by department rule ~~of the department~~, the owner or manager may request approval of an alternative form that ~~if the alternative form~~ includes, at a minimum, the information required on the form prescribed by department rule ~~of the department~~. Inspection records of the last 14 daily inspections must be kept on site by the owner or manager and made immediately available to the department upon request.

(17) ~~(16)~~ TRAINING OF EMPLOYEES.—The owner or manager of an amusement ride shall maintain a record of employee training for each employee authorized to operate, assemble, disassemble, transport, or conduct maintenance on an amusement ride on a form prescribed by department rule ~~of the department~~. In lieu of the form prescribed by department rule ~~of the department~~, the owner or manager may request approval of an alternative form that ~~if the alternative form~~ includes, at a minimum, the information required on the form prescribed by department rule ~~of the department~~. The training record must be kept on site by the owner or manager and made immediately available to the department upon request. Training may not be conducted when an amusement ride is open to the public unless the training is

conducted under the supervision of an employee who is trained in the operation of that ride. The owner or manager shall certify that each employee is trained, as required by this section and any rules adopted thereunder, on the amusement ride for which the employee is responsible.

(18)~~(17)~~ PROHIBITIONS RELATED TO BUNGY OPERATIONS.—The following bungy operations are prohibited:

(a) A bungy operation conducted with balloons, blimps, helicopters, or other aircraft.

(b) Sand bagging, which is the practice of holding onto any object, including another person, while bungy jumping, for the purpose of exerting more force on the bungy cord to stretch it further, and then releasing the object during the jump causing the jumper to rebound with more force than could be created by the jumper's weight alone.

(c) Tandem or multiple bungy jumping.

(d) Bungy jumping from any bridge, overpass, or any other structure not specifically designed as an amusement ride.

(e) The practice of bungy catapulting or reverse bungy jumping.

(19)~~(18)~~ IMMEDIATE FINAL ORDERS.—

(a) An amusement ride that fails to meet the requirements of this section or pass the inspections required by this section;~~, or an amusement ride~~ that is involved in an accident for which a patron is transported to a hospital as defined in

chapter 395;~~,~~ or ~~an amusement ride~~ that has a mechanical, structural, or electrical defect that affects patron safety may be considered an immediate serious danger to the public health, safety, and welfare and, upon issuance of an immediate final order prohibiting patron use of the ride, may not be operated for patron use until it has passed a subsequent inspection by or at the direction of the department.

(b) An amusement ride of a similar make and model to an amusement ride described in paragraph (a) may be considered an immediate serious danger to the public health, safety, and welfare and, upon issuance of an immediate final order prohibiting patron use of the ride, may not be operated for patron use until it has passed a subsequent inspection by or at the direction of the department.

(20) WITNESSES AND EVIDENCE.—

(a) In any examination or investigation conducted by the department or by an examiner appointed by the department, the department may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, subpoena witnesses, compel witness attendance and testimony, and require by subpoena the production of documents or other evidence that it deems relevant to the inquiry.

(b) If any person refuses to comply with such subpoena or to testify as to any relevant matter, the Circuit Court of Leon County, or the circuit court of the county in which such

examination or investigation is being conducted or the county in which such person resides pursuant to an application filed with the department, may issue an order requiring such person to comply with the subpoena and to testify. Any failure to obey such an order of the court may be punished by the court as a contempt thereof.

(c) Subpoenas must be served, and proof of such service must be made, in the same manner as if issued by a circuit court. Witness fees and mileage, if claimed, must be allowed as they are for testimony in a circuit court.

(d) Any person willfully testifying falsely under oath as to any matter material to any such examination, investigation, or hearing commits perjury and shall be punished accordingly.

(e) Any person who asks to be excused from attending or testifying or from producing any documents or other evidence in connection with any examination, hearing, or investigation on the ground that the testimony or evidence required may tend to incriminate him or her or subject him or her to a penalty or forfeiture and who, nevertheless, is directed by the department and the Department of Legal Affairs to give such testimony or produce such evidence shall comply with that directive. The person may not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may have testified or produced evidence, and no testimony given or evidence

produced may be received against him or her in any criminal action, investigation, or proceeding. However, a person so testifying is not exempt from prosecution or punishment for any perjury committed by him or her in such testimony, and the testimony or evidence given or produced is admissible against him or her in any criminal action, investigation, or proceeding concerning such perjury; and the person is not exempt from the refusal, suspension, or revocation of any license, permission, or authority conferred or to be conferred pursuant to this chapter.

(f) Any such individual may execute, acknowledge, and file with the department a statement expressly waiving such immunity or privilege with respect to any transaction, matter, or thing specified in such statement; and upon such filing, the testimony of such individual or such evidence in relation to such transaction, matter, or thing may be received or produced before any judge or justice, court, tribunal, grand jury, or otherwise; and, if so received or produced, such individual is not entitled to any immunity or privileges on account of any testimony he or she may so give or evidence so produced.

(g) Any person who refuses or fails without lawful cause to testify relative to the affairs of any person, when subpoenaed and requested by the department to so testify, commits a misdemeanor of the second degree, punishable as provided in s. 775.083.

(21) ~~(19)~~ ENFORCEMENT AND PENALTIES.—

(a) The department may deny, suspend for a period not to exceed 1 year, or revoke any permit ~~or inspection certificate~~. In addition to denial, suspension, or revocation, the department may impose an administrative fine in the Class III ~~Class II~~ category pursuant to s. 570.971 not to exceed $10,000 ~~$2,500~~ for each violation, for each day the violation exists, against the owner or manager of the amusement ride if it finds that:

1. An amusement ride has operated or is operating:

a. With a mechanical, structural, or electrical defect that affects patron safety, of which the owner or manager has knowledge, or, through the exercise of reasonable diligence, should have knowledge;

b. In a manner or circumstance that presents a risk of serious injury to patrons;

c. At a speed in excess of its maximum safe operating speed;

d. In violation of this section or department ~~any~~ rule ~~adopted under this section~~; or

e. In violation of an order of the department or order of any court; ~~or~~

2. An owner, a manager, or an operator in the course of his or her duties is under the influence of drugs or alcohol; or

3. An amusement ride was presented for inspection as ready for operation with a mechanical, structural, or electrical

defect that affects patron safety, of which the owner or manager has knowledge or, through the exercise of reasonable diligence, should have knowledge.

(b) In addition to the administrative fine provided in paragraph (a), the department may impose an additional administrative fine in the Class IV category pursuant to s. 570.971 of $10,000 or more against the owner or manager if a violation resulted in serious injury or death to a patron.

(c) ~~(b) The department shall,~~ In its order suspending a permit ~~or inspection certificate~~, the department shall specify the period during which the suspension is effective, which~~; but such period~~ may not exceed 1 year. The permit must ~~or inspection certificate shall~~ remain suspended during the period so specified, subject, however, to any rescission or modification of the order by the department, or modification or reversal thereof by the court, before ~~prior to~~ expiration of the suspension period.

(d) ~~(c) The owner of an amusement ride,~~ If the permit ~~or inspection certificate~~ for the amusement ride has been revoked by the department, the owner or manager of such ride may not apply for another permit ~~or inspection certificate~~ for the amusement ride within 2 years after the date of such revocation. If judicial review is sought and a stay of the revocation is obtained, the owner or manager may not apply for another permit ~~or inspection certificate~~ within 2 years after the final order

of the court sustaining the revocation.

(e) ~~(d)~~ During the period of suspension or revocation of a permit ~~or inspection certificate~~, the owner or manager may not engage in or attempt to engage in any operation of the amusement ride for which a permit ~~or inspection certificate~~ is required under this section.

(f) ~~(e)~~ When a suspension period imposed by the department has expired, an owner or manager whose ~~annual~~ permit ~~or inspection certificate~~ has expired may reapply for a new permit ~~or inspection certificate~~ by submitting a complete application to the department.

(g) ~~(f)~~ In addition to the remedies provided in this section, and notwithstanding the existence of any adequate remedy at law, the department may bring an action to enjoin the violation ~~of any provision~~ of this section, or rules adopted under this section, in the circuit court of the county in which the violation occurs or is about to occur. Upon presentation ~~competent and substantial evidence presented~~ by the department to the court of competent and substantial evidence of the violation or threatened violation, the court must immediately issue the temporary or permanent injunction sought by the department. The injunction must be issued without bond.

(h) ~~(g)~~ In addition to the penalties authorized ~~to be imposed~~ for any violation of this section or any rule adopted under this section, the department may issue a letter of warning

to the owner or manager of the amusement ride specifying the violation and directing the owner or manager to immediately correct the violation.

(i) ~~(h)~~ Any person who knowingly violates ~~any provision of~~ this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. This act shall take effect July 1, 2020.