

Commerce Committee

Thursday, February 20, 2020
9:00 AM –12:00 PM
Webster Hall (212 Knott)

Meeting Packet

Jose Oliva
Speaker

Mike La Rosa
Chair

The Florida House of Representatives

Commerce Committee

Jose Oliva
Speaker

Mike La Rosa
Chair

Meeting Agenda

Thursday, February 20, 2020
9:00 am – 12:00 pm
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- CS/HB 9 Damages by Civil Justice Subcommittee, Leek
- CS/HB 359 Insurance by Insurance & Banking Subcommittee, Santiago
- CS/HB 529 Insurance Guaranty Associations by Insurance & Banking Subcommittee, Webb
- CS/CS/HB 689 Department of Business and Professional Regulation by Government Operations & Technology Appropriations Subcommittee, Business & Professions Subcommittee, Rodriguez, A.
- CS/HB 991 Lottery Games by Government Operations & Technology Appropriations Subcommittee, Robinson
- CS/HB 1011 Vacation Rentals by Government Operations & Technology Appropriations Subcommittee, Fischer, La Rosa
- CS/HB 1095 Underground Facility Damage Prevention and Safety by Energy & Utilities Subcommittee, Fitzenhagen
- HB 1193 Deregulation of Professions and Occupations by Ingoglia

303 House Office Building, 402 South Monroe Street, Tallahassee, FL 32399-1300
(850) 717-4870

- HB 1211 Reinsurance by Jones

- CS/HB 1353 Private Security Services by Business & Professions Subcommittee, Polsky, Plakon

- HB 7089 Nicotine Products by Health Market Reform Subcommittee, Toledo

Consideration of the following proposed committee substitute(s):

- PCS for CS/HB 1139 -- Economic Development

V. Closing Remarks

VI. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 9 Damages
SPONSOR(S): Civil Justice Subcommittee, Leek and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 4 N, As CS	Jones	Luczynski
2) Commerce Committee		Fortenberry	Hamon
3) Judiciary Committee			

SUMMARY ANALYSIS

A tort is a civil wrong for which the law provides a remedy. The purpose of tort law is to fairly compensate a person harmed by another person's wrongful acts, whether intentional or negligent. In a negligence action in Florida, the compensation a plaintiff recovers is reduced to the extent the plaintiff or a third party contributed to the injury.

A healthy tort liability system benefits society by compensating injured parties fairly, resolving disputes, and discouraging undesirable behavior. A flawed tort liability system, in contrast, may be detrimental to society because it may increase costs and disputes, raise insurance premiums and healthcare costs, and stifle economic growth.

In a personal injury tort case, a court may award an injured person damages for past and future medical expenses. Generally, it is the jury's duty to determine an accurate amount to award for such medical expenses.

When a jury is aware of the billed amount of a medical procedure—which may be artificially high—but remains unaware of the amount typically paid by other patients for similar services in the same area, it may reasonably conclude the plaintiff's damages are more severe than they actually are. Jurors may inadvertently use the billed amount as a benchmark from which to calculate—and thereby inflate—other damages, such as noneconomic damages and future medical expenses.

The bill requires that in personal injury and wrongful death actions to recover medical damages, a jury must only hear evidence of medical expenses based on the usual and customary amounts actually received by medical providers. This ensures a jury will rely on the most accurate information available to calculate damages to be awarded.

The bill has no impact on local or state government revenues or expenditures. The bill may have a positive direct economic impact on the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida's Tort Liability System

A tort is a civil wrong for which the law provides a remedy. The purpose of tort liability law is to fairly compensate a person harmed by someone else's intentional or negligent wrongful act.

When a state's tort liability system is functioning properly, it:

- Provides a fair and equitable forum to resolve disputes;
- Appropriately compensates legitimately harmed persons;
- Shifts the loss to responsible parties;
- Provides an incentive to prevent future harm; and
- Deters undesirable behavior.[1]

A flawed tort liability system may be unpredictable and may generate higher levels of damages awarded in litigation, causing:

- Increased costs across the economy;
- Increased risks and costs of doing business;
- Greater incentives to file meritless lawsuits;
- Higher insurance premiums;
- Increased healthcare costs;
- Declining availability of medical services; and
- Deterrence of economic development and job creation activities.[2]

According to the United States (U.S.) Chamber of Commerce Institute for Legal Reform's 2019 "Lawsuit Climate Survey" (Survey), Florida has the fifth-worst tort liability system.[3] The Survey's questionnaire asked respondents to grade each state's liability system on the following criteria:

- Overall treatment of tort and contract litigation;
- Enforcing meaningful venue requirements;
- Treatment of class action suits and mass consolidation suits;
- Damages;
- Proportional discovery;
- Scientific and technical evidence;
- Trial judge impartiality and competence;
- Fairness of juries; and
- Quality of appellate review.

The Survey noted that the City of Miami and Miami-Dade County are among a small number of local jurisdictions in the U.S. known for having a particularly unfair and unreasonable litigation environment.[4]

---

[1] Am. Jur. 2d Torts s. 2.
[2] The Perryman Group, *Potential Economic Benefits of Tort Reform in Florida*, Citizens Against Lawsuit Abuse (Sept. 2018), https://cdn.p2a.co/385013/PKpghW4BPS15392676823kGn5yy2F1 (last visited Jan. 29, 2020).
[3] *2019 Lawsuit Climate Survey: Ranking the States*, U.S. Chamber Institute for Legal Reform (Sept. 2019), https://www.instituteforlegalreform.com/uploads/sites/1/2019_Lawsuit_Climate_Survey_-_Ranking_the_States.pdf. (last visited Jan. 29, 2020).
[4] *Id.* at 9.

The American Tort Reform Foundation's annual report places Florida on its "Watch List," indicating that it considers Florida to have a history of "abusive litigation or troubling developments."[5] The report's summary acknowledges, however, that "Florida took great strides toward improving its legal climate in 2019."[6]

The financial and economic impacts of the tort liability system are substantial. In 2016, the costs and compensation paid in the U.S. tort liability system totaled $429 billion, or 2.3 percent of national gross domestic product (GDP).[7] Relative to state GDP, Florida has higher tort liability system costs than any other state, at 3.6 percent.[8] In 2016, the total costs and compensation paid within Florida's tort liability system was equivalent to $4,442 for every household in the state.[9] Excessive tort costs in Florida are estimated to annually cost the state economy:

- $7.6 billion in direct costs;
- $11.8 billion in annual output;
- 126,139 jobs;[10]
- $614.8 million in State revenues; and
- $516 million in local government revenues.[11]

Calculation of Damages for Medical Expenses in Tort Cases

The aim of tort law is to fairly compensate an injured person for another person's wrongful act. To this end, a court may award an injured person damages for past and future medical expenses.[12]

Collateral Source Rule

At common law, the collateral source rule prohibited courts from reducing damages for benefits plaintiffs received from collateral sources, like insurance payments or contractual discounts negotiated by plaintiffs' health maintenance organizations.[13] The existence of such collateral sources was inadmissible at trial based on the rationale that such evidence could mislead the jury on the issue of liability and cause the jury to believe the plaintiff was seeking multiple payments for the same injury.[14] An injured person in a personal injury action could recover the full value of the medical services billed, regardless of whether the injured person paid the full amount to the medical provider.

The Legislature modified the collateral source rule by enacting the Tort Reform and Insurance Act of 1986 (the Act).[15] The Act requires a court to reduce an award by the total amount of all collateral sources the plaintiff receives, unless a subrogation or reimbursement right[16] exists.[17] A court can

---

[5] American Tort Reform Foundation, Judicial Hellholes 2019/2020 Executive Summary, https://www.judicialhellholes.org/2019-2020/executive-summary/ (last visited Jan. 29, 2020).
[6] *Id.*
[7] Paul Hinton, David McKnight, and Lawrence Powell, *Costs and Compensation of the U.S. Tort System*, U.S. Chamber Institute for Legal Reform (Oct. 24, 2018), https://www.instituteforlegalreform.com/research/2018-costs-and-compensation-of-the-us-tort-system (last visited Jan. 29, 2020).
[8] *Id.*
[9] *Id.*
[10] The Perryman Group, *supra* note 2, at 11-13 (calculating the number of Florida jobs lost by comparing Florida to Ohio and using integrated simulations to measure the dynamic effects on productivity and other economic phenomena).
[11] *Id.* (calculating these figures by comparing Florida to the benchmark state of Ohio, which has enacted tort reforms and ranks near the middle of the Institute for Legal Reform rankings).
[12] 17 Fla. Jur 2d Damages s. 7.
[13] Robert E. Gordon & Justin Linn, *Goble, Thyssenkrupp*, and the Collateral Source Rule: Resolving the Ongoing Conflict, 84 Fla. B.J. 18 (2010).
[14] *Gormley v. GTE Prods. Corp.*, 587 So. 2d 455, 458 (Fla. 1991).
[15] Ch. 86-160, Laws of Fla.; Gordon & Linn, *supra* note 13 at 18.
[16] "Subrogation" is a process where an insurer pays a loss under an insurance policy and is entitled to all of the rights and remedies belonging to the insured. Black's Law Dictionary (10th ed. 2014). A court's reduction of damages when a right of reimbursement or subrogation exists can cause an inaccurately low award.
[17] S. 768.76(1), F.S.

reduce past and future damages, but the modified collateral source rule still prohibits a jury from hearing evidence of collateral sources at trial.[18]

Medical Billing and Letters of Protection

In a typical personal injury case, a plaintiff receives treatment from a health care provider for his or her injuries. Different providers may have different rates for the same procedure based on various factors.[19] The amount billed (list price) of the procedure is rarely the price actually paid. A third party, such as an insurance company, rather than the patient, often negotiates the price of the procedure. The difference between the list price and the amount paid (the negotiated price), if awarded, is a windfall to the plaintiff, called phantom damages.[20]

When a plaintiff is treated for injuries, he or she may agree to a letter of protection with the medical provider, which sets the value of the medical care rendered. Under a letter of protection, a medical provider agrees to defer collection on a bill for services until the plaintiff recovers damages from a lawsuit, at which point the medical provider is paid from the lawsuit's proceeds. The letter of protection's valuation of the medical bills may not accurately reflect what the plaintiff would pay out-of-pocket or what a third party would pay.[21]

Judicial Decisions

Case law on admissibility of collateral source medical payments in Florida is sometimes inconsistent. In *Florida Physician's Insurance Reciprocal v. Stanley*, 452 So. 2d 514 (Fla. 1984), the Florida Supreme Court (Court) ruled that the jury could consider the value of unearned governmental or charitable medical services to determine the reasonable cost of the plaintiff's future medical care.[22]

In 2015, the Court retreated from its decision in *Stanley*, holding Medicare, Medicaid, and "social legislation benefits" inadmissible for the purpose of determining the reasonable cost of future medical care.[23] The Court reasoned that the *Stanley* decision was too difficult for courts to apply and that tortfeasors and their insurers should "not enjoy such a windfall at the expense of taxpayers who fund social legislation benefits."[24]

The Fourth District Court of Appeal (DCA) held that if Medicare or another governmental plan paid for past medical care, the jury should be free to consider the amounts actually paid by the governmental plan; and that any verdict for past medical expenses should be reduced to the amount Medicare actually paid to the provider.[25] The Fourth DCA has also held that evidence of entitlement to future Medicaid benefits is inadmissible where such evidence is not relevant to the issue of the plaintiff's future medical care.[26] In another case, a medical provider billed the plaintiff, and the plaintiff's private health insurer paid an amount less than the billed amount due to a contract between the provider and insurer.[27] The Court required the jury's award reduced to the amount actually paid.[28]

---

[18] Gordon & Linn, *supra* note 13 at 18 (citing *Gormley*, 587 So.2d at 458); *see* Victor E. Schwartz & Cary Silverman, *Truth in Damages: Florida Juries Should Base Personal Injury Awards on Actual Costs of Treatment, Not Inflated Medical Bills*, https://www.fljustice.org/files/124353479.pdf (last visited Jan. 29, 2020).
[19] Sarah Kliff and Dan Keating, *One Hospital Charges $8,000—Another, $38,000*, Washington Post (May 8, 2013), https://www.washingtonpost.com/news/wonk/wp/2013/05/08/one-hospital-charges-8000-another-38000/?utm_term=.ec6886353b67 (last visited Jan. 29, 2020).
[20] *Goble v. Frohman*, 901 So. 2d 830, 832 (Fla. 2005).
[21] Caroline C. Pace, Tort Recovery for Medicare Beneficiaries: Procedures, Pitfalls and Potential Values, 49-APR Hous. Law. 24, 27 (2012).
[22] *Florida Physician's Ins. Reciprocal v. Stanley*, 452 So. 2d 514, 515 (Fla. 1984).
[23] *Joerg v. State Farm Mut. Auto. Ins. Co.*, 176 So. 3d 1247, 1256-57 (Fla. 2015).
[24] *Id.* at 1256.
[25] *Thyssenkrupp Elevator Corp. v. Lasky*, 868 So. 2d 547 (Fla. 4th DCA 2003).
[26] *Velilla v. VIP Care Pavilion, Ltd.*, 861 So. 2d 69, 71-72 (Fla. 4th DCA 2003).
[27] *Goble*, 901 So. 2d at 832; *see also Nationwide Mut. Fire Ins. Co. v. Harrell*, 53 So. 3d 1084 (Fla. 1st DCA 2010).
[28] *Id.*

In contrast, where the plaintiff was not insured and personally negotiated his bills to a lower amount, the Fourth DCA held the jury should hear evidence of the originally-charged amount of the bills, reasoning that the lower price the plaintiff actually paid was negotiated rather than received from a gratuitous source.[29]

When a jury is aware of the billed amount but remains unaware of the amount typically paid by other patients for similar services in the same geographic area, it may reasonably conclude the plaintiff's damages are more severe than they actually are. Moreover, jurors may inadvertently use the artificially high billed amount as a benchmark from which to calculate—and thereby inflate—other damages, such as noneconomic damages and future medical expenses.[30]

Effect of Proposed Changes

The bill requires that, in an action for personal injury or wrongful death to recover past, present, or future medical damages, a jury only hears evidence of medical expenses based on the usual and customary amounts received by a service provider in the same geographic area. If the plaintiff is due reimbursement through insurance or government health care coverage, the amounts paid or payable under that coverage is considered the usual and customary amount for purposes of the figure the jury hears.

Requiring a jury to consider only evidence that accurately reflects the amount a medical provider receives rather than the amount a medical provider charges in a bill ensures the jury does not rely on inaccurate information when calculating damages.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 768.042, F.S., relating to damages.
Section 2: Provides an effective date of July 1, 2020.

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.

[29] *Durse v. Henn*, 68 So. 3d 271, 277 (Fla. 4th DCA 2011).
[30] Florida House of Representatives, Civil Justice Subcommittee Meeting Packet, Feb. 20, 2019, https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3022&Session=2019&DocumentType=Meeting Packets&FileName=cjs 2-20-19.pdf (last visited Jan. 29, 2020).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent the bill lowers tort costs, then costs for certain insurance products, medical services, and other products and services may also be lower.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 29, 2020, the Civil Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Deleted the requirement that a jury must consult a database to calculate medical damages.
- Clarified that the bill applies to evidence regarding past, present, and future medical expenses, not just past expenses.
- Required that evidence regarding medical expenses must be based on the amount usually received by a service provider.
- Required that, if the plaintiff is entitled to health insurance or government health coverage reimbursement, the medical expense amount the jury hears must be the reimbursement amount.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

A bill to be entitled

An act relating to damages; amending s. 768.042, F.S.; requiring that certain medical expenses in personal injury claims be based on certain usual and customary amounts received; specifying situations in which certain health coverage must be considered usual and customary amounts received; deleting an obsolete provision; providing an effective date.

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

Section 1. Subsection (2) of section 768.042, Florida Statutes, is amended to read:

768.042 Damages.—

(2) In any claim for damages relating to personal injury to a claimant, evidence regarding the past, present, or future medical expenses must be based on the usual and customary amounts received by a service provider for the same or similar services in the community in which the medical expenses are, or are reasonably probable to be, incurred. Evidence of usual and customary amounts received may not include evidence of increased or additional charges based on the outcome of litigation. If the claimant is entitled to reimbursement through any public or private health insurance or governmental health coverage, the amounts paid or payable under the insurance or governmental

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

health coverage must be considered the usual and customary amounts received for purposes of this subsection ~~The provisions of this section shall not apply to any complaint filed prior to May 20, 1975~~.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 359 Insurance
SPONSOR(S): Insurance & Banking Subcommittee; Santiago
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N, As CS	Lloyd	Cooper
2) Commerce Committee		Lloyd	Hamon

SUMMARY ANALYSIS

The bill makes the following changes regarding insurance:

- **Motor Vehicle Salvage** – Current Florida law exceeds the federal standard for motor vehicle odometer disclosures. The bill conforms the requirements for electronic signature security to the federal requirements.
- **Workers' Compensation Payments to Injured Workers** – Lost wages may be paid to the injured worker by check, direct deposit to a financial institution or a prepaid card. The bill allows payment, upon authorization of the injured worker, by sending money electronically via an account with a state licensed money transmitter.
- **Civil Remedies Against Insurers** – Florida law requires a pre-suit notice 60 days prior to suing on a bad faith claim, but no particular insurer address is specified. The bill establishes the insurer name and address for delivery of the notice. It starts the 60 days from the day the insurer receives the notice. Also, it extends the statute of limitation for 60 days, if the property appraisal process is invoked in the claim.
- **Insurer Trade Secrets** – Insurer trade secrets are protected by law (but are not confidential and exempt public records). The bill prohibits the publishing or dissemination of aggregate information containing protected trade secret information when the information can be extrapolated from the aggregate information.
- **Insurance Ratemaking and Form Filing Deadlines** – The bill extends the closure of the Office of Insurance Regulation's (OIR) review period for property and casualty rate and form filings to the close of the following business day if the deadline falls on a weekend or holiday.
- **Hurricane Modeling** – Current law establishes criteria for the Florida Commission on Hurricane Loss Projection Methodology regarding hurricane loss models and prescribes how approved models affect OIR's approval of a rate filing. The bill establishes that OIR may not disapprove a homeowner's insurance rate filing solely because the rate filing uses an average of approved hurricane models.
- **Use of Secondary Legal Authority** – The bill provides that a statement of liability insurance law by a secondary authority that conflicts with the federal or state constitution or Florida's statutes, case law, or common law does not constitute the law or public policy of Florida.
- **Time for Filing Property Insurance Claims** – Generally, an insurer must receive notice of a claim, supplemental claim, or reopened claim within five years of a loss. The bill shortens the time to three years for all claims (hurricane/windstorm already three years) except sinkhole loss claims, which remains two years.
- **Property Insurance Mediation Notice Requirements** – Insurers are required to provide property insurance policyholders with notice of their right to participate in mediation. The bill allows property insurers to provide the required notice at the time the policyholder disputes a claim.
- **Residential Condominium Loss Assessments** – The bill clarifies that the condominium unit owner's property loss assessment coverage in effect one day before the date of an occurrence that resulted in a loss is the applicable coverage for the loss.

The bill has no impact on state or local government revenues or expenditures. It has no known positive or negative economic impacts on the private sector.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Motor Vehicles - Salvage Certificates of Title and Certificates of Destruction

The owner of a motor vehicle or mobile home that is considered to be salvage[1] is required to forward the title of the motor vehicle or mobile home to the Department of Highway Safety and Motor Vehicles (DHSMV) for processing within 72 hours after the motor vehicle or mobile home becomes salvage.[2] However, an insurance company that pays money as compensation for the total loss of a motor vehicle or mobile home must obtain the certificate of title for the motor vehicle or mobile home, make the required notification to the National Motor Vehicle Title Information System,[3] and, within 72 hours after receiving such certificate of title, forward such title to DHSMV for processing. The certificates of title may be forwarded to DHSMV via electronic means, the United States Postal Service, or other commercial delivery service (e.g., FedEx or UPS). The owner or insurance company may not dispose of a vehicle or mobile home that is a total loss before it obtains from DHSMV a salvage certificate of title or certificate of destruction.

To facilitate the issuance of salvage certificates of title and certificates of destruction when the insurer has been unable to obtain the title from the insured so that it may be surrendered to DHSMV, effective July 1, 2020:

- The insurer may receive a salvage certificate of title or certificate of destruction from DHSMV 30 days after paying the claim, if:
  - There is no electronic lien on the motor vehicle or mobile home; and
  - The insurer has:
    - Obtained a release of all liens;
    - Provided proof of payment of the total loss claim; and
    - Provided an affidavit[4] on letterhead signed by the insurance company or its authorized agent stating the attempts[5] that have been made to obtain the title from the owner or lienholder and further stating that all attempts are to no avail.[6]

The "Electronic Signature Act of 1996"[7] provides that unless otherwise provided by law, an electronic signature[8] may be used to sign a writing and has the same force and effect as a written signature.

---

[1] "Salvage" is defined as a motor vehicle or mobile home that is a total loss. S. 319.30(1)(t), F.S. A motor vehicle is a "total loss:"
- When an insurance company pays the vehicle owner to replace the wrecked or damaged vehicle with one of like kind and quality or when an insurance company pays the owner upon the theft of the motor vehicle or mobile home; or
- When an uninsured motor vehicle or mobile home is wrecked or damaged and the cost, at the time of loss, of repairing or rebuilding the vehicle is 80 percent or more of the cost to the owner of replacing the wrecked or damaged motor vehicle or mobile home with one of like kind and quality.

S. 319.30(3)(a), F.S.

[2] S. 319.30(3)(b), F.S.

[3] The National Motor Vehicle Title Information System (NMVTIS) is an electronic system that provides consumers with valuable information about a vehicle's condition and history. NMVTIS allows consumers to find information on a vehicle's title, most recent odometer reading, brand history, and, in some cases, historical theft data. https://www.vehiclehistory.gov/nmvtis_consumers.html (Last visited Dec. 18, 2019).

[4] The affidavit must include a request that the salvage certificate of title or certificate of destruction be issued in the insurance company's name due to payment of a total loss claim to the owner or lienholder. S. 319.30(3)(b)1.c., F.S.

[5] The attempts to contact the owner may be by written request delivered in person or by first-class mail with a certificate of mailing to the owner's or lienholder's last known address. S. 319.30(3)(b)1.c., F.S. If the owner or lienholder is notified of the request for title in person, the insurance company must provide an affidavit attesting to the in-person request for a certificate of title. S. 319.30(3)(b)1.c.2., F.S.

[6] The request to the owner or lienholder for the certificate of title must include a complete description of the motor vehicle or mobile home and the statement that a total loss claim has been paid on the motor vehicle or mobile home. S. 319.30(3)(b)1.c.3., F.S.

[7] Ch. 668, part I, F.S.

[8] Section 668.003(4), F.S., defines "electronic signature" as any letters, characters, or symbols, manifested by electronic or similar means, executed or adopted by a party with an intent to authenticate a writing. A writing is electronically signed if an electronic signature is logically associated with such writing.

In 2019, the Legislature passed HB 301, related to Insurance.[9] Among other things, the bill addressed the use of electronic signatures for automotive title transactions. It authorized an electronic signature consistent with ch. 668, F.S., relating to electronic commerce, to be used to satisfy any signature requirement related to the issuance of a salvage certificate of title or certificate of destruction when this new process becomes effective. However, it required an electronic signature on an odometer disclosure to meet specific security requirements.

For an odometer disclosure related to a certificate of destruction, the electronic signature must meet or exceed Level 2 requirements for Identity Assurance Level, Authenticator Assurance Level, and Federation Assurance Level, as described in the National Institute of Standards and Technology Special Publication 800-63-3, as of December 1, 2017. For a salvage certificate of title, the electronic signature must meet or exceed Level 3 requirements of this standard. While there are several differences between Level 2 and Level 3 requirements that affect the relative security of the electronic signature, one difference limits the use of electronic signatures when executing electronic signatures for odometer disclosures related to salvage certificates of title. Level 3 requires in person identity proofing, while Level 2 allows remote or in person identity proofing.

The security levels were chosen based on ongoing federal rule development that governs odometer disclosures. The draft federal regulations included the use of Level 2 requirements in certain instances and Level 3 requirements in others. HB 301 mirrored this structure; however, the final federal regulation was published with an unexpected change after the passage of HB 301. Only Level 2 requirements were implemented. So, the Level 3 requirement of s. 319.30(3)(d), F.S., applicable to odometer disclosures for obtaining salvage certificates of title exceed the federal standard.[10]

Effect of the Bill

The bill allows electronic signatures on odometer disclosures related to salvage certificates of title to use Level 2 security requirements, consistent with the applicable federal standard. This applies the same security requirements to electronic signatures on odometer disclosures for both certificates of destruction and salvage certificates of title and allows certificate applicants to electronically sign odometer disclosures remotely in both instances, rather than remotely when applying for a certificate of destruction, but in person only for salvage certificates of title.

Workers' Compensation – Payments to Injured Workers

When a compensable work-related injury occurs, the employer and their insurance carrier may be liable for payment of lost wages to the injured worker. Payment for lost wages is interchangeably referred to as indemnity benefits or compensation. Currently, indemnity benefits, including penalties associated with incorrect or untimely payment of indemnity, may be paid to the injured worker by check or, upon authorization of the injured worker, deposited into a financial institution or to a prepaid card.[11,12] Carriers are required to keep records of all payments made, and the Department of Financial Services (DFS) audits employers and carriers for appropriate payment of indemnity benefits.

---

[9] Ch. 2019-108. Laws of Fla.

[10] 84 Fed. Reg. 52664, at 52665 (Oct. 2, 2019).

[11] S. 440.12(1)(a), F.S. For the purposes of workers' compensation indemnity payments, "financial institution" means a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.

[12] Pursuant to s. 440.12(1)(b), F.S., a carrier may use a prepaid card to deliver the payment of compensation to an employee if the employee is: 1. provided with at least one means of accessing his or her entire compensation payment once per week without incurring fees; 2. provided with the ability to make point-of-sale purchases without incurring fees from the financial institution issuing the prepaid card; and 3. provided with the terms and conditions of the prepaid card program, including a description of any fees that may be assessed. The obligation to pay indemnity benefits is satisfied when it is directly deposited compensation onto the prepaid card; further, it is considered paid on the date the funds become available for withdrawal by the injured worker. S. 440.20(1)(a), F.S.

Effect of the Bill

The bill allows employers and their carriers, upon authorization of the injured worker, to pay indemnity benefits, including associated monetary penalties, by sending money electronically to the injured worker via her or his account with a money transmitter. Indemnity and penalties paid via money transmitter accounts is considered paid on the date the funds become available to the injured worker for withdrawal.

The money transmitter must be licensed under ch. 560, part II, F.S. A money transmitter is a type of money services business licensed and regulated by the Florida Office of Financial Regulation (OFR).[13] As of January 21, 2020, there are 213 money transmitters licensed to operate in Florida (at 49,664 locations), 26 of these money transmitters are dual licensed as check cashers.

Civil Remedies against Insurers

Pre-Suit Notice and Tolling of the Statute of Limitation Following Issuance of Pre-Suit Notice

In 1982 the Legislature enacted s. 624.155, F.S., which provides that any person may bring a claim for "bad faith" against an insurer for "not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured with due regard for her or his interests,"[14] the same as the common law standard.[15] In order to bring a bad faith claim under the statute, a plaintiff must first give the insurer and DFS 60 days' written notice of the alleged violation.[16] The 60-day period begins on the date the notice is filed. While the notice is required to be provided to both DFS and the insurer,[17] the statute is silent on what constitutes filing and whether the filing date is the date the notice is received by DFS or the date it was received by the insurer.[18]

The notice must include:

- The statutory provision which the insurer allegedly violated;
- The facts and circumstances giving rise to the violation;
- The name of any individual involved in the violation;

---

[13] A money services business must have a net worth of $100,000. If the licensee is operating in more than one location, the net worth requirement is increased by $10,000, per location, up to a maximum of $2,000,000. Licensees are required to obtain annual financial reports for submission to OFR. Additionally, prior to licensing, a licensee must provide a surety bond to OFR in amount between $50,000 and $2,000,000, as specified in rule. In the alternative, the licensee may deposit cash, securities, or alternative security devices as provided by rule with a federally insured financial institution that are pledged to OFR. The surety bond or collateral deposit must remain in place for five years after the licensee ceases business operations in this state. S. 560.209, F.S. Currently, a money transmitter must calculate their surety bond or collateral deposit based on the number of active branches operated and combined monetary value of the volume of money transmission and payment instruments sold. If the money services business operates 250 or more branches, the required bond is at least $2,000,000. If they are operating fewer than 250 branches, then the bond is equal to two percent of the combined value of the previous year's money transmissions and payment instruments sold, rounded up to the next $50,000 increment. Form OFR-560-07 (eff. Oct. 18, 2009), R. 69V-560.1012, F.A.C. License applicant's surety bonds are determined based on the monetary value of projected first-year business. Form OFR-560-01 (eff. Jan. 2, 2014), R. 69V-560.1012, F.A.C. Bonds are then adjusted annually based on actual operations.

[14] S. 624.155(1)(b), F.S.

[15] Fla. Standard Jury Instr. 404.4 (Civil).

[16] S. 624.155(3)(a), F.S.

[17] Filing of the notice with the correct insurer has been held to be a condition precedent to maintaining a bad faith suit against the insurer. *Lopez v. GEICO Casualty Co.*, 968 F.Supp. 2d 1202, at 1209 (S.D. Fla. 2013). In *Lopez*, the plaintiff filed the notice with Government Employees Insurance Company, a similarly named sister company instead of the actual insurer, GEICO Casualty Company. Because the statute of limitation had run out following the flawed delivery of the notice, the *Lopez* case was dismissed with prejudice.

[18] Filing of the notice with DFS has been held to establish the date that starts the 60-day cure period. *Harper v. GEICO Gen. Ins. Co.*, 272 So. 3d 448 (Fla. 2nd DCA 2019). In *Harper*, the plaintiff filed the notice with DFS electronically on Dec. 19, 2013, and mailed the notice to GEICO with it being received by GEICO on Dec. 26, 2013. When GEICO later paid the claim on Feb. 21, 2014, the payment was 65 days from the date DFS received the notice, but 57 days from the date GEICO received the notice. The trial court held that GEICO paid the claim within the 60-day cure period. On appeal, the Second DCA held that the 60-day cure period ran from the date DFS received the notice. The result allowed the plaintiff to pursue a bad faith claim against GEICO for untimely payment of the claim.

- Reference to specific policy language that is relevant to the violation, unless the person bringing the civil action is a third party claimant; and
- A statement that the notice is given to perfect the right to pursue a civil remedy.[19]

The statute of limitation for the filing of a lawsuit under s. 624.155, F.S., is tolled for 65 days following the issuance of the notice described above. This extends the claimant's right to sue the insurer until after the conclusion of the 60-day period following the notice within which the insurer may respond to the notice by addressing the alleged violation.

In 2019, the Legislature revised s. 624.155, F.S., to prohibit the issuance of the notice when the insurer invokes the appraisal process. However, the appraisal process, which can be invoked for the first time following receipt of the pre-suit notice,[20] is unlikely to be completed within the 60-day cure period or the 65-day tolling of the applicable statute of limitations. If the appraisal process extends beyond the date the statute of limitation expires following the current tolling period, then the right to sue the insurer in civil court is lost.

Property Appraisal Process

Insurance companies often include an appraisal clause in property insurance policies.[21] The appraisal clause provides a procedure to resolve disputes between the policyholder and the insurer concerning the value of a covered loss. The appraisal clause is used only to determine disputed values. An appraisal cannot be used to determine what is covered under an insurance policy. Coverage issues are litigated and determined by the courts.

The appraisal process *generally* works as follows:

- The insurance company and the policyholder each appoint an independent, disinterested appraiser.
- Each appraiser evaluates the loss independently.
- The appraisers negotiate and attempt to reach an agreed amount of the damages.
- If the appraisers agree as to the amount of the claim, the insurer pays the claim.
- If the appraisers cannot agree on the amount, they together choose a mutually acceptable umpire.
- Once the umpire has been chosen, the appraisers each present their loss assessment to the umpire.
- The umpire will subsequently provide a written decision to both appraisers. A decision agreed to by any two of the three will set the amount of the loss.
- The insurance company or the policyholder may challenge the umpire's impartiality and disqualify a proposed umpire based on criteria set forth in statute.[22]

Effect of the Bill

The bill adds an additional tolling period to s. 624.155, F.S. It tolls the statute of limitation for 60 days following the date appraisal is invoked in a residential property insurance claim. In combination with the current 65-day tolling period resulting from the filing of the notice, the statute of limitation could be tolled for up to 125 days to allow the insurer the 60-day cure period and also allow the parties to pursue the appraisal process prior to expiration of the statute of limitation.

---

[19] S. 624.155(3)(b), F.S.

[20] Invoking the appraisal process along with timely payment, if required, can be used by the insurer to cure its claims handling violations and prevent a bad faith claim. See *Effect of the Bill*, p. 5.

[21] *Citizens Property Insurance Corporation v. Mango Hill Condominium Association 12 Inc.*, 54 So. 3d 578 (Fla. 3d DCA 2011) and *Intracoastal Ventures Corp. v. Safeco Ins. Co. of America,* 540 So. 2d 162 (Fla. 3d DCA 1989), contain examples of appraisal clauses.

[22] *See* s. 627.70151, F.S.

The bill also provides that the required pre-suit notice must be sent to the insurer at the insurer's name and address designated by the insurer pursuant to statute for the purposes of receiving legal process service via DFS. Additionally, the bill clarifies that the 60-day cure period runs from the date the insurer receives the notice at the designated name and address, rather than following "filing," which is not defined.

Insurer Trade Secrets

Public Records

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the Florida Constitution.[23] The general law must state with specificity the public necessity justifying the exemption[24] and must be no more broad than necessary to accomplish its purpose.[25]

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act[26] (Act) provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. In the same manner as the Florida Constitution requires a statement of public necessity and limits the breadth of a public records exemption, an exemption under the Act may be no more broad than necessary to meet one of the following purposes:[27]

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.

The Act also requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.[28] Specified questions must be considered by the Legislature during the review process.[29]

Trade Secrets

Florida law contains a variety of provisions that make trade secret information exempt or confidential and exempt[30] from public record requirements. Some exemptions only protect trade secrets, while

[23] FLA. CONST. art. I, s. 24(c).
[24] This portion of a public record exemption is commonly referred to as a "public necessity statement."
[25] FLA. CONST. art. I, s. 24(c).
[26] S. 119.15, F.S.
[27] S. 119.15(6)(b), F.S.
[28] S. 119.15(3), F.S.
[29] Section 119.15(6)(a), F.S., requires the Legislature to consider the following questions as part of the review process: 1) What specific records or meetings are affected by the exemption? 2) What specific parties does the exemption affect? 3) What is the public purpose of the exemption? 4) Can the information contained in the records or meetings be readily obtained by alternative means? If so, how? 5) Is the record or meeting protected by another exemption? 6) Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?
[30] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Attorney General Opinion 85-62 (August 1, 1985).

others protect "proprietary business information" and define that term to specifically include trade secrets. Generally, trade secret[31] information received by the Office of Insurance Regulation (OIR) or DFS is not protected as confidential and exempt public record information,[32] but the insurer is given the opportunity to receive notice of a public records request and a period of time to respond so that the insurer can move to protect the trade secret through an action in circuit court, if they so desire.[33] When an insurer submits trade secret information under the Florida Insurance Code[34] or OIR rules, the insurer may file a Notice of Trade Secret and mark and segregate the trade secret information provided to OIR.[35] This protection relates to public records requests from the public that would result in the publication of materials covered under a Notice of Trade Secret. It does not expressly extend to publication of aggregate information such as OIR's Annual Report or other OIR or DFS publications or reports that are not done in response to a public records request.

Effect of the Bill

The bill limits the release of aggregate information by OIR and DFS if protected trade secret information can be extrapolated from the aggregate information that OIR or DFS would otherwise release. This could occur where aggregate information is reported on a line of insurance in which a small number of companies participate such that one or more of the participating companies could back-out their own data from the reported aggregate information and discern the trade secret information of their competitor. The bill does not create a new public records exception, rather, it limits what OIR and DFS may do with public record information that is protected as a trade secret, but is not confidential and exempt public record information.

Extension of Deadlines in Insurance Rate and Form Filings

Florida law provides certain requirements regarding OIR's review and approval of property and casualty insurance rate and form filings, including timeframes within which OIR must review these filings.[36] However, the law is silent on the applicable deadline should the closure of the review period fall on a weekend or a holiday.

Effect of the Bill

The bill establishes that if the last day of the timeframe for OIR to review and approve or disapprove a rate filing for property, casualty, or surety insurance, including motor vehicle insurance, or to review an insurer's form filing, falls on a weekend or holiday recognized by Florida governmental agencies or branches, then period shall be extended until the conclusion of the next business day.

Rate Disapprovals Based Upon Hurricane Modeling

The law governing OIR's review and approval of residential property insurance rate filings requires that a rate filing account for mitigation measures that policyholders undertake to reduce hurricane losses.[37] It sets forth the criteria under which OIR may disapprove rate filings, including disapproval of rates that

---

[31] "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process that:
(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
S. 626.002(4), F.S.

[32] Trade secret information contained in an insurance administrator's records that is obtained by OIR is confidential and exempt. S. 626.884(2), F.S.,

[33] S. 624.4213(2), F.S.

[34] The Florida Insurance Code is chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S. S. 624.01, F.S.

[35] S. 624.4213(1), F.S.

[36] S. 627.062, F.S. (which controls rating requirements for property and casualty insurance in general), s. 627.0651, F.S. (which controls rating requirements for motor vehicle insurance), and s. 627.410 (which controls form filings in general). While the statutes differentiate between issuance of a notice of intent to approve or disapprove a property and casualty rate filing, other than a motor vehicle rate filing, and simply approving or disapproving a motor vehicle rate filing following review, the practical effect of the review process is the same.

[37] S. 627.062(2)(j), F.S.

are determined to be excessive, inadequate, or unfairly discriminatory.[38] Florida law also establishes criteria for the Florida Commission on Hurricane Loss Projection Methodology's (Commission) consideration and approval of hurricane loss models and prescribes how those models affect OIR's approval of property insurance rate filings.[39]

Effect of the Bill

The bill provides parameters for OIR's approval or disapproval of rate filings by establishing that OIR may not disapprove a homeowner's insurance rate filing solely because the rate filing uses a modeling indication that is the weighted or straight average of two or more models currently found to be accurate or reliable by the Commission.

Use of Secondary Legal Authority

When rendering decisions of law, a court will rely on legal authorities. Legal authorities are writings of the law and are classified in various ways, such as:

- Primary authority – those issued directly from a law-making body;
- Secondary authority –those that explain the law, but do not establish it directly;
- Persuasive authority – those that carry some weight, but are not binding; or
- Binding authority – those that are mandatory on a court, such as decisions in the same matter or on the same issue by an appellate court having direct jurisdiction over a lower court.[40]

A primary authority is what one typically thinks of when considering what makes up the law, specifically the U.S. Constitution, Florida Constitution, Acts of the Florida Legislature approved by the Governor, especially as codified in the Florida Statutes, and precedent setting opinions of the U.S. Supreme Court, Florida Supreme Court, federal Eleventh Circuit Court of Appeals, the various Florida District Courts of Appeal, and so on. Secondary authorities include compendiums, law reviews and journals, and academic treatises of the law. Secondary authorities describe what the law is and how it developed in various jurisdictions or legal specialties.

Courts will look to secondary authorities in a case that presents an issue of law that is not covered by a primary authority. Such a review of secondary authority may inform the court of persuasive authorities or a treatise on common law relevant to the issue of law. Given that primary authorities state law directly and secondary authorities are encyclopedic in nature, conflicts between primary and secondary authorities are resolved in favor of the primary authority.

Effect of the Bill

The bill provides that a statement of liability insurance law by a secondary authority that conflicts with the federal or state constitution or Florida's statutes, case law, or common law does not constitute the law or public policy of Florida.

Time for Filing Property Insurance Claims

Since an insurance policy is a contract and no limitations on insurance claims existed in the Florida Insurance Code, the five-year statute of limitation for a contract dispute was applied to insurance disputes.[41] However, in 2011 two types of claims were given a shorter statute of limitation. A notice of any claim, supplemental claim, or reopened claim resulting from windstorm or a hurricane must be provided to the policyholder's insurance company within three years after the windstorm caused the

[38] S. 627.062, F.S.
[39] Ss. 627.0628–627.06281, F.S.
[40] Black's Law Dictionary (11th ed. 2019).
[41] S. 95.11, F.S.

covered damage or the hurricane first made landfall otherwise the claim is barred.[42] Additionally, those claims related to a sinkhole loss are barred unless the notice of claim, including initial, supplemental, and reopened claims, is properly filed within two years after the policyholder knew or should have known about the sinkhole loss.[43]

Effect of the Bill

The bill modifies the property insurance claim notice requirements to make them applicable to all property insurance claims with the exception of sinkhole loss as defined in s. 627.706(2), F.S. Upon passage of the bill, notice of all property insurance claims, supplemental claims, or reopened claims must be provided to an insurer within three years after the date of loss or such claims will be barred.

Property Insurance Mediation Notice Requirements

DFS administers alternative dispute resolution programs for various types of insurance, including a mediation program for property insurance claims.[44] For property insurance claims involving personal lines and commercial residential claims, the policyholder, as a first-party claimant, a third-party, as an assignee, or the insurer may request mediation under the DFS program; however, the insurer is not required to participate in mediation requested by a third-party assignee.[45] Florida law requires that, at either issuance or renewal of a property insurance policy, or at the time a first-party property insurance claim is made, an insurer must provide a policyholder with notice of its right to participate in mediation.[46]

Effect of the Bill

The bill establishes that, in addition to having the option to provide a policyholder with notice of its right to participate in mediation at policy issuance or renewal or at the filing of a first-party claim, an insurer has the option to provide a policyholder with such notice at the time that the policyholder disputes a claim.

Residential Condominium Loss Assessments

Loss assessment coverage is insurance coverage for condominium unit owners that provides protection for situations where the owner of a condominium unit, as the owner of shared property, is held financially responsible for:

- Deductibles owed when a claim is made under a condominium association's property insurance policy;
- Damage that occurs to the condominium building or the common areas of a condominium property; or
- Injuries that occur in the common areas of a condominium property.[47]

Florida law requires that property insurance policies held by condominium unit owners include a minimum property loss assessment coverage of $2000 for all assessments made as a result of the same direct loss to the condominium property.[48] The law further establishes that the maximum amount

---

[42] Ch. 2011-39, Laws of Fla. Current law also specifies that the three-year notice requirement does not affect any applicable limitations on civil actions provided for claims, supplemental claims, or reopened claims timely filed. S. 627.70132, F.S. For example, policyholders still have five year after breach of an insurance contract by an insurer, which may include claim denial, to file suit for the breach.
[43] S. 627.706(5), F.S.
[44] S. 627.7015, F.S.
[45] S. 627.7015(1), F.S.
[46] S. 627.7015(2), F.S.
[47] The Balance, *Loss Assessment Explained for Condo Insurance*, https://www.thebalance.com/loss-assessment-explained-for-condo-insurance-4060435 (last visited Jan. 8, 2020).
[48] S. 627.714(1), F.S.

of any unit owner's coverage that can be assessed for any loss is an amount equal to the unit owner's loss assessment coverage limit in effect one day before the date of an occurrence, but it does not specify exactly what occurrence is referenced.[49]

Effect of the Bill

The bill clarifies that the amount of loss assessment coverage that can be assessed against a unit owner is based upon the coverage limit for loss assessment that was in effect in the unit owner's policy one day before the date of an occurrence that resulted in a loss for which the unit owner is being assessed. Further, the bill establishes that the coverage in place at that time applies regardless of the date on which the condominium association assesses the unit owner.

B. SECTION DIRECTORY:

Section 1: Amends s. 319.30, F.S., relating to definitions; dismantling, destruction, change of identity of motor vehicle or mobile home; salvage.

Section 2: Amends s. 440.12, F.S., relating to time for commencement and limits on weekly rate of compensation.

Section 3: Amends s. 440.20, F.S., relating to time for payment of compensation and medical bills; penalties for late payment.

Section 4: Amends s. 624.155, F.S., relating to civil remedy.

Section 5: Amends s. 624.307, F.S., relating to general powers; duties.

Section 6: Amends s. 624.315, F.S., relating to department; annual report.

Section 7: Amends s. 627.062, F.S., relating to rate standards.

Section 8: Amends s. 627.0651, F.S., relating to making and use of rates for motor vehicle insurance.

Section 9: Amends s. 627.410, F.S., relating to filing, approval of forms.

Section 10: Amending s. 627.419, F.S., relating to construction of policies.

Section 11: Amends s. 627.70132, F.S., relating to notice of windstorm or hurricane claim.

Section 12: Amends s. 627.7015, F.S., relating to alternative procedure for resolution of disputed property insurance claims.

Section 13: Amends s. 627.714, F.S., relating to residential condominium unit owner coverage; loss assessment coverage required.

Section 14: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

[49] S. 627.714(2), F.S.

2. Expenditures:

   The portion of the bill requiring the pre-suit civil remedy notice to go to a specified insurer address may require a change to DFS' civil remedy notice web page. The amount of the impact, if any, has not been estimated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None known.

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 neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 15, 2020, the Insurance & Banking Subcommittee considered a proposed committee substitute, adopted two amendments, and reported the bill favorably as a committee substitute. The following changes were made to the bill:

- **Deletions**

  The bill no longer:
  - Requires a triennial Hurricane Catastrophe Fund premium formula audit.
  - Tolls the statute of limitation for filing a third party bad faith claim following the Governor declaring a state of emergency due to fire, wind, or flood event.

- **Additions:**

- Allows an employee who is receiving workers' compensation payments to authorize a carrier to transmit compensation payments to a money transmitter, and specifies that the carrier's transmission of compensation to the employee's money transmitter account satisfies the carrier's obligation to pay compensation directly to the employee when the payment becomes available for withdrawal.

- **Revisions:**

  - Protection of insurer trade secrets – eliminates terms inconsistent with current statute and to avoid unintentional effects, such as creating a de facto public records exemption or allowing insurer preview and court review of DFS or OIR annual reports and publications;
  - Limitation on homeowners' insurance rate denials – substitutes correct terminology to avoid confusion over use of multiple models to establish a weighted or straight average to establish a modeling indication; and
  - Use of secondary authority – prohibits court consideration of statements of liability insurance law by secondary legal authorities that conflict with law, rather than those by the American Law Institute's Restatement of the Law, Liability Insurance.

The staff analysis has been updated to reflect the committee substitute.

A bill to be entitled

An act relating to insurance; amending s. 319.30, F.S.; revising the requirements for certain electronic signatures submitted through insurance companies; amending s. 440.12, F.S.; providing that an employee receiving workers' compensation payments may authorize a carrier to transmit compensation payments to a licensed money transmitter; amending s. 440.20, F.S.; specifying that the carrier's transmission of compensation with a licensed money transmitter to the employee's account satisfies the carrier's obligation to pay compensation directly to the employee; amending s. 624.155, F.S.; providing requirements for the delivery of certain violation notices to insurers; revising the circumstances under which an action may not lie; revising the timeframe during which the statute of limitations for certain actions for civil remedy is tolled; amending ss. 624.307 and 624.315, F.S.; authorizing the releases of specified information obtained by the Department of Financial Services and the Office of Insurance Regulation; providing an exception; amending s. 627.062, F.S.; requiring an extension of the office's review period of insurance rate standards under certain circumstances; deleting obsolete language; prohibiting

the office from disapproving a rate for homeowners' insurance under certain circumstances; amending ss. 627.0651 and 627.410, F.S.; requiring an extension of the office's review period of insurance rate standards under certain circumstances; amending s. 627.419, F.S.; limiting construction of liability insurance law in certain circumstances; amending s. 627.70132, F.S.; revising the types of claims, supplemental claims, or reopened claims under a property insurance policy that are barred unless notice is given to the insurer within a specified timeframe; revising the timeframe of such claims; revising the definition of the terms "supplemental claim" and "reopened claim"; amending s. 627.7015, F.S.; revising the timeframe for insurers' notification of certain mediation program; conforming provisions to changes made by the act; amending s. 627.714, F.S.; specifying the maximum amount of loss assessment coverage for certain unit owners; providing an effective date.

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

Section 1. Paragraph (d) of subsection (3) of section 319.30, Florida Statutes, is amended to read:

319.30 Definitions; dismantling, destruction, change of

identity of motor vehicle or mobile home; salvage.—

(3)

(d) An electronic signature that is consistent with chapter 668 satisfies any signature required under this subsection, except that an electronic signature on an odometer disclosure submitted through an insurance company must be executed using an electronic signature, as defined in s. 668.003(4), that uses a system providing an Identity Assurance Level, Authenticator Assurance Level, and Federation Assurance Level, as described in the National Institute of Standards and Technology Special Publication 800-63-3, as of December 1, 2017, that are equivalent to or greater than~~:~~

~~1.~~ level 2, for each level, for a certificate of destruction or~~:~~

~~2. Level 3, for each level,~~ for a salvage certificate of title.

Section 2. Paragraph (a) of subsection (1) of section 440.12, Florida Statutes, is amended to read:

440.12 Time for commencement and limits on weekly rate of compensation.—

(1) Compensation is not allowed for the first 7 days of the disability, except for benefits provided under s. 440.13. However, if the injury results in more than 21 days of disability, compensation is allowed from the commencement of the disability.

(a) All weekly compensation payments, except for the first payment, must be paid by check or, if authorized by the employee, on a prepaid card pursuant to paragraph (b) or deposited directly into the employee's account at a financial institution as defined in s. 655.005 or transmitted to the employee's account with a money transmitter licensed under part II of chapter 560.

Section 3. Paragraph (a) of subsection (1) and paragraph (a) of subsection (6) of section 440.20, Florida Statutes, are amended to read:

440.20 Time for payment of compensation and medical bills; penalties for late payment.—

(1)(a) Unless the carrier denies compensability or entitlement to benefits, the carrier shall pay compensation directly to the employee as required by ss. 440.14, 440.15, and 440.16, in accordance with those sections. Upon receipt of the employee's authorization as provided for in s. 440.12(1)(a), the carrier's obligation to pay compensation directly to the employee is satisfied when the carrier directly deposits, by electronic transfer or other means, compensation into the employee's account at a financial institution as defined in s. 655.005 or onto a prepaid card in accordance with s. 440.12(1) or transmits the employee's compensation to the employee's account with a money transmitter licensed under part II of chapter 560. Compensation by direct deposit or through the use

of a prepaid card or through transmission is considered paid on the date the funds become available for withdrawal by the employee.

(6)(a) If any installment of compensation for death or dependency benefits, or compensation for disability benefits payable without an award is not paid within 7 days after it becomes due, as provided in subsection (2), subsection (3), or subsection (4), there shall be added to such unpaid installment a penalty of an amount equal to 20 percent of the unpaid installment, which shall be paid at the same time as, but in addition to, such installment of compensation. This penalty shall not apply for late payments resulting from conditions over which the employer or carrier had no control. When any installment of compensation payable without an award has not been paid within 7 days after it became due and the claimant concludes the prosecution of the claim before a judge of compensation claims without having specifically claimed additional compensation in the nature of a penalty under this section, the claimant will be deemed to have acknowledged that, owing to conditions over which the employer or carrier had no control, such installment could not be paid within the period prescribed for payment and to have waived the right to claim such penalty. However, during the course of a hearing, the judge of compensation claims shall on her or his own motion raise the question of whether such penalty should be awarded or excused.

The department may assess without a hearing the penalty against either the employer or the carrier, depending upon who was at fault in causing the delay. The insurance policy cannot provide that this sum will be paid by the carrier if the department or the judge of compensation claims determines that the penalty should be paid by the employer rather than the carrier. Any additional installment of compensation paid by the carrier pursuant to this section shall be paid directly to the employee by check or, if authorized by the employee, by direct deposit into the employee's account at a financial institution or by transmission to the employee's account with a money transmitter licensed under part II of chapter 560.

Section 4. Subsection (3) of section 624.155, Florida Statutes, is amended to read:

624.155 Civil remedy.—

(3)(a) As a condition precedent to bringing an action under this section, the department and the authorized insurer must have been given 60 days' written notice of the violation. Notice to the authorized insurer must be delivered to the name and address designated by the insurer under s. 624.422(2).

(b) The notice shall be on a form provided by the department and shall state with specificity the following information, and such other information as the department may require:

1. The statutory provision, including the specific

language of the statute, which the authorized insurer allegedly violated.

2. The facts and circumstances giving rise to the violation.

3. The name of any individual involved in the violation.

4. Reference to specific policy language that is relevant to the violation, if any. If the person bringing the civil action is a third party claimant, she or he shall not be required to reference the specific policy language if the authorized insurer has not provided a copy of the policy to the third party claimant pursuant to written request.

5. A statement that the notice is given in order to perfect the right to pursue the civil remedy authorized by this section.

(c) No action shall lie if, within 60 days after the authorized insurer receives the ~~filing~~ notice pursuant to paragraph (a), the damages are paid or the circumstances giving rise to the violation are corrected.

(d) The authorized insurer that is the recipient of a notice filed pursuant to this section shall report to the department on the disposition of the alleged violation.

(e) The applicable statute of limitations for an action under this section shall be tolled for a period of:

1. Sixty days after the date on which appraisal is invoked by any party in a residential property insurance claim; and

2. Sixty-five ~~65~~ days after the date on which ~~by the mailing of~~ the notice required under ~~by~~ this subsection or the ~~mailing of a~~ subsequent notice required under ~~by~~ this subsection is mailed.

(f) A notice required under this subsection may not be filed within 60 days after appraisal is invoked by any party in a residential property insurance claim.

Section 5. Subsection (4) of section 624.307, Florida Statutes, is amended to read:

624.307 General powers; duties.—

(4) The department and office may each collect, propose, publish, and disseminate information relating to the subject matter of any duties imposed upon it by law. Aggregate information published or disseminated by the department or office under this subsection may include information covered by a notice of trade secret under s. 624.4213(1), unless the information can be individually extrapolated, in which case the information may not be published or disseminated by the department or the office.

Section 6. Subsection (4) is added to section 624.315, Florida Statutes, to read:

624.315 Department; annual report.—

(4) The office may include information covered by a notice of trade secret under s. 624.4213(1) in the report under subsection (1) or make the information available under

subsection (2), unless the information can be individually extrapolated, in which case the information may not be published or disseminated by the department or the office.

Section 7. Paragraphs (a) and (j) of subsection (2) of section 627.062, Florida Statutes, are amended to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

(a) Insurers or rating organizations shall establish and use rates, rating schedules, or rating manuals that allow the insurer a reasonable rate of return on the classes of insurance written in this state. A copy of rates, rating schedules, rating manuals, premium credits or discount schedules, and surcharge schedules, and changes thereto, must be filed with the office under one of the following procedures:

1. If the filing is made at least 90 days before the proposed effective date and is not implemented during the office's review of the filing and any proceeding and judicial review, such filing is considered a "file and use" filing. In such case, the office shall finalize its review by issuance of a notice of intent to approve or a notice of intent to disapprove within 90 days after receipt of the filing. The notice of intent to approve and the notice of intent to disapprove constitute agency action for purposes of the Administrative Procedure Act. Requests for supporting information, requests for mathematical or mechanical corrections, or notification to the insurer by the

office of its preliminary findings does not toll the 90-day period during any such proceedings and subsequent judicial review. The rate shall be deemed approved if the office does not issue a notice of intent to approve or a notice of intent to disapprove within 90 days after receipt of the filing.

2. If the filing is not made in accordance with subparagraph 1., such filing must be made as soon as practicable, but within 30 days after the effective date, and is considered a "use and file" filing. An insurer making a "use and file" filing is potentially subject to an order by the office to return to policyholders those portions of rates found to be excessive, as provided in paragraph (h).

3. If the last day of the 90-day timeframe for the issuance of a notice of intent under subparagraph 1. ends on a weekend or a holiday specified in s. 110.117, the closure of the office's review period shall be extended until the conclusion of the next business day.

~~3. For all property insurance filings made or submitted after January 25, 2007, but before May 1, 2012, an insurer seeking a rate that is greater than the rate most recently approved by the office shall make a "file and use" filing. For purposes of this subparagraph, motor vehicle collision and comprehensive coverages are not considered property coverages.~~

(j) With respect to residential property insurance rate filings:~~,~~

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

1. The rate filing must account for mitigation measures undertaken by policyholders to reduce hurricane losses.

2. The office may not disapprove a rate for homeowners' insurance solely because the rate filing uses a modeling indication that is the weighted or straight average of two or more models currently found to be accurate or reliable pursuant to s. 627.0628.

The provisions of this subsection do not apply to workers' compensation, employer's liability insurance, and motor vehicle insurance.

Section 8. Paragraph (a) of subsection (1) of section 627.0651, Florida Statutes, is amended to read:

627.0651 Making and use of rates for motor vehicle insurance.—

(1) Insurers shall establish and use rates, rating schedules, or rating manuals to allow the insurer a reasonable rate of return on motor vehicle insurance written in this state. A copy of rates, rating schedules, and rating manuals, and changes therein, shall be filed with the office under one of the following procedures:

(a)1. If the filing is made at least 60 days before the proposed effective date and the filing is not implemented during the office's review of the filing and any proceeding and judicial review, such filing shall be considered a "file and

use" filing. In such case, the office shall initiate proceedings to disapprove the rate and so notify the insurer or shall finalize its review within 60 days after receipt of the filing. Notification to the insurer by the office of its preliminary findings shall toll the 60-day period during any such proceedings and subsequent judicial review. The rate shall be deemed approved if the office does not issue notice to the insurer of its preliminary findings within 60 days after the filing.

2. If the last day of the 60-day timeframe for the office's notification or review finalization under subparagraph 1. ends on a weekend or a holiday specified in s. 110.117, the closure of the office's review period shall be extended until the conclusion of the next business day.

Section 9. Subsection (2) of section 627.410, Florida Statutes, is amended to read:

627.410 Filing, approval of forms.—

(2)(a) Every such filing must be made at least 30 days in advance of any such use or delivery. At the expiration of the 30 days, the form filed will be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the office. The approval of such form by the office constitutes a waiver of any unexpired portion of such waiting period. The office may extend the period within which it may affirmatively approve or disapprove such form by up to 15 days

by giving notice of such extension before expiration of the initial 30-day period. At the expiration of such extended period, and in the absence of prior affirmative approval or disapproval, such form shall be deemed approved.

(b) If the last day of the initial 30-day period, or the last day of the 15-day extension authorized by the office, under paragraph (a) ends on a weekend or a holiday specified in s. 110.117, the closure of the review period shall be extended until the conclusion of the next business day.

Section 10. Subsection (10) is added to section 627.419, Florida Statutes, to read:

627.419 Construction of policies.—

(10) A secondary legal authority does not constitute the law or public policy of this state if its statement of the law relating to liability insurance is in conflict with:

(a) The Constitution of the United States or the State Constitution;

(b) A statute of this state;

(c) This state's case law precedent; or

(d) Other common law that may have been adopted by this state.

Section 11. Section 627.70132, Florida Statutes, is amended to read:

627.70132 Notice of property insurance ~~windstorm or hurricane~~ claim.—Except for a sinkhole loss as defined in

627.706(2), a claim, supplemental claim, or reopened claim under an insurance policy that provides property insurance, as defined in s. 624.604, ~~for loss or damage caused by the peril of windstorm or hurricane~~ is barred unless notice of the claim, supplemental claim, or reopened claim is ~~was~~ given to the insurer in accordance with the terms of the policy within 3 years after the date of loss ~~the hurricane first made landfall or the windstorm caused the covered damage~~. For purposes of this section, the term "supplemental claim" or "reopened claim" means any additional claim for recovery from the insurer for losses ~~from the same hurricane or windstorm~~ which the insurer has previously adjusted pursuant to the initial claim. This section does not affect any applicable limitation on civil actions provided in s. 95.11 for claims, supplemental claims, or reopened claims timely filed under this section.

Section 12. Subsection (2) and paragraph (e) of subsection (9) of section 627.7015, Florida Statutes, are amended to read:

627.7015 Alternative procedure for resolution of disputed property insurance claims.—

(2) ~~At the time of issuance and renewal of a policy or at the time a first-party claim within the scope of this section is filed by the policyholder,~~ The insurer shall notify the policyholder of its right to participate in the mediation program under this section and shall choose any of the following times to provide the notification:

(a) Upon the issuance and renewal of a policy; or

(b) At the time the policyholder:

1. Disputes a claim; or

2. Files a first-party claim within the scope of this section.

The department shall prepare a consumer information pamphlet for distribution to persons participating in mediation.

(9) For purposes of this section, the term "claim" refers to any dispute between an insurer and a policyholder relating to a material issue of fact other than a dispute:

(e) With respect to a property ~~windstorm or hurricane~~ loss that does not comply with s. 627.70132.

Section 13. Subsection (2) of section 627.714, Florida Statutes, is amended to read:

627.714 Residential condominium unit owner coverage; loss assessment coverage required.—

(2) The maximum amount of any unit owner's loss assessment coverage that can be assessed for any loss shall be an amount equal to that unit owner's loss assessment coverage limit in effect 1 day before the date of the occurrence that gave rise to the loss. Such coverage applies to any loss assessment regardless of the date of the assessment by the association. Any changes to the limits of a unit owner's coverage for loss assessments made on or after the day before the date of the

occurrence do ~~are~~ not apply ~~applicable~~ to such loss.

Section 14. This act shall take effect upon becoming a law.

COMMERCE COMMITTEE

CS/HB 359 by Rep. Santiago
Insurance

AMENDMENT SUMMARY
February 20, 2020

Amendment 1 by Rep. Santiago (Strike-all): The amendment makes the following changes to the bill:

Removes:

- Hurricane Modeling – A provision allowing the use of weighted or straight averages of hurricane loss projection models in homeowners' insurance ratemaking.
- Use of Secondary Legal Authority – A prohibition on use of statements of the law on liability insurance provided by secondary legal authorities if they conflict with the U.S. or Florida Constitution or Florida statute, case law, or common law.
- Time for Filing Property Insurance Claims – A proposed reduction in the time limitation for filing certain property insurance claims, including supplemental claims and reopened claims.
- Property Insurance Mediation Notice Requirements – Authority for an insurer to deliver the required notification of right to mediate a property insurance claim at the time a policyholder disputes a claim.

Additions:

- Motor Vehicle Insurance – Reduces the limitation on policy cancellation of an initial policy from 60 days to 30 days to conform to a 2019 legislative revision requiring prepayment of only one month's premium, rather than two month's premium.
- Travel Insurance – Incorporates the Travel Insurance Model Act, by the National Association of Insurance Commissioners, into the Florida Insurance Code.

Revisions:

- Civil Remedies Against Insurers –
    - Requires the Department of Financial Services (DFS) to forward the required pre-suit civil remedy notice related to bad faith claims to the insurer by email, rather than requiring the person filing the notice to send it to the insurer directly (using a statutorily designated address) and requires the insurer to designate an email address for this purpose.
    - Reduces the statute of limitation tolling period from 65 days to 60 days because of the replacement of the required physical mailing of the civil remedy notice with an automated delivery of it by email from DFS.
- Effective date – Provides an effective date of upon becoming law for the section of the bill affecting motor vehicle salvage (Sec. 1); the remainder of the bill is effective on July 1, 2020.

Amendment 1 to Amendment 1 by Rep. Santiago (Line 415): The amendment requires the Office of Insurance Regulation to take loss data associated with insolvent insurers into account when considering and approving workers' compensation rates.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____ (Y/N)
ADOPTED AS AMENDED	____ (Y/N)
ADOPTED W/O OBJECTION	____ (Y/N)
FAILED TO ADOPT	____ (Y/N)
WITHDRAWN	____ (Y/N)
OTHER	

Committee/Subcommittee hearing bill: Commerce Committee

Representative Santiago offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Effective upon this act becoming a law, paragraph (d) of subsection (3) of section 319.30, Florida Statutes, is amended to read:

319.30 Definitions; dismantling, destruction, change of identity of motor vehicle or mobile home; salvage.—

(3)

(d) An electronic signature that is consistent with chapter 668 satisfies any signature required under this subsection, except that an electronic signature on an odometer disclosure submitted through an insurance company must be executed using an electronic signature, as defined in s.

668.003(4), which ~~that~~ uses a system providing an Identity Assurance Level, Authenticator Assurance Level, and Federation Assurance Level, as described in the National Institute of Standards and Technology Special Publication 800-63-3, as of December 1, 2017, which ~~that~~ are equivalent to or greater than~~:~~

~~1.~~ Level 2, for each level, for a certificate of destruction or~~.~~

~~2. Level 3, for each level,~~ for a salvage certificate of title.

Section 2. Paragraph (a) of subsection (1) of section 440.12, Florida Statutes, is amended to read:

440.12 Time for commencement and limits on weekly rate of compensation.—

(1) Compensation is not allowed for the first 7 days of the disability, except for benefits provided under s. 440.13. However, if the injury results in more than 21 days of disability, compensation is allowed from the commencement of the disability.

(a) All weekly compensation payments, except for the first payment, must be paid by check or, if authorized by the employee, paid on a prepaid card pursuant to paragraph (b), ~~or~~ deposited directly into the employee's account at a financial institution as defined in s. 655.005, or transmitted to the employee's account with a money transmitter licensed under part II of chapter 560.

Section 3. Paragraph (a) of subsection (1) and paragraph (a) of subsection (6) of section 440.20, Florida Statutes, are amended to read:

440.20 Time for payment of compensation and medical bills; penalties for late payment.—

(1)(a) Unless the carrier denies compensability or entitlement to benefits, the carrier shall pay compensation directly to the employee as required by ss. 440.14, 440.15, and 440.16, in accordance with those sections. Upon receipt of the employee's authorization as provided for in s. 440.12(1)(a), the carrier's obligation to pay compensation directly to the employee is satisfied when the carrier directly deposits, by electronic transfer or other means, compensation into the employee's account at a financial institution as defined in s. 655.005 or onto a prepaid card in accordance with s. 440.12(1) or transmits the employee's compensation to the employee's account with a money transmitter licensed under part II of chapter 560. Compensation by direct deposit, ~~or~~ through the use of a prepaid card, or through transmission is considered paid on the date the funds become available for withdrawal by the employee.

(6)(a) If any installment of compensation for death or dependency benefits, or compensation for disability benefits payable without an award is not paid within 7 days after it becomes due, as provided in subsection (2), subsection (3), or

subsection (4), there shall be added to such unpaid installment a penalty of an amount equal to 20 percent of the unpaid installment, which shall be paid at the same time as, but in addition to, such installment of compensation. This penalty shall not apply for late payments resulting from conditions over which the employer or carrier had no control. When any installment of compensation payable without an award has not been paid within 7 days after it became due and the claimant concludes the prosecution of the claim before a judge of compensation claims without having specifically claimed additional compensation in the nature of a penalty under this section, the claimant will be deemed to have acknowledged that, owing to conditions over which the employer or carrier had no control, such installment could not be paid within the period prescribed for payment and to have waived the right to claim such penalty. However, during the course of a hearing, the judge of compensation claims shall on her or his own motion raise the question of whether such penalty should be awarded or excused. The department may assess without a hearing the penalty against either the employer or the carrier, depending upon who was at fault in causing the delay. The insurance policy cannot provide that this sum will be paid by the carrier if the department or the judge of compensation claims determines that the penalty should be paid by the employer rather than the carrier. Any additional installment of compensation paid by the carrier

pursuant to this section shall be paid directly to the employee by check or, if authorized by the employee, by direct deposit into the employee's account at a financial institution or by transmission to the employee's account with a money transmitter licensed under part II of chapter 560.

Section 4. Section 624.01, Florida Statutes, is amended to read:

624.01 Short title.—Chapters 624-632, 634, 635, 636, 641, 642, 647, 648, and 651 constitute the "Florida Insurance Code."

Section 5. Subsection (3) of section 624.155, Florida Statutes, is amended to read:

624.155 Civil remedy.—

(3)(a) As a condition precedent to bringing an action under this section, the department and the authorized insurer must have been given 60 days' written notice of the violation. Notice to the authorized insurer must be provided by the department to the e-mail address designated by the insurer under s. 624.422.

(b) The notice shall be on a form provided by the department and shall state with specificity the following information, and such other information as the department may require:

1. The statutory provision, including the specific language of the statute, which the authorized insurer allegedly violated.

2. The facts and circumstances giving rise to the violation.

3. The name of any individual involved in the violation.

4. Reference to specific policy language that is relevant to the violation, if any. If the person bringing the civil action is a third party claimant, she or he shall not be required to reference the specific policy language if the authorized insurer has not provided a copy of the policy to the third party claimant pursuant to written request.

5. A statement that the notice is given in order to perfect the right to pursue the civil remedy authorized by this section.

(c) No action shall lie if, within 60 days after the insurer receives ~~filing~~ notice from the department in accordance with this subsection, the damages are paid or the circumstances giving rise to the violation are corrected.

(d) The authorized insurer that is the recipient of a notice filed pursuant to this section shall report to the department on the disposition of the alleged violation.

(e) The applicable statute of limitations for an action under this section shall be tolled for a period of 60 ~~65~~ days after the:

1. Insurer receives from the department ~~by the mailing of~~ the notice required by this subsection.

2. Date appraisal is invoked pursuant to paragraph (f) ~~or~~

~~the mailing of a subsequent notice required by this subsection~~.

(f) A notice required under this subsection may not be filed within 60 days after appraisal is invoked by any party in a residential property insurance claim.

Section 6. Subsection (4) of section 624.307, Florida Statutes, is amended to read:

624.307 General powers; duties.—

(4) The department and office may each collect, propose, publish, and disseminate information relating to the subject matter of any duties imposed upon it by law. Aggregate information published or disseminated by the department or office under this subsection may include information covered by a notice of trade secret under s. 624.4213(1), unless the information can be individually extrapolated, in which case the information may not be published or disseminated by the department or the office.

Section 7. Subsection (4) is added to section 624.315, Florida Statutes, to read:

624.315 Department; annual report.—

(4) The office may include information covered by a notice of trade secret under s. 624.4213(1) in the report under subsection (1) or make the information available under subsection (2), unless the information can be individually extrapolated, in which case the information may not be published or disseminated by the department or the office.

Section 8. Subsection (2) of section 624.422, Florida Statutes, is amended to read:

624.422 Service of process; appointment of Chief Financial Officer as process agent.—

(2) Prior to its authorization to transact insurance in this state, each insurer shall file with the department designation of the name and address of the person to whom process against it served upon the Chief Financial Officer is to be forwarded. Each insurer shall also file with the department designation of the name and e-mail address of the person to whom the department shall forward civil remedy notices filed under 624.155. The insurer may change a ~~the~~ designation at any time by a new filing.

Section 9. Paragraph (c) of subsection (1) of section 626.321, Florida Statutes, is amended to read:

626.321 Limited licenses and registration.—

(1) The department shall issue to a qualified applicant a license as agent authorized to transact a limited class of business in any of the following categories of limited lines insurance:

(c) *Travel insurance.*—License covering only policies and certificates of travel insurance which are subject to review by the office. Policies and certificates of travel insurance may provide coverage for travel insurance, as defined in s. 647.02 ~~risks incidental to travel, planned travel, or accommodations~~

~~while traveling, including, but not limited to, accidental death and dismemberment of a traveler; trip or event cancellation, interruption, or delay; loss of or damage to personal effects or travel documents; damages to travel accommodations; baggage delay; emergency medical travel or evacuation of a traveler; or medical, surgical, and hospital expenses related to an illness or emergency of a traveler. Such policy or certificate may be issued for terms longer than 90 days, but, other than a policy or certificate providing coverage for air ambulatory services only, each policy or certificate must be limited to coverage for travel or use of accommodations of no longer than 90 days~~. The license may be issued only to an individual or business entity that has filed with the department an application for a license in a form and manner prescribed by the department.

1. A limited lines travel insurance producer, as defined in s. 647.02, shall be licensed to sell, solicit, or negotiate travel insurance through a licensed insurer.

2. A person may not act as a limited lines travel insurance producer or travel retailer unless properly licensed or registered, respectively. As used in this paragraph, the term "travel retailer" means a business entity that:

a. Makes, arranges, or offers planned travel.

b. May, under subparagraph 3., offer and disseminate travel insurance as a service to its customers on behalf of and under the direction of a limited lines travel insurance

producer.

3. A travel retailer may offer and disseminate travel insurance under a limited lines travel insurance producer business entity license only if all of the following requirements are met:

a. The limited lines travel insurance producer or travel retailer provides to purchasers of travel insurance:

(I) A description of the material terms or the actual material terms of the insurance coverage.

(II) A description of the process for filing a claim.

(III) A description of the review or cancellation process for the travel insurance policy.

(IV) The identity and contact information of the insurer and limited lines travel insurance producer.

b. At the time of licensure, the limited lines travel insurance producer establishes and maintains a register on the department's website and appoints each travel retailer that offers travel insurance on behalf of the limited lines travel insurance producer. The limited lines travel insurance producer must maintain and update the register, which must include the travel retailer's federal tax identification number and the name, address, and contact information of the travel retailer and an officer or person who directs or controls the travel retailer's operations. The limited lines travel insurance producer shall submit the register to the department upon

reasonable request. The limited lines travel insurance producer shall also certify that the travel retailer register complies with 18 U.S.C. s. 1033. The grounds for the suspension and revocation and the penalties applicable to resident insurance producers under this section apply to the limited lines travel insurance producers and travel retailers.

c. The limited lines travel insurance producer has designated one of its employees as the designated responsible producer. The designated responsible producer, who must be a licensed insurance producer, is responsible for compliance with the travel insurance laws and regulations applicable to the limited lines travel insurance producer and its registrants. The designated responsible producer and the president, secretary, treasurer, and any other officer or person who directs or controls the limited lines travel insurance producer's insurance operations must comply with the fingerprinting requirements applicable to insurance producers in the resident state of the limited lines travel insurance producer.

d. The limited lines travel insurance producer has paid all applicable licensing and appointment fees, as set forth in applicable general law.

e. The limited lines travel insurance producer requires each employee and each authorized representative of the travel retailer whose duties include offering and disseminating travel insurance to receive a program of instruction or training, which

is subject, at the discretion of the department, to review and approval. The training material must, at a minimum, contain adequate instructions on the types of insurance offered, ethical sales practices, and required disclosures to prospective purchasers.

As used in this paragraph, the term "offer and disseminate" means to provide general information, including a description of the coverage and price, as well as processing the application and collecting premiums.

4. A travel retailer offering or disseminating travel insurance shall make available to prospective purchasers brochures or other written materials that have been approved by the travel insurer. Such materials must include information that, at a minimum:

a. Provides the identity and contact information of the insurer and the limited lines travel insurance producer.

b. Explains that the purchase of travel insurance is not required in order to purchase any other product or service from the travel retailer.

c. Explains that a travel retailer is authorized to provide only general information about the insurance offered by the travel retailer, including a description of the coverage and price, but is not qualified or authorized to answer technical questions about the terms and conditions of the insurance

offered by the travel retailer or to evaluate the adequacy of the customer's existing insurance coverage.

5. A travel retailer employee or authorized representative who is not licensed as an insurance producer may not:

a. Evaluate or interpret the technical terms, benefits, and conditions of the offered travel insurance coverage;

b. Evaluate or provide advice concerning a prospective purchaser's existing insurance coverage; or

c. Hold himself or herself or the travel retailer out as a licensed insurer, licensed producer, or insurance expert.

Notwithstanding any other law, a travel retailer whose insurance-related activities, and those of its employees and authorized representatives, are limited to offering and disseminating travel insurance on behalf of and under the direction of a limited lines travel insurance producer meeting the conditions in this section may receive related compensation upon registration by the limited lines travel insurance producer as described in paragraph (2)(b).

6. As the insurer's designee, the limited lines travel insurance producer is responsible for the acts of the travel retailer and shall use reasonable means to ensure compliance by the travel retailer with this section.

7. Any person licensed as a general or personal lines agent may sell, solicit, and negotiate travel insurance.÷

~~1. To a full-time salaried employee of a common carrier or a full-time salaried employee or owner of a transportation ticket agency and may authorize the sale of such ticket policies only in connection with the sale of transportation tickets, or to the full-time salaried employee of such an agent. Such policy may not be for more than 48 hours or more than the duration of a specified one-way trip or round trip.~~

~~2. To an entity or individual that is:~~

~~a. The developer of a timeshare plan that is the subject of an approved public offering statement under chapter 721;~~

~~b. An exchange company operating an exchange program approved under chapter 721;~~

~~c. A managing entity operating a timeshare plan approved under chapter 721;~~

~~d. A seller of travel as defined in chapter 559; or~~

~~e. A subsidiary or affiliate of any of the entities described in sub-subparagraphs a.-d.~~

~~3. To a full-time salaried employee of a licensed general lines agent or a business entity that offers travel planning services if insurance sales activities authorized by the license are in connection with, and incidental to, travel.~~

~~a. A license issued to a business entity that offers travel planning services must encompass each office, branch office, or place of business making use of the entity's business name in order to offer, solicit, and sell insurance pursuant to~~

~~this paragraph.~~

~~b. The application for licensure must list the name, address, and phone number for each office, branch office, or place of business that is to be covered by the license. The licensee shall notify the department of the name, address, and phone number of any new location that is to be covered by the license before the new office, branch office, or place of business engages in the sale of insurance pursuant to this paragraph. The licensee shall notify the department within 30 days after the closing or terminating of an office, branch office, or place of business. Upon receipt of the notice, the department shall delete the office, branch office, or place of business from the license.~~

~~c. A licensed and appointed entity is directly responsible and accountable for all acts of the licensee's employees and parties with whom the licensee has entered into a contractual agreement to offer travel insurance.~~

~~A licensee shall require each individual who offers policies or certificates under subparagraph 2. or subparagraph 3. to receive initial training from a general lines agent or an insurer authorized under chapter 624 to transact insurance within this state. For an entity applying for a license as a travel insurance agent, the fingerprinting requirement of this section applies only to the president, secretary, and treasurer and to~~

~~any other officer or person who directs or controls the travel insurance operations of the entity.~~

Section 10. Paragraph (a) of subsection (2) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

(a) Insurers or rating organizations shall establish and use rates, rating schedules, or rating manuals that allow the insurer a reasonable rate of return on the classes of insurance written in this state. A copy of rates, rating schedules, rating manuals, premium credits or discount schedules, and surcharge schedules, and changes thereto, must be filed with the office under one of the following procedures:

1. If the filing is made at least 90 days before the proposed effective date and is not implemented during the office's review of the filing and any proceeding and judicial review, such filing is considered a "file and use" filing. In such case, the office shall finalize its review by issuance of a notice of intent to approve or a notice of intent to disapprove within 90 days after receipt of the filing. <u>If the 90-day period ends on a weekend or a holiday under s. 110.117(1)(a)-(i), it must be extended until the conclusion of the next business day.</u> The notice of intent to approve and the notice of intent to disapprove constitute agency action for purposes of the Administrative Procedure Act. Requests for supporting

information, requests for mathematical or mechanical corrections, or notification to the insurer by the office of its preliminary findings does not toll the 90-day period during any such proceedings and subsequent judicial review. The rate shall be deemed approved if the office does not issue a notice of intent to approve or a notice of intent to disapprove within 90 days after receipt of the filing.

2. If the filing is not made in accordance with subparagraph 1., such filing must be made as soon as practicable, but within 30 days after the effective date, and is considered a "use and file" filing. An insurer making a "use and file" filing is potentially subject to an order by the office to return to policyholders those portions of rates found to be excessive, as provided in paragraph (h).

3. For all property insurance filings made or submitted after January 25, 2007, but before May 1, 2012, an insurer seeking a rate that is greater than the rate most recently approved by the office shall make a "file and use" filing. For purposes of this subparagraph, motor vehicle collision and comprehensive coverages are not considered property coverages.

The provisions of this subsection do not apply to workers' compensation, employer's liability insurance, and motor vehicle insurance.

Section 11. Paragraph (a) of subsection (1) of section

627.0651, Florida Statutes, is amended to read:

627.0651 Making and use of rates for motor vehicle insurance.—

(1) Insurers shall establish and use rates, rating schedules, or rating manuals to allow the insurer a reasonable rate of return on motor vehicle insurance written in this state. A copy of rates, rating schedules, and rating manuals, and changes therein, shall be filed with the office under one of the following procedures:

(a) If the filing is made at least 60 days before the proposed effective date and the filing is not implemented during the office's review of the filing and any proceeding and judicial review, such filing shall be considered a "file and use" filing. In such case, the office shall initiate proceedings to disapprove the rate and so notify the insurer or shall finalize its review within 60 days after receipt of the filing. <u>If the 60-day period ends on a weekend or a holiday under s. 110.117(1)(a)-(i), it must be extended until the conclusion of the next business day.</u> Notification to the insurer by the office of its preliminary findings shall toll the 60-day period during any such proceedings and subsequent judicial review. The rate shall be deemed approved if the office does not issue notice to the insurer of its preliminary findings within 60 days after the filing.

Section 12. Subsection (2) of section 627.410, Florida

Statutes, is amended to read:

627.410 Filing, approval of forms.—

(2) Every such filing must be made at least 30 days in advance of any such use or delivery. At the expiration of the 30 days, the form filed will be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the office. The approval of such form by the office constitutes a waiver of any unexpired portion of such waiting period. The office may extend the period within which it may affirmatively approve or disapprove such form by up to 15 days by giving notice of such extension before expiration of the initial 30-day period. If the initial 30-day period or the 15-day extension period ends on a weekend or a holiday under s. 110.117(1)(a)-(i), the review period must be extended until the conclusion of the next business day. At the expiration of such extended period, and in the absence of prior affirmative approval or disapproval, such form shall be deemed approved.

Section 13. Subsection (2) of section 627.714, Florida Statutes, is amended to read:

627.714 Residential condominium unit owner coverage; loss assessment coverage required.—

(2) The maximum amount of any unit owner's loss assessment coverage that can be assessed for any loss shall be an amount equal to that unit owner's loss assessment coverage limit in effect 1 day before the date of the occurrence that gave rise to

the loss. Such coverage is applicable to any loss assessment regardless of the date of the assessment by the association. Any changes to the limits of a unit owner's coverage for loss assessments made on or after the day before the date of the occurrence are not applicable to such loss.

Section 14. Subsection (4) of section 627.7295, Florida Statutes, is amended to read:

627.7295 Motor vehicle insurance contracts.—

(4) The insurer may cancel the policy in accordance with this code except that, notwithstanding s. 627.728, an insurer may not cancel a new policy or binder during the first 30 ~~60~~ days immediately following the effective date of the policy or binder for nonpayment of premium unless the reason for the cancellation is the issuance of a check for the premium that is dishonored for any reason or any other type of premium payment that was subsequently determined to be rejected or invalid.

Section 15. The Division of Law Revision is directed to create chapter 647, Florida Statutes, consisting of ss. 647.01-647.08, Florida Statutes, to be entitled "Travel Insurance."

Section 16. Section 647.01, Florida Statutes, is created to read:

647.01 Purpose and scope.—

(1) The purpose of this chapter is to promote the public welfare by creating a comprehensive legal framework within which travel insurance may be sold in this state.

(2) This chapter applies to:

(a) Travel insurance that covers any resident of this state and that is sold, solicited, negotiated, or offered in this state.

(b) Policies and certificates that are delivered or issued for delivery in this state.

This chapter does not apply to cancellation fee waivers or travel assistance services, except as expressly provided in this chapter.

(3) All other applicable provisions of the insurance laws of this state continue to apply to travel insurance, except that the specific provisions of this chapter shall supersede any general provisions of law that would otherwise be applicable to travel insurance.

Section 17. Section 647.02, Florida Statutes, is created to read:

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

(1) "Aggregator site" means a website that provides access to information regarding insurance products from more than one insurer, including product and insurer information, for use in comparison shopping.

(2) "Blanket travel insurance" means a policy of travel insurance issued to an eligible group providing coverage to all members of the eligible group without a separate charge to

individual members of the eligible group.

(3) "Cancellation fee waiver" means a contractual agreement between a supplier of travel services and its customer to waive some or all of the nonrefundable cancellation fee provisions of the supplier's underlying travel contract with or without regard to the reason for the cancellation or form of reimbursement. A cancellation fee waiver is not insurance.

(4) "Eligible group," solely for the purposes of travel insurance, means two or more persons who are engaged in a common enterprise or who have an economic, educational, or social affinity or relationship, including, but not limited to, any of the following:

(a) An entity engaged in the business of providing travel or travel services, including, but not limited to:

1. A tour operator, lodging provider, vacation property owner, hotel, resort, travel club, travel agency, property manager, and cultural exchange program.

2. An operator, owner, or lessor of a means of transportation of passengers, including, but not limited to, a common carrier, airline, cruise line, railroad, steamship company, and public bus carrier.

With regard to any particular travel or type of travel or travelers, all members or customers of the group must have a common exposure to risk attendant to such travel.

(b) A university, college, school, or other institution of learning, covering students, teachers, employees, or volunteers.

(c) An employer covering any group of employees, volunteers, contractors, board of directors, dependents, or guests.

(d) A sports team or camp, or a sponsor thereof, covering participants, members, campers, employees, officials, supervisors, or volunteers.

(e) A religious, charitable, recreational, educational, or civic organization, or a branch thereof, covering any group of members, participants, or volunteers.

(f) A financial institution or financial institution vendor, or a parent holding company, trustee, or agent of or designated by one or more financial institutions or financial institution vendors, including account holders, credit card holders, debtors, guarantors, or purchasers.

(g) An incorporated or unincorporated association, including a labor union, having a common interest and constitution and bylaws, which is organized and maintained in good faith for purposes other than obtaining insurance coverage for its members or participants.

(h) A trust or the trustees of a fund that covers its members, employees, or customers and is established, created, or maintained for the benefit of its members, employees, or customers, subject to:

1. The department's authorizing the use of a trust.

2. The premium tax provisions in s. 647.03 applicable to incorporated or unincorporated associations that have a common interest and constitution and bylaws and that are organized and maintained in good faith for purposes other than obtaining insurance coverage for their members, employees, or customers.

(i) An entertainment production company covering any group of participants, volunteers, audience members, contestants, or workers.

(j) A volunteer fire department, ambulance, rescue, police, court, first-aid, civil defense, or other such volunteer group.

(k) A preschool, daycare institution for children or adults, or senior citizen club.

(l) An automobile or truck rental or leasing company covering a group of individuals who may become renters, lessees, or passengers as defined by their travel status on the rented or leased vehicles. The common carrier, the operator, owner, or lessor of a means of transportation, or the motor vehicle or truck rental or leasing company is the policyholder under a policy to which this section applies.

(m) Any other group for which the department has made the following determinations:

1. The group members are engaged in a common enterprise or have an economic, educational, or social affinity or

relationship.

2. Issuance of the travel insurance policy is not contrary to the public interest.

(5) "Fulfillment materials" means documentation sent to the purchaser of a travel protection plan confirming the purchase and providing the travel protection plan's coverage and assistance details.

(6) "Group travel insurance" means travel insurance issued to an eligible group.

(7) "Limited lines travel insurance producer" means:

(a) A licensed or third-party administrator;

(b) A licensed insurance producer, including a limited lines producer; or

(c) A travel administrator.

(8) "Travel administrator" means a person who directly or indirectly underwrites policies for; collects charges, collateral, or premiums from; or adjusts or settles claims made by residents of this state in connection with travel insurance, except that a person is not considered a travel administrator if the person is:

(a) A person working for a travel administrator, to the extent that the person's activities are subject to the supervision and control of the travel administrator;

(b) An insurance producer selling insurance or engaged in administrative and claims-related activities within the scope of

the producer's license;

(c) A travel retailer, as defined s. 626.321(1)(c)2., offering and disseminating travel insurance and registered under the license of a limited lines travel insurance producer in accordance with s. 626.321(1)(c);

(d) A person adjusting or settling claims in the normal course of the person's practice or employment as an attorney at law, without collecting charges or premiums in connection with insurance coverage; or

(e) A business entity that is affiliated with a licensed insurer while acting as a travel administrator for the direct and assumed insurance business of the affiliated insurer.

(9) "Travel assistance services" means noninsurance services for which the consumer is not indemnified based on a fortuitous event, and the provision of which does not result in the transfer or shifting of risk which would constitute the business of insurance. The term includes, but is not limited to, security advisories, destination information, vaccination and immunization information services, travel reservation services, entertainment, activity and event planning, translation assistance, emergency messaging, international legal and medical referrals, medical case monitoring, coordination of transportation arrangements, emergency cash transfer assistance, medical prescription replacement assistance, passport and travel document replacement assistance, lost luggage assistance,

concierge services, and any other service that is furnished in connection with planned travel. Travel assistance services are not insurance and are not related to insurance.

(10) "Travel insurance" means insurance coverage for personal risks incidental to planned travel, including:

(a) Interruption or cancellation of trip or event;

(b) Loss of baggage or personal effects;

(c) Damages to accommodations or rental vehicles;

(d) Sickness, accident, disability, or death occurring during travel;

(e) Emergency evacuation; or

(f) Any other contractual obligations to indemnify or pay a specified amount to the traveler upon determinable contingencies related to travel, as determined by the office.

Travel insurance does not include major medical plans that provide comprehensive medical protection for travelers with trips lasting longer than 6 months, including major medical plans for those working or residing abroad as expatriates, any other product that requires a specific insurance producer license, or a contract sold by a ch. 497 licensee for repatriation of remains or funeral services to be provided for a beneficiary who dies outside of the service area of the licensee.

(11) "Travel protection plan" means a plan that provides

one or more of the following: travel insurance, travel assistance services, and cancellation fee waivers.

Section 18. Section 647.03, Florida Statutes, is created to read:

647.03 Premium tax.—

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

(a) "Primary certificateholder" means an individual who purchases travel insurance under a group policy.

(b) "Primary policyholder" means an individual who purchases individual travel insurance.

(2) A travel insurer shall pay the premium tax, as required under s. 624.509, on travel insurance premiums paid by any of the following:

(a) A primary policyholder who is a resident of this state.

(b) A primary certificateholder who is a resident of this state.

(c) A blanket travel insurance policyholder:

1. Who is a resident in this state;

2. Who has his or her principal place of business in this state; or

3. Whose affiliate or subsidiary who has purchased blanket travel insurance for eligible blanket group members has his or her principal place of business in this state.

The premium tax under this subsection is subject to any apportionment rules that apply to an insurer across multiple taxing jurisdictions or that authorize an insurer to allocate premium on an apportioned basis in a reasonable and equitable manner in those jurisdictions.

(3) A travel insurer shall:

(a) Document the state of residence or principal place of business of the policyholder or certificateholder, or an affiliate or subsidiary thereof, as required under subsection (2).

(b) Report as premium only the amount allocable to travel insurance and not any amounts received for travel assistance services or cancellation fee waivers.

Section 19. Section 647.04, Florida Statutes, is created to read:

647.04 Travel protection plans.—A travel protection plan may be offered for one price for the combined features that the travel protection plan offers in this state if the travel protection plan meets all of the following requirements:

(1) The travel protection plan clearly discloses to the consumer, at or before the time of purchase, that it includes travel insurance, travel assistance services, and cancellation fee waivers, as applicable, and provides information and an opportunity, at or before the time of purchase, for the consumer to obtain additional information regarding the features and

pricing of each.

(2) The fulfillment materials:

(a) Describe and delineate the travel insurance, travel assistance services, and cancellation fee waivers in the travel protection plan.

(b) Include the travel insurance disclosures required in this chapter, the contact information for persons providing travel assistance services, and cancellation fee waivers, as applicable.

Section 20. Section 647.05, Florida Statutes, is created to read:

647.05 Sales practices.—

(1)(a) All documents provided to a consumer before the purchase of travel insurance, including, but not limited to, sales materials, advertising materials, and marketing materials, must be consistent with the travel insurance policy, including, but not limited to, forms, endorsements, policies, rate filings, and certificates of insurance.

(b) For travel insurance policies or certificates that contain preexisting condition exclusions, information and an opportunity to learn more about the preexisting condition exclusions must be provided any time before the purchase. Information on the exclusions and the opportunity to learn more about these exclusions must be included in the coverage's fulfillment materials.

(c) The fulfillment materials and the information described in s. 626.321(1)(c)3.a. must be provided to a policyholder or certificateholder as soon as practicable after the purchase of a travel protection plan. Unless the insured has started a covered trip or filed a claim under the travel insurance coverage, the policyholder or certificateholder may cancel a policy or certificate for a full refund of the travel protection plan price from the date of purchase of a travel protection plan until at least:

1. Fifteen days after the date of delivery of the travel protection plan's fulfillment materials by postal mail; or

2. Ten days after the date of delivery of the travel protection plan's fulfillment materials by means other than postal mail.

For the purposes of this paragraph, the term "delivery" means handing fulfillment materials to the policyholder or certificateholder or sending fulfillment materials by postal mail or electronic means to the policyholder or certificateholder.

(d) An insurer shall disclose in the policy documentation and fulfillment materials whether the travel insurance is primary or secondary to other applicable coverage.

(e) If travel insurance is marketed directly to a consumer through an insurer's website or by others through an aggregator

site, it is not an unfair trade practice or other violation of law if the following requirements are met:

1. The web page provides an accurate summary or short description of the coverage.

2. The consumer has access to the full provisions of the policy through electronic means.

(2) A person offering, soliciting, or negotiating travel insurance or travel protection plans on an individual or group basis may not do so by using a negative or opt-out option that would require a consumer to take an affirmative action to deselect coverage, such as unchecking a box on an electronic form, when the consumer purchases a trip.

(3) If a consumer's destination jurisdiction requires insurance coverage, it is not an unfair trade practice to require that the consumer choose between the following options as a condition of purchasing a trip or travel package:

(a) Purchasing the coverage required by the destination jurisdiction through the travel retailer, as defined s. 626.321(1)(c)2., or limited lines travel insurance producer supplying the trip or travel package; or

(b) Agreeing to obtain and provide proof of coverage that meets the destination jurisdiction's requirements before departure.

(4)(a) A person offering travel insurance to residents of this state is subject to part IX of chapter 626, the Unfair

Insurance Trade Practices Act, except as otherwise provided in this chapter. If a conflict arises between this chapter and the Unfair Insurance Trade Practices Act regarding the sale and marketing of travel insurance and travel protection plans, the provisions of this chapter shall control.

(b) A person commits an unfair insurance trade practice under the Unfair Insurance Trade Practices Act if the person:

1. Offers or sells a travel insurance policy that could never result in payment of any claims for any insured under the policy; or

2. Markets blanket travel insurance coverage as free.

Section 21. Section 647.06, Florida Statutes, is created to read:

647.06 Travel administrators.—

(1) Notwithstanding any other provision of the Florida Insurance Code, a person may not act or represent himself or herself as a travel administrator in this state unless the person:

(a) Is a licensed and appointed property and casualty insurance producer in this state for activities authorized under that producer license;

(b) Is a licensed insurance agency, appointed as a managing general agent in this state; or

(c) Holds a valid third-party administrator license in this state.

(2) A travel administrator and its employees are exempt from the licensing requirements of part VI of chapter 626 for the travel insurance it administers.

(3) An insurer is responsible for ensuring that a travel administrator administering travel insurance underwritten by the insurer:

(a) Acts in accordance with this chapter.

(b) Maintains all books and records that are relevant to the insurer and makes these books and records available to the department upon request.

Section 22. Section 647.07, Florida Statutes, is created to read:

647.07 Travel insurance policy.—

(1) Notwithstanding any other provision of the Florida Insurance Code, travel insurance shall be classified and filed for purposes of rates and forms under the inland marine line of insurance; however, travel insurance that provides coverage for sickness, accident, disability, or death occurring during travel, either exclusively or in conjunction with related coverages of emergency evacuation or repatriation of remains, or incidental limited property and casualty benefits, such as baggage or trip cancellation, may be classified and filed for purposes of rates and forms under either the accident and health line of insurance or the inland marine line of insurance.

(2) Travel insurance may be in the form of an individual,

group, or blanket policy. Group or blanket policies are classified as commercial inland marine insurance under s. 627.021(2)(d). Travel insurance policies not issued to a commercial entity and primarily used for personal, family, or household purposes are considered personal inland marine insurance and shall not be subject to s. 627.062. Sections of policies or endorsements for travel insurance which are considered personal inland marine insurance consisting of travel assistance services or cancellation fee waivers are not subject to s. 627.410.

(3) Travel insurance programs may be developed and provided based on travel protection plans designed for individual or identified marketing or distribution channels.

Section 23. Section 647.08, Florida Statutes, is created to read:

647.08 Rulemaking authority.—The office shall adopt rules to administer this chapter.

Section 24. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2020.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to insurance; amending s. 319.30, F.S.; revising a certain electronic signature requirement for a motor vehicle salvage certificate of title; amending ss. 440.12 and 440.20, F.S.; authorizing the payment of certain workers' compensation benefits to be transmitted to the employee's account with a licensed money transmitter; amending s. 624.155, F.S.; revising requirements and procedures for the civil remedy notice provided to insurers and the Department of Financial Services; revising the timeframe for an insurer to pay damages or for certain circumstances to be corrected; revising circumstances that toll the applicable statute of limitations and the period the statute of limitations is tolled; amending ss. 624.307 and 624.315, F.S.; providing that certain aggregate information containing trade secret information may be publicly disclosed by the department or the Office of Insurance Regulation, except under certain circumstances; amending s. 624.422, F.S., requiring insurers to file with the department certain contact information for service of process; amending s. 626.321, F.S.; providing that certain travel insurance licenses are subject to review by the department rather than by the office; revising persons who may be licensed to transact in travel insurance; specifying licensure and registration requirements for certain persons; defining the term "travel retailer"; specifying requirements

for, restrictions on, and authorized acts by travel retailers and limited lines travel insurance producers; defining the term "offer and disseminate"; authorizing certain persons to sell, solicit, and negotiate travel insurance; amending ss. 627.062, 627.0651, and 627.410, F.S.; specifying that certain periods ending on a weekend or on certain holidays are extended until the conclusion of the next business day; amending s. 627.714, F.S.; revising criteria for assessing a residential condominium unit owner's loss assessment coverage; amending s. 627.7295, F.S.; decreasing the timeframe during which an insurer may not cancel a new policy or binder of motor vehicle insurance for nonpayment of premium, except under certain circumstances; creating ch. 647, F.S., entitled "Travel Insurance"; creating s. 647.01, F.S.; providing legislative purpose; providing applicability; creating s. 647.02, F.S.; defining terms; creating s. 647.03, F.S.; defining the terms "primary certificateholder" and "primary policyholder"; requiring travel insurers to pay the insurance premium tax on specified travel insurance premiums; providing construction; specifying requirements for travel insurers; creating s. 647.04, F.S.; providing that a travel protection plan may be offered for one price if it meets specified requirements; creating s. 647.05, F.S.; specifying sales practice requirements, prohibited sales practices, and authorized sales practices relating to travel insurance; specifying a policyholder or certificateholder's

right to cancel a travel protection plan for a full refund; defining the term "delivery"; specifying unfair insurance trade practices; providing construction; creating s. 647.06, F.S.; specifying qualifications for travel administrators; providing an exemption from certain licensure; providing that insurers are responsible for ensuring certain acts by travel administrators; creating s. 647.07, F.S.; specifying the classification for travel insurance for rate filing purposes; specifying authorized forms of travel insurance; providing applicability of certain provisions of the Rating Law; authorizing the development and provision of travel insurance programs on certain bases; creating s. 647.08, F.S.; requiring the department to adopt rules; providing effective dates.

Amendment No. aa1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Commerce Committee

Representative Santiago offered the following:

Amendment to Amendment (879785) by Representative Santiago (with title amendment)

Between lines 415 and 416 of the amendment, insert:

Section 11. Paragraphs (b), (c), (d), (e), (f), and (g) of subsection (1) of section 627.072, Florida Statutes, are redesignated as paragraphs (c), (d), (e), (f), (g), and (h), respectively, and paragraph (b) is added to that subsection, to read:

627.072 Making and use of rates.—

(1) As to workers' compensation and employer's liability insurance, the following factors shall be used in the determination and fixing of rates:

(b) The impact resulting from past loss experience and

prospective loss experience for insurers whose data is missing from statewide experience due to insolvency. Prior reported data for such insurers and all other relevant information may be used to assess the impact on rates.

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

Remove line 898 of the amendment and insert:
the conclusion of the next business day; amending s. 627.072, F.S., providing a ratemaking factor for workers' compensation and employer's liability insurance; amending s. 627.714,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 529 Insurance Guaranty Associations
SPONSOR(S): Insurance & Banking Subcommittee, Webb
TIED BILLS: **IDEN./SIM. BILLS:** SB 898

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 0 N, As CS	Fortenberry	Cooper
2) Ways & Means Committee	16 Y, 0 N	Aldridge	Langston
3) Commerce Committee		Fortenberry	Hamon K.W.H.

SUMMARY ANALYSIS

A condominium is a form of ownership of real property comprised of units along with an undivided right of access to common elements. A condominium association is responsible for the operation and maintenance of the common elements and all unit owners are members of the condominium association. A condominium association must use its best efforts to maintain an insurance policy for the benefit of the association, the association property, and the common elements belonging to all condominium unit owners.

Florida law provides for guaranty associations to ensure policyholders of insolvent insurers are protected with respect to insurance premiums paid and settlement of outstanding claims. Insurers are required to participate in the guaranty associations as a condition of transacting insurance business in Florida. Florida operates four guaranty associations including the Florida Insurance Guaranty Association (FIGA).

FIGA issues guaranty fund payments for all lines of property and casualty insurance, including policies written to condominium associations, with certain exceptions. FIGA maintains two accounts, including one for auto insurers and one for all other property and casualty insurers that are covered by FIGA. Florida law provides that FIGA is only obligated to pay the portions of claims, made to insolvent property and casualty insurers, which are in excess of $100, and less than $300,000. For policies providing homeowner's insurance coverage, FIGA provides for up to an additional $200,000 for the portion of a covered claim which relates to the damage to the structure and contents. However, for policies covering condominium associations FIGA's coverage is capped at $100,000 multiplied by the number of condominium units in the condominium association.

If an insurer's assets are insufficient to pay all claims, FIGA can issue post-insolvency assessments to obtain funds to pay the remaining claims. The assessments levied against any insurer in a calendar year may not exceed more than two percent of that insurer's net direct written premium in Florida for the kinds of insurance within an account maintained by FIGA. In the event that these assessments are insufficient to cover claims of insurers rendered insolvent by the effects of a hurricane, FIGA may levy emergency assessments, in an amount not to exceed two percent of that insurer's net written premiums written in Florida for the kinds of insurance within an account.

The bill changes the amount of coverage that FIGA must provide for each condominium unit within a condominium association from a maximum of $100,000 multiplied by the number of units to $200,000 multiplied by the number of units. The bill also changes the amount of the emergency assessments that FIGA is authorized to levy against any insurer from a maximum of two percent of that insurer's net written premiums in Florida for the kinds of insurance within either the auto or all other insurance accounts maintained by FIGA to a maximum of four percent of the same premiums.

This bill does not impact local or state government revenues or expenditures. It potentially has both positive and negative direct economic impacts on the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Condominiums and Condominium Associations

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] Common elements are those portions of condominium property not located within the boundaries of the individual condominium units[2] and are considered jointly owned by all of the condominium unit owners. Examples of common elements include roofs, heating and air conditioning systems, exterior walls, pipes, and electrical systems.

A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.[3] The declaration governs the relationships among condominium unit owners and a condominium association. The condominium association is an entity responsible for the operation and maintenance of the common elements owned by the unit owners, and all unit owners of condominiums are members of the condominium association. The condominium association is overseen by an elected board of directors, commonly referred to as a board of administration.[4] The board enacts bylaws, which government administration of the condominium association.[5]

Insurance Policies Held by Condominium Associations

A condominium association must use its best efforts to maintain an insurance policy for the benefit of the association, the association property, and the common elements belonging to all condominium unit owners. One of the most significant common elements typically covered by condominium association insurance is roofs. Roofs are also some of the most likely elements to be severely damaged in a windstorm or hurricane. Condominium association insurance coverage does not include personal property within a unit or a unit's limited common elements, floor, wall, ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments.[6] Insurance coverage for such property is the responsibility of the unit owner.[7]

Guaranty Associations

Under federal law, insurance companies cannot file for bankruptcy.[8] Instead, they are either rehabilitated or liquidated by their state of domicile. Florida law establishes the system for the treatment of impaired or insolvent insurers[9] in Florida and sets up guaranty payments where necessary.[10] Florida law provides for guaranty associations to ensure policyholders of insolvent insurers are protected with respect to insurance premiums paid and settlement of outstanding claims,

---

[1] S. 718.103(11), F.S.
[2] S. 718.103(8), F.S.
[3] S. 718.104(2), F.S.
[4] S. 718.111, F.S.
[5] S. 718.112, F.S.
[6] S. 718.111, F.S.
[7] *Id.*
[8] 11 U.S.C. § 109(b)(2).
[9] "An 'insolvent insurer' means an insurer that was authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction if such order has become final by the exhaustion of appellate review." S. 631.54(7), F.S.
[10] Ch. 631, F.S.

up to limits provided by law.[11] A guaranty association is a not-for-profit corporation created by law and directed to protect policyholders from financial losses and delays in claims payment and settlements due to the insolvency of an insurer.[12] Insurers are required to participate in the guaranty associations as a condition of transacting insurance business in Florida. Florida operates four guaranty associations including the Florida Insurance Guaranty Association (FIGA)[13].

Florida Insurance Guaranty Association

FIGA provides a "mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer."[14] It issues guaranty fund payments and provides related services for all lines of property and casualty insurance, including policies written to condominium associations, with certain exceptions.[15] When a Florida property and casualty insurer becomes insolvent, FIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left with unpaid claims. FIGA obtains funds to pay the claims of insolvent insurers located in Florida from the liquidation of the assets of insolvent insurers by the Division of Rehabilitation and Liquidation (the Division) in the Florida Department of Financial Services (DFS) and from the liquidation of assets of insolvent insurers located outside Florida that transact insurance business in Florida.[16]

Florida law provides that FIGA is only obligated to pay the portions of claims made to insolvent property and casualty insurers, which are in excess of $100, and less than $300,000.[17] It further establishes that for policies providing homeowner's insurance coverage, FIGA provides for up to an additional $200,000 for the portion of a covered claim which related to the damage to the structure and contents.[18] However, for policies covering condominium associations, which the condominium associations have a responsibility to provide insurance coverage on residential units within the association, FIGA's coverage is capped at $100,000 multiplied by the number of condominium units in the condominium association.[19]

When an insolvent insurer is liquidated in Florida, FIGA assumes the claims and is "deemed the insurer to the extent of its obligation on...covered claims, and,...shall have all rights, duties, defenses, and obligations of the insolvent insurer as if the insurer had not become insolvent."[20] If an insurer's assets are insufficient to pay all claims, FIGA can also issue post-insolvency assessments to obtain funds to pay the remaining claims.[21] Currently, the assessments levied against any insurer in a calendar year may not exceed more than two percent of that insurer's net direct written premium in Florida for the kinds of insurance within an account.[22]

---

[11] *Id.*
[12] *See e.g.,* ss. 631.51 and 631.902, F.S.
[13] Ch. 631, part II, F.S.
[14] S. 631.51, F.S.
[15] S. 631.52, F.S.
[16] *See* s. 631.061, F.S. for grounds for liquidation. *See* s. 631.025, F.S., for an overview of persons subject to proceedings initiated by the Division.
[17] S. 631.57(1), F.S.
[18] *Id.*
[19] *Id.*
[20] S. 631.57, F.S.
[21] *Id.*
[22] S. 631.57(3)(a), F.S. As established in s. 632.52, F.S., FIGA covers "all kinds of direct insurance" with certain exceptions, such as life, annuity, health, disability, workers' compensation, and surplus lines insurance. FIGA maintains two accounts, including one for auto insurance and one for all other property and casualty insurance who are covered by FIGA. When an auto insurer's assets are insufficient to pay claims, all auto insurers within the auto account are assessed. When another property and casualty insurer's assets are insufficient to pay claims, all insurers within the all other account are assessed.

In the event that these assessments are insufficient to cover claims of insurers rendered insolvent by the effects of a hurricane, FIGA may levy emergency assessments.[23] The emergency assessments levied against any insurer in any one calendar year may not exceed more than two percent of that insurer's net written premiums written in Florida for the kinds of insurance within either the auto or all other insurance accounts maintained by FIGA.[24]

Effect of Bill

The bill changes the amount of coverage that FIGA must provide for each condominium unit within a condominium association from a maximum of $100,000 multiplied by the number of units to $200,000 multiplied by the number of units.

The bill also changes the amount of the emergency assessments that FIGA is authorized to levy against any insurer from a maximum of two percent of that insurer's net written premiums in Florida for the kinds of insurance within either the auto or all other insurance accounts maintained by FIGA to a maximum of four percent of the same premiums.

B. SECTION DIRECTORY:

Section 1. Amends s. 631.57, F.S., relating to duties and powers of the association.

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

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:

This bill has a positive effect on the private sector by providing additional coverage for condominium unit owners when FIGA must pay claims under condominium association policies. It also has the potential to have a negative impact on the private sector if FIGA deems it necessary to exercise its increased emergency assessment authority. However, the potential for FIGA to exercise its emergency assessment authority is more remote than the potential exercise of the initial assessment authority.

[23] S. 631.57(3)(e)1., F.S.
[24] *Id.*

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 neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 15, 2020, the Insurance and Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment made a technical change regarding the percentage of the emergency assessment.

The staff analysis has been updated to reflect the committee substitute.

A bill to be entitled

An act relating to insurance guaranty associations; amending s. 631.57, F.S.; revising the obligations of the Florida Insurance Guaranty Association, Incorporated, for policies covering condominium associations and homeowners' associations; revising the percentage limits on the emergency assessments levied against insurers by the Office of Insurance Regulation; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) and paragraph (e) of subsection (3) of section 631.57, Florida Statutes, are amended to read:

631.57 Powers and duties of the association.—

(1) The association shall:

(a)1. Be obligated to the extent of the covered claims existing:

a. Prior to adjudication of insolvency and arising within 30 days after the determination of insolvency;

b. Before the policy expiration date if less than 30 days after the determination; or

c. Before the insured replaces the policy or causes its cancellation, if she or he does so within 30 days of the

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

determination.

2. The obligation under subparagraph 1. includes only the amount of each covered claim which is in excess of $100 and is less than $300,000, except that policies providing coverage for homeowner's insurance shall provide for an additional $200,000 for the portion of a covered claim which relates only to the damage to the structure and contents.

3.a. Notwithstanding subparagraph 2., the obligation under subparagraph 1. for policies covering condominium associations or homeowners' associations, which associations have a responsibility to provide insurance coverage on residential units within the association, shall include that amount of each covered property insurance claim which is less than $200,000 ~~$100,000~~ multiplied by the number of condominium units or other residential units; however, as to homeowners' associations, this sub-subparagraph applies only to claims for damage or loss to residential units and structures attached to residential units.

b. Notwithstanding sub-subparagraph a., the association has no obligation to pay covered claims that are to be paid from the proceeds of bonds issued under s. 631.695. However, the association shall assign and pledge the first available moneys from all or part of the assessments to be made under paragraph (3)(a) to or on behalf of the issuer of such bonds for the benefit of the holders of such bonds. The association shall administer any such covered claims and present valid covered

claims for payment in accordance with the provisions of the assistance program in connection with which such bonds have been issued.

4. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises.

(3)

(e)1. In addition to assessments authorized in paragraph (a), and to the extent necessary to secure the funds for the account specified in s. 631.55(2)(b) for the direct payment of covered claims of insurers rendered insolvent by the effects of a hurricane and to pay the reasonable costs to administer such claims, or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 631.695 and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, the office, upon certification of the board of directors, shall levy emergency assessments upon insurers holding a certificate of authority. The emergency assessments levied against any insurer may not exceed in any one calendar year more than 4 ~~2~~ percent of that insurer's net written premiums in this state for the kinds of insurance within the account specified in s. 631.55(2)(b).

2. Emergency assessments authorized under this paragraph shall be levied by the office upon insurers in accordance with paragraph (f), upon certification as to the need for such assessments by the board of directors. If the board participates in the issuance of bonds in accordance with s. 631.695, emergency assessments shall be levied in each year that bonds issued under s. 631.695 and secured by such emergency assessments are outstanding in amounts up to such 4 percent ~~2 percent~~ limit as required in order to provide for the full and timely payment of the principal of, redemption premium, if any, and interest on, and related costs of issuance of, such bonds. The emergency assessments are assigned and pledged to the municipality, county, or legal entity issuing bonds under s. 631.695 for the benefit of the holders of such bonds in order to provide for the payment of the principal of, redemption premium, if any, and interest on such bonds, the cost of issuance of such bonds, and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, without further action by the association, the office, or any other party. If bonds are issued under s. 631.695 and the association determines to secure such bonds by a pledge of revenues received from the emergency assessments, such bonds, upon such pledge of revenues, shall be secured by and payable from the proceeds of such emergency assessments, and the proceeds of emergency assessments levied

under this paragraph shall be remitted directly to and administered by the trustee or custodian appointed for such bonds.

3. Emergency assessments used to defease bonds issued under this part may be payable in a single payment or, at the option of the association, may be payable in 12 monthly installments with the first installment being due and payable at the end of the month after an emergency assessment is levied and subsequent installments being due by the end of each succeeding month.

4. If emergency assessments are imposed, the report required by s. 631.695(7) must include an analysis of the revenues generated from the emergency assessments imposed under this paragraph.

5. If emergency assessments are imposed, the references in sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to assessments levied under paragraph (a) must include emergency assessments imposed under this paragraph.

6. If the board of directors participates in the issuance of bonds in accordance with s. 631.695, an annual assessment under this paragraph shall continue while the bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund bonds issued pursuant to s. 631.695, unless adequate provision has been made for the payment of the bonds in the documents

authorizing the issuance of such bonds.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 689 Department of Business and Professional Regulation
SPONSOR(S): Government Operations & Technology Appropriations Subcommittee, Business & Professions Subcommittee, Rodriguez, A.
TIED BILLS: **IDEN./SIM. BILLS:** SB 912

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N, As CS	Wright	Anstead
2) Government Operations & Technology Appropriations Subcommittee	12 Y, 0 N, As CS	Helpling	Topp
3) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

The Department of Business and Professional Regulation (DBPR), is responsible for licensing and regulating tobacco and alcohol sales, pugilistic events, and condominium associations in Florida.

Related to tobacco taxing and reporting regulations, the bill:
- requires that business records related to cigarette and tobacco products must be filed with DBPR, through their electronic system, and
- updates reporting requirements related to the sale of tobacco products.

Related to alcohol regulations, the bill:
- changes how alcoholic beverage license applicants submit fingerprints to DBPR,
- requires that an applicant for any alcoholic beverage license provide proof of the applicant's right of occupancy for the entire premises for which the applicant is seeking to license,
- requires alcoholic beverage licensees to maintain a current electronic mail address with DBPR,
- requires reports on alcohol sales be submitted through DBPR's electronic system,
- requires notices related to a vendor payment delinquency to be made through electronic mail, and
- changes auditing timeframes for special restaurant licensees.

Related to pugilistic events regulations, the bill gives full authority to the Florida State Boxing Commission to determine glove weights and requirements, including not requiring any gloves, for pugilistic matches.

Related to condominium association regulations, the bill:
- requires that a proposed annual budget be provided to members of the association and adopted by the board of directors no later than 30 days before the beginning of the fiscal year,
- provides that a person may not serve on a board if he or she is delinquent in the payment of an assessment due to the condominium association,
- removes the requirement that the Ombudsman keep his or her principal office in Leon County, and
- allows DBPR to adopt rules on the submission of complaints against condominium associations.

The bill will have no fiscal impact on the state or local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Department of Business and Professional Regulation

The Florida Department of Business and Professional Regulation (DBPR) regulates and licenses businesses and professionals in Florida through the following divisions:

- The Division of Administration,
- The Division of Alcoholic Beverages and Tobacco,
- The Division of Certified Public Accounting,
- The Division of Drugs, Devices, and Cosmetics,
- The Division of Florida Condominiums, Timeshares, and Mobile Homes,
- The Division of Hotels and Restaurants,
- The Division of Pari-mutuel Wagering,
- The Division of Professions,
- The Division of Real Estate,
- The Division of Regulation,
- The Division of Technology, and
- The Division of Service Operations.[1]

The Division of Regulation is the enforcement authority for the Florida State Boxing Commission, Labor Organizations and Business Agents, Farm Labor Program, Child Labor Program, and any professional boards and programs housed within the Division of Professions.[2] To ensure compliance with applicable laws and rules by those professions and related businesses, The Division of Regulation investigates complaints, utilizes compliance mechanisms, and performs inspections.[3]

The Division of Florida Condominiums, Timeshares, and Mobile Homes (FCTMH) provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure.[4] FCTMH has limited regulatory authority over the following business entities and individuals:[5]

- 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 (jurisdiction is limited to arbitration of election and recall disputes).

The Division of Alcoholic Beverages and Tobacco (ABT) regulates the manufacture, distribution, sale, and service of alcoholic beverages and tobacco products in Florida, including:

- receipt and processing of license applications;
- collection and auditing of taxes, surcharges, and fees paid by licensees; and

[1] s. 20.165, F.S.
[2] Except the Board of Architecture and Interior Design, and the Florida Board of Professional Engineers. Florida Department of Business and Professional Regulation, *Division of Regulation*, http://www.myfloridalicense.com/dbpr/reg/index.html (last visited Dec. 19, 2019).
[3] Florida Department of Business and Professional Regulation, *Division of Regulation*, http://www.myfloridalicense.com/DBPR/division-of-regulation/ (last visited Jan. 8, 2020).
[4] Department of Business and Professional Regulation, *Division of Florida Condominiums, Timeshares, and Mobile Homes*, http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/, (last visited Jan. 8, 2020).
[5] *Id.*

- enforcement of the laws and regulations governing the sale of alcoholic beverages and tobacco products.[6]

Tobacco

Background

ABT is responsible for the regulation of tobacco products under ch. 210, F.S., which sets out tax requirements only for cigarettes and tobacco products, and ch. 569, F.S., which sets out requirements for tobacco sales. [7]

"Cigarettes" are defined in s. 210.01(1), F.S., relating to state taxes on cigarettes, as "any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient." This definition does not include cigars.

"Tobacco products" are defined in s. 210.25(11), F.S., relating to state taxes on tobacco products other than cigarettes or cigars, as "loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing."

Cigars, nicotine products, and nicotine dispensing devices are not included in these definitions, and therefore they are not taxed as a cigarette or tobacco product in Florida.[8]

A person, firm, association, or corporation must obtain a permit from ABT to function as any of the following in Florida:

- retail tobacco products dealer,[9]
- cigarette manufacturer,[10]
- cigarette wholesale dealer,[11]
- cigarette distributing agent,[12]
- cigarette importer,[13]
- cigarette exporter,[14] or
- cigar wholesale dealer,[15] or
- tobacco wholesale dealer/distributor.[16]

ABT collects monthly business records related to cigarettes, which are used to accurately collect and distribute cigarette taxes. Such records must be submitted to ABT by any manufacturer, importer, distributing agent, wholesale dealer, retail dealer, common carrier, or any other person handling,

---

[6] Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/ (last visited Jan. 8, 2020).
[7] S. 561.02, F.S.
[8] Ss. 210.01(1), 210.25(12), F.S. "Nicotine dispensing device" means any product that employs an electronic, chemical, or mechanical means to produce vapor from a nicotine product. "Nicotine products" do not include tobacco products, certain smoking cessation products, and products with incidental nicotine. S. 877.112(1)(a),(b), F.S.
[9] S. 569.003, F.S.
[10] Ss. 210.01(21) and 210.15, F.S.
[11] Ss. 210.01(6) and 210.15(1), F.S.
[12] Ss. 210.01(14) and 210.15(1), F.S.
[13] Ss. 210.01(20) and 210.15(1), F.S.
[14] Ss. 210.01(17) and 210.15(1), F.S.
[15] S. 210.65(2), F.S.
[1616] Ss. 210.25(5) and 210.40, F.S.

transporting, or possessing cigarettes for sale or distribution in Florida. ABT prescribes the manner in which these records are submitted.[17]

ABT also collects monthly returns showing the taxable price of each tobacco product, not including cigarettes or cigars, that is manufactured or brought or caused to be brought into Florida for sale. Such returns must be submitted by every place of business that sells or manufactures such tobacco products in Florida. ABT prescribes the form and content for submitting such returns to ABT. Each return must be accompanied by a remittance for the full tax liability shown.[18]

Effect of the Bill

The bill requires business records related to cigarette and tobacco products to be filed through ABT's electronic data submission system.

The bill changes the requirements related to business records for tobacco products that must be submitted to ABT. Instead of submitting a return showing the taxable price of each tobacco product, tobacco product businesses must submit a full and complete report on tobacco product sales and manufacturing.

Alcoholic Beverages

Requirements for Licensees and License Applicants

ABT is responsible for enforcing the Beverage Law and supervising the conduct, management, and operation of the manufacturing, packaging, distribution, and sale of all alcoholic beverages in Florida.[19]

Any person, before engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages, must file a sworn application in the format prescribed by ABT. The applicant must be a legal or business entity, person, or persons and must include all persons, officers, shareholders, and directors of such legal or business entity that have a direct or indirect interest in the business seeking to be licensed under this part. The format and content of the application is determined by ABT.[20]

Before any application is approved, ABT may require such applicant to file a set of fingerprints with ABT on regular United States Department of Justice (USDOJ) forms, and for any person or persons interested directly or indirectly with the applicant in the business for which the license is being sought.[21]

All applications for alcoholic beverage licenses for consumption on the premises shall be accompanied by a certificate from H&R, the Department of Agriculture and Consumer Services, the Department of Health, the Agency for Health Care Administration, or the county health department stating that the place of business wherein the business is to be conducted meets all of the sanitary requirements of the state.[22]

Generally, for premises and manufacturing licenses, ABT requires that applicants must submit sketches of the area and have some dominion and control over the area, but there is not a specific requirement that applicants have a right of occupancy for the entire premises for which a license is sought.[23]

---

[17] S. 210.09(2), F.S. Some tax forms are electronically filed with ABT, and some require manual transmission. Department of Business and Professional Regulation, *Alcoholic Beverages and Tobacco- Forms & Publications, Licensing Related Forms, Tax-Related Forms*, http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/forms-and-publications/#1516309637983-6566a2a4-a2f1 (last visited Jan. 10, 2020).
[18] S. 210.55(1), F.S.
[19] S. 561.02, F.S.
[20] S. 561.17(1), F.S.
[21] *Id.*
[22] *Id.*
[23] Ss. 561.01(11), 565.03(2)(c), F.S.; Email from Conner Mann, Office of Legislative Affairs, DBPR, RE: House Inquiry, (Dec. 19, 2019).

There is also not a statutory requirement that licensees or applicants provide and maintain an electronic mail address for communications with ABT.

Each manufacturer, distributor, broker, sales agent, importer, and exporter must keep a complete and accurate record and make reports showing the amount of:[24]

- beverages manufactured or sold within the state and to whom sold;
- beverages imported from beyond the limits of the state and to whom sold; and
- beverages exported beyond the limits of the state, to whom sold, the place where sold, and the address of the person to whom sold.

Each manufacturer, distributor, broker, sales agent, and importer must send this full and complete report to ABT by the 10th day of each month for the previous calendar month. The report must be made out in triplicate: two copies must be sent to ABT, and the third copy must be retained for the licensee's record. Reports must be made on forms prepared and furnished by ABT.[25]

Credit for the Sale of Liquor

Vendors have up to 10 days after the calendar week when a sale of liquor was made to make a timely payment to a distributor for such liquor. When a vendor does not make a timely payment, the distributor who made such sale must, within 3 days, notify ABT of such in writing.[26]

ABT must then give notice to such vendor that it has received a notice of payment delinquency from a distributor. The vendor has 5 days after receipt of such notice to show cause and demand a hearing. The demand must be delivered to ABT either in person or by due course of mail within those 5 days.[27]

If no such demand for hearing is made, ABT must declare in writing to such vendor and to all manufacturers and distributors in Florida that all further sales to such vendor are prohibited until ABT certifies in writing that such vendor has fully paid for all previously purchased liquors.[28]

Permit Carriers

"Permit carrier" is defined as "a licensee authorized to make deliveries as provided in s. 561.57, F.S."[29]

In 2015, the Legislature passed a law amending s. 561.57, F.S., which allowed a licensed vendor to transport alcoholic beverages from a distributor's place of business to the vendor's licensed premises or off-premises storage permitted by ABT without a vehicle permit. It also removed the requirement for such vendors to possess an invoice or sales ticket during the transportation of alcoholic beverages.[30]

When this law was passed, the definition for "permit carrier," which was the name of the permit that was removed, was erroneously left in statute and is now obsolete.[31]

Auditing for Special Licenses

Section 561.20(1), F.S., limits, by county, the number of alcoholic beverage licenses that may be issued for the sale of distilled spirits, to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as "quota" licenses. The quota license is the only alcoholic

[24] S. 561.55(1), F.S.
[25] S. 561.55(2), F.S.
[26] S. 561.42(3), F.S.
[27] S. 561.42(4), F.S.
[28] *Id.*
[29] S. 561.01(20), F.S.
[30] Ch. 2015-52, Laws of Fla.
[31] *Id.*; S. 561.01, F.S.

beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation, if certain conditions are met.

A "special license" is an exception to the quota licensing scheme, which allows certain entities to serve liquor without a quota license. One such special license is a "special restaurant license," which applies to a food service establishment that has 2,500 square feet, is equipped to serve 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages. Such a food service establishment must be audited by ABT for compliance with the food and nonalcoholic beverage sales percentage requirements during the first 60-day operating period, and each 12-month operating period thereafter.

Failure by a sales licensee to satisfy the requirements as to the percentages of food and nonalcoholic beverage sales results in revocation of the special license. A licensee whose license is revoked is ineligible to have an interest in a subsequent application for a license for 120 days after the revocation.[32]

Effect of the Bill

The bill changes the mechanism through which applicants submit fingerprints to ABT. Instead of using USDOJ forms, applicants will need to either file fingerprints electronically through an approved electronic fingerprinting vendor, or use a form prescribed by the Florida Department of Law Enforcement.

The bill requires that an applicant for any alcoholic beverage license provide proof of the applicant's right of occupancy for the entire premises that the applicant is seeking a license.

The bill requires any person licensed or permitted by ABT to provide an electronic mail address to ABT to function as the primary contact for all communication from ABT to the licensee or permittee. Such licensees and permittees are responsible for maintaining accurate contact information with ABT.

The bill removes the requirement that reports on alcoholic beverages sold by a manufacturer, distributor, broker, sales agent, and importer must be made out in triplicate. Instead, the reports will be submitted to ABT through ABT's electronic data submission system.

The bill requires ABT to send a notice of payment delinquency to a vendor via electronic mail, not by written notice. The bill also allows a vendor to send a demand for a hearing to ABT via electronic mail.

The bill removes the obsolete definition for "permit carrier."

The bill changes ABT auditing timeframes for special restaurant licensees. The bill gives ABT more time to complete the initial audit. The first audit must be performed within the first 120 days of operation, instead of within the first 60 days.

Also, instead of a mandatory yearly audit, the timing for subsequent audits will be determined by the following percentages of the licensee's gross food and beverage revenue from the sale of food an non-alcoholic beverages, as established by the licensee's most recent audit:

- level 1 licensees, with 51 to 60 percent, will be audited every year;
- level 2 licensees, with 61 to 75 percent, will be audited every 2 years;
- level 3 licensees, with 76 to 90 percent, will be audited every 3 years; and
- level 4 licensees, with 91 to 100 percent, will be audited every 4 years.

[32] S. 561.20(2)(a)4., F.S.

Pugilistic Exhibitions

Background

Chapter 548, F.S., governs the Florida State Boxing Commission (FSBC). The function of the FSBC is to license and regulate pugilistic events and matches, including professional boxing, kickboxing, and mixed martial arts. The FSBC ensures that all matches are conducted in accordance with provisions of state laws and rules. The FSBC designates employees to attend the matches, appoints match officials, and ensures the matches are held in a safe and fair manner.[33] Members of the FSBC are appointed by the Governor, and there are five members.[34]

A match participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician,[35] matchmaker, or promoter must be licensed by FSBC before directly or indirectly acting in such capacity in connection with any match. In order to obtain a license, an applicant must:[36]

- complete an application in a form prescribed by the FSBC,
- be at least 18 years of age, and
- pay an application fee.

The FSBC generally establishes by rule any necessary protective devices that participants must wear, and the appropriate weight of gloves to be used in each boxing match. However, by statute, all participants in boxing matches must wear gloves weighing not less than 8 ounces each, and participants in mixed martial arts matches must wear gloves weighing between 4 to 8 ounces each.[37]

The FSBC requires that any glove intended to be used by a boxing or kickboxing participant in a match to be whole, clean, in sanitary condition, and have the thumb attached.[38] When both participants in a match weigh 154 pounds or less, both participants must use 8 ounce gloves, and when one or more of the participants in a match weighs more than 154 pounds, both participants must use 10 ounce gloves.[39]

For mixed martial arts participants, the FSBC requires gloves to be whole, clean, and in sanitary condition.[40] Gloves must weigh no less than 4 ounces and no more than 8 ounces, but both participants must wear the same weight gloves and use the same manufacturer of gloves as provided by the promoter, unless both participants agree to use different manufacturers of gloves.[41]

There is a debate as to whether bare knuckle boxing is safer or more dangerous than competitions with gloves. Data on the topic is limited. Gloves were initially introduced to boxing matches in the 18th century as a way to protect the participants' hands, not heads.[42] Experts opposed to bare knuckle matches argue that gloves help in blocks and other defensive moves, and therefore provide head protection, and that bare knuckle matches generally involve more body shots, which can result in serious internal injuries.[43] However, experts in favor of bare knuckle matches argue that the force behind a bare knuckle punch is generally less than a gloved punch, which can be safer for head strikes,

---

[33] S. 548.003, F.S.
[34] S. 548.003(1), F.S.
[35] A physician must be licensed pursuant to chapter 458 or chapter 459, must maintain a license in good standing, and must demonstrate satisfactory medical training or experience in boxing. S. 548.017, F.S.
[36] S. 548.021, F.S.
[37] S. 548.043(3), F.S.
[38] R. 61K1-3.030(2)(d), F.A.C.
[39] R. 61K1-3.030(2)(a), (b), F.A.C.
[40] R. 61K1-3.031(2)(b), F.A.C.
[41] R. 61K1-3.031(2)(a), F.A.C.
[42] Bob Moen, *Bare-knuckle boxing from a bygone era looks for a comeback*, AP News, https://apnews.com/a0926f603f6b4d83a958cc1d0fa9296e (last visited Jan. 11, 2020); Nick Wong, *Why Bare-Knuckle Fighting May Be Safer Than Boxing*, Complex Media, Inc., https://www.complex.com/sports/2015/11/bare-knuckle-boxing (last visited Jan. 11, 2020).
[43] *Id.*

and that a bare knuckle match generally involves less total strikes due to hand injuries resulting from no glove protection, which can lead to less injuries overall.[44]

In 2011, the Yavapai Nation in Arizona oversaw a bare knuckle boxing match on an Indian reservation, that is generally believed to be the first sanctioned bare knuckle boxing match in the United States since 1889.[45] In 2018, Wyoming became the first state to allow bare knuckle boxing matches, and held a championship event.[46] On June 22, 2019, in Tampa, Florida, the FSBC sanctioned The Bare Knuckle Fighting Championship, where the participants wore gloves that exposed the knuckles.[47] Currently, Wyoming, Mississippi, Florida, Kansas, and several Tribal Nations allow sanctioned bare knuckle boxing events.[48]

Effect of the Bill

The bill changes the name of the "Florida State Boxing Commission" to the "Florida Athletic Commission."

The bill gives full authority to the FSBC to determine glove requirements and weights for any pugilistic match, without a minimum or maximum weight set by statute. It also gives the FSBC the option of not requiring any gloves for pugilistic matches.

Condominiums

FCTMH, a division within DBPR, provides education, complaint resolution, mediation and arbitration, and developer disclosures for condominium associations.[49]

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., (the Condominium Act) comprised of units which may be owned by one or more persons along with an undivided right of access to common elements.[50] A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.[51] 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, which enacts bylaws which govern the administration of the association.

Annual Budget

Every condominium association must have an annual financial budget that sets forth the proposed expenditure of funds for the maintenance, management, and operation of the condominium. The annual budget must include operating expenses for the coming year and reserve accounts for capital expenditures and deferred maintenance.[52]

---

[44] *Id.*
[45] Michael Woods, *Reviving a bygone, bare-knuckle era*, ESPN (Aug. 5, 2011), https://www.espn.com/boxing/story/_/id/6835788/bringing-back-bygone-bare-knuckle-era-boxing (last visited Jan. 9, 2020).
[46] Josh Peter, Bare-knuckle boxing legally held in United States for first time, USA Today (Jun. 3, 2018), https://www.usatoday.com/story/sports/boxing/2018/06/02/bare-knuckle-boxing-official-return/666535002/ (last visited Jan. 9, 2020).
[47] Florida Department of Business and Professional Regulation, *Match Results*, http://www.myfloridalicense.com/dbpr/pro/sbc/documents/BKFC6MatchResults.pdf (last visited Jan. 9, 2020); Combat Sports Law, *Let's Talk Florida and Bare Knuckle Boxing*, https://combatsportslaw.com/2019/05/21/lets-talk-florida-and-bare-knuckle-boxing/ (last visited Jan. 9, 2020).
[48] Combat Sports Law, Documenting Bare Knuckle Boxing Legality, https://combatsportslaw.com/2019/06/23/documenting-bare-knuckle-boxing-legality/ (last visited Jan. 9, 2020).
[49] Department of Business and Professional Regulation, *Division of Florida Condominiums, Timeshares, and Mobile Homes*, http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/, (last visited Jan. 8, 2020).
[50] S. 718.103(11), F.S.
[51] S. 718.104(2), F.S.
[52] S. 718.112(2)(f), F.S.

In order to adopt a proposed annual budget, an association must hold a meeting to adopt the proposed budget. The association must provide notice of the meeting and a copy of the proposed budget to the members of the association at least 14 days before the meeting.[53] The proposed budget must be detailed, and, at a minimum, include the condominium's estimated expenses, the estimated expenses of each unit owner, and a statement that the proposed budget is a good faith estimate and represents an approximation of the future expenses.[54]

Board Directors

The condominium association is overseen by an elected board of directors. The board is responsible for managing the affairs of the association, has a fiduciary relationship with the unit owners, and has the responsibility to act with the highest degree of good faith and to place the interests of the unit owners above the personal interests of the directors.[55]

There are two ways that a person may become a board member:

- A person may be elected to the board by the members of the association,[56] or
- A person is appointed to the board by the developer if the developer is still entitled to representation, or by the board of directors if a vacancy on the board occurs between meetings.[57]

A condominium association's bylaws will establish the eligibility requirements to serve on the association's board of directors.[58] However, current law also establishes minimum requirements in order to serve on an association's board of directors.[59] In order to serve as a board director a person may not:[60]

- Be a co-owner of a unit with another director unless they own more than one unit or the condominium association is made up of less than ten units;
- Be **delinquent** in the payment of *any* **monetary obligation** to the condominium association;
- Have been previously suspended or removed from a condominium association's board of directors by FCTMH; or
- Have been convicted of a felony, under certain circumstances.[61]

The term "monetary obligation" is not defined in the Condominium Act, but, according to legal experts, a monetary obligation is considered to be any type of money owed to the association including fines, fees, and assessments.[62]

The Condominium Act also does not define the term "delinquent." According to DBPR, this can result in confusion for purposes of determining if a person is eligible to serve as a board director, because many associations have grace periods before late fees and interest applies to unpaid monetary obligations. However, it is unclear if these grace periods apply related to board service eligibility.[63]

---

[53] S. 718.112(2)(e), F.S.
[54] Ss. 718.112(2)(f), & 718.504(21), F.S.
[55] Ss. 718.103(4), 718.111, 718.112, F.S.
[56] S. 718.112(2)(d)4., F.S.
[57] Ss. 617.0809, & 718.112(2)(d)9., F.S.
[58] S. 718.112(2)(a), F.S.
[59] S. 718.112(2)(d), F.S.
[60] Ss. 718.112(2)(d), F.S.
[61] S. 718.111(1)(d), F.S.
[62] *See* Ch. 718, F.S.; David G. Muller, *Can delinquent owner run for a board*, Naples Daily News, Aug. 17, 2019, https://www.naplesnews.com/story/money/real-estate/2019/08/17/can-delinquent-owner-run-board/1985170001/ (last visited Jan. 9, 2020); Joe Adams, *Term Limits Continue to Cause Confusion*, Florida Condo & HOA Law Blog, Dec. 17, 2018, https://www.floridacondohoalawblog.com/2018/12/17/term-limits-continue-to-cause-confusion/ (last visited Jan. 9, 2020).
[63] *See* Ch. 718, F.S.; Email from Gabe Peters, , Director of Legislative Affairs, Department of Business & Professional Regulation, Condo Language Clarification (Jan. 10, 2020).

Condominium Ombudsman

Within FCTMH is housed the Office of the Condominium Ombudsman (Ombudsman). The Ombudsman is an attorney appointed by the Governor and a neutral resource for unit owners and condominium associations. The Ombudsman is authorized to prepare and issue reports and recommendations to the Governor, FCTMH, and the Legislature on any matter or subject within the jurisdiction of FCTMH. In addition, the Ombudsman may make recommendations to FCTMH for changes in rules and procedures for the filing, investigation, and resolution of complaints.[64]

The Ombudsman also acts as a liaison between FCTMH, unit owners, and condominium associations, and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.[65]

The Ombudsman is required to keep his or her principal office in Leon County.[66]

Condominium Complaints Received by FCTMH

FCTMH is charged with ensuring that condominium associations comply with the requirements of the Condominium Act and handling complaints alleging violations of the Condominium Act. FCTMH 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.[67] Once a developer has turned control of the condominium to the association, FCTMH only has jurisdiction to investigate complaints related to financial issues, elections, and unit owner access to official records.[68]

Within 30 days of receiving a complaint, FCTMH must acknowledge the complaint in writing, and notify the complainant whether the complaint is in its jurisdiction and whether additional information is needed. If the complaint is within FCTMH's jurisdiction, FCTMH must investigate the complaint and take action within 90 days of receiving the complaint or receiving additional information requested by FCTMH.[69]

Current law creates rules and requirements for filing complaints with DBPR against licensed professionals regulated by DBPR. Complaints filed against licensed professionals must be in writing, signed by the complainant, and legally sufficient. A complaint is legally sufficient if it contains ultimate facts that show a violation of the licensed professional's practice act.[70] However, no such rules or requirements exists for filing complaints against condominiums with FCTMH.

FCTMH provides a complaint form for condominium complaints, including a checklist of documents to provide with the complaint, on its website. According to FCTMH, submitting a complaint on the FCTMH's complaint form "may expedite the processing of your complaint."[71]

According to DBPR, establishing rules and requirements for filing complaints against condominium associations would allow FCTMH to be more efficient in resolving complaints filed against condominium associations.[72]

---

[64] Ss. 718.5011 & 718.5012, F.S.
[65] *Id.*
[66] S. 718.5014, F.S.
[67] 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.
[68] Ss. 718.117, & 718.501, F.S.
[69] S. 718.501(1)(m), F.S.
[70] S. 455.225(1), F.S.
[71] Florida Department of Business & Professional Regulation, *How to File a Complaint*, http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/complaints/#1572463379489-2bc8adc0-ec6a (last visited Jan. 10, 2020); Florida Department of Business & Professional Regulation, *Instructions for Filing a Condominium/Cooperative Complaint*, http://www.myfloridalicense.com/dbpr/lsc/documents/cccomplaint.pdf (last visited Jan. 10, 2020).

Effect of the Bill

The bill provides that, in addition to the current law requirements for adopting a proposed annual budget, a proposed annual budget must be provided to members of the association and adopted by the board of directors no later than 30 days before the beginning of the fiscal year, instead of only being provided to members 14 days before the meeting.

The bill provides that a person may not serve on a board if he or she is delinquent in the payment of an **assessment** due to the condominium association, instead of any **monetary obligation**. Current law defines "assessment" as an owner's share of funds that are required for the payment of common expenses.[73]

The bill also provides that a person is delinquent if a payment is not made by the due date identified in the association's declaration, articles of incorporation, or bylaws. If no due date is specifically identified in the condominium's declaration, articles of incorporation, or bylaws the due date is the first day of the assessment period.

The bill removes the requirement that the Ombudsman must keep his or her principal office in Leon County.

The bill provides that FCTMH may adopt rules regarding the submission of a complaint against a condominium association.

B. SECTION DIRECTORY:

Section 1 Amends s. 210.09, F.S., revising reporting requirements for cigarette sales.
Section 2 Amends s. 210.55, F.S., revising reporting requirements for tobacco products sales.
Section 3 Amends s. 548.003, F.S., renaming the Florida State Boxing Commission as the Florida Athletic Commission.
Section 4 Amends s. 548.043, F.S., providing glove requirements for pugilistic events.
Section 5 Amends s. 561.01, F.S., deleting the definition for "permit carrier."
Section 6 Amends s. 561.17, F.S., revising filing requirements for fingerprints for alcohol license applicants, and requiring alcohol licensees to maintain current electronic mail addresses.
Section 7 Amends s. 561.20, F.S., revising audit requirements for special restaurant licenses.
Section 8 Amends s. 561.42, F.S., allowing certain notices to be given by electronic mail.
Section 9 Amends s. 561.55, F.S., revising requirements for reports related to alcohol licenses.
Section 10 Amends s. 718.112, F.S., providing eligibility requirements for members of a condominium board of directors.
Section 11 Amends s. 718.501, F.S., allowing FCTMH to adopt rules prescribing the form of condominium complaints.
Section 12 Amends s. 718.5014, F.S., revising primary office location requirements for the office of the condominium ombudsman.
Section 13 Amends s. 455.219, F.S., conforming a provision
Section 14 Amends s. 548.002, F.S., conforming a provision.
Section 15 Amends s. 548.05, F.S., conforming a provision.
Section 16 Amends s. 548.071, F.S., conforming a provision.
Section 17 Amends s. 548.077, F.S., conforming a provision.
Section 18 Provides an effective date.

[72] Email from Gabe Peters, Director of Legislative Affairs, Department of Business & Professional Regulation, Condo Clarification (Jan. 10, 2020).
[73] S. 718.103(1), F.S.

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 make it easier for licensees to maintain their licenses due to clarified regulatory schemes and routine auditing.

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:

DBPR will need to update rules related to regulations on tobacco, alcohol, condominium associations, and pugilistic events. DBPR has adequate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 15, 2020, the Business & Professions Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment clarified:

- that the definition for "delinquent," as used in determining eligibility to be a candidate to serve on a condominium board, is limited to condominium assessment payments; and
- that the default definition for "delinquent" includes all condominium assessments.

On January 28, 2020, the Government Operations & Technology Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute for committee substitute. The amendment removed two sections of the bill related to modifications of hotel and restaurant fees and fees schedules.

This analysis is drafted to the committee substitute as passed by the Government Operations & Technology Appropriations Subcommittee.

A bill to be entitled

An act relating to the Department of Business and Professional Regulation; amending s. 210.09, F.S.; requiring that certain reports relating to the transportation or possession of cigarettes be filed with the Division of Alcoholic Beverages and Tobacco through the division's electronic data submission system; amending s. 210.55, F.S.; requiring that certain entities file reports, rather than returns, relating to tobacco products with the division; providing requirements for such reports; amending s. 548.003, F.S.; renaming the Florida State Boxing Commission as the Florida Athletic Commission; amending s. 548.043, F.S.; revising rulemaking requirements for the commission relating to gloves; amending s. 561.01, F.S.; deleting the definition of the term "permit carrier"; amending s. 561.17, F.S.; revising a requirement related to the filing of fingerprints with the division; requiring that applications be accompanied by certain information relating to right of occupancy; providing requirements relating to contact information for licensees and permittees; amending s. 561.20, F.S.; conforming cross-references; revising requirements for issuing special licenses to certain food service

establishments; amending s. 561.42, F.S.; requiring the division, and authorizing vendors, to use electronic mail to give certain notice; amending s. 561.55, F.S.; revising requirements for reports relating to alcoholic beverages; amending s. 718.112, F.S.; providing the circumstances under which a person is delinquent in the payment of an assessment in the context of eligibility for membership on certain condominium boards; requiring that an annual budget be proposed to unit owners and adopted by the board before a specified time; amending s. 718.501, F.S.; authorizing the Division of Florida Condominiums, Timeshares, and Mobile Homes to adopt rules regarding the submission of complaints against a condominium association; amending s. 718.5014, F.S.; revising the location requirements for the principal office of the condominium ombudsman; amending ss. 455.219, 548.002, 548.05, 548.071, and 548.077, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsection (2) of section 210.09, Florida Statutes, is amended to read:

210.09 Records to be kept; reports to be made; examination.—

(2) The division is authorized to prescribe and promulgate by rules and regulations, which shall have the force and effect of the law, such records to be kept and reports to be made to the division by any manufacturer, importer, distributing agent, wholesale dealer, retail dealer, common carrier, or any other person handling, transporting or possessing cigarettes for sale or distribution within the state as may be necessary to collect and properly distribute the taxes imposed by s. 210.02. All reports shall be made on or before the 10th day of the month following the month for which the report is made, unless the division by rule or regulation shall prescribe that reports be made more often. All reports shall be filed with the division through the division's electronic data submission system.

Section 2. Subsection (1) of section 210.55, Florida Statutes, is amended to read:

210.55 Distributors; monthly returns.—

(1) On or before the 10th of each month, every taxpayer with a place of business in this state shall file a full and complete report ~~return~~ with the division showing the tobacco products ~~taxable price of each tobacco product~~ brought or caused to be brought into this state for sale, or made, manufactured, or fabricated in this state for sale in this state, during the preceding month. Every taxpayer outside this state shall file a

full and complete report with the division through the division's electronic data submission system ~~return~~ showing the quantity and taxable price of each tobacco product shipped or transported to retailers in this state, to be sold by those retailers, during the preceding month. Reports must ~~Returns shall~~ be made upon forms furnished and prescribed by the division and must ~~shall~~ contain any other information that the division requires. Each report must ~~return shall~~ be accompanied by a remittance for the full tax liability shown and be filed with the division through the division's electronic data submission system.

Section 3. Section 548.003, Florida Statutes, is amended to read:

548.003 Florida Athletic ~~State Boxing~~ Commission.—

(1) The Florida Athletic ~~State Boxing~~ Commission is created and is assigned to the Department of Business and Professional Regulation for administrative and fiscal accountability purposes only. The ~~Florida State Boxing~~ commission shall consist of five members appointed by the Governor, subject to confirmation by the Senate. One member must be a physician licensed pursuant to chapter 458 or chapter 459, who must maintain an unencumbered license in good standing, and who must, at the time of her or his appointment, have practiced medicine for at least 5 years. Upon the expiration of the term of a commissioner, the Governor shall appoint a successor to

serve for a 4-year term. A commissioner whose term has expired shall continue to serve on the commission until such time as a replacement is appointed. If a vacancy on the commission occurs prior to the expiration of the term, it shall be filled for the unexpired portion of the term in the same manner as the original appointment.

(2) The ~~Florida State Boxing~~ commission, as created by subsection (1), shall administer the provisions of this chapter. The commission has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter and to implement each of the duties and responsibilities conferred upon the commission, including, but not limited to:

(a) Development of an ethical code of conduct for commissioners, commission staff, and commission officials.

(b) Facility and safety requirements relating to the ring, floor plan and apron seating, emergency medical equipment and services, and other equipment and services necessary for the conduct of a program of matches.

(c) Requirements regarding a participant's apparel, bandages, handwraps, gloves, mouthpiece, and appearance during a match.

(d) Requirements relating to a manager's participation, presence, and conduct during a match.

(e) Duties and responsibilities of all licensees under this chapter.

(f) Procedures for hearings and resolution of disputes.

(g) Qualifications for appointment of referees and judges.

(h) Qualifications for and appointment of chief inspectors and inspectors and duties and responsibilities of chief inspectors and inspectors with respect to oversight and coordination of activities for each program of matches regulated under this chapter.

(i) Designation and duties of a knockdown timekeeper.

(j) Setting fee and reimbursement schedules for referees and other officials appointed by the commission or the representative of the commission.

(k) Establishment of criteria for approval, disapproval, suspension of approval, and revocation of approval of amateur sanctioning organizations for amateur boxing, kickboxing, and mixed martial arts held in this state, including, but not limited to, the health and safety standards the organizations use before, during, and after the matches to ensure the health, safety, and well-being of the amateurs participating in the matches, including the qualifications and numbers of health care personnel required to be present, the qualifications required for referees, and other requirements relating to the health, safety, and well-being of the amateurs participating in the matches. The commission may adopt by rule, or incorporate by reference into rule, the health and safety standards of USA Boxing as the minimum health and safety standards for an amateur

boxing sanctioning organization, the health and safety standards of the International Sport Kickboxing Association as the minimum health and safety standards for an amateur kickboxing sanctioning organization, and the minimum health and safety standards for an amateur mixed martial arts sanctioning organization. The commission shall review its rules for necessary revision at least every 2 years and may adopt by rule, or incorporate by reference into rule, the then-existing current health and safety standards of USA Boxing and the International Sport Kickboxing Association. The commission may adopt emergency rules to administer this paragraph.

(3) The commission shall maintain an office in Tallahassee. At the first meeting of the commission after June 1 of each year, the commission shall select a chair and a vice chair from among its membership. Three members shall constitute a quorum and the concurrence of at least three members is necessary for official commission action.

(4) Three consecutive unexcused absences or absences constituting 50 percent or more of the commission's meetings within any 12-month period shall cause the commission membership of the member in question to become void, and the position shall be considered vacant. The commission shall, by rule, define unexcused absences.

(5) Each commission member shall be accountable to the Governor for the proper performance of duties as a member of the

commission. The Governor shall cause to be investigated any complaint or unfavorable report received by the Governor or the department concerning an action of the commission or any member and shall take appropriate action thereon. The Governor may remove from office any member for malfeasance, unethical conduct, misfeasance, neglect of duty, incompetence, permanent inability to perform official duties, or pleading guilty or nolo contendere to or being found guilty of a felony.

(6) Each member of the commission shall be compensated at the rate of $50 for each day she or he attends a commission meeting and shall be reimbursed for other expenses as provided in s. 112.061.

(7) The commission shall be authorized to join and participate in the activities of the Association of Boxing Commissions (ABC).

(8) The department shall provide all legal and investigative services necessary to implement this chapter. The department may adopt rules as provided in ss. 120.536(1) and 120.54 to carry out its duties under this chapter.

Section 4. Subsection (3) of section 548.043, Florida Statutes, is amended to read:

548.043 Weights and classes, limitations; gloves.—

(3) The commission shall establish by rule <u>the need for gloves, if any, and the weight of any such gloves to be used in each pugilistic match</u> ~~the appropriate weight of gloves to be~~

~~used in each boxing match; however, all participants in boxing matches shall wear gloves weighing not less than 8 ounces each and participants in mixed martial arts matches shall wear gloves weighing 4 to 8 ounces each~~. Participants shall wear such protective devices as the commission deems necessary.

Section 5. Subsection (20) of section 561.01, Florida Statutes, is amended to read:

561.01 Definitions.—As used in the Beverage Law:

~~(20) "Permit carrier" means a licensee authorized to make deliveries as provided in s. 561.57.~~

Section 6. Subsections (1) and (2) of section 561.17, Florida Statutes, are amended, and subsection (5) is added to that section, to read:

561.17 License and registration applications; approved person.—

(1) Any person, before engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages, shall file, with the district licensing personnel of the district of the division in which the place of business for which a license is sought is located, a sworn application in the format prescribed by the division. The applicant must be a legal or business entity, person, or persons and must include all persons, officers, shareholders, and directors of such legal or business entity that have a direct or indirect interest in the business seeking to be licensed under

this part. However, the applicant does not include any person that derives revenue from the license solely through a contractual relationship with the licensee, the substance of which contractual relationship is not related to the control of the sale of alcoholic beverages. Before any application is approved, the division may require the applicant to file a set of fingerprints electronically through an approved electronic fingerprinting vendor or on ~~regular United States Department of Justice~~ forms prescribed by the Florida Department of Law Enforcement for herself or himself and for any person or persons interested directly or indirectly with the applicant in the business for which the license is being sought, when required by the division. If the applicant or any person who is interested with the applicant either directly or indirectly in the business or who has a security interest in the license being sought or has a right to a percentage payment from the proceeds of the business, either by lease or otherwise, is not qualified, the division shall deny the application. However, any company regularly traded on a national securities exchange and not over the counter; any insurer, as defined in the Florida Insurance Code; or any bank or savings and loan association chartered by this state, another state, or the United States which has an interest, directly or indirectly, in an alcoholic beverage license is not required to obtain the division's approval of its officers, directors, or stockholders or any change of such

positions or interests. A shopping center with five or more stores, one or more of which has an alcoholic beverage license and is required under a lease common to all shopping center tenants to pay no more than 10 percent of the gross proceeds of the business holding the license to the shopping center, is not considered as having an interest, directly or indirectly, in the license. A performing arts center, as defined in s. 561.01, which has an interest, directly or indirectly, in an alcoholic beverage license is not required to obtain division approval of its volunteer officers or directors or of any change in such positions or interests.

(2) All applications for any alcoholic beverage license must be accompanied by proof of the applicant's right of occupancy for the entire premises sought to be licensed. All applications for alcoholic beverage licenses for consumption on the premises shall be accompanied by a certificate of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation, the Department of Agriculture and Consumer Services, the Department of Health, the Agency for Health Care Administration, or the county health department that the place of business wherein the business is to be conducted meets all of the sanitary requirements of the state.

(5) Any person or entity licensed or permitted by the division must provide an electronic mail address to the division to function as the primary contact for all communication by the

division to the licensee or permittees. Licensees and permittees are responsible for maintaining accurate contact information on file with the division.

Section 7. Paragraph (a) of subsection (2) of section 561.20, Florida Statutes, is amended to read:

561.20 Limitation upon number of licenses issued.—

(2)(a) The limitation of the number of licenses as provided in this section does not prohibit the issuance of a special license to:

1. Any bona fide hotel, motel, or motor court of not fewer than 80 guest rooms in any county having a population of less than 50,000 residents, and of not fewer than 100 guest rooms in any county having a population of 50,000 residents or greater; or any bona fide hotel or motel located in a historic structure, as defined in s. 561.01(20) ~~s. 561.01(21)~~, with fewer than 100 guest rooms which derives at least 51 percent of its gross revenue from the rental of hotel or motel rooms, which is licensed as a public lodging establishment by the Division of Hotels and Restaurants; provided, however, that a bona fide hotel or motel with no fewer than 10 and no more than 25 guest rooms which is a historic structure, as defined in s. 561.01(20) ~~s. 561.01(21)~~, in a municipality that on the effective date of this act has a population, according to the University of Florida's Bureau of Economic and Business Research Estimates of Population for 1998, of no fewer than 25,000 and no more than

35,000 residents and that is within a constitutionally chartered county may be issued a special license. This special license shall allow the sale and consumption of alcoholic beverages only on the licensed premises of the hotel or motel. In addition, the hotel or motel must derive at least 60 percent of its gross revenue from the rental of hotel or motel rooms and the sale of food and nonalcoholic beverages; provided that this subparagraph shall supersede local laws requiring a greater number of hotel rooms;

2. Any condominium accommodation of which no fewer than 100 condominium units are wholly rentable to transients and which is licensed under chapter 509, except that the license shall be issued only to the person or corporation that operates the hotel or motel operation and not to the association of condominium owners;

3. Any condominium accommodation of which no fewer than 50 condominium units are wholly rentable to transients, which is licensed under chapter 509, and which is located in any county having home rule under s. 10 or s. 11, Art. VIII of the State Constitution of 1885, as amended, and incorporated by reference in s. 6(e), Art. VIII of the State Constitution, except that the license shall be issued only to the person or corporation that operates the hotel or motel operation and not to the association of condominium owners;

4. A food service establishment that has 2,500 square feet

of service area, is equipped to serve meals to 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages during the first 120-day ~~60-day~~ operating period and the first ~~each~~ 12-month operating period thereafter. Subsequent audit timeframes must be based upon the audit percentage established by the most recent audit and conducted on a staggered scale as follows: level 1, 51 percent to 60 percent, every year; level 2, 61 percent to 75 percent, every 2 years; level 3, 76 percent to 90 percent, every 3 years; and level 4, 91 percent to 100 percent, every 4 years. A food service establishment granted a special license on or after January 1, 1958, pursuant to general or special law may not operate as a package store and may not sell intoxicating beverages under such license after the hours of serving or consumption of food have elapsed. Failure by a licensee to meet the required percentage of food and nonalcoholic beverage gross revenues during the covered operating period shall result in revocation of the license or denial of the pending license application. A licensee whose license is revoked or an applicant whose pending application is denied, or any person required to qualify on the special license application, is ineligible to have any interest in a subsequent application for such a license for a period of 120 days after the date of the final denial or revocation;

5. Any caterer, deriving at least 51 percent of its gross

food and beverage revenue from the sale of food and nonalcoholic beverages at each catered event, licensed by the Division of Hotels and Restaurants under chapter 509. This subparagraph does not apply to a culinary education program, as defined in s. 381.0072(2), which is licensed as a public food service establishment by the Division of Hotels and Restaurants and provides catering services. Notwithstanding any law to the contrary, a licensee under this subparagraph shall sell or serve alcoholic beverages only for consumption on the premises of a catered event at which the licensee is also providing prepared food, and shall prominently display its license at any catered event at which the caterer is selling or serving alcoholic beverages. A licensee under this subparagraph shall purchase all alcoholic beverages it sells or serves at a catered event from a vendor licensed under s. 563.02(1), s. 564.02(1), or licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), as appropriate. A licensee under this subparagraph may not store any alcoholic beverages to be sold or served at a catered event. Any alcoholic beverages purchased by a licensee under this subparagraph for a catered event that are not used at that event must remain with the customer; provided that if the vendor accepts unopened alcoholic beverages, the licensee may return such alcoholic beverages to the vendor for a credit or reimbursement. Regardless of the county or counties in which the licensee operates, a licensee under this subparagraph

shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this subparagraph must maintain for a period of 3 years all records and receipts for each catered event, including all contracts, customers' names, event locations, event dates, food purchases and sales, alcoholic beverage purchases and sales, nonalcoholic beverage purchases and sales, and any other records required by the department by rule to demonstrate compliance with the requirements of this subparagraph. Notwithstanding any law to the contrary, any vendor licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), may, without any additional licensure under this subparagraph, serve or sell alcoholic beverages for consumption on the premises of a catered event at which prepared food is provided by a caterer licensed under chapter 509. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph shall not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this section shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. The Division of Alcoholic Beverages and Tobacco is hereby authorized to adopt rules to administer the license created in this subparagraph, to include rules governing licensure,

recordkeeping, and enforcement. The first $300,000 in fees collected by the division each fiscal year pursuant to this subparagraph shall be deposited in the Department of Children and Families' Operations and Maintenance Trust Fund to be used only for alcohol and drug abuse education, treatment, and prevention programs. The remainder of the fees collected shall be deposited into the Hotel and Restaurant Trust Fund created pursuant to s. 509.072; or

6. A culinary education program as defined in s. 381.0072(2) which is licensed as a public food service establishment by the Division of Hotels and Restaurants.

a. This special license shall allow the sale and consumption of alcoholic beverages on the licensed premises of the culinary education program. The culinary education program shall specify designated areas in the facility where the alcoholic beverages may be consumed at the time of application. Alcoholic beverages sold for consumption on the premises may be consumed only in areas designated pursuant to s. 561.01(11) and may not be removed from the designated area. Such license shall be applicable only in and for designated areas used by the culinary education program.

b. If the culinary education program provides catering services, this special license shall also allow the sale and consumption of alcoholic beverages on the premises of a catered event at which the licensee is also providing prepared food. A

culinary education program that provides catering services is not required to derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. Notwithstanding any law to the contrary, a licensee that provides catering services under this sub-subparagraph shall prominently display its beverage license at any catered event at which the caterer is selling or serving alcoholic beverages. Regardless of the county or counties in which the licensee operates, a licensee under this sub-subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this sub-subparagraph must maintain for a period of 3 years all records required by the department by rule to demonstrate compliance with the requirements of this sub-subparagraph.

c. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph does not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this subparagraph shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. Any culinary education program that holds a license to sell alcoholic beverages shall comply with the age requirements set forth in ss. 562.11(4), 562.111(2), and 562.13.

d. The Division of Alcoholic Beverages and Tobacco may adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement.

e. A license issued pursuant to this subparagraph does not permit the licensee to sell alcoholic beverages by the package for off-premises consumption.

However, any license heretofore issued to any such hotel, motel, motor court, or restaurant or hereafter issued to any such hotel, motel, or motor court, including a condominium accommodation, under the general law shall not be moved to a new location, such license being valid only on the premises of such hotel, motel, motor court, or restaurant. Licenses issued to hotels, motels, motor courts, or restaurants under the general law and held by such hotels, motels, motor courts, or restaurants on May 24, 1947, shall be counted in the quota limitation contained in subsection (1). Any license issued for any hotel, motel, or motor court under this law shall be issued only to the owner of the hotel, motel, or motor court or, in the event the hotel, motel, or motor court is leased, to the lessee of the hotel, motel, or motor court; and the license shall remain in the name of the owner or lessee so long as the license is in existence. Any special license now in existence heretofore issued under this law cannot be renewed except in the name of

the owner of the hotel, motel, motor court, or restaurant or, in the event the hotel, motel, motor court, or restaurant is leased, in the name of the lessee of the hotel, motel, motor court, or restaurant in which the license is located and must remain in the name of the owner or lessee so long as the license is in existence. Any license issued under this section shall be marked "Special," and nothing herein provided shall limit, restrict, or prevent the issuance of a special license for any restaurant or motel which shall hereafter meet the requirements of the law existing immediately prior to the effective date of this act, if construction of such restaurant has commenced prior to the effective date of this act and is completed within 30 days thereafter, or if an application is on file for such special license at the time this act takes effect; and any such licenses issued under this proviso may be annually renewed as now provided by law. Nothing herein prevents an application for transfer of a license to a bona fide purchaser of any hotel, motel, motor court, or restaurant by the purchaser of such facility or the transfer of such license pursuant to law.

Section 8. Subsection (4) of section 561.42, Florida Statutes, is amended 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.—

(4) Before the division shall so declare and prohibit such sales to such vendor, ~~it shall,~~ within 2 days after receipt of such notice~~,~~ the division shall give ~~written~~ notice to such vendor by electronic mail of the receipt by the division of such notification of delinquency and such vendor shall be directed to forthwith make payment thereof or, upon failure to do so, to show cause before the division why further sales to such vendor shall not be prohibited. Good and sufficient cause to prevent such action by the division may be made by showing payment, failure of consideration, or any other defense which would be considered sufficient in a common-law action. The vendor shall have 5 days after service ~~receipt~~ of such notice via electronic mail within which to show such cause, and he or she may demand a hearing thereon, provided he or she does so in writing within said 5 days, such written demand to be delivered to the division either in person, by electronic mail, or by due course of mail within such 5 days. If no such demand for hearing is made, the division shall thereupon declare in writing to such vendor and to all manufacturers and distributors within the state that all further sales to such vendor are prohibited until such time as the division certifies in writing that such vendor has fully paid for all liquors previously purchased. In the event such prohibition of sales and declaration thereof to the vendor, manufacturers, and distributors is ordered by the division, the

vendor may seek review of such decision by the Department of Business and Professional Regulation within 5 days. In the event application for such review is filed within such time, such prohibition of sales shall not be made, published, or declared until final disposition of such review by the department.

Section 9. Subsection (2) of section 561.55, Florida Statutes, is amended to read:

561.55 Manufacturers', distributors', brokers', sales agents', importers', vendors', and exporters' records and reports.—

(2) Each manufacturer, distributor, broker, sales agent, and importer shall make a full and complete report by the 10th day of each month for the previous calendar month. The report must be ~~shall be made out in triplicate; two copies shall be sent to the division, and the third copy shall be retained for the manufacturer's, distributor's, broker's, sales agent's, or importer's record. Reports shall be~~ made on forms prepared ~~and furnished~~ by the division and filed with the division through the division's electronic data submission system.

Section 10. Paragraphs (d) and (f) of subsection (2) of section 718.112, Florida Statutes, are amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(d) *Unit owner meetings.*—

1. An annual meeting of the unit owners must be held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting must be held within 45 miles of the condominium property. However, such distance requirement does not apply to an association governing a timeshare condominium.

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term must be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. Board members may serve terms longer than 1 year if permitted by the bylaws or articles of incorporation. A board member may not serve more than 8 consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all

votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a residential condominium association of more than 10 units or in a residential condominium association that does not include timeshare units or timeshare interests, co-owners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any <u>assessment</u> ~~monetary obligation~~ due to the

association, is not eligible to be a candidate for board membership and may not be listed on the ballot. For purposes of this paragraph, a person is delinquent if a payment is not made by the due date as specifically identified in the declaration of condominium, bylaws, or articles of incorporation. If a due date is not specifically identified in the declaration of condominium, bylaws, or articles of incorporation, the due date is the first day of the assessment period. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. This subparagraph does not limit the term of a member of the board of a nonresidential or timeshare condominium.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice must include an agenda, must be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting, and must be posted in a conspicuous place on the condominium property at least 14 continuous days

before the annual meeting. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property where all notices of unit owner meetings must be posted. This requirement does not apply if there is no condominium property for posting notices. In lieu of, or in addition to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a

requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association's official records. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice must be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

4. The members of the board of a residential condominium shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or

elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This subparagraph does not apply to an association governing a timeshare condominium.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates. Upon request of a candidate, an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the

association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not authorize any other person to vote his or her ballot, and any ballots improperly cast are invalid. A unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting. Notwithstanding this sub-subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. Within 90 days after being elected or appointed to the board of an association of a residential condominium, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best

of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director of an association of a residential condominium who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election or the duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.

c. Any challenge to the election process must be commenced within 60 days after the election results are announced.

5. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), must be made at a duly noticed meeting of unit owners and is subject to all requirements of this chapter or the applicable condominium documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any law that provides for such action.

6. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any law. Notice of meetings of the board of administration, unit owner meetings, except unit owner meetings called to recall board members under paragraph (j), and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission. A unit owner who consents to receiving notices by electronic transmission is solely responsible for removing or bypassing filters that block receipt of mass emails sent to members on behalf of the association in the course of giving electronic notices.

7. Unit owners have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the association may adopt reasonable rules governing the frequency, duration, and manner of unit owner participation.

8. A unit owner may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the division.

9. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to sub-subparagraph 4.a. unless the association governs 10 units or fewer and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (j) and rules adopted by the division.

10. This chapter does not limit the use of general or limited proxies, require the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association or nonresidential condominium association.

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an

association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(f) *Annual budget.*—

1. The proposed annual budget of estimated revenues and expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, at a minimum, any applicable expenses listed in s. 718.504(21). <u>The annual budget must be proposed to unit owners and adopted by the board of directors no later than 30 days before the beginning of the fiscal year.</u> A multicondominium association shall adopt a separate budget of common expenses for each condominium the association operates and shall adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached to it must show the amount budgeted for this maintenance. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they need not be listed.

2.a. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000. The amount to be reserved must be computed using a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. This subsection does not apply to an adopted budget in which the members of an association have determined, by a majority vote at a duly called meeting of the association, to provide no reserves or less reserves than required by this subsection.

b. Before turnover of control of an association by a developer to unit owners other than a developer pursuant to s. 718.301, the developer may vote the voting interests allocated to its units to waive the reserves or reduce the funding of reserves through the period expiring at the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or

an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first, after which time reserves may be waived or reduced only upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves and no such result is achieved or a quorum is not attained, the reserves included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a duly called meeting of the association. Before turnover of control of an association by a developer to unit owners other than the developer pursuant to s. 718.301, the developer-controlled association may not vote to use reserves for purposes other than those for which they were intended without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the association.

4. The only voting interests that are eligible to vote on questions that involve waiving or reducing the funding of

reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended, are the voting interests of the units subject to assessment to fund the reserves in question. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended must contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

Section 11. Paragraph (m) of subsection (1) of section 718.501, Florida Statutes, is amended to read:

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

(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 unit owner access to association records pursuant to s. 718.111(12).

(m) If a complaint is made, the division must conduct its inquiry with due regard for the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any

right to a hearing pursuant to ss. 120.569 and 120.57. The division may adopt rules regarding the submission of a complaint against an association.

Section 12. Section 718.5014, Florida Statutes, is amended to read:

718.5014 Ombudsman location.—The ombudsman shall maintain his or her principal office at a ~~in Leon County on the premises of the division or, if suitable space cannot be provided there, at another~~ place convenient to the offices of the division which will enable the ombudsman to expeditiously carry out the duties and functions of his or her office. The ombudsman may establish branch offices elsewhere in the state upon the concurrence of the Governor.

Section 13. Subsection (1) of section 455.219, Florida Statutes, is amended to read:

455.219 Fees; receipts; disposition; periodic management reports.—

(1) Each board within the department shall determine by rule the amount of license fees for its profession, based upon department-prepared long-range estimates of the revenue required to implement all provisions of law relating to the regulation of professions by the department and any board; however, when the department has determined, based on the long-range estimates of such revenue, that a profession's trust fund moneys are in excess of the amount required to cover the necessary functions

of the board, or the department when there is no board, the department may adopt rules to implement a waiver of license renewal fees for that profession for a period not to exceed 2 years, as determined by the department. Each board, or the department when there is no board, shall ensure license fees are adequate to cover all anticipated costs and to maintain a reasonable cash balance, as determined by rule of the department, with advice of the applicable board. If sufficient action is not taken by a board within 1 year of notification by the department that license fees are projected to be inadequate, the department shall set license fees on behalf of the applicable board to cover anticipated costs and to maintain the required cash balance. The department shall include recommended fee cap increases in its annual report to the Legislature. Further, it is legislative intent that no regulated profession operate with a negative cash balance. The department may provide by rule for the advancement of sufficient funds to any profession or the Florida Athletic ~~State Boxing~~ Commission operating with a negative cash balance. Such advancement may be for a period not to exceed 2 consecutive years and shall require interest to be paid by the regulated profession. Interest shall be calculated at the current rate earned on Professional Regulation Trust Fund investments. Interest earned shall be allocated to the various funds in accordance with the allocation of investment earnings during the period of the advance.

Section 14. Subsection (4) of section 548.002, Florida Statutes, is amended to read:

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

(4) "Commission" means the Florida Athletic ~~State Boxing~~ Commission.

Section 15. Subsections (3) and (4) of section 548.05, Florida Statutes, are amended to read:

548.05 Control of contracts.—

(3) The commission may require that each contract contain language authorizing the ~~Florida State Boxing~~ commission to withhold any or all of any manager's share of a purse in the event of a contractual dispute as to entitlement to any portion of a purse. The commission may establish rules governing the manner of resolution of such dispute. In addition, if the commission deems it appropriate, the commission is hereby authorized to implead interested parties over any disputed funds into the appropriate circuit court for resolution of the dispute prior to release of all or any part of the funds.

(4) Each contract subject to this section shall contain the following clause: "This agreement is subject to the provisions of chapter 548, Florida Statutes, and to the rules of the Florida Athletic ~~State Boxing~~ Commission and to any future amendments of either."

Section 16. Subsection (12) of section 548.071, Florida Statutes, is amended to read:

548.071 Suspension or revocation of license or permit by commission.—The commission may suspend or revoke a license or permit if the commission finds that the licensee or permittee:

(12) Has been disciplined by the ~~Florida State Boxing~~ commission or similar agency or body of any jurisdiction.

Section 17. Section 548.077, Florida Statutes, is amended to read:

548.077 Florida Athletic ~~State Boxing~~ Commission; collection and disposition of moneys.—All fees, fines, forfeitures, and other moneys collected under the provisions of this chapter shall be paid by the commission to the Chief Financial Officer who, after the expenses of the commission are paid, shall deposit them in the Professional Regulation Trust Fund to be used for the administration and operation of the commission and to enforce the laws and rules under its jurisdiction. In the event the unexpended balance of such moneys collected under the provisions of this chapter exceeds $250,000, any excess of that amount shall be deposited in the General Revenue Fund.

Section 18. This act shall take effect July 1, 2020.

Commerce Committee

CS/CS/HB 689 by Rep. Rodriguez, A.
Department of Business and Professional Regulation

AMENDMENT SUMMARY
February 20, 2020

Amendment 1 by Rep. Rodriguez, A. (Line 66):

- allows records related to taxes on cigarettes and tobacco products to be stored electronically.

Amendment 2 by Rep. Fitzenhagen (Line 86):

- revises the definition of the term "yacht" for purposes of the Yacht and Ship Brokers Act, which determines whether a sales transaction of a yacht falls within the regulatory framework of the Act.
- defines "yacht" to mean any "**recreational**" vessel which is propelled by sail or machinery in the water which exceeds 32 feet in length, and which "**was manufactured or operated primarily for pleasure; or leased, rented, or chartered to another**."
- revises the definition to no longer limit "yacht" to a vessel that weighs less than 300 gross tons.

Amendment 3 by Rep. Fitzenhagen (Line 544):

- revises the requirements for committing the crime of "adulterating liquor" to remove "grains of paradise" from the list of ingredients that would be a felony to include.

Amendment 4 by Rep. Fitzenhagen (Line 938):

- provides that a successor in interest (a person who obtains an interest in property from the original owner) to a timeshare estate that pays unpaid assessments leftover from the prior owner is considered a subordinate lienholder for purposes of claiming surplus funds in a judicial sale of the timeshare property.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Commerce Committee

Representative Rodriguez, A. offered the following:

Amendment (with directory and title amendments)

Remove lines 66-86 and insert:

(3) All manufacturers, importers, distributing agents, wholesale dealers, agents, or retail dealers shall maintain and keep for a period of 3 years at the place of business where any transaction takes place, such records of cigarettes received, sold, or delivered within the state as may be required by the division. Such records may be kept in an electronic or paper format. The division or its duly authorized representative is hereby authorized to examine the books, papers, invoices, and other records, the stock of cigarettes in and upon any premises where the same are placed, stored, and sold, and the equipment of any such manufacturers, importers, distributing agents,

wholesale dealers, agents, or retail dealers, pertaining to the sale and delivery of cigarettes taxable under this part. To verify the accuracy of the tax imposed and assessed by this part, each person is hereby directed and required to give to the division or its duly authorized representatives the means, facilities, and opportunity for such examinations as are herein provided for and required.

Section 2. Subsection (1) of section 210.55, Florida Statutes, is amended to read:

210.55 Distributors; monthly returns.—

(1) On or before the 10th of each month, every taxpayer with a place of business in this state shall file a full and complete report ~~return~~ with the division showing the tobacco products ~~taxable price of each tobacco product~~ brought or caused to be brought into this state for sale, or made, manufactured, or fabricated in this state for sale in this state, during the preceding month. Every taxpayer outside this state shall file a full and complete report with the division through the division's electronic data submission system ~~return~~ showing the quantity and taxable price of each tobacco product shipped or transported to retailers in this state, to be sold by those retailers, during the preceding month. Reports must ~~Returns shall~~ be made upon forms furnished and prescribed by the division and must ~~shall~~ contain any other information that the division requires. Each report must ~~return shall~~ be accompanied

by a remittance for the full tax liability shown and be filed with the division through the division's electronic data submission system.

Section 3. Section 210.60, Florida Statutes, is amended to read:

210.60 Books, records, and invoices to be kept and preserved; inspection by agents of division.—Every distributor shall keep in each licensed place of business complete and accurate records for that place of business, including itemized invoices of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco products made, except sales to an ultimate consumer. Such records shall show the names and addresses of purchasers and other pertinent papers and documents relating to the purchase, sale, or disposition of tobacco products. When a licensed distributor sells tobacco products exclusively to ultimate consumers at the addresses given in the license, no invoice of those sales shall be required, but itemized invoices shall be made of all tobacco products transferred to other retail outlets owned or controlled by that licensed distributor. All books, records and other papers, and other documents required by this section to be kept shall be preserved for a period of at least 3 years after the date of the documents, as aforesaid, or the date of the entries thereof appearing in the

records, unless the division, in writing, authorizes their destruction or disposal at an earlier date. At any time during usual business hours, duly authorized agents or employees of the division may enter any place of business of a distributor and inspect the premises, the records required to be kept under this part, and the tobacco products contained therein to determine whether all the provisions of this part are being fully complied with. Refusal to permit such inspection by a duly authorized agent or employee of the division shall be grounds for revocation of the license. Every person who sells tobacco products to persons other than an ultimate consumer shall render with each sale an itemized invoice showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. The seller shall preserve legible copies of all such invoices for 3 years from the date of sale. Every retailer shall produce itemized invoices of all tobacco products purchased. The invoices shall show the name and address of the seller and the date of purchase. The retailer shall preserve a legible copy of each such invoice for 3 years from the date of purchase. Invoices shall be available for inspection by authorized agents or employees of the division at the retailer's place of business. <u>Any records required by this section may be kept in an electronic or paper format.</u>

D I R E C T O R Y A M E N D M E N T

Remove lines 49-50 and insert:

Section 1. Subsections (2) and (3) of section 210.09, Florida Statutes, are amended to read:

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

Remove lines 4-11 and insert:

requiring that certain reports relating to the transportation or possession of cigarettes be filed with the Division of Alcoholic Beverages and Tobacco through the division's electronic data submission system; authorizing certain records to be kept in an electronic or paper format; amending s. 210.55, F.S.; requiring that certain entities file reports, rather than returns, relating to tobacco products with the division; providing requirements for such reports; amending s. 210.60, F.S.; authorizing certain records to be kept in an electronic or paper format; amending s.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Fitzenhagen offered the following:

Amendment (with title amendment)

Between lines 86 and 87, insert:

Section 1. Subsection (4) of section 326.002, Florida Statutes, is amended to read:

326.002 Definitions.—As used in ss. 326.001-326.006, the term:

(4) "Yacht" means any recreational vessel which is propelled by sail or machinery in the water which exceeds 32 feet in length, and which was manufactured or operated primarily for pleasure; or leased, rented, or chartered to another ~~weighs less than 300 gross tons~~.

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

Between lines 11 and 12, insert:

326.002, F.S.; amending the definition of "yacht"; amending s.

Amendment No. 3

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Fitzenhagen offered the following:

Amendment (with title amendment)

Between lines 544 and 545, insert:

Section 1. Section 562.455, Florida Statutes, is amended to read:

562.455 Adulterating liquor; penalty.—Whoever adulterates, for the purpose of sale, any liquor, used or intended for drink, with cocculus indicus, vitriol, ~~grains of paradise,~~ opium, alum, capsicum, copperas, laurel water, logwood, brazil wood, cochineal, sugar of lead, or any other substance which is poisonous or injurious to health, and whoever knowingly sells any liquor so adulterated, commits ~~shall be guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

Remove line 30 and insert:

relating to alcoholic beverages; amending s. 562.455, F.S.; providing that grains of paradise does not qualify as an adulterating liquor; amending s. 718.112,

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee
Representative Fitzenhagen offered the following:

Amendment (with title amendment)

Between lines 938 and 939, insert:

Section 1. Paragraph (a) of subsection (7) of section 721.15, Florida Statutes, is amended to read:

721.15 Assessments for common expenses.—

(7)(a) A purchaser, regardless of how her or his timeshare estate or timeshare license has been acquired, including a purchaser at a judicial sale, is personally liable for all assessments for common expenses which come due while the purchaser is the owner of such interest. A successor in interest is jointly and severally liable with her or his predecessor in interest for all unpaid assessments against such predecessor up to the time of transfer of the timeshare interest to such

successor without prejudice to any right a successor in interest may have to recover from her or his predecessor in interest any amounts assessed against such predecessor and paid by such successor. A successor in interest who pays the unpaid assessments attributable to her or his predecessor in interest is a subordinate lienholder for purposes of satisfying the requirements of s. 45.032(3)(b). The predecessor in interest or his or her agent, or a person providing resale transfer services for the predecessor in interest pursuant to s. 721.17(3) or his or her agent, shall deliver to the managing entity a copy of the recorded deed of conveyance if the interest is a timeshare estate or a copy of the instrument of transfer if the interest is a timeshare license, with the name and mailing address of the successor in interest within 15 days after the date of transfer, and after such delivery the successor in interest shall be listed by the managing entity as the owner of the timeshare interest on the books and records of the timeshare plan. The managing entity shall not be liable to any person for any inaccuracy in the books and records of the timeshare plan arising from the failure of the predecessor in interest to timely and correctly notify the managing entity of the name and mailing address of the successor in interest.

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

Remove line 42 and insert:

condominium ombudsman; amending s. 721.15, F.S.; providing requirements for a subordinate lienholder related timeshare estates; amending ss. 455.219, 548.002,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 991 Lottery Games
SPONSOR(S): Government Operations & Technology Appropriations Subcommittee, Robinson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1318

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Gaming Control Subcommittee	14 Y, 1 N	Salter	Barry
2) Government Operations & Technology Appropriations Subcommittee	8 Y, 3 N, As CS	Helpling	Topp
3) Commerce Committee		Salter	Hamon

SUMMARY ANALYSIS

Gambling is generally prohibited and illegal in Florida. However, in 1986, Florida voters adopted a constitutional amendment authorizing the creation of the Department of the Lottery (Lottery). Since that time, the Florida Lottery has grown into one of the largest state-run lotteries in the country, with annual sales exceeding $7.1 billion in fiscal year 2018-2019. Lottery tickets can be purchased at over 13,000 retail locations throughout Florida.

Current law does not require the Lottery to inform customers who purchase lottery tickets of the risks associated with gambling, including the potential for compulsive or addictive behavior. However, the Lottery encourages customers to "Play Responsibly" and widely advertises a toll-free phone number for a referral service to assist people with gambling problems.

The bill directs the Lottery to contractually require vendors, beginning January 1, 2021, to place the following message prominently on all lottery tickets: "PLAY RESPONSIBLY." The message must appear on all lottery tickets printed beginning January 1, 2022. The bill requires the Lottery to provide the same message in all advertisements or promotions of lottery games, including those on television, the Internet, print, and the radio, beginning January 1, 2021.

The bill expressly prohibits the player's use of electronic devices in playing lottery games. The bill prohibits the Lottery from conducting a lottery game in which the winner is chosen on the basis of the activities or outcomes of one or more sporting events.

For fiscal analysis of the bill's requirement to include "PLAY RESPONSIBLY" on 5 percent on the front of all lottery tickets printed beginning January 1, 2022, and all advertisements beginning January 1, 2021, see *Fiscal Analysis and & Economic Impact Statement.*

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

General Overview of Lottery in Florida

In general, gambling is illegal in Florida.[1] Chapter 849, F.S., prohibits keeping a gambling house,[2] running a lottery,[3] or the manufacture, sale, lease, play, or possession of slot machines.[4] Certain exceptions have been authorized, with restrictions on permitted locations, operators, and prizes, including penny-ante games,[5] bingo,[6] cardrooms,[7] charitable drawings,[8] game promotions (sweepstakes),[9] and bowling tournaments.[10] In addition, Chapters 550 and 551, F.S., respectively, authorize pari-mutuel wagering on certain live events at licensed facilities and slot machine gaming at specified locations.

Section 7 of Article X of the Florida Constitution provides, "Lotteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution, are hereby prohibited in this state."[11]

In 1986, Florida voters approved an amendment to the Florida Constitution to allow the state to operate a lottery. Section 15 of Article X of the Florida Constitution provides as follows:

> Lotteries may be operated by the state.... On the effective date of this amendment, the lotteries shall be known as the Florida Education Lotteries. Net proceeds derived from the lotteries shall be deposited to a state trust fund, to be designated The State Education Lotteries Trust Fund, to be appropriated by the Legislature. The schedule may be amended by general law.

Chapter 24, F.S., was enacted by ch. 87-65, L.O.F., to establish the state lottery pursuant to the constitutional authorization set forth above. Section 24.102, F.S., creates the Department of the Lottery (Lottery) and states the Legislature's intent that it be self-supporting, revenue-producing, and function as an entrepreneurial business enterprise. Florida began offering lottery games in 1988, with a $1 weekly drawing.[12] Since then, the Lottery has grown to include approximately 60 different scratch-off games available at over 13,000 retailer locations, with lottery ticket prices ranging from $1 to $30.[13] This growth resulted in more than $7.1 billion in total sales for the 2018-2019 fiscal year.[14]

---

[1] S. 849.08, F.S.
[2] S. 849.01, F.S.
[3] S. 849.09, F.S.
[4] S. 849.16, F.S.
[5] S. 849.085, F.S.
[6] S. 849.0931, F.S.
[7] S. 849.086, F.S.
[8] S. 849.0935, F.S.
[9] S. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.
[10] S. 546.10, F.S.
[11] The pari-mutuel pools that were authorized by law on the effective date of the Florida Constitution (Nov. 5, 1968) include horseracing, greyhound racing and jai alai games.
[12] Fla. Lottery, *History*, http://www.flalottery.com/history (last visited Jan. 22, 2020).
[13] *Id.*; Fla. Lottery, *Scratch Offs*, http://www.flalottery.com/scratch-offs?amount=30 (last visited Jan. 22, 2020).
[14] Office of Program Policy Analysis and Government Accountability, *Review of the Florida Lottery, 2019* DRAFT (Jan. 2020).

Lottery Warning and Problem Gambling

Currently, there is no statutory provision requiring the Lottery to inform customers who purchase lottery tickets of the risks associated with gambling, including the potential for compulsive or addictive gambling. However, the Lottery's website includes a "Play Responsibly" page, which states:

> Florida Lottery games are designed to be a fun, low-cost form of entertainment with the added benefit of helping to support education. While most of our players enjoy the fun and entertainment of playing our games, for some, gambling of any kind can be a problem.
>
> To assist individuals and families struggling with addiction, the Florida Lottery encourages them to contact the Florida Council on Compulsive Gambling... Their multilingual Helpline number is:
>
> 888-ADMIT IT (888-236-4848) [15]

The Play Responsibly page also lists phone numbers and a link where one may call, text, or chat with someone at the National Problem Gambling Helpline as well as a link to Gamblers Anonymous.[16] Phone numbers for the Florida Council on Compulsive Gambling, National Problem Gambling Helpline and Gamblers Anonymous can also be found in "Play Responsibly" pamphlets, located next to tickets in most retailers.[17]

In addition, the following statement is found on the back of certain lottery products: "Play Responsibly – If you or someone you know has a gambling problem, call 1-888-ADMIT-IT."[18]

Addiction is characterized by the "inability to consistently abstain, impairment in behavioral control, craving, diminished recognition of significant problems with one's behaviors and interpersonal relationships, and a dysfunctional emotional response."[19] Opponents of gambling contend that participants in gambling are particularly susceptible to addiction, specifically in an attempt to overcome the anxiety brought on by the gambling lifestyle.[20] Gambling studies indicate that games of chance present the illusion of quick and effortless financial gain yet can often lead to financial loss due to the statistical improbability of winning a prize.[21] Researchers describe a cycle in which the gambler believes she can win back her losses, with the cycle continuing until she is forced to seek rehabilitation to break her habit.[22]

Personal Electronic Devices

The percentage of Americans who own a cellphone has increased significantly, from 62% in 2002 to 96% in 2019.[23] Smartphone ownership has also increased dramatically from 35% in 2011 to 81% in 2019.[24] Tablet computers were introduced in 2010 and as of June 2019, roughly half of U.S. adults own

---

[15] Fla. Lottery, *Where to Play,* http://www.flalottery.com/whereToPlay (last visited Jan. 22, 2020).
[16] Fla. Lottery, *Play Responsibly*, http://www.flalottery.com/playResponsibly (last visited Jan. 22, 2020).
[17] Document on file with the Gaming Control Subcommittee.
[18] Document on file with the Gaming Control Subcommittee.
[19] Am. Soc'y of Addiction Med., *Quality and Practice*, http://www.asam.org/quality-practice/definition-of-addiction (last visited Jan. 22, 2020).
[20] *See* Psychguides.com, *Compulsive Gambling Symptoms, Causes and Effects*, http://www.psychguides.com/guides/compulsive-gambling-symptoms-causes-and-effects/ (last visited Jan. 22, 2020).
[21] *Id.*
[22] *See* Natasha Dow Schüll, Addiction by Design: Machine Gambling in Las Vegas, 225 (2012).
[23] Pew Research Center; *Mobile Fact Sheet,* http://www.pewinternet.org/fact-sheet/mobile/ (last visited Jan. 22, 2020).
[24] *Id.*

one.[25] American ownership of desktop and laptop computers has experienced slight fluctuation over the past 10 years, with ownership remaining around 75%.[26]

Currently, there is no explicit statutory provision related to the use of such devices in relation to lottery tickets or games. However, given the wording of several statutes and their enactment prior to the advent and proliferation of smartphones, the Lottery's authorizing statutes appear to contemplate the authorization of lottery games in paper form only.[27]

Recent Developments

Sports betting has become largely popular over the past three decades. In 1992, the federal Professional and Amateur Sports Protection Act (PASPA) was enacted into law. PASPA made it unlawful for a governmental entity or person to sponsor, operate, advertise, promote, license, or authorize a lottery, sweepstakes, or other betting, gambling, or wagering on professional or amateur sports. In May 2018, the U.S. Supreme Court held that the PASPA provision prohibiting state authorization of sports gambling violated the anti-commandeering rule and was therefore unconstitutional.[28] As of January 2020, 15 states have legalized sports betting.[29]

In November 2018, Florida voters passed a constitutional amendment entitled Voter Control of Gambling in Florida, substantially reducing the Legislature's authority to authorize "casino gambling."[30] The Florida Lottery,[31] certain tribal gaming,[32] and specified pari-mutuel wagering activities[33] are exempt from the amendment.

Educational Enhancement Trust Fund

The Lottery is required to transfer variable percentages of gross revenue from the sale of lottery games from the Lottery's Operating Trust Fund to the Educational Enhancement Trust Fund within the Department of Education.[34] The remaining funds left in the Lottery's Operating Trust Fund are used for the payment of administrative expenses of the Lottery, including costs incurred for contracts entered into for the purchase of goods or services required by the Lottery.[35] The December 11, 2019, Revenue Estimating Conference estimated $1.8 billion for Fiscal Year 2019-20, $1.9 billion for Fiscal Year 2020-21, and $1.9 billion for Fiscal Year 2021-22 to be transferred to the Educational Enhancement Trust Fund.[36]

---

[25] *Id.*
[26] *Id.*
[27] S. 24.112(13), F.S.; S. 24.105(6), F.S.; S. 24.108(2), F.S. (1987).
[28] In 2012, New Jersey enacted a constitutional amendment making it lawful for the legislature to authorize sports gambling. The National Collegiate Athletic Association brought suit, ultimately leading to a ruling by the U.S. Supreme Court invalidating PASPA. *Murphy v. NCAA*, 138 S.Ct. 1461, 1471 (2018).
[29] Dustin Gouker, *Legislative Tracker: Sports Betting*, Legal Sports Report (Jan. 11, 2020), https://www.legalsportsreport.com/sportsbetting-bill-tracker/ (last visited Jan. 22, 2020).
[30] FLA. CONST. ART. X. §30.
[31] For purposes of Article X, Section 30, the term "casino gambling" excludes any game authorized under Article X, Section 15 of the Florida Constitution (State operated lotteries). FLA. CONST. ART. X. §30.
[32] Article X, Section 30(c) provides as follows: "Nothing herein shall be construed to limit the ability of the state or Native American tribes to negotiate gaming compacts pursuant to the Federal Indian Gaming Regulatory Act for the conduct of casino gambling on tribal lands, or to affect any existing gambling on tribal lands pursuant to compacts executed by the state and Native American tribes pursuant to IGRA." FLA. CONST. ART. X. §30(c).
[33] For purposes of Article X, Section 30, the term "casino gambling" does not include pari-mutuel wagering on horse racing, dog racing, or jai alai exhibitions. FLA. CONST. ART. X. §30.
[34] S. 24.121(2) F.S.
[35] S. 24.121(3) F.S.
[36] Office of Economic and Demographic Research, Revenue Estimating Conference Executive Summary for Lottery Ticket Sales and the EETF December 11, 2019, http://edr.state.fl.us/Content/conferences/lottery/lotterysummary.pdf (last visited Feb. 6, 2020).

Effect of Proposed Changes

The bill requires that beginning January 1, 2021, all advertisements and promotions of lottery games include the following message: "PLAY RESPONSIBLY." If the advertisement is shown on television, the internet, or another electronic medium, the message must appear in black font on a white background and occupy at least five percent of the surface area of the advertisement or promotion. If the advertisement is in print, including a newspaper, magazine, or billboard, the message must appear in prominent text and occupy at least five percent of the total surface area of the advertisement or promotion. If the advertisement is on the radio, the message must be audibly announced at the conclusion of the advertisement or promotion.

The bill requires that beginning January 1, 2021, all contracts for the printing of lottery tickets specify that tickets printed on or after January 1, 2022, must include the following message: "PLAY RESPONSIBLY." The message must appear in prominent text on the front of each ticket and occupy at least five percent of the total surface area of the ticket.

The bill prohibits the use of electronic devices to play lottery games.[37] The bill also clarifies that the Lottery may not conduct any lottery game in which the winner is chosen based upon the activities or outcomes of one or more sporting events.

B. SECTION DIRECTORY:

Section 1: Amends s. 24.105, F.S., relating to powers and duties of the Department of the Lottery.

Section 2: Amends s. 24.107, F.S., relating to advertising and promotions of lottery games.

Section 3: Amends s. 24.111, F.S., relating to vendors; disclosure and contract requirements.

Section 4: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The lottery projects that there will be an estimated loss of revenue totaling $117.2 million.[38] This amount includes taking as many as 1,125 terminal and 208 vending machines out of service at one time to have the message "PLAY RESPONSIBLY" appear on the machines. The Lottery is authorized to have 1,000 Full-Service Vending Machines to sell terminal tickets and instant tickets and 1,500 Full Service Vending Machines with functionality to sell only instant tickets.[39] This loss of sales would represent a decrease in transfer to the Educational Enhancement Trust Fund of $37.9 million.[40]

However, the bill provides that advertisements in print include newspapers, magazines, and billboards that must include the "PLAY RESPONSIBLY" message. The bill does not identify terminal and vending machines as media that require the message. The Lottery fiscal analysis does not appear to be applicable to the bill as drafted. The Lottery analysis did not include loss of revenue or reductions to the Educational Enhancement Trust Fund related to the "PLAY RESPONSIBLY"

[37] This does not apply to Lottery vending machines under s. 24.112, F.S.
[38] Department of the Lottery, Department Analysis of 2020 HB 991, p. 4 (Jan. 30, 2020).
[39] Ch. 2019-115 Laws of Fla., Specific Appropriation 2771.
[40] Department of the Lottery, *supra* note 35 at 4.

message appearing on advertisements or tickets, as specified by the bill. If the Lottery is not required to modify terminal and vending machines, there is likely no loss of current revenue resulting from the implementation of the bill.

2. Expenditures:

The Lottery estimates the total cost to implement the bill is approximately $6.3 million, as follows:

- Terminal, vending machines, and other related products: $4.4 million.
- Lighted jackpot signs throughout the state: $1.36 million.
- Modifications to signs and promotional materials at vendor locations: $266,000.
- Replacement of billboards: $240,000.[41]

As stated above, the bill provides that advertisements in print include newspapers, magazines, and billboards. From the estimated expenditures provided by the Lottery, it may be that only billboards will be required to have the "PLAY RESPONSIBLY" message be included. The estimated cost for the billboard is for complete replacement. The Lottery did not provide an estimate for other alternatives, including modification to current billboards. Modifications to advertisements including billboard modifications or replacements can be accomplished with the Lottery's base appropriations for advertising. The Lottery's paid advertising and promotion appropriation is $36.3 million for Fiscal Year 2019-20.[42]

The bill requires all lottery tickets that are not part of an interstate lottery to include a "PLAY RESPONSIBLY" message beginning January 1, 2022. The Lottery did not provide an estimated cost for modifying tickets to include the message. Many tickets already include "Play Responsibly – If you or someone you know has a gambling problem, call 1-888-ADMIT-IT" on the back of tickets. The cost to include "PLAY RESPONSIBLY" on 5 percent on the front of specified lottery tickets, within the specified time frame, may be minimal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the Lottery removes vending and ticket machines from retailer stores to be modified, the Lottery estimates a projected loss of approximately $6.6 million in retailer commissions.[43] However the Lottery's fiscal analysis does not appear to be applicable to the bill as drafted.

D. FISCAL COMMENTS:

The bill has not yet been reviewed by the Revenue Estimating Impact Conference.

[41] Department of the Lottery, Department Analysis of 2020 HB 991, p. 5 (Jan. 30, 2020).
[42] Ch. 2019-115 Laws of Fla., Specific Appropriation 2773.
[43] Department of the Lottery, *supra* note 38 at 5.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On Tuesday, February 11, 2020, the Government Operations & Technology Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed the requirement that $500,000 from the Lottery's Operating Trust Fund be allocated annually toward preventing compulsive and addictive gambling.

This analysis is drafted to the committee substitute as passed by the Government Operations & Technology Appropriations Subcommittee.

A bill to be entitled

An act relating to lottery games; amending s. 24.105, F.S.; prohibiting an electronic device from being used by a player to play any lottery game; prohibiting the department from authorizing the operation of a specified lottery game; amending s. 24.107, F.S.; requiring the Department of the Lottery to include a specified warning in all advertisements and promotions of lottery games; providing an exception; providing requirements for such warning; amending s. 24.111, F.S.; requiring all contracts between the department and a vendor to include a provision that requires the vendor to place or print a specified warning on all lottery tickets; providing an exception; providing requirements for such warning; providing an effective date.

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

Section 1. Paragraph (a) of subsection (9) of section 24.105, Florida Statutes, is amended to read:

24.105 Powers and duties of department.—The department shall:

(9) Adopt rules governing the establishment and operation of the state lottery, including:

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

(a) The type of lottery games to be conducted, except that:

1. The ~~No~~ name of an elected official may not ~~shall~~ appear on the ticket or play slip of any lottery game or on any prize or on any instrument used for the payment of prizes, unless such prize is in the form of a state warrant.

2. ~~No~~ Coins or currency may not ~~shall~~ be dispensed from any electronic computer terminal or electronic device used in any lottery game.

3. Other than as specifically provided in s. 24.112, an electronic computer ~~no~~ terminal or electronic device may not be used by the player to play ~~for~~ any lottery game ~~which may be operated solely by the player without the assistance of the retailer~~.

4. The department may not authorize the operation of a lottery game in which the winner is chosen on the basis of the activities or outcomes of one or more sporting events.

Section 2. Subsection (3) is added to section 24.107, Florida Statutes, to read:

24.107 Advertising and promotion of lottery games.—

(3) Beginning January 1, 2021, all advertisements and promotions of lottery games under this chapter, excluding multi-state lottery games, must include a warning that meets all of the following requirements:

(a) If on television, on the Internet, or in any other

electronic medium, appear in black font on a white background and occupy at least 5 percent of the total surface area of the advertisement or promotion.

(b) If in print, including in a newspaper, in a magazine, or on a billboard, appear in prominent text and occupy at least 5 percent of the total surface area of the advertisement or promotion.

(c) If on radio, be audibly announced at the conclusion of the advertisement or promotion.

(d) Contain the following message: "PLAY RESPONSIBLY."

Section 3. Subsection (8) is added to section 24.111, Florida Statutes, to read:

24.111 Vendors; disclosure and contract requirements.—

(8) Beginning January 1, 2021, all contracts subject to this section must contain a provision that requires the vendor to place or print a warning on all lottery tickets sold under this chapter, excluding multi-state lottery tickets. The warning must meet all of the following requirements:

(a) Appear in prominent text on the front side of the lottery ticket and occupy at least 5 percent of the total surface area of the lottery ticket.

(b) Contain the following message: "PLAY RESPONSIBLY."

(c) Appear on all lottery tickets printed on or after January 1, 2022.

Section 4. This act shall take effect July 1, 2020.

COMMERCE COMMITTEE

HB 991 by Rep. Robinson
Lottery Games

AMENDMENT SUMMARY
February 20, 2020

Amendment 1 by Rep. Robinson:

Specifies that the warning requirements in the bill do not apply to advertisements and promotions on Lottery vending machines authorized under s. 24.112(15) or equipment used by a Lottery retailer.

Amendment No. 1

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Robinson offered the following:

Amendment (with title amendment)

Between lines 60 and 61, insert:

This subsection does not apply to advertisements and promotions on vending machines authorized under s. 24.112(15) or equipment used by a retailer.

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

Remove line 9 and insert:

of lottery games; providing exceptions; providing

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1011 Vacation Rentals
SPONSOR(S): Government Operations & Technology Appropriations Subcommittee, Fischer and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Workforce Development & Tourism Subcommittee	10 Y, 5 N	Willson	Barry
2) Government Operations & Technology Appropriations Subcommittee	8 Y, 5 N, As CS	Helpling	Topp
3) Commerce Committee		Willson MW	Hamon K.W.H.

SUMMARY ANALYSIS

The Division of Hotels and Restaurants (Division) in the Department of Business and Professional Regulation (DBPR) licenses and inspects vacation rentals within the state.

A vacation rental is classified as any unit or group of units in a condominium or cooperative or any individually or collectively owned home, not a timeshare project, which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, or advertised to the public as a place regularly rented to guests. The rental of individual rooms within a condominium unit or house is excluded from the licensure and regulation of public lodging establishments by the Division.

Local governments may not prohibit vacation rentals or regulate the duration or frequency of such rentals. Local regulations adopted before June 1, 2011, are not subject to this prohibition.

The bill:

- Defines the term "advertising platform".
- Requires that users of advertising platforms include certain licensure and tax identification information in a vacation rental listing and provide certain information to the Division on a regular basis.
- Authorizes certain enforcement mechanisms relating to unlicensed activities.
- Preempts the regulation of advertising platforms to the state.
- Clarifies the scope of the state preemption of vacation rentals.
- Specifies that local regulations which apply uniformly to all residential properties, without regard to whether the property is offered for rent, are not subject to preemption.
- Specifies that the bill does not supersede the statutory authority of condominiums, cooperatives, or homeowners' associations to govern the use of their properties.
- Requires vacation rental operators to display licensing and tax information under certain circumstances.

The bill does not preempt local regulations affecting vacation rentals if the regulation applies uniformly to all residential properties.

The bill provides 19.00 new positions and $1.4 million in the first year and $1.3 million recurring thereafter to DBPR to implement the bill. There may be an indeterminate positive impact for state revenue generated from additional license fees, tourism, sales taxes, and fines. There will be a negative fiscal impact for local governments that collect fees or fines related to the regulation of vacation rentals. See *Fiscal Analysis and Economic Impact Statement.*

Except as otherwise provided, the bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Vacation Rentals

The Division of Hotels and Restaurants (Division) within the Department of Business and Professional Regulation (DBPR) is charged with enforcing the provisions of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare. DBPR licenses vacation rentals within the state and has the power to inspect a licensed vacation rental.[1]

Public lodging establishments are classified as a hotel, motel, vacation rental, nontransient apartment, transient apartment, bed and breakfast inn, or timeshare project.[2]

The term "public lodging establishments" includes transient and nontransient public lodging establishments.[3] The principal differences between transient and nontransient public lodging establishments are the number of times that the establishments are rented in a calendar year and the length of the rentals.

The term "transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings, which is rented to guests more than three times in a calendar year for periods of less than 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.[4]

The term "vacation rental" means any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project.[5]

Section 509.013(4)(b)9., F.S., exempts living or sleeping facilities that do not fit within the classification of a hotel, motel, timeshare project, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment. Currently, the classification for "vacation rental" only applies to situations where the entire unit or dwelling is offered for rent; therefore the rental of individual rooms within a condominium unit or house is excluded from the licensure and regulation of public lodging establishments by the Division.[6]

Licensure

The Division is authorized to issue vacation rental licenses as follows:

- Single license: issued to an individual person or entity, but not a licensed agent, and may include one single-family house or townhouse, or a unit or group of units within a single building that are owned and operated by the same individual person or entity.
- Group license: issued to a licensed agent to cover all units within a building or group of buildings in a single complex and only covers units held out to the public as a place regularly rented to guests.

---

[1] S. 509.241, F.S.
[2] S. 509.242(1), F.S.
[3] S. 509.013(4)(a), F.S.
[4] S. 509.013(4)(a)1., F.S.
[5] S. 509.242(1)(c), F.S.
[6] DBPR, Agency Analysis of 2020 Senate Bill 1128, p.2 (Jan. 7, 2020). *See also* 18-06 Fla. Op.Att'y Gen. (2018).

- Collective license: issued to a licensed agent who represents a collective group of houses or units found on separate locations not to exceed 75 houses per license.[7]

Applicants for licensure must submit the appropriate application and required fee to the Division. The license fees are based on the number of rental units in the establishment. A current license must be conspicuously displayed in the office or lobby of the licensed establishment.[8] If no office or lobby is present on the premises of the licensed establishment, the license must be readily available for inspection upon request.[9]

As of July 1, 2019, there were 47,337 public lodging establishments licensed by the Division. These licenses are distributed as follows:

- Hotels: 2,056 licenses;
- Motels: 2,513 licenses;
- Non-transient apartments: 18,363 licenses;
- Transient apartments: 913 licenses;
- Bed and Breakfast Inns: 260 licenses;
- Vacation rental condominiums: 7,563 licenses;
- Vacation rental dwellings: 15,650 licenses; and
- Vacation rental timeshare projects: 19 licenses.[10]

License Fees

The Division provides the following fee schedule relating to vacation rentals:[11]

- Vacation rentals/collective license.

$150	$10	$10	VARIES

- Vacation rentals/group and single license.

SINGLE UNIT	$150	$10	$10	$170
2-25	$150	$20	$10	$180
26-50	$150	$35	$10	$195
51-100	$150	$50	$10	$210
101-200	$150	$75	$10	$235
201-300	$150	$105	$10	$265
301-400	$150	$135	$10	$295
401-500	$150	$160	$10	$320
OVER 500	$150	$190	$10	$350

Applicants for initial licensure are required to pay the full license fee if the application is made during, or more than six months before, the annual renewal period. A half-year fee is authorized if such application is made 6 months or less before the renewal period.

---

[7] S. 509.241, F.S.
[8] S. 509.241(3), F.S.
[9] R. 61C-1.002(1), F.A.C.
[10] DBPR, *Division of Hotels and Restaurants Annual Report for FY 2018-2019*, http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2018_19.pdf (last visited Jan. 13, 2020).
[11] R. 61C-1.008, F.A.C.
[12] S. 509.302, F.S., establishes the Hospitality Education Program. All public lodging establishments and all public food service establishments licensed under ch. 509, F.S., are required to pay an annual fee of no more than $10, which shall be included in the annual license fee and used for the sole purpose of funding the Hospitality Education Program.

A $50 application fee is required when making the initial application or an application for change of ownership.

Renewal fees are based upon the number of units under the license when the license was either issued or last renewed, whichever is most recent.

A $50 delinquency fee is required to renew a delinquent license filed with the Division after the expiration date.

Sanitation and Safety

Current law requires each public lodging establishment to meet requirements and standards relating to sanitation and safety.[13] These requirements and standards apply to the following:

- Water, plumbing and waste;
- Public bathrooms (vacation rentals are exempt from this requirement);
- Towels;
- Glassware, tableware, and utensils (vacation rentals are exempt from federal and state standards but must sanitize with household cleaning supplies and provide notice of such in guest rooms);
- Kitchens;
- Ice making machines;
- Locking devices;
- Vermin control;
- Storage and labeling of toxic items;
- Structural components, attachments, and fixtures; and
- Attics, basements, boiler rooms, meter rooms, laundry rooms, and storage rooms.

Ventilation and Fire Safety

Each bedroom in a public lodging establishment must be properly ventilated with windows or mechanical ventilation.[14] Specialized smoke detectors for the deaf and hearing-impaired must be made available upon request by guests in transient public lodging establishments without charge.[15]

In addition, smoke alarms must be installed in every living unit[16] and automatic fire sprinklers may be required in public lodging establishments if the rental units are located within a building with three or more stories or greater than 75 feet in height.[17] All local fire authority requirements must be met. Electrical wiring must be in good repair.

Conduct on Premises

The operator of a public lodging establishment is authorized to refuse accommodations or service to undesirable guests.[18] Subject to proper notification, an operator may remove guests who:

- Illegally possess or deal controlled substances;
- Are intoxicated;
- Are profane, lewd, or brawling;
- Disturb the peace and comfort of other guests;
- Injure the reputation, dignity, or standing of the establishment;
- Fail to pay rent on time;

[13] *See generally* s. 509.221, F.S., and R. 61C-1&3, F.A.C.
[14] S. 509.221(3), F.S.
[15] R. 61C-1.004, F.A.C.
[16] S. 509.215(1)(b), F.S.
[17] S. 509.215(1), F.S.
[18] S. 509.142, F.S.

- Fail to check out on time;
- Are generally detrimental to the establishment.[19]

The admission to, or the removal from, a public lodging establishment cannot be based upon race, creed, color, sex, physical disability, or national origin.[20]

Violations for remaining or attempting to remain in an establishment after being requested to leave are a second-degree misdemeanor, punishable as provided in ss. 775.082 or 775.083, F.S.[21]

In addition, an operator is authorized to take a person into custody and detain that person for disorderly conduct that creates a threat to the life or safety of the person or others.[22]

Inspections

The Division is required to inspect all public lodging establishments as often as necessary for the enforcement of the law and protection of the public health, safety and welfare. Each licensed public lodging establishment must be inspected at least biannually (twice per year), except for transient and non-transient apartments, which must be inspected at least annually.[23]

Vacation rentals are not subject to this requirement, but must be available for inspection upon a request by the Division. For inspection purposes, the licensee or operator must, upon request, meet the inspector at the site of a specified establishment with keys to the licensed house or unit being inspected.[24]

Additionally, an applicant for a vacation rental license is required to submit with the license application a signed certificate evidencing the inspection of all balconies, platforms, stairways, railings, and railways from a person competent to conduct such inspections.[25]

The Division also may inspect a vacation rental in response to a consumer complaint related to sanitation issues or unlicensed activity. In Fiscal Year 2018-2019, the Division received 228 consumer complaints related to vacation rentals, of which 14 were confirmed as a violation by the Division.[26]

Registry

The licensee or operator must notify the Division of all houses or units represented in a license application. Any time a change in the address or number of houses or units occurs, the licensee or operator must notify the Division at least 60 days prior to the expiration date of the license. In addition, a list of the included houses or units must be maintained in a written form for inspection by request.[27]

Each operator of a transient public lodging establishment must maintain a register showing the dates each rental unit was occupied by a guest as well as the rates charged to the occupants. This register

---

[19] S. 509.141(1), F.S.
[20] S. 509.141(1), F.S.
[21] S. 509.141(3), F.S.
[22] S. 509.143(1), F.S.
[23] *See generally* s. 509.032, F.S., Rule 61C-1.002, F.A.C.
[24] *Id.*
[25] *See* ss. 509.211(3) and 509.2112, F.S., and form *DBPR HR-7020, Division of Hotels and Restaurants Certificate of Balcony Inspection*, available at: https://www.myfloridalicense.com/CheckListDetail.asp?SID=&xactCode=1030&clientCode=2007&XACT_DEFN_ID=7694 (last visited Jan. 13, 2020).
[26] DBPR, *Division of Hotels and Restaurants Annual Report for FY 2018-2019*, at 21.
[27] *Id.*

must be maintained in chronological order and available for inspection by the Division at any time. Operators must maintain two years of register data.[28]

Violations

Any public lodging establishment found to be in violation of ch. 509, F.S., or rules adopted by the Division, may be subject to administrative actions including the following penalties:

- Fines not to exceed $1,000 per offense; and
- Suspension, revocation, or refusal of a license.[29]

Licensees with a single license are responsible for all violations of ch. 509, F.S., or rules adopted by the Division.[30] The authorized agent of the licensee is responsible for a violation for licensees holding a collective or group license if the dwelling or unit was listed under the agent or as otherwise reflected in records filed with the Division.[31]

Preemption Authority

Prior to June 1, 2011, local governments regulated vacation rentals (also referred to as resort dwellings in many local ordinances). Local governments could restrict or prohibit vacation rentals up to, and including, banning the use of residential properties as vacation rentals.

Legislation in 2011 preempted the authority to regulate vacation rentals to the state.[32] The preemption prevented local governments from enacting any new law, ordinance, or regulation that:

- restricted the use of vacation rentals;
- prohibited vacation rentals; or
- regulated vacation rentals based solely on their classification, use, or occupancy.

The 2011 preemption did not apply to local regulations enacted on or before June 1, 2011.

Prior to the 2011 preemption, several municipalities had created regulations specifically relating to vacation rentals.[33] As an example, one ordinance prohibited owners of single-family residences in residential zones from renting their properties for durations of less than 30 days, although it grandfathered certain vacation rentals that had already obtained all applicable state and local licenses and permits.[34] Subsequent to the enactment of the 2011 legislation, the vacation rental market experienced growth.[35]

In 2014, the Legislature narrowed the scope of the preemption to preempt only those local regulations which prohibit vacation rentals or regulate the duration or frequency of vacation rentals.[36]

---

[28] S. 509.101(2), F.S.
[29] S. 509.261(1), F.S.
[30] *Id.*
[31] *Id.*
[32] Ch. 2011-119, Laws of Fla., codified in s. 509.032(7), F.S.
[33] *See* City of Venice Code of Ordinances, ch. 86, art. V, div. 9, s. 86-151. *See also* Monroe County Code, No. 004-1997 (2013); Bal Harbour Village Code of Ordinances, s. 21-363.
[34] City of Venice Code of Ordinances, ch. 86, art. V, div. 9, s. 86-151. *See also City of Venice v. Gwynn*, 76 So. 3d 401, 403 (Fla. 2nd DCA 2011).
[35] *See* Melissa Maynard, *As Short-Terms Rentals Boom, Regulation an Issue*, THE PEW CHARITABLE TRUST (June, 6, 2013), http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2013/06/06/as-shortterms-rentals-boom-regulation-an-issue.
[36] Ch. 2014-71, Laws of Fla., codified in s. 509.032(7)(b), F.S.

Recent Activity

Homeowners found to be in conflict with ordinances regulating vacation rentals have taken legal action against their respective local governments through the Bert J. Harris, Jr., Private Property Rights Protection Act.[37] The act provides a cause of action for private property owners whose real property has been inordinately burdened by a specific action of a governmental entity that may not rise to the level of a "taking" under the State or Federal Constitutions. The inordinate burden can apply to either an existing use of real property or a vested right to a specific use.[38]

In November 2015, the City of Anna Maria passed and adopted Ordinance No. 15-807. This ordinance provides a general framework for the regulation of vacation rentals, including maximum occupancy requirements. According to the city's website, since April 2016, approximately 113 Bert Harris Act claims citing Ordinance No. 15-807 amounting to approximately $38 million in damages have been filed.[39]

In March 2016, Miami Beach passed an ordinance making the fine for a first violation for a resident caught renting short-term $20,000. Each subsequent fine increases by $20,000 and can be as high as $100,000. Vacation/short-term rentals that are permitted in certain zoning districts of Miami Beach are required to provide and conspicuously display the city-issued business tax receipt number and the resort tax certificate number in every advertisement or listing of any type in connection with the rental of the residential property.[40]

In June 2018, it was reported that Miami Beach had issued $12.1 million in fines, only $174,000 of which had been paid. Some owners were reported to have accumulated up to $60,000 in fines.[41]

Condominiums, Cooperatives, and Homeowners' Associations

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 but have an undivided share of access to common facilities.[42] A condominium is created by recording a declaration in the public records of the county in which the condominium will be located.[43] A declaration governs the relationships among condominium unit owners and the condominium association. All unit owners are members of the condominium association. The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration." The association enacts condominium association bylaws governing the administration of the association. The declaration as originally recorded or as amended may include covenants and restrictions concerning the use, occupancy, and transfer of the units in the association.

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.[44] 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 similar in many ways. A cooperative is created using "cooperative documents" which

---

[37] Kathy Prucnell, *2 more Holmes Beach Bert Harris claims proceed to courthouse*, THE ISLANDER (Feb. 20, 2018), https://www.islander.org/2018/02/2-more-holmes-beach-bert-harris-claims-proceed-to-courthouse/.
[38] S. 70.001, F.S.
[39] CITY OF ANNA MARIA, *Bert J. Harris, Jr., Private Property Rights Protection Act Claim Filings*, http://www.cityofannamaria.com/residents/bert_harris_claim.php (last visited Mar. 16, 2019).
[40] *See* Miami Beach City Code, Sec. 142-1111 and 142-905(b).
[41] Chabeli Herrera, *Miami Beach has the country's highest short-term rental fines. It just got sued,* MIAMI HERALD (June 28, 2018), https://www.miamiherald.com/news/business/article213954174.html.
[42] S. 718.103(11), F.S.
[43] S. 718.104(2), F.S.
[44] S. 719.103(2)(26), F.S.

include articles of incorporation of the association, bylaws, and the ground lease or other underlying lease, if any. The documents may include restrictions, which affect the use of the property.

A homeowners' association (HOA) is an association of residential property owners where voting membership consists of parcel owners, membership is a mandatory condition of parcel ownership, and which may impose assessments that, if unpaid, can become a lien on the parcel.[45] Chapter 720, F.S., only regulates HOAs whose covenants and restrictions include mandatory assessments. Like a condominium or cooperative, an HOA is administered by an elected board of directors. The powers and duties of an HOA includes those provided in ch. 720, F.S., and contained in the governing documents of the association. The governing documents include the recorded covenants and restrictions, bylaws, articles of incorporation, and duly adopted amendments to those documents. The documents may include restrictive covenants governing the use and occupancy of properties.

Based on these laws, condominium, cooperative, and homeowners' associations have enacted provisions that govern the ability of the property owners to rent their properties. Certain condominium, cooperative, and homeowners' associations have taken actions such as prohibiting owners from renting their properties, restricting the duration of the rental term, or limiting the frequency owners are allowed to rent their properties.

Effect of the Bill

Preemption

The bill amends s. 509.032(7), F.S., relating to the preemption of vacation rentals by the state.

The bill specifies that the regulation of vacation rentals and advertising platforms is preempted to the state.

The bill does not preempt local regulations affecting vacation rentals if the regulation applies uniformly to all residential properties, regardless of whether:

- the property is used as a vacation rental,
- the property is used as a long-term rental subject to chapter 83, or
- the property owner chooses not to rent the property.

The bill prohibits local regulations that allow or require the inspection or licensing of vacation rentals. However, vacation rentals will remain exempt from state inspection requirements.

The bill also provides for the following legislative findings: that vacation rentals are residential in nature, that residential property owners have a constitutionally protected right to use their property as a vacation rental, and that vacation rentals are different from other types of public lodging and play a unique and critical role in the state's tourism industry.

Advertising Platforms

Definition

The bill creates s. 509.013(17), F.S., defining the term "advertising platform" as a person who:

- Provides an online application, software, website, system, or print advertisement through which a transient public lodging establishment located in this state is advertised or held out to the public as available to rent for transient occupancy;
- Provides or maintains a marketplace for the renting by transient occupancy of a vacation rental; or

[45] S. 720.301(9), F.S.

- Provides a reservation or payment system that facilitates a transaction for the renting by transient occupancy of a vacation rental and for which the person collects or receives, directly or indirectly, a fee in connection with the reservation or payment service provided for such transaction.

The bill exempts a multiple listing service or an online or print advertisement for the rental of a transient public lodging establishment by a licensed real estate broker or sales associate from the definition of "advertising platform". The bill specifies, however, that a licensed real estate broker or sales associate must comply with s. 509.243(3), F.S., relating to the removal of listings that fail to display valid license numbers.

Platform Requirements

Effective January 1, 2021, the bill creates s. 509.243, F.S., requiring an advertising platform must:

- Require that a person who places an advertisement for a vacation rental include the license number, applicable Florida sales tax registration, and tourist development tax account numbers, and attest to the best of their knowledge that this information is correct.
- Provide to the Division on a quarterly basis, by file transfer protocol or electronic data exchange file, a list of all vacation rental listings in this state on its platform specified information, including the Internet address of the listing, the vacation rental license number, and applicable tax numbers.
- Remove from public view an advertisement or listing from its online application, software, website, or system within 15 business days after being notified by the Division in writing that the subject advertisement or listing for the rental of a vacation rental located in this state fails to display a valid license number issued by the Division.

If the Division has probably cause to believe that a person not licensed by the Division has violated ch. 509, F.S., the bill authorizes the Division to issue a notice to cease and desist and to enforce such a notice by injunction or a writ of mandamus. If DBPR is required to seek enforcement of the notice for a penalty pursuant to s. 120.569, F.S.,[46] it is entitled to collect its attorney fees and costs, together with any cost of collection.

Vacation Rental Operators

Effective January 1, 2021, the bill amends s. 509.241, F.S., to require the operator of a vacation rental offered for transient occupancy through an advertising platform to display the vacation rental license number and the applicable Florida sales tax registration and tourist development tax account numbers under which such taxes must be paid for each rental of the property as a vacation rental.

Vacation Rental Licensure

The bill amends s. 509.242 F.S., removing "any" from the definition of a vacation rental. This modification would add single bedrooms or groups of bedrooms in a house to the definition of a vacation rental. This modification would also include hosted stays, in which the unit owner is renting an unoccupied portion of an occupied dwelling. These modifications may require previously exempt individuals to obtain a license to continue to rent these specified units.[47]

[46] Section 120.569, F.S., provides the administrative procedures for resolution of agency decisions which affect substantial interests before the Division of Administrative Hearings.
[47] DBPR, Agency Analysis of 2020 Senate Bill 1128, p. 3 (Jan. 29, 2020).

Condominiums, Cooperatives, and Homeowners' Associations

The bill provides that it is not the Legislature's intent to supersede any current or future declaration or declaration of condominium adopted pursuant to ch. 718, F.S., cooperative documents adopted pursuant to ch. 719, F.S., or declaration of covenants or declaration adopted pursuant to ch. 720, F.S.

Except as otherwise provided, the bill takes effect upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends s. 509.013, F.S., defining the term "advertising platform".

Section 2: Amends s. 509.032, F.S., preempting the regulation of vacation rentals to the state; providing legislative findings; authorizing a local law, ordinance, or regulation to regulate certain activities under certain circumstances; prohibiting a local law, ordinance, or regulation from allowing or requiring inspections or licensing of vacation rentals; preempting the regulation of advertising platforms to the state.

Section 3: Amends s. 509.241, F.S., requiring licenses issued by the Division to be displayed conspicuously to the public inside the licensed establishment; and requiring the operator of certain vacation rentals to also display its vacation rental license number and applicable tax account numbers.

Section 4: Amends s. 509.242, F.S., revising the criteria for a public lodging establishment to be classified as a vacation rental.

Section 5: Creates s. 509.243, F.S., requiring advertising platforms to require that persons placing advertisements for vacation rentals include certain information in the advertisements; providing that the advertising platform is not required to verify such information; requiring each advertising platform to quarterly provide the Division with certain information regarding vacation rentals in this state listed on the platform; requiring an advertising platform to remove an advertisement or listing under certain conditions and within a specified timeframe; authorizing the Division to issue and deliver a notice to cease and desist for certain violations; providing that such notice does not constitute agency action for which a certain hearing may be sought; authorizing the Division to file certain proceedings; and authorizing the collection of attorney fees and costs under certain circumstances.

Section 6: Provides for applicability.

Section 7: Provides positions and appropriations.

Section 8: Provides for effective dates.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   There may be an indeterminate increase in revenues due to additional license fees, tourism and sales taxes, and fines.

2. Expenditures:

The bill requires advertising platforms to list specific information relating to tax rentals and send the information to DBPR, but does not require the platforms to verify the information. To verify the information is correct, DBPR will need to audit the uniform resource location for internet addresses, vacation license numbers, Florida sales tax registration numbers, and tourist development tax numbers. DBPR will also need to coordinate with the 67 county tax collectors to verify taxing information is correct. Once the information is verified, DBPR will be able to send and enforce removal notices for those vacation rentals not in compliance. [48]

The bill modifies the definition of vacation rental, which may significantly increase the number of individuals required to acquire a license. In addition, vacation rental operators will be required to display additional information including the rental's license in all units and the license number in all advertisements. The additional requirements and licenses may result in additional complaints from local jurisdictions, tax collectors, vacation rentals guests, license holders, and concerned homeowners. [49]

The bill provides 19.00 new positions and $1.4 million in the first year and $1.3 million recurring thereafter, from the Hotel and Restaurant Trust Fund, to DBPR to implement the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Preempting local governments from regulating vacation rentals will prevent a local government from imposing and collecting fees and fines relating to regulation and enforcement, which will have an indeterminate negative fiscal impact on local revenues, depending on each local government's current practice of vacation rental regulation and enforcement.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will provide a more predictable and uniform regulatory framework for vacation rentals in Florida. However, certain operators who offer hosted stays or individual room(s) within a larger dwelling or unit will now be subject to regulation by the Division, including certain licensure and fee requirements.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

[48] DBPR, Agency Analysis of 2020 Senate Bill 1128, p. 7-8 (Jan. 29, 2020).
[49] DBPR, Agency Analysis of 2020 Senate Bill 1128, p. 4 (Jan. 29, 2020).

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 111-113: "This sub-subparagraph ~~paragraph~~ does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011." It is not clear what effect, if any, this grandfathering clause will have if it is limited to sub-subparagraph 509.032(7)(a)2.c., F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the Government Operations & Technology Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute provides 19.00 positions and an appropriation of $1.4 million to DBPR to implement the bill.

This analysis is drafted to the committee substitute as passed by the Government Operations & Technology Appropriations Subcommittee.

A bill to be entitled

An act relating to vacation rentals; amending s. 509.013, F.S.; defining the term "advertising platform"; amending s. 509.032, F.S.; preempting the regulation of vacation rentals to the state; providing legislative findings; authorizing a local law, ordinance, or regulation to regulate certain activities under certain circumstances; prohibiting a local law, ordinance, or regulation from allowing or requiring inspections or licensing of vacation rentals; preempting the regulation of advertising platforms to the state; amending s. 509.241, F.S.; requiring licenses issued by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to be displayed conspicuously to the public inside the licensed establishment; requiring the operator of certain vacation rentals to also display its vacation rental license number and applicable tax account numbers; amending s. 509.242, F.S.; revising the criteria for a public lodging establishment to be classified as a vacation rental; creating s. 509.243, F.S.; requiring advertising platforms to require that persons placing advertisements for vacation rentals include certain information in the advertisements; providing that the

advertising platform is not required to verify such information; requiring each advertising platform to quarterly provide the division with certain information regarding vacation rentals in this state listed on the platform; requiring an advertising platform to remove an advertisement or listing under certain conditions and within a specified timeframe; authorizing the division to issue and deliver a notice to cease and desist for certain violations; providing that such notice does not constitute agency action for which a certain hearing may be sought; authorizing the division to file certain proceedings; authorizing the collection of attorney fees and costs under certain circumstances; providing applicability; providing appropriations and authorizing positions; providing effective dates.

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

Section 1. Subsection (17) is added to section 509.013, Florida Statutes, to read:

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

(17) "Advertising platform" means a person who:

(a) Provides an online application, software, website, system, or print advertisement through which a transient public

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

lodging establishment located in this state is advertised or held out to the public as available to rent for transient occupancy;

(b) Provides or maintains a marketplace for the renting by transient occupancy of a vacation rental; or

(c) Provides a reservation or payment system that facilitates a transaction for the renting by transient occupancy of a vacation rental and for which the person collects or receives, directly or indirectly, a fee in connection with the reservation or payment service provided for such transaction.

The term does not include the multiple listing service or an online or print advertisement of a transient public lodging establishment by a real estate broker or sales associate licensed under chapter 475; however, a real estate broker or sales associate licensed under chapter 475 must comply with s. 509.243(3).

Section 2. Subsection (7) of section 509.032, Florida Statutes, is amended to read:

509.032 Duties.—

(7) PREEMPTION AUTHORITY.—

(a) *Public lodging establishments and public food service establishments.*—

1. Preemption.—The regulation of public lodging establishments, including vacation rentals, and public food

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

service establishments, including, but not limited to, sanitation standards, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state. This subparagraph ~~paragraph~~ does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206.

2.~~(b)~~ Vacation rentals.—

a. The Legislature finds that:

(I) Property owners who choose to use their property as a vacation rental have constitutionally protected property rights and other rights that must be protected, including the right to use their residential property as a vacation rental;

(II) Vacation rentals play a significant, unique, and critical role in this state's tourism industry, and that role is different from other types of public lodging establishments;

(III) There are factors unique to the ownership and operation of a vacation rental; and

(IV) Vacation rentals are residential in nature, a residential use, and thus permitted in residential neighborhoods.

b. Except as provided under this subparagraph, the

regulation of vacation rentals, including inspection and licensing, is expressly preempted to the state.

c. A local law, ordinance, or regulation may regulate activities that arise when a property is used as a vacation rental if the law, ordinance, or regulation applies uniformly to all residential properties without regard to whether the property is used as a vacation rental as defined in s. 509.242, the property is used as a long-term rental subject to chapter 83, or the property owner chooses not to rent the property. However, a local law, ordinance, or regulation may not prohibit ~~vacation~~ rentals or regulate the duration or frequency of ~~rental of vacation~~ rentals. This sub-subparagraph ~~paragraph~~ does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011.

d. A local law, ordinance, or regulation may not allow or require the inspection or licensing of vacation rentals.

e.~~(c)~~ This subparagraph ~~paragraph (b)~~ does not apply to any local law, ordinance, or regulation exclusively relating to property valuation as a criterion for vacation rental if the local law, ordinance, or regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern designation.

(b) *Advertising platforms.*—The regulation of advertising platforms is preempted to the state and shall be regulated under this chapter.

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

Section 3. Effective January 1, 2021, subsection (3) of section 509.241, Florida Statutes, is amended to read:

509.241 Licenses required; exceptions.—

(3) DISPLAY OF LICENSE.—Any license issued by the division must ~~shall~~ be conspicuously displayed to the public inside ~~in~~ the ~~office or lobby of the~~ licensed establishment. Public food service establishments that ~~which~~ offer catering services must ~~shall~~ display their license number on all advertising for catering services. The operator of a vacation rental offered for transient occupancy through an advertising platform must also display the vacation rental license number and the applicable Florida sales tax registration and tourist development tax account numbers under which such taxes must be paid for each rental of the property as a vacation rental.

Section 4. Paragraph (c) of subsection (1) of section 509.242, Florida Statutes, is amended to read:

509.242 Public lodging establishments; classifications.—

(1) A public lodging establishment shall be classified as a hotel, motel, nontransient apartment, transient apartment, bed and breakfast inn, timeshare project, or vacation rental if the establishment satisfies the following criteria:

(c) *Vacation rental.*—A vacation rental is a ~~any~~ unit or group of units in a condominium or cooperative or in an ~~any~~ individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also

a transient public lodging establishment but ~~that is~~ not a timeshare project.

Section 5. Effective January 1, 2021, section 509.243, Florida Statutes, is created to read:

509.243 Advertising platforms.—

(1)(a) An advertising platform must require that a person who places an advertisement for the rental of a vacation rental:

1. Include in the advertisement the vacation rental license number and the applicable Florida sales tax registration and tourist development tax account numbers under which such taxes must be paid before the advertisement may be listed; and

2. Attest to the best of their knowledge that the license number for the vacation rental property and the applicable tax numbers are current, valid, and accurately stated in the advertisement.

(b) An advertising platform must display the license number and applicable Florida sales tax registration and tourist development tax numbers, but the advertising platform is not required to verify such information.

(2) An advertising platform must provide to the division on a quarterly basis, by file transfer protocol or electronic data exchange file, a list of all vacation rental listings in this state on its platform and all of the following information for each listing:

(a) The uniform resource locator for the Internet address

of the listing.

(b) The vacation rental license number provided by the owner or operator.

(c) The applicable Florida sales tax registration and tourist development tax numbers under which taxes will be remitted for rentals commenced through the advertisement.

(3) An advertising platform must remove from public view an advertisement or listing from its online application, software, website, or system within 15 business days after being notified by the division in writing that the subject advertisement or listing for the rental of a vacation rental located in this state fails to display a valid license number issued by the division.

(4) If the division has probable cause to believe that a person not licensed by the division has violated this chapter, or any rule adopted pursuant thereto, the division may issue and deliver to such person a notice to cease and desist from the violation. The issuance of a notice to cease and desist does not constitute agency action for which a hearing under ss. 120.569 and 120.57 may be sought. For the purpose of enforcing a cease and desist notice, the division may file a proceeding in the name of the state seeking the issuance of an injunction or a writ of mandamus against any person who violates any provision of the notice. If the department is required to seek enforcement of the notice for a penalty pursuant to s. 120.569, it is

entitled to collect its attorney fees and costs, together with any cost of collection.

Section 6. The Legislature does not intend for the application of this act to supersede any current or future declaration or declaration of condominium adopted pursuant to chapter 718, Florida Statutes, cooperative documents adopted pursuant to chapter 719, Florida Statutes, or declaration of covenants or declaration adopted pursuant to chapter 720, Florida Statutes.

Section 7. For the 2020-2021 fiscal year, the sums of $1,306,368 in recurring funds and $116,749 in nonrecurring funds from the Hotel and Restaurant Trust Fund are appropriated to the Department of Business and Professional Regulation and 19 full-time equivalent positions with associated salary rate of 792,021 are authorized for the purpose of implementing this act.

Section 8. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

COMMERCE COMMITTEE

CS/HB 1011 by Rep. Fischer
Vacation Rentals

AMENDMENT SUMMARY
February 20, 2020

Amendment 1 by Rep. Fischer (strike-all). The amendment:

- Removes the reference to "print advertisement" from the definition of "advertising platform," and clarifies that a person must meet all three criteria to be an advertising platform.
- Prohibits local laws that require inspections or licenses for vacation rentals.
- Relating to preemption, the amendment deletes "legislative intent" language and maintains the current "grandfathering" provision, including local laws in a jurisdiction within an Area of Critical State Concern
- Allows local governments to amend "grandfathered" local laws to be less restrictive.
- Requires the advertising platform to verify that the vacation rental license number provided by the owner or operator is valid and applies to the subject vacation rental before publishing the advertisement and at the end of each calendar quarter.
- Requires the Dept. of Business and Professional Regulation (DBPR) to maintain license information in an accessible electronic format to facilitate prompt compliance.
- Requires an advertising platform to quarterly provide DBPR with a list of all vacation rentals located in the state, including the physical address and unit number for the vacation rental.
- Requires advertising platforms to collect and remit sales tax and tourist development taxes if the guest pays for the rental on or through the advertising platform, permits advertising platforms to exclude service fees when calculating the taxes to be collected and remitted, and authorizes the Dept. of Revenue (DOR) to adopt rules.
- Clarifies that the taxes an advertising platform must collect and remit are based on the total rental amount charged by the owner or operator for use of the vacation rental.
- Amends s. 212.03, F.S., to incorporate the requirement that an advertising platform collect and remit the specified taxes into ch. 212, F.S., and thereby clarify the authority of the DOR.
- Requires DOR and counties that have elected to self-administer tourist development taxes to allow advertising platforms to register, collect, and remit such taxes.
- Requires advertising platforms to adopt an anti-discrimination policy and to inform the users of its services that it is illegal to refuse accommodation to an individual based on race, creed, color, sex, pregnancy, physical disability, or national origin, pursuant to s. 509.092, F.S.
- Clarifies that the bill "shall not" supersede any current or former governing document of a community association.
- Authorizes DOR to adopt emergency rules, which are effective for 6 months and may be renewed to adopt permanent rules.
- Revises the Florida Sexual Predators Act (s. 775.21, F.S.) to provide additional safeguards relating to vacation rentals under certain circumstances.
- Removes the appropriation to DBPR.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Commerce Committee
Representative Fischer offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 509.013, Florida Statutes, is amended to read:

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

(1) "Advertising platform" means a person who:

(a) Provides an online application, software, website, or system through which a vacation rental located in this state is advertised or held out to the public as available to rent for transient occupancy;

(b) Provides or maintains a marketplace for the renting by transient occupancy of a vacation rental; and

(c) Provides a reservation or payment system that facilitates a transaction for the renting by transient occupancy of a vacation rental and for which the person collects or receives, directly or indirectly, a fee in connection with the reservation or payment service provided for such transaction.

(2) ~~(6)~~ "Director" means the Director of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

(3) ~~(1)~~ "Division" means the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

(4) ~~(3)~~ "Guest" means any patron, customer, tenant, lodger, boarder, or occupant of a public lodging establishment or public food service establishment.

(5) ~~(16)~~ "Nontransient" means a guest in nontransient occupancy.

(6) ~~(14)~~ "Nontransient establishment" means any public lodging establishment that is rented or leased to guests by an operator whose intention is that the dwelling unit occupied will be the sole residence of the guest.

(7) ~~(15)~~ "Nontransient occupancy" means occupancy when it is the intention of the parties that the occupancy will not be temporary. There is a rebuttable presumption that, when the dwelling unit occupied is the sole residence of the guest, the occupancy is nontransient.

(8) ~~(2)~~ "Operator" means the owner, licensee, proprietor, lessee, manager, assistant manager, or appointed agent of a public lodging establishment or public food service establishment.

(9)(a) ~~(4)(a)~~ "Public lodging establishment" includes a transient public lodging establishment as defined in subparagraph 1. and a nontransient public lodging establishment as defined in subparagraph 2.

1. "Transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

2. "Nontransient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

License classifications of public lodging establishments, and the definitions therefor, are set out in s. 509.242. For the

purpose of licensure, the term does not include condominium common elements as defined in s. 718.103.

(b) The following are excluded from the definitions in paragraph (a):

1. Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors.

2. Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place regulated under s. 381.0072.

3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients.

4. Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent.

5. Any migrant labor camp or residential migrant housing permitted by the Department of Health under ss. 381.008-381.00895.

6. Any establishment inspected by the Department of Health and regulated by chapter 513.

7. Any nonprofit organization that operates a facility providing housing only to patients, patients' families, and patients' caregivers and not to the general public.

8. Any apartment building inspected by the United States Department of Housing and Urban Development or other entity acting on the department's behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to attest in writing that such building meets the criteria provided in this subparagraph. The division may adopt rules to implement this requirement.

9. Any roominghouse, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, timeshare project, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment under s. 509.242.

(10)(a) ~~(5)(a)~~ "Public food service establishment" means any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by

customers; or prepared before ~~prior to~~ being delivered to another location for consumption. The term includes a culinary education program, as defined in s. 381.0072(2), which offers, prepares, serves, or sells food to the general public, regardless of whether it is inspected by another state agency for compliance with sanitation standards.

(b) The following are excluded from the definition in paragraph (a):

1. Any place maintained and operated by a public or private school, college, or university:

a. For the use of students and faculty; or

b. Temporarily to serve such events as fairs, carnivals, food contests, cook-offs, and athletic contests.

2. Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization:

a. For the use of members and associates; or

b. Temporarily to serve such events as fairs, carnivals, food contests, cook-offs, or athletic contests.

Upon request by the division, a church or a religious, nonprofit fraternal, or nonprofit civic organization claiming an exclusion under this subparagraph must provide the division documentation of its status as a church or a religious, nonprofit fraternal, or nonprofit civic organization.

3. Any eating place maintained and operated by an individual or entity at a food contest, cook-off, or a temporary event lasting from 1 to 3 days which is hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization. Upon request by the division, the event host must provide the division documentation of its status as a church or a religious, nonprofit fraternal, or nonprofit civic organization.

4. Any eating place located on an airplane, train, bus, or watercraft which is a common carrier.

5. Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place that is regulated under s. 381.0072.

6. Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12.

7. Any place of business where the food available for consumption is limited to ice, beverages with or without garnishment, popcorn, or prepackaged items sold without additions or preparation.

8. Any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters.

9. Any vending machine that dispenses any food or beverages other than potentially hazardous foods, as defined by division rule.

10. Any vending machine that dispenses potentially hazardous food and which is located in a facility regulated under s. 381.0072.

11. Any research and development test kitchen limited to the use of employees and which is not open to the general public.

(11) ~~(7)~~ "Single complex of buildings" means all buildings or structures that are owned, managed, controlled, or operated under one business name and are situated on the same tract or plot of land that is not separated by a public street or highway.

(12) ~~(8)~~ "Temporary food service event" means any event of 30 days or less in duration where food is prepared, served, or sold to the general public.

(13) ~~(9)~~ "Theme park or entertainment complex" means a 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.

(14) ~~(10)~~ "Third-party provider" means, for purposes of s. 509.049, any provider of an approved food safety training program that provides training or such a training program to a

public food service establishment that is not under common ownership or control with the provider.

(15)~~(13)~~ "Transient" means a guest in transient occupancy.

(16)~~(11)~~ "Transient establishment" means any public lodging establishment that is rented or leased to guests by an operator whose intention is that such guests' occupancy will be temporary.

(17)~~(12)~~ "Transient occupancy" means occupancy when it is the intention of the parties that the occupancy will be temporary. There is a rebuttable presumption that, when the dwelling unit occupied is not the sole residence of the guest, the occupancy is transient.

Section 2. Paragraph (c) of subsection (3) and subsection (7) of section 509.032, Florida Statutes, are amended to read:

509.032 Duties.—

(3) SANITARY STANDARDS; EMERGENCIES; TEMPORARY FOOD SERVICE EVENTS.—The division shall:

(c) Administer a public notification process for temporary food service events and distribute educational materials that address safe food storage, preparation, and service procedures.

1. Sponsors of temporary food service events shall notify the division not less than 3 days before the scheduled event of the type of food service proposed, the time and location of the event, a complete list of food service vendors participating in the event, the number of individual food service facilities each

vendor will operate at the event, and the identification number of each food service vendor's current license as a public food service establishment or temporary food service event licensee. Notification may be completed orally, by telephone, in person, or in writing. A public food service establishment or food service vendor may not use this notification process to circumvent the license requirements of this chapter.

2. The division shall keep a record of all notifications received for proposed temporary food service events and shall provide appropriate educational materials to the event sponsors and notify the event sponsors of the availability of the food-recovery brochure developed under s. 595.420.

3.a. Unless excluded under s. 509.013 ~~s. 509.013(5)(b)~~, a public food service establishment or other food service vendor must obtain one of the following classes of license from the division: an individual license, for a fee of no more than $105, for each temporary food service event in which it participates; or an annual license, for a fee of no more than $1,000, that entitles the licensee to participate in an unlimited number of food service events during the license period. The division shall establish license fees, by rule, and may limit the number of food service facilities a licensee may operate at a particular temporary food service event under a single license.

b. Public food service establishments holding current licenses from the division may operate under the regulations of such a license at temporary food service events.

(7) PREEMPTION AUTHORITY.—

(a) The regulation of public lodging establishments, including vacation rentals, and public food service establishments, including, but not limited to, sanitation standards, licensing, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is expressly preempted to the state. A local law, ordinance, or regulation may not allow or require the local inspection or licensing of public lodging establishments, including vacation rentals, or public food service establishments. This paragraph does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206.

(b) A local law, ordinance, or regulation may regulate activities that arise when a property is used as a vacation rental if the law, ordinance, or regulation applies uniformly to all residential properties without regard to whether the property is used as a vacation rental as defined in s. 509.242, the property is used as a long-term rental subject to chapter

83, or the property owner chooses not to rent the property. However, a local law, ordinance, or regulation may not prohibit ~~vacation~~ rentals or regulate the duration or frequency of ~~rental of vacation~~ rentals. The prohibitions set forth in this paragraph do ~~This paragraph does~~ not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011, including when such law, ordinance, or regulation is being amended to be less restrictive with regard to a prohibition, or duration, or frequency regulation.

(c) Paragraph (b) and the provisions of paragraph (a) relating to the licensing of vacation rentals do ~~does~~ not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011, in any jurisdiction within ~~exclusively relating to property valuation as a criterion for vacation rental if the local law, ordinance, or regulation is required to be approved by the state land planning agency pursuant to~~ an area of critical state concern, as designated by s. 380.0552 or chapter 28-36, Florida Administrative Code. Any such local law, ordinance, or regulation may be amended so long as the amendment is not more restrictive than the existing law, ordinance, or regulation.

(d) The regulation of advertising platforms is preempted to the state and shall be regulated under this chapter ~~designation~~.

Section 3. Effective January 1, 2021, subsection (3) of section 509.241, Florida Statutes, is amended to read:

509.241 Licenses required; exceptions.—

(3) DISPLAY OF LICENSE.—Any license issued by the division must ~~shall~~ be conspicuously displayed to the public inside ~~in~~ the ~~office or lobby of the~~ licensed establishment. Public food service establishments that ~~which~~ offer catering services must ~~shall~~ display their license number on all advertising for catering services. The owner or operator of a vacation rental offered for transient occupancy through an advertising platform must also display the vacation rental license number and the applicable Florida sales tax registration and tourist development tax account numbers under which such taxes must be paid for each rental of the property as a vacation rental.

Section 4. Effective January 1, 2021, section 509.243, Florida Statutes, is created to read:

509.243 Advertising platforms.—

(1)(a) An advertising platform must require that a person who places an advertisement for the rental of a vacation rental:

1. Include in the advertisement the vacation rental license number and the applicable Florida sales tax registration and tourist development tax account numbers under which such taxes must be paid before the advertisement may be listed; and

2. Attest to the best of their knowledge that the license number for the vacation rental property and the applicable tax

numbers are current, valid, and accurately stated in the advertisement.

(b) An advertising platform must display the vacation rental license number and applicable Florida sales tax registration and tourist development tax numbers. The advertising platform must verify that the vacation rental license number provided by the owner or operator is valid and applies to the subject vacation rental before publishing the advertisement on its platform and again at the end of each calendar quarter that the advertisement remains on its platform.

(c) The division shall maintain vacation rental license information in a readily accessible electronic format that is sufficient to facilitate prompt compliance with the requirements of this subsection by an advertising platform or a person placing an advertisement on an advertising platform for transient rental of a vacation rental.

(2) An advertising platform must provide to the division on a quarterly basis, by file transfer protocol or electronic data exchange file, a list of all vacation rentals located in this state that are advertised on its platform, along with the following information for each vacation rental:

(a) The uniform resource locator for the Internet address of the vacation rental advertisement.

(b) Unless otherwise stated in the vacation rental advertisement at the Internet address provided pursuant to

paragraph (a), the physical address of the vacation rental, including any unit designation, the vacation rental license number provided by the owner or operator, and the applicable Florida sales tax registration and tourist development tax account numbers under which taxes will be remitted for the rentals commenced through the advertisement.

(3) An advertising platform must remove from public view an advertisement or listing from its online application, software, website, or system within 15 business days after being notified by the division in writing that the subject advertisement or listing for the rental of a vacation rental located in this state fails to display a valid license number issued by the division.

(4) If a guest uses a payment system on or through an advertising platform to pay for the rental of a vacation rental located in this state, the advertising platform shall collect and remit all taxes imposed under chapters 125 and 212 on the total rental amount charged by the owner or operator for the use of the vacation rental under ss. 125.0104 and 212.03.

(5) If the division has probable cause to believe that a person not licensed by the division has violated this chapter, or any rule adopted pursuant thereto, the division may issue and deliver to such person a notice to cease and desist from the violation. The issuance of a notice to cease and desist does not constitute agency action for which a hearing under ss. 120.569

and 120.57 may be sought. For the purpose of enforcing a cease and desist notice, the division may file a proceeding in the name of the state seeking the issuance of an injunction or a writ of mandamus against any person who violates any provision of the notice. If the department is required to seek enforcement of the notice for a penalty pursuant to s. 120.569, it is entitled to collect its attorney fees and costs, together with any cost of collection.

(6) Advertising platforms must adopt an antidiscrimination policy to help prevent discrimination among its users and must inform all users of their services that it is illegal to refuse accommodation to an individual based on race, creed, color, sex, pregnancy, physical disability, or national origin pursuant to s. 509.092.

Section 5. Subsection (2) of section 212.03, Florida Statutes is amended to read:

212.03 Transient rentals tax; rate, procedure, enforcement, exemptions.—

(2)(a) The tax provided for herein shall be in addition to the total amount of the rental, shall be charged by the lessor or person receiving the rent in and by said rental arrangement to the lessee or person paying the rental, and shall be due and payable at the time of the receipt of such rental payment by the lessor or person, as defined in this chapter, who receives said rental or payment. The owner, lessor, or person receiving the

rent shall remit the tax to the department at the times and in the manner hereinafter provided for dealers to remit taxes under this chapter. The same duties imposed by this chapter upon dealers in tangible personal property respecting the collection and remission of the tax; the making of returns; the keeping of books, records, and accounts; and the compliance with the rules and regulations of the department in the administration of this chapter shall apply to and be binding upon all persons who manage or operate hotels, apartment houses, roominghouses, tourist and trailer camps, and the rental of condominium units, and to all persons who collect or receive such rents on behalf of such owner or lessor taxable under this chapter.

(b) If a guest uses a payment system on or through an advertising platform, as defined in s. 509.013, to pay for the rental of a vacation rental located in this state, the advertising platform shall collect and remit all taxes imposed under chapters 125 and 212 on the total rental amount charged by the owner or operator for the use of the vacation rental under s. 125.0104 and this section. In order to facilitate the remittance of such taxes, the department and counties that have elected to self-administer the taxes imposed under chapter 125 must allow advertising platforms to register, collect and remit such taxes.

Section 6. Subsection (12) of section 159.27, Florida Statutes, is amended to read:

159.27 Definitions.—The following words and terms, unless the context clearly indicates a different meaning, shall have the following meanings:

(12) "Public lodging or restaurant facility" means property used for any public lodging establishment as defined in s. 509.242 or public food service establishment as defined in s. 509.013 ~~s. 509.013(5)~~ if it is part of the complex of, or necessary to, another facility qualifying under this part.

Section 7. Paragraph (jj) of subsection (7) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any entity by this chapter do not inure to any transaction that is otherwise taxable under this chapter when payment is made by a representative or employee of the entity by any means, including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable under this chapter unless the entity has

obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

(jj) Complimentary meals.—Also exempt from the tax imposed by this chapter are food or drinks that are furnished as part of a packaged room rate by any person offering for rent or lease any transient living accommodations as described in s. 509.013 ~~s. 509.013(4)(a)~~ which are licensed under part I of chapter 509 and which are subject to the tax under s. 212.03, if a separate charge or specific amount for the food or drinks is not shown. Such food or drinks are considered to be sold at retail as part of the total charge for the transient living accommodations. Moreover, the person offering the accommodations is not considered to be the consumer of items purchased in furnishing such food or drinks and may purchase those items under conditions of a sale for resale.

Section 8. Paragraph (b) of subsection (4) of section 316.1955, Florida Statutes, is amended to read:

316.1955 Enforcement of parking requirements for persons who have disabilities.—

(4)

(b) Notwithstanding paragraph (a), a theme park or an entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~ which provides parking in designated areas for persons who have disabilities may allow any vehicle that is transporting a person who has a disability to remain parked in a space reserved for persons who have disabilities throughout the period the theme park is open to the public for that day.

Section 9. Subsection (5) of section 404.056, Florida Statutes, is amended to read:

404.056 Environmental radiation standards and projects; certification of persons performing measurement or mitigation services; mandatory testing; notification on real estate documents; rules.—

(5) NOTIFICATION ON REAL ESTATE DOCUMENTS.—Notification shall be provided on at least one document, form, or application executed at the time of, or prior to, contract for sale and purchase of any building or execution of a rental agreement for any building. Such notification shall contain the following language:

"RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed

to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department."

The requirements of this subsection do not apply to any residential transient occupancy, as described in s. 509.013 ~~s. 509.013(12)~~, provided that such occupancy is 45 days or less in duration.

Section 10. Subsection (6) of section 477.0135, Florida Statutes, is amended to read:

477.0135 Exemptions.—

(6) A license is not required of any individual providing makeup or special effects services in a theme park or entertainment complex to an actor, stunt person, musician, extra, or other talent, or providing makeup or special effects services to the general public. The term "theme park or entertainment complex" has the same meaning as in s. 509.013 ~~s. 509.013(9)~~.

Section 11. Paragraph (b) of subsection (2) of section 509.221, Florida Statutes, is amended to read:

509.221 Sanitary regulations.—

(2)

(b) Within a theme park or entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~, the bathrooms are not

required to be in the same building as the public food service establishment, so long as they are reasonably accessible.

Section 12. Paragraph (b) of subsection (5) of section 553.5041, Florida Statutes, is amended to read:

553.5041 Parking spaces for persons who have disabilities.—

(5) Accessible perpendicular and diagonal accessible parking spaces and loading zones must be designed and located to conform to ss. 502 and 503 of the standards.

(b) If there are multiple entrances or multiple retail stores, the parking spaces must be dispersed to provide parking at the nearest accessible entrance. If a theme park or an entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~ provides parking in several lots or areas from which access to the theme park or entertainment complex is provided, a single lot or area may be designated for parking by persons who have disabilities, if the lot or area is located on the shortest accessible route to an accessible entrance to the theme park or entertainment complex or to transportation to such an accessible entrance.

Section 13. Subsection (2) of section 705.17, Florida Statutes, is amended to read:

705.17 Exceptions.—

(2) Sections 705.1015-705.106 do not apply to any personal property lost or abandoned on premises located within a theme

park or entertainment complex, as defined in s. 509.013 ~~s. 509.013(9)~~, or operated as a zoo, a museum, or an aquarium, or on the premises of a public food service establishment or a public lodging establishment licensed under part I of chapter 509, if the owner or operator of such premises elects to comply with s. 705.185.

Section 14. Section 705.185, Florida Statutes, is amended to read:

705.185 Disposal of personal property lost or abandoned on the premises of certain facilities.—When any lost or abandoned personal property is found on premises located within a theme park or entertainment complex, as defined in s. 509.013 ~~s. 509.013(9)~~, or operated as a zoo, a museum, or an aquarium, or on the premises of a public food service establishment or a public lodging establishment licensed under part I of chapter 509, if the owner or operator of such premises elects to comply with this section, any lost or abandoned property must be delivered to such owner or operator, who must take charge of the property and make a record of the date such property was found. If the property is not claimed by its owner within 30 days after it is found, or a longer period of time as may be deemed appropriate by the owner or operator of the premises, the owner or operator of the premises may not sell and must dispose of the property or donate it to a charitable institution that is exempt from federal income tax under s. 501(c)(3) of the Internal

Revenue Code for sale or other disposal as the charitable institution deems appropriate. The rightful owner of the property may reclaim the property from the owner or operator of the premises at any time before the disposal or donation of the property in accordance with this section and the established policies and procedures of the owner or operator of the premises. A charitable institution that accepts an electronic device, as defined in s. 815.03(9), access to which is not secured by a password or other personal identification technology, shall make a reasonable effort to delete all personal data from the electronic device before its sale or disposal.

Section 15. Section 717.1355, Florida Statutes, is amended to read:

717.1355 Theme park and entertainment complex tickets.—This chapter does not apply to any tickets for admission to a theme park or entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~, or to any tickets to a permanent exhibition or recreational activity within such theme park or entertainment complex.

Section 16. Subsection (8) of section 877.24, Florida Statutes, is amended to read:

877.24 Nonapplication of s. 877.22.—Section 877.22 does not apply to a minor who is:

(8) Attending an organized event held at and sponsored by a theme park or entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~.

Section 17. The application of this act shall not supersede any current or future declaration or declaration of condominium adopted pursuant to chapter 718, Florida Statutes, cooperative document adopted pursuant to chapter 719, Florida Statutes, or declaration or declaration of covenant adopted pursuant to chapter 720, Florida Statutes.

Section 18. (1) The Department of Revenue is authorized, and all conditions are deemed to be met, to adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for the purpose of implementing s. 212.03, Florida Statutes, including establishing procedures to facilitate the remittance of taxes.

(2) Notwithstanding any other provision of law, emergency rules adopted pursuant to subsection (1) are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(3) This section expires January 1, 2023.

Section 19. Paragraphs (n) and (o) of subsection (2) and paragraph (e) of subsection (6) of section 775.21, Florida Statutes, are amended to read:

775.21 The Florida Sexual Predators Act.—

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

(n) "Temporary residence" means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of 3 or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state. Temporary residence also includes a place where a person lodges in a vacation rental, as defined in s. 509.242, for 24 hours or more.

(o) "Transient residence" means a county where a person lives, remains, or is located for a period of 3 or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address. Transient residence also includes a county where a person lodges in a vacation rental, as defined in s. 509.242, for 24 hours or more.

(6) REGISTRATION.—

(e)1. If the sexual predator is not in the custody or control of, or under the supervision of, the Department of Corrections or is not in the custody of a private correctional facility, the sexual predator shall register in person:

a. At the sheriff's office in the county where he or she establishes or maintains a residence within 24 hours after establishing or maintaining a temporary residence or transient residence in a vacation rental or 48 hours after establishing or maintaining any other ~~a~~ residence in this state; and

b. At the sheriff's office in the county where he or she was designated a sexual predator by the court within 48 hours after such finding is made.

2. Any change that occurs after the sexual predator registers in person at the sheriff's office as provided in subparagraph 1. in any of the following information related to the sexual predator must be reported as provided in paragraphs (g), (i), and (j): permanent, temporary, or transient residence; name; vehicles owned; electronic mail addresses; Internet identifiers and each Internet identifier's corresponding website homepage or application software name; home and cellular telephone numbers; employment information; and change in status at an institution of higher education. When a sexual predator registers with the sheriff's office, the sheriff shall take a photograph, a set of fingerprints, and palm prints of the predator and forward the photographs, palm prints, and fingerprints to the department, along with the information that the predator is required to provide pursuant to this section.

Section 20. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

656
657 ---
658 **T I T L E A M E N D M E N T**
659 Remove everything before the enacting clause and insert:
660 A bill to be entitled
661 An act relating to vacation rentals; amending s.
662 509.013, F.S.; defining the term "advertising
663 platform"; amending s. 509.032, F.S.; conforming a
664 cross-reference; preempting the regulation of vacation
665 rentals and advertising platforms to the state;
666 prohibiting a local law, ordinance, or regulation from
667 allowing or requiring inspections or licensing of
668 public lodging establishments, including vacation
669 rentals, or public food service establishments;
670 authorizing a local law, ordinance, or regulation to
671 regulate certain activities under certain
672 circumstances; expanding an exemption to allow certain
673 ordinances adopted on or before June 1, 2011, to be
674 amended to be less restrictive; preempting the
675 regulation of advertising platforms to the state;
676 amending s. 509.241, F.S.; requiring licenses issued
677 by the Division of Hotels and Restaurants of the
678 Department of Business and Professional Regulation to
679 be displayed conspicuously to the public inside the
680 licensed establishment; requiring the operator of

certain vacation rentals to also display its vacation rental license number and applicable tax account numbers; creating s. 509.243, F.S.; requiring advertising platforms to require that persons placing advertisements for vacation rentals include certain information in the advertisements; providing that advertising platforms are required to verify such information; requiring advertising platforms to quarterly provide the division with certain information regarding vacation rentals in this state listed on the platforms; requiring advertising platforms to remove an advertisement or listing under certain conditions and within a specified timeframe; requiring advertising platforms to collect and remit taxes imposed under chs. 125 and 212, F.S., for certain transactions; authorizing the Department of Revenue to adopt rules; authorizing the division to issue and deliver a notice to cease and desist for certain violations; providing that such notice does not constitute agency action for which a certain hearing may be sought; authorizing the division to file certain proceedings; authorizing the collection of attorney fees and costs under certain circumstances; requiring advertising platforms to adopt an antidiscrimination policy and to inform users

of its services; amending s. 212.03, F.S.; requiring advertising platforms to collect and remit taxes imposed under chs. 125 and 212, F.S., for certain transactions; amending ss. 159.27, 212.08, 316.1955, 404.056, 477.0135, 509.221, 553.5041, 705.17, 705.185, 717.1355, and 877.24, F.S.; conforming provisions to changes made by the act; authorizing the department to adopt emergency rules; providing requirements and an expiration for such rules; amending s. 775.21, F.S.; requiring sexual predators to register with the local sheriff's office under certain circumstances; providing effective dates.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1095 Underground Facility Damage Prevention and Safety
SPONSOR(S): Energy & Utilities Subcommittee; Fitzenhagen
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1464

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	14 Y, 0 N, As CS	Keating	Keating
2) Government Operations & Technology Appropriations Subcommittee	11 Y, 0 N	Helpling	Topp
3) Commerce Committee		Keating	Hamon

SUMMARY ANALYSIS

Chapter 556, F.S., is the "Underground Facility Damage Prevention and Safety Act" (Act). The stated purpose of the Act is to identify and locate underground facilities prior to an excavation or demolition to prevent injury to persons or property or interruption of services resulting from damage to those facilities. To accomplish this, the Act creates a not-for-profit corporation (Sunshine 811) to administer a free-access notification system.

The bill amends ch. 556, F.S., to:

- Expand the list of entities that may issue citations for violations of ch. 556, F.S., to include the State Fire Marshal and local fire chiefs.
- Increase the maximum civil penalty (up to $2,500 plus 5 percent, in addition to any other court costs) for certain violations of ch. 556, F.S., that involve an underground pipe or facility transporting hazardous materials regulated by the U.S. DOT Pipeline and Hazardous Material Safety Administration (PHMSA). One hundred percent of the civil penalty will be distributed to the entity that issued the citation.
- Require each clerk of court to submit an annual report to the State Fire Marshal listing each violation notice written under ch. 556, F.S., which was filed in that county during the preceding calendar year.
- Require Sunshine 811 to transmit reports of incidents that involve high-priority subsurface installations (HPSI) for investigation by one of the following authorities, who may issue a citation and impose a civil penalty for a violation of ch. 556, F.S., that was a proximate cause of the incident: the State Fire Marshal, the fire chief of the county in which the incident occurred, a local or state law enforcement officer, a government code inspector, or a code enforcement officer. Ninety-five percent of the civil penalty will be distributed to the investigating authority that issued the citation, with the remaining 5 percent retained by the clerk of court for administrative costs.
- Create an "underground facility damage prevention review panel" (review panel) under the State Fire Marshal for the purpose of reviewing complaints of alleged violations of ch. 556, F.S., and identifying issues or potential issues related to damage prevention and enforcement.

The bill may have an indeterminate positive fiscal impact on state and local government revenues. The bill will require the State Fire Marshall to provide resources to support the review panel, and it may require the expenditure of resources by a state or local government entity to whom an HPSI incident is referred for investigation. These expenditures may be offset in whole or in part by the portion of any civil penalties collected and distributed to these entities through their enforcement of ch. 556, F.S.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Underground Facility Damage Prevention and Safety Act

Chapter 556, F.S., is the "Underground Facility Damage Prevention and Safety Act" (Act). The goal of the Act is to identify and locate underground facilities[1] prior to an excavation or demolition to prevent injury to persons or property or interruption of services resulting from damage to those facilities.[2] To accomplish this, the Act creates a not-for-profit corporation to administer a free-access notification system whereby a person intending to conduct excavation or demolition activities can give prior notice to the system of the person's intended activities, allowing operators of underground facilities the opportunity to identify and locate their nearby facilities.[3] All operators of underground facilities in the state are required to be members of the corporation ("member operators") and are required to use and participate in the system.[4]

The not-for-profit corporation created under the Act is Sunshine State One-Call of Florida, Inc., which operates under the name "Sunshine 811" and exercises its powers through a board of directors.[5] The system is required to provide a single toll-free telephone number (811) within Florida which excavators can use to notify member operators of planned excavation or demolition activities.[6] The person intending to conduct excavation or demolition must notify the system not less than two full business days before beginning the operations.[7] The person must also provide specified identification, location, and operational information which remain valid for 30 calendar days.[8] Upon receipt of this notice, the system provides to the person a list of names of the member operators who will be advised of the notification.[9]

The system operator in turn notifies the potentially affected member operators of the planned excavation or demolition activities.[10] Within two full business days after the time the notification is received by the system (or 10 days if the proposed excavation is in proximity to facilities beneath state waters), potentially affected member operators must determine the location of their underground facilities in relation to the proposed excavation or demolition. If this cannot be done in this time period,

---

[1] s. 556.102(13), F.S., defines "underground facility" as "any public or private personal property which is buried, placed below ground, or submerged on any member operator's right-of-way, easement, or permitted use which is being used or will be used in connection with the storage or conveyance of water; sewage; electronic, telephonic, or telegraphic communication; electric energy; oil; petroleum products; natural gas; optical signals; or other substances, and includes, but is not limited to, pipelines, pipes, sewers, conduits, cables, valves, and lines. For purposes of this act, a liquefied petroleum gas line regulated under chapter 527 is not an underground facility unless such line is subject to the requirements of Title 49 C.F.R. adopted by the Department of Agriculture and Consumer Services, provided there is no encroachment on any member operator's right-of-way, easement, or permitted use. Petroleum storage systems subject to regulation pursuant to chapter 376 are not considered underground facilities for the purposes of this act unless the storage system is located on a member operator's right-of-way or easement. Storm drainage systems are not considered underground facilities."

[2] S. 556.101(3), F.S.

[3] S. 556.101(2), F.S.

[4] S. 556.103(1), F.S.

[5] S. 556.103, F.S.

[6] S. 556.104, F.S.

[7] S. 556.105(1)(a), F.S. The law provides an exception to this requirement for excavation beneath state waters, but does not specify a time frame for notifying the system of such an excavation.

[8] S. 556.105(1)(c), F.S.

[9] S. 556.105(3), F.S.

[10] S. 556.105(5), F.S. The statute also provides that member operators with state-owned underground facilities located within the right-of-way of a state highway need not be notified of excavation or demolition activities and are under no obligation to mark or locate facilities.

the member operator must contact the person giving notice and negotiate a new schedule and time that is agreeable and does not unreasonably delay the excavator. If a member operator determines that a proposed excavation or demolition is in proximity to or conflicts with an underground facility, the member operator must identify the horizontal route of the facility in a specified manner.[11]

An excavator is required to delay excavations until the first of the following events occurs: (1) each member operator's underground facilities have been marked and located; (2) the excavator has been notified that no member operator has underground facilities in the area described in the notice; or (3) expiration of the time allowed for markings. If a member operator has not located and marked its underground facilities within the time allowed for marking, the excavator may proceed with the excavation, provided that the excavator does so with reasonable care and that detection equipment or other acceptable means to locate underground facilities are used. An excavator may not conduct demolition in an area until all member operators' underground facilities have been marked and located or removed.[12]

Violations of certain provisions are noncriminal infractions enforceable by citations which may be issued by any local or state law enforcement officer, government code inspector, or code enforcement officer. The law establishes a civil penalty of $500, plus court costs, for such infractions.[13] Eighty percent of the civil penalty collected by the clerk of the court will be distributed to the government entity whose employee issued the citation, with 20 percent of the penalty retained by the clerk of the court to cover administrative costs.[14] The fine and forfeiture fund is established by the clerk of the circuit court in each county of this state and functions as a separate fund for use by the clerk of the circuit court in performing court-related functions.

In 2010, the Legislature established a special process to address damages to any facility identified as a "high-priority subsurface installation."[15] These facilities are defined as "an underground gas transmission or gas distribution pipeline, an underground pipeline used to transport gasoline, jet fuel, or any other refined petroleum product or hazardous or highly volatile liquid" that the pipeline's operator has identified as critical.[16] If an alleged violation of a required procedure involves damage to a high-priority subsurface installation and the damage results in death or serious bodily injury or results in property damage, including service-restoration costs, of more than $50,000 or interruption of service to at least 2,500 customers, the incident must be reported to Sunshine 811 by the excavator or member operator within 24 hours.[17] Sunshine 811 must then transmit an incident report to the Division of Administrative Hearings (DOAH) for a hearing to determine whether a violation of required procedure was a proximate cause of the incident. If DOAH finds that a violation was a proximate cause of the incident, it may impose a fine not to exceed $50,000 (or $10,000 if a state agency or political subdivision caused the incident).[18] Funds collected from a fine issued by DOAH are paid to Sunshine 811 to cover its costs to engage DOAH's services, and any remaining funds may be used only for damage-prevention education.[19]

In 2017, the Legislature established additional reporting requirements. First, an excavator must immediately call 911 to report any contact with or damage to an underground facility that results in the escape of natural gas or other hazardous substance or material regulated by the U.S. Department of Transportation (DOT) Pipeline and Hazardous Material Safety Administration (PHMSA). Second, if an

[11] S. 556.105(5), F.S.
[12] S. 556.105(6), F.S.
[13] S. 556.107(1), F.S.
[14] S. 556.107(1)(c), F.S.
[15] Ch. 2010-100, L.O.F., s. 10.
[16] S. 556.116, F.S.
[17] *Id.*
[18] *Id.*
[19] *Id.*

event damages any pipe, cable, or other underground facility, the member operator must file a report with Sunshine 811.[20]

By March 31 of each year, each clerk of court must submit a report to Sunshine 811 listing each violation notice written under s. 556.107(1)(a), F.S., which was filed in that county during the preceding calendar year.[21] The report must state the name and address of the member or excavator who committed each infraction and indicate whether or not the civil penalty for the infraction was paid.[22] The Sunshine 811 board must submit an annual progress report to the President of the Senate, the Speaker of the House of Representative, and the Governor, no later than 60 days before the convening of each regular session of the Legislature.[23] This report must include a summary of the reports provided by the clerks of court, a summary of damage data reported to the system for the prior year, and any analysis of this data by the board.[24]

In its most recent Annual Report, Sunshine 811 indicates that 16,576 damage incidents were reported in 2018, while 13 citations were issued by entities authorized to enforce the Act.[25] These citations resulted in $6,602.50 of fines being levied. Further, the Annual Report identifies one case referred to DOAH involving damage to a natural gas distribution main. In that case, DOAH found that the excavator's failure to notify Sunshine 811 prior to excavation was the proximate cause of the incident and imposed a $5,000 fine.[26]

U.S. DOT Pipeline and Hazardous Material Safety Administration - Pipeline Damage Prevention Programs

The U.S. DOT has back-stop authority to conduct administrative civil enforcement proceedings against excavators who damage hazardous liquid and natural gas pipelines in a state that has failed to adequately enforce its excavation damage prevention or one-call laws.[27]

On July 13, 2015, PHMSA announced the issuance of a final rule to establish the process for evaluating state excavation damage prevention law enforcement programs and enforcing minimum Federal damage prevention standards in states where damage prevention law enforcement is deemed inadequate or does not exist.[28]

Under its rule, PHMSA uses the following criteria in evaluating the effectiveness of a state damage prevention program[29]:

- Does the state have the authority to enforce its state excavation damage prevention law using civil penalties and other appropriate sanctions for violations?
- Has the state designated a state agency or other body as the authority responsible for enforcement of the state excavation damage prevention law?
- Is the state assessing civil penalties and other appropriate sanctions for violations at levels sufficient to deter noncompliance and is the state making publicly available information that demonstrates the effectiveness of the state's enforcement program?

---

[20] Ch. 2017-102, L.O.F.
[21] S. 556.107(2), F.S.
[22] *Id.*
[23] S. 556.103(5), F.S.
[24] *Id.*
[25] Sunshine 811, *2018-19 Annual Report*, available at https://static1.squarespace.com/static/533db0bde4b0d9f7ba7f1ee7/t/5dcf0cd17b2a3459bd9a81d6/1573850332734/2018-19_annualrpt.pdf (last visited Feb. 18, 2020).
[26] *Id.*
[27] 49 U.S.C. § 60114.
[28] U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 80 Fed. Reg. 43,868 (July 23, 2015) (codified at 49 C.F.R. Pts. 196 and 198).
[29] *Id.*

- Does the enforcement authority (if one exists) have a reliable mechanism (e.g., mandatory reporting, complaint driven reporting) for learning about excavation damage to underground facilities?
- Does the state employ excavation damage investigation practices that are adequate to determine the responsible party or parties when excavation damage to underground facilities occurs?
- At a minimum, do the state's excavation damage prevention requirements include the following:
    - Excavators may not engage in excavation activity without first using an available one-call notification system to establish the location of underground facilities in the excavation area.
    - Excavators may not engage in excavation activity in disregard of the marked location of a pipeline facility as established by a pipeline operator.
    - An excavator who causes damage to a pipeline facility:
        - Must report the damage to the operator of the facility at the earliest practical moment following discovery of the damage; and
        - If the damage results in the escape of any PHMSA regulated natural and other gas or hazardous liquid, must promptly report to other appropriate authorities by calling the 911 emergency telephone number or another emergency telephone number.
- Does the state limit exemptions for excavators from its excavation damage prevention law?
    - A state must provide to PHMSA a written justification for any exemptions for excavators from state damage prevention requirements.
    - PHMSA will make the written justifications available to the public.

PHMSA will enforce federal requirements and may take immediate enforcement against excavators in states where a state pipeline excavation damage prevention law enforcement program is not determined to be adequate by the criteria and procedures used by PHMSA.[30] States that fail to establish an adequate enforcement program within five years of the date of a finding of inadequacy may be subject to up to a 4 percent reduction in base state pipeline safety grant funding.[31] PHMSA has found Florida's enforcement program to be inadequate each year since 2016, with its most recent finding submitted in June 2019.[32]

State Fire Marshal

Florida's Chief Financial Officer is designated by law as the State Fire Marshal.[33] The State Fire Marshal is responsible for minimizing the loss of life and property in the state due to fire.[34] It is also charged with enforcing laws related to: the prevention of fire and explosion through the regulation of conditions which could lead to fire and explosion; installation and maintenance of fire alarm systems and fire protection systems; the maintenance of fire cause and loss records; and suppression of arson and the investigation of the cause, origin, and circumstances of fire.[35]

The State Fire Marshal operates as a division of the Department of Financial Services. It operates through an Office of the Director and two bureaus: the Bureau of Fire Prevention and the Bureau of Firefighter Standards and Training.[36] The Bureau of Firefighter Standards and Training approves firefighter training curricula, offers fire service training at the Florida State Fire College, and certifies fire service members that meet standards. The Bureau of Fire Prevention conducts fire/life safety

---

[30] *Id.*
[31] *Id.*
[32] U.S Department of Transportation, Pipeline and Hazardous Materials Safety Administration, *Notice of Inadequacy Letter for 2018*, (Jun. 28, 2019) https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/safety-awareness/pipeline/55641/fl-signed-notice-inadequacy-letter-2018-php-19-0112-signed.pdf (last visited Feb. 18. 2020).
[33] S. 633.104(1), F.S.
[34] S. 633.104(2), F.S.
[35] *Id.*
[36] Chief Financial Officer, *Division of State Fire Marshal*, https://www.myfloridacfo.com/Division/SFM/ (last visited Feb. 18, 2020).

inspections and reviews construction plans for all state-owned buildings, regulates the fireworks and fire sprinkler industries, inspects and licenses boilers, and certifies fire suppression industry workers. It has six field offices and 3 satellite offices around the state.[37]

Florida law provides investigatory authority for the State Fire Marshal.[38] Upon request, the State Fire Marshall must investigate the cause, origin, and circumstances of fires and explosions where property has been damaged or destroyed and there is probable cause to believe that the fire or explosion was the result of carelessness or design. If the fire or explosion occurs in a municipality, county, or special district with an organized fire department, the local fire official must provide for an initial investigation before requesting an investigation by the State Fire Marshal. In an investigation, the State Fire Marshal may require testimony under oath from persons believed to be aware of any facts related to matters under investigation. If the State Fire Marshal believes that there is sufficient evidence to charge a person with an offense, he or she must cause the person to be arrested and must provide the appropriate prosecuting office with all pertinent information collected. The State Fire Marshal may compel the testimony of witnesses and the production of pertinent documents and may seize personal property to be held for evidence. The State Fire Marshal may designate an agent for the purpose of conducting an investigation, and the agent may hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, receive evidence, and require the attendance and testimony of witnesses and the production of documents or other evidence material to the investigation. The State Fire Marshal must keep a record of all fires and explosions investigated under its authority.

Effect of Proposed Changes

Expanded Enforcement Authority

The bill expands the list of entities that may issue citations for certain violations of ch. 556, F.S. The bill authorizes the State Fire Marshal and the fire chief of the special district, municipality, or county to issue such citations.

Enhanced Civil Penalties for Certain Violations

The bill provides for civil penalties of up to $2,500 (plus 5 percent, in addition to any other court costs) for certain violations of ch. 556, F.S., that involve an underground pipe or other underground facility transporting hazardous materials regulated by PHMSA. Specifically, the following violations are subject to this enhanced civil penalty:

- Failure by an excavator to comply with s. 556.105(1), F.S., which requires an excavator to provide notice and certain information to the Sunshine 811 system within specified timeframes prior to beginning excavation of demolition work.
- Failure by an excavator to comply with s. 556.105(5)(c), F.S., which requires an excavator to use increased caution when working within a tolerance zone,[39] such as hand digging, pot holing, soft digging, vacuum methods, or other similar procedures.
- Failure by an excavator to comply with s. 556.105(6), F.S., which requires an excavator to avoid excavation in an area until whichever of the following occurs first: each member operator's underground facilities have been located and marked; the exactor has been notified that no member operator has underground facilities in the area; or the time allowed for markings has expired.
- Failure by an excavator to comply with s. 556.106(11), F.S., which requires an excavator to stop excavation and demolition activities in the vicinity of an underground facility and notify the Sunshine 811 system if the marking for the facility is removed or no longer visible.

[37] *Id.*
[38] S. 366.112, F.S.
[39] "Tolerance zone" means "24 inches from the outer edge of either side of the exterior surface of a marked underground facility." S. 556.102(12), F.S.

- Failure by an excavator to comply with s. 556.105(12), F.S., which requires an excavator to immediately notify the appropriate member operator if the excavator causes contact with or damage to a pipe and to immediately call 911 to report contact or damage that causes the escape of any natural gas or other hazardous substance or material regulated by PHMSA.

If the clerk of court collects a civil penalty for one of these violations, the bill provides that 100 percent of the civil penalty will be distributed to the entity that issued the citation. The additional five percent, plus any additional court costs, is retained by the clerk to cover administrative costs. The bill provides that a person who fails to properly respond to a citation issued for one of these violations will be charged with the offense of failing to respond to the citation and, if convicted, commits a misdemeanor of the second degree. The bill provides that a written warning to this effect must be provided at the time the citation is issued.

Reporting Requirements

The bill provides that, by March 31 of each year, each clerk of court must submit a report to the State Fire Marshal listing each violation notice written under s. 556.107(1)(a), F.S., which has been filed in that county during the preceding calendar year. The report must state the name and address of the member or excavator who committed each infraction and indicate whether or not the civil penalty for the infraction was paid. This is the same information currently reported by the clerks of court to Sunshine 811.

Incidents involving High-Priority Subsurface Installations

For incidents reported to Sunshine 811 that involve high-priority subsurface installations, Sunshine 811 must transmit the incident report to one of the following enforcement authorities: the State Fire Marshal, the fire chief of the special district, municipality, or county, a local or state law enforcement officer, a government code inspector, or a code enforcement officer. The authority to whom the incident report is transmitted must conduct an investigation to determine whether an incident has occurred and, if so, whether a violation of s. 556.107(1)(a), F.S., was a proximate cause of the incident. The investigating authority may issue a citation and impose a civil penalty if it finds that a violation occurred and was a proximate cause of the incident. Upon collection of the civil penalty, the clerk of court must distribute 95 percent of the penalty to the investigating authority that issued the citation. The remaining five percent is retained by the clerk to cover administrative costs.

These provisions replace the requirement in current law that DOAH conduct investigations of incidents involving high-priority subsurface installations. The bill removes all provisions of current law that establish the procedural requirements for DOAH review of such incidents.

Underground Facility Damage Prevention Review Panel

The bill creates "underground facility damage prevention review panel" (review panel) under the State Fire Marshal. The review panel is responsible for reviewing complaints of alleged violations of ch. 556, F.S., and identifying issues or potential issues related to damage prevention and enforcement. The review panel must identify areas where additional education is needed and recommend solutions to issues it has identified. The review panel also must review current practices for locating underground pipes or other underground facilities that transport materials regulated by PHMSA and determine whether statutory changes are needed to make these pipes or facilities more resilient and safer for communities. The bill requires the review panel to operate consistent with s. 20.052, F.S., which governs advisory bodies created by statute as adjuncts to an executive agency.

The review panel must consist of nine members appointed by the State Fire Marshal and must include a seat for each of the following:

- One member representing the electric utility industry;
- One member representing the telecommunications industry;

- One member licensed as an underground utility and excavation contractor under ch. 489, F.S., and engaged in work within road or highway rights-of-way;
- One member representing the natural gas industry;
- One member representing the utility locator industry;
- One member representing county or municipal water and sewer service providers;
- One member representing excavators performing work unrelated to construction in road or highways rights-of-way, including landscaping, fencing, or plumbing contractors;
- One member licensed as an underground utility and excavation contractor under ch. 489, F.S., and engaged in work for public utilities; and
- One member representing the public at large.

The bill provides for staggered two-year terms for each seat on the review panel and requires the review panel to elect a chair and vice chair from its membership. The review panel must meet quarterly in conjunction with the meeting of the Sunshine 811 board or at the call of the chair. The bill requires the board to establish a process for receiving applications for appointment to the review panel.

The bill requires the State Fire Marshal to provide staff support and meeting space for the review panel. The bill provides that members of the review panel will serve without compensation and are not entitled to reimbursement of per diem or travel expenses.

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

B. SECTION DIRECTORY:

Section 1. Amends s. 556.107, F.S., relating to violations.

Section 2. Amends s. 556.116, F.S., relating to high-priority subsurface installations.

Section 3. Creates s. 556.117, F.S., establishing an underground facility damage prevention review panel.

Section 4. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may have an indeterminate positive fiscal impact on state revenues.

   The bill authorizes the State Fire Marshal to issue citations for certain violations specified in ch, 556, F.S. Further, the bill increases the maximum fine that may be imposed as a civil penalty for violations related to an underground pipe or other underground facility transporting hazardous materials regulated by PHMSA. Because the State Fire Marshal and other state law enforcement entities that issue such citations will receive between 80 and 100 percent of the resulting civil penalties collected by the clerk of court, the bill may encourage greater enforcement efforts by these entities, leading to additional state revenues. The significance of the increase in state revenues will depend on compliance with ch. 556, F.S., and the enforcement efforts of the State Fire Marshal and state law enforcement officers.

2. Expenditures:

   The bill may require the expenditure of resources by the State Fire Marshal or another state law enforcement authority to whom an alleged HPSI incident is referred for investigation. The bill also

requires the State Fire Marshal to provide staff support and meeting space for the underground facility damage prevention review panel created by the bill. Expenditures to perform these functions may be offset in whole or in part by the portion of any civil penalties collected and distributed to these entities through their enforcement of ch, 556, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have an indeterminate positive impact on local government revenues.

The bill authorizes fire chiefs to issue citations for certain violations specified in ch, 556, F.S. Further, the bill increases the maximum fine that may be imposed as a civil penalty for violations related to an underground pipe or other underground facility transporting hazardous materials regulated by PHMSA. Because fire chiefs that issue such citations will receive between 80 and 100 percent of the resulting civil penalties collected by the clerk of court, the bill may encourage greater enforcement efforts by fire chiefs, leading to additional revenues. The significance of the increase in revenues will depend on compliance with ch. 556, F.S., and the enforcement efforts of fire chiefs.

2. Expenditures:

The bill may require the expenditure of resources by a fire chief, local law enforcement authority, or local code inspection or enforcement authority to whom an alleged HPSI incident is referred for investigation. These expenditures may be offset in whole or in part by the portion of any civil penalties collected and distributed to these entities through their enforcement of ch, 556, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may encourage increased enforcement of ch, 556, F.S. Increased enforcement will result in additional fines imposed on persons who violate certain provisions of ch. 556, F.S. As a result, increased enforcement may deter behaviors that cause damages to property, utility service outages, and serious bodily injury.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill lists multiple enforcement authorities to whom Sunshine 811 may send an HPSI incident report for investigation, but it does not specify how Sunshine 811 may choose from among these enforcement authorities.

IV. AMENDMENTS / COMMITTEE SUBSTITUTE CHANGES

On January 21, 2020, the Energy & Utilities Subcommittee adopted one amendment to the bill and reported the bill favorably as a committee substitute. The amendment:

- Clarifies that the fire chief of a special district, municipality, or county may enforce certain provisions of ch. 556, F.S.
- Removes the bill's requirement that an annual report of infractions be sent by each clerk of court to the Public Service Commission.
- Requires the State Fire Marshal to appoint the members of the underground facility damage prevention review panel created by the bill, and provides that members of the review panel will serve without compensation or reimbursement of expenses.
- Removes a provision of the bill that required member operators to share equally in the costs of operating the review panel to the extent that those costs exceed the civil penalties recovered through citations issued by the State Fire Marshal.

This analysis addresses the committee substitute as approved by the Energy & Utilities Subcommittee.

A bill to be entitled

An act relating to underground facility damage prevention and safety; amending s. 556.107, F.S.; providing noncriminal violations relating to the transportation of certain hazardous materials; authorizing the State Fire Marshal or local fire chief to issue certain citations; providing enhanced civil penalties; providing disposition of the civil penalty; requiring a report by additional entities; amending s. 556.116, F.S.; providing that certain incident reports must be submitted to, and investigated by, the State Fire Marshal, local fire chief, local or state law enforcement officer, government code inspector, or code enforcement officer; authorizing the State Fire Marshal, local fire chief, or any local or state law enforcement officer, government code inspector, or code enforcement officer to issue citations and civil penalties; providing for disposition of the civil penalty; removing provisions relating to hearings by the Division of Administrative Hearings of certain incidents; creating s. 556.117, F.S.; creating an underground facility damage prevention review panel; providing duties and membership of the review panel; specifying the term limits of the review panel; requiring the State Fire Marshal to provide support to

the review panel; providing that members of the panel serve without reimbursement or compensation; providing an effective date.

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

Section 1. Section 556.107, Florida Statutes, is amended to read:

556.107 Violations.—

(1) NONCRIMINAL INFRACTIONS.—

(a)1. Violations of the following provisions are noncriminal infractions:

a.~~1.~~ Section 556.105(1), relating to providing required information.

b.~~2.~~ Section 556.105(6), relating to the avoidance of excavation.

c.~~3.~~ Section 556.105(11), relating to the need to stop excavation or demolition because marks are no longer visible, or, in the case of underwater facilities, are inadequately documented.

d.~~4.~~ Section 556.105(12), relating to the need to cease excavation or demolition activities because of contact or damage to an underground facility.

e.~~5.~~ Section 556.105(5)(a) and (b), relating to identification of underground facilities, if a member operator

does not mark an underground facility, but not if a member operator marks an underground facility incorrectly.

f.~~6.~~ Section 556.109(2), relating to falsely notifying the system of an emergency situation or condition.

g.~~7.~~ Section 556.114(1), (2), (3), and (4), relating to a failure to follow low-impact marking practices, as defined therein.

2. Violations of the following provisions when related to an underground pipe or other underground facility transporting hazardous materials that are regulated by the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation are noncriminal infractions, subject to enhanced civil penalties under paragraph (c):

a. Section 556.105(1), relating to providing required information.

b. Section 556.105(5)(c), relating to excavation practices in tolerance zones.

c. Section 556.105(6), relating to the avoidance of certain excavation.

d. Section 556.105(11), relating to the need to stop excavation or demolition because certain marks are no longer visible or are inadequately documented.

e. Section 556.105(12), relating to the need to cease excavation or demolition activities because of contact or damage to an underground facility.

(b) Any excavator or member operator who commits a noncriminal infraction under paragraph (a) may be issued a citation by the State Fire Marshal; the fire chief of the special district, municipality, or county; or any local or state law enforcement officer, government code inspector, or code enforcement officer, and the issuer of a citation may require an excavator to cease work on any excavation or not start a proposed excavation until there has been compliance with the provisions of this chapter. Citations shall be hand delivered to any employee of the excavator or member operator who is involved in the noncriminal infraction. The citation shall be issued in the name of the excavator ~~or member operator, whichever is applicable~~.

(c)1. Any excavator or member operator who commits a noncriminal infraction under subparagraph (a)1. ~~paragraph (a)~~ may be required to pay a civil penalty of $500 plus court costs for each infraction~~, which is $500 plus court costs~~. If a citation is issued by the State Fire Marshal; the fire chief of the special district, municipality, or county; a state law enforcement officer;~~,~~ a local law enforcement officer;~~,~~ a local government code inspector;~~,~~ or a code enforcement officer, 80 percent of the civil penalty collected by the clerk of the court shall be distributed to the governmental entity whose employee issued the citation and 20 percent of the penalty shall be retained by the clerk to cover administrative costs, in addition

to other court costs. Any person who fails to properly respond to a citation issued under ~~pursuant to~~ paragraph (b) shall, in addition to the citation, be charged with the offense of failing to respond to the citation and, upon conviction, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect must be provided at the time any citation is issued under ~~pursuant to~~ paragraph (b).

2. Any excavator or member operator who commits a noncriminal infraction under subparagraph (a)2. may be required to pay an enhanced civil penalty of $2,500 plus 5 percent in addition to any other court costs for each infraction. If a citation is issued by the State Fire Marshal; the fire chief of the special district, municipality, or county; a state law enforcement officer; a local law enforcement officer; a local government code inspector; or a code enforcement officer, 100 percent of the civil penalty collected by the clerk of the court shall be distributed to the governmental entity whose employee issued the citation. The additional 5 percent, plus any additional court costs, is to be retained by the clerk to cover administrative costs. Any person who fails to properly respond to a citation issued under paragraph (b) shall, in addition to the citation, be charged with the offense of failing to respond to the citation and, upon conviction, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s.

775.083. A written warning to this effect must be provided at the time a citation is issued under paragraph (b).

(d) Any person cited for an infraction under paragraph (a) may post a bond, which must ~~shall~~ be equal in amount to the applicable civil penalty plus any additional court costs.

(e) A person charged with a noncriminal infraction under paragraph (a) may pay the applicable civil penalty plus the additional court costs, by mail or in person, within 30 days after the date of receiving the citation. If the person cited pays the civil penalty, she or he is deemed to have admitted to committing the infraction and to have waived the right to a hearing on the issue of commission of the infraction. The admission may be used as evidence in any other proceeding under this chapter.

(f) Any person may elect to have a hearing on the commission of the infraction ~~appear~~ before the county court. A person who elects to have a hearing waives ~~and if so electing is deemed to have waived~~ the limitations on the civil penalties ~~penalty~~ specified in paragraph (c). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven, the court may impose a civil penalty not to exceed $5,000 plus court costs for each infraction. In determining the amount of the civil penalty, the court may consider previous noncriminal infractions committed.

(g) At a court hearing under this chapter, the commission of a charged infraction must be proven by a preponderance of the evidence.

(h) If the court finds that a person ~~is found by a judge or hearing official to have~~ committed an infraction, the person may appeal that finding or the amount of the civil penalties imposed to the circuit court.

(i) Sunshine State One-Call of Florida, Inc., may, at its own cost, retain an attorney to assist in the presentation of relevant facts and law in the county court proceeding pertaining to the citation issued under this section. The corporation may also appear in any case appealed to the circuit court if a county court judge finds that an infraction of the chapter was committed. An appellant in the circuit court proceeding shall timely notify the corporation of any appeal under this section.

(2) REPORT OF INFRACTIONS.—By March 31 of each year, each clerk of court shall submit a report to the State Fire Marshal and Sunshine State One-Call of Florida, Inc., listing each violation notice written under paragraph (1)(a) which has been filed in that county during the preceding calendar year. The report must state the name and address of the member or excavator who committed each infraction and indicate whether or not the civil penalty for the infraction was paid.

(3) MISDEMEANORS.—Any person who knowingly and willfully removes or otherwise destroys the valid stakes or other valid

physical markings described in s. 556.105(5)(a) and (b) used to mark the horizontal route of an underground facility commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. For purposes of this subsection, stakes or other nonpermanent physical markings are considered valid for 30 calendar days after information is provided to the system under s. 556.105(1)(a).

Section 2. Section 556.116, Florida Statutes, is amended to read:

556.116 High-priority subsurface installations; special procedures.—

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

~~(a) "Division" means the Division of Administrative Hearings.~~

(a)~~(b)~~ "High-priority subsurface installation" means an underground gas transmission or gas distribution pipeline, an underground pipeline used to transport gasoline, jet fuel, or any other refined petroleum product or hazardous or highly volatile liquid, such as anhydrous ammonia or carbon dioxide, if the pipeline is deemed to be critical by the operator of the pipeline and is identified as a high-priority subsurface installation to an excavator who has provided a notice of intent to excavate under ~~pursuant to~~ s. 556.105(1), or would have been identified as a high-priority subsurface installation except for the excavator's failure to give proper notice of intent to

excavate.

(b) ~~(c)~~ "Incident" means an event that involves damage to a high-priority subsurface installation that has been identified as such by the operator according to the notification procedures set forth in subsection (2) and that:

1. Results in death or serious bodily injury requiring inpatient hospitalization.

2. Results in property damage, including service-restoration costs, in an amount in excess of $50,000 or interruption of service to 2,500 or more customers.

(2) When an excavator proposes to excavate or demolish within 15 feet of the horizontal route of an underground facility that has been identified as a high-priority subsurface installation by the operator of the facility, the operator shall, in addition to identifying the horizontal route of its facility as set forth in s. 556.105(5)(a) and (b), and within the time period set forth in s. 556.105(9)(a) for a positive response, notify the excavator that the facility is a high-priority subsurface installation. If the member operator provides such timely notice of the existence of a high-priority subsurface installation, an excavator shall notify the operator of the planned excavation start date and time before beginning excavation. If the member operator does not provide timely notice, the excavator may proceed, after waiting the prescribed time period set forth in s. 556.105(9)(a), to excavate without

notifying the member operator of the excavation start date and time. The exemptions stated in s. 556.108 apply to the notification requirements in this subsection.

(3)(a) An alleged commission of an infraction listed in s. 556.107(1) which results in an incident must be reported to the system by a member operator or an excavator within 24 hours after learning of the alleged occurrence of an incident.

(b) Upon receipt of an allegation that an incident has occurred, the system shall transmit an incident report to the State Fire Marshal; the fire chief of the special district, municipality, or county; a local or state law enforcement officer; a government code inspector; or a code enforcement officer in order to ~~division and contract with the division so that the division may~~ conduct an investigation ~~a hearing~~ to determine whether an incident has occurred, and, if so, whether a violation of s. 556.107(1)(a) was a proximate cause of the incident. ~~The contract for services to be performed by the division must include provisions for the system to reimburse the division for any costs incurred by the division for court reporters, transcript preparation, travel, facility rental, and other customary hearing costs, in the manner set forth in s. 120.65(9).~~

(c) The State Fire Marshal; the fire chief of the special district, municipality, or county; a local or state law enforcement officer; a government code inspector; or a code

enforcement officer ~~division has jurisdiction in a proceeding under this section to determine the facts and law concerning an alleged incident. The division~~ may issue a citation and impose a civil penalty ~~fine~~ against a violator in an amount not to exceed $50,000 if the person violated a provision of s. 556.107(1)(a) and that violation was a proximate cause of the incident. However, if a state agency or political subdivision caused the incident, the state agency or political subdivision may not be fined in an amount in excess of $10,000.

(d) The civil penalty ~~A fine~~ imposed under this subsection ~~by the division~~ is in addition to any amount payable as a result of a citation relating to the incident under s. 556.107(1)(a).

(e) If a civil penalty is imposed by the State Fire Marshal; the fire chief of the special district, municipality, or county; a local or state law enforcement officer; a government code inspector; or a code enforcement officer under this subsection, 95 percent of the civil penalty collected by the clerk of the court shall be distributed to the governmental entity whose employee issued the citation and civil penalty and 5 percent of the civil penalty shall be retained by the clerk to cover administrative costs ~~A fine against an excavator or a member operator imposed under this subsection shall be paid to the system, which shall use the collected fines to satisfy the costs incurred by the system for any proceedings under this section. To the extent there are any funds remaining, the system~~

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

~~may use the funds exclusively for damage-prevention education~~.

(f) This section does not change the basis for civil liability. The findings and results of an investigation ~~a hearing~~ under this section may not be used as evidence of liability in any civil action.

~~(4)(a) The division shall issue and serve on all original parties an initial order that assigns the case to a specific administrative law judge and requests information regarding scheduling the final hearing within 5 business days after the division receives a petition or request for hearing. The original parties in the proceeding include all excavators and member operators identified by the system as being involved in the alleged incident. The final hearing must be conducted within 60 days after the date the petition or the request for a hearing is filed with the division.~~

~~(b) Unless the parties otherwise agree, venue for the hearing shall be in the county in which the underground facility is located.~~

~~(c) An intervenor in the proceeding must file a petition to intervene no later than 15 days before the final hearing. A person who has a substantial interest in the proceeding may intervene.~~

~~(5) The following procedures apply:~~

~~(a) Motions shall be limited to the following:~~

~~1. A motion in opposition to the petition.~~

~~2. A motion requesting discovery beyond the informal exchange of documents and witness lists described in paragraph (c). Upon a showing of necessity, additional discovery may be permitted in the discretion of the administrative law judge, but only if the discovery can be completed no later than 5 days before the final hearing.~~

~~3. A motion for continuance of the final hearing date.~~

~~(b) All parties shall attend a prehearing conference for the purpose of identifying the legal and factual issues to be considered at the final hearing, the names and addresses of witnesses who may be called to testify at the final hearing, documentary evidence that will be offered at the final hearing, the range of penalties that may be imposed, and any other matter that would expedite resolution of the proceeding. The prehearing conference may be held by telephone conference call.~~

~~(c) Not later than 5 days before the final hearing, the parties shall furnish to each other copies of documentary evidence and lists of witnesses who may testify at the final hearing.~~

~~(d) All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, and to be represented by counsel or other qualified representative.~~

~~(e) The record shall consist only of:~~

~~1. All notices, pleadings, motions, and intermediate~~

~~rulings.~~

~~2. Evidence received during the final hearing.~~

~~3. A statement of matters officially recognized.~~

~~4. Proffers of proof and objections and rulings thereon.~~

~~5. Matters placed on the record after an ex parte communication.~~

~~6. The written final order of the administrative law judge presiding at the final hearing.~~

~~7. The official transcript of the final hearing.~~

~~(f) The division shall accurately and completely preserve all testimony in the proceeding and, upon request by any party, shall make a full or partial transcript available at no more than actual cost.~~

~~(g) The administrative law judge shall issue a final order within 30 days after the final hearing or the filing of the transcript thereof, whichever is later. The final order of the administrative law judge must include:~~

~~1. Findings of fact based exclusively on the evidence of record and matters officially recognized.~~

~~2. Conclusions of law. In determining whether a party has committed an infraction of s. 556.107(1)(a), and whether the infraction was a proximate cause of an incident, the commission of an infraction must be proven by a preponderance of the evidence.~~

~~3. Imposition of a fine, if applicable.~~

~~4. Any other information required by law or rule to be contained in a final order.~~

~~The final order of the administrative law judge constitutes final agency action subject to judicial review pursuant to s. 120.68.~~

Section 3. Section 556.117, Florida Statutes, is created to read:

556.117 Underground facility damage prevention review panel.—

(1) The underground facility damage prevention review panel is established under the Division of State Fire Marshal within the Department of Financial Services to review complaints of an alleged violation under this chapter to identify issues or potential issues with damage prevention and enforcement. The review panel shall identify areas in the state where additional education related to damage prevention and enforcement is needed and shall recommend solutions to remedy issues related to damage prevention and enforcement. The review panel shall also review current practices for locating underground pipes or other underground facilities that transport hazardous materials which are regulated by the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation in the state and determine if any statutory changes are needed to make such pipelines or facilities more resilient and safer

for communities. Except as otherwise provided in this section, the review panel shall operate in a manner consistent with s. 20.052.

(2) The review panel shall consist of nine members appointed by the State Fire Marshal and shall include the following:

(a) One member representing the electrical utility industry.

(b) One member representing the telecommunications industry.

(c) One member licensed as an underground utility and excavation contractor under chapter 489 and engaged in work within road or highway rights-of-way.

(d) One member representing the natural gas industry.

(e) One member representing the utility locator industry.

(f) One member representing county or municipal water and sewer service providers.

(g) One member representing excavators performing work unrelated to construction in road or highway rights-of-way, including landscaping, fencing, or plumbing contractors.

(h) One member licensed as an underground utility and excavation contractor under chapter 489 and engaged in work for public utilities.

(i) One member representing the public at large.

(3) The board of directors shall establish a process to

receive applications for the purpose of appointing members to the review panel.

(4) Each member shall serve for a 2-year term. A member may not serve more than two consecutive 2-year terms, except that members listed in paragraphs (2)(a)-(e) shall initially serve a 1-year term and those members listed in paragraphs (2)(f)-(i) shall serve a 2-year term. All subsequent appointments shall be for 2-year terms. A vacancy for an unexpired term of a member shall be filled in the same manner as the original appointment. The review panel shall elect from among its members a chair and vice chair and meet quarterly in conjunction with the meeting of the board of directors or at the call of the chair.

(5) The Division of State Fire Marshal shall provide staff support and meeting space to the review panel. Members of the panel shall serve without compensation and are not entitled to reimbursement for per diem or travel expenses.

Section 4. This act shall take effect July 1, 2020.

COMMERCE COMMITTEE

CS/HB 1095 by Rep. Fitzenhagen
UNDERGROUND FACILITY DAMAGE PREVENTION AND SAFETY

AMENDMENT SUMMARY
February 20, 2020

Amendment 1 by Rep. Fitzenhagen (Strike-all)

- Consolidates existing definitions in ch. 556, F.S.
- Defines the term "permanent marker" and provides a criminal penalty for knowingly and willfully removing or damaging a permanent marker.
- Modifies the required distribution of enhanced civil penalties collected for certain infractions by distributing 80 percent to the enforcing authority and 20 percent to the clerk of court to cover court costs.
- Limits the civil penalty that a county court may impose, after hearing, to the otherwise applicable civil penalty for the underlying infraction plus court costs.
- Requires an underground facilities owner or an excavator, within 24 hours of learning of an alleged infraction that causes an incident involving a high-priority subsurface installation (HPSI), to notify the State Fire Marshal.
- Provides that the State Fire Marshal is the sole authority for investigation and enforcement related to infractions alleged to have caused HPSI incidents.
- Modifies the required distribution of additional civil penalties collected for infractions that cause an HPSI incident such that: the clerk of court retains 5 percent for court costs; Sunshine 811 receives 50 percent of the remainder to use solely for damage-prevention education; and the State Fire Marshal receives the other 50 percent of the remainder to use solely for certain types of firefighter protection programs.
- Provides that it is a second degree misdemeanor to willfully fail to properly respond to any citation issued for an infraction under ch. 556, F.S.
- Requires that each clerk of court, in its annual report to Sunshine 811 and the State Fire Marshal, list each citation issued for violations of ch. 556, F.S., the enforcement authority, the specific statutory infraction, and the type of underground facility related to the infraction.
- Provides that authorized agents of the State Fire Marshal may conduct investigations and issue citations related to violations of ch. 556, F.S.
- Requires Sunshine 811 to review all reports made to the State Fire Marshal and other complaints of alleged infractions to identify issues related to damage prevention and enforcement, and annually provide an analysis and recommendations to the Governor, President of the Senate, and Speaker of the House of Representatives.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee
Representative Fitzenhagen offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Present subsections (8) and (9) through (14) of section 556.102, Florida Statutes, are redesignated as subsections (10) and (12) through (17), respectively, and new subsections (8), (9), and (11) are added to that section, to read:

556.102 Definitions.—As used in this act:

(8) "High-priority subsurface installation" means an underground gas transmission or gas distribution pipeline, or an underground pipeline used to transport gasoline, jet fuel, or any other refined petroleum product or hazardous or highly volatile liquid, such as anhydrous ammonia or carbon dioxide, if

the pipeline is deemed to be critical by the operator of the pipeline and is identified as a high-priority subsurface installation to an excavator who has provided a notice of intent to excavate under to s. 556.105(1), or would have been identified as a high-priority subsurface installation except for the excavator's failure to give proper notice of intent to excavate.

(9) "Incident" means an event that involves damage to a high-priority subsurface installation that has been identified as such by the operator according to the notification procedures set forth in s. 556.116(1) and that:

1. Results in death or serious bodily injury requiring inpatient hospitalization.

2. Results in property damage, including service-restoration costs, in an amount in excess of $50,000 or interruption of service to 2,500 or more customers.

(11) "Permanent marker" means a clearly visible indication of the approximate location of an underground facility which is made of material that is durable in nature and which is reasonably expected to remain in position for the life of the underground facility.

Section 2. Section 556.107, Florida Statutes, is amended to read:

556.107 Violations.—

(1) NONCRIMINAL INFRACTIONS.—

(a)1. Violations of the following provisions are noncriminal infractions:

a.~~1.~~ Section 556.105(1), relating to providing required information.

b. Section 556.105(5)(c), relating to excavation practices in tolerance zones.

c.~~2.~~ Section 556.105(6), relating to the avoidance of excavation.

d.~~3.~~ Section 556.105(11), relating to the need to stop excavation or demolition because marks are no longer visible, or, in the case of underwater facilities, are inadequately documented.

e.~~4.~~ Section 556.105(12), relating to the need to cease excavation or demolition activities because of contact or damage to an underground facility.

f.~~5.~~ Section 556.105(5)(a) and (b), relating to identification of underground facilities, if a member operator does not mark an underground facility, but not if a member operator marks an underground facility incorrectly.

g.~~6.~~ Section 556.109(2), relating to falsely notifying the system of an emergency situation or condition.

h.~~7.~~ Section 556.114(1), (2), (3), and (4), relating to a failure to follow low-impact marking practices, as defined therein.

2. Violations of the following provisions involving an

underground facility transporting hazardous materials that are regulated by the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation are noncriminal infractions, subject to enhanced civil penalties under paragraph (c):

a. Section 556.105(1), relating to providing required information.

b. Section 556.105(5)(c), relating to excavation practices in tolerance zones.

c. Section 556.105(6), relating to the avoidance of certain excavation.

d. Section 556.105(11), relating to the need to stop excavation or demolition because certain marks are no longer visible or are inadequately documented.

e. Section 556.105(12), relating to the need to cease excavation or demolition activities because of contact or damage to an underground facility.

(b) Any excavator or member operator who commits a noncriminal infraction under paragraph (a) may be issued a citation by the State Fire Marshal or agents as provided in ss. 633.114 and 633.116; the fire chief of the special district, municipality, or county; or any local or state law enforcement officer, government code inspector, or code enforcement officer, and the issuer of a citation may require an excavator to cease work on any excavation or not start a proposed excavation until

there has been compliance with the provisions of this chapter. Citations shall be hand delivered to any employee of the excavator or member operator who is involved in the noncriminal infraction. The citation shall be issued in the name of the excavator or member operator, whichever is applicable.

(c)1. Any excavator or member operator who commits a noncriminal infraction under subparagraph (a)1. ~~paragraph (a)~~ may be required to pay a civil penalty of $500 plus court costs for each infraction~~, which is $500 plus court costs~~. If a citation is issued ~~by a state law enforcement officer, a local law enforcement officer, a local government code inspector, or a code enforcement officer~~, 80 percent of the civil penalty collected by the clerk of the court must ~~shall~~ be distributed to the governmental entity whose employee issued the citation and 20 percent of the penalty must ~~shall~~ be retained by the clerk ~~to cover administrative costs,~~ in addition to any ~~other~~ court costs. Any person who fails to properly respond to a citation issued under ~~pursuant to~~ paragraph (b) shall, in addition to the citation, be charged with the offense of failing to respond to the citation and, upon conviction, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect must be provided at the time any citation is issued under ~~pursuant to~~ paragraph (b).

2. Any excavator or member operator who commits a noncriminal infraction under subparagraph (a)2. may be required

to pay an enhanced civil penalty of $2,500 plus court costs for each infraction. If a citation is issued, 80 percent of the civil penalty collected by the clerk of the court must be distributed to the governmental entity whose employee issued the citation and 20 percent must be retained by the clerk in addition to any court costs.

3. Any person who willfully fails to properly respond to a citation issued under paragraph (b) shall, in addition to the citation, be charged with the offense of failing to respond to the citation and, upon conviction, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect must be provided at the time a citation is issued under paragraph (b).

(d) Any person cited for an infraction under paragraph (a) or s. 556.116(2)(c) may post a bond, which must ~~shall~~ be equal in amount to the applicable civil penalty plus any additional court costs.

(e) A person charged with a noncriminal infraction under paragraph (a) or s. 556.116(2)(c) may pay the applicable civil penalty plus the additional court costs, by mail or in person, within 30 days after the date of receiving the citation. If the person cited pays the civil penalty, she or he is deemed to have admitted to committing the infraction and to have waived the right to a hearing on the issue of commission of the infraction. The admission may be used as evidence in any other proceeding

under this chapter.

(f) Any person may elect to have a hearing on the commission of the infraction ~~appear~~ before the county court. A person who elects to have a hearing waives ~~and if so electing is deemed to have waived~~ the limitations on the civil penalties ~~penalty~~ specified in paragraph (c). The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven, the court may impose a civil penalty not to exceed the applicable civil penalty ~~$5,000~~ plus court costs for each infraction. In determining the amount of the civil penalty, the court may consider previous noncriminal infractions committed.

(g) At a court hearing under this chapter, the commission of a charged infraction must be proven by a preponderance of the evidence.

(h) If the court finds that a person ~~is found by a judge or hearing official to have~~ committed an infraction, the person may appeal that finding or the amount of the civil penalties imposed to the circuit court.

(i) Sunshine State One-Call of Florida, Inc., may, at its own cost, retain an attorney to assist in the presentation of relevant facts and law in the county court proceeding pertaining to the citation issued under this section. The corporation may also appear in any case appealed to the circuit court if a county court judge finds that an infraction of the chapter was

committed. An appellant in the ~~circuit~~ court proceeding shall timely notify the corporation of any appeal under this section.

(2) REPORT OF INFRACTIONS.—By March 31 of each year, each clerk of court shall submit a report to the State Fire Marshal and Sunshine State One-Call of Florida, Inc., listing each citation issued for a violation ~~notice written~~ under paragraph (1)(a) and s. 556.116(2)(c) which has been filed in that county during the preceding calendar year. The report must state the name and address of the member or excavator who committed each infraction, the enforcement authority, the specific statutory infraction, and the type of underground facility related to the infraction and must indicate whether or not the civil penalty for the infraction was paid.

(3) MISDEMEANORS.—

(a) Any person who knowingly and willfully removes or otherwise destroys the valid stakes or other valid physical markings described in s. 556.105(5)(a) and (b) used to mark the horizontal route of an underground facility commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. For purposes of this subsection, stakes or other nonpermanent physical markings are considered valid for 30 calendar days after information is provided to the system under s. 556.105(1)(a).

(b) Any person who knowingly and willfully removes or damages a permanent marker placed to identify the approximate

location of an underground facility commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 3. Section 556.116, Florida Statutes, is amended to read:

556.116 High-priority subsurface installations; special procedures.—

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

~~(a) "Division" means the Division of Administrative Hearings.~~

~~(b) "High-priority subsurface installation" means an underground gas transmission or gas distribution pipeline, an underground pipeline used to transport gasoline, jet fuel, or any other refined petroleum product or hazardous or highly volatile liquid, such as anhydrous ammonia or carbon dioxide, if the pipeline is deemed to be critical by the operator of the pipeline and is identified as a high-priority subsurface installation to an excavator who has provided a notice of intent to excavate pursuant to s. 556.105(1), or would have been identified as a high-priority subsurface installation except for the excavator's failure to give proper notice of intent to excavate.~~

~~(c) "Incident" means an event that involves damage to a high-priority subsurface installation that has been identified as such by the operator according to the notification procedures~~

~~set forth in subsection (2) and that:~~

~~1. Results in death or serious bodily injury requiring inpatient hospitalization.~~

~~2. Results in property damage, including service-restoration costs, in an amount in excess of $50,000 or interruption of service to 2,500 or more customers.~~

~~(2)~~ When an excavator proposes to excavate or demolish within 15 feet of the horizontal route of an underground facility that has been identified as a high-priority subsurface installation by the operator of the facility, the operator shall, in addition to identifying the horizontal route of its facility as set forth in s. 556.105(5)(a) and (b), and within the time period set forth in s. 556.105(9)(a) for a positive response, notify the excavator that the facility is a high-priority subsurface installation. If the member operator provides such timely notice of the existence of a high-priority subsurface installation, an excavator shall notify the operator of the planned excavation start date and time before beginning excavation. If the member operator does not provide timely notice, the excavator may proceed, after waiting the prescribed time period set forth in s. 556.105(9)(a), to excavate without notifying the member operator of the excavation start date and time. The exemptions stated in s. 556.108 apply to the notification requirements in this subsection.

(2)(a)~~(3)(a)~~ An alleged commission of an infraction listed

in s. 556.107(1) which results in an incident must be reported to the system and the State Fire Marshal by a member operator or an excavator within 24 hours after learning of the alleged occurrence of an incident.

(b) Upon receipt of an allegation that an incident has occurred, the member operator or excavator ~~system~~ shall transmit an incident report to the State Fire Marshal, who shall ~~division and contract with the division so that the division may~~ conduct an investigation ~~a hearing~~ to determine whether an incident has occurred, and, if so, whether a violation of s. 556.107(1)(a) was a proximate cause of the incident. The State Fire Marshal may authorize its agents as provided in ss. 633.114, 633.116, and 633.118 to conduct investigations of incidents ~~The contract for services to be performed by the division must include provisions for the system to reimburse the division for any costs incurred by the division for court reporters, transcript preparation, travel, facility rental, and other customary hearing costs, in the manner set forth in s. 120.65(9)~~.

(c) The State Fire Marshal or agents as provided in ss. 633.114, 633.116, and 633.118 ~~division has jurisdiction in a proceeding under this section to determine the facts and law concerning an alleged incident. The division~~ may issue a citation and impose a civil penalty ~~fine~~ against a violator in an amount not to exceed $50,000 if the person violated a provision of s. 556.107(1)(a) and that violation was a proximate

cause of the incident. However, if a state agency or political subdivision caused the incident, the state agency or political subdivision may not be fined in an amount in excess of $10,000.

(d) The civil penalty ~~A fine~~ imposed under this subsection ~~by the division~~ is in addition to any amount payable as a result of a citation relating to the incident under s. 556.107(1)(a).

(e) If an additional civil penalty is imposed by the State Fire Marshal or his or her agents, 5 percent of the civil penalty must be retained by the clerk to cover administrative costs, and the remainder of the civil penalty must be distributed equally between the system and the State Fire Marshal. The portion of the civil penalty distributed to the system must be used exclusively to fund damage-prevention education. The portion of the civil penalty distributed to the State Fire Marshal must be used exclusively to fund programs created within the State Fire Marshal's office that provide need-based financial assistance to help fire departments, including volunteer fire departments, procure equipment, supplies, and educational training designed to mitigate firefighter exposure to hazardous, cancer-causing chemicals ~~A fine against an excavator or a member operator imposed under this subsection shall be paid to the system, which shall use the collected fines to satisfy the costs incurred by the system for any proceedings under this section. To the extent there are any funds remaining, the system may use the funds exclusively for~~

~~damage-prevention education~~.

(f) Any excavator or member operator who commits a noncriminal infraction under s. 556.116(2)(c) must be provided a written warning at the time a citation is issued stating that any person who willfully fails to properly respond to a citation must, in addition to the citation, be charged with the offense of failing to respond to the citation and, upon conviction, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(g) This section does not change the basis for civil liability. The findings and results of an investigation ~~a hearing~~ under this section may not be used as evidence of liability in any civil action.

~~(4)(a) The division shall issue and serve on all original parties an initial order that assigns the case to a specific administrative law judge and requests information regarding scheduling the final hearing within 5 business days after the division receives a petition or request for hearing. The original parties in the proceeding include all excavators and member operators identified by the system as being involved in the alleged incident. The final hearing must be conducted within 60 days after the date the petition or the request for a hearing is filed with the division.~~

~~(b) Unless the parties otherwise agree, venue for the hearing shall be in the county in which the underground facility~~

~~is located.~~

~~(c) An intervenor in the proceeding must file a petition to intervene no later than 15 days before the final hearing. A person who has a substantial interest in the proceeding may intervene.~~

~~(5) The following procedures apply:~~

~~(a) Motions shall be limited to the following:~~

~~1. A motion in opposition to the petition.~~

~~2. A motion requesting discovery beyond the informal exchange of documents and witness lists described in paragraph (c). Upon a showing of necessity, additional discovery may be permitted in the discretion of the administrative law judge, but only if the discovery can be completed no later than 5 days before the final hearing.~~

~~3. A motion for continuance of the final hearing date.~~

~~(b) All parties shall attend a prehearing conference for the purpose of identifying the legal and factual issues to be considered at the final hearing, the names and addresses of witnesses who may be called to testify at the final hearing, documentary evidence that will be offered at the final hearing, the range of penalties that may be imposed, and any other matter that would expedite resolution of the proceeding. The prehearing conference may be held by telephone conference call.~~

~~(c) Not later than 5 days before the final hearing, the parties shall furnish to each other copies of documentary~~

~~evidence and lists of witnesses who may testify at the final hearing.~~

~~(d) All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, and to be represented by counsel or other qualified representative.~~

~~(e) The record shall consist only of:~~

~~1. All notices, pleadings, motions, and intermediate rulings.~~

~~2. Evidence received during the final hearing.~~

~~3. A statement of matters officially recognized.~~

~~4. Proffers of proof and objections and rulings thereon.~~

~~5. Matters placed on the record after an ex parte communication.~~

~~6. The written final order of the administrative law judge presiding at the final hearing.~~

~~7. The official transcript of the final hearing.~~

~~(f) The division shall accurately and completely preserve all testimony in the proceeding and, upon request by any party, shall make a full or partial transcript available at no more than actual cost.~~

~~(g) The administrative law judge shall issue a final order within 30 days after the final hearing or the filing of the transcript thereof, whichever is later. The final order of the administrative law judge must include:~~

~~1. Findings of fact based exclusively on the evidence of record and matters officially recognized.~~

~~2. Conclusions of law. In determining whether a party has committed an infraction of s. 556.107(1)(a), and whether the infraction was a proximate cause of an incident, the commission of an infraction must be proven by a preponderance of the evidence.~~

~~3. Imposition of a fine, if applicable.~~

~~4. Any other information required by law or rule to be contained in a final order.~~

~~The final order of the administrative law judge constitutes final agency action subject to judicial review pursuant to s. 120.68.~~

Section 4. Section 556.117, Florida Statutes, is created to read:

556.117 Underground facility damage prevention review.—Sunshine State One-Call of Florida, Inc., shall review the reports submitted by the clerks of court to the State Fire Marshal and any complaints of alleged violations under this chapter to identify issues or potential issues with damage prevention and enforcement. The corporation shall identify areas in the state where additional education related to damage prevention and enforcement is needed and shall recommend solutions to remedy issues related to damage prevention and

enforcement. The corporation shall, by October 1 of each year, submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives an analysis of its reviews and any recommendations for improving underground facility damage prevention and enforcement.

Section 5. This act shall take effect July 1, 2020.

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

Remove everything before the enacting clause and insert: An act relating to underground facility damage prevention and safety; amending s. 556.102, F.S.; defining the term "permanent marker" and consolidating other definitions from throughout the chapter; amending s. 556.107, F.S.; revising noncriminal violations and providing noncriminal violations relating to the transportation of certain hazardous materials; authorizing the State Fire Marshal or his or her agents to issue certain citations; providing enhanced civil penalties; providing disposition of the civil penalty; requiring a report by additional entities; providing civil penalties relating to removing or damaging a permanent marker; amending s. 556.116, F.S.; moving and consolidating definitions to the definition section for the chapter; providing that certain incident reports must be submitted to, and investigated by, the State Fire Marshal or his or her agents; authorizing the State Fire Marshal

or his or her agents to issue citations and civil penalties; providing for disposition of the civil penalty; requiring written warnings for certain noncriminal infractions; providing for an enhanced penalty upon conviction for a failure to respond; removing provisions relating to hearings by the Division of Administrative Hearings of certain incidents; creating s. 556.117, F.S.; requiring Sunshine State One-Call of Florida, Inc., to review certain reports and complaints; requiring the corporation to identify areas for additional education and recommend solutions; requiring an annual report to the Governor and the Legislature; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1193 Deregulation of Professions and Occupations
SPONSOR(S): Ingoglia
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 474

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	12 Y, 3 N	Wright	Anstead
2) Government Operations & Technology Appropriations Subcommittee	10 Y, 2 N	Helpling	Topp
3) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

The bill relates to various businesses and professions regulated by the Department of Business and Professional Regulation. Specifically, the bill, cited as the "Occupational Freedom and Opportunity Act," does the following:

- Deregulates:
  - Interior designers and interior design businesses,
  - Hair braiders, hair wrappers, and body wrappers,
  - Nail polishers and makeup applicators, and
  - Boxing announcers and timekeepers.
- Partially deregulates the following professions, while maintaining civil and criminal causes of action:
  - Auctioneers,
  - Talent agents, and
  - Labor organizations.
- Eliminates the additional business license required for the following licensees:
  - Asbestos abatement consultants and contractors,
  - Architects,
  - Landscape architects, and
  - Geologists.
- Reduces the hours of training required to obtain a license for:
  - Barbers and restricted barbers, and
  - Nail, facial, and full specialists.
- Adds new ways for out of state professionals to obtain a license in the state for:
  - Veterinarians,
  - Construction and electrical contractors,
  - Landscape architects,
  - Geologists,
  - Engineers,
  - Certified public accountants,
  - Home inspectors,
  - Building code professionals, and
  - Cosmetologists, and Barbers.
- Reduces the number of members on the Florida Building Commission.
- Authorizes unlicensed individual to provide compensated dietary and nutritional information as long as such individuals do not represent that they are licensed dieticians or nutritionists.
- Prohibits DBPR from disciplining or revoking a licensee based solely on defaulting on a student loan.

The bill has a significant negative fiscal impact to state revenues including a $4.2 million reduction over the next three fiscal years. For more details, see *Fiscal Analysis and & Economic Impact Statement.*

The bill has an effective date of July 1, 2020, except where otherwise indicated.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Occupational Licensing

An occupational or professional license is a form of regulation that requires individuals who want to perform certain types of work, such as contractors and cosmetologists, to obtain permission from the government to perform the work.[1] Generally, an individual obtains such permission by demonstrating that they have the designated knowledge, skills, and abilities to perform the work by meeting pre-determined criteria established by the government, such as work experience and examinations. If the individual successfully completes the pre-determined criteria, the government issues the individual a license, which allows them to perform the work.[2]

In the 1950s, less than five percent of U.S. workers were required to have an occupational license to do their jobs. Since then, the number of workers required to have a license has risen to more than one-quarter of U.S. workers, and an estimated 28.7 percent of the Florida workforce requires a license from the state.[3]

In 2015, The White House published a report on the current state of occupational licensing in the nation. The report found that when designed and implemented carefully, requiring occupational licenses offers important health and safety protections to consumers, as well as benefits to workers. However, the report also found that too often licensing requirements are inconsistent, inefficient, arbitrary, and there is evidence that the current licensing regimes in the U.S. raise the price of goods and services, restrict employment opportunities, and make it more difficult for workers to take their skills across state lines.[4]

Organizational Structure of the Department of Business and Professional Regulation

The Florida Department of Business and Professional Regulation (DBPR) regulates and licenses businesses and professionals in Florida through the following divisions:

- The Division of Administration,
- The Division of Alcoholic Beverages and Tobacco,
- The Division of Certified Public Accounting,
- The Division of Drugs, Devices, and Cosmetics,
- The Division of Florida Condominiums, Timeshares, and Mobile Homes,
- The Division of Hotels and Restaurants,
- The Division of Pari-mutuel Wagering,
- The Division of Professions,
- The Division of Real Estate,
- The Division of Regulation,
- The Division of Technology, and
- The Division of Service Operations.[5]

The Division of Professions (Professions) licenses and regulates more than 434,000 professionals through the following professional boards and programs:

- Board of Architecture and Interior Design,
- Asbestos Licensing Unit,

---

[1] The White House, *Occupational Licensing: A Framework for Policymakers*, 6 (July 2015) https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf (last visited on Dec. 30, 2019).
[2] Bureau of Labor Statistics, *Frequently asked questions about data on certifications and licenses*, https://www.bls.gov/cps/certifications-and-licenses-faqs.htm, (last visited on Nov. 26, 2019).
[3] White House, *supra* note 1, at 3.
[4] *Id.*, at 3-5.
[5] S. 20.165, F.S.

- Athlete Agents,
- Board of Auctioneers,
- Barbers' Board,
- Building Code Administrators and Inspectors Board,
- Regulatory Council of Community Association Managers,
- Construction Industry Licensing Board,
- Board of Cosmetology,
- Electrical Contractors' Licensing Board,
- Board of Employee Leasing Companies,
- Home Inspectors,
- Board of Landscape Architecture,
- Mold-Related Services,
- Board of Pilot Commissioners,
- Board of Professional Geologists,
- Talent Agencies,
- Board of Veterinary Medicine, and
- Florida Board of Professional Engineers.[6]

The Division of Regulation (Regulations) is the enforcement authority for Labor Organizations and Business Agents, the Florida State Boxing Commission, Farm Labor Program, Child Labor Program, and any professional boards and programs housed within Professions.[7] To ensure compliance with applicable laws and rules by those professions and related businesses, Regulations investigates complaints, utilizes compliance mechanisms, and performs inspections.[8]

The Division of Florida Condominiums, Timeshares, and Mobile Homes (FCTMH) provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure.[9] FCTMH has limited 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 (jurisdiction limited to arbitration of election and recall disputes).[10]

For each professional licensed issued by DBPR, DBPR charges an application fee set by the applicable board, or by DBPR if there is no board for the profession. DBPR also imposes a $5 unlicensed activity fee on each occupational license, in order to fund efforts to combat unlicensed activity.[11]

Also, for professional licenses granted by DBPR, a license by endorsement means a license granted to an applicant based on their license in another jurisdiction. Section 455.227(2), F.S., allows DBPR or an applicable board to deny a license application based on an applicant's license history in another jurisdiction.[12]

---

[6] Florida Department of Business and Professional Regulation, *Division of Professions*, http://www.myfloridalicense.com/DBPR/division-of-professions/ (last visited Jan. 9, 2020).
[7] Except the Board of Architecture and Interior Design, and the Florida Board of Professional Engineers. Florida Department of Business and Professional Regulation, *Division of Regulation*, http://www.myfloridalicense.com/DBPR/division-of-regulation/ (last visited Dec. 19, 2019).
[8] Florida Department of Business and Professional Regulation, *Division of Regulation*, http://www.myfloridalicense.com/DBPR/division-of-regulation/ (last visited Dec. 19, 2019).
[9] Department of Business and Professional Regulation, *Division of Florida Condominiums, Timeshares, and Mobile Homes*, http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/ (last visited Jan. 9, 2020).
[10] *Id.*
[11] S. 455.2281, F.S.
[12] S. 455.227(1)(f), (2)(a), F.S.

Barbering

Background

Barbers, restricted barbers, and barbershops are regulated by ch. 476, F.S., and by the Barbers' Board.

'Barbering' means any of the following practices when done for remuneration and for the public, but not when done for the treatment of disease or physical or mental ailments: shaving, cutting, trimming, coloring, shampooing, arranging, dressing, curling, or waving the hair or beard or applying oils, creams, lotions, or other preparations to the face, scalp, or neck, either by hand or by mechanical appliances."[13]

A 'restricted barber' is a person who has a restricted license to practice barbering that limits the licensee's practice to specific areas of demonstrated competence pursuant to rules adopted by the board.

To be eligible for licensure, barbers and restricted barbers must:

- be at least 16 years old,
- complete 1,200 hours of training,[14] which can cost between $2,000 and $11,000,[15]
- pass the applicable written examination,[16] and
- pay a $205 fee.[17]

Barbers and restricted barbers are required to complete 2 hours of continuing education every two years, which must be focused on HIV/AIDS topics.[18]

Barbers licensed in another state are eligible for a license by endorsement in Florida if they have completed:[19]

- at least 1,200 educational hours,
- a written exam, and
- a 2 hour HIV/AIDS course.

For the 2018-2019 Fiscal Year, there were 21,248 barbers in the state. DBPR received 666 complaints against barbers, and took 405 disciplinary actions.[20]

Effect of the Bill

The bill reduces the number of required hours of training from 1,200 to 600 for barbers and from 1,200 to 400 for restricted barbers. The type of training required is limited to sanitation, safety, laws, and rules.

The bill allows full license reciprocity in Florida for applicants who hold a barber license in another state, without needing to pass a written examination.

---

[13] S. 476.034(2), F.S.
[14] Under certain circumstances, an applicant may take the exam after completing 1,000 hours of training. If he or she passes the exam, no more training is required. S. 476.114(c)2., F.S.
[15] CostHHelper, Inc., How Much Does Barber School Cost?, https://education.costhelper.com/barber-school.html (last visited Jan. 9, 2020).
[16] R. 61-35.006, F.A.C.
[17] Email from Colton Madill, Deputy Legislative Affairs Director, Florida Department of Business and Professional Regulation, RE: DBPR Fee Schedule (Jan. 3, 2020).
[18] S. 455.2228, F.S.
[19] S. 476.144, F.S.
[20] Florida Department of Business and Professional Regulation, *2018-2019 Annual Report*, pp.19, 90.

Cosmetology and Cosmetology Salons

Background

Cosmetologists, hair wrappers, hair braiders, nail specialists, facial specialists, full specialists, body wrappers, and related salons in the state are regulated in accordance with ch. 477, F.S., and by the Board of Cosmetology.

The term 'cosmetology' is defined as "the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services."[21]

To be eligible for licensure, a cosmetologist must:

- be at least 16 years old,
- complete 1,200 hours of training, which typically costs between $5,000 and $20,000,[22]
- pass an examination, and
- pay an initial license fee of $63.50.[23]

In order to renew a cosmetology license or specialty registration, a licensee must complete 16 hours of continuing education biennially.[24]

Cosmetologists and specialists licensed in other states are eligible for a license by endorsement in Florida if they have been licensed for more than 1 year or have completed the required hours of education for the equivalent Florida license, and completed a 2 hour HIV/AIDS course.[25]

For 2018-2019 Fiscal Year, there were 253,065 cosmetologists and specialists in the state. DBPR received 2,091 complaints, and took 1,323 disciplinary actions.[26]

Specialty Registrations

A 'specialist' is defined as any person holding a specialty registration in one or more of the following cosmetology specialties:[27]

- manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands. This term includes any procedure or process for the affixing of artificial nails, except those nails which may be applied solely by use of a simple adhesive;
- pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet; and
- facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services.

A nail specialist may complete manicures and pedicures. A facial specialist may complete facials. A full specialist may complete manicures, pedicures, and facials.[28]

---

[21] S. 477.013, F.S.
[22] BeautySchools.com, *The Cost of Beauty School*, https://www.beautyschools.com/the-cost-of-beauty-school/ (last visited Dec. 19, 2019).
[23] DBPR, *supra* note 13.
[24] S. 477.019(7)(a), F.S.
[25] S. 477.019(1)(c), F.S.
[26] DBPR, *supra* note 16.
[27] S. 477.013, F.S.
[28] R. 61G5-29.001, F.A.C.

To qualify for a specialist registration, the applicant must:[29]

- be at least 16 years old;
- register with DBPR and pay the $75 registration fee; and
- obtain a certificate of completion from an approved specialty education program, consisting of:
  - 240 hours of training for a nail specialty,
  - 260 hours of training for a facial specialty, and
  - 500 hours of training for a full specialty.[30]

Currently, a person who applies polish or paint to fingernails and toenails or makeup for compensation needs a cosmetology or specialty license.[31]

There are 40,355 nail specialists, 29,556 facial specialists, and 33,257 full specialists. In fiscal year 2018-2019, for nail specialists, DBPR received 142 complaints and took 81 disciplinary actions; for facial specialists, DBPR received 74 complaints and took 9 disciplinary actions; and for full specialists, DBPR received 78 complaints and took 75 disciplinary actions.[32]

Hair Braiding, Hair Wrapping, and Body Wrapping Registrations

'Hair braiding' means the "weaving or interweaving of natural human hair for compensation without cutting, coloring, permanent waving, relaxing, removing, or chemical treatment and does not include the use of hair extensions or wefts."[33]

'Hair wrapping' means the "wrapping of manufactured materials around a strand or strands of human hair, for compensation, without cutting, coloring, permanent waving, relaxing, removing, weaving, chemically treating, braiding, using hair extensions, or performing any other service defined as cosmetology."[34]

'Body wrapping' means a "treatment program that uses herbal wraps for the purposes of cleansing and beautifying the skin of the body, but does not include the application of oils, lotions, or other fluids to the body, except fluids contained in presoaked materials used in the wraps, or manipulation of the body's superficial tissue, other than that arising from compression emanating from the wrap materials."[35]

A person who wishes to practice as a hair braider, hair wrapper, or body wrapper must:[36]

- be at least 16 years old;
- register with DBPR and pay the $25 registration fee; and
- for hair braiders, take a two-day board-approved 16-hour course that consists of:
  - 5 hours on HIV/AIDS and other communicable diseases,
  - 5 hours on sanitation and sterilization,
  - 4 hours on disorders and diseases of the scalp, and
  - 2 hours on studies regarding laws affecting hair braiding;
- for hair wrappers, take a one-day board-approved 6-hour course that consists of education in:
  - HIV/AIDS and other communicable diseases,
  - sanitation and sterilization,
  - disorders and diseases of the scalp, and
  - studies regarding laws affecting hair wrapping;
- for body wrappers, take a two-day board-approved 12-hour course that consists of education in:
  - HIV/AIDS and other communicable diseases,
  - sanitation and sterilization,

[29] S. 477.0201, F.S.
[30] Ch. 61G5-22, F.A.C.
[31] Texas currently allows makeup application for compensation without a license. Tex. Occ. Code Ann § 1602.003(b)(3) (West 2015).
[32] DBPR, *supra* note 13.
[33] S. 477.013(9), F.S.
[34] S. 477.013(10), F.S.
[35] S. 477.013(11), F.S.
[36] Described in ss. 477.013 and 477.0132, F.S.

- disorders and diseases of the skin, and
- studies regarding laws affecting body wrapping.[37]

Continuing education is not required of hair braiders, hair wrappers, and body wrappers.[38] Hair braiding, hair wrapping, and body wrapping are not required to be performed in a licensed salon.[39]

There are 4,882 hair braiders, 1,183 hair wrappers, and 6,883 body wrappers. In fiscal year 2018-2019, for hair braiders, DBPR received 37 complaints and took 13 disciplinary actions; for hair wrappers, DBPR received 3 complaints and took 2 disciplinary actions; and for body wrappers, DBPR received 4 complaints and took no disciplinary actions.[40] These actions generally do not involve consumer injury, but are technical scope of practice violations (e.g., practicing with an expired license or failing to timely renew the license).[41]

Cosmetology Salons

In Florida, cosmetology and specialty salons must be licensed.[42] Such salons are inspected periodically by DBPR, in accordance with sanitary standards set forth by the Board of Cosmetology.[43]

Generally, all cosmetology services must be performed in a licensed cosmetology or specialty salon and be performed by a properly licensed professional.[44] However, there are limited exceptions that allow certain services to be performed outside of a salon. Exceptions to this requirement include when services are performed for:[45]

- a special event[46] by a properly licensed person who is employed by a licensed salon.
  - Arrangements for the performance of such cosmetology services must be made through a licensed salon.
- a client for reasons of ill health is unable to go to a licensed salon.
  - Arrangements for the performance of such cosmetology services must be made through a licensed salon.
- the motion picture, fashion photography, theatrical, or television industry; a photography studio salon; a manufacturer trade show demonstration; or an educational seminar.

Effect of the Bill

The bill reduces the amount of training hours required for specialty registrations to:

- 150 hours from 240 hours for nail specialists,
- 165 hours from 260 hours for facial specialists, and
- 300 hours from 500 hours for full specialists.

The bill requires that such training hours focus on sanitation and safety.

The bill removes all licensure and regulatory requirements[47] for:

- hair braiders,
- hair wrappers,

---

[37] Courses for hair braiding, hair wrapping, and body wrapping generally cost between $75 and $250. Examples include:1STOPCEU.com, *Home*, https://www.1stopceu.com/ (last visited Dec. 19, 2019); and JT's Beauty Shop, Inc., *Florida State Certified Courses (Theory)*, http://www.jtbeautysalon.com/courses.html (last visited Dec. 19, 2019).

[38] S. 477.019(7)(b), F.S.

[39] S. 477.0132(2), F.S.

[40] Email from Colton Madill, Deputy Legislative Affairs Director, Florida Department of Business and Professional Regulation, RE: License Numbers (Mar. 16, 2019).

[41] Florida Department of Business and Professional Regulation, Agency Analysis of 2017 Senate Bill 802, 4 (March 2, 2017).

[42] S. 477.025(1), F.S.

[43] S. 477.025(9), F.S.; Ch. 61G5-20, F.A.C.

[44] S. 477.0263(1), F.S.

[45] S. 477.0263(2)-(4), F.S.

[46] Defined by board rule as a wedding or fashion shows. R. 61G5-20.0015(1), F.A.C.

[47] The bill also makes conforming changes to cross-references.

- body wrappers,
- nail polishers or painters, and
- makeup applicators.

The bill expands the scope of hair braiding to include weaving or interweaving commercial hair without the use of adhesives or bonders and the ability to use extensions or wefts, which will also be allowed to be performed without a license.

The bill reduces the amount of biennial continuing education required of cosmetologists and specialists for license renewal from 16 hours to 10 hours.

The bill also removes the requirement that a licensed cosmetologist must work through a salon for special events, thus allowing cosmetology services to be performed in connection with a special event by a licensed professional who is not employed by a licensed salon. It also removes the requirement that an appointment for a special event must be made through a licensed salon.

The bill allows hair shampooing, hair cutting, hair arranging, nail polish removal, nail filing, nail buffing, and nail cleansing to be performed outside of a salon by a properly licensed professional who is not employed by a licensed salon, regardless of whether the service is in connection with a special event.

The bill allows full license reciprocity in Florida for applicants who hold a cosmetology or specialty license in another state.

Auctioneers and Auctioneer Apprentices

Background

Auction businesses, auctioneers, and apprentice auctioneers are licensed and regulated in accordance with part VI of ch. 468, F.S., and by the Florida Board of Auctioneers within DBPR.

A license is required before any person can auction or offer to auction any property in this state, and the auctioneer practice act applies to all auctions in the state, with certain exceptions. [48]

In order to qualify for licensure as an auctioneer, an applicant must:
- be 18 years or older;
- not have committed any act or offense in the state or any other jurisdiction which would constitute a basis for disciplinary action in Florida;
- have held an apprentice license and have served as an apprentice for 1 year or more, or have completed a course of study, consisting of not less than 80 classroom hours of instruction, that meets standards adopted by the board; and
- pass the required examination.

At the time of application, applicants for an auctioneer license must pay an initial licensing fee of $205. The biennial renewal fee is $155.[49]

An auctioneer may be disciplined or have a civil action brought against them by DBPR for one of the following violations:[50]
- violating any trade or commerce law;
- misrepresenting property for sale at auction;
- failing to return money or property within 30 days of control of such money or property;
- false, deceptive, misleading, or untruthful advertising;

[48] S. 468.385(2), 383, F.S.
[49] DBPR, *supra* note 13.
[50] S. 468.389, F.S.

- bad faith or dishonesty in a sales transaction;
- using false bidders, cappers, or shills;
- comingling auction monies with personal money;
- refusing or neglecting to pay public moneys into the State Treasury when prescribed by law; and
- other violations of the practice act.

An auctioneer commits a third degree felony for certain violations of the practice act, including:[51]
- failing to return money or property within 30 days of control of such money or property;
- bad faith or dishonesty in a sales transaction;
- using false bidders, cappers, or shills;
- comingling auction monies with personal money; and
- refusing or neglecting to pay the public moneys into the State Treasury when prescribed by law.

There is no continuing education requirement for auctioneers or auctioneer apprentices.

An 'auction business' is a "sole proprietorship, partnership, or corporation which in the regular course of business arranges, manages, sponsors, advertises, promotes, or carries out auctions, employs auctioneers to conduct auctions in its facilities, or uses or allows the use of its facilities for auctions."[52]

Currently, there are 2,611 licensed auctioneers and 41 auctioneer apprentices. In fiscal year 2018-2019, DBPR received 90 complaints against auctioneers, and issued 24 disciplinary orders. There was only 1 disciplinary action against an auctioneer apprentice.[53]

Effect of the Bill

The bill repeals all provisions which require auctioneers, auctioneer apprentices, and auctioneer businesses to be licensed and regulated by DBPR.

The bill maintains current law related to civil and criminal causes of action against auctioneers for failing to comply with statutory requirements.

Talent Agencies

Background

Talent agencies are regulated by part VII of ch. 468, F.S. A talent agency is defined as "[a]ny person who, for compensation, engages in the occupation or business of procuring or attempting to procure engagements for an artist."[54] Individuals are prohibited from owning, operating, soliciting business, or otherwise engaging in or carrying on the occupation of a talent agency in this state unless the person first obtains licensure for the talent agency.[55]

To qualify for a talent agency license, each owner and operator must be of good moral character and identify financial interests in any other business of like nature.[56] For a determination of good moral character, each application must include a full set of fingerprints of each owner and operator, and if the talent agency is a corporation, each principal officer, so that DBPR may conduct a full fingerprint and police records search.[57]

---

[51] S. 468.391, F.S.
[52] S. 468.382(1), F.S.
[53] DBPR, *supra* note 13.
[54] S. 468.401, F.S.
[55] S. 468.403(1), F.S.
[56] S. 468.405, F.S.
[57] S. 467.403(3), F.S.

At the time of application, applicants for a talent agency license must pay an initial licensing fee of $705. The biennial renewal fee is $405.[58]

Licensed talent agencies are required to: [59]

- File an itemized schedule of maximum fees, charges, and commissions;
- Pay to the artist all money collected from an employer for the benefit of an artist within five business days after receipt of the money;
- Display a copy of the license conspicuously in the place of business;
- File a bond with DBPR in the form of a surety for the penal sum of $5,000, which may be drawn upon if a person is aggrieved by the misconduct of the talent agency;
- Maintain records including the application, registration, or contract of each artist;
- Provide a copy of the contract to the artist within 24 hours of the contract's execution; and
- Comply with talent agency regulations and prohibitions.

Licensed talent agencies are prohibited from:[60]

- Charging the artist a registration fee;
- Requiring the artist to subscribe to, purchase, or attend any publication, postcard service, advertisement, resume service, photography service, school, acting school, workshop, or acting workshop; and
- Sexual misconduct.

Section 468.413, F.S., provides criminal penalties for:

- Operating a talent agency without a license;
- Obtaining a license through misrepresentation;
- Assigning a license to another individual;
- Relocating a talent agency without notifying the DBPR;
- Failing to provide information on an application regarding related businesses;
- Failing to maintain records;
- Requiring an artist to subscribe to, purchase, or attend any publication, postcard service, advertisement, resume service, photography service, school, acting school, workshop, or acting workshop;
- Failing to provide a copy of the contract to an artist;
- Failing to maintain a record sheet; and
- Knowingly sending an artist to an employer the licensee knows to be in violation of the laws of Florida or of the United States.

For the 2018-2019 Fiscal Year, there were 418 talent agents in the state. DBPR received 58 complaints against talent agents, and did not take any disciplinary actions against talent agents. [61]

Effect of the Bill

The bill repeals all provisions which require talent agents to be licensed and regulated by DBPR. However, talent agent will still be required to maintain a bond.

[58] DBPR, *supra* note 13.
[59] Ss. 468.406, 410, F.S.
[60] S. 468.410, F.S.
[61] DBPR, *supra* note 16.

The bill still requires talent agents to comply with the following requirements:

- Fee posting;
- Schedule posting;
- Maintenance of specific records;
- Obtaining a bond; and
- Contract provisions and availability.

The bill requires bonding agencies to refuse to issue talent agency bonds to a talent agency if any of its owners or operators have been convicted of sexual offender or sexual predator crimes. The bill also requires that a criminal history check be performed prior to issuing or renewing the bond.

The bill maintains civil and criminal causes of action against talent agents for failure to comply with statutory requirements.

Interior Designers

Background

Interior designers and related business organizations are regulated by part I of ch. 481, F.S., and by the Board of Architecture and Interior Design.

Generally, 'interior design' means "designs, consultations, studies, drawings, specifications, and administration of design construction contracts relating to nonstructural interior elements[62] of a [commercial] building or structure."[63] Interior designers have the ability to sign, date, and seal drawings ("sign and seal"), plans, specifications, and reports filed for public record and for filings with local building departments to obtain a building permit related to interior design.[64]

'Interior decorating,' which is differentiated from 'interior design' under Florida law and does not require a license, is limited to the selection or assistance in selection of surface materials, window treatments, wallcoverings, paint, floor coverings, surface-mounted lighting, surface-mounted fixtures, and loose furnishings not subject to regulation under applicable building codes.

Licensure

To practice interior design, an applicant must:

- Complete the licensure application and pay a $30 fee,[65]
- Have a combination of 6 years of relevant education and experience (which must include at least 2 years of education), and
- Pass the licensure examination.

The required examination in Florida is a 3-part national examination administered by the National Council for Interior Design Qualification (NCIDQ), at a cost of $1,325, including the application fee.[66] Requirements to sit for the NCIDQ, including education and experience requirements, mirror Florida's licensure prerequisites.[67]

Interior designers must complete 20 hours of continuing education each biennium to renew their license.[68]

---

[62] "Nonstructural element" means an element which does not require structural bracing and which is something other than a load-bearing wall, load-bearing column, or other load-bearing element of a building or structure which is essential to the structural integrity of the building. S. 481.203(10), F.S.
[63] S. 481.203(8), F.S.
[64] S. 481.221, F.S.
[65] R. 61G1-17.002, F.A.C.
[66] Council for Interior Design Qualification, *Fees and Forms*, https://www.cidq.org/fees (last visited Dec. 19, 2019).
[67] Council for Interior Design Qualification, *Eligibility Requirements*, https://www.cidq.org/paths (last visited Dec. 19, 2019).
[68] R. 61G1-21.001, F.A.C.

The biennial renewal fee for an interior designer is $100.[69]

Business entities or persons operating under fictitious names offering interior design services must also obtain a certificate of authorization. At least one principal officer or partner and all personnel who act on the business entity's behalf in the state must be registered interior designers. The initial license fee for a certificate of authorization is $75 and the biennial renewal fee is $100.[70]

Exemptions

Florida law exempts the practice of *residential* interior design from licensure requirements.[71] However, s. 481.223(1)(c), F.S., prohibits any unlicensed actor from ever using the title 'interior designer' or words to that effect. In 2010, this provision was found to be an unconstitutional restriction on free speech based on the exemption for residential interior design.[72] Other constitutional challenges of licensure requirements based on claims of limitations on 1st amendment free speech,[73] interstate commerce,[74] and violations of due process and equal protection, have not been successful.[75]

Other unlicensed individuals are also exempted from licensure requirements, including interior decorators, employees of retail establishments providing interior decorator services[76] on the premises of the retail establishment or in the furtherance of a retail sale or prospective retail sale, and a manufacturer of commercial food service equipment who prepares designs, specifications, or layouts for the sale or installation of such equipment.[77]

Other States

Florida is one of 6 U.S. states or territories requiring interior designers to be licensed. Approximately 20 other states offer title acts, allowing only candidates meeting statutory requirements to hold themselves out as 'registered interior designers.'[78]

For the 2018-2019 Fiscal Year, there were 2,831 licensed interior designers and 978 interior design business licenses. DBPR received 3 complaints against interior designers, and took 5 disciplinary actions. There was 1 disciplinary action against an interior design business.[79]

Effect of the Bill

The bill repeals all licensure and regulatory requirements for interior designers and interior design businesses.[80]

---

[69] DBPR, *supra* note 13.
[70] R. 61G1-17.002, F.A.C.
[71] S. 481.229(6)(a), F.S.
[72] *Locke v. Shore*, 682 F.Supp.2d 1283, 1295 (N.D.Fla., 2010).
[73] *Locke v. Shore*, 634 F.3d 1185, 1191 (11th Cir. 2011)("Because the license requirement governs 'occupational conduct, and not a substantial amount of protected speech,' it does not implicate constitutionally protected activity under the First Amendment.").
[74] *Id.* at 1193 ("Out-of-state unlicensed interior designers may practice in commercial settings in Florida 'under the instruction, control or supervision' of a licensed architect or while 'acting as a contractor in the execution of work designed by an architect.").
[75] *Id.* at 1196 ("Thus, the fact that, after Florida passed its license requirement, other states have considered and rejected the notion that the unlicensed practice of interior design poses safety concerns, is of no consequence.").
[76] S. 481.203(15), F.S. Services limited to the selection or assistance in selection of surface materials, window treatments, wallcoverings, paint, floor coverings, surface-mounted lighting, surface-mounted fixtures, and loose furnishings are not subject to regulation under applicable building codes.
[77] S. 481.229(6), F.S.
[78] International Interior Design Association, *Interior Design Laws*, http://advocacy.iida.org/#interiordesignlaws (last visited Dec. 19, 2019).
[79] DBPR, *supra* note 16.
[80] The bill also makes conforming changes to cross-references.

The bill allows interior designers who have passed the NCIDQ examination or the California Council for Interior Design Certification, or have previously held a license to practice interior design from DBPR, to submit plans for interior design to a local permitting agency if such agency requires such plans.

The bill changes the name of the Board of Architecture and Interior Design to the Board of Architecture, and removes the interior design members from the board to reflect the deregulation of interior design.

Architecture

Background

Architects and related business organizations in the state are regulated by ch. 481, pt. I, F.S., and by the Board of Architecture and Interior Design.

"Architecture services" means the rendering or offering to render services in connection with the design and construction of a structure or group of structures which have as their principal purpose human habitation or use, and the utilization of space within and surrounding such structures. These services include planning, providing preliminary study designs, drawings and specifications, job-site inspection, and administration of construction contracts.[81]

To practice architecture, an applicant must:[82]

- Complete the licensure application and pay a $35 fee,[83]
- Complete a bachelor's or master's degree from an accredited architecture program,
- Complete the national architectural experience program, which takes approximately 2 years, and
- Pass the national licensure examination given by the National Council of Architectural Registration Boards.

An architecture business corporation, limited liability company, or partnership offering architecture services to the public must obtain a certificate of authorization.[84] One or more of the principal officers of the corporation or limited liability company, or one or more partners of the partnership, must be a licensed architect. Applicants for an architecture business certificate of authorization must pay an application fee of $35. The biennial renewal fee is $100.[85] There is no requirement on the business entity other than to obtain licensure and there are no inspection requirements.

Architects must complete 24 hours of continuing education every 2 years. Of those hours, 2 must be devoted to specialized or advanced courses on the Florida Building Code.[86]

For 2018-2019 Fiscal Year, there were 11,357 architects and 3,026 architecture businesses in the state. DBPR received 42 complaints against architects, and took 36 disciplinary actions.[87] DBPR received 15 complaints against architecture businesses, and took 3 disciplinary actions.

Effect of the Bill

The bill removes the requirement that architects obtain a separate business license (certificate of authorization), but continues to allow architecture firms to operate in the state. The bill provides that a licensed architect may qualify their architect business, and agree to serve as a qualifying architect for such business. The qualifying agent must ensure responsible supervisory control of all projects of the business organization.

---

[81] S. 481.206(6), F.S.
[82] Ss. 481.209, 481.211, and 481.213, F.S.
[83] R. 61G1-17.002, F.A.C.
[84] S. 481.219(2)-(3), F.S.
[85] Rr. 61G1-17.001, 17.002, F.A.C.
[86] S. 481.215(5), F.S.; R. 61G1-24.001, F.A.C.
[87] DBPR, *supra* note 13.

If an architect leaves or otherwise changes their relationship with the business, he or she must inform the Board of Architecture of such within 30 days. If the departing architect was the only qualifier, the architecture business will need a replacement qualifying architect within 60 days to continue to operate.

The bill removes the requirement that a portion of continuing education courses must be devoted to the Florida Building Code.

Professional Engineers

Background

The practice of engineering is regulated by ch. 471, F.S., and by the Florida Board of Professional Engineers (FBPE). Unlike most DBPR professions, the administrative, investigative, and prosecutorial services for FBPE are not provided by DBPR. DBPR contracts with Florida Engineers Management Corporation (FEMC), a non-profit corporation, to provide such services.[88]

In order to be licensed as a professional engineer, a person must successfully pass two examinations:[89]

- the fundamentals examination, and
- then, the principles and practices examination.

Prior to being permitted to sit for the fundamentals examination, an applicant is required to have graduated from an approved engineering curriculum of 4 years or more in a FBPE approved school, college, or university, and have a record of 4 years of active engineering experience. [90]

A person who is licensed in another state is eligible for a professional engineering license by endorsement in Florida if they:[91]

- have graduated from an FBPE-approved engineering program, have passed a licensing examination that is substantially equivalent to the fundamentals examination **and** principles and practice examination, and have satisfied the experience requirements; or
- hold a valid license to practice engineering issued by another state or territory of the United States, if the criteria for issuance of the license were substantially the same as the licensure criteria that existed in this state at the time the license was issued.

FBPE deems that an applicant who seeks licensure by endorsement has passed an examination substantially equivalent to the fundamentals examination when such applicant has held a valid professional engineer's license in another state for 15 years and has had 20 years of continuous professional-level engineering experience.[92]

FBPE also deems that an applicant who seeks licensure by endorsement has passed an examination substantially equivalent to the fundamentals examination **and** the principles and practices examination when such applicant has held a valid professional engineer's license in another state for 25 years and has had 30 years of continuous professional-level engineering experience.[93]

For the 2018-2019 Fiscal Year, there were 36,526 professional engineers. FBPE received 195 complaints against professional engineers, and took 92 disciplinary actions. The initial licensing fee is $230, and the biennial renewal fee is $98.75.[94]

---

[88] S. 471.038(3), F.S.
[89] S. 471.013, F.S.
[90] *Id.*
[91] S. 471.015(3), F.S.
[92] S. 471.015(5), F.S.
[93] *Id.*
[94] Florida Engineers Management Corporation, 2019 Annual Report, 2, https://fbpe.org/wp-content/uploads/2019/09/2018-19-FEMC-Annual-Report.pdf (last visited Jan. 9, 2020); DBPR, *supra* note 13.

Effect the Bill

The bill reduces the number of years that a professional engineer must be licensed in another jurisdiction in order to be deemed to have passed the licensure examinations for a license by endorsement. If such applicant has been licensed in another jurisdiction for:

- 10 years, they are deemed to have passed the fundamentals examination;
- 15 years, they are deemed to have passed both the fundamental examination and the principles and practices examination.

Landscape Architecture

Background

Landscape architects and related business organizations are regulated by ch. 481, pt. II, F.S., and by the Board of Landscape Architecture (BLA).

"Landscape architecture services" means consultation for and preparation of planting plans drawn for compensation, including specifications and installation details for plant materials, soil amendments, mulches, edging, gravel, and other similar materials.[95]

In order to be licensed as a landscape architect, a person must:

- complete:
  - a landscape architecture degree program approved by the Landscape Architectural Accreditation Board (LAAB), or
  - 6 years of practical experience, with some credit available for education credits;[96]
- pass the nationally recognized Landscape Architecture Registration Examination (LARE);[97] and
- have 1 year of practical experience, not including any experience used to qualify to take the examination.[98]

For 2018-2019 Fiscal Year, there were 1,627 landscape architects. DBPR received 39 complaints against landscape architects, and did not take any disciplinary actions. The initial licensing fee is $230, and the biennial renewal fee is $230.[99]

A person who is licensed in another state is eligible for a landscape architecture license by endorsement in Florida if they:[100]

- have graduated from an approved program or have 6 years of related experience, have an additional year of practical experience, and have passed a licensing examination which is substantially equivalent to the LARE; or
- hold a valid license to practice landscape architecture issued by another state or territory of the United States, if the criteria for issuance of such license were substantially identical to the licensure criteria which existed in this state at the time the license was issued.

If an applicant for a license by endorsement has been licensed for at least 5 years in another jurisdiction without disciplinary history, such applicant does not have to complete the additional year of practical experience.[101]

---

[95] S. 481.303(7), F.S.
[96] S. 481.309(1)(b), F.S.
[97] R. 61G10-11.001, F.A.C.
[98] S. 481.310, F.S.
[99] DBPR, *supra* notes 13 and 16.
[100] S. 481.311(3), F.S.
[101] R. 61G10-11.004(2)(e), F.A.C.

A landscape architecture corporation or partnership may offer landscape architecture services if:

- one or more of the principles of the corporation, or partners in the partnership, is a licensed landscape architect; and
- the corporation or partnership has been issued a certificate of authorization by the board.[102]

Applicants for a landscape architecture business certificate of authorization must pay an application fee and initial licensure fee of $455 and a biennial renewal fee of $342.50.[103] Currently, there are 358 landscape architecture businesses.[104]

Continuing Education

Landscape architects must complete 16 hours of continuing education every 2 years. Continuing education courses and providers must be approved by the BLA.[105]

For continuing education provider approval, the BLA requires that the applicant must be professionally associated with the practice or education of landscape architecture, and that the applicant submit certain identifying information about their organization. Certain organizations, such as the American Society of Landscape Architects (ASLA), Florida Department of Transportation, and state colleges and universities in Florida, are deemed approved providers.[106]

The BLA currently individually approves each continuing education course. For continuing education course approval, the BLA requires:[107]

- a description of the subject or subjects to be covered;
- an outline of the course which includes the subjects, topics, and subtopics to be presented;
- a current bibliography;
- the names of each proposed instructor and alternate instructor with his or her resume;
- the total hours of instruction which will be given; and
- if the course is to be delivered by distanced learning, the means by which the course will demonstrate student involvement, and addresses comprehension of content at regular intervals.

The Landscape Architecture Continuing Education System (LACES) is a collaboration of several national landscape architecture organizations, including the ASLA and LAAB, which establishes, maintains, and enforces standards for evaluating professional development and continuing education programs for landscape architects. LACES approves and registers landscape architecture courses that cover a broad range of subject matter, including health, safety, and welfare.[108] Florida does not currently allow licensees to obtain credit through this system for courses that have not been independently approved by BLA.[109]

Effect of the Bill

The bill provides that an applicant who holds both a bachelor's degree of landscape architecture and a master's degree of landscape architecture does not have to demonstrate 1 year of practical experience in landscape architecture to qualify for licensure.

---

[102] S. 481.319(1), F.S.
[103] R. 61G10-12.002, F.A.C.
[104] DBPR, *supra* note 13.
[105] Ss. 455.2179(1), 481.313(3),(4), F.S.
[106] R. 61G10-18.002, F.A.C.
[107] R. 61G10-18.006, F.A.C.
[108] Landscape Architecture Continuing Education System, *About Us*, https://laces.asla.org/AboutUs.aspx (last visited Dec. 19, 2019).
[109] Landscape Architecture Continuing Education System, *Find Your State Licensure Laws & Boards*, https://www.asla.org/StateGovtAffairsLicensure.aspx (last visited Dec. 19, 2019).

The bill provides that a person licensed in another state is also eligible for a license by endorsement in Florida if they have:

- held a valid license to practice landscape architecture in another state or territory of the United States for at least 10 years before the date of application,
- successfully completed an examination that is equivalent to or more stringent than the LARE, and
- made the application either when the applicant's license in another state or territory is active, or within 2 years of when such license was last active.

The bill also provides that an applicant who has met the requirements to be qualified for a license by endorsement except for successful completion of an examination that is equivalent to, or more stringent than the LARE examination, may take the LARE without completing additional education requirements.

The bill removes the requirement that landscape architecture businesses obtain a separate license to operate, while still continuing to allow such businesses to operate in the state. Instead, a licensed landscape architect must apply to qualify the business organization as a qualifying agent in order to engage in the practice of landscape architecture as a business organization. The qualifying agent must provide notice to DBPR within one month of any change in the information contained in the license application.

The bill allows landscape architects to receive hour-for-hour continuing education credit for attending courses that relate to and increase the basic knowledge of landscape architecture as determined by the BLA, offered through LACES, or any other nationally recognized clearinghouse for continuing education, without separate course and provider approval. The landscape architect must submit the syllabus or outline for the course, and proof of attendance of the course, to the BLA to receive credit.

Geology

Background

Geology is regulated by ch. 492, F.S., and by the Board of Professional Geologists. The practice of geology in Florida includes the performance of, or offering to perform, geological services, including, but not limited to, consultation, investigation, evaluation, planning, and geologic mapping.[110]

In order for a person with a license in another state to be eligible for a license by endorsement in Florida, an applicant must:[111]

- be at least 18 years of age;
- not have committed any act or offense which would constitute the basis for disciplining a Florida professional geologist;
- have graduated with a degree in geology, or other degree acceptable to the board with at least 30 semester hours or 45 quarter hours of geological coursework;
- have at least 5 years of professional geological work experience;
- have an active license in good standing in a jurisdiction of the United States;
- have passed an examination which has been approved by the board as substantially equivalent to or more stringent than that of Florida; and
- have successfully passed the laws and rules examination.

However, DBPR may not issue a license to any applicant who is under investigation in any jurisdiction for an offense which would constitute a violation of the practice act.

[110] S. 492.102(7), F.S.
[111] S. 492.108, F.S.

For the 2018-2019 Fiscal Year, there were 2,213 geologists. DBPR received 2 complaints against geologists, and did not take any disciplinary actions. The initial licensing fee is $500, and the biennial renewal fee is $125.[112]

A firm, corporation, or partnership may offer geology services to the public if:
- the entity has on file the name and license number of its affiliated licensed geologists;
- the entity has been issued a certification of authorization by DBPR;
- all final geological documents prepared or approved for the use of the entity shall be dated and signed and sealed by the licensed geologist;
- the entity is not relieved of personal liability due to a licensed geologist practicing at the entity;
- the entity files an application with DBPR.[113]

Any change in the business operating relationship between the business organization and the qualifying geologist must be reported to DBPR within 30 days.

Applicants for a geology business certificate of authorization must pay an application fee of $350 and a biennial renewal fee of $350.[114]

Effect of the Bill

The bill allows a person licensed in another state to also qualify for a license by endorsement in Florida if they have:
- held a valid license to practice geology in another state, trust, territory, or possession of the United States for at least 10 years before the date of application,
- successfully completed a state, regional, national, or other examination that is equivalent to or more stringent than the Florida examination, and
- made the application either when the applicant's license in another state or territory is active, or within 2 years of when such license was last active.

If such applicant has met the requirements for a license by endorsement except successful completion of an examination that is equivalent to or more stringent than the examination required by the board, such applicant may take the examination required by the board.

The bill removes the requirement that geology businesses obtain a separate license to operate, while continuing to allow such organizations to continue to operate in the state. Instead, a licensed geologist must apply to qualify the business organization as a qualifying agent if he or she proposes to engage in the practice of geology as a firm, corporation, or partnership. A qualifying agent is required to update DBPR of any changes in the relationship between himself or herself and the business organization within 30 days.

Asbestos Abatement Business Organization

Background

Asbestos consultants and contractors are regulated by ch. 469, F.S. Asbestos abatement means the removal, encapsulation, enclosure, or disposal of asbestos.[115]

[112] DBPR, *supra* note 13.
[113] S. 481.319(1), F.S.
[114] R. 61G10-12.002, F.A.C.
[115] S. 469.001(1), F.S.

An asbestos consultant may:

- conduct an asbestos survey,
- develop an operation and maintenance plan,
- monitor and evaluate asbestos abatement, and
- prepare asbestos abetment specifications.[116]

An asbestos contractor may perform the work of an asbestos consultant and also conduct asbestos abatement work.[117]

For the 2018-2019 Fiscal Year, there were 453 asbestos professionals in the state. DBPR received 6 complaints against asbestos professionals, and did not take any disciplinary actions. The initial licensing fee is $250, and the biennial renewal fee is $155.[118]

If an asbestos consultant or contractor practices through a business organization, the business organization must be licensed as an asbestos abatement business. Each licensed business organization must have a qualifying agent that is licensed under ch. 469, F.S. If the qualifying agent terminates his or her affiliation with the business organization and is the only qualifying agent for the business organization, another qualifying agent must qualify the business organization within 60 days after the termination, and may not engage in the practice of asbestos abatement until it is qualified. [119]

Applicants for an asbestos abatement business license pay an application fee of $300, an initial licensure fee of $250. The biennial renewal fee is $255.[120] For the 2018-2019 Fiscal Year, DBPR received no complaints against asbestos abatement businesses, and did not take any disciplinary actions.[121]

Effect of the Bill

The bill removes the requirement for asbestos abatement licensees to obtain a separate license for an asbestos abatement business organization. Instead, if an applicant wants to practice under a firm offering asbestos abatement services, the qualifying agent must apply and have the license issued in his or her name, and the business organization name must be noted on the license. The qualifying agent must still be a licensed asbestos abatement professional, and must prove they are qualified to supervise and are financially responsible.

The bill does not amend the responsibilities of licensees under ch. 469, F.S., or otherwise effect the obligations of asbestos abatement consultants or contractors.

Veterinary Medicine

Background

Veterinary medical practice is regulated by ch. 474, F.S., and by the Board of Veterinary Medicine.[122]

A veterinarian is a health practitioner licensed by the board to engage in the practice of veterinary medicine in Florida,[123] which is the diagnosis of medical conditions of animals, and the prescribing or administering

---

[116] S. 469.003, F.S.
[117] S. 469.003(3), F.S.
[118] DBPR, *supra* note 13.
[119] S. 469.006, F.S.
[120] R. 61E1-3.001, F.A.C.
[121] DBPR, *supra* note 13.
[122] *See* ss. 474.204 through 474.2125, F.S., concerning the powers and duties of the board.
[123] *See* s. 474.202(11), F.S.

of medicine and treatment to animals for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease, or holding oneself out as performing any of these functions.[124]

To become a licensed veterinarian, an applicant must have:

- graduated from a college of veterinary medicine accredited by the American Veterinary Medical Association Council on Education (AVMAE); **or** from a college of veterinary medicine listed in the American Veterinary Medical Association Roster of Veterinary Colleges of the World (AVMARVC) and obtained a certificate from the Education Commission for Foreign Veterinary Graduates;
- successfully completed the North American Veterinary Licensing Examination (NAVLE), or an examination determined by the board to be equivalent; and
- successfully completed an examination of the laws and rules governing the practice of veterinary medicine in Florida.[125]

For the 2018-2019 Fiscal Year, there were 11,522 veterinarians. DBPR received 447 complaints against veterinarians, and took 79 disciplinary actions. The initial licensing fee is $100, and the biennial renewal fee is $265.[126]

The Program for the Assessment of Veterinary Education Equivalence (PAVE) is a common alternative pathway for graduates of international, non-accredited programs to practice in the United States. PAVE evaluates such programs on behalf of participating American Association of Veterinary State Boards.[127]

A person who is licensed in another state or country is eligible for a license by endorsement in Florida if they:[128]

- successfully complete an examination of the laws and rules governing the practice of veterinary medicine in Florida; and
- either:
    - hold a valid license to practice veterinary medicine in another jurisdiction of the United States for the 3 years immediately preceding the application for licensure, provided that the requirements for licensure are equivalent to or more stringent than a Florida license; or
    - have graduated from an AVMAE or AVMARVC program and have successfully completed an examination which is equivalent to or more stringent than the NAVLE.

DBPR may not issue a license by endorsement to any applicant who is under investigation in any state, territory, or the District of Columbia for an act which would constitute a violation of the practice act until the investigation is complete and disciplinary proceedings have been terminated.[129]

A "limited-service veterinary medical practice" means offering or providing limited types of veterinary services for a limited time at any location that has a primary purpose other than providing veterinary medical service at a permanent or mobile establishment. Such practice must provide veterinary medical services for privately owned animals that do not reside at that location.[130] Such practice must obtain a permit and must register each location where a limited service clinic is held. A licensed veterinarian must supervise the limited practice.[131]

---

[124] *See* s. 474.202(9), F.S. Also included is the determination of the health, fitness, or soundness of an animal, and the performance of any manual procedure for the diagnosis or treatment of pregnancy or fertility or infertility of animals.
[125] R. 61G18-11.002, F.A.C.
[126] DBPR, *supra* notes 13 and 16.
[127] American Association of Veterinary State Boards, *International Pathways*, https://www.aavsb.org/pave/ (last visited Mar. 14, 2019).
[128] S. 474.217(1), F.S.
[129] S. 474.217(2), F.S.
[130] S. 474.202(6), F.S.
[131] S. 474.215(7)-(8), F.S.

The board establishes minimum standards for the operation of limited service veterinary medical practices.[132] The board has authorized by rule such practices to perform microchipping,[133] vaccinations, immunizations, and parasitic control.[134]

Employees, agents, or contractors of animal shelters, humane organizations, or animal control agencies operated by a humane organization or by a county, municipality, or other incorporated political subdivision, may not perform microchipping procedures on cats and dogs unless they are a veterinarian or a veterinarian is supervising the procedure.[135]

Effect of the Bill

The bill allows graduates of a veterinary medicine program recognized by the PAVE to be eligible for licensure as a veterinarian.

The bill codifies the current board rule allowing limited service veterinary practices to perform microchipping, vaccinations, immunizations, and parasitic control. The bill also allows employees, agents, or contractors of animal shelters, humane organizations, or animal control agencies operated by a humane organization or by a county, municipality, or other incorporated political subdivision to perform microchipping services on cats and dogs without veterinarian supervision.

The bill allows applicants for a license by endorsement who have been licensed in a jurisdiction of the United States for 3 years to also be eligible for licensure in Florida as long as they have completed a licensing examination that is equivalent to or more stringent than the NAVLE.

Construction Contractors

Background

Construction contractors are regulated by part I of ch. 489, F.S., and by the Construction Industry Licensing Board (CILB).

In order to become a construction contractor, an applicant must meet the following criteria:[136]

- be of good moral character;
- be at least 18 years of age;
- successfully pass the certification examination; and
- meet eligibility requirements according to a combination of education and experience as approved by the board, which must include at least 1 year of related experience.

For the 2018-2019 Fiscal Year, there were 90,536 construction contractors. DBPR received 8,873 complaints against construction contractors, and took 1,323 disciplinary actions. The initial licensing fee is $245, and the biennial renewal fee is $205.[137]

By CILB rule, when an applicant passes an examination and wishes to use those test scores for a license upgrade or a different license type, such passage is only valid for 4 years.[138]

---

[132] S. 474.215(7), F.S.
[133] A microchip is a small, electronic chip enclosed in a glass cylinder which is injected under the skin of a pet. When a chip is scanned, it transmits the pet's identification number, which is used in the manufacturer's microchip registry to find the owner. American Veterinary Medical Association, *Microchipping of Animals FAQ*, https://www.avma.org/microchipping-animals-faq (last visited Dec. 19, 2019).
[134] R. 61G18-15.007(1), F.A.C.
[135] Ss. 474.202(5), 823.15, F.S.
[136] S. 489.111(2)(c)1.-3., F.S.
[137] DBPR, *supra* notes 13 and 16.
[138] R. 61G4-16.005, F.A.C.

A person who is licensed in another state is eligible for a license by endorsement in Florida if the:[139]

- criteria for issuance of such license were substantially equivalent to Florida's current certification criteria; or
- state or territory has entered into a reciprocal agreement with the board for the recognition of contractor licenses issued in that state, based on criteria for the issuance of such licenses that are substantially equivalent to the criteria for certification in this state.

An unlicensed person may perform work that falls under the scope of contracting if it is casual, minor, or inconsequential in nature, and the aggregate contract price for all labor and materials is less than $1,000, subject to certain requirements. This is generally called the "handyman exception." The "handyman exception" was enacted in 1979 and the amount for the exception has not been increased since.[140]

DBPR's umbrella chapter, ch. 455, F.S., allows DBPR or a board thereunder to deny a license based on applicant's license disciplinary history in any jurisdiction.[141]

Effect of the Bill

The bill clarifies that a licensure examination passage does not expire and may be used at any time to qualify for another license type.

The bill allows an applicant for a license by examination who has a 4 year building construction degree, or another degree approved by the CILB, to be deemed to have passed the licensure examination.

The bill allows an applicant to also qualify for a license by endorsement if they have:

- held a valid license to practice the same type of construction contracting in another state or territory for at least 10 years before the date of application,
- complied with workers' compensation requirements, shown proof of financial health of their business organization, and submitted fingerprints, and
- made the application either when the applicant's license in another state or territory is active, or within 2 years of when such license was last active.

The bill expressly states that the CILB may evaluate an applicant's prior licensure disciplinary history when making a decision to grant a license by endorsement.

The bill increases the maximum for the "handyman exception" to $2,500, from less than $1,000.

Electrical Contractors

Background

Electrical and alarm system contractors are regulated by part II of ch. 489, F.S., and by the Electrical Contractor Licensing Board (ECLB).

In order to become an electrical contractor or alarm system contractor, a person must submit an application to DBPR and meet the following criteria:

- be at least 18 years of age,
- be of good moral character,
- successfully pass the certification examination, and
- meet eligibility requirements according to a combination of education and experience as approved by the board.[142]

---

[139] S. 489.115(3), F.S.
[140] S. 489.103(9), F.S.
[141] S. 455.227(1)(f), F.S.
[142] S. 489.511(1)(a) and (b), F.S.

For the 2018-2019 Fiscal Year, there were 14,058 electrical contractors. DBPR received 870 complaints against electrical contractors, and took 248 disciplinary actions. The initial licensing fee is $300, and the biennial renewal fee is $300.[143]

Electrical contractors and burglar alarm contractors must complete 14 hours of continuing education each biennium to renew their license. Such continuing education must include at least 7 hours on technical subjects, 1 hour on workers' compensation, 1 hour on workplace safety, 1 hour on business practices, and for alarm system contractors and electrical contractors engaged in alarm system contracting, 2 hours on false alarm prevention.[144]

A person who is licensed in another state is eligible for a license by endorsement in Florida if the:
- criteria for issuance of such license was substantially equivalent to Florida's current certification criteria; or
- state or territory has entered into a reciprocal agreement with the board for the recognition of contractor licenses issued in that state, based on criteria for the issuance of such licenses that are substantially equivalent to the criteria for certification in this state.

Only examinations from North Carolina, California, and Georgia have been found to be substantially similar to Florida.[145]

A "burglar alarm system agent" means a person:
- Who is employed by a licensed alarm system contractor or licensed electrical contractor; and
- Whose specific duties include any of the following activities of alarm system contracting: altering, installing, maintaining, moving, repairing, replacing, servicing, selling, or monitoring an intrusion or burglar alarm system for compensation.[146]

Before an electrical contractor or alarm system contractor may employ an agent, the agent must complete a minimum of 14 hours of training from an ECLB approved provider, which includes basic alarm system electronics in addition to related training including CCTV and access control training, with at least 2 hours of training in the prevention of false alarms.[147]

Effect of the Bill

The bill allows an applicant to also qualify for a license by endorsement if they have:
- held a valid license to practice electrical or alarm system contracting in another state or territory for at least 10 years before the date of application,
- complied with workers' compensation requirements, shown proof of financial health of their business organization, and has shown proof of good moral character, and
- made either when the applicant's license in another state or territory is active, or within 2 years of when such license was last active.

The bill reduces the amount of continuing education required for electrical and alarm system contractors every 2 years from 14 hours to 7 hours, and reduces the amount of required hours devoted to technical subjects to 1 hour.

The bill allows burglar alarm system agents to have 90 days to complete their required 14 hour training course after employment by an electrical or alarm system contractor.

---

[143] DBPR, *supra* notes 13 and 16.
[144] S. 489.517(4), F.S.
[145] Florida Department of Business and Professional Regulation, Reciprocity and Endorsement, 6 (2018).
[146] S. 489.505(25), F.S.
[147] S. 489.518(1)(b), F.S.

Building Code Administrators, Inspectors, and Plans Examiners

Building officials, inspectors, and plans examiners are regulated by part XII of ch. 468, F.S., and by the Florida Building Code Administrators and Inspectors Board (BCAIB).[148]

A building code administrator, also known as a building official, supervises building code activities, including plans review, enforcement, and inspection.[149]

A building code inspector inspects construction that requires permits to determine compliance with building codes and state accessibility laws. An inspector's ability to practice is limited to the category or categories in which the inspector has been certified. The inspector categories are:

- Building inspector,
- Coastal construction inspector,
- Commercial electrical inspector,
- Residential electrical inspector,
- Mechanical inspector,
- Plumbing inspector,
- One and two family dwelling inspector, and
- Electrical inspector.[150]

A one and two family dwelling inspector may inspect and determine that one and two family dwellings and accessory structures are constructed in accordance with the provisions of the building, plumbing, mechanical, accessibility, and electrical codes.[151]

A plans examiner reviews plans submitted for building permits to determine design compliance with construction codes. A plans examiner's ability to practice is limited to the category or categories the plans examiner is certified in. The plans examiner categories are:

- Residential plans examiner,
- Building plans examiner,
- Plumbing plans examiner,
- Mechanical plans examiner, and
- Electrical plans examiner.[152]

In order to become licensed, building code administrators, inspectors, and plans examiners must take a licensing exam in the category in which they seek licensure.

In order to sit for the administrator exam, a person must be at least 18 years of age, be of good moral character, and meet one of the following eligibility requirements:[153]

- have 10 years of combined experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent, with at least 5 years of such experience in supervisory positions; or
- have a combination of no more than 5 years of postsecondary education in the field of construction or related field and at least 5 years of experience as an architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent; and completed training on ethics and Florida laws relating to administrators.

[148] S. 468.605, F.S.
[149] S. 468.603(1), F.S.
[150] S. 468.603(4), F.S.
[151] S. 468.603(4)(f), F.S.
[152] S. 468.603(7), F.S.
[153] S. 468.609(3), F.S.

In order to sit for the plans examiner or inspector exam, a person must be at least 18 years of age, be of good moral character, and meet one of the following eligibility requirements:[154]

- have 5 years of combined relevant experience;
- have 4 years of combined postsecondary education and relevant experience;
- have 4 years of combined technical education and relevant experience;
- complete an approved cross-training program and have at least 2 years of experience;
- hold a standard certificate issued by the BCAIB or a firesafety inspector license, and
    - have at least 5 years of relevant experience as an inspector or plans examiner;
    - have a minimum of 3 years of experience in inspection or plan review, and completed an inspector or plans examiner training program in the new category sought;
    - have a minimum of 5 years of experience in firesafety inspection, and completed a training program of not less than 200 hours in the new category sought; or
    - complete an approved training program of not less than 300 hours in inspection or plans review; and a minimum of 2 years of experience in inspection; plans review; fire code inspections and fire plans review of new buildings as a firesafety inspector; or construction; or
- complete a 4 year internship certification program.

For the 2018-2019 Fiscal Year, there were 9,650 building code professionals. DBPR received 79 complaints against building code professionals, and took 6 disciplinary actions. The initial licensing fee is $101.25, or $5 for city or county employees, and the biennial renewal fee is $5.[155]

A provisional license may be granted to a person who is qualified to sit for the administrator, inspector, or plans examiner exam, but has not yet taken the exam. A provisional license allows a person to engage in the duties of whichever licensure category the license is granted for the duration of such license. Provisional licenses are valid for 1 year, and may be renewed by the BCAIB **only** for just cause for up to 2 more years. However, an applicant who is completing an internship program for a plans examiner license may apply to the BCAIB for a provisional certificate that is valid for the duration of the internship program.[156]

A person who is licensed in another state is eligible for a building code administrator, inspector, or plans examiner license by endorsement in Florida if they:[157]

- have met experience, educational, or training program requirements;
- completed the Florida principle and practice exam; and
- completed the relevant International Codes Council (ICC) exams for the category sought.

Effect of the Bill

The bill renames a "one and two family dwelling inspector" to "residential inspectors" and expands the scope to include inspecting one-family, two-family, or three-family residences not exceeding two habitable stories above no more than one uninhabitable story, and accessory use structures in connection therewith, for compliance with the building, plumbing, mechanical, accessibility, and electrical codes.

The bill reduces the amount of experience and education required for certain pathways to become a building code inspector or plans examiner. The requirements are reduced to:

- 4 years from 5 years for combined relevant experience,
- 3 years from 4 years for combined post-secondary education and relevant experience, and
- 3 years from 4 years for combined technical education and relevant experience.

---

[154] S. 468.609(2), F.S.
[155] DBPR, *supra* notes 13 and 16.
[156] S. 468.609, F.S.
[157] S. 468.613, F.S.; R. 61G19-6.0035(4), F.A.C.

The bill provides that a person licensed in another state is also eligible for a license by endorsement in Florida if they:

- are at least 18 years of age;
- are of good moral character;
- hold a valid license to practice as a building code administrator, inspector, or plans examiner in another state or territory of the United States for at least 10 years before the date of application,
- successfully completed an applicable examination administered by the ICC, and
- made the application either when the applicant's license in another state or territory is active, or within 2 years of when such license was last active.

The bill extends the period of time for which a provisional license is initially valid, from 1 year to 2 years.

Home Inspectors

Background

Home inspectors are regulated by part XV of ch. 468, F.S., and by the Home Inspection Services Licensing Program.

In order to obtain licensure as a home inspector, a person must:

- have good moral character;
- carry required liability insurance;
- complete a course study of at least 120 hours; and
- pass the required examination.[158]

For the 2018-2019 Fiscal Year, there were 7,576 home inspectors. DBPR received 141 complaints against construction contractors, and took 4 disciplinary actions. The initial licensing fee is $230, and the biennial renewal fee is $105.[159]

A person who is licensed in another state is eligible for a license by endorsement in Florida who:[160]

- is of good moral character;
- holds a valid license to practice home inspection services in another state or territory of the United States whose educational requirements are substantially equivalent to Florida; and
- has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the Florida examination.

DBPR may not issue a license by endorsement to any applicant who is under investigation in another state for any act that would constitute a violation of the practice act until the investigation is complete and disciplinary proceedings have been terminated.[161]

Effect of the Bill

The bill allows an applicant to also qualify for a license by endorsement if they have:

- a liability insurance policy as required for other licensees,
- held a valid license to practice home inspection services in another state or territory of the United States for at least 10 years before the date of application, and
- made the application either when the applicant's license in another state or territory is active, or within 2 years of when such license was last active.

---

[158] S. 468.8313, F.S.
[159] DBPR, *supra* notes 13 and 16.
[160] S. 468.8414(3), F.S.
[161] S. 468.8314(3), F.S.

Certified Public Accountants

Background

The Board of Accountancy within DBPR is charged with regulating the practice of public accountancy in Florida. To be licensed as a certified public accountant, a person must:[162]

- be of good moral character,
- pass the licensure exam, and
- have at least 150 semester hours of education, with a focus on accounting and business.

For the 2018-2019 Fiscal Year, there were 41,320 certified public accountants. DBPR received 456 complaints against certified public accountants, and took 93 disciplinary actions. The initial licensing fee is $50, and the biennial renewal fee is $95.[163]

An applicant is eligible for a license by endorsement who:[164]

- is of good moral character;
- has completed 80 hours of CE, if it has been at least 2 years since passing the licensing examination;[165] and
- either:
    - is not licensed, but has otherwise met the licensing requirements and has passed a licensing examination that is substantially equivalent to the Florida examination; or
    - holds a valid license to practice public accounting issued by another state or territory of the United States, if the criteria for issuance of such license are substantially equivalent to a Florida license or is otherwise permitted.

Effect of the Bill

The bill removes the requirement that applicants for a license by endorsement who passed a licensing exam more than 2 years prior to the date of application must complete 80 hours of continuing education hours before they are eligible for such license.

Florida Building Commission

Background

In 2000, the Legislature authorized implementation of the first statewide Florida Building Code (Code), which replaced all local building codes.[166] In 2004, the state adopted the International Code Council's I-Codes as the base of the Code to create standards used in design, building, and compliance processes to "construct safe, sustainable, affordable, and resilient structures."[167]

The Florida Building Commission (Commission) was created to implement the Code. The Commission, which is housed within DBPR, is a 27-member technical body responsible for the development, maintenance, and interpretation of the Code. The Commission also approves products for statewide acceptance. Members are appointed by the Governor and confirmed by the Senate, and include design professionals, contractors, and government experts in the various disciplines covered by the Code.

---

[162] S. 473.308(2)-(5), F.S.
[163] DBPR, *supra* notes 13 and 16.
[164] S. 468.8414(3), (4), F.S.
[165] R. 61H1-29.003, F.A.C.
[166] *Id.* & DBPR, *Overview of the Florida Building Code*, https://www.floridahousing.org/.../aboutflorida/.../overview-of-the-florida-building-commission-and-standard.pptx (last visited on Oct. 18, 2017).
[167] International Code Council, *About the ICC*, http://www.iccsafe.org/about-icc/overview/about-international-code-council/ (last visited on Oct. 18, 2017) & International Code Council, *ICC Code Development Process*, https://cdn-web.iccsafe.org/wp-content/uploads/ICC-Code-Development-Process.pdf (last visited on Oct. 18, 2017).

Members, who must be able to do business in the state and must be actively engaged in the designated profession, include the following:

- One architect;
- One structural engineer;
- One air-conditioning or mechanical contractor;
- One electrical contractor;
- One member from fire protection engineering or technology;
- One general contractor;
- One plumbing contractor;
- One roofing or sheet metal contractor;
- One residential contractor;
- Three members who are municipal or district code enforcement officials, one of whom is also a fire marshall;
- One member who represents the Department of Financial Services;
- One member who is a county code enforcement official;
- One member of a Florida-based organization of persons with disabilities or a nationally chartered organization of persons with disabilities with chapters in the state;
- One member of the manufactured buildings industry;
- One mechanical or electrical engineer;
- One member who is a representative of a municipality or a charter county;
- One member of the building products manufacturing industry;
- One member who is a representative of the commercial building owners and managers industry;
- One member who is a representative of the insurance industry;
- One member who is a representative of public education;
- One member who is a swimming pool contractor;
- One member who is a representative of the green building industry and who is a third-party commission agent, a Florida board member of the United States Green Building Council or Green Building Initiative, a professional who is accredited under the International Green Construction Code (IGCC), or a professional who is accredited under Leadership in Energy and Environmental Design (LEED);
- One member who is a representative of a natural gas distribution system;
- One member who is a representative of the Department of Agriculture and Consumer Services' Office of Energy; and
- One member who is the chair. [168]

The Commission has 11 Technical Advisory Committees (TAC) ranging from the building structural TAC to the swimming pool TAC.[169] TACs are made up of Commission members and other parties who advise the Commission on declaratory statements, proposed amendments, and any other areas of interest of the Commission.[170]

Effect of the Bill

The bill reduces the number of members on the Commission from 27 to 19. The membership under the bill is as follows:

- One licensed architect with at least 5 years of experience in the design and construction of buildings designated for Group E or Group I occupancies by the Florida Building Code;
- One structural engineer;
- One air-conditioning contractor, mechanical contractor, or mechanical engineer;
- One electrical contractor or electrical engineer;

---

[168] S. 553.74, F.S.
[169] DBPR, *Florida Building Code Online*, https://www.floridabuilding.org/c/c_commission.aspx (last visited on Oct. 18, 2017).
[170] DBPR, *Florida Building Code Standards*, http://www.myfloridalicense.com/dbpr/bcs/program_committees.html (last visited on Oct. 18, 2017), & Rule 61G20-2.001 F.A.C.

- One certified general contractor or one certified building contractor. The Associated Builders and Contractors of Florida, the Florida Associated General Contractors Council, the Florida Home Builders Association, and the Union Contractors Association are encouraged to recommend a list of candidates for consideration;
- One plumbing contractor;
- One roofing or sheet metal contractor;
- One certified residential contractor;
- Three members who are municipal, county, or district code enforcement officials, one of whom is also a fire marshall;
- One member of a Florida-based organization of persons with disabilities or a nationally chartered organization of persons with disabilities with chapters in the state which complies with or is certified to be compliant with the requirements of the Americans with Disability Act of 1990, as amended.;
- One member of the manufactured buildings industry;
- One member of the building products manufacturing industry;
- One member who is a representative of the commercial building owners and managers industry;
- One member who is a representative of the insurance industry;
- One member who is a swimming pool contractor;
- One member who is a representative of the green building industry and who is a third-party commission agent, a Florida board member of the United States Green Building Council or Green Building Initiative, a professional who is accredited under the International Green Construction Code (IGCC), or a professional who is accredited under Leadership in Energy and Environmental Design (LEED); and
- One member who is a representative of a natural gas distribution system.

The bill removes the following members from the Commission:

- One member from fire protection engineering or technology;
- One member who represents the Department of Financial Services;
- One member who is a county code enforcement official;
- One member who is a representative of a municipality or a charter county;
- One member who is a representative of public education;
- One member who is a representative of the Department of Agriculture and Consumer Services' Office of Energy; and
- One member who is solely the chair.

This section becomes effective January 1, 2021.

Employee Leasing Companies

Background

Employee Leasing Companies are regulated by part XI of ch. 468, F.S., and the Board of Employee Leasing Companies. Generally, 'employee leasing' means an arrangement whereby a leasing company assigns its employees to a client and allocates the direction of and control over the leased employees between the leasing company and the client, with exceptions.[171]

Currently, if an applicant is denied a license, or a licensee had their license revoked, they are ineligible to reapply for a license for a period of 1 year following final agency action. This time restriction does not apply to administrative denials or revocations entered because:[172]

- the applicant or licensee has made an inadvertent error or omission on the application;
- the experience documented to the board was insufficient at the time of the previous application; or

[171] S. 468.522, F.S.
[172] S. 468.524(4), F.S.

- DBPR is unable to complete the criminal background investigation because of insufficient information from the Florida Department of Law Enforcement, the Federal Bureau of Investigation, or any other applicable law enforcement agency.

Effect of the Bill

The bill removes the 1 year time restriction for reapplication for initial applicants who were denied a license, but retains the time restriction for licensees who had their license revoked.

Pugilistic Timekeepers and Announcers

Background

Chapter 548, F.S., governs the Florida State Boxing Commission (FSBC) under DBPR. The function of the FSBC is to license and regulate pugilistic events, including professional boxing, kickboxing, and mixed martial arts. The FSBC ensures that all matches are conducted in accordance with provisions of state laws and rules. The FSBC designates employees to attend the matches, appoints match officials, and ensures the matches are held in a safe and fair manner.

A 'timekeeper' is an individual who is assigned the duties to maintain the time for each round during a pugilistic event.[173]

An 'announcer' is an individual who has the authority to make all announcements, including the result of the event, during a pugilistic event.[174]

In order to obtain a license, a timekeeper or announcer applicant must:[175]
- complete an application in a form prescribed by the FSBC,
- be at least 18 years of age, and
- pay an application fee of $50.

Currently, there are 10 licensed timekeepers and 17 licensed announcers. According to DBPR, there were no disciplinary orders against timekeepers or announcers in the 2018-2019 Fiscal Year. [176]

Effect of the Bill

The bill removes all licensure and regulatory requirements for boxing announcers and timekeepers.[177]

Yacht and Ship Broker Branch Offices

Background

Yacht and ship brokers, salespersons, and related business organizations are regulated by ch. 326, F.S., and by the Yacht and Ship Broker's Section of DBPR.

Each yacht and ship broker must maintain a principle place of business in this state and may establish branch offices in the state. A separate license must be maintained for each branch office.

The initial branch office license fee and the biennial renewal fee are both $100.[178] There are no requirements of the branch office other than to obtain licensure and there are no inspection requirements.

---

[173] R. 61K1-3.0001(19), F.A.C.
[174] R. 61K1-3.0001(1), F.A.C.
[175] S. 548.021, F.S.
[176] DBPR, *supra* note 13.
[177] The bill also makes conforming changes to cross-references.
[178] R. 61B-60.002, F.A.C.

Currently, there are 73 yacht broker branch offices. According to DBPR, there were no disciplinary orders against branch offices in the 2018-2019 Fiscal Year.[179]

Effect of the Bill

The bill removes the requirement for yacht and ship brokers to obtain a separate branch office license for each branch office. The bill does not remove the requirement for a broker to be licensed or to maintain a principle place of business in Florida.

Labor Organizations

Background

Labor organizations and related business agents are regulated by part I of ch. 447, F.S., and by the Labor Organizations Program at DBPR.[180]

A labor organization is defined as "[a]ny organization of employees or local or subdivision thereof, having within its membership residents of the state, whether incorporated or not, organized for the purpose of dealing with employers concerning hours of employment, rate of pay, working conditions, or grievances of any kind relating to employment and recognized as a unit of bargaining by one or more employers doing business in this state."[181] In Florida, all labor organizations are required to register with DBPR and all business agents of labor organizations must obtain a license.

The National Labor Relations Board (NLRB) is an independent federal entity which provides the same type of union oversight as DBPR and is active in Florida, maintaining offices in Tampa and Miami. The United States Department of Labor, Office of Labor Management Standards also registers unions at the federal level.[182]

Business agents are defined as "[a]ny person, without regard to title, who shall, for a pecuniary or financial consideration, act or attempt to act for any labor organization in:

- The issuance of membership or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization;
- Soliciting or receiving from any employer any right or privilege for employees."[183]

Applicants for a business agent license pay a $25 fee for licensure. Labor organization applicants must pay an annual fee of $1.

Currently, there are 319 licensed labor organizations and 465 associated business agents. According to DBPR, there were no disciplinary orders against labor organizations or business agents in the 2018-2019 Fiscal Year.[184]

Effect of the Bill

The bill repeals the licensing requirements and provisions related to licensure of labor organizations and business agents.

---

[179] DBPR, *supra* note 16.
[180] This does not include certain public employee organizations, which are regulated by the Public Employees Relations Commission, an independent, quasi-judicial agency described in pt. II of ch. 447, F.S.
[181] S. 447.02(1), F.S.
[182] National Labor Relations Board, *What We Do*, https://www.nlrb.gov/about-nlrb/what-we-do (March 16, 2019); United States Department of Labor, Office of Labor Management Standards, *Reports Required Under the LMRDA and the CSRA*, https://www.dol.gov/olms/regs/compliance/rrlo/repreq.htm (March 16, 2019); DBPR, *supra* note 16.
[183] S. 447.02(2), F.S.
[184] DBPR, *supra* notes 13 and 16.

Student Loan Defaults and Disciplinary Action

Background

Many states allow a licensing agency to discipline a licensee when they default on student loans or scholarship obligations.[185] In Florida, the only agency that has express authority to discipline a licensee for such action is the Florida Department of Health (DOH). DOH brought 722 such disciplinary actions against health practitioners in the 2018-2019 Fiscal Year.[186] Neither DBPR nor a board thereunder has ever disciplined a licensee for defaulting on a student loan.[187]

Proponents of such disciplinary licensing laws argue that:

- The threat of losing a professional license is powerful tool to ensure borrowers stay current on their student loans, and as a result, these laws reduce the number borrowers who default; and
- It is in the taxpayers' interest to ensure borrowers are repaying their government-backed student loans because the state or federal government foots the bill if borrowers default.[188]

Opponents of such disciplinary licensing laws argue that states are using their licensing authority as a punitive debt collection tool, and that the purpose of licensing laws is to protect the health and safety of the public, not to operate as defacto debt collectors.[189] Opponents also argue that "if people are unable to work in their chosen field – the one they went to school for and presumably took out loans to fund – how can they be expected to pay their debt?"[190]

Over the past few years, there have been bills filed in Congress that would prevent all states from taking such disciplinary measures, but so far they have been unsuccessful.[191]

Effect of the Bill

The bill specifically prohibits DBPR or any board under DBPR from disciplining a licensee solely for defaulting or becoming delinquent on a federal or state guaranteed student loan or a scholarship obligation.

Dietetics and Nutrition

Background

Dieticians and nutritionists are regulated by ch. 468, Part X, F.S., and by the Council of Dietetics and Nutrition, which is under the delegated authority of the Board of Medicine, at DOH.[192]

The practice of dietetics and nutrition includes:[193]

- assessing nutritional needs and status using appropriate data;
- recommending appropriate dietary regimens, nutrition support, and nutrient intake;

---

[185] Andrew Wagner, *License Suspension for Student Loan Defaulters*, National Conference of State Legislatures Legisbrief, Oct. 1, 2018, http://www.ncsl.org/research/labor-and-employment/license-suspension-for-student-loan-defaulters.aspx (last visited Mar. 19, 2019).
[186] Email from Gary Landry, Office of Legislative Planning, Department of Health, Student Loan information as promised (Oct. 30, 2019).
[187] Email from Colton Madill, Office of Legislative Affairs, Department of Business and Professional Regulation, RE: HB 115 (Oct. 30, 2019).
[188] Jessica Silver-Greenberg, Stacey Cowley, & Natalie Kitroeff, *When Unpaid Student Loan Bills Mean You Can No Longer Work*, The New York Times (Nov. 18, 2017) https://www.nytimes.com/2017/11/18/business/student-loans-licenses.html?_r=0 (last visited on Nov. 26, 2019).
[189] *Id.*
[190] Courtney Nagle, *Student Loan Debt Could Affect Your Job in 13 States*, U.S. News, https://www.usnews.com/education/blogs/student-loan-ranger/articles/2019-04-10/these-states-could-revoke-your-professional-license-over-student-loan-debt (last visited Jan. 10, 2020).
[191] Wagner, *supra* note 178.
[192] S. 468.506, F.S.
[193] S. 468.503(5), F.S.

- ordering therapeutic diets;
- improving health status through nutrition, research, counseling, and education; and
- developing, implementing, and managing nutrition care systems, including evaluating, monitoring, and maintaining appropriate standards of high quality food and nutrition services.

Nutrition counseling includes advising and assessing individuals or groups on appropriate nutritional intake by integrating information from a nutrition assessment.[194] A nutrition assessment is an evaluation of nutritional needs using appropriate data to determine nutrient needs or status and making appropriate nutrition recommendations.[195]

An individual must be licensed to practice dietetics and nutrition or provide nutrition counseling for remuneration, or to hold oneself out as a practitioner of dietetics and nutrition practice or nutrition counseling.[196] To qualify for licensure, an applicant must:[197]

- possess a baccalaureate or post-baccalaureate degree in human nutrition, food and nutrition, dietetics, or food management, or an equivalent course of study, from an accredited school or program;
- complete preprofessional experience of at least 900 hours or has education or experience determined to be equivalent by the Board of Medicine; and
- pass a licensure examination.

However, there are a number of exceptions to these licensure requirements. Licensing is not required for a person:[198]

- Licensed in this state as a certain health practitioner, as long as such person is engaging in the practice of the profession for which he or she is licensed.
- Employed by the federal government, if such person engages in dietetics solely under the direction or control of the organization by which the person is employed.
- Employed as a cooperative extension home economist.
- Pursuing a course of study leading to a degree in dietetics and nutrition from an accredited school, if the activities and services are a part of a supervised course of study and the person's title clearly indicates that he or she is a student or trainee.
- Fulfilling the required preprofessional experience required for licensure.
- Registered or licensed in another state practicing dietetics or nutrition incidental to a course of study when taking or giving a postgraduate course or other course of study in this state, if the person holds an appointment on the faculty of an accredited school.
- Markets or distributing food, food materials, or dietary supplements, or engaging in the explanation of the use and benefits of those products or the preparation of those products, if the person does not engage for a fee in dietetics and nutrition practice or nutrition counseling.
- Marketing or distributing food, food materials, or dietary supplements, or engaging in the explanation of the use or preparation of such products, as an employee of a permitted pharmacy.
- Employed as an educator by a nonprofit organization approved by the council, a governmental entity, an elementary or secondary school, an accredited institution of higher education, if his or her activities are part of such employment.
- Providing weight control services or related weight control products, provided that the program has been reviewed by, consultation is available from, and no program change can be made without approval by a licensed dietitian/nutritionist.

---

[194] S. 468.503(10), F.S.
[195] S. 468.503(9), F.S.
[196] S. 468.504, F.S.
[197] S. 468.509, F.S. An individual may be licensed without examination if the individual demonstrates that he or she is a registered dietician or nutritionist with the Commission on Dietetic Registration or is a certified as nutrition specialist by the Certification Board of Nutrition Specialist or is a diplomat of the American Clinical Board of Nutrition.
[198] S. 468.505, F.S.

- Employed by a licensed hospital, nursing home, continuing care facility, or assisted living facility, if the person is employed in compliance with governing facility licensure laws and rules regarding the operation of its dietetic department.
- Employed by a nursing facility exempt from licensure.
- Exempt from licensure under ch. 464, F.S.
- Employed as a dietetic technician.
- Disseminating information, conducting a class or seminar, or giving a speech related to nutrition, if such information, class, seminar or speech is provided without a fee.

Individuals who provide dietary or nutrition information for compensation as a part of a profession that is not regulated, such as a fitness trainer or a life coach, are subject to prosecution for the unlicensed practice of a regulated health profession.[199]

Applicants for a dietetics and nutrition license must pay an initial examination fee of $200, an application fee of $80, an initial license fee of $80, and an unlicensed activity fee of $5.[200] The biennial renewal fee is $75.[201]

Currently, 7 states do not register or license dietitians: Arizona, California, Colorado, Michigan, New Jersey, Texas, and Virginia.[202] California, Texas, and Virginia provide title protection for dietitians.[203] Title protection limits the use of certain titles, such as "dietitian" or "nutritionist" to individuals meeting certain criteria, such as holding a national certification or having met the requirements for licensure.[204]

In the 2018-2019 Fiscal Year, there were 5,413 licensed dieticians and nutritionists. DOH received 8 complaints against dieticians and nutritionists, but no complaints were found legally sufficient by the board to take disciplinary action.[205]

Effect of the Bill

The bill authorizes an unlicensed individual to provide compensated dietary and nutritional information as long as the individual does not represent or imply that they are a dietician, licensed dietitian, registered dietitian, licensed nutritionist, licensed nutrition counselor, or use any other term or symbol that implies the they are a dietitian, nutritionist, or nutrition counselor.

Except where indicated otherwise, the bill has an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1 Provides "Occupational Freedom and Opportunity Act" as the act title;
Section 2 Amends s. 20.165, F.S., conforming provisions;
Section 3 Amends s. 287.055, F.S., conforming provisions;
Section 4 Amends s. 326.004, F.S., deleting requirement for yacht broker branch office licenses;
Section 5 Amends s. 447.02, F.S., conforming provisions;
Section 6 Repeals s. 447.04, F.S., relating to licensure requirements for business agents;

---

[199] An individual prosecuted for the unlicensed practice of a regulated health care profession may be subject to both administrative and criminal sanctions if found guilty.
[200] Florida Department of Health, *Licensing*, http://www.floridahealth.gov/licensing-and-regulation/dietetic-nutrition/licensing/index.html (last visited Dec. 19, 2019).
[201] Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2018-2019*, 46, http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/annual-report-1819.pdf (last visited on Dec. 19, 2019).
[202] Commission on Dietetic Registration, Academy of Nutrition and Dietetics, *Laws the Regulate Dietitians/Nutritionists*, available at https://www.cdrnet.org/vault/2459/web/files/Licensurelawsregulations.pdf (last visited Dec.19, 2019).
[203] *Id.*
[204] Academy of Nutrition and Dietetics, *Licensure and Professional Regulation of Dietitians*, available at http://www.eatrightpro.org/resource/advocacy/legislation/all-legislation/licensure (last visited Dec.19, 2019).
[205] Florida Department of Health, *supra* note 162 at 14, 29.

Section 7 Repeals s. 447.041, F.S., relating to hearings for labor organizations or business agents denied licensure;
Section 8 Repeals s. 447.045, F.S., relating to confidential application information;
Section 9 Repeals s. 447.06, F.S., relating to required registration of labor organizations;
Section 10 Amends s. 447.09, F.S., deleting certain actions relating to right of franchise of a member of a labor organization;
Section 11 Repeals s. 447.12, F.S., relating to fees;
Section 12 Repeals s. 447.16, F.S., relating to applicability;
Section 13 Amends s. 447.305, F.S., deleting provision requiring notification to DBPR;
Section 14 Amends s. 455.213, F.S., requiring DBPR and boards to enter into reciprocity agreements, when available, and to post certain information on their website;
Section 15 Creates s. 455.2278, F.S., to prohibit DBPR from certain disciplinary actions;
Section 16 Amends s. 468.381, F.S., revising legislative findings and intent related to auctioneers;
Section 17 Amends s. 468.382, F.S., revising definitions;
Section 18 Repeals s. 468.384, F.S., relating to Florida Board of Auctioneers;
Section 19 Repeals s. 468.385, F.S., relating to training requirements;
Section 20 Repeals s. 468.3851, F.S., relating to licensure renewal;
Section 21 Repeals s. 468.3852, F.S., relating to licensure reactivation;
Section 22 Repeals s. 468.3855, F.S., relating to training requirements;
Section 23 Repeals s. 468.386, F.S., relating to fees and local licensing requirements;
Section 24 Repeals s. 468.387, F.S., relating to licensure by endorsement;
Section 25 Amends s. 468.388, F.S., relating to licensure requirements;
Section 26 Amends s. 468.389, F.S., providing grounds for civil remedies;
Section 27 Amends s. 468.391, F.S., conforming provisions;
Section 28 Repeals s. 468.392, F.S., relating to the Auctioneer Recovery Fund;
Section 29 Repeals s. 468.393, F.S., relating to the Auctioneer Recovery Fund;
Section 30 Repeals s. 468.394, F.S., relating to the Auctioneer Recovery Fund;
Section 31 Repeals s. 468.395, F.S., relating to the Auctioneer Recovery Fund;
Section 32 Repeals s. 468.396, F.S., relating to the Auctioneer Recovery Fund;
Section 33 Repeals s. 468.397, F.S., relating to the Auctioneer Recovery Fund;
Section 34 Repeals s. 468.398, F.S., relating to the Auctioneer Recovery Fund;
Section 35 Repeals s. 468.399, F.S., relating to the Auctioneer Recovery Fund;
Section 36 Amends s. 468.401, F.S., removing definitions;
Section 37 Repeals s. 468.402, F.S., relating to duties and authority of DBPR for talent agencies;
Section 38 Repeals s. 468.403, F.S., relating to duties and authority of DBPR for talent agencies;
Section 39 Repeals s. 468.404, F.S., relating to duties and authority of DBPR for talent agencies;
Section 40 Repeals s. 468.405, F.S., relating to duties and authority of DBPR for talent agencies;
Section 41 Amends s. 468.406, F.S., revising requirements for a schedule of fees and charges;
Section 42 Repeals s. 468.407, F.S., relating to license posting requirements;
Section 43 Amends s. 468.408, F.S., conforming provisions;
Section 44 Amends s. 468.409, F.S., removing a records inspection requirement;
Section 45 Amends s. 468.410, F.S., deleting a contract requirement;
Section 46 Amends s. 468.412, F.S., deleting recordkeeping and posting requirements;
Section 47 Amends s. 468.413, F.S., revising criminal penalties for talent agencies;
Section 48 Repeals s. 468.414, F.S., relating to the Professional Regulation Trust Fund;
Section 49 Amends s. 468.415, F.S., revising penalties;
Section 50 Amends s. 468.505, F.S., relating to unlicensed individuals practicing dietetics and nutrition counseling;
Section 51 Amends s. 468.524, F.S., revising time limitations for reapplication as a licensed employee leasing company;
Section 52 Amends s. 468.603, F.S., revising a definition;
Section 53 Amends s. 468.609, F.S., revising education and experience requirements;
Section 54 Amends s. 468.613, F.S., revising requirements for a license by endorsement;

Section 55 Amends s. 468.8314, F.S., revising requirements for a license by endorsement;

Section 56 Amends s. 469.006, F.S., revising requirements for asbestos abatement businesses;
Section 57 Amends s. 469.009, F.S., conforming provisions;
Section 58 Amends s. 471.015, F.S., revising requirements for a license by endorsement;
Section 59 Amends s. 473.308, F.S., revising requirements for a license by endorsement;
Section 60 Amends s. 474.202, F.S., revising the definition for 'limited-service veterinary medical practice';
Section 61 Amends s. 474.203, F.S., allowing microchipping to be performed without a veterinary license or supervision, under certain circumstances;
Section 62 Amends s. 474.207, F.S., adding an approved licensing examination;
Section 63 Amends s. 474.217, F.S., revising requirements for a license by endorsement;
Section 64 Amends s. 476.114, F.S., revising barber training requirements;
Section 65 Amends s. 476.144, F.S., revising restricted barbers training requirements;
Section 66 Amends s. 477.013, F.S., revising and providing definitions;
Section 67 Repeals s. 477.0132, F.S., relating to the registration of hair braiding, hair wrapping, and body wrapping;
Section 68 Amends s. 477.0135, F.S., exempting hair braiders, hair wrappers, body wrappers, nail polishers, and makeup applicators from licensure;
Section 69 Amends s. 477.019, F.S., conforming provisions;
Section 70 Amends s. 477.0201, F.S., providing requirements for specialty licenses;
Section 71 Amends s. 477.026, F.S., conforming provisions;
Section 72 Amends s. 477.0263, F.S., adding exceptions to services that must be performed in a licensed salon;
Section 73 Amends s. 477.0265, F.S., conforming provisions;
Section 74 Amends s. 477.029, F.S., conforming provisions;
Section 75 Amends s. 481.201, F.S., removing legislative findings related to interior design;
Section 76 Amends s. 481.203, F.S., revising definitions for 'certificate of authorization' and 'business organization';
Section 77 Amends s. 481.205, F.S., revising provisions for the Board of Architecture;
Section 78 Amends s. 481.207, F.S., conforming provisions;
Section 79 Amends s. 481.209, F.S., conforming provisions;
Section 80 Amends s. 481.213, F.S., conforming provisions;
Section 81 Amends s. 481.2131, F.S., revising regulations for practicing interior design;
Section 82 Amends s. 481.215, F.S., conforming provisions;
Section 83 Amends s. 481.217, F.S., conforming provisions;
Section 84 Amends s. 481.219, F.S., removing regulations for interior design businesses;
Section 85 Amends s. 481.221, F.S., conforming provisions;
Section 86 Amends s. 481.222, F.S., conforming provisions;
Section 87 Amends s. 481.223, F.S., conforming provisions;
Section 88 Amends s. 481.2251, F.S., conforming provisions;
Section 89 Amends s. 481.229, F.S., conforming provisions;
Section 90 Amends s. 481.231, F.S., conforming provisions;
Section 91 Amends s. 481.303, F.S., deleting the definition of 'certificate of authorization';
Section 92 Amends s. 481.310, F.S., revising training requirements;
Section 93 Amends s. 481.311, F.S., conforming provisions;
Section 94 Amends s. 481.313, F.S., revising continuing education requirements;
Section 95 Amends s. 481.317, F.S., conforming provisions;
Section 96 Amends s. 481.319, F.S., deleting the requirement for a certificate of authorization and authorizing practice through a corporation or partnership;
Section 97 Amends s. 481.321, F.S., revising requirements for the display of a certificate number;
Section 98 Amends s. 481.329, F.S., conforming a cross-reference;
Section 99 Amends s. 489.103, F.S., revising contract limits for unlicensed contractors in certain situations;
Section 100 Amends s. 489.111, F.S., revising timing for taking a license exam; conforming a provision;

Section 101 Amends s. 489.113, F.S., allowing certain contracting applicants to be exempt from taking a licensing examination;
Section 102 Amends s. 489.115, F.S., revising requirements for a license by endorsement;
Section 103 Amends s. 489.511, F.S., revising requirements for a license by endorsement;
Section 104 Amends s. 489.517, F.S., reducing continuing education requirements;
Section 105 Amends s. 489.518, F.S., revising training requirements for burglar alarm system agents;
Section 106 Amends s. 492.104, F.S., conforming provisions;
Section 107 Amends s. 492.108, F.S., revising requirements for a license by endorsement;
Section 108 Amends s. 492.111, F.S., deleting the requirements for a certificate of authorization for a professional geologist;
Section 109 Amends s. 492.113, F.S., conforming provisions;
Section 110 Amends s. 492.115, F.S., conforming provisions;
Section 111 Amends s. 548.003, F.S., deleting the requirement for the Florida State Boxing Commission to adopt rules relating to a timekeeper;
Section 112 Amends s. 548.017, F.S., deleting the licensure requirement for timekeepers and announcers;
Section 113 Amends s. 553.5141, F.S., conforming provisions;
Section 114 Amends s. 553.74, F.S., revising the membership of the Florida Building Commission;
Section 115 Amends s. 553.79, F.S., conforming provisions;
Section 116 Amends s. 558.002, F.S., conforming provisions;
Section 117 Amends s. 559.25, F.S., conforming provisions;
Section 118 Amends s. 823.15, F.S., allowing certain unlicensed individuals to perform microchipping services;
Section 119 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill will have a significant negative fiscal impact on state revenues. Over the next three fiscal years, the estimated reduction totals $4,151,913 as follows:[206]

Division of Professions: The bill should result in a reduction of license fees, license renewal fees and unlicensed activity fees of approximately $1,519,940 in FY 2020-21, $936,313 in FY 2021-22, and $1,666,320 in FY 2022-23.

The following fees are eliminated:

- Board of Auctioneers for initial licensure and renewals of auctioneers, auctioneer apprentices, and auction businesses.
- Office of Talent Agencies for initial licensure and renewals of talent agencies.
- Board of Architecture and Interior Design for the initial registration and renewal of interior designers and business licenses for both interior designers and architects.
- Board of Cosmetology for initial registration and renewal of hair braiders, hair wrappers and body wrappers.
- Board of Landscape Architecture for the issuance and renewal of certificates of authorization for businesses.
- Board of Professional Geologists for the issuance and renewal of certificates of authorization for businesses.
- Issuance and renewal of Asbestos Business certificates of authorization.

[206] Florida Department of Business and Professional Regulation, Agency Analysis of 2020 HB 1193, p. 19 (Jan. 22, 2020).

Division of Regulation: Revenue reduction of approximately $830 in FY 2020-21, $830 in FY 2021-22, and $830 in FY 2022-23.

- Business agent and labor organization license fees are eliminated.

Florida Boxing Commission: Revenue reduction of approximately $1,450 in FY 2020-21, $1,450 in FY 2021-22, and $1,450 in FY 2022-23.

- The fees received by the department from the Boxing Commission for the licensure of timekeepers and announcers are eliminated.

Division of Florida Condominiums, Timeshares and Mobile Homes: (Yacht and Ship Brokers) Revenue reduction of approximately $5,900 in FY 2020-21, $7,500 in FY 2021-22, and $9,100 in FY 2022-23.

As a result of the revenue reduction, there will be a reduction in the 8% service charge to General Revenue of approximately $122,250 in FY 2020-21, $75,687 in FY 2021-22, and $134,216 in FY 2022-23.[207]

For more detail of the reduction of revenues, see *Fiscal Comments.*

2. Expenditures:

The bill will result in a reduction of expenditures related to the reduced workload provided through deregulation of entities currently regulated by the department. The estimated reduction includes a reduction of $191,208 in FY 2020-21, $204,128 in FY 2021-22, and $197,708 in FY 2022-23.[208]

For more detail of the reduction of expenditures, see *Fiscal Comments.*

To implement the bill, the department will need to make changes to Versa and the Interactive Voice Response system to accommodate modifications. Modifications can be made within existing resources.[209]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate positive fiscal impact for the private sector. The bill provides for the portability of Florida licensure by requiring reciprocity with states with similar requirements. The impact will vary, depending on how many licensees are provided licensure through reciprocity.

[207] Email from Lynn Smith, Planning and Budgeting Administrator, Florida Department of Business and Professional Regulation, Regarding General Revenue Service Charge (Jan. 22, 2020)
[208] Florida Department of Business and Professional Regulation, Agency Analysis of 2020 HB 1193, pp. 19-20 (Jan. 22, 2020).
[209] Florida Department of Business and Professional Regulation, Agency Analysis of 2020 HB 1193, p. 18 (Jan. 22, 2020).

In addition, current licensees should see the following fee reductions:[210]

- Professions: An estimated expenditure reduction of approximately $1,519,940 in FY 2020-21, $936,313 in FY 2021-22, and $1,666,320 in FY 2022-23.
- Regulation: An estimated expenditure reduction of approximately $830 in FY 2020-21, $830 in FY 2021-22, and $830 in FY 2022-23.
- Boxing Commission: An estimated expenditure reduction of approximately $1,450 in FY 2020-21, $1,450 in FY 2021-22, and $1,450 in FY 2022-23.
- Condominiums: (Yacht and Ship Brokers) An estimated expenditure reduction of approximately $5,900 in FY 2020-21, $7,500 in FY 2021-22, and $9,100 in FY 2022-23.

Interior designers, labor organizations, auctioneers, talent agents, pugilistic announcers, pugilistic timekeepers, hair braiders, hair wrappers, body wrappers, nail painters, and makeup artists will no longer need to pay costs associated with professional licensure.

Unlicensed individuals will be able to offer dietetic and nutrition services without paying costs associated with professional licensure.

Nail specialists, facial specialists, full specialists, barbers, and restricted barber applicants will require less training to obtain licensure, which may lead to a reduced training cost.

Asbestos abatement consultants and contractors, landscape architects, geologists, and architects will no longer need to pay costs associated with retaining certificates of authorization for business organizations.

Barbers, building code professionals, construction and electrical contractors, cosmetologists, engineers, geologists, home inspectors, veterinarians, landscape architects, and certified public accountants will have an additional pathway for a license by endorsement or examination to be able to practice in Florida.

Cosmetologists and electrical and alarm system contractors will be required to complete less continuing education for license renewal, which will lead to a reduction is costs to maintain a license.

There may be an increase in the number of people in the workforce practicing their chosen professions.

[210] Florida Department of Business and Professional Regulation, Agency Analysis of 2020 HB 1193, p. 19 (Jan. 22, 2020)

D. FISCAL COMMENTS:

Detail of Estimated Revenue Reductions:[211]

DESCRIPTION	FY 20-21	FY 21-22	FY 22-23
Initial License:			
Architecture Business	(418,000)	(25,500)	(443,500)
Asbestos Business	(2,805)	(65,025)	(2,805)
Auctioneers (Individual)	(12,865)	(299,770)	(12,865)
Auctioneers (Business)	(11,160)	(143,065)	(11,160)
Body Wrappers	(109,900)	(109,925)	(144,075)
Geologists (Business)	(129,150)	(6,650)	(135,800)
Hair Braider	(83,975)	(84,025)	(116,125)
Hair Wrappers	(21,050)	(21,075)	(29,050)
Interior Design (Individual)	(396,875)	(11,875)	(408,750)
Interior Design Business	(139,500)	(7,375)	(146,875)
Landscape Architecture - Business	(4,715)	(141,373)	(4,715)
Talent Agencies	(189,945)	(20,655)	(210,600)
Business Agents	(525)	(525)	(525)
Labor Organizations-Organizations	(305)	(305)	(305)
Boxing Announcer	(750)	(750)	(750)
Boxing Timekeeper	(700)	(700)	(700)
Yacht and Ship Branch Office License	(5,900)	(7,500)	(9,100)
FEES	**(1,528,120)**	**(946,093)**	**(1,677,700)**

Detail of Expenditure Reductions by Board:

The following chart includes the estimated reductions in expenditures by DBPR related to the deregulation of the boards/professions included in the bill.[212] After a year of actual, realized savings, the department will propose budget savings in the Fiscal Year 2021-22 Legislative Budget Request to be permanently reduced.

	FY 2020-21	FY 2021-22	FY 2022-23
Florida Building Commission	17,340	17,340	17,340
Architecture and Interior Design	102,600	106,700	106,400
Auctioneers	55,712	60,811	55,712
Cosmetology	10,900	13,100	13,600
Talent Agents	21,996	23,517	21,996
Total Cost Savings:	**191,208**	**204,128**	**197,708**

The elimination of license fees will result in operating accounts closing with negative balances in the Professional Regulation Trust Fund. The department provided the following statement:[213]

[211] Email from Lynn Smith, Planning and Budgeting Administrator, Florida Department of Business and Professional Regulation, Regarding General Revenue Service Charge (Jan. 22, 2020)

[212] Florida Department of Business and Professional Regulation, Agency Analysis of 2020 HB 1193, pp. 19-20 (Jan. 22, 2020).

[213] Email from Lynn Smith, Planning and Budgeting Administrator, Florida Department of Business and Professional Regulation, RE: Statement regarding negative balances in the Professional Regulation Trust Fund (Jan. 23, 2020).

Negative Board Account Balances and Auctioneer Recovery Fund Claims

As of June 30, 2019, the Florida Board of Auctioneers operating account, the Board of Professional Geologists operating account, the Talent Agencies operating account and the Talent Agencies unlicensed activity account reflected negative balances.

The proposed elimination of the license fees for boards that have a deficit balance will result in the accounts closing with a negative balance. The operating account of the Florida Board of Auctioneers and the operating and unlicensed activity accounts for Talent Agencies will close with negative balances in FY 2019-20. Each of the funds may have additional costs that may not be posted until after July 1, 2020, the effective date of the bill.

The Auctioneer Recovery Fund's operating account may have a positive balance at the end of June 2020. If there are pending claims against the Auctioneer Recovery Fund at the end of June 2020, budget authority for processing these claims from the account may be necessary if the claims are processed and paid after June 30, 2020, notwithstanding the bill's dissolution of the Board of Auctioneers and elimination of licensure for this profession.

The operating account deficit for the Board of Professional Geologists will increase by the end of FY 2019-20. Several accounts with negative balances have borrowed from other board accounts during prior fiscal years in which the negative balances in the accounts needed to be addressed. Pursuant to s. 455.219, F.S., and Rule 61-5.004, F.A.C., all loans will be repaid with interest. For the negative balance accounts associated with professions or boards which would not continue pursuant to amendments in the bill, clarification of budget authority for repayment of the borrowed amounts from other boards may be needed.

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:

Application, forms, rules, and rule chapters will need to be updated related to the following licensure programs:

- Barber's Board,
- Boxing Commission,
- Board of Cosmetology,
- Board of Professional Engineers,
- Board of Professional Geologists,
- Building Code Administrators and Inspectors Board,
- Board of Veterinary Medicine,
- Board of Landscape Architecture,
- Construction Industry Licensing Board,
- Electrical Contractor's Licensing Board,
- Asbestos Consultants,
- Board of Accountancy,
- Florida Building Commission,

- Board of Architecture and Interior Design,
- Board of Auctioneers,
- Talent Agencies, and
- Dieticians and Nutritionists.

DBPR, DOH, and the boards have sufficient rulemaking authority to make required changes.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the deregulation of professions and occupations; providing a short title; amending s. 20.165, F.S.; renaming the Board of Architecture and Interior Design as the Board of Architecture within the Department of Business and Professional Regulation; deleting a provision establishing the Florida Board of Auctioneers; amending s. 287.055, F.S.; conforming provisions to changes made by the act; amending s. 326.004, F.S.; deleting the requirement for a yacht broker to maintain a separate license for each branch office; deleting the requirement for the division to establish a fee; amending s. 447.02, F.S.; conforming provisions to changes made by the act; repealing s. 447.04, F.S., relating to licensure and permit requirements for business agents; repealing s. 447.041, F.S., relating to hearings for persons or labor organizations denied licensure as a business agent; repealing s. 447.045, F.S., relating to confidential information obtained during the application process; repealing s. 447.06, F.S., relating to required registration of labor organizations; amending s. 447.09, F.S.; deleting certain prohibited actions relating to the right of franchise of a member of a labor organization;

repealing s. 447.12, F.S., relating to registration fees; repealing s. 447.16, F.S., relating to applicability; amending s. 447.305, F.S.; deleting a provision that requires notification of registrations and renewals to the department; amending s. 455.213, F.S.; requiring the Department of Business and Professional Regulation or a board to seek reciprocal licensing agreements with other states under certain circumstances; providing requirements; creating s. 455.2278, F.S.; providing definitions; prohibiting the department or a board from suspending or revoking a person's license solely on the basis of a delinquency or default in the payment of his or her student loan; prohibiting the department or a board from suspending or revoking a person's license solely on the basis of a default in satisfying the requirements of his or her work-conditional scholarship; repealing s. 468.381, F.S., relating to purpose; amending s. 468.382, F.S.; revising definitions; repealing s. 468.384, F.S., relating to the Florida Board of Auctioneers; repealing s. 468.385, F.S., relating to licensure requirements for the practice of auctioneering; repealing s. 468.3851, F.S., relating to licensure renewal; repealing s. 468.3852, F.S., relating to license reactivation; repealing s. 468.3855, F.S.,

relating to training requirements for auctioneer apprenticeships; repealing s. 468.386, F.S., relating to fees and local licensing requirements; repealing s. 468.387, F.S., relating to licensure by endorsement; amending s. 468.388, F.S.; deleting certain requirements relating to auctioneer licenses with regard to the conduct of an auction; amending s. 468.389, F.S.; revising prohibited acts and penalties; amending s. 468.391, F.S.; conforming cross-references; repealing ss. 468.392, 468.393, 468.394, 468.395, 468.396, 468.397, 468.398, and 458.399, F.S., relating to the Auctioneer Recovery Fund, surcharges and assessments on license fees, payment of interest earned into the recovery fund, recovery from the recovery fund, claims against a single licensee in excess of a specified dollar limitation and joinder of claims, payment of claims from the recovery fund, suspension of a judgment debtor's license, and the expenditure of excess funds, respectively; amending s. 468.401, F.S.; revising definitions; repealing ss. 468.402, 468.403, 468.404, and 468.405, F.S., relating to duties and authority of the Department of Business and Professional Regulation with regard to licensure of talent agencies, licensure requirements, license fees and renewals, and qualification for a talent

agency license, respectively; amending s. 468.406, F.S.; requiring an owner or operator of a talent agency to post an itemized schedule of fees, charges, and commissions in a specified place; repealing s. 468.407, F.S., relating to the form and posting requirements for a license; amending s. 468.408, F.S.; conforming provisions to changes made by the act; prohibiting certain bonds from being issued or renewed by a bonding agency to an owner or operator of a talent agency unless the bonding agency verifies that each owner or operator has not been convicted of specified crimes; amending s. 468.409, F.S.; deleting a requirement for record inspection; amending s. 468.410, F.S.; deleting a requirement to include specified information in a contract between a talent agency and applicant; amending s. 468.412, F.S.; deleting recordkeeping and posting requirements; amending s. 468.413, F.S.; revising criminal penalties; conforming provisions to changes made by the act; repealing s. 468.414, F.S., relating to the deposit of certain funds in the Professional Regulation Trust Fund; amending s. 468.415, F.S.; prohibiting any agent, owner, or operator who commits sexual misconduct in the operation of a talent agency from acting as an agent, owner, or operator of a

Florida talent agency; amending s. 468.505, F.S.; providing that certain unlicensed persons are not prohibited or restricted from his or her practice, services, or activities in dietetics and nutrition under certain circumstances; amending 468.524, F.S.; deleting specified exemptions from the time restriction for an employee leasing company to reapply for licensure; amending s. 468.603, F.S.; revising a definition; amending s. 468.609, F.S.; revising certain experience requirements for a person to take the examination for certification; revising the time period a provisional certificate is valid; amending s. 468.613, F.S.; providing for waiver of specified requirements for certification under certain circumstances; amending s. 468.8314, F.S.; requiring an applicant for a license by endorsement to maintain a specified insurance policy; requiring the department to certify an applicant who holds a specified license issued by another state or territory of the United States under certain circumstances; amending s. 469.006, F.S.; providing additional licensure requirements for asbestos abatement consulting or contracting as a partnership, corporation, business trust, or other legal entity; amending s. 469.009, F.S.; conforming provisions to changes made by the

act; amending s. 471.015, F.S.; revising licensure requirements for engineers who hold specified licenses in another state; amending s. 473.308, F.S.; deleting continuing education requirements for license by endorsement for certified public accountants; amending s. 474.202, F.S.; revising the definition of the term "limited-service veterinary medical practice" to include certain vaccinations or immunizations; amending s. 474.203, F.S.; providing an exemption for a person whose work is solely confined to microchip implantation in dogs and cats; amending s. 474.207, F.S.; revising education requirements for licensure by examination; amending s. 474.217, F.S.; requiring the Department of Business and Professional Regulation to issue a license by endorsement to certain applicants who successfully complete a specified examination; amending s. 476.114, F.S.; revising training requirements for licensure as a barber; amending s. 476.144, F.S.; requiring the department to license an applicant who is licensed to practice barbering in another state; amending s. 477.013, F.S.; revising the definition of the term "hair braiding"; repealing s. 477.0132, F.S., relating to registration for hair braiding, hair wrapping, and body wrapping; amending s. 477.0135, F.S.; providing additional exemptions

from license or registration requirements for specified occupations or practices; amending s. 477.019, F.S.; conforming provisions to changes made by the act; amending s. 477.0201, F.S.; providing requirements for registration as a specialist; amending s. 477.026, F.S.; conforming provisions to changes made by the act; amending s. 477.0263, F.S.; authorizing certain persons to perform specified cosmetology services in a location other than a licensed salon under certain circumstances; amending ss. 477.0265 and 477.029, F.S.; conforming provisions to changes made by the act; amending s. 481.201, F.S.; deleting legislative findings relating to the practice of interior design; amending s. 481.203, F.S.; revising definitions; amending s. 481.205, F.S.; renaming the Board of Architecture and Interior Design as the Board of Architecture; revising membership of the board; conforming provisions; amending ss. 481.207, 481.209, and 481.213, F.S.; conforming provisions; amending s. 481.2131, F.S.; requiring certain interior designers to include proof of completed specified examination requirements when submitting documents for the issuance of a building permit; providing that a license or registration is not required for specified persons to practice;

amending ss. 481.215 and 481.217, F.S.; conforming provisions to changes made by the act; amending s. 481.219, F.S.; deleting provisions permitting the practice of or offer to practice interior design through certain business organizations; deleting provisions requiring certificates of authorization for certain business organizations offering interior design services to the public; requiring a licensee or applicant in the practice of architecture to qualify a business organization; providing requirements; amending 481.221, F.S.; conforming provisions; requiring a registered architect or a qualifying agent for a business organization to display their license number in specified advertisements; providing an exception; amending ss. 481.222 and 481.223, F.S.; conforming provisions; repealing s. 481.2251, F.S., relating to the practice and regulation of interior design, registration for interior designers, and disciplinary proceedings against registered interior designers; amending ss. 481.229 and 481.231, F.S.; conforming provisions; amending s. 481.303, F.S.; deleting the definition of the term "certificate of authorization"; amending s. 481.310, F.S.; providing that an applicant who holds a specified degree is not required to demonstrate 1 year of practical experience

for licensure; amending s. 481.311, F.S.; requiring the Board of Landscape Architecture to certify an applicant who holds a specified license issued by another state or territory of the United States under certain circumstances; conforming provisions; amending s. 481.313, F.S.; authorizing a landscape architect to receive hour-for-hour credit for certain approved continuing education courses under certain circumstances; 481.317, F.S.; conforming provisions; amending s. 481.319, F.S.; deleting the requirement for a certificate of authorization; authorizing landscape architects to practice through a corporation or partnership; amending s. 481.321, F.S.; requiring a landscape architect to display their certificate number in specified advertisements; amending s. 481.329, F.S.; conforming a cross-reference; amending s. 489.103, F.S.; revising certain contract prices for exemption; amending s. 489.111, F.S.; providing that an applicant who is exempt from a specified examination is eligible for licensure; amending s. 489.113, F.S.; providing that an applicant holding a specified degree does not have to pass a certain examination; amending s. 489.115, F.S.; requiring the Construction Industry Licensing Board to certify any applicant who holds a specified license to practice

contracting issued by another state or territory of the United States under certain circumstances; amending s. 489.511, F.S.; requiring the board to certify as qualified for certification by endorsement any applicant who holds a specified license to practice electrical or alarm system contracting issued by another state or territory of the United States under certain circumstances; amending s. 489.517, F.S.; providing a reduction in certain continuing education hours required for registered contractors; amending s. 489.518, F.S.; requiring a person to have completed a specified amount of training within a certain time period to perform the duties of an alarm system agent; amending s. 492.104, F.S.; conforming provisions to changes made by the act; amending 492.108, F.S.; requiring the department to issue a license by endorsement to any applicant who has held a specified license to practice geology in another state, territory, or possession of the United States for a certain period of time; providing that an applicant may take the examination required by the board if they have not met the specified examination requirement; amending s. 492.111, F.S.; deleting the requirements for a certificate of authorization for a professional geologist; amending ss. 492.113 and

492.115, F.S.; conforming provisions; amending s. 548.003, F.S.; deleting the requirement that the Florida State Boxing Commission adopt rules relating to a knockdown timekeeper; amending s. 548.017, F.S.; deleting the licensure requirement for a timekeeper or announcer; amending s. 553.5141, F.S.; conforming provisions to changes made by the act; amending s. 553.74, F.S.; revising the membership and qualifications of the Florida Building Commission; amending ss. 553.79, 558.002, and 559.25, F.S.; conforming provisions to changes made by the act; amending s. 823.15, F.S.; authorizing certain persons to implant dogs and cats with specified microchips under certain circumstances; providing effective dates.

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

Section 1. This act may be cited as the "Occupational Freedom and Opportunity Act."

Section 2. Paragraph (a) of subsection (4) of section 20.165, Florida Statutes, is amended to read:

20.165 Department of Business and Professional Regulation.—There is created a Department of Business and Professional Regulation.

(4)(a) The following boards and programs are established within the Division of Professions:

1. Board of Architecture ~~and Interior Design~~, created under part I of chapter 481.

~~2. Florida Board of Auctioneers, created under part VI of chapter 468.~~

2.~~3.~~ Barbers' Board, created under chapter 476.

3.~~4.~~ Florida Building Code Administrators and Inspectors Board, created under part XII of chapter 468.

4.~~5.~~ Construction Industry Licensing Board, created under part I of chapter 489.

5.~~6.~~ Board of Cosmetology, created under chapter 477.

6.~~7.~~ Electrical Contractors' Licensing Board, created under part II of chapter 489.

7.~~8.~~ Board of Employee Leasing Companies, created under part XI of chapter 468.

8.~~9.~~ Board of Landscape Architecture, created under part II of chapter 481.

9.~~10.~~ Board of Pilot Commissioners, created under chapter 310.

10.~~11.~~ Board of Professional Engineers, created under chapter 471.

11.~~12.~~ Board of Professional Geologists, created under chapter 492.

12.~~13.~~ Board of Veterinary Medicine, created under chapter

474.

13.~~14.~~ Home inspection services licensing program, created under part XV of chapter 468.

14.~~15.~~ Mold-related services licensing program, created under part XVI of chapter 468.

Section 3. Paragraphs (h) and (k) of subsection (2) of section 287.055, Florida Statutes, are amended to read:

287.055 Acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services; definitions; procedures; contingent fees prohibited; penalties.—

(2) DEFINITIONS.—For purposes of this section:

(h) A "design-build firm" means a partnership, corporation, or other legal entity that:

1. Is certified under s. 489.119 to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; or

2. Is qualified ~~certified~~ under s. 471.023 to practice or to offer to practice engineering; qualified ~~certified~~ under s. 481.219 to practice or to offer to practice architecture; or qualified ~~certified~~ under s. 481.319 to practice or to offer to practice landscape architecture.

(k) A "design criteria professional" means a firm that is qualified ~~who holds a current certificate of registration~~ under

chapter 481 to practice architecture or landscape architecture or a firm who holds a current certificate as a registered engineer under chapter 471 to practice engineering and who is employed by or under contract to the agency for the providing of professional architect services, landscape architect services, or engineering services in connection with the preparation of the design criteria package.

Section 4. Subsection (13) of section 326.004, Florida Statutes, is amended to read:

326.004 Licensing.—

(13) Each broker must maintain a principal place of business in this state and may establish branch offices in the state. ~~A separate license must be maintained for each branch office. The division shall establish by rule a fee not to exceed $100 for each branch office license.~~

Section 5. Subsection (3) of section 447.02, Florida Statutes, is amended to read:

447.02 Definitions.—The following terms, when used in this chapter, shall have the meanings ascribed to them in this section:

~~(3) The term "department" means the Department of Business and Professional Regulation.~~

Section 6. Section 447.04, Florida Statutes, is repealed.

Section 7. Section 447.041, Florida Statutes, is repealed.

Section 8. Section 447.045, Florida Statutes, is repealed.

Section 9. Section 447.06, Florida Statutes, is repealed.

Section 10. Subsections (6) and (8) of section 447.09, Florida Statutes, are amended to read:

447.09 Right of franchise preserved; penalties.—It shall be unlawful for any person:

~~(6) To act as a business agent without having obtained and possessing a valid and subsisting license or permit.~~

~~(8) To make any false statement in an application for a license.~~

Section 11. Section 447.12, Florida Statutes, is repealed.

Section 12. Section 447.16, Florida Statutes, is repealed.

Section 13. Subsection (4) of section 447.305, Florida Statutes, is amended to read:

447.305 Registration of employee organization.—

~~(4) Notification of registrations and renewals of registration shall be furnished at regular intervals by the commission to the Department of Business and Professional Regulation.~~

Section 14. Subsection (14) is added to section 455.213, Florida Statutes, to read:

455.213 General licensing provisions.—

(14) The department or a board must enter into a reciprocal licensing agreement with other states if the practice act within the purview of this chapter permits such agreement. If a reciprocal licensing agreement exists or if the department

or board has determined another state's licensing requirements or examinations to be substantially similar to those under the practice act, the department or board must post on its website which jurisdictions have such reciprocal licensing agreements or substantially similar licenses.

Section 15. Section 455.2278, Florida Statutes, is created to read:

455.2278 Restriction on disciplinary action for student loan default.—

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

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

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

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

(d) "Work-conditional scholarship" means an award of financial aid for a student to further his or her education which imposes an obligation on the student to complete certain work-related requirements to receive or to continue receiving the scholarship.

(2) STUDENT LOAN DEFAULT; DELINQUENCY.—The department or a board may not suspend or revoke a license that it has issued to any person who is in default on or delinquent in the payment of his or her student loans solely on the basis of such default or

delinquency.

(3) WORK-CONDITIONAL SCHOLARSHIP DEFAULT.—The department or a board may not suspend or revoke a license that it has issued to any person who is in default on the satisfaction of the requirements of his or her work-conditional scholarship solely on the basis of such default.

Section 16. Section 468.381, Florida Statutes, is repealed.

Section 17. Section 468.382, Florida Statutes, is amended to read:

468.382 Definitions.—As used in this act, the term:

(1)~~(8)~~ "Absolute auction" means an auction that requires no minimum opening bid that limits the sale other than to the highest bidder.

(2)~~(7)~~ "Agricultural product" means the natural products from a farm, nursery, grove, orchard, vineyard, garden, or apiary, including livestock, tobacco, and vegetables and includes those agricultural products as defined in chapter 618.

(3)~~(1)~~ "Auction business" means a sole proprietorship, partnership, or corporation which in the regular course of business arranges, manages, sponsors, advertises, promotes, or carries out auctions, employs auctioneers to conduct auctions in its facilities, or uses or allows the use of its facilities for auctions.

(4)~~(2)~~ "Auctioneer" means any person who conducts auctions

within the state ~~licensed pursuant to this part who holds a valid Florida auctioneer license~~.

~~(3) "Apprentice" means any person who is being trained as an auctioneer by a licensed auctioneer.~~

~~(4) "Board" means the Florida Board of Auctioneers.~~

~~(5) "Department" means the Department of Business and Professional Regulation.~~

(5)~~(6)~~ "Livestock" means any animal included in the definition of "livestock" by s. 585.01 or s. 588.13.

Section 18. Section 468.384, Florida Statutes, is repealed.

Section 19. Section 468.385, Florida Statutes, is repealed.

Section 20. Section 468.3851, Florida Statutes, is repealed.

Section 21. Section 468.3852, Florida Statutes, is repealed.

Section 22. Section 468.3855, Florida Statutes, is repealed.

Section 23. Section 468.386, Florida Statutes, is repealed.

Section 24. Section 468.387, Florida Statutes, is repealed.

Section 25. Subsections (6) through (11) of section 468.388, Florida Statutes, are renumbered as subsections (4)

through (9), respectively, and present subsections (3), (4), (5), (9), (10), and (11) are amended to read:

468.388 Conduct of an auction.—

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

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

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

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

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

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

(c) Any interest which accrues to sale proceeds on deposit shall be the property of the seller for whom the funds were

received unless the parties have agreed otherwise by written agreement executed prior to the auction.

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

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

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

1. Contains misrepresentations of facts.

2. Is misleading or deceptive because, in its content or in the context in which it is presented, it makes only a partial

disclosure of relevant facts.

3. Creates false or unjustified expectations of the services to be performed.

~~4. Contains any representation or claim which the advertising licensee fails to perform.~~

~~5. Fails to include the name and license number of the principal auctioneer and the auction business.~~

~~6. Fails to include the name and license number of the sponsor if an apprentice is acting as the principal auctioneer.~~

4.~~7.~~ Advertises an auction as absolute without specifying any and all items to be sold with reserve or with minimum bids.

5.~~8.~~ Fails to include the percentage amount of any buyer's premium or surcharge which is a condition to sale.

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

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

Section 26. Section 468.389, Florida Statutes, is amended to read:

468.389 Prohibited acts; penalties.—

~~(1)~~ The following acts shall be grounds for a civil cause of action for damages against an auctioneer, auction business, or any owner or manager thereof or, in the case of corporate

ownership, any substantial stockholder of the corporation owning the auction business ~~the disciplinary activities provided in subsections (2) and (3)~~:

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

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

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

(4)~~(d)~~ False, deceptive, misleading, or untruthful advertising.

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

(6)~~(f)~~ Using or permitting the use of false bidders, cappers, or shills.

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

(7)~~(h)~~ Commingling money or property of another person with his or her own. Every auctioneer and auction business shall

maintain a separate trust or escrow account in an insured bank or savings and loan association located in this state in which shall be deposited all proceeds received for another person through an auction sale.

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

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

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

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

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

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

~~(b) Revocation or suspension of a license.~~

~~(c) Imposition of an administrative fine not to exceed~~

~~$1,000 for each count or separate offense.~~

~~(d) Issuance of a reprimand.~~

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

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

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

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

Section 27. Section 468.391, Florida Statutes, is amended to read:

468.391 Penalty.—Any auctioneer, ~~apprentice,~~ or auction business or any owner or manager thereof, or, in the case of corporate ownership, any substantial stockholder of the corporation owning the auction business, who ~~operates without an active license or~~ violates s. 468.389(3), (5), (6), (7), or (8) ~~s. 468.389(1)(c), (e), (f), (h), or (i)~~ commits a felony of the third degree, punishable as provided in s. 775.082 or s.

775.083.

Section 28. Section 468.392, Florida Statutes, is repealed.

Section 29. Section 468.393, Florida Statutes, is repealed.

Section 30. Section 468.394, Florida Statutes, is repealed.

Section 31. Section 468.395, Florida Statutes, is repealed.

Section 32. Section 468.396, Florida Statutes, is repealed.

Section 33. Section 468.397, Florida Statutes, is repealed.

Section 34. Section 468.398, Florida Statutes, is repealed.

Section 35. Section 468.399, Florida Statutes, is repealed.

Section 36. Section 468.401, Florida Statutes, is amended to read:

468.401 ~~Regulation of~~ Talent agencies; definitions.—As used in this part, the term ~~or any rule adopted pursuant hereto~~:

(1) ~~(8)~~ "Artist" means a person performing on the professional stage or in the production of television, radio, or motion pictures; a musician or group of musicians; or a model.

(2) ~~(7)~~ "Buyer" or "employer" means a person, company,

partnership, or corporation that uses the services of a talent agency to provide artists.

(3) "Compensation" means any one or more of the following:

(a) Any money or other valuable consideration paid or promised to be paid for services rendered by any person conducting the business of a talent agency under this part;

(b) Any money received by any person in excess of that which has been paid out by such person for transportation, transfer of baggage, or board and lodging for any applicant for employment; or

(c) The difference between the amount of money received by any person who furnishes employees, performers, or entertainers for circus, vaudeville, theatrical, or other entertainments, exhibitions, engagements, or performances and the amount paid by him or her to such employee, performer, or entertainer.

(4) "Engagement" means any employment or placement of an artist, where the artist performs in his or her artistic capacity. However, the term "engagement" shall not apply to procuring opera, music, theater, or dance engagements for any organization defined in s. 501(c)(3) of the Internal Revenue Code or any nonprofit Florida arts organization that has received a grant from the Division of Cultural Affairs of the Department of State or has participated in the state touring program of the Division of Cultural Affairs.

~~(5) "Department" means the Department of Business and~~

~~Professional Regulation.~~

(5)~~(6)~~ "Operator" means the person who is or who will be in actual charge of a talent agency.

(6)~~(2)~~ "Owner" means any partner in a partnership, member of a firm, or principal officer or officers of a corporation, whose partnership, firm, or corporation owns a talent agency, or any individual who is the sole owner of a talent agency.

(7)~~(9)~~ "Person" means any individual, company, society, firm, partnership, association, corporation, manager, or any agent or employee of any of the foregoing.

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

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

(8)~~(1)~~ "Talent agency" means any person who, for compensation, engages in the occupation or business of procuring or attempting to procure engagements for an artist.

Section 37. Section 468.402, Florida Statutes, is repealed.

Section 38. Section 468.403, Florida Statutes, is repealed.

Section 39. Section 468.404, Florida Statutes, is repealed.

Section 40. Section 468.405, Florida Statutes, is repealed.

Section 41. Subsection (1) of section 468.406, Florida Statutes, is amended to read:

468.406 Fees to be charged by talent agencies; rates; display.—

(1) Each owner or operator of a talent agency shall post in a conspicuous place in each place of business of the agency ~~applicant for a license shall file with the application~~ an itemized schedule of maximum fees, charges, and commissions that ~~which~~ it intends to charge and collect for ~~its~~ services. The ~~This~~ schedule ~~may thereafter be raised only by filing with the department an amended or supplemental schedule at least 30 days before the change is to become effective. The schedule shall be posted in a conspicuous place in each place of business of the agency and~~ shall be printed in not less than a 30-point boldfaced type, except that an agency that uses written contracts containing maximum fee schedules need not post such schedules.

Section 42. Section 468.407, Florida Statutes, is repealed.

Section 43. Subsection (1) of section 468.408, Florida Statutes, is amended to read:

468.408 Bond required.—

(1) An owner or operator of a ~~There shall be filed with~~

~~the department for each~~ talent agency shall obtain ~~license~~ a bond in the form of a surety by a reputable company engaged in the bonding business and authorized to do business in this state. The bond shall be for the penal sum of $5,000, with one or more sureties ~~to be approved by the department~~, and be conditioned that the owner or operator of the talent agency ~~applicant~~ conform to and not violate any of the duties, terms, conditions, provisions, or requirements of this part. Such bond may not be issued or renewed by the bonding agency unless each owner or operator of a talent agency submits fingerprints to the Department of Law Enforcement for a state criminal history record check and to the Federal Bureau of Investigation for a national criminal history record check, and the bonding agency verifies by examination of the criminal history records checks that each owner or operator has not been convicted of a crime that would require registration as a sexual offender, as required in s. 943.0435 or s. 944.607, or as a sexual predator, as required under s. 775.21.

(a) If any person is aggrieved by the misconduct of any talent agency, the person may maintain an action in his or her own name upon the bond of the agency in any court having jurisdiction of the amount claimed. All such claims shall be assignable, and the assignee shall be entitled to the same remedies, upon the bond of the agency or otherwise, as the person aggrieved would have been entitled to if such claim had

not been assigned. Any claim or claims so assigned may be enforced in the name of such assignee.

(b) The bonding company shall notify the talent agency ~~department~~ of any claim against such bond, and a copy of such notice shall be sent to the talent agency against which the claim is made.

Section 44. Section 468.409, Florida Statutes, is amended to read:

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

Section 45. Subsection (3) of section 468.410, Florida Statutes, is amended to read:

468.410 Prohibition against registration fees; referral.—

(3) A talent agency shall give each applicant a copy of a contract, within 24 hours after the contract's execution, which lists the services to be provided and the fees to be charged. ~~The contract shall state that the talent agency is regulated by the department and shall list the address and telephone number of the department.~~

Section 46. Subsections (4) through (11) of section 468.412, Florida Statutes, are renumbered as subsections (3) through (10), respectively, and present subsections (2), (3), (4), (6), and (11) of that section are amended to read:

468.412 Talent agency regulations; prohibited acts.—

(2) Each talent agency shall keep records in which shall be entered:

(a) The name and address of each artist employing such talent agency.~~;~~

(b) The amount of fees received from each such artist.~~;~~

(c) The employment in which each such artist is engaged at the time of employing such talent agency and the amount of compensation of the artist in such employment, if any, and the employments subsequently secured by such artist during the term of the contract between the artist and the talent agency and the amount of compensation received by the artist pursuant thereto.~~;~~ ~~and~~

~~(d) Other information which the department may require from time to time.~~

~~(3) All books, records, and other papers kept pursuant to this act by any talent agency shall be open at all reasonable hours to the inspection of the department and its agents. Each talent agency shall furnish to the department, upon request, a true copy of such books, records, and papers, or any portion thereof, and shall make such reports as the department may prescribe from time to time.~~

(3)~~(4)~~ Each talent agency shall post in a conspicuous place in the office of such talent agency a printed copy of this part ~~and of the rules adopted under this part~~. ~~Such copies shall also contain the name and address of the officer charged with enforcing this part. The department shall furnish to talent agencies printed copies of any statute or rule required to be posted under this subsection.~~

(5)~~(6)~~ A ~~No~~ talent agency may not publish or cause to be published any false, fraudulent, or misleading information, representation, notice, or advertisement. All advertisements of a talent agency by means of card, circulars, or signs, and in newspapers and other publications, and all letterheads, receipts, and blanks shall be printed and contain the ~~licensed~~ name~~, department license number,~~ and address of the talent agency and the words "talent agency." A ~~No~~ talent agency may not give any false information or make any false promises or representations concerning an engagement or employment to any applicant who applies for an engagement or employment.

(10)~~(11)~~ A talent agency may assign an engagement contract to another talent agency ~~licensed~~ in this state only if the artist agrees in writing to the assignment. The assignment must occur, and written notice of the assignment must be given to the artist, within 30 days after the artist agrees in writing to the assignment.

Section 47. Section 468.413, Florida Statutes, is amended to read:

468.413 Legal requirements; penalties.—

~~(1) Each of the following acts constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:~~

~~(a) Owning or operating, or soliciting business as, a talent agency in this state without first procuring a license from the department.~~

~~(b) Obtaining or attempting to obtain a license by means of fraud, misrepresentation, or concealment.~~

(1)~~(2)~~ Each of the following acts constitutes a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083:

~~(a) Relocating a business as a talent agency, or operating under any name other than that designated on the license, unless written notification is given to the department and to the surety or sureties on the original bond, and unless the license is returned to the department for the recording thereon of such~~

~~changes.~~

~~(b) Assigning or attempting to assign a license issued under this part.~~

~~(c) Failing to show on a license application whether or not the agency or any owner of the agency is financially interested in any other business of like nature and, if so, failing to specify such interest or interests.~~

(a)~~(d)~~ Failing to maintain the records required by s. 468.409 or knowingly making false entries in such records.

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

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

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

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

or of this state.

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

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

Section 48. Section 468.414, Florida Statutes, is repealed.

Section 49. Section 468.415, Florida Statutes, is amended to read:

468.415 Sexual misconduct in the operation of a talent agency.—The talent agent-artist relationship is founded on mutual trust. Sexual misconduct in the operation of a talent agency means violation of the talent agent-artist relationship through which the talent agent uses the relationship to induce or attempt to induce the artist to engage or attempt to engage

in sexual activity. Sexual misconduct is prohibited in the operation of a talent agency. ~~If~~ Any agent, owner, or operator of a ~~licensed~~ talent agency who commits ~~is found to have committed~~ sexual misconduct in the operation of a talent agency~~, the agency license shall be permanently revoked. Such agent, owner, or operator~~ shall be permanently prohibited from acting ~~disqualified from present and future licensure~~ as an agent, owner, or operator of a Florida talent agency.

Section 50. Paragraph (n) is added to subsection (1) of section 468.505, Florida Statutes, to read:

468.505 Exemptions; exceptions.—

(1) Nothing in this part may be construed as prohibiting or restricting the practice, services, or activities of:

(n) A person who provides information, recommendations, or advice concerning nutrition, or who markets food, food materials, or dietary supplements for remuneration, if that person does not represent himself or herself as a dietitian, licensed dietitian, registered dietitian, licensed nutritionist, nutrition counselor, or licensed nutrition counselor, or use any word, letter, symbol, or insignia indicating or implying that he or she is a dietitian, nutritionist, or nutrition counselor.

Section 51. Subsection (4) of section 468.524, Florida Statutes, is amended to read:

468.524 Application for license.—

(4) A ~~An applicant or~~ licensee is ineligible to reapply for a license for a period of 1 year following final agency action on the ~~denial or~~ revocation of a license ~~applied for or~~ issued under this part. This time restriction does not apply to administrative ~~denials or~~ revocations entered because:

(a) The ~~applicant or~~ licensee has made an inadvertent error or omission on the application;

(b) The experience documented to the board was insufficient at the time of the previous application; or

~~(c) The department is unable to complete the criminal background investigation because of insufficient information from the Florida Department of Law Enforcement, the Federal Bureau of Investigation, or any other applicable law enforcement agency;~~

(c) ~~(d)~~ The ~~applicant or~~ licensee has failed to submit required fees. ~~; or~~

~~(e) An applicant or licensed employee leasing company has been deemed ineligible for a license because of the lack of good moral character of an individual or individuals when such individual or individuals are no longer employed in a capacity that would require their licensing under this part.~~

Section 52. Paragraph (f) of subsection (5) of section 468.603, Florida Statutes, is amended to read:

468.603 Definitions.—As used in this part:

(5) "Categories of building code inspectors" include the

following:

(f) "Residential ~~One and two family dwelling~~ inspector" means a person who is qualified to inspect and determine that one-family, two-family, or three-family residences not exceeding two habitable stories above no more than one uninhabitable story and accessory use structures in connection therewith ~~one and two family dwellings and accessory structures~~ are constructed in accordance with the provisions of the governing building, plumbing, mechanical, accessibility, and electrical codes.

Section 53. Paragraph (c) of subsection (2) and paragraph (a) of subsection (7) of section 468.609, Florida Statutes, are amended to read:

468.609 Administration of this part; standards for certification; additional categories of certification.—

(2) A person may take the examination for certification as a building code inspector or plans examiner pursuant to this part if the person:

(c) Meets eligibility requirements according to one of the following criteria:

1. Demonstrates 4 ~~5~~ years' combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought;

2. Demonstrates a combination of postsecondary education in the field of construction or a related field and experience

which totals 3 ~~4~~ years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;

3. Demonstrates a combination of technical education in the field of construction or a related field and experience which totals 3 ~~4~~ years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;

4. Currently holds a standard certificate issued by the board or a firesafety inspector license issued pursuant to chapter 633, has a minimum of 3 years' verifiable full-time experience in inspection or plan review, and has satisfactorily completed a building code inspector or plans examiner training program that provides at least 100 hours but not more than 200 hours of cross-training in the certification category sought. The board shall establish by rule criteria for the development and implementation of the training programs. The board shall accept all classroom training offered by an approved provider if the content substantially meets the intent of the classroom component of the training program;

5. Demonstrates a combination of the completion of an approved training program in the field of building code inspection or plan review and a minimum of 2 years' experience in the field of building code inspection, plan review, fire code inspections and fire plans review of new buildings as a

firesafety inspector certified under s. 633.216, or construction. The approved training portion of this requirement shall include proof of satisfactory completion of a training program that provides at least 200 hours but not more than 300 hours of cross-training that is approved by the board in the chosen category of building code inspection or plan review in the certification category sought with at least 20 hours but not more than 30 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificateholder. The board shall coordinate with the Building Officials Association of Florida, Inc., to establish by rule the development and implementation of the training program. However, the board shall accept all classroom training offered by an approved provider if the content substantially meets the intent of the classroom component of the training program;

6. Currently holds a standard certificate issued by the board or a firesafety inspector license issued pursuant to chapter 633 and:

a. Has at least 4 ~~5~~ years' verifiable full-time experience as an inspector or plans examiner in a standard certification category currently held or has a minimum of 4 ~~5~~ years' verifiable full-time experience as a firesafety inspector licensed pursuant to chapter 633.

b. Has satisfactorily completed a building code inspector

or plans examiner classroom training course or program that provides at least 200 but not more than 300 hours in the certification category sought, except for one-family and two-family dwelling training programs, which must provide at least 500 but not more than 800 hours of training as prescribed by the board. The board shall establish by rule criteria for the development and implementation of classroom training courses and programs in each certification category; or

7.a. Has completed a 4-year internship certification program as a building code inspector or plans examiner while employed full-time by a municipality, county, or other governmental jurisdiction, under the direct supervision of a certified building official. Proof of graduation with a related vocational degree or college degree or of verifiable work experience may be exchanged for the internship experience requirement year-for-year, but may reduce the requirement to no less than 1 year.

b. Has passed an examination administered by the International Code Council in the certification category sought. Such examination must be passed before beginning the internship certification program.

c. Has passed the principles and practice examination before completing the internship certification program.

d. Has passed a board-approved 40-hour code training course in the certification category sought before completing

the internship certification program.

e. Has obtained a favorable recommendation from the supervising building official after completion of the internship certification program.

(7)(a) The board shall provide for the issuance of provisional certificates valid for 2 years ~~1 year~~, as specified by board rule, to any building code inspector or plans examiner who meets the eligibility requirements described in subsection (2) and any newly employed or promoted building code administrator who meets the eligibility requirements described in subsection (3). The provisional license may be renewed by the board for just cause; however, a provisional license is not valid for longer than 3 years.

Section 54. Section 468.613, Florida Statutes, is amended to read:

468.613 Certification by endorsement.—The board shall examine other certification or training programs, as applicable, upon submission to the board for its consideration of an application for certification by endorsement. The board shall waive its examination, qualification, education, or training requirements, to the extent that such examination, qualification, education, or training requirements of the applicant are determined by the board to be comparable with those established by the board. The board shall waive its examination, qualification, education, or training requirements

if an applicant for certification by endorsement is at least 18 years of age; is of good moral character; has held a valid building administrator, inspector, plans examiner, or the equivalent, certification issued by another state or territory of the United States for at least 10 years before the date of application; and has successfully passed an applicable examination administered by the International Codes Council. Such application must be submitted to the board while the applicant holds a valid license in another state or territory or within 2 years after the expiration of such license.

Section 55. Subsection (3) of section 468.8314, Florida Statutes, is amended to read:

468.8314 Licensure.—

(3) The department shall certify as qualified for a license by endorsement an applicant who is of good moral character as determined in s. 468.8313, who maintains an insurance policy as required by s. 468.8322, and who:~~,~~

(a) Holds a valid license to practice home inspection services in another state or territory of the United States, whose educational requirements are substantially equivalent to those required by this part; and has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by this part; or

(b) Has held a valid license to practice home inspection

services issued by another state or territory of the United States for at least 10 years before the date of application. Such application must be submitted to the department while the applicant holds a valid license in another state or territory or within 2 years after the expiration of such license.

Section 56. Paragraphs (a) and (e) of subsection (2), subsection (3), paragraph (b) of subsection (4), and subsection (6) of section 469.006, Florida Statutes, are amended to read:

469.006 Licensure of business organizations; qualifying agents.—

(2)(a) If the applicant proposes to engage in consulting or contracting as a partnership, corporation, business trust, or other legal entity, or in any name other than the applicant's legal name, the ~~legal entity must apply for licensure through a qualifying agent or the~~ individual applicant must qualify ~~apply for licensure under~~ the business organization ~~fictitious name~~.

(e) A ~~The~~ license~~, when issued upon application of a business organization,~~ must be in the name of the qualifying agent ~~business organization~~, and the name of the business organization ~~qualifying agent~~ must be noted on the license ~~thereon~~. If there is a change in any information that is required to be stated on the application, the qualifying agent ~~business organization~~ shall, within 45 days after such change occurs, mail the correct information to the department.

(3) The qualifying agent must ~~shall~~ be licensed under this

chapter in order for the business organization to be qualified ~~licensed~~ in the category of the business conducted for which the qualifying agent is licensed. If any qualifying agent ceases to be affiliated with such business organization, the agent shall so inform the department. In addition, if such qualifying agent is the only licensed individual affiliated with the business organization, the business organization shall notify the department of the termination of the qualifying agent and has ~~shall have~~ 60 days after ~~from~~ the date of termination of the qualifying agent's affiliation with the business organization ~~in which~~ to employ another qualifying agent. The business organization may not engage in consulting or contracting until a qualifying agent is employed, unless the department has granted a temporary nonrenewable license to the financially responsible officer, the president, the sole proprietor, a partner, or, in the case of a limited partnership, the general partner, who assumes all responsibilities of a primary qualifying agent for the entity. This temporary license only allows ~~shall only allow~~ the entity to proceed with incomplete contracts.

(4)

(b) Upon a favorable determination by the department, after investigation of the financial responsibility, credit, and business reputation of the qualifying agent and the new business organization, the department shall issue, without any examination, a new license in the qualifying agent's ~~business~~

~~organization's~~ name, and the name of the business organization ~~qualifying agent~~ shall be noted thereon.

(6) Each qualifying agent shall pay the department an amount equal to the original fee for licensure ~~of a new business organization.~~ if the qualifying agent for a business organization desires to qualify additional business organizations.~~,~~ The department shall require the agent to present evidence of supervisory ability and financial responsibility of each such organization. Allowing a licensee to qualify more than one business organization must ~~shall~~ be conditioned upon the licensee showing that the licensee has both the capacity and intent to adequately supervise each business organization. The department may ~~shall~~ not limit the number of business organizations that ~~which~~ the licensee may qualify except upon the licensee's failure to provide such information as is required under this subsection or upon a finding that the ~~such~~ information or evidence ~~as is~~ supplied is incomplete or unpersuasive in showing the licensee's capacity and intent to comply with the requirements of this subsection. A qualification for an additional business organization may be revoked or suspended upon a finding by the department that the licensee has failed in the licensee's responsibility to adequately supervise the operations of the business organization. Failure to adequately supervise the operations of a business organization

is ~~shall be~~ grounds for denial to qualify additional business organizations.

Section 57. Subsection (1) of section 469.009, Florida Statutes, is amended to read:

469.009 License revocation, suspension, and denial of issuance or renewal.—

(1) The department may revoke, suspend, or deny the issuance or renewal of a license; reprimand, censure, or place on probation any contractor, consultant, or financially responsible officer~~, or business organization~~; require financial restitution to a consumer; impose an administrative fine not to exceed $5,000 per violation; require continuing education; or assess costs associated with any investigation and prosecution if the contractor or consultant, or business organization or officer or agent thereof, is found guilty of any of the following acts:

(a) Willfully or deliberately disregarding or violating the health and safety standards of the Occupational Safety and Health Act of 1970, the Construction Safety Act, the National Emission Standards for Asbestos, the Environmental Protection Agency Asbestos Abatement Projects Worker Protection Rule, the Florida Statutes or rules promulgated thereunder, or any ordinance enacted by a political subdivision of this state.

(b) Violating any provision of chapter 455.

(c) Failing in any material respect to comply with the

provisions of this chapter or any rule promulgated hereunder.

(d) Acting in the capacity of an asbestos contractor or asbestos consultant under any license issued under this chapter except in the name of the licensee as set forth on the issued license.

(e) Proceeding on any job without obtaining all applicable approvals, authorizations, permits, and inspections.

(f) Obtaining a license by fraud or misrepresentation.

(g) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of asbestos consulting or contracting or the ability to practice asbestos consulting or contracting.

(h) Knowingly violating any building code, lifesafety code, or county or municipal ordinance relating to the practice of asbestos consulting or contracting.

(i) Performing any act which assists a person or entity in engaging in the prohibited unlicensed practice of asbestos consulting or contracting, if the licensee knows or has reasonable grounds to know that the person or entity was unlicensed.

(j) Committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer. Financial mismanagement or misconduct occurs when:

1. Valid liens have been recorded against the property of

a contractor's customer for supplies or services ordered by the contractor for the customer's job; the contractor has received funds from the customer to pay for the supplies or services; and the contractor has not had the liens removed from the property, by payment or by bond, within 75 days after the date of such liens;

2. The contractor has abandoned a customer's job and the percentage of completion is less than the percentage of the total contract price paid to the contractor as of the time of abandonment, unless the contractor is entitled to retain such funds under the terms of the contract or refunds the excess funds within 30 days after the date the job is abandoned; or

3. The contractor's job has been completed, and it is shown that the customer has had to pay more for the contracted job than the original contract price, as adjusted for subsequent change orders, unless such increase in cost was the result of circumstances beyond the control of the contractor, was the result of circumstances caused by the customer, or was otherwise permitted by the terms of the contract between the contractor and the customer.

(k) Being disciplined by any municipality or county for an act or violation of this chapter.

(l) Failing in any material respect to comply with the provisions of this chapter, or violating a rule or lawful order of the department.

(m) Abandoning an asbestos abatement project in which the asbestos contractor is engaged or under contract as a contractor. A project may be presumed abandoned after 20 days if the contractor terminates the project without just cause and without proper notification to the owner, including the reason for termination; if the contractor fails to reasonably secure the project to safeguard the public while work is stopped; or if the contractor fails to perform work without just cause for 20 days.

(n) Signing a statement with respect to a project or contract falsely indicating that the work is bonded; falsely indicating that payment has been made for all subcontracted work, labor, and materials which results in a financial loss to the owner, purchaser, or contractor; or falsely indicating that workers' compensation and public liability insurance are provided.

(o) Committing fraud or deceit in the practice of asbestos consulting or contracting.

(p) Committing incompetency or misconduct in the practice of asbestos consulting or contracting.

(q) Committing gross negligence, repeated negligence, or negligence resulting in a significant danger to life or property in the practice of asbestos consulting or contracting.

(r) Intimidating, threatening, coercing, or otherwise discouraging the service of a notice to owner under part I of

chapter 713 or a notice to contractor under chapter 255 or part I of chapter 713.

(s) Failing to satisfy, within a reasonable time, the terms of a civil judgment obtained against the licensee, or the business organization qualified by the licensee, relating to the practice of the licensee's profession.

For the purposes of this subsection, construction is considered to be commenced when the contract is executed and the contractor has accepted funds from the customer or lender.

Section 58. Subsection (5) of section 471.015, Florida Statutes, is amended to read:

471.015 Licensure.—

(5)(a) The board shall deem that an applicant who seeks licensure by endorsement has passed an examination substantially equivalent to the fundamentals examination when such applicant has held a valid professional engineer's license in another state for 10 ~~15~~ years ~~and has had 20 years of continuous professional-level engineering experience~~.

(b) The board shall deem that an applicant who seeks licensure by endorsement has passed an examination substantially equivalent to the fundamentals examination and the principles and practices examination when such applicant has held a valid professional engineer's license in another state for 15 ~~25~~ years ~~and has had 30 years of continuous professional-level~~

~~engineering experience~~.

Section 59. Subsection (7) of section 473.308, Florida Statutes, is amended to read:

473.308 Licensure.—

(7) The board shall certify as qualified for a license by endorsement an applicant who:

(a)~~1.~~ Is not licensed and has not been licensed in another state or territory and who has met the requirements of this section for education, work experience, and good moral character and has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306; or ~~and~~

~~2. Has completed such continuing education courses as the board deems appropriate, within the limits for each applicable 2-year period as set forth in s. 473.312, but at least such courses as are equivalent to the continuing education requirements for a Florida certified public accountant licensed in this state during the 2 years immediately preceding her or his application for licensure by endorsement; or~~

(b)1.~~a.~~ Holds a valid license to practice public accounting issued by another state or territory of the United States, if the criteria for issuance of such license were substantially equivalent to the licensure criteria that existed in this state at the time the license was issued;

2.~~b.~~ Holds a valid license to practice public accounting

issued by another state or territory of the United States but the criteria for issuance of such license did not meet the requirements of subparagraph 1. ~~sub-subparagraph a.~~; has met the requirements of this section for education, work experience, and good moral character; and has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306; or

3.~~c.~~ Holds a valid license to practice public accounting issued by another state or territory of the United States for at least 10 years before the date of application; has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306; and has met the requirements of this section for good moral character.~~; and~~

~~2. Has completed continuing education courses that are equivalent to the continuing education requirements for a Florida certified public accountant licensed in this state during the 2 years immediately preceding her or his application for licensure by endorsement.~~

Section 60. Subsection (6) of section 474.202, Florida Statutes, is amended to read:

474.202 Definitions.—As used in this chapter:

(6) "Limited-service veterinary medical practice" means offering or providing veterinary services at any location that

has a primary purpose other than that of providing veterinary medical service at a permanent or mobile establishment permitted by the board; provides veterinary medical services for privately owned animals that do not reside at that location; operates for a limited time; and provides limited types of veterinary medical services, including vaccinations or immunizations against disease, preventative procedures for parasitic control, and microchip implantation.

Section 61. Subsection (9) is added to section 474.203, Florida Statutes, to read:

474.203 Exemptions.—This chapter does not apply to:

(9) An employee, agent, or contractor of a public or private animal shelter, humane organization, or animal control agency operated by a humane organization or by a county, municipality, or other incorporated political subdivision whose work is confined solely to microchip implantation for dogs and cats in accordance with s. 823.15.

For the purposes of chapters 465 and 893, persons exempt pursuant to subsection (1), subsection (2), or subsection (4) are deemed to be duly licensed practitioners authorized by the laws of this state to prescribe drugs or medicinal supplies.

Section 62. Paragraph (b) of subsection (2) of section 474.207, Florida Statutes, is amended to read:

474.207 Licensure by examination.—

(2) The department shall license each applicant who the board certifies has:

(b)1. Graduated from a college of veterinary medicine accredited by the American Veterinary Medical Association Council on Education; or

2. Graduated from a college of veterinary medicine listed in the American Veterinary Medical Association Roster of Veterinary Colleges of the World and obtained a certificate from the Education Commission for Foreign Veterinary Graduates or the Program for the Assessment of Veterinary Education Equivalence.

The department shall not issue a license to any applicant who is under investigation in any state or territory of the United States or in the District of Columbia for an act which would constitute a violation of this chapter until the investigation is complete and disciplinary proceedings have been terminated, at which time the provisions of s. 474.214 shall apply.

Section 63. Subsection (1) of section 474.217, Florida Statutes, is amended to read:

474.217 Licensure by endorsement.—

(1) The department shall issue a license by endorsement to any applicant who, upon applying to the department and remitting a fee set by the board, demonstrates to the board that she or he:

(a) Has demonstrated, in a manner designated by rule of

the board, knowledge of the laws and rules governing the practice of veterinary medicine in this state; and

(b)1. ~~Either~~ Holds, and has held for the 3 years immediately preceding the application for licensure, a valid, active license to practice veterinary medicine in another state of the United States, the District of Columbia, or a territory of the United States, provided that the applicant has successfully completed a state, regional, national, or other examination that is equivalent to or more stringent than the examination required by the board ~~requirements for licensure in the issuing state, district, or territory are equivalent to or more stringent than the requirements of this chapter~~; or

2. Meets the qualifications of s. 474.207(2)(b) and has successfully completed a state, regional, national, or other examination which is equivalent to or more stringent than the examination given by the department and has passed the board's clinical competency examination or another clinical competency examination specified by rule of the board.

Section 64. Subsection (2) of section 476.114, Florida Statutes, is amended to read:

476.114 Examination; prerequisites.—

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

(a) Is at least 16 years of age;

(b) Pays the required application fee; and

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

2. Has received a minimum of 600 ~~1,200~~ hours of training in sanitation, safety, and laws and rules, as established by the board, which shall include, but shall not be limited to, the equivalent of completion of services directly related to the practice of barbering at one of the following:

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

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

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

The board shall establish by rule procedures whereby the school or program may certify that a person is qualified to take the required examination after the completion of a minimum of 400 ~~1,000~~ actual school hours. If the person passes the examination, she or he shall have satisfied this requirement; but if the person fails the examination, she or he shall not be qualified to take the examination again until the completion of the full requirements provided by this section.

Section 65. Subsection (5) of section 476.144, Florida Statutes, is amended to read:

476.144 Licensure.—

(5) The board shall certify as qualified for licensure by endorsement as a barber in this state an applicant who holds a current active license to practice barbering in another state. The board shall adopt rules specifying procedures for the licensure by endorsement of practitioners desiring to be licensed in this state who hold a current active license in another ~~state or~~ country and who have met qualifications substantially similar to, equivalent to, or greater than the qualifications required of applicants from this state.

Section 66. Subsection (9) of section 477.013, Florida Statutes, is amended to read:

477.013 Definitions.—As used in this chapter:

(9) "Hair braiding" means the weaving or interweaving of natural human hair or commercial hair, including the use of hair extensions or wefts, for compensation without cutting, coloring, permanent waving, relaxing, removing, or chemical treatment ~~and does not include the use of hair extensions or wefts~~.

Section 67. Section 477.0132, Florida Statutes, is repealed.

Section 68. Subsections (7) through (11) are added to section 477.0135, Florida Statutes, to read:

477.0135 Exemptions.—

(7) A license or registration is not required for a person whose occupation or practice is confined solely to hair braiding as defined in s. 477.013(9).

(8) A license or registration is not required for a person whose occupation or practice is confined solely to hair wrapping as defined in s. 477.013(10).

(9) A license or registration is not required for a person whose occupation or practice is confined solely to body wrapping as defined in s. 477.013(12).

(10) A license or registration is not required for a person whose occupation or practice is confined solely to applying polish to fingernails and toenails.

(11) A license or registration is not required for a person whose occupation or practice is confined solely to makeup application.

Section 69. Subsections (6) and (7) of section 477.019, Florida Statutes, are amended to read:

477.019 Cosmetologists; qualifications; licensure; supervised practice; license renewal; endorsement; continuing education.—

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

~~apprenticeship program.~~

(7)(a) The board shall prescribe by rule continuing education requirements intended to ensure protection of the public through updated training of licensees and registered specialists, not to exceed 10 ~~16~~ hours biennially, as a condition for renewal of a license or registration as a specialist under this chapter. Continuing education courses shall include, but not be limited to, the following subjects as they relate to the practice of cosmetology: human immunodeficiency virus and acquired immune deficiency syndrome; Occupational Safety and Health Administration regulations; workers' compensation issues; state and federal laws and rules as they pertain to cosmetologists, cosmetology, salons, specialists, specialty salons, and booth renters; chemical makeup as it pertains to hair, skin, and nails; and environmental issues. Courses given at cosmetology conferences may be counted toward the number of continuing education hours required if approved by the board.

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

(b) ~~(c)~~ The board may, by rule, require any licensee in violation of a continuing education requirement to take a refresher course or refresher course and examination in addition

to any other penalty. The number of hours for the refresher course may not exceed 48 hours.

Section 70. Subsection (1) of section 477.0201, Florida Statutes, is amended to read:

477.0201 Specialty registration; qualifications; registration renewal; endorsement.—

(1) Any person is qualified for registration as a specialist in any ~~one or more of the~~ specialty practice ~~practices~~ within the practice of cosmetology under this chapter who:

(a) Is at least 16 years of age or has received a high school diploma.

(b) Has received a certificate of completion for: ~~in a~~

1. 150 hours of training, as established by the board, which shall focus primarily on sanitation and safety, to practice specialties as defined in s. 477.013(6)(a) and (b); ~~specialty pursuant to s. 477.013(6)~~

2. 165 hours of training, as established by the board, which shall focus primarily on sanitation and safety, to practice the specialty as defined in s. 477.013(6)(c); or

3. 300 hours of training, as established by the board, which shall focus primarily on sanitation and safety, to practice the specialties as defined in s. 477.013(6)(a)-(c).

(c) The certificate of completion specified in paragraph (b) must be from one of the following:

1. A school licensed pursuant to s. 477.023.

2. A school licensed pursuant to chapter 1005 or the equivalent licensing authority of another state.

3. A specialty program within the public school system.

4. A specialty division within the Cosmetology Division of the Florida School for the Deaf and the Blind, provided the training programs comply with minimum curriculum requirements established by the board.

Section 71. Paragraph (f) of subsection (1) of section 477.026, Florida Statutes, is amended to read:

477.026 Fees; disposition.—

(1) The board shall set fees according to the following schedule:

~~(f) For hair braiders, hair wrappers, and body wrappers, fees for registration shall not exceed $25.~~

Section 72. Subsection (4) of section 477.0263, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

477.0263 Cosmetology services to be performed in licensed salon; exceptions.—

(4) Pursuant to rules adopted by the board, any cosmetology or specialty service may be performed in a location other than a licensed salon when the service is performed in connection with a special event and is performed by a person ~~who is employed by a licensed salon and~~ who holds the proper license

or specialty registration. ~~An appointment for the performance of any such service in a location other than a licensed salon must be made through a licensed salon.~~

(5) Any person who holds the proper license may perform hair shampooing, hair cutting, hair arranging, nail polish removal, nail filing, nail buffing, and nail cleansing services in a location other than a licensed salon.

Section 73. Paragraph (f) of subsection (1) of section 477.0265, Florida Statutes, is amended to read:

477.0265 Prohibited acts.—

(1) It is unlawful for any person to:

(f) Advertise or imply that skin care services ~~or body wrapping~~, as performed under this chapter, have any relationship to the practice of massage therapy as defined in s. 480.033(3), except those practices or activities defined in s. 477.013.

Section 74. Paragraph (a) of subsection (1) of section 477.029, Florida Statutes, is amended to read:

477.029 Penalty.—

(1) It is unlawful for any person to:

(a) Hold himself or herself out as a cosmetologist or~~,~~ specialist~~, hair wrapper, hair braider, or body wrapper~~ unless duly licensed or registered, or otherwise authorized, as provided in this chapter.

Section 75. Section 481.201, Florida Statutes, is amended to read:

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

Section 76. Section 481.203, Florida Statutes, is amended to read:

481.203 Definitions.—As used in this part, the term:

(1)~~(3)~~ "Architect" or "registered architect" means a natural person who is licensed under this part to engage in the practice of architecture.

(2)~~(6)~~ "Architecture" means the rendering or offering to render services in connection with the design and construction of a structure or group of structures which have as their principal purpose human habitation or use, and the utilization of space within and surrounding such structures. These services include planning, providing preliminary study designs, drawings and specifications, job-site inspection, and administration of construction contracts.

(3)~~(1)~~ "Board" means the Board of Architecture ~~and Interior Design~~.

(4)~~(5)~~ "Business organization" means a partnership, a limited liability company, a corporation, or an individual operating under a fictitious name ~~"Certificate of authorization" means a certificate issued by the department to a corporation or partnership to practice architecture or interior design~~.

(5)~~(4)~~ "Certificate of registration" means a license issued by the department to a natural person to engage in the practice of architecture or interior design.

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

(7)~~(2)~~ "Department" means the Department of Business and Professional Regulation.

(8)~~(14)~~ "Diversified interior design experience" means experience which substantially encompasses the various elements of interior design services set forth under the definition of "interior design" in subsection (10)~~(8)~~.

(9)~~(15)~~ "Interior decorator services" includes the selection or assistance in selection of surface materials, window treatments, wallcoverings, paint, floor coverings, surface-mounted lighting, surface-mounted fixtures, and loose

furnishings not subject to regulation under applicable building codes.

(10)~~(8)~~ "Interior design" means designs, consultations, studies, drawings, specifications, and administration of design construction contracts relating to nonstructural interior elements of a building or structure. "Interior design" includes, but is not limited to, reflected ceiling plans, space planning, furnishings, and the fabrication of nonstructural elements within and surrounding interior spaces of buildings. "Interior design" specifically excludes the design of or the responsibility for architectural and engineering work, except for specification of fixtures and their location within interior spaces. As used in this subsection, "architectural and engineering interior construction relating to the building systems" includes, but is not limited to, construction of structural, mechanical, plumbing, heating, air-conditioning, ventilating, electrical, or vertical transportation systems, or construction which materially affects lifesafety systems pertaining to firesafety protection such as fire-rated separations between interior spaces, fire-rated vertical shafts in multistory structures, fire-rated protection of structural elements, smoke evacuation and compartmentalization, emergency ingress or egress systems, and emergency alarm systems.

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

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

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

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

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

(15) ~~(7)~~ "Townhouse" is a single-family dwelling unit not exceeding three stories in height which is constructed in a series or group of attached units with property lines separating such units. Each townhouse shall be considered a separate building and shall be separated from adjoining townhouses by the use of separate exterior walls meeting the requirements for zero clearance from property lines as required by the type of construction and fire protection requirements; or shall be

separated by a party wall; or may be separated by a single wall meeting the following requirements:

(a) Such wall shall provide not less than 2 hours of fire resistance. Plumbing, piping, ducts, or electrical or other building services shall not be installed within or through the 2-hour wall unless such materials and methods of penetration have been tested in accordance with the Standard Building Code.

(b) Such wall shall extend from the foundation to the underside of the roof sheathing, and the underside of the roof shall have at least 1 hour of fire resistance for a width not less than 4 feet on each side of the wall.

(c) Each dwelling unit sharing such wall shall be designed and constructed to maintain its structural integrity independent of the unit on the opposite side of the wall.

Section 77. Subsection (1) and paragraph (a) of subsection (3) of section 481.205, Florida Statutes, are amended to read:

481.205 Board of Architecture ~~and Interior Design~~.—

(1) The Board of Architecture ~~and Interior Design~~ is created within the Department of Business and Professional Regulation. The board shall consist of seven ~~11~~ members. Five members must be registered architects who have been engaged in the practice of architecture for at least 5 years~~; three members must be registered interior designers who have been offering interior design services for at least 5 years and who are not also registered architects;~~ and two ~~three~~ members must be

laypersons who are not, and have never been, architects~~, interior designers,~~ or members of any closely related profession or occupation. At least one member of the board must be 60 years of age or older.

(3)(a) Notwithstanding the provisions of ss. 455.225, 455.228, and 455.32, the duties and authority of the department to receive complaints and investigate and discipline persons licensed under this part, including the ability to determine legal sufficiency and probable cause; to initiate proceedings and issue final orders for summary suspension or restriction of a license pursuant to s. 120.60(6); to issue notices of noncompliance, notices to cease and desist, subpoenas, and citations; to retain legal counsel, investigators, or prosecutorial staff in connection with the licensed practice of architecture ~~and interior design~~; and to investigate and deter the unlicensed practice of architecture ~~and interior design~~ as provided in s. 455.228 are delegated to the board. All complaints and any information obtained pursuant to an investigation authorized by the board are confidential and exempt from s. 119.07(1) as provided in s. 455.225(2) and (10).

Section 78. Section 481.207, Florida Statutes, is amended to read:

481.207 Fees.—The board, by rule, may establish separate fees for architects ~~and interior designers~~, to be paid for applications, examination, reexamination, licensing and renewal,

delinquency, reinstatement, and recordmaking and recordkeeping. The examination fee shall be in an amount that covers the cost of obtaining and administering the examination and shall be refunded if the applicant is found ineligible to sit for the examination. The application fee is nonrefundable. The fee for initial application and examination for architects ~~and interior designers~~ may not exceed $775 plus the actual per applicant cost to the department for purchase of the examination from the National Council of Architectural Registration Boards ~~or the National Council of Interior Design Qualifications, respectively,~~ or similar national organizations. The biennial renewal fee for architects may not exceed $200. ~~The biennial renewal fee for interior designers may not exceed $500.~~ The delinquency fee may not exceed the biennial renewal fee established by the board for an active license. The board shall establish fees that are adequate to ensure the continued operation of the board and to fund the proportionate expenses incurred by the department which are allocated to the regulation of architects ~~and interior designers~~. Fees shall be based on department estimates of the revenue required to implement this part and the provisions of law with respect to the regulation of architects ~~and interior designers~~.

Section 79. Section 481.209, Florida Statutes, is amended to read:

481.209 Examinations.—

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

~~(a)~~ has passed the licensure examination prescribed by board rule~~;~~ and

~~(b)~~ is a graduate of a school or college of architecture with a program accredited by the National Architectural Accreditation Board.

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

~~(a) Is a graduate from an interior design program of 5 years or more and has completed 1 year of diversified interior design experience;~~

~~(b) Is a graduate from an interior design program of 4 years or more and has completed 2 years of diversified interior design experience;~~

~~(c) Has completed at least 3 years in an interior design curriculum and has completed 3 years of diversified interior design experience; or~~

~~(d) Is a graduate from an interior design program of at least 2 years and has completed 4 years of diversified interior design experience.~~

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

Section 80. Subsections (1) through (4) of section 481.213, Florida Statutes, are amended to read:

481.213 Licensure.—

(1) The department shall license any applicant who the board certifies is qualified for licensure and who has paid the initial licensure fee. ~~Licensure as an architect under this section shall be deemed to include all the rights and privileges of licensure as an interior designer under this section.~~

(2) The board shall certify for licensure by examination any applicant who passes the prescribed licensure examination and satisfies the requirements of ss. 481.209 and 481.211~~, for architects, or the requirements of s. 481.209, for interior designers~~.

(3) The board shall certify as qualified for a license by endorsement as an architect ~~or as an interior designer~~ an applicant who:

(a) Qualifies to take the prescribed licensure examination, and has passed the prescribed licensure examination or a substantially equivalent examination in another jurisdiction, as set forth in s. 481.209 for architects ~~or interior designers, as applicable~~, and has satisfied the internship requirements set forth in s. 481.211 for architects;

(b) Holds a valid license to practice architecture ~~or interior design~~ issued by another jurisdiction of the United States, if the criteria for issuance of such license were substantially equivalent to the licensure criteria that existed in this state at the time the license was issued; ~~provided, however, that an applicant who has been licensed for use of the~~

~~title "interior design" rather than licensed to practice interior design shall not qualify hereunder;~~ or

(c) Has passed the prescribed licensure examination and holds a valid certificate issued by the National Council of Architectural Registration Boards, and holds a valid license to practice architecture issued by another state or jurisdiction of the United States.

(4) The board may refuse to certify any applicant who has violated any of the provisions of s. 481.223~~,~~ or s. 481.225, ~~or s. 481.2251,~~ as applicable.

Section 81. Section 481.2131, Florida Statutes, is amended to read:

481.2131 Interior design; practice requirements~~;~~ ~~disclosure of compensation for professional services~~.—

(1) ~~A registered interior designer is authorized to perform "interior design" as defined in s. 481.203. Interior design documents prepared by a registered interior designer shall contain a statement that the document is not an architectural or engineering study, drawing, specification, or design and is not to be used for construction of any load-bearing columns, load-bearing framing or walls of structures, or issuance of any building permit, except as otherwise provided by law.~~ Interior design documents that are prepared in accordance with the Florida Building Code ~~and sealed~~ by an ~~a registered~~ interior designer must ~~may~~, if required by a permitting body, be

accepted by the permitting body ~~be submitted~~ for the issuance of a building permit for interior construction excluding design of any structural, mechanical, plumbing, heating, air-conditioning, ventilating, electrical, or vertical transportation systems or that materially affect lifesafety systems pertaining to firesafety protection such as fire-rated separations between interior spaces, fire-rated vertical shafts in multistory structures, fire-rated protection of structural elements, smoke evacuation and compartmentalization, emergency ingress or egress systems, and emergency alarm systems. Interior design documents submitted for the issuance of a building permit by an individual performing interior design services who is not a licensed architect must include written proof that such individual has successfully passed the qualification examination prescribed by either the National Council for Interior Design Qualifications or the California Council for Interior Design Certification, or that such individual held a license to practice interior design from the department. All drawings, plans, specifications, or reports prepared or issued by the interior designer and filed for public record shall bear the signature of the interior designer who prepared or approved the document and the date on which they were signed. The signature and date shall be evidence of the authenticity of that to which they are affixed. Final plans, specifications, or reports prepared or issued by an interior designer may be transmitted electronically and may be

electronically signed by the interior designer.

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

Section 82. Subsections (3) and (5) of section 481.215, Florida Statutes, are amended to read:

481.215 Renewal of license.—

(3) A ~~No~~ license renewal may not ~~shall~~ be issued to an architect ~~or an interior designer~~ by the department until the licensee submits proof satisfactory to the department that, during the 2 years before ~~prior to~~ application for renewal, the licensee participated per biennium in not less than 20 hours of at least 50 minutes each per biennium of continuing education approved by the board. The board shall approve only continuing education that builds upon the basic knowledge of architecture

~~or interior design~~. The board may make exception from the requirements of continuing education in emergency or hardship cases.

~~(5) The board shall require, by rule adopted pursuant to ss. 120.536(1) and 120.54, a specified number of hours in specialized or advanced courses, approved by the Florida Building Commission, on any portion of the Florida Building Code, adopted pursuant to part IV of chapter 553, relating to the licensee's respective area of practice.~~

Section 83. Subsection (1) of section 481.217, Florida Statutes, is amended to read:

481.217 Inactive status.—

(1) The board may prescribe by rule continuing education requirements as a condition of reactivating a license. The rules may not require more than one renewal cycle of continuing education to reactivate a license for a registered architect ~~or interior designer~~. ~~For interior design, the board may approve only continuing education that builds upon the basic knowledge of interior design.~~

Section 84. Section 481.219, Florida Statutes, is amended to read:

481.219 Qualification of business organizations ~~certification of partnerships, limited liability companies, and corporations~~.—

(1) A licensee may ~~The practice of or the offer to~~

practice architecture ~~or interior design by licensees~~ through a qualified business organization that offers ~~corporation, limited liability company, or partnership offering~~ architectural ~~or interior design~~ services to the public~~, or by a corporation, limited liability company, or partnership offering architectural or interior design services to the public through licensees under this part as agents, employees, officers, or partners, is permitted~~, subject to the provisions of this section.

(2) If a licensee or an applicant proposes to engage in the practice of architecture as a business organization, the licensee or applicant shall qualify the business organization upon approval of the board ~~For the purposes of this section, a certificate of authorization shall be required for a corporation, limited liability company, partnership, or person practicing under a fictitious name, offering architectural services to the public jointly or separately. However, when an individual is practicing architecture in her or his own name, she or he shall not be required to be certified under this section. Certification under this subsection to offer architectural services shall include all the rights and privileges of certification under subsection (3) to offer interior design services~~.

(3)(a) A business organization may not engage in the practice of architecture unless its qualifying agent is a registered architect under this part. A qualifying agent who

terminates an affiliation with a qualified business organization shall immediately notify the department of such termination. If such qualifying agent is the only qualifying agent for that business organization, the business organization must be qualified by another qualifying agent within 60 days after the termination. Except as provided in paragraph (b), the business organization may not engage in the practice of architecture until it is qualified by another qualifying agent.

(b) In the event a qualifying agent ceases employment with a qualified business organization, the executive director or the chair of the board may authorize another registered architect employed by the business organization to temporarily serve as its qualifying agent for a period of no more than 60 days. The business organization is not authorized to operate beyond such period under this chapter absent replacement of the qualifying agent who has ceased employment.

(c) A qualifying agent shall notify the department in writing before engaging in the practice of architecture in her or his own name or in affiliation with a different business organization, and she or he or such business organization shall supply the same information to the department as required of applicants under this part.

~~(3) For the purposes of this section, a certificate of authorization shall be required for a corporation, limited liability company, partnership, or person operating under a~~

~~fictitious name, offering interior design services to the public jointly or separately. However, when an individual is practicing interior design in her or his own name, she or he shall not be required to be certified under this section.~~

(4) All final construction documents and instruments of service which include drawings, specifications, plans, reports, or other papers or documents that involve ~~involving~~ the practice of architecture which are prepared or approved for the use of the business organization ~~corporation, limited liability company, or partnership~~ and filed for public record within the state must ~~shall~~ bear the signature and seal of the licensee who prepared or approved them and the date on which they were sealed.

~~(5) All drawings, specifications, plans, reports, or other papers or documents prepared or approved for the use of the corporation, limited liability company, or partnership by an interior designer in her or his professional capacity and filed for public record within the state shall bear the signature and seal of the licensee who prepared or approved them and the date on which they were sealed.~~

~~(6) The department shall issue a certificate of authorization to any applicant who the board certifies as qualified for a certificate of authorization and who has paid the fee set in s. 481.207.~~

(5)~~(7)~~ The board shall allow a licensee or ~~certify~~ an

applicant to qualify one or more business organizations ~~as qualified for a certificate of authorization~~ to offer architectural ~~or interior design~~ services, or to use a fictitious name to offer such services, if ~~provided that:~~

~~(a)~~ one or more of the principal officers of the corporation or limited liability company, or one or more partners of the partnership, and all personnel of the corporation, limited liability company, or partnership who act in its behalf in this state as architects, are registered as provided by this part.~~; or~~

~~(b) One or more of the principal officers of the corporation or one or more partners of the partnership, and all personnel of the corporation, limited liability company, or partnership who act in its behalf in this state as interior designers, are registered as provided by this part~~.

~~(8) The department shall adopt rules establishing a procedure for the biennial renewal of certificates of authorization.~~

~~(9) The department shall renew a certificate of authorization upon receipt of the renewal application and biennial renewal fee.~~

(6)~~(10)~~ Each qualifying agent who qualifies a business organization ~~partnership, limited liability company, and corporation certified~~ under this section shall notify the department within 30 days after ~~of~~ any change in the information

contained in the application upon which the qualification ~~certification~~ is based. Any registered architect ~~or interior designer~~ who qualifies the business organization shall ensure ~~corporation, limited liability company, or partnership as provided in subsection (7) shall be responsible for ensuring~~ responsible supervising control of projects of the business organization ~~entity~~ and shall notify the department of the ~~upon~~ termination of her or his employment with a business organization qualified ~~partnership, limited liability company, or corporation certified~~ under this section ~~shall notify the department of the termination~~ within 30 days after such termination.

(7)~~(11)~~ A business organization is not ~~No corporation, limited liability company, or partnership shall be~~ relieved of responsibility for the conduct or acts of its agents, employees, or officers by reason of its compliance with this section. However, except as provided in s. 558.0035, the architect who signs and seals the construction documents and instruments of service is ~~shall be~~ liable for the professional services performed~~, and the interior designer who signs and seals the interior design drawings, plans, or specifications shall be liable for the professional services performed~~.

~~(12) Disciplinary action against a corporation, limited liability company, or partnership shall be administered in the same manner and on the same grounds as disciplinary action~~

~~against a registered architect or interior designer, respectively.~~

(8)~~(13)~~ ~~Nothing in~~ This section may not ~~shall~~ be construed to mean that a certificate of registration to practice architecture ~~or interior design~~ must ~~shall~~ be held by a business organization ~~corporation, limited liability company, or partnership~~. ~~Nothing in~~ This section does not prohibit a business organization from offering ~~prohibits corporations, limited liability companies, and partnerships from joining together to offer~~ architectural or~~,~~ engineering, ~~interior design, surveying and mapping, and landscape architectural~~ services, or any combination of such services, to the public if the business organization~~, provided that each corporation, limited liability company, or partnership~~ otherwise meets the requirements of law.

~~(14) Corporations, limited liability companies, or partnerships holding a valid certificate of authorization to practice architecture shall be permitted to use in their title the term "interior designer" or "registered interior designer."~~

Section 85. Subsections (4), (6), (8), (10), (11), and (12) of section 481.221, Florida Statutes, are renumbered as subsections (3), (4), (5), (6), (7), and (8), respectively, and present subsections (3), (5), (7), (9), (10), (11), and (12) of that section are amended to read:

481.221 Seals; display of certificate number; permitting

requirements.—

~~(3) The board shall adopt a rule prescribing the distinctly different seals to be used by registered interior designers holding valid certificates of registration. Each registered interior designer shall obtain a seal as prescribed by the board, and all drawings, plans, specifications, or reports prepared or issued by the registered interior designer and being filed for public record shall bear the signature and seal of the registered interior designer who prepared or approved the document and the date on which they were sealed. The signature, date, and seal shall be evidence of the authenticity of that to which they are affixed. Final plans, specifications, or reports prepared or issued by a registered interior designer may be transmitted electronically and may be signed by the registered interior designer, dated, and sealed electronically with the seal in accordance with ss. 668.001-668.006.~~

~~(5) No registered interior designer shall affix, or permit to be affixed, her or his seal or signature to any plan, specification, drawing, or other document which depicts work which she or he is not competent or licensed to perform.~~

~~(7) No registered interior designer shall affix her or his signature or seal to any plans, specifications, or other documents which were not prepared by her or him or under her or his responsible supervising control or by another registered~~

~~interior designer and reviewed, approved, or modified and adopted by her or him as her or his own work according to rules adopted by the board.~~

~~(9) Studies, drawings, specifications, and other related documents prepared by a registered interior designer in providing interior design services shall be of a sufficiently high standard to clearly and accurately indicate all essential parts of the work to which they refer.~~

(6)~~(10)~~ Each registered architect must ~~or interior designer, and each corporation, limited liability company, or partnership holding a certificate of authorization, shall~~ include her or his license ~~its certificate~~ number in any newspaper, telephone directory, or other advertising medium used by the registered licensee ~~architect, interior designer, corporation, limited liability company, or partnership~~. Each business organization must include the license number of the registered architect who serves as the qualifying agent for that business organization in any newspaper, telephone directory, or other advertising medium used by the business organization. A business organization is not required to display the license numbers of other registered architects employed by the business organization ~~A corporation, limited liability company, or partnership is not required to display the certificate number of individual registered architects or interior designers employed by or working within the corporation, limited liability company,~~

~~or partnership~~.

(7)~~(11)~~ When the certificate of registration of a registered architect ~~or interior designer~~ has been revoked or suspended by the board, the registered architect ~~or interior designer~~ shall surrender her or his seal to the secretary of the board within a period of 30 days after the revocation or suspension has become effective. If the certificate of the registered architect ~~or interior designer~~ has been suspended for a period of time, her or his seal shall be returned to her or him upon expiration of the suspension period.

(8)~~(12)~~ A person may not sign and seal by any means any final plan, specification, or report after her or his certificate of registration has expired or is suspended or revoked. A registered architect ~~or interior designer~~ whose certificate of registration is suspended or revoked shall, within 30 days after the effective date of the suspension or revocation, surrender her or his seal to the executive director of the board and confirm in writing to the executive director the cancellation of the registered architect's ~~or interior designer's~~ electronic signature in accordance with ss. 668.001-668.006. When a registered architect's ~~or interior designer's~~ certificate of registration is suspended for a period of time, her or his seal shall be returned upon expiration of the period of suspension.

Section 86. Section 481.222, Florida Statutes, is amended

to read:

481.222 Architects performing building code inspection services.—Notwithstanding any other provision of law, a person who is currently licensed to practice as an architect under this part may provide building code inspection services described in s. 468.603(5) and (8) to a local government or state agency upon its request, without being certified by the Florida Building Code Administrators and Inspectors Board under part XII of chapter 468. With respect to the performance of such building code inspection services, the architect is subject to the disciplinary guidelines of this part and s. 468.621(1)(c)-(h). Any complaint processing, investigation, and discipline that arise out of an architect's performance of building code inspection services shall be conducted by the Board of Architecture ~~and Interior Design~~ rather than the Florida Building Code Administrators and Inspectors Board. An architect may not perform plans review as an employee of a local government upon any job that the architect or the architect's company designed.

Section 87. Section 481.223, Florida Statutes, is amended to read:

481.223 Prohibitions; penalties; injunctive relief.—

(1) A person may not knowingly:

(a) Practice architecture unless the person is an architect or a registered architect; however, a licensed

architect who has been licensed by the board and who chooses to relinquish or not to renew his or her license may use the title "Architect, Retired" but may not otherwise render any architectural services.

~~(b) Practice interior design unless the person is a registered interior designer unless otherwise exempted herein; however, an interior designer who has been licensed by the board and who chooses to relinquish or not to renew his or her license may use the title "Interior Designer, Retired" but may not otherwise render any interior design services.~~

(b) ~~(c)~~ Use the name or title "architect," ~~or~~ "registered architect," ~~or "interior designer" or "registered interior designer,"~~ or words to that effect, when the person is not then the holder of a valid license issued pursuant to this part.

(c) ~~(d)~~ Present as his or her own the license of another.

(d) ~~(e)~~ Give false or forged evidence to the board or a member thereof.

(e) ~~(f)~~ Use or attempt to use an architect ~~or interior designer~~ license that has been suspended, revoked, or placed on inactive or delinquent status.

(f) ~~(g)~~ Employ unlicensed persons to practice architecture ~~or interior design~~.

(g) ~~(h)~~ Conceal information relative to violations of this part.

(2) Any person who violates any provision of subsection

(1) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3)(a) Notwithstanding chapter 455 or any other law to the contrary, an affected person may maintain an action for injunctive relief to restrain or prevent a person from violating paragraph (1)(a) or~~,~~ paragraph (1)(b)~~, or paragraph (1)(c)~~. The prevailing party is entitled to actual costs and attorney's fees.

(b) For purposes of this subsection, the term "affected person" means a person directly affected by the actions of a person suspected of violating paragraph (1)(a) or~~,~~ paragraph (1)(b)~~, or paragraph (1)(c)~~ and includes, but is not limited to, the department, any person who received services from the alleged violator, or any private association composed primarily of members of the profession the alleged violator is practicing or offering to practice or holding himself or herself out as qualified to practice.

Section 88. Section 481.2251, Florida Statutes, is repealed.

Section 89. Subsections (5) through (8) of section 481.229, Florida Statutes, are amended to read:

481.229 Exceptions; exemptions from licensure.—

~~(5)(a) Nothing contained in this part shall prevent a registered architect or a partnership, limited liability company, or corporation holding a valid certificate of~~

~~authorization to provide architectural services from performing any interior design service or from using the title "interior designer" or "registered interior designer."~~

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

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

~~requirements for renewal of the certificate of authorization to provide architectural services under s. 481.219 shall be deemed to satisfy the requirements for renewal of the certificate of authorization to provide interior design services under that section.~~

~~(6) This part shall not apply to:~~

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

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

~~(7) Nothing in this part shall be construed as authorizing or permitting an interior designer to engage in the business of,~~

~~or to act as, a contractor within the meaning of chapter 489, unless registered or certified as a contractor pursuant to chapter 489.~~

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

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

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

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

Section 90. Subsection (1) of section 481.231, Florida Statutes, is amended to read:

481.231 Effect of part locally.—

(1) ~~Nothing in~~ This part does not ~~shall be construed to~~ repeal, amend, limit, or otherwise affect any specific provision of any local building code or zoning law or ordinance that has been duly adopted, now or hereafter enacted, which is more restrictive, with respect to the services of registered architects ~~or registered interior designers,~~ than ~~the provisions of~~ this part~~; provided, however, that a licensed architect shall be deemed licensed as an interior designer for purposes of offering or rendering interior design services to a county, municipality, or other local government or political subdivision~~.

Section 91. Section 481.303, Florida Statutes, is amended to read:

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

(1) "Board" means the Board of Landscape Architecture.

(2)~~(4)~~ "Certificate of registration" means a license issued by the department to a natural person to engage in the practice of landscape architecture.

(3)~~(2)~~ "Department" means the Department of Business and Professional Regulation.

~~(5) "Certificate of authorization" means a license issued by the department to a corporation or partnership to engage in the practice of landscape architecture.~~

(4)~~(6)~~ "Landscape architecture" means professional

services, including, but not limited to, the following:

(a) Consultation, investigation, research, planning, design, preparation of drawings, specifications, contract documents and reports, responsible construction supervision, or landscape management in connection with the planning and development of land and incidental water areas, including the use of Florida-friendly landscaping as defined in s. 373.185, where, and to the extent that, the dominant purpose of such services or creative works is the preservation, conservation, enhancement, or determination of proper land uses, natural land features, ground cover and plantings, or naturalistic and aesthetic values;

(b) The determination of settings, grounds, and approaches for and the siting of buildings and structures, outdoor areas, or other improvements;

(c) The setting of grades, shaping and contouring of land and water forms, determination of drainage, and provision for storm drainage and irrigation systems where such systems are necessary to the purposes outlined herein; and

(d) The design of such tangible objects and features as are necessary to the purpose outlined herein.

(5) ~~(7)~~ "Landscape design" means consultation for and preparation of planting plans drawn for compensation, including specifications and installation details for plant materials, soil amendments, mulches, edging, gravel, and other similar

materials. Such plans may include only recommendations for the conceptual placement of tangible objects for landscape design projects. Construction documents, details, and specifications for tangible objects and irrigation systems shall be designed or approved by licensed professionals as required by law.

(6)~~(3)~~ "Registered landscape architect" means a person who holds a license to practice landscape architecture in this state under the authority of this act.

Section 92. Section 481.310, Florida Statutes, is amended to read:

481.310 Practical experience requirement.—Beginning October 1, 1990, every applicant for licensure as a registered landscape architect shall demonstrate, prior to licensure, 1 year of practical experience in landscape architectural work. An applicant who holds both a bachelor's degree and a master's degree in landscape architecture is not required to demonstrate 1 year of practical experience in landscape architectural work to obtain licensure. The board shall adopt rules providing standards for the required experience. An applicant who qualifies for examination pursuant to s. 481.309(1)(b)1. may obtain the practical experience after completing the required professional degree. Experience used to qualify for examination pursuant to s. 481.309(1)(b)2. may not be used to satisfy the practical experience requirement under this section.

Section 93. Subsections (5) and (6) of section 481.311,

Florida Statutes, are renumbered as subsections (4) and (5), respectively, and subsection (3) and present subsection (4) of that section are amended, to read:

481.311 Licensure.—

(3) The board shall certify as qualified for a license by endorsement an applicant who:

(a) Qualifies to take the examination as set forth in s. 481.309; and has passed a national, regional, state, or territorial licensing examination which is substantially equivalent to the examination required by s. 481.309; ~~or~~

(b) Holds a valid license to practice landscape architecture issued by another state or territory of the United States, if the criteria for issuance of such license were substantially identical to the licensure criteria which existed in this state at the time the license was issued; or~~.~~

(c) Has held a valid license to practice landscape architecture in another state or territory of the United States for at least 10 years before the date of application and has successfully completed a state, regional, national, or other examination that is equivalent to or more stringent than the examination required by the board, subject to subsection (5). An applicant who has met the requirements to be qualified for a license by endorsement except for successful completion of an examination that is equivalent to or more stringent than the examination required by the board may take the examination

required by the board without completing additional education requirements. Such application must be submitted to the board while the applicant holds a valid license in another state or territory or within 2 years after the expiration of such license.

~~(4) The board shall certify as qualified for a certificate of authorization any applicant corporation or partnership who satisfies the requirements of s. 481.319.~~

Section 94. Subsection (4) of section 481.313, Florida Statutes, is amended to read:

481.313 Renewal of license.—

(4) The board, by rule adopted pursuant to ss. 120.536(1) and 120.54, shall establish criteria for the approval of continuing education courses and providers, and shall by rule establish criteria for accepting alternative nonclassroom continuing education on an hour-for-hour basis. A landscape architect shall receive hour-for-hour credit for attending continuing education courses approved by the Landscape Architecture Continuing Education System or another nationally recognized clearinghouse for continuing education that relate to and increase the basic knowledge of landscape architecture, as determined by the board, if such landscape architect submits proof satisfactory to the board that such course was approved by the Landscape Architecture Continuing Education System or another nationally recognized clearinghouse for continuing

education, the syllabus or outline for such course, and attendance of such course.

Section 95. Subsection (2) of section 481.317, Florida Statutes, is amended to read:

481.317 Temporary certificates.—

~~(2) Upon approval by the board and payment of the fee set in s. 481.307, the department shall grant a temporary certificate of authorization for work on one specified project in this state for a period not to exceed 1 year to an out-of-state corporation, partnership, or firm, provided one of the principal officers of the corporation, one of the partners of the partnership, or one of the principals in the fictitiously named firm has obtained a temporary certificate of registration in accordance with subsection (1).~~

Section 96. Section 481.319, Florida Statutes, is amended to read:

481.319 Corporate and partnership practice of landscape architecture~~; certificate of authorization~~.—

(1) The practice of or offer to practice landscape architecture by registered landscape architects registered under this part through a corporation or partnership offering landscape architectural services to the public, or through a corporation or partnership offering landscape architectural services to the public through individual registered landscape architects as agents, employees, officers, or partners, is

permitted, subject to the provisions of this section, if:

(a) One or more of the principal officers of the corporation, or partners of the partnership, and all personnel of the corporation or partnership who act in its behalf as landscape architects in this state are registered landscape architects; and

(b) One or more of the officers, one or more of the directors, one or more of the owners of the corporation, or one or more of the partners of the partnership is a registered landscape architect~~; and~~

~~(c) The corporation or partnership has been issued a certificate of authorization by the board as provided herein~~.

(2) All documents involving the practice of landscape architecture which are prepared for the use of the corporation or partnership shall bear the signature and seal of a registered landscape architect.

(3) A landscape architect applying to practice in the name of a ~~An applicant~~ corporation must ~~shall~~ file with the department the names and addresses of all officers and board members of the corporation, including the principal officer or officers, duly registered to practice landscape architecture in this state and, also, of all individuals duly registered to practice landscape architecture in this state who shall be in responsible charge of the practice of landscape architecture by the corporation in this state. A landscape architect applying to

practice in the name of a ~~An applicant~~ partnership must ~~shall~~ file with the department the names and addresses of all partners of the partnership, including the partner or partners duly registered to practice landscape architecture in this state and, also, of an individual or individuals duly registered to practice landscape architecture in this state who shall be in responsible charge of the practice of landscape architecture by said partnership in this state.

(4) Each landscape architect qualifying a partnership or ~~and~~ corporation ~~licensed~~ under this part must ~~shall~~ notify the department within 1 month after ~~of~~ any change in the information contained in the application upon which the license is based. Any landscape architect who terminates her or his ~~or her~~ employment with a partnership or corporation licensed under this part shall notify the department of the termination within 1 month after such termination.

~~(5) Disciplinary action against a corporation or partnership shall be administered in the same manner and on the same grounds as disciplinary action against a registered landscape architect.~~

(5)~~(6)~~ Except as provided in s. 558.0035, the fact that a registered landscape architect practices landscape architecture through a corporation or partnership as provided in this section does not relieve the landscape architect from personal liability for her or his ~~or her~~ professional acts.

Section 97. Subsection (5) of section 481.321, Florida Statutes, is amended to read:

481.321 Seals; display of certificate number.—

(5) Each registered landscape architect must ~~and each corporation or partnership holding a certificate of authorization shall~~ include her or his ~~its~~ certificate number in any newspaper, telephone directory, or other advertising medium used by the registered landscape architect, corporation, or partnership. A corporation or partnership must ~~is not required to~~ display the certificate number ~~numbers~~ of at least one officer, director, owner, or partner who is a ~~individual~~ registered landscape architect ~~architects~~ employed by or practicing with the corporation or partnership.

Section 98. Subsection (5) of section 481.329, Florida Statutes, is amended to read:

481.329 Exceptions; exemptions from licensure.—

(5) This part does not prohibit any person from engaging in the practice of landscape design, as defined in s. 481.303 ~~481.303(7)~~, or from submitting for approval to a governmental agency planting plans that are independent of, or a component of, construction documents that are prepared by a Florida-registered professional. Persons providing landscape design services shall not use the title, term, or designation "landscape architect," "landscape architectural," "landscape architecture," "L.A.," "landscape engineering," or any

description tending to convey the impression that she or he is a landscape architect unless she or he is registered as provided in this part.

Section 99. Subsection (9) of section 489.103, Florida Statutes, is amended to read:

489.103 Exemptions.—This part does not apply to:

(9) Any work or operation of a casual, minor, or inconsequential nature in which the aggregate contract price for labor, materials, and all other items is less than $2,500 ~~$1,000~~, but this exemption does not apply:

(a) If the construction, repair, remodeling, or improvement is a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made in contracts of amounts less than $2,500 ~~$1,000~~ for the purpose of evading this part or otherwise.

(b) To a person who advertises that he or she is a contractor or otherwise represents that he or she is qualified to engage in contracting.

Section 100. Subsection (2) of section 489.111, Florida Statutes, is amended to read:

489.111 Licensure by examination.—

(2) A person shall be eligible for licensure by examination if the person:

(a) Is 18 years of age;

(b) Is of good moral character; and

(c) Meets eligibility requirements according to one of the following criteria:

1. Has received a baccalaureate degree from an accredited 4-year college in the appropriate field of engineering, architecture, or building construction and has 1 year of proven experience in the category in which the person seeks to qualify. For the purpose of this part, a minimum of 2,000 person-hours shall be used in determining full-time equivalency. An applicant who is exempt from passing an examination as provided in s. 489.113(1) is eligible for a license under this section.

2. Has a total of at least 4 years of active experience as a worker who has learned the trade by serving an apprenticeship as a skilled worker who is able to command the rate of a mechanic in the particular trade or as a foreman who is in charge of a group of workers and usually is responsible to a superintendent or a contractor or his or her equivalent, provided, however, that at least 1 year of active experience shall be as a foreman.

3. Has a combination of not less than 1 year of experience as a foreman and not less than 3 years of credits for any accredited college-level courses; has a combination of not less than 1 year of experience as a skilled worker, 1 year of experience as a foreman, and not less than 2 years of credits for any accredited college-level courses; or has a combination

of not less than 2 years of experience as a skilled worker, 1 year of experience as a foreman, and not less than 1 year of credits for any accredited college-level courses. All junior college or community college-level courses shall be considered accredited college-level courses.

4.a. An active certified residential contractor is eligible to receive a certified building contractor license after passing or having previously passed ~~take~~ the building contractors' examination if he or she possesses a minimum of 3 years of proven experience in the classification in which he or she is certified.

b. An active certified residential contractor is eligible to receive a certified general contractor license after passing or having previously passed ~~take~~ the general contractors' examination if he or she possesses a minimum of 4 years of proven experience in the classification in which he or she is certified.

c. An active certified building contractor is eligible to receive a certified general contractor license after passing or having previously passed ~~take~~ the general contractors' examination if he or she possesses a minimum of 4 years of proven experience in the classification in which he or she is certified.

5.a. An active certified air-conditioning Class C contractor is eligible to receive a certified air conditioning

Class B contractor license after passing or having previously passed ~~take~~ the air-conditioning Class B contractors' examination if he or she possesses a minimum of 3 years of proven experience in the classification in which he or she is certified.

b. An active certified air-conditioning Class C contractor is eligible to receive a certified air conditioning Class A contractor license after passing or having previously passed ~~take~~ the air-conditioning Class A contractors' examination if he or she possesses a minimum of 4 years of proven experience in the classification in which he or she is certified.

c. An active certified air-conditioning Class B contractor is eligible to receive a certified air conditioning Class A contractor license after passing or having previously passed ~~take~~ the air-conditioning Class A contractors' examination if he or she possesses a minimum of 1 year of proven experience in the classification in which he or she is certified.

6.a. An active certified swimming pool servicing contractor is eligible to receive a certified residential swimming pool contractor license after passing or having previously passed ~~take~~ the residential swimming pool contractors' examination if he or she possesses a minimum of 3 years of proven experience in the classification in which he or she is certified.

b. An active certified swimming pool servicing contractor

is eligible to receive a certified commercial swimming pool contractor license after passing or having previously passed ~~take~~ the swimming pool commercial contractors' examination if he or she possesses a minimum of 4 years of proven experience in the classification in which he or she is certified.

c. An active certified residential swimming pool contractor is eligible to receive a certified commercial swimming pool contractor license after passing or having previously passed ~~take~~ the commercial swimming pool contractors' examination if he or she possesses a minimum of 1 year of proven experience in the classification in which he or she is certified.

d. An applicant is eligible to receive a certified swimming pool/spa servicing contractor license after passing or having previously passed ~~take~~ the swimming pool/spa servicing contractors' examination if he or she has satisfactorily completed 60 hours of instruction in courses related to the scope of work covered by that license and approved by the Construction Industry Licensing Board by rule and has at least 1 year of proven experience related to the scope of work of such a contractor.

Section 101. Subsection (1) of section 489.113, Florida Statutes, is amended to read:

489.113 Qualifications for practice; restrictions.—

(1) Any person who desires to engage in contracting on a

statewide basis shall, as a prerequisite thereto, establish his or her competency and qualifications to be certified pursuant to this part. To establish competency, a person shall pass the appropriate examination approved by the board and certified by the department. If an applicant has received a baccalaureate degree from an accredited 4-year college in building construction, or a related degree as approved by the board by rule, such applicant is not required to pass such examination. Any person who desires to engage in contracting on other than a statewide basis shall, as a prerequisite thereto, be registered pursuant to this part, unless exempted by this part.

Section 102. Subsection (3) of section 489.115, Florida Statutes, is amended to read:

489.115 Certification and registration; endorsement; reciprocity; renewals; continuing education.—

(3) The board shall certify as qualified for certification by endorsement any applicant who:

(a) Meets the requirements for certification as set forth in this section; has passed a national, regional, state, or United States territorial licensing examination that is substantially equivalent to the examination required by this part; and has satisfied the requirements set forth in s. 489.111;

(b) Holds a valid license to practice contracting issued by another state or territory of the United States, if the

criteria for issuance of such license were substantially equivalent to Florida's current certification criteria; ~~or~~

(c) Holds a valid, current license to practice contracting issued by another state or territory of the United States, if the state or territory has entered into a reciprocal agreement with the board for the recognition of contractor licenses issued in that state, based on criteria for the issuance of such licenses that are substantially equivalent to the criteria for certification in this state; or

(d) Has held a valid license to practice contracting issued by another state or territory for at least 10 years before the date of application and is applying for the same or similar license in this state, subject to subsections (5)-(9). The board may consider whether such applicant has had a license to practice contracting revoked, suspended, or otherwise acted against by the licensing authority of another state, territory, or country. Such application must be submitted to the board while the applicant holds a valid license in another state or territory or within 2 years after the expiration of such license.

Section 103. Subsection (5) of section 489.511, Florida Statutes, is amended to read:

489.511 Certification; application; examinations; endorsement.—

(5) The board shall certify as qualified for certification

by endorsement any individual applying for certification who:

(a) Meets the requirements for certification as set forth in this section; has passed a national, regional, state, or United States territorial licensing examination that is substantially equivalent to the examination required by this part; and has satisfied the requirements set forth in s. 489.521; ~~or~~

(b) Holds a valid license to practice electrical or alarm system contracting issued by another state or territory of the United States, if the criteria for issuance of such license was substantially equivalent to the certification criteria that existed in this state at the time the certificate was issued; or

(c) Has held a valid license to practice electrical or alarm system contracting issued by another state or territory for at least 10 years before the date of application and is applying for the same or similar license in this state, subject to ss. 489.510 and 489.521(3)(a), and subparagraph (1)(b)1. Such application must be submitted to the board while the applicant holds a valid license in another state or territory or within 2 years after the expiration of such license.

Section 104. Subsection (3) and paragraph (b) of subsection (4) of section 489.517, Florida Statutes, are amended to read:

489.517 Renewal of certificate or registration; continuing education.—

(3) Each certificateholder or registrant shall provide proof, in a form established by rule of the board, that the certificateholder or registrant has completed at least 7 ~~14~~ classroom hours of at least 50 minutes each of continuing education courses during each biennium since the issuance or renewal of the certificate or registration. The board shall by rule establish criteria for the approval of continuing education courses and providers and may by rule establish criteria for accepting alternative nonclassroom continuing education on an hour-for-hour basis.

(4)

(b) Of the 7 ~~14~~ classroom hours of continuing education required, at least 1 hour ~~7 hours~~ must be on technical subjects, 1 hour on workers' compensation, 1 hour on workplace safety, 1 hour on business practices, and for alarm system contractors and electrical contractors engaged in alarm system contracting, 2 hours on false alarm prevention.

Section 105. Paragraph (b) of subsection (1) of section 489.518, Florida Statutes, is amended to read:

489.518 Alarm system agents.—

(1) A licensed electrical or alarm system contractor may not employ a person to perform the duties of a burglar alarm system agent unless the person:

(b) Has successfully completed a minimum of 14 hours of training within 90 days after employment, to include basic alarm

system electronics in addition to related training including CCTV and access control training, with at least 2 hours of training in the prevention of false alarms. Such training shall be from a board-approved provider, and the employee or applicant for employment shall provide proof of successful completion to the licensed employer. The board shall by rule establish criteria for the approval of training courses and providers and may by rule establish criteria for accepting alternative nonclassroom education on an hour-for-hour basis. The board shall approve providers that conduct training in other than the English language. The board shall establish a fee for the approval of training providers or courses, not to exceed $60. Qualified employers may conduct training classes for their employees, with board approval.

Section 106. Section 492.104, Florida Statutes, is amended, to read:

492.104 Rulemaking authority.—The Board of Professional Geologists has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this chapter. Every licensee shall be governed and controlled by this chapter and the rules adopted by the board. The board is authorized to set, by rule, fees for application, examination, ~~certificate of authorization,~~ late renewal, initial licensure, and license renewal. These fees may ~~should~~ not exceed the cost of implementing the application, examination, initial licensure, and license renewal or other

administrative process and shall be established as follows:

(1) The application fee shall not exceed $150 and shall be nonrefundable.

(2) The examination fee shall not exceed $250, and the fee may be apportioned to each part of a multipart examination. The examination fee shall be refundable in whole or part if the applicant is found to be ineligible to take any portion of the licensure examination.

(3) The initial license fee shall not exceed $100.

(4) The biennial renewal fee shall not exceed $150.

~~(5) The fee for a certificate of authorization shall not exceed $350 and the fee for renewal of the certificate shall not exceed $350.~~

(5)~~(6)~~ The fee for reactivation of an inactive license may ~~shall~~ not exceed $50.

(6)~~(7)~~ The fee for a provisional license may ~~shall~~ not exceed $400.

(7)~~(8)~~ The fee for application, examination, and licensure for a license by endorsement is ~~shall be~~ as provided in this section for licenses in general.

Section 107. Subsection (1) of section 492.108, Florida Statutes, is amended to read:

492.108 Licensure by endorsement; requirements; fees.—

(1) The department shall issue a license by endorsement to any applicant who, upon applying to the department and remitting

an application fee, has been certified by the board that he or she:

(a) Has met the qualifications for licensure in s. 492.105(1)(b)-(e) and:~~.~~

1.~~(b)~~ Is the holder of an active license in good standing in a state, trust, territory, or possession of the United States.

2.~~(c)~~ Was licensed through written examination in at least one state, trust, territory, or possession of the United States, the examination requirements of which have been approved by the board as substantially equivalent to or more stringent than those of this state, and has received a score on such examination which is equal to or greater than the score required by this state for licensure by examination.

3.~~(d)~~ Has taken and successfully passed the laws and rules portion of the examination required for licensure as a professional geologist in this state.

(b) Has held a valid license to practice geology in another state, trust, territory, or possession of the United States for at least 10 years before the date of application and has successfully completed a state, regional, national, or other examination that is equivalent to or more stringent than the examination required by the department. If such applicant has met the requirements for a license by endorsement except successful completion of an examination that is equivalent to or

more stringent than the examination required by the board, such applicant may take the examination required by the board. Such application must be submitted to the board while the applicant holds a valid license in another state or territory or within 2 years after the expiration of such license.

Section 108. Section 492.111, Florida Statutes, is amended to read:

492.111 Practice of professional geology by a firm, corporation, or partnership~~; certificate of authorization~~.—The practice of, or offer to practice, professional geology by individual professional geologists licensed under the provisions of this chapter through a firm, corporation, or partnership offering geological services to the public through individually licensed professional geologists as agents, employees, officers, or partners thereof is permitted subject to the provisions of this chapter, if ~~provided that~~:

(1) At all times that it offers geological services to the public, the firm, corporation, or partnership is qualified by ~~has on file with the department the name and license number of~~ one or more individuals who hold a current, active license as a professional geologist in the state and are serving as a geologist of record for the firm, corporation, or partnership. A geologist of record may be any principal officer or employee of such firm or corporation, or any partner or employee of such partnership, who holds a current, active license as a

professional geologist in this state, or any other Florida-licensed professional geologist with whom the firm, corporation, or partnership has entered into a long-term, ongoing relationship, as defined by rule of the board, to serve as one of its geologists of record. ~~It shall be the responsibility of the firm, corporation, or partnership and~~ The geologist of record shall ~~to~~ notify the department of any changes in the relationship or identity of that geologist of record within 30 days after such change.

~~(2) The firm, corporation, or partnership has been issued a certificate of authorization by the department as provided in this chapter. For purposes of this section, a certificate of authorization shall be required of any firm, corporation, partnership, association, or person practicing under a fictitious name and offering geological services to the public; except that, when an individual is practicing professional geology in her or his own name, she or he shall not be required to obtain a certificate of authorization under this section. Such certificate of authorization shall be renewed every 2 years.~~

(2)~~(3)~~ All final geological papers or documents involving the practice of the profession of geology which have been prepared or approved for the use of such firm, corporation, or partnership, for delivery to any person for public record with the state, shall be dated and bear the signature and seal of the

professional geologist or professional geologists who prepared or approved them.

(3)~~(4)~~ Except as provided in s. 558.0035, the fact that a licensed professional geologist practices through a corporation or partnership does not relieve the registrant from personal liability for negligence, misconduct, or wrongful acts committed by her or him. The partnership and all partners are jointly and severally liable for the negligence, misconduct, or wrongful acts committed by their agents, employees, or partners while acting in a professional capacity. Any officer, agent, or employee of a corporation is personally liable and accountable only for negligent acts, wrongful acts, or misconduct committed by her or him or committed by any person under her or his direct supervision and control, while rendering professional services on behalf of the corporation. The personal liability of a shareholder of a corporation, in her or his capacity as shareholder, may be no greater than that of a shareholder-employee of a corporation incorporated under chapter 607. The corporation is liable up to the full value of its property for any negligent acts, wrongful acts, or misconduct committed by any of its officers, agents, or employees while they are engaged on behalf of the corporation in the rendering of professional services.

~~(5) The firm, corporation, or partnership desiring a certificate of authorization shall file with the department an~~

~~application therefor, upon a form to be prescribed by the department, accompanied by the required application fee.~~

~~(6) The department may refuse to issue a certificate of authorization if any facts exist which would entitle the department to suspend or revoke an existing certificate of authorization or if the department, after giving persons involved a full and fair hearing, determines that any of the officers or directors of said firm or corporation, or partners of said partnership, have violated the provisions of s. 492.113.~~

Section 109. Subsection (4) of section 492.113, Florida Statutes, is amended to read:

492.113 Disciplinary proceedings.—

(4) The department shall reissue the license of a disciplined professional geologist ~~or business~~ upon certification by the board that the disciplined person has complied with ~~all of~~ the terms and conditions set forth in the final order.

Section 110. Section 492.115, Florida Statutes, is amended to read:

492.115 Roster of licensed professional geologists.—A roster showing the names and places of business or residence of all licensed professional geologists and all properly qualified firms, corporations, or partnerships practicing ~~holding certificates of authorization to practice~~ professional geology in the state shall be prepared annually by the department. A

copy of this roster must be made available to ~~shall be obtainable by~~ each licensed professional geologist and each firm, corporation, or partnership qualified by a professional geologist ~~holding a certificate of authorization~~, and copies thereof shall be placed on file with the department.

Section 111. Paragraph (i) of subsection (2) of section 548.003, Florida Statutes, is amended to read:

548.003 Florida State Boxing Commission.—

(2) The Florida State Boxing Commission, as created by subsection (1), shall administer the provisions of this chapter. The commission has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter and to implement each of the duties and responsibilities conferred upon the commission, including, but not limited to:

~~(i) Designation and duties of a knockdown timekeeper.~~

Section 112. Subsection (1) of section 548.017, Florida Statutes, is amended to read:

548.017 Participants, managers, and other persons required to have licenses.—

(1) A participant, manager, trainer, second, ~~timekeeper,~~ referee, judge, ~~announcer,~~ physician, matchmaker, or promoter must be licensed before directly or indirectly acting in such capacity in connection with any match involving a participant. A physician approved by the commission must be licensed pursuant to chapter 458 or chapter 459, must maintain an unencumbered

license in good standing, and must demonstrate satisfactory medical training or experience in boxing, or a combination of both, to the executive director before working as the ringside physician.

Section 113. Paragraph (d) of subsection (1) of section 553.5141, Florida Statutes, is amended to read:

553.5141 Certifications of conformity and remediation plans.—

(1) For purposes of this section:

(d) "Qualified expert" means:

1. An engineer licensed pursuant to chapter 471.

2. A certified general contractor licensed pursuant to chapter 489.

3. A certified building contractor licensed pursuant to chapter 489.

4. A building code administrator licensed pursuant to chapter 468.

5. A building inspector licensed pursuant to chapter 468.

6. A plans examiner licensed pursuant to chapter 468.

7. An interior designer who has passed the qualification examination prescribed by either the National Council for Interior Design Qualifications or the California Council for Interior Design Certification or who was licensed as an interior designer by the Department of Business and Professional Regulation ~~licensed pursuant to chapter 481~~.

8. An architect licensed pursuant to chapter 481.

9. A landscape architect licensed pursuant to chapter 481.

10. Any person who has prepared a remediation plan related to a claim under Title III of the Americans with Disabilities Act, 42 U.S.C. s. 12182, that has been accepted by a federal court in a settlement agreement or court proceeding, or who has been qualified as an expert in Title III of the Americans with Disabilities Act, 42 U.S.C. s. 12182, by a federal court.

Section 114. Effective January 1, 2021, subsection (1) of section 553.74, Florida Statutes, is amended to read:

553.74 Florida Building Commission.—

(1) The Florida Building Commission is created and located within the Department of Business and Professional Regulation for administrative purposes. Members are appointed by the Governor subject to confirmation by the Senate. The commission is composed of 19 ~~27~~ members, consisting of the following members:

(a) One architect licensed under chapter 481 with at least 5 years of experience in the design and construction of buildings designated for Group E or Group I occupancies by the Florida Building Code ~~registered to practice in this state and actively engaged in the profession~~. The American Institute of Architects, Florida Section, is encouraged to recommend a list of candidates for consideration.

(b) One structural engineer registered to practice in this

state and actively engaged in the profession. The Florida Engineering Society is encouraged to recommend a list of candidates for consideration.

(c) One air-conditioning contractor, ~~or~~ mechanical contractor, or mechanical engineer certified to do business in this state and actively engaged in the profession. The Florida Air Conditioning Contractors Association, the Florida Refrigeration and Air Conditioning Contractors Association, ~~and~~ the Mechanical Contractors Association of Florida, and the Florida Engineering Society are encouraged to recommend a list of candidates for consideration.

(d) One electrical contractor or electrical engineer certified to do business in this state and actively engaged in the profession. The Florida Association of Electrical Contractors, ~~and~~ the National Electrical Contractors Association, Florida Chapter, and the Florida Engineering Society are encouraged to recommend a list of candidates for consideration.

~~(e) One member from fire protection engineering or technology who is actively engaged in the profession. The Florida Chapter of the Society of Fire Protection Engineers and the Florida Fire Marshals and Inspectors Association are encouraged to recommend a list of candidates for consideration.~~

(e)~~(f)~~ One certified general contractor or one certified building contractor certified to do business in this state and

actively engaged in the profession. The Associated Builders and Contractors of Florida, the Florida Associated General Contractors Council, the Florida Home Builders Association, and the Union Contractors Association are encouraged to recommend a list of candidates for consideration.

(f) ~~(g)~~ One plumbing contractor licensed to do business in this state and actively engaged in the profession. The Florida Association of Plumbing, Heating, and Cooling Contractors is encouraged to recommend a list of candidates for consideration.

(g) ~~(h)~~ One roofing or sheet metal contractor certified to do business in this state and actively engaged in the profession. The Florida Roofing, Sheet Metal, and Air Conditioning Contractors Association and the Sheet Metal and Air Conditioning Contractors' National Association are encouraged to recommend a list of candidates for consideration.

(h) ~~(i)~~ One certified residential contractor licensed to do business in this state and actively engaged in the profession. The Florida Home Builders Association is encouraged to recommend a list of candidates for consideration.

(i) ~~(j)~~ Three members who are municipal, county, or district codes enforcement officials, one of whom is also a fire official. The Building Officials Association of Florida and the Florida Fire Marshals and Inspectors Association are encouraged to recommend a list of candidates for consideration.

~~(k) One member who represents the Department of Financial~~

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

~~Services.~~

~~(l) One member who is a county codes enforcement official. The Building Officials Association of Florida is encouraged to recommend a list of candidates for consideration.~~

(j) ~~(m)~~ One member of a Florida-based organization of persons with disabilities or a nationally chartered organization of persons with disabilities with chapters in this state which complies with or is certified to be compliant with the requirements of the Americans with Disability Act of 1990, as amended.

(k) ~~(n)~~ One member of the manufactured buildings industry who is licensed to do business in this state and is actively engaged in the industry. The Florida Manufactured Housing Association is encouraged to recommend a list of candidates for consideration.

~~(o) One mechanical or electrical engineer registered to practice in this state and actively engaged in the profession. The Florida Engineering Society is encouraged to recommend a list of candidates for consideration.~~

~~(p) One member who is a representative of a municipality or a charter county. The Florida League of Cities and the Florida Association of Counties are encouraged to recommend a list of candidates for consideration.~~

(l) ~~(q)~~ One member of the building products manufacturing industry who is authorized to do business in this state and is

actively engaged in the industry. The Florida Building Material Association, the Florida Concrete and Products Association, and the Fenestration Manufacturers Association are encouraged to recommend a list of candidates for consideration.

(m) ~~(r)~~ One member who is a representative of the building owners and managers industry who is actively engaged in commercial building ownership or management. The Building Owners and Managers Association is encouraged to recommend a list of candidates for consideration.

(n) ~~(s)~~ One member who is a representative of the insurance industry. The Florida Insurance Council is encouraged to recommend a list of candidates for consideration.

~~(t) One member who is a representative of public education.~~

(o) ~~(u)~~ One member who is a swimming pool contractor licensed to do business in this state and actively engaged in the profession. The Florida Swimming Pool Association and the United Pool and Spa Association are encouraged to recommend a list of candidates for consideration.

(p) ~~(v)~~ One member who is a representative of the green building industry and who is a third-party commission agent, a Florida board member of the United States Green Building Council or Green Building Initiative, a professional who is accredited under the International Green Construction Code (IGCC), or a professional who is accredited under Leadership in Energy and

Environmental Design (LEED).

(q) ~~(w)~~ One member who is a representative of a natural gas distribution system and who is actively engaged in the distribution of natural gas in this state. The Florida Natural Gas Association is encouraged to recommend a list of candidates for consideration.

~~(x) One member who is a representative of the Department of Agriculture and Consumer Services' Office of Energy. The Commissioner of Agriculture is encouraged to recommend a list of candidates for consideration.~~

~~(y) One member who shall be the chair.~~

Section 115. Paragraph (c) of subsection (5) of section 553.79, Florida Statutes, is amended to read:

553.79 Permits; applications; issuance; inspections.—

(5)

(c) The architect or engineer of record may act as the special inspector provided she or he is on the Board of Professional Engineers' or the Board of Architecture's ~~Architecture and Interior Design's~~ list of persons qualified to be special inspectors. School boards may utilize employees as special inspectors provided such employees are on one of the professional licensing board's list of persons qualified to be special inspectors.

Section 116. Subsection (7) of section 558.002, Florida Statutes, is amended to read:

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

(7) "Design professional" means a person, as defined in s. 1.01, who is ~~licensed in this state as~~ an architect~~, interior designer,~~ a landscape architect, an engineer, a surveyor, or a geologist.

Section 117. Subsection (3) of section 559.25, Florida Statutes, is amended to read:

559.25 Exemptions.—The provisions of this part shall not apply to or affect the following persons:

~~(3) Duly licensed auctioneers, selling at auction.~~

Section 118. Subsection (5) is added to section 823.15, Florida Statutes, to read:

823.15 Dogs and cats released from animal shelters or animal control agencies; sterilization requirement.—

(5) Employees, agents, or contractors of a public or private animal shelter, humane organization, or animal control agency operated by a humane organization or by a county, municipality, or other incorporated political subdivision may implant dogs and cats with radio frequency identification microchip as part of their work with such public or private animal shelter, humane organization, or animal control agency.

Section 119. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2020.

COMMERCE COMMITTEE

HB 1193 by Rep. Ingoglia
Deregulation of Professions and Occupations

AMENDMENT SUMMARY
February 20, 2020

Amendment 1 by Rep. Ingoglia (Strike-all):

The strike-all amendment:

- Removes provisions from the bill related to auctioneers.
- Removes provisions from the bill related to asbestos abatement professionals.
- Changes provisions in the bill related to interior designers to provide for a voluntary registration.
- Waives certain requirements to obtain a commercial driver license for military veterans.
- Prohibits local governments from imposing a fee, license, or regulation on food trucks, except for those related to special events and zoning.
- Revises barber training hours to 900 hours, from 600 hours; and restricted barbers to 600 hours, from 400 hours. (Current law requires 1,200 hours for barbers and 1,000 hours for restricted barbers).
- Revises nail specialist training hours to 180 hours, from 150 hours; facial specialist training hours to 220 hours, from 165 hours; and full specialists to 400 hours, from 300 hours; and clarifies that these hours for full specialists are aligned with Pell Grant requirements.
- Clarifies the experience needed for firesafety plans examiners and firesafety inspectors.
- Clarifies what activities qualify as "makeup application."
- Allows certain animal organizations to contact cat and dog owners as reflected on a microchip scan.
- Clarifies that applicants for a contractor license that hold a building construction bachelors' degree only have to take the business and finance portion of the licensure examination.
- Requires certain out-of-state applicants for construction contractor or architect licenses to complete a 2 hour course on wind mitigation related to the Florida Building Code.
- Requires certain out-of-state applicants for electrical and alarm system contractor licenses to complete a 2 hour course on the Florida Building Code.
- Revises continuing education hours for electrical contractors to 11 hours, from 7 hours (Current law requires 14 hours).
- Prohibits the Department of Health from disciplining a professional license when a licensee defaults on a student loan.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Commerce Committee

Representative Ingoglia offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. This act may be cited as the "Occupational Freedom and Opportunity Act."

Section 2. Paragraphs (h) and (k) of subsection (2) of section 287.055, Florida Statutes, are amended to read:

287.055 Acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services; definitions; procedures; contingent fees prohibited; penalties.—

(2) DEFINITIONS.—For purposes of this section:

(h) A "design-build firm" means a partnership, corporation, or other legal entity that:

1. Is certified under s. 489.119 to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; or

2. Is qualified ~~certified~~ under s. 471.023 to practice or to offer to practice engineering; qualified ~~certified~~ under s. 481.219 to practice or to offer to practice architecture; or qualified ~~certified~~ under s. 481.319 to practice or to offer to practice landscape architecture.

(k) A "design criteria professional" means a firm that is qualified ~~who holds a current certificate of registration~~ under chapter 481 to practice architecture or landscape architecture or a firm who holds a current certificate as a registered engineer under chapter 471 to practice engineering and who is employed by or under contract to the agency for the providing of professional architect services, landscape architect services, or engineering services in connection with the preparation of the design criteria package.

Section 3. Subsection (4) of section 322.57, Florida Statutes, is renumbered as subsection (5), and a new subsection (4) is added to that section, to read:

322.57 Tests of knowledge concerning specified vehicles; endorsement; nonresidents; violations.—

(4)(a) As used in this subsection, the term "servicemember" means a member of any branch of the United States military or military reserves, the United States Coast Guard or its reserves, the Florida National Guard, or the Florida Air National Guard.

(b) The department shall waive the requirement to pass the examination for a commercial driver license for servicemembers and veterans if:

1. The applicant is a veteran who has been honorably discharged from military service within 1 year before the application.

2. The applicant is trained as an Army Motor Transport Operator (MOS 88M) or a similar military specialty.

3. The applicant has received training to operate large trucks in compliance with the Federal Motor Carrier Safety Administration.

4. The applicant has at least 2 years of experience in the military driving vehicles that would require a commercial driver license to operate.

(c) An applicant must complete all other requirements for a commercial driver license within 1 year after receiving a waiver under paragraph (b) or the waiver is invalid.

(d) The department shall adopt rules to administer this subsection.

Section 4. Subsection (13) of section 326.004, Florida Statutes, is amended to read:

326.004 Licensing.—

(13) Each broker must maintain a principal place of business in this state and may establish branch offices in the state. ~~A separate license must be maintained for each branch office. The division shall establish by rule a fee not to exceed $100 for each branch office license.~~

Section 5. Subsection (3) of section 447.02, Florida Statutes, is amended to read:

447.02 Definitions.—The following terms, when used in this chapter, shall have the meanings ascribed to them in this section:

~~(3) The term "department" means the Department of Business and Professional Regulation.~~

Section 6. Section 447.04, Florida Statutes, is repealed.

Section 7. Section 447.041, Florida Statutes, is repealed.

Section 8. Section 447.045, Florida Statutes, is repealed.

Section 9. Section 447.06, Florida Statutes, is repealed.

Section 10. Subsections (6) and (8) of section 447.09, Florida Statutes, are amended to read:

447.09 Right of franchise preserved; penalties.—It shall be unlawful for any person:

~~(6) To act as a business agent without having obtained and possessing a valid and subsisting license or permit.~~

~~(8) To make any false statement in an application for a license.~~

Section 11. Section 447.12, Florida Statutes, is repealed.

Section 12. Section 447.16, Florida Statutes, is repealed.

Section 13. Subsection (4) of section 447.305, Florida Statutes, is amended to read:

447.305 Registration of employee organization.—

~~(4) Notification of registrations and renewals of registration shall be furnished at regular intervals by the commission to the Department of Business and Professional Regulation.~~

Section 14. Subsection (14) is added to section 455.213, Florida Statutes, to read:

455.213 General licensing provisions.—

(14) The department or a board must enter into a reciprocal licensing agreement with other states if the practice act within the purview of this chapter permits such agreement. If a reciprocal licensing agreement exists or if the department or board has determined another state's licensing requirements or examinations to be substantially similar to those under the practice act, the department or board must post on its website which jurisdictions have such reciprocal licensing agreements or substantially similar licenses.

Section 15. Section 455.2278, Florida Statutes, is created to read:

455.2278 Restriction on disciplinary action for student loan default.—

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

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

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

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

(d) "Work-conditional scholarship" means an award of financial aid for a student to further his or her education which imposes an obligation on the student to complete certain work-related requirements to receive or to continue receiving the scholarship.

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

(3) WORK-CONDITIONAL SCHOLARSHIP DEFAULT.—The department or a board may not suspend or revoke a license that it has issued to any person who is in default on the satisfaction of the requirements of his or her work-conditional scholarship solely on the basis of such default.

Section 16. Paragraph (k) of subsection (1) of section 456.072, Florida Statutes, is amended to read:

456.072 Grounds for discipline; penalties; enforcement.—

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

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

Section 17. Section 456.0721, Florida Statutes, is repealed.

Section 18. Subsection (4) of section 456.074, Florida Statutes, is amended to read:

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

~~(4) Upon receipt of information that a Florida-licensed health care practitioner has defaulted on a student loan issued or guaranteed by the state or the Federal Government, the department shall notify the licensee by certified mail that he or she shall be subject to immediate suspension of license unless, within 45 days after the date of mailing, the licensee provides proof that new payment terms have been agreed upon by all parties to the loan. The department shall issue an emergency order suspending the license of any licensee who, after 45 days following the date of mailing from the department, has failed to provide such proof. Production of such proof shall not prohibit the department from proceeding with disciplinary action against the licensee pursuant to s. 456.073.~~

Section 19. Section 468.401, Florida Statutes, is amended to read:

468.401 ~~Regulation of~~ Talent agencies; definitions.—As used in this part, the term ~~or any rule adopted pursuant hereto~~:

(1)~~(8)~~ "Artist" means a person performing on the professional stage or in the production of television, radio, or motion pictures; a musician or group of musicians; or a model.

(2)~~(7)~~ "Buyer" or "employer" means a person, company, partnership, or corporation that uses the services of a talent agency to provide artists.

(3) "Compensation" means any one or more of the following:

(a) Any money or other valuable consideration paid or promised to be paid for services rendered by any person conducting the business of a talent agency under this part;

(b) Any money received by any person in excess of that which has been paid out by such person for transportation, transfer of baggage, or board and lodging for any applicant for employment; or

(c) The difference between the amount of money received by any person who furnishes employees, performers, or entertainers for circus, vaudeville, theatrical, or other entertainments, exhibitions, engagements, or performances and the amount paid by him or her to such employee, performer, or entertainer.

(4) "Engagement" means any employment or placement of an artist, where the artist performs in his or her artistic capacity. However, the term "engagement" shall not apply to procuring opera, music, theater, or dance engagements for any organization defined in s. 501(c)(3) of the Internal Revenue Code or any nonprofit Florida arts organization that has received a grant from the Division of Cultural Affairs of the Department of State or has participated in the state touring program of the Division of Cultural Affairs.

~~(5) "Department" means the Department of Business and Professional Regulation.~~

(5)~~(6)~~ "Operator" means the person who is or who will be in actual charge of a talent agency.

(6) ~~(2)~~ "Owner" means any partner in a partnership, member of a firm, or principal officer or officers of a corporation, whose partnership, firm, or corporation owns a talent agency, or any individual who is the sole owner of a talent agency.

(7) ~~(9)~~ "Person" means any individual, company, society, firm, partnership, association, corporation, manager, or any agent or employee of any of the foregoing.

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

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

(8) ~~(1)~~ "Talent agency" means any person who, for compensation, engages in the occupation or business of procuring or attempting to procure engagements for an artist.

Section 20. Section 468.402, Florida Statutes, is repealed.

Section 21. Section 468.403, Florida Statutes, is repealed.

Section 22. Section 468.404, Florida Statutes, is repealed.

Section 23. Section 468.405, Florida Statutes, is repealed.

Section 24. Subsection (1) of section 468.406, Florida Statutes, is amended to read:

468.406 Fees to be charged by talent agencies; rates; display.—

(1) Each owner or operator of a talent agency shall post in a conspicuous place in each place of business of the agency ~~applicant for a license shall file with the application~~ an itemized schedule of maximum fees, charges, and commissions that ~~which~~ it intends to charge and collect for ~~its~~ services. The ~~This~~ schedule ~~may thereafter be raised only by filing with the department an amended or supplemental schedule at least 30 days before the change is to become effective. The schedule shall be posted in a conspicuous place in each place of business of the agency and~~ shall be printed in not less than a 30-point boldfaced type, except that an agency that uses written contracts containing maximum fee schedules need not post such schedules.

Section 25. Section 468.407, Florida Statutes, is repealed.

Section 26. Subsection (1) of section 468.408, Florida Statutes, is amended to read:

468.408 Bond required.—

(1) An owner or operator of a ~~There shall be filed with the department for each~~ talent agency shall obtain ~~license~~ a bond in the form of a surety by a reputable company engaged in the bonding business and authorized to do business in this state. The bond shall be for the penal sum of $5,000, with one

or more sureties ~~to be approved by the department~~, and be conditioned that the owner or operator of the talent agency ~~applicant~~ conform to and not violate any of the duties, terms, conditions, provisions, or requirements of this part. Such bond may not be issued or renewed by the bonding agency unless each owner or operator of a talent agency submits fingerprints to the Department of Law Enforcement for a state criminal history record check and to the Federal Bureau of Investigation for a national criminal history record check, and the bonding agency verifies by examination of the criminal history records checks that each owner or operator has not been convicted of a crime that would require registration as a sexual offender, as required in s. 943.0435 or s. 944.607, or as a sexual predator, as required under s. 775.21.

(a) If any person is aggrieved by the misconduct of any talent agency, the person may maintain an action in his or her own name upon the bond of the agency in any court having jurisdiction of the amount claimed. All such claims shall be assignable, and the assignee shall be entitled to the same remedies, upon the bond of the agency or otherwise, as the person aggrieved would have been entitled to if such claim had not been assigned. Any claim or claims so assigned may be enforced in the name of such assignee.

(b) The bonding company shall notify the talent agency ~~department~~ of any claim against such bond, and a copy of such

notice shall be sent to the talent agency against which the claim is made.

Section 27. Section 468.409, Florida Statutes, is amended to read:

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

Section 28. Subsection (3) of section 468.410, Florida Statutes, is amended to read:

468.410 Prohibition against registration fees; referral.—

(3) A talent agency shall give each applicant a copy of a contract, within 24 hours after the contract's execution, which lists the services to be provided and the fees to be charged. ~~The contract shall state that the talent agency is regulated by~~

~~the department and shall list the address and telephone number of the department.~~

Section 29. Subsections (4) through (11) of section 468.412, Florida Statutes, are renumbered as subsections (3) through (10), respectively, and present subsections (2), (3), (4), (6), and (11) of that section are amended, to read:

468.412 Talent agency regulations; prohibited acts.—

(2) Each talent agency shall keep records in which shall be entered:

(a) The name and address of each artist employing such talent agency.~~;~~

(b) The amount of fees received from each such artist.~~;~~

(c) The employment in which each such artist is engaged at the time of employing such talent agency and the amount of compensation of the artist in such employment, if any, and the employments subsequently secured by such artist during the term of the contract between the artist and the talent agency and the amount of compensation received by the artist pursuant thereto.~~;~~ ~~and~~

~~(d) Other information which the department may require from time to time.~~

~~(3) All books, records, and other papers kept pursuant to this act by any talent agency shall be open at all reasonable hours to the inspection of the department and its agents. Each talent agency shall furnish to the department, upon request, a~~

~~true copy of such books, records, and papers, or any portion thereof, and shall make such reports as the department may prescribe from time to time.~~

(3)~~(4)~~ Each talent agency shall post in a conspicuous place in the office of such talent agency a printed copy of this part ~~and of the rules adopted under this part~~. ~~Such copies shall also contain the name and address of the officer charged with enforcing this part. The department shall furnish to talent agencies printed copies of any statute or rule required to be posted under this subsection.~~

(5)~~(6)~~ A ~~No~~ talent agency may not publish or cause to be published any false, fraudulent, or misleading information, representation, notice, or advertisement. All advertisements of a talent agency by means of card, circulars, or signs, and in newspapers and other publications, and all letterheads, receipts, and blanks shall be printed and contain the ~~licensed~~ name~~, department license number,~~ and address of the talent agency and the words "talent agency." A ~~No~~ talent agency may not give any false information or make any false promises or representations concerning an engagement or employment to any applicant who applies for an engagement or employment.

(10)~~(11)~~ A talent agency may assign an engagement contract to another talent agency ~~licensed~~ in this state only if the artist agrees in writing to the assignment. The assignment must occur, and written notice of the assignment must be given to the

artist, within 30 days after the artist agrees in writing to the assignment.

Section 30. Section 468.413, Florida Statutes, is amended to read:

468.413 Legal requirements; penalties.—

~~(1) Each of the following acts constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084:~~

~~(a) Owning or operating, or soliciting business as, a talent agency in this state without first procuring a license from the department.~~

~~(b) Obtaining or attempting to obtain a license by means of fraud, misrepresentation, or concealment.~~

(1) ~~(2)~~ Each of the following acts constitutes a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083:

~~(a) Relocating a business as a talent agency, or operating under any name other than that designated on the license, unless written notification is given to the department and to the surety or sureties on the original bond, and unless the license is returned to the department for the recording thereon of such changes.~~

~~(b) Assigning or attempting to assign a license issued under this part.~~

~~(c) Failing to show on a license application whether or not the agency or any owner of the agency is financially interested in any other business of like nature and, if so, failing to specify such interest or interests.~~

(a) ~~(d)~~ Failing to maintain the records required by s. 468.409 or knowingly making false entries in such records.

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

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

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

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

~~(3) The court may, in addition to other punishment provided for in subsection (2), suspend or revoke the license of~~

~~any licensee under this part who has been found guilty of any misdemeanor listed in subsection (2).~~

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

Section 31. Section 468.414, Florida Statutes, is repealed.

Section 32. Section 468.415, Florida Statutes, is amended to read:

468.415 Sexual misconduct in the operation of a talent agency.—The talent agent-artist relationship is founded on mutual trust. Sexual misconduct in the operation of a talent agency means violation of the talent agent-artist relationship through which the talent agent uses the relationship to induce or attempt to induce the artist to engage or attempt to engage in sexual activity. Sexual misconduct is prohibited in the operation of a talent agency. ~~If~~ Any agent, owner, or operator of a ~~licensed~~ talent agency who commits ~~is found to have~~

~~committed~~ sexual misconduct in the operation of a talent agency~~,~~ ~~the agency license shall be permanently revoked. Such agent, owner, or operator~~ shall be permanently prohibited from acting ~~disqualified from present and future licensure~~ as an agent, owner, or operator of a Florida talent agency.

Section 33. Paragraph (n) is added to subsection (1) of section 468.505, Florida Statutes, to read:

468.505 Exemptions; exceptions.—

(1) ~~Nothing in~~ This part may not be construed as prohibiting or restricting the practice, services, or activities of:

(n) A person who provides information, recommendations, or advice concerning nutrition, or who markets food, food materials, or dietary supplements for remuneration, if that person does not represent himself or herself as a dietitian, licensed dietitian, registered dietitian, licensed nutritionist, nutrition counselor, or licensed nutrition counselor, or use any word, letter, symbol, or insignia indicating or implying that he or she is a dietitian, nutritionist, or nutrition counselor.

Section 34. Subsection (4) of section 468.524, Florida Statutes, is amended to read:

468.524 Application for license.—

(4) A ~~An applicant or~~ licensee is ineligible to reapply for a license for a period of 1 year following final agency action on the ~~denial or~~ revocation of a license ~~applied for or~~

issued under this part. This time restriction does not apply to administrative ~~denials or~~ revocations entered because:

(a) The ~~applicant or~~ licensee has made an inadvertent error or omission on the application;

(b) The experience documented to the board was insufficient at the time of the previous application; or

~~(c) The department is unable to complete the criminal background investigation because of insufficient information from the Florida Department of Law Enforcement, the Federal Bureau of Investigation, or any other applicable law enforcement agency;~~

(c)~~(d)~~ The ~~applicant or~~ licensee has failed to submit required fees.~~; or~~

~~(e) An applicant or licensed employee leasing company has been deemed ineligible for a license because of the lack of good moral character of an individual or individuals when such individual or individuals are no longer employed in a capacity that would require their licensing under this part.~~

Section 35. Paragraph (f) of subsection (5) of section 468.603, Florida Statutes, is amended to read:

468.603 Definitions.—As used in this part:

(5) "Categories of building code inspectors" include the following:

(f) "Residential ~~One and two family dwelling~~ inspector" means a person who is qualified to inspect and determine that

one-family, two-family, or three-family residences not exceeding two habitable stories above no more than one uninhabitable story and accessory use structures in connection therewith ~~one and two family dwellings and accessory structures~~ are constructed in accordance with the provisions of the governing building, plumbing, mechanical, accessibility, and electrical codes.

Section 36. Paragraph (c) of subsection (2) and paragraph (a) of subsection (7) of section 468.609, Florida Statutes, are amended to read:

468.609 Administration of this part; standards for certification; additional categories of certification.—

(2) A person may take the examination for certification as a building code inspector or plans examiner pursuant to this part if the person:

(c) Meets eligibility requirements according to one of the following criteria:

1. Demonstrates 4 ~~5~~ years' combined experience in the field of construction or a related field, building code inspection, or plans review corresponding to the certification category sought;

2. Demonstrates a combination of postsecondary education in the field of construction or a related field and experience which totals 3 ~~4~~ years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;

3. Demonstrates a combination of technical education in the field of construction or a related field and experience which totals 3 ~~4~~ years, with at least 1 year of such total being experience in construction, building code inspection, or plans review;

4. Currently holds a standard certificate issued by the board or a firesafety inspector license issued pursuant to chapter 633, with ~~has~~ a minimum of 3 years' verifiable full-time experience in firesafety inspection or firesafety plan review, and has satisfactorily completed a building code inspector or plans examiner training program that provides at least 100 hours but not more than 200 hours of cross-training in the certification category sought. The board shall establish by rule criteria for the development and implementation of the training programs. The board shall accept all classroom training offered by an approved provider if the content substantially meets the intent of the classroom component of the training program;

5. Demonstrates a combination of the completion of an approved training program in the field of building code inspection or plan review and a minimum of 2 years' experience in the field of building code inspection, plan review, fire code inspections and fire plans review of new buildings as a firesafety inspector certified under s. 633.216, or construction. The approved training portion of this requirement shall include proof of satisfactory completion of a training

program that provides at least 200 hours but not more than 300 hours of cross-training that is approved by the board in the chosen category of building code inspection or plan review in the certification category sought with at least 20 hours but not more than 30 hours of instruction in state laws, rules, and ethics relating to professional standards of practice, duties, and responsibilities of a certificateholder. The board shall coordinate with the Building Officials Association of Florida, Inc., to establish by rule the development and implementation of the training program. However, the board shall accept all classroom training offered by an approved provider if the content substantially meets the intent of the classroom component of the training program;

6. Currently holds a standard certificate issued by the board or a firesafety inspector license issued pursuant to chapter 633 and:

a. Has at least 4 ~~5~~ years' verifiable full-time experience as an inspector or plans examiner in a standard certification category currently held or has a minimum of 4 ~~5~~ years' verifiable full-time experience as a firesafety inspector licensed pursuant to chapter 633.

b. Has satisfactorily completed a building code inspector or plans examiner classroom training course or program that provides at least 200 but not more than 300 hours in the certification category sought, except for one-family and two-

family dwelling training programs, which must provide at least 500 but not more than 800 hours of training as prescribed by the board. The board shall establish by rule criteria for the development and implementation of classroom training courses and programs in each certification category; or

7.a. Has completed a 4-year internship certification program as a building code inspector or plans examiner while employed full-time by a municipality, county, or other governmental jurisdiction, under the direct supervision of a certified building official. Proof of graduation with a related vocational degree or college degree or of verifiable work experience may be exchanged for the internship experience requirement year-for-year, but may reduce the requirement to no less than 1 year.

b. Has passed an examination administered by the International Code Council in the certification category sought. Such examination must be passed before beginning the internship certification program.

c. Has passed the principles and practice examination before completing the internship certification program.

d. Has passed a board-approved 40-hour code training course in the certification category sought before completing the internship certification program.

e. Has obtained a favorable recommendation from the supervising building official after completion of the internship certification program.

(7)(a) The board shall provide for the issuance of provisional certificates valid for 2 years ~~1 year~~, as specified by board rule, to any building code inspector or plans examiner who meets the eligibility requirements described in subsection (2) and any newly employed or promoted building code administrator who meets the eligibility requirements described in subsection (3). The provisional license may be renewed by the board for just cause; however, a provisional license is not valid for longer than 3 years.

Section 37. Section 468.613, Florida Statutes, is amended to read:

468.613 Certification by endorsement.—The board shall examine other certification or training programs, as applicable, upon submission to the board for its consideration of an application for certification by endorsement. The board shall waive its examination, qualification, education, or training requirements, to the extent that such examination, qualification, education, or training requirements of the applicant are determined by the board to be comparable with those established by the board. The board shall waive its examination, qualification, education, or training requirements if an applicant for certification by endorsement is at least 18

years of age; is of good moral character; has held a valid building administrator, inspector, plans examiner, or the equivalent, certification issued by another state or territory of the United States for at least 10 years before the date of application; and has successfully passed an applicable examination administered by the International Codes Council. Such application must be submitted to the board while the applicant holds a valid license in another state or territory or within 2 years after the expiration of such license.

Section 38. Subsection (3) of section 468.8314, Florida Statutes, is amended to read:

468.8314 Licensure.—

(3) The department shall certify as qualified for a license by endorsement an applicant who is of good moral character as determined in s. 468.8313, who maintains an insurance policy as required by s. 468.8322, and who:~~;~~

(a) Holds a valid license to practice home inspection services in another state or territory of the United States, whose educational requirements are substantially equivalent to those required by this part; and has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by this part; or

(b) Has held a valid license to practice home inspection services issued by another state or territory of the United

States for at least 10 years before the date of application. Such application must be submitted to the department while the applicant holds a valid license in another state or territory or within 2 years after the expiration of such license.

Section 39. Subsection (5) of section 471.015, Florida Statutes, is amended to read:

471.015 Licensure.—

(5)(a) The board shall deem that an applicant who seeks licensure by endorsement has passed an examination substantially equivalent to the fundamentals examination when such applicant has held a valid professional engineer's license in another state for 10 ~~15~~ years ~~and has had 20 years of continuous professional-level engineering experience~~.

(b) The board shall deem that an applicant who seeks licensure by endorsement has passed an examination substantially equivalent to the fundamentals examination and the principles and practices examination when such applicant has held a valid professional engineer's license in another state for 15 ~~25~~ years ~~and has had 30 years of continuous professional-level engineering experience~~.

Section 40. Subsection (7) of section 473.308, Florida Statutes, is amended to read:

473.308 Licensure.—

(7) The board shall certify as qualified for a license by endorsement an applicant who:

(a)~~1.~~ Is not licensed and has not been licensed in another state or territory and who has met the requirements of this section for education, work experience, and good moral character and has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306; or ~~and~~

~~2. Has completed such continuing education courses as the board deems appropriate, within the limits for each applicable 2-year period as set forth in s. 473.312, but at least such courses as are equivalent to the continuing education requirements for a Florida certified public accountant licensed in this state during the 2 years immediately preceding her or his application for licensure by endorsement; or~~

(b)1.~~a.~~ Holds a valid license to practice public accounting issued by another state or territory of the United States, if the criteria for issuance of such license were substantially equivalent to the licensure criteria that existed in this state at the time the license was issued;

2.~~b.~~ Holds a valid license to practice public accounting issued by another state or territory of the United States but the criteria for issuance of such license did not meet the requirements of subparagraph 1. ~~sub-subparagraph a.~~; has met the requirements of this section for education, work experience, and good moral character; and has passed a national, regional, state, or territorial licensing examination that is

substantially equivalent to the examination required by s. 473.306; or

3.~~c.~~ Holds a valid license to practice public accounting issued by another state or territory of the United States for at least 10 years before the date of application; has passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the examination required by s. 473.306; and has met the requirements of this section for good moral character.~~; and~~

~~2. Has completed continuing education courses that are equivalent to the continuing education requirements for a Florida certified public accountant licensed in this state during the 2 years immediately preceding her or his application for licensure by endorsement.~~

Section 41. Subsection (6) of section 474.202, Florida Statutes, is amended to read:

474.202 Definitions.—As used in this chapter:

(6) "Limited-service veterinary medical practice" means offering or providing veterinary services at any location that has a primary purpose other than that of providing veterinary medical service at a permanent or mobile establishment permitted by the board; provides veterinary medical services for privately owned animals that do not reside at that location; operates for a limited time; and provides limited types of veterinary medical services, including vaccinations or immunizations against

disease, preventative procedures for parasitic control, and microchip implantation.

Section 42. Subsection (9) is added to section 474.203, Florida Statutes, to read:

474.203 Exemptions.—This chapter does not apply to:

(9) An employee, agent, or contractor of a public or private animal shelter, humane organization, or animal control agency operated by a humane organization or by a county, municipality, or other incorporated political subdivision whose work is confined solely to the implantation of a radio frequency identification device microchip for dogs and cats in accordance with s. 823.15.

For the purposes of chapters 465 and 893, persons exempt pursuant to subsection (1), subsection (2), or subsection (4) are deemed to be duly licensed practitioners authorized by the laws of this state to prescribe drugs or medicinal supplies.

Section 43. Paragraph (b) of subsection (2) of section 474.207, Florida Statutes, is amended to read:

474.207 Licensure by examination.—

(2) The department shall license each applicant who the board certifies has:

(b)1. Graduated from a college of veterinary medicine accredited by the American Veterinary Medical Association Council on Education; or

2. Graduated from a college of veterinary medicine listed in the American Veterinary Medical Association Roster of Veterinary Colleges of the World and obtained a certificate from the Education Commission for Foreign Veterinary Graduates or the Program for the Assessment of Veterinary Education Equivalence.

The department shall not issue a license to any applicant who is under investigation in any state or territory of the United States or in the District of Columbia for an act which would constitute a violation of this chapter until the investigation is complete and disciplinary proceedings have been terminated, at which time the provisions of s. 474.214 shall apply.

Section 44. Subsection (1) of section 474.217, Florida Statutes, is amended to read:

474.217 Licensure by endorsement.—

(1) The department shall issue a license by endorsement to any applicant who, upon applying to the department and remitting a fee set by the board, demonstrates to the board that she or he:

(a) Has demonstrated, in a manner designated by rule of the board, knowledge of the laws and rules governing the practice of veterinary medicine in this state; and

(b)1. ~~Either~~ Holds, and has held for the 3 years immediately preceding the application for licensure, a valid, active license to practice veterinary medicine in another state

of the United States, the District of Columbia, or a territory of the United States, provided that the applicant has successfully completed a state, regional, national, or other examination that is equivalent to or more stringent than the examination required by the board ~~requirements for licensure in the issuing state, district, or territory are equivalent to or more stringent than the requirements of this chapter~~; or

2. Meets the qualifications of s. 474.207(2)(b) and has successfully completed a state, regional, national, or other examination which is equivalent to or more stringent than the examination given by the department and has passed the board's clinical competency examination or another clinical competency examination specified by rule of the board.

Section 45. Effective January 1, 2021, subsection (2) of section 476.114, Florida Statutes, is amended to read:

476.114 Examination; prerequisites.—

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

(a) Is at least 16 years of age;

(b) Pays the required application fee; and

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

2. Has received a minimum of 900 ~~1,200~~ hours of training in sanitation, safety, and laws and rules, as established by the board, which shall include, but shall not be limited to, the equivalent of completion of services directly related to the practice of barbering at one of the following:

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

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

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

The board shall establish by rule procedures whereby the school or program may certify that a person is qualified to take the required examination after the completion of a minimum of 600 ~~1,000~~ actual school hours. If the person passes the examination, she or he shall have satisfied this requirement; but if the person fails the examination, she or he shall not be qualified to take the examination again until the completion of the full requirements provided by this section.

Section 46. Subsection (5) of section 476.144, Florida Statutes, is amended to read:

476.144 Licensure.—

(5) The board shall certify as qualified for licensure by endorsement as a barber in this state an applicant who holds a current active license to practice barbering in another state. The board shall adopt rules specifying procedures for the

licensure by endorsement of practitioners desiring to be licensed in this state who hold a current active license in another ~~state or~~ country and who have met qualifications substantially similar to, equivalent to, or greater than the qualifications required of applicants from this state.

Section 47. Subsection (9) of section 477.013, Florida Statutes, is amended to read:

477.013 Definitions.—As used in this chapter:

(9) "Hair braiding" means the weaving or interweaving of natural human hair or commercial hair, including the use of hair extensions or wefts, for compensation without cutting, coloring, permanent waving, relaxing, removing, or chemical treatment ~~and does not include the use of hair extensions or wefts~~.

Section 48. Section 477.0132, Florida Statutes, is repealed.

Section 49. Subsections (7) through (11) are added to section 477.0135, Florida Statutes, to read:

477.0135 Exemptions.—

(7) A license or registration is not required for a person whose occupation or practice is confined solely to hair braiding as defined in s. 477.013(9).

(8) A license or registration is not required for a person whose occupation or practice is confined solely to hair wrapping as defined in s. 477.013(10).

(9) A license or registration is not required for a person whose occupation or practice is confined solely to body wrapping as defined in s. 477.013(12).

(10) A license or registration is not required for a person whose occupation or practice is confined solely to applying polish to fingernails and toenails.

(11) A license or registration is not required for a person whose occupation or practice is confined solely to makeup application, which includes, but is not limited to, application of makeup primer, face paint, lipstick, eyeliner, eye shadow, foundation, rouge or cheek color, mascara, strip lashes, individual lashes, face powder, corrective stick, and makeup remover; but does not include manual or chemical exfoliation, semi-permanent lash application, lash or brow tinting, or hair removal.

Section 50. Subsections (6) and (7) of section 477.019, Florida Statutes, are amended to read:

477.019 Cosmetologists; qualifications; licensure; supervised practice; license renewal; endorsement; continuing education.—

(6) The board shall certify as qualified for licensure by endorsement as a cosmetologist in this state an applicant who holds a current active license to practice cosmetology in another state. ~~The board may not require proof of educational hours if the license was issued in a state that requires 1,200~~

~~or more hours of precensure education and passage of a written examination. This subsection does not apply to applicants who received their license in another state through an apprenticeship program.~~

(7)(a) The board shall prescribe by rule continuing education requirements intended to ensure protection of the public through updated training of licensees and registered specialists, not to exceed 10 ~~16~~ hours biennially, as a condition for renewal of a license or registration as a specialist under this chapter. Continuing education courses shall include, but not be limited to, the following subjects as they relate to the practice of cosmetology: human immunodeficiency virus and acquired immune deficiency syndrome; Occupational Safety and Health Administration regulations; workers' compensation issues; state and federal laws and rules as they pertain to cosmetologists, cosmetology, salons, specialists, specialty salons, and booth renters; chemical makeup as it pertains to hair, skin, and nails; and environmental issues. Courses given at cosmetology conferences may be counted toward the number of continuing education hours required if approved by the board.

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

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

Section 51. Effective January 1, 2021, subsection (1) of section 477.0201, Florida Statutes, is amended to read:

477.0201 Specialty registration; qualifications; registration renewal; endorsement.—

(1) Any person is qualified for registration as a specialist in any ~~one or more of the~~ specialty practice ~~practices~~ within the practice of cosmetology under this chapter who:

(a) Is at least 16 years of age or has received a high school diploma.

(b) Has received a certificate of completion for: ~~in a~~

1. 180 hours of training, as established by the board, which shall focus primarily on sanitation and safety, to practice specialties as defined in s. 477.013(6)(a) and (b); ~~specialty pursuant to s. 477.013(6)~~

2. 220 hours of training, as established by the board, which shall focus primarily on sanitation and safety, to practice the specialty as defined in s. 477.013(6)(c); or

3. 400 hours of training or the number of hours of training required to maintain minimum Pell Grant requirements,

as established by the board, which shall focus primarily on sanitation and safety, to practice the specialties as defined in s. 477.013(6)(a)-(c).

(c) The certificate of completion specified in paragraph (b) must be from one of the following:

1. A school licensed pursuant to s. 477.023.

2. A school licensed pursuant to chapter 1005 or the equivalent licensing authority of another state.

3. A specialty program within the public school system.

4. A specialty division within the Cosmetology Division of the Florida School for the Deaf and the Blind, provided the training programs comply with minimum curriculum requirements established by the board.

Section 52. Paragraph (f) of subsection (1) of section 477.026, Florida Statutes, is amended to read:

477.026 Fees; disposition.—

(1) The board shall set fees according to the following schedule:

~~(f) For hair braiders, hair wrappers, and body wrappers, fees for registration shall not exceed $25.~~

Section 53. Subsection (4) of section 477.0263, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

477.0263 Cosmetology services to be performed in licensed salon; exceptions.—

(4) Pursuant to rules adopted by the board, any cosmetology or specialty service may be performed in a location other than a licensed salon when the service is performed in connection with a special event and is performed by a person ~~who is employed by a licensed salon and~~ who holds the proper license or specialty registration. ~~An appointment for the performance of any such service in a location other than a licensed salon must be made through a licensed salon.~~

(5) Any person who holds the proper license may perform hair shampooing, hair cutting, hair arranging, nail polish removal, nail filing, nail buffing, and nail cleansing services in a location other than a licensed salon.

Section 54. Paragraph (f) of subsection (1) of section 477.0265, Florida Statutes, is amended to read:

477.0265 Prohibited acts.—

(1) It is unlawful for any person to:

(f) Advertise or imply that skin care services ~~or body wrapping~~, as performed under this chapter, have any relationship to the practice of massage therapy as defined in s. 480.033(3), except those practices or activities defined in s. 477.013.

Section 55. Paragraph (a) of subsection (1) of section 477.029, Florida Statutes, is amended to read:

477.029 Penalty.—

(1) It is unlawful for any person to:

(a) Hold himself or herself out as a cosmetologist or~~,~~ specialist~~, hair wrapper, hair braider, or body wrapper~~ unless duly licensed or registered, or otherwise authorized, as provided in this chapter.

Section 56. Section 481.201, Florida Statutes, is amended to read:

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

Section 57. Section 481.203, Florida Statutes, is amended to read:

481.203 Definitions.—As used in this part, the term:

(1)~~(3)~~ "Architect" or "registered architect" means a natural person who is licensed under this part to engage in the practice of architecture.

(2)~~(6)~~ "Architecture" means the rendering or offering to render services in connection with the design and construction

of a structure or group of structures which have as their principal purpose human habitation or use, and the utilization of space within and surrounding such structures. These services include planning, providing preliminary study designs, drawings and specifications, job-site inspection, and administration of construction contracts.

(3) ~~(1)~~ "Board" means the Board of Architecture and Interior Design.

(4) "Business organization" means a partnership, a limited liability company, a corporation, or an individual operating under a fictitious name.

~~(5) "Certificate of authorization" means a certificate issued by the department to a corporation or partnership to practice architecture or interior design.~~

(5) ~~(4)~~ "Certificate of registration" means a license issued by the department to a natural person to engage in the practice of architecture or interior design.

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

(7) ~~(2)~~ "Department" means the Department of Business and Professional Regulation.

(8) ~~(14)~~ "Diversified interior design experience" means experience which substantially encompasses the various elements

of interior design services set forth under the definition of "interior design" in subsection (10) ~~(8)~~.

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

(10) ~~(8)~~ "Interior design" means designs, consultations, studies, drawings, specifications, and administration of design construction contracts relating to nonstructural interior elements of a building or structure. "Interior design" includes, but is not limited to, reflected ceiling plans, space planning, furnishings, and the fabrication of nonstructural elements within and surrounding interior spaces of buildings. "Interior design" specifically excludes the design of or the responsibility for architectural and engineering work, except for specification of fixtures and their location within interior spaces. As used in this subsection, "architectural and engineering interior construction relating to the building systems" includes, but is not limited to, construction of structural, mechanical, plumbing, heating, air-conditioning, ventilating, electrical, or vertical transportation systems, or construction which materially affects lifesafety systems pertaining to firesafety protection such as fire-rated

separations between interior spaces, fire-rated vertical shafts in multistory structures, fire-rated protection of structural elements, smoke evacuation and compartmentalization, emergency ingress or egress systems, and emergency alarm systems.

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

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

(13) ~~(9)~~ "Registered interior designer" or "interior designer" means a natural person who holds a valid certificate of registration to practice interior design ~~is licensed under this part~~.

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

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

(16)~~(7)~~ "Townhouse" is a single-family dwelling unit not exceeding three stories in height which is constructed in a series or group of attached units with property lines separating such units. Each townhouse shall be considered a separate building and shall be separated from adjoining townhouses by the use of separate exterior walls meeting the requirements for zero clearance from property lines as required by the type of construction and fire protection requirements; or shall be separated by a party wall; or may be separated by a single wall meeting the following requirements:

(a) Such wall shall provide not less than 2 hours of fire resistance. Plumbing, piping, ducts, or electrical or other building services shall not be installed within or through the 2-hour wall unless such materials and methods of penetration have been tested in accordance with the Standard Building Code.

(b) Such wall shall extend from the foundation to the underside of the roof sheathing, and the underside of the roof shall have at least 1 hour of fire resistance for a width not less than 4 feet on each side of the wall.

(c) Each dwelling unit sharing such wall shall be designed and constructed to maintain its structural integrity independent of the unit on the opposite side of the wall.

Section 58. Paragraph (a) of subsection (3) of section 481.205, Florida Statutes, is amended to read:

481.205 Board of Architecture and Interior Design.—

(3)(a) Notwithstanding the provisions of ss. 455.225, 455.228, and 455.32, the duties and authority of the department to receive complaints and investigate and discipline persons licensed or registered under this part, including the ability to determine legal sufficiency and probable cause; to initiate proceedings and issue final orders for summary suspension or restriction of a license or certificate of registration pursuant to s. 120.60(6); to issue notices of noncompliance, notices to cease and desist, subpoenas, and citations; to retain legal counsel, investigators, or prosecutorial staff in connection with the licensed practice of architecture or registered ~~and~~ interior design; and to investigate and deter the unlicensed practice of architecture ~~and interior design~~ as provided in s. 455.228 are delegated to the board. All complaints and any information obtained pursuant to an investigation authorized by the board are confidential and exempt from s. 119.07(1) as provided in s. 455.225(2) and (10).

Section 59. Section 481.207, Florida Statutes, is amended to read:

481.207 Fees.—The board, by rule, may establish ~~separate~~ fees for architects and registered interior designers, to be paid for applications, examination, reexamination, licensing and renewal, delinquency, reinstatement, and recordmaking and recordkeeping. The examination fee shall be in an amount that covers the cost of obtaining and administering the examination

and shall be refunded if the applicant is found ineligible to sit for the examination. The application fee is nonrefundable. The fee for initial application and examination for architects ~~and interior designers~~ may not exceed $775 plus the actual per applicant cost to the department for purchase of the examination from the National Council of Architectural Registration Boards ~~or the National Council of Interior Design Qualifications, respectively,~~ or similar national organizations. The initial nonrefundable fee for registered interior designers may not exceed $75. The biennial renewal fee for architects may not exceed $200. The biennial renewal fee for registered interior designers may not exceed $75 ~~$500~~. The delinquency fee may not exceed the biennial renewal fee established by the board for an active license. The board shall establish fees that are adequate to ensure the continued operation of the board and to fund the proportionate expenses incurred by the department which are allocated to the regulation of architects and registered interior designers. Fees shall be based on department estimates of the revenue required to implement this part and the provisions of law with respect to the regulation of architects and interior designers.

Section 60. Section 481.209, Florida Statutes, is amended to read:

481.209 Examinations.—

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

~~(a)~~ has passed the licensure examination prescribed by board rule~~;~~ and

~~(b)~~ is a graduate of a school or college of architecture with a program accredited by the National Architectural Accreditation Board.

(2) A person seeking to obtain a certificate of registration as a registered interior designer and a seal pursuant to s. 481.221 must provide the department with his or her name and address and written proof that he or she has successfully passed the qualification examination prescribed by the Council for Interior Design Qualification or its successor entity or the California Council for Interior Design Certification or its successor entity, or has successfully passed an equivalent exam as determined by the department. Any person who was licensed as an interior designer by the department and who was in good standing as of July 1, 2020, is eligible to obtain a certificate of registration as a registered interior designer ~~desiring to be licensed as a registered interior designer shall apply to the department for licensure. The department shall administer the licensure examination for~~

~~interior designers to each applicant who has completed the application form and remitted the application and examination fees specified in s. 481.207 and who the board certifies:~~

~~(a) Is a graduate from an interior design program of 5 years or more and has completed 1 year of diversified interior design experience;~~

~~(b) Is a graduate from an interior design program of 4 years or more and has completed 2 years of diversified interior design experience;~~

~~(c) Has completed at least 3 years in an interior design curriculum and has completed 3 years of diversified interior design experience; or~~

~~(d) Is a graduate from an interior design program of at least 2 years and has completed 4 years of diversified interior design experience.~~

~~Subsequent to October 1, 2000, for the purpose of having the educational qualification required under this subsection accepted by the board, the applicant must complete his or her education at a program, school, or college of interior design whose curriculum has been approved by the board as of the time of completion. Subsequent to October 1, 2003, all of the required amount of educational credits shall have been obtained in a program, school, or college of interior design whose curriculum has been approved by the board, as of the time each educational credit is gained. The board shall adopt rules~~

~~providing for the review and approval of programs, schools, and colleges of interior design and courses of interior design study based on a review and inspection by the board of the curriculum of programs, schools, and colleges of interior design in the United States, including those programs, schools, and colleges accredited by the Foundation for Interior Design Education Research. The board shall adopt rules providing for the review and approval of diversified interior design experience required by this subsection~~.

Section 61. Subsections (1), (2), and (3) of section 481.213, Florida Statutes, are amended, and subsection (8) is added to that section, to read:

481.213 Licensure and registration.—

(1) The department shall license or register any applicant who the board certifies is qualified for licensure or registration and who has paid the initial licensure or registration fee. Licensure as an architect under this section shall be deemed to include all the rights and privileges of registration ~~licensure~~ as an interior designer under this section.

(2) The board shall certify for licensure or registration by examination any applicant who passes the prescribed licensure or registration examination and satisfies the requirements of ss. 481.209 and 481.211, for architects, or the requirements of s. 481.209, for interior designers.

(3) The board shall certify as qualified for a license by endorsement as an architect or registration as a registered ~~an~~ interior designer an applicant who:

(a) Qualifies to take the prescribed licensure or registration examination, and has passed the prescribed licensure or registration examination or a substantially equivalent examination in another jurisdiction, as set forth in s. 481.209 for architects or registered interior designers, as applicable, and has satisfied the internship requirements set forth in s. 481.211 for architects;

(b) Holds a valid license to practice architecture or a license, registration, or certification to practice interior design issued by another jurisdiction of the United States, if the criteria for issuance of such license were substantially equivalent to the licensure criteria that existed in this state at the time the license was issued; ~~provided, however, that an applicant who has been licensed for use of the title "interior design" rather than licensed to practice interior design shall not qualify hereunder;~~ or

(c) Has passed the prescribed licensure examination and holds a valid certificate issued by the National Council of Architectural Registration Boards, and holds a valid license to practice architecture issued by another state or jurisdiction of the United States.

An architect who is licensed in another state who seeks qualification for license by endorsement under this subsection must complete a board-approved 2 hour course on wind mitigation under the Florida Building Code.

(8) A certificate of registration is not required for a person whose occupation or practice is confined to interior decorator services or for a person whose occupation or practice is confined to interior design not covered by this part.

Section 62. Subsection (1) of section 481.2131, Florida Statutes, is amended to read:

481.2131 Interior design; practice requirements~~;~~ disclosure of compensation for professional services.—

(1) ~~A registered interior designer is authorized to perform "interior design" as defined in s. 481.203.~~ Interior design documents prepared by a registered interior designer shall contain a statement that the document is not an architectural or engineering study, drawing, specification, or design and is not to be used for construction of any load-bearing columns, load-bearing framing or walls of structures, or issuance of any building permit, except as otherwise provided by law. Interior design documents that are prepared and sealed by a registered interior designer must ~~may~~, if required by a permitting body, be accepted by the permitting body ~~be submitted~~ for the issuance of a building permit for interior construction excluding design of any structural, mechanical, plumbing,

heating, air-conditioning, ventilating, electrical, or vertical transportation systems or that materially affect lifesafety systems pertaining to firesafety protection such as fire-rated separations between interior spaces, fire-rated vertical shafts in multistory structures, fire-rated protection of structural elements, smoke evacuation and compartmentalization, emergency ingress or egress systems, and emergency alarm systems.

Section 63. Section 481.215, Florida Statutes, is amended to read:

481.215 Renewal of license or certificate of registration.—

(1) Subject to the requirement of subsection (3), the department shall renew a license or certificate of registration upon receipt of the renewal application and renewal fee.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses or certificates of registration.

(3) A ~~No~~ license or certificate of registration renewal may not ~~shall~~ be issued to an architect or a registered ~~an~~ interior designer by the department until the licensee or registrant submits proof satisfactory to the department that, during the 2 years before ~~prior to~~ application for renewal, the licensee or registrant participated per biennium in not less than 20 hours of at least 50 minutes each per biennium of continuing education approved by the board. The board shall

approve only continuing education that builds upon the basic knowledge of architecture ~~or interior design~~. The board may make exception from the requirements of continuing education in emergency or hardship cases.

(4) The board shall by rule establish criteria for the approval of continuing education courses and providers and shall by rule establish criteria for accepting alternative nonclassroom continuing education on an hour-for-hour basis.

(5) For a license or certificate of registration, the board shall require, by rule adopted pursuant to ss. 120.536(1) and 120.54, 2 ~~a specified number of~~ hours in specialized or advanced courses~~, approved by the Florida Building Commission,~~ on any portion of the Florida Building Code, adopted pursuant to part IV of chapter 553, relating to the licensee's respective area of practice. Such hours count toward the continuing education hours required under subsection (3). A licensee may complete the courses required under this subsection online.

Section 64. Section 481.217, Florida Statutes, is amended to read:

481.217 Inactive status.—

(1) The board may prescribe by rule continuing education requirements as a condition of reactivating a license. The rules may not require more than one renewal cycle of continuing education to reactivate a license or registration for a registered architect or registered interior designer. ~~For~~

~~interior design, the board may approve only continuing education that builds upon the basic knowledge of interior design.~~

(2) The board shall adopt rules relating to application procedures for inactive status and for the reactivation of inactive licenses or registrations.

Section 65. Section 481.219, Florida Statutes, is amended to read:

481.219 Qualification of business organizations ~~certification of partnerships, limited liability companies, and corporations~~.—

(1) A licensee may ~~The practice of or the offer to~~ practice architecture ~~or interior design by licensees~~ through a qualified business organization that offers ~~corporation, limited liability company, or partnership offering~~ architectural ~~or interior design~~ services to the public~~, or by a corporation, limited liability company, or partnership offering architectural or interior design services to the public through licensees under this part as agents, employees, officers, or partners, is permitted~~, subject to the provisions of this section.

(2) If a licensee or an applicant proposes to engage in the practice of architecture as a business organization, the licensee or applicant shall qualify the business organization upon approval of the board ~~For the purposes of this section, a certificate of authorization shall be required for a corporation, limited liability company, partnership, or person~~

~~practicing under a fictitious name, offering architectural services to the public jointly or separately. However, when an individual is practicing architecture in her or his own name, she or he shall not be required to be certified under this section. Certification under this subsection to offer architectural services shall include all the rights and privileges of certification under subsection (3) to offer interior design services~~.

(3)(a) A business organization may not engage in the practice of architecture unless its qualifying agent is a registered architect under this part. A qualifying agent who terminates an affiliation with a qualified business organization shall immediately notify the department of such termination. If such qualifying agent is the only qualifying agent for that business organization, the business organization must be qualified by another qualifying agent within 60 days after the termination. Except as provided in paragraph (b), the business organization may not engage in the practice of architecture until it is qualified by another qualifying agent.

(b) In the event a qualifying agent ceases employment with a qualified business organization, the executive director or the chair of the board may authorize another registered architect employed by the business organization to temporarily serve as its qualifying agent for a period of no more than 60 days. The business organization is not authorized to operate beyond such

period under this chapter absent replacement of the qualifying agent who has ceased employment.

(c) A qualifying agent shall notify the department in writing before engaging in the practice of architecture in her or his own name or in affiliation with a different business organization, and she or he or such business organization shall supply the same information to the department as required of applicants under this part.

~~(3) For the purposes of this section, a certificate of authorization shall be required for a corporation, limited liability company, partnership, or person operating under a fictitious name, offering interior design services to the public jointly or separately. However, when an individual is practicing interior design in her or his own name, she or he shall not be required to be certified under this section.~~

(4) All final construction documents and instruments of service which include drawings, specifications, plans, reports, or other papers or documents that involve ~~involving~~ the practice of architecture which are prepared or approved for the use of the business organization ~~corporation, limited liability company, or partnership~~ and filed for public record within the state must ~~shall~~ bear the signature and seal of the licensee who prepared or approved them and the date on which they were sealed.

~~(5) All drawings, specifications, plans, reports, or other papers or documents prepared or approved for the use of the corporation, limited liability company, or partnership by an interior designer in her or his professional capacity and filed for public record within the state shall bear the signature and seal of the licensee who prepared or approved them and the date on which they were sealed.~~

~~(6) The department shall issue a certificate of authorization to any applicant who the board certifies as qualified for a certificate of authorization and who has paid the fee set in s. 481.207.~~

(5)~~(7)~~ The board shall allow a licensee or ~~certify~~ an applicant to qualify one or more business organizations ~~as qualified for a certificate of authorization~~ to offer architectural ~~or interior design~~ services, or to use a fictitious name to offer such services, if ~~provided that:~~

~~(a)~~ one or more of the principal officers of the corporation or limited liability company, or one or more partners of the partnership, and all personnel of the corporation, limited liability company, or partnership who act in its behalf in this state as architects, are registered as provided by this part.~~; or~~

~~(b) One or more of the principal officers of the corporation or one or more partners of the partnership, and all personnel of the corporation, limited liability company, or~~

~~partnership who act in its behalf in this state as interior designers, are registered as provided by this part~~.

~~(8) The department shall adopt rules establishing a procedure for the biennial renewal of certificates of authorization.~~

~~(9) The department shall renew a certificate of authorization upon receipt of the renewal application and biennial renewal fee.~~

(6) ~~(10)~~ Each qualifying agent who qualifies a business organization, partnership, limited liability company, or ~~and~~ corporation certified under this section shall notify the department within 30 days after ~~of~~ any change in the information contained in the application upon which the qualification ~~certification~~ is based. Any registered architect or interior designer who qualifies the business organization shall ensure ~~corporation, limited liability company, or partnership as provided in subsection (7) shall be responsible for ensuring~~ responsible supervising control of projects of the business organization ~~entity~~ and shall notify the department of the ~~upon~~ termination of her or his employment with a business organization qualified ~~partnership, limited liability company, or corporation certified~~ under this section ~~shall notify the department of the termination~~ within 30 days after such termination.

(7) ~~(11)~~ A business organization is not ~~No corporation, limited liability company, or partnership shall be~~ relieved of responsibility for the conduct or acts of its agents, employees, or officers by reason of its compliance with this section. However, except as provided in s. 558.0035, the architect who signs and seals the construction documents and instruments of service is ~~shall be~~ liable for the professional services performed, and the interior designer who signs and seals the interior design drawings, plans, or specifications shall be liable for the professional services performed.

~~(12) Disciplinary action against a corporation, limited liability company, or partnership shall be administered in the same manner and on the same grounds as disciplinary action against a registered architect or interior designer, respectively.~~

(8) ~~(13)~~ ~~Nothing in~~ This section may not ~~shall~~ be construed to mean that a certificate of registration to practice architecture ~~or interior design~~ must ~~shall~~ be held by a business organization ~~corporation, limited liability company, or partnership~~. ~~Nothing in~~ This section does not prohibit a business organization from offering ~~prohibits corporations, limited liability companies, and partnerships from joining together to offer~~ architectural or~~,~~ engineering, ~~interior design, surveying and mapping, and landscape architectural~~ services, or any combination of such services, to the public if

the business organization~~, provided that each corporation, limited liability company, or partnership~~ otherwise meets the requirements of law.

~~(14) Corporations, limited liability companies, or partnerships holding a valid certificate of authorization to practice architecture shall be permitted to use in their title the term "interior designer" or "registered interior designer."~~

Section 66. Subsections (5) and (10) of section 481.221, Florida Statutes, are amended to read:

481.221 Seals; display of certificate number.—

(5) A ~~No~~ registered interior designer may not ~~shall~~ affix, or permit to be affixed, her or his seal or signature to any plan, specification, drawing, or other document which depicts work which she or he is not competent or registered ~~licensed~~ to perform.

(10) Each registered architect must ~~or interior designer, and each corporation, limited liability company, or partnership holding a certificate of authorization, shall~~ include her or his license ~~its certificate~~ number in any newspaper, telephone directory, or other advertising medium used by the registered licensee. Each business organization must include the license number of the registered architect who serves as the qualifying agent for that business organization in any newspaper, telephone directory, or other advertising medium used by the business organization ~~architect, interior designer, corporation, limited~~

~~liability company, or partnership. A corporation, limited liability company, or partnership is not required to display the certificate number of individual registered architects or interior designers employed by or working within the corporation, limited liability company, or partnership~~.

Section 67. Section 481.223, Florida Statutes, is amended to read:

481.223 Prohibitions; penalties; injunctive relief.—

(1) A person may not knowingly:

(a) Practice architecture unless the person is an architect or a registered architect; however, a licensed architect who has been licensed by the board and who chooses to relinquish or not to renew his or her license may use the title "Architect, Retired" but may not otherwise render any architectural services.

~~(b) Practice interior design unless the person is a registered interior designer unless otherwise exempted herein; however, an interior designer who has been licensed by the board and who chooses to relinquish or not to renew his or her license may use the title "Interior Designer, Retired" but may not otherwise render any interior design services.~~

(b)~~(c)~~ Use the name or title "architect," ~~or~~ "registered architect," or ~~"interior designer" or~~ "registered interior designer,"~~ or words to that effect,~~ when the person is not then the holder of a valid license or certificate of registration

issued pursuant to this part. This paragraph does not restrict the use of the name or title "interior designer" or "interior design firm."

(c) ~~(d)~~ Present as his or her own the license of another.

(d) ~~(e)~~ Give false or forged evidence to the board or a member thereof.

(e) ~~(f)~~ Use or attempt to use an architect ~~or interior designer~~ license or interior design certificate of registration that has been suspended, revoked, or placed on inactive or delinquent status.

(f) ~~(g)~~ Employ unlicensed persons to practice architecture ~~or interior design~~.

(g) ~~(h)~~ Conceal information relative to violations of this part.

(2) Any person who violates any provision of subsection (1) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3)(a) Notwithstanding chapter 455 or any other law to the contrary, an affected person may maintain an action for injunctive relief to restrain or prevent a person from violating paragraph (1)(a) or~~,~~ paragraph (1)(b)~~, or paragraph (1)(c)~~. The prevailing party is entitled to actual costs and attorney's fees.

(b) For purposes of this subsection, the term "affected person" means a person directly affected by the actions of a

person suspected of violating paragraph (1)(a) or~~,~~ paragraph (1)(b)~~, or paragraph (1)(c)~~ and includes, but is not limited to, the department, any person who received services from the alleged violator, or any private association composed primarily of members of the profession the alleged violator is practicing or offering to practice or holding himself or herself out as qualified to practice.

Section 68. Section 481.2251, Florida Statutes, is amended to read:

481.2251 Disciplinary proceedings against registered interior designers.—

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

(a) Attempting to register ~~obtain, obtaining,~~ or renewing registration~~,~~ by bribery, by fraudulent misrepresentation, or through an error of the board~~, a license to practice interior design~~;

(b) Having an interior design license, certification, or registration ~~a license to practice interior design~~ revoked, suspended, or otherwise acted against, including the denial of licensure, registration, or certification by the licensing authority of another jurisdiction for any act which would constitute a violation of this part or of chapter 455;

(c) Being convicted or found guilty, ~~regardless of adjudication,~~ of a crime in any jurisdiction which directly

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

(d) False, deceptive, or misleading advertising;

~~(e) Failing to report to the board any person who the licensee knows is in violation of this part or the rules of the board;~~

~~(f) Aiding, assisting, procuring, or advising any unlicensed person to use the title "interior designer" contrary to this part or to a rule of the board;~~

~~(g) Failing to perform any statutory or legal obligation placed upon a registered interior designer;~~

(e)~~(h)~~ Making or filing a report which the registrant ~~licensee~~ knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, or willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records shall include only those which are signed in the capacity as a registered interior designer;

(f)~~(i)~~ Making deceptive, untrue, or fraudulent representations in the provision of interior design services;

(g) ~~(j)~~ Accepting and performing professional responsibilities which the registrant ~~licensee~~ knows or has reason to know that she or he is not competent or licensed to perform;

~~(k) Violating any provision of this part, any rule of the board, or a lawful order of the board previously entered in a disciplinary hearing;~~

~~(l) Conspiring with another licensee or with any other person to commit an act, or committing an act, which would tend to coerce, intimidate, or preclude another licensee from lawfully advertising her or his services;~~

~~(m) Acceptance of compensation or any consideration by an interior designer from someone other than the client without full disclosure of the compensation or consideration amount or value to the client prior to the engagement for services, in violation of s. 481.2131(2);~~

(h) ~~(n)~~ Rendering or offering to render architectural services; or

(i) ~~(o)~~ Committing an act of fraud or deceit, or of negligence, incompetency, or misconduct, in the practice of interior design~~, including, but not limited to, allowing the preparation of any interior design studies, plans, or other instruments of service in an office that does not have a full-time Florida-registered interior designer assigned to such~~

~~office or failing to exercise responsible supervisory control over services or projects, as required by board rule~~.

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

(a) Refusal to register the applicant ~~approve an application for licensure~~;

(b) Refusal to renew an existing registration ~~license~~;

(c) Removal from the state registry ~~Revocation or suspension of a license~~; or

(d) Imposition of an administrative fine not to exceed $500 ~~$1,000~~ for each violation or separate offense and a fine of up to $2,500 ~~$5,000~~ for matters pertaining to a material violation of the Florida Building Code as reported by a local jurisdiction~~; or~~

~~(e) Issuance of a reprimand~~.

Section 69. Paragraph (b) of subsection (5) and subsections (6) and (8) of section 481.229, Florida Statutes, are amended to read:

481.229 Exceptions; exemptions from licensure.—

(5)

(b) Notwithstanding any other provision of this part, all persons licensed as architects under this part shall be qualified for interior design registration ~~licensure~~ upon

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

(6) This part does ~~shall~~ not apply to~~:~~

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

(b) An employee of a retail establishment providing "interior decorator services" on the premises of the retail

establishment or in the furtherance of a retail sale or prospective retail sale, provided that such employee does not advertise as, or represent himself or herself as, an interior designer.

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

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

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

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

Section 70. Subsection (1) of section 481.231, Florida Statutes, is amended to read:

481.231 Effect of part locally.—

(1) ~~Nothing in~~ This part does not ~~shall be construed to~~ repeal, amend, limit, or otherwise affect any specific provision of any local building code or zoning law or ordinance that has been duly adopted, now or hereafter enacted, which is more restrictive, with respect to the services of registered architects or registered interior designers, than ~~the provisions of~~ this part; provided, however, that a licensed architect shall be deemed registered ~~licensed~~ as an interior designer for purposes of offering or rendering interior design services to a county, municipality, or other local government or political subdivision.

Section 71. Section 481.303, Florida Statutes, is amended to read:

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

(1) "Board" means the Board of Landscape Architecture.

(2) ~~(4)~~ "Certificate of registration" means a license issued by the department to a natural person to engage in the practice of landscape architecture.

(3) ~~(2)~~ "Department" means the Department of Business and Professional Regulation.

~~(5) "Certificate of authorization" means a license issued by the department to a corporation or partnership to engage in the practice of landscape architecture.~~

(4)~~(6)~~ "Landscape architecture" means professional services, including, but not limited to, the following:

(a) Consultation, investigation, research, planning, design, preparation of drawings, specifications, contract documents and reports, responsible construction supervision, or landscape management in connection with the planning and development of land and incidental water areas, including the use of Florida-friendly landscaping as defined in s. 373.185, where, and to the extent that, the dominant purpose of such services or creative works is the preservation, conservation, enhancement, or determination of proper land uses, natural land features, ground cover and plantings, or naturalistic and aesthetic values;

(b) The determination of settings, grounds, and approaches for and the siting of buildings and structures, outdoor areas, or other improvements;

(c) The setting of grades, shaping and contouring of land and water forms, determination of drainage, and provision for storm drainage and irrigation systems where such systems are necessary to the purposes outlined herein; and

(d) The design of such tangible objects and features as are necessary to the purpose outlined herein.

(5)~~(7)~~ "Landscape design" means consultation for and preparation of planting plans drawn for compensation, including specifications and installation details for plant materials, soil amendments, mulches, edging, gravel, and other similar materials. Such plans may include only recommendations for the conceptual placement of tangible objects for landscape design projects. Construction documents, details, and specifications for tangible objects and irrigation systems shall be designed or approved by licensed professionals as required by law.

(6)~~(3)~~ "Registered landscape architect" means a person who holds a license to practice landscape architecture in this state under the authority of this act.

Section 72. Section 481.310, Florida Statutes, is amended to read:

481.310 Practical experience requirement.—Beginning October 1, 1990, every applicant for licensure as a registered landscape architect shall demonstrate, before ~~prior to~~ licensure, 1 year of practical experience in landscape architectural work. An applicant who holds both a bachelor's degree and a master's degree in landscape architecture is not required to demonstrate 1 year of practical experience in landscape architectural work to obtain licensure. The board shall adopt rules providing standards for the required experience. An applicant who qualifies for examination pursuant to s. 481.309(1)(b)1. may obtain the practical experience after

completing the required professional degree. Experience used to qualify for examination pursuant to s. 481.309(1)(b)2. may not be used to satisfy the practical experience requirement under this section.

Section 73. Subsections (5) and (6) of section 481.311, Florida Statutes, are renumbered as subsections (4) and (5), respectively, and subsection (3) and present subsection (4) of that section are amended, to read:

481.311 Licensure.—

(3) The board shall certify as qualified for a license by endorsement an applicant who:

(a) Qualifies to take the examination as set forth in s. 481.309; and has passed a national, regional, state, or territorial licensing examination which is substantially equivalent to the examination required by s. 481.309; ~~or~~

(b) Holds a valid license to practice landscape architecture issued by another state or territory of the United States, if the criteria for issuance of such license were substantially identical to the licensure criteria which existed in this state at the time the license was issued; or~~.~~

(c) Has held a valid license to practice landscape architecture in another state or territory of the United States for at least 10 years before the date of application and has successfully completed a state, regional, national, or other examination that is equivalent to or more stringent than the

examination required by the board, subject to subsection (5). An applicant who has met the requirements to be qualified for a license by endorsement except for successful completion of an examination that is equivalent to or more stringent than the examination required by the board may take the examination required by the board without completing additional education requirements. Such application must be submitted to the board while the applicant holds a valid license in another state or territory or within 2 years after the expiration of such license.

~~(4) The board shall certify as qualified for a certificate of authorization any applicant corporation or partnership who satisfies the requirements of s. 481.319.~~

Section 74. Subsection (4) of section 481.313, Florida Statutes, is amended to read:

481.313 Renewal of license.—

(4) The board, by rule adopted pursuant to ss. 120.536(1) and 120.54, shall establish criteria for the approval of continuing education courses and providers, and shall by rule establish criteria for accepting alternative nonclassroom continuing education on an hour-for-hour basis. A landscape architect shall receive hour-for-hour credit for attending continuing education courses approved by the Landscape Architecture Continuing Education System or another nationally recognized clearinghouse for continuing education that relate to

and increase the basic knowledge of landscape architecture, as determined by the board, if such landscape architect submits proof satisfactory to the board that such course was approved by the Landscape Architecture Continuing Education System or another nationally recognized clearinghouse for continuing education, the syllabus or outline for such course, and attendance of such course.

Section 75. Subsection (2) of section 481.317, Florida Statutes, is amended to read:

481.317 Temporary certificates.—

~~(2) Upon approval by the board and payment of the fee set in s. 481.307, the department shall grant a temporary certificate of authorization for work on one specified project in this state for a period not to exceed 1 year to an out-of-state corporation, partnership, or firm, provided one of the principal officers of the corporation, one of the partners of the partnership, or one of the principals in the fictitiously named firm has obtained a temporary certificate of registration in accordance with subsection (1).~~

Section 76. Section 481.319, Florida Statutes, is amended to read:

481.319 Corporate and partnership practice of landscape architecture~~; certificate of authorization~~.—

(1) The practice of or offer to practice landscape architecture by registered landscape architects registered under

this part through a corporation or partnership offering landscape architectural services to the public, or through a corporation or partnership offering landscape architectural services to the public through individual registered landscape architects as agents, employees, officers, or partners, is permitted, subject to the provisions of this section, if:

(a) One or more of the principal officers of the corporation, or partners of the partnership, and all personnel of the corporation or partnership who act in its behalf as landscape architects in this state are registered landscape architects; and

(b) One or more of the officers, one or more of the directors, one or more of the owners of the corporation, or one or more of the partners of the partnership is a registered landscape architect~~; and~~

~~(c) The corporation or partnership has been issued a certificate of authorization by the board as provided herein~~.

(2) All documents involving the practice of landscape architecture which are prepared for the use of the corporation or partnership shall bear the signature and seal of a registered landscape architect.

(3) A landscape architect applying to practice in the name of a ~~An applicant~~ corporation must ~~shall~~ file with the department the names and addresses of all officers and board members of the corporation, including the principal officer or

officers, duly registered to practice landscape architecture in this state and, also, of all individuals duly registered to practice landscape architecture in this state who shall be in responsible charge of the practice of landscape architecture by the corporation in this state. A landscape architect applying to practice in the name of a ~~An applicant~~ partnership must ~~shall~~ file with the department the names and addresses of all partners of the partnership, including the partner or partners duly registered to practice landscape architecture in this state and, also, of an individual or individuals duly registered to practice landscape architecture in this state who shall be in responsible charge of the practice of landscape architecture by said partnership in this state.

(4) Each landscape architect qualifying a partnership or ~~and~~ corporation ~~licensed~~ under this part must ~~shall~~ notify the department within 1 month after ~~of~~ any change in the information contained in the application upon which the license is based. Any landscape architect who terminates her or his ~~or her~~ employment with a partnership or corporation licensed under this part shall notify the department of the termination within 1 month after such termination.

~~(5) Disciplinary action against a corporation or partnership shall be administered in the same manner and on the same grounds as disciplinary action against a registered landscape architect.~~

(5) ~~(6)~~ Except as provided in s. 558.0035, the fact that a registered landscape architect practices landscape architecture through a corporation or partnership as provided in this section does not relieve the landscape architect from personal liability for her or his ~~or her~~ professional acts.

Section 77. Subsection (5) of section 481.321, Florida Statutes, is amended to read:

481.321 Seals; display of certificate number.—

(5) Each registered landscape architect must ~~and each corporation or partnership holding a certificate of authorization shall~~ include her or his ~~its~~ certificate number in any newspaper, telephone directory, or other advertising medium used by the registered landscape architect, corporation, or partnership. A corporation or partnership must ~~is not required to~~ display the certificate number ~~numbers~~ of at least one officer, director, owner, or partner who is a ~~individual~~ registered landscape architect ~~architects~~ employed by or practicing with the corporation or partnership.

Section 78. Subsection (5) of section 481.329, Florida Statutes, is amended to read:

481.329 Exceptions; exemptions from licensure.—

(5) This part does not prohibit any person from engaging in the practice of landscape design, as defined in s. 481.303 ~~481.303(7)~~, or from submitting for approval to a governmental agency planting plans that are independent of, or a component

of, construction documents that are prepared by a Florida-registered professional. Persons providing landscape design services shall not use the title, term, or designation "landscape architect," "landscape architectural," "landscape architecture," "L.A.," "landscape engineering," or any description tending to convey the impression that she or he is a landscape architect unless she or he is registered as provided in this part.

Section 79. Subsection (9) of section 489.103, Florida Statutes, is amended to read:

489.103 Exemptions.—This part does not apply to:

(9) Any work or operation of a casual, minor, or inconsequential nature in which the aggregate contract price for labor, materials, and all other items is less than $2,500 ~~$1,000~~, but this exemption does not apply:

(a) If the construction, repair, remodeling, or improvement is a part of a larger or major operation, whether undertaken by the same or a different contractor, or in which a division of the operation is made in contracts of amounts less than $2,500 ~~$1,000~~ for the purpose of evading this part or otherwise.

(b) To a person who advertises that he or she is a contractor or otherwise represents that he or she is qualified to engage in contracting.

Section 80. Subsection (2) of section 489.111, Florida Statutes, is amended to read:

489.111 Licensure by examination.—

(2) A person shall be eligible for licensure by examination if the person:

(a) Is 18 years of age;

(b) Is of good moral character; and

(c) Meets eligibility requirements according to one of the following criteria:

1. Has received a baccalaureate degree from an accredited 4-year college in the appropriate field of engineering, architecture, or building construction and has 1 year of proven experience in the category in which the person seeks to qualify. For the purpose of this part, a minimum of 2,000 person-hours shall be used in determining full-time equivalency. An applicant who is exempt from passing an examination or portion thereof as provided in s. 489.113(1) is eligible for a license under this section.

2. Has a total of at least 4 years of active experience as a worker who has learned the trade by serving an apprenticeship as a skilled worker who is able to command the rate of a mechanic in the particular trade or as a foreman who is in charge of a group of workers and usually is responsible to a superintendent or a contractor or his or her equivalent,

provided, however, that at least 1 year of active experience shall be as a foreman.

3. Has a combination of not less than 1 year of experience as a foreman and not less than 3 years of credits for any accredited college-level courses; has a combination of not less than 1 year of experience as a skilled worker, 1 year of experience as a foreman, and not less than 2 years of credits for any accredited college-level courses; or has a combination of not less than 2 years of experience as a skilled worker, 1 year of experience as a foreman, and not less than 1 year of credits for any accredited college-level courses. All junior college or community college-level courses shall be considered accredited college-level courses.

4.a. An active certified residential contractor is eligible to receive a certified building contractor license after passing or having previously passed ~~take~~ the building contractors' examination if he or she possesses a minimum of 3 years of proven experience in the classification in which he or she is certified.

b. An active certified residential contractor is eligible to receive a certified general contractor license after passing or having previously passed ~~take~~ the general contractors' examination if he or she possesses a minimum of 4 years of proven experience in the classification in which he or she is certified.

c. An active certified building contractor is eligible to receive a certified general contractor license after passing or having previously passed ~~take~~ the general contractors' examination if he or she possesses a minimum of 4 years of proven experience in the classification in which he or she is certified.

5.a. An active certified air-conditioning Class C contractor is eligible to receive a certified air conditioning Class B contractor license after passing or having previously passed ~~take~~ the air-conditioning Class B contractors' examination if he or she possesses a minimum of 3 years of proven experience in the classification in which he or she is certified.

b. An active certified air-conditioning Class C contractor is eligible to receive a certified air conditioning Class A contractor license after passing or having previously passed ~~take~~ the air-conditioning Class A contractors' examination if he or she possesses a minimum of 4 years of proven experience in the classification in which he or she is certified.

c. An active certified air-conditioning Class B contractor is eligible to receive a certified air conditioning Class A contractor license after passing or having previously passed ~~take~~ the air-conditioning Class A contractors' examination if he or she possesses a minimum of 1 year of proven experience in the classification in which he or she is certified.

6.a. An active certified swimming pool servicing contractor is eligible to receive a certified residential swimming pool contractor license after passing or having previously passed ~~take~~ the residential swimming pool contractors' examination if he or she possesses a minimum of 3 years of proven experience in the classification in which he or she is certified.

b. An active certified swimming pool servicing contractor is eligible to receive a certified commercial swimming pool contractor license after passing or having previously passed ~~take~~ the swimming pool commercial contractors' examination if he or she possesses a minimum of 4 years of proven experience in the classification in which he or she is certified.

c. An active certified residential swimming pool contractor is eligible to receive a certified commercial swimming pool contractor license after passing or having previously passed ~~take~~ the commercial swimming pool contractors' examination if he or she possesses a minimum of 1 year of proven experience in the classification in which he or she is certified.

d. An applicant is eligible to receive a certified swimming pool/spa servicing contractor license after passing or having previously passed ~~take~~ the swimming pool/spa servicing contractors' examination if he or she has satisfactorily completed 60 hours of instruction in courses related to the

scope of work covered by that license and approved by the Construction Industry Licensing Board by rule and has at least 1 year of proven experience related to the scope of work of such a contractor.

Section 81. Subsection (1) of section 489.113, Florida Statutes, is amended to read:

489.113 Qualifications for practice; restrictions.—

(1) Any person who desires to engage in contracting on a statewide basis shall, as a prerequisite thereto, establish his or her competency and qualifications to be certified pursuant to this part. To establish competency, a person shall pass the appropriate examination approved by the board and certified by the department. If an applicant has received a baccalaureate degree from an accredited 4-year college in building construction, or a related degree as approved by the board by rule, such applicant is only required to take and pass the business and finance portion of the examination. Any person who desires to engage in contracting on other than a statewide basis shall, as a prerequisite thereto, be registered pursuant to this part, unless exempted by this part.

Section 82. Subsection (3) of section 489.115, Florida Statutes, is amended to read:

489.115 Certification and registration; endorsement; reciprocity; renewals; continuing education.—

(3) The board shall certify as qualified for certification by endorsement any applicant who:

(a) Meets the requirements for certification as set forth in this section; has passed a national, regional, state, or United States territorial licensing examination that is substantially equivalent to the examination required by this part; and has satisfied the requirements set forth in s. 489.111;

(b) Holds a valid license to practice contracting issued by another state or territory of the United States, if the criteria for issuance of such license were substantially equivalent to Florida's current certification criteria; ~~or~~

(c) Holds a valid, current license to practice contracting issued by another state or territory of the United States, if the state or territory has entered into a reciprocal agreement with the board for the recognition of contractor licenses issued in that state, based on criteria for the issuance of such licenses that are substantially equivalent to the criteria for certification in this state;

(d) Has held a valid license to practice contracting issued by another state or territory for at least 10 years before the date of application and is applying for the same or similar license in this state, subject to subsections (5)-(9). The board may consider whether such applicant has had a license to practice contracting revoked, suspended, or otherwise acted

against by the licensing authority of another state, territory, or country. Such application must be submitted to the board while the applicant holds a valid license in another state or territory or within 2 years after the expiration of such license. A building contractor, residential contractor, general contractor, or roofing contractor who obtains a license by endorsement or reciprocity under this paragraph must have completed, within the previous 2 years or within 30 days after being licensed, a board-approved 2 hour course on wind mitigation, flood resistance, and water intrusion requirements under the Florida Building Code. The approved course may be provided online. The board may approve other building code courses to satisfy this requirement, provided the necessary wind mitigation, flood resistance, and water intrusion requirements are presented.

Section 83. Subsection (5) of section 489.511, Florida Statutes, is amended to read:

489.511 Certification; application; examinations; endorsement.—

(5) The board shall certify as qualified for certification by endorsement any individual applying for certification who:

(a) Meets the requirements for certification as set forth in this section; has passed a national, regional, state, or United States territorial licensing examination that is substantially equivalent to the examination required by this

part; and has satisfied the requirements set forth in s. 489.521; ~~or~~

(b) Holds a valid license to practice electrical or alarm system contracting issued by another state or territory of the United States, if the criteria for issuance of such license was substantially equivalent to the certification criteria that existed in this state at the time the certificate was issued; or

(c) Has held a valid license to practice electrical or alarm system contracting issued by another state or territory for at least 10 years before the date of application and is applying for the same or similar license in this state, subject to ss. 489.510 and 489.521(3)(a), and subparagraph (1)(b)1. Such application must be submitted to the board while the applicant holds a valid license in another state or territory or within 2 years after the expiration of such license. An electrical contractor or alarm system contractor who is licensed in another state who seeks qualification for license by endorsement under this paragraph must complete a class on the Florida Building Code approved by the board, not to exceed 2 hours.

Section 84. Subsection (3) and paragraph (b) of subsection (4) of section 489.517, Florida Statutes, are amended to read:

489.517 Renewal of certificate or registration; continuing education.—

(3)(a) Each certificateholder or registrant licensed as a specialty contractor or an alarm system contractor shall provide

proof, in a form established by rule of the board, that the certificateholder or registrant has completed at least 7 ~~14~~ classroom hours of at least 50 minutes each of continuing education courses during each biennium since the issuance or renewal of the certificate or registration. The board shall by rule establish criteria for the approval of continuing education courses and providers and may by rule establish criteria for accepting alternative nonclassroom continuing education on an hour-for-hour basis.

(b) Each certificateholder or registrant licensed as an electrical contractor shall provide proof, in a form established by rule of the board, that the certificateholder or registrant has completed at least 11 classroom hours of at least 50 minutes each of continuing education courses during each biennium since the issuance or renewal of the certificate or registration. The board shall by rule establish criteria for the approval of continuing education courses and providers and may by rule establish criteria for accepting alternative nonclassroom continuing education on an hour-for-hour basis.

(4)

(b)1. For licensed specialty contractors or alarm system contractors, of the 7 ~~14~~ classroom hours of continuing education required, at least 1 hour ~~7 hours~~ must be on technical subjects, 1 hour on workers' compensation, 1 hour on workplace safety, 1 hour on business practices, and ~~for alarm system contractors and~~

~~electrical contractors engaged in alarm system contracting,~~ 2 hours on false alarm prevention.

2. For licensed electrical contractors, of the minimum 11 classroom hours of continuing education required, at least 7 hours must be on technical subjects, 1 hour on workers' compensation, 1 hour on workplace safety, and 1 hour on business practices. Electrical contractors engaged in alarm system contracting must also complete 2 hours on false alarm prevention.

Section 85. Paragraph (b) of subsection (1) of section 489.518, Florida Statutes, is amended to read:

489.518 Alarm system agents.—

(1) A licensed electrical or alarm system contractor may not employ a person to perform the duties of a burglar alarm system agent unless the person:

(b) Has successfully completed a minimum of 14 hours of training within 90 days after employment, to include basic alarm system electronics in addition to related training including CCTV and access control training, with at least 2 hours of training in the prevention of false alarms. Such training shall be from a board-approved provider, and the employee or applicant for employment shall provide proof of successful completion to the licensed employer. The board shall by rule establish criteria for the approval of training courses and providers and may by rule establish criteria for accepting alternative

nonclassroom education on an hour-for-hour basis. The board shall approve providers that conduct training in other than the English language. The board shall establish a fee for the approval of training providers or courses, not to exceed $60. Qualified employers may conduct training classes for their employees, with board approval.

Section 86. Section 492.104, Florida Statutes, is amended, to read:

492.104 Rulemaking authority.—The Board of Professional Geologists has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this chapter. Every licensee shall be governed and controlled by this chapter and the rules adopted by the board. The board is authorized to set, by rule, fees for application, examination, ~~certificate of authorization,~~ late renewal, initial licensure, and license renewal. These fees may ~~should~~ not exceed the cost of implementing the application, examination, initial licensure, and license renewal or other administrative process and shall be established as follows:

(1) The application fee shall not exceed $150 and shall be nonrefundable.

(2) The examination fee shall not exceed $250, and the fee may be apportioned to each part of a multipart examination. The examination fee shall be refundable in whole or part if the applicant is found to be ineligible to take any portion of the licensure examination.

(3) The initial license fee shall not exceed $100.

(4) The biennial renewal fee shall not exceed $150.

~~(5) The fee for a certificate of authorization shall not exceed $350 and the fee for renewal of the certificate shall not exceed $350.~~

(5)~~(6)~~ The fee for reactivation of an inactive license may ~~shall~~ not exceed $50.

(6)~~(7)~~ The fee for a provisional license may ~~shall~~ not exceed $400.

(7)~~(8)~~ The fee for application, examination, and licensure for a license by endorsement is ~~shall be~~ as provided in this section for licenses in general.

Section 87. Subsection (1) of section 492.108, Florida Statutes, is amended to read:

492.108 Licensure by endorsement; requirements; fees.—

(1) The department shall issue a license by endorsement to any applicant who, upon applying to the department and remitting an application fee, has been certified by the board that he or she:

(a) Has met the qualifications for licensure in s. 492.105(1)(b)-(e) and:~~.~~

1.~~(b)~~ Is the holder of an active license in good standing in a state, trust, territory, or possession of the United States.

2. ~~(c)~~ Was licensed through written examination in at least one state, trust, territory, or possession of the United States, the examination requirements of which have been approved by the board as substantially equivalent to or more stringent than those of this state, and has received a score on such examination which is equal to or greater than the score required by this state for licensure by examination.

3. ~~(d)~~ Has taken and successfully passed the laws and rules portion of the examination required for licensure as a professional geologist in this state.

(b) Has held a valid license to practice geology in another state, trust, territory, or possession of the United States for at least 10 years before the date of application and has successfully completed a state, regional, national, or other examination that is equivalent to or more stringent than the examination required by the department. If such applicant has met the requirements for a license by endorsement except successful completion of an examination that is equivalent to or more stringent than the examination required by the board, such applicant may take the examination required by the board. Such application must be submitted to the board while the applicant holds a valid license in another state or territory or within 2 years after the expiration of such license.

Section 88. Section 492.111, Florida Statutes, is amended to read:

492.111 Practice of professional geology by a firm, corporation, or partnership~~; certificate of authorization~~.—The practice of, or offer to practice, professional geology by individual professional geologists licensed under the provisions of this chapter through a firm, corporation, or partnership offering geological services to the public through individually licensed professional geologists as agents, employees, officers, or partners thereof is permitted subject to the provisions of this chapter, if ~~provided that~~:

(1) At all times that it offers geological services to the public, the firm, corporation, or partnership is qualified by ~~has on file with the department the name and license number of~~ one or more individuals who hold a current, active license as a professional geologist in the state and are serving as a geologist of record for the firm, corporation, or partnership. A geologist of record may be any principal officer or employee of such firm or corporation, or any partner or employee of such partnership, who holds a current, active license as a professional geologist in this state, or any other Florida-licensed professional geologist with whom the firm, corporation, or partnership has entered into a long-term, ongoing relationship, as defined by rule of the board, to serve as one of its geologists of record. ~~It shall be the responsibility of the firm, corporation, or partnership and~~ The geologist of record shall ~~to~~ notify the department of any changes in the

relationship or identity of that geologist of record within 30 days after such change.

~~(2) The firm, corporation, or partnership has been issued a certificate of authorization by the department as provided in this chapter. For purposes of this section, a certificate of authorization shall be required of any firm, corporation, partnership, association, or person practicing under a fictitious name and offering geological services to the public; except that, when an individual is practicing professional geology in her or his own name, she or he shall not be required to obtain a certificate of authorization under this section. Such certificate of authorization shall be renewed every 2 years.~~

(2)~~(3)~~ All final geological papers or documents involving the practice of the profession of geology which have been prepared or approved for the use of such firm, corporation, or partnership, for delivery to any person for public record with the state, shall be dated and bear the signature and seal of the professional geologist or professional geologists who prepared or approved them.

(3)~~(4)~~ Except as provided in s. 558.0035, the fact that a licensed professional geologist practices through a corporation or partnership does not relieve the registrant from personal liability for negligence, misconduct, or wrongful acts committed by her or him. The partnership and all partners are jointly and

severally liable for the negligence, misconduct, or wrongful acts committed by their agents, employees, or partners while acting in a professional capacity. Any officer, agent, or employee of a corporation is personally liable and accountable only for negligent acts, wrongful acts, or misconduct committed by her or him or committed by any person under her or his direct supervision and control, while rendering professional services on behalf of the corporation. The personal liability of a shareholder of a corporation, in her or his capacity as shareholder, may be no greater than that of a shareholder-employee of a corporation incorporated under chapter 607. The corporation is liable up to the full value of its property for any negligent acts, wrongful acts, or misconduct committed by any of its officers, agents, or employees while they are engaged on behalf of the corporation in the rendering of professional services.

~~(5) The firm, corporation, or partnership desiring a certificate of authorization shall file with the department an application therefor, upon a form to be prescribed by the department, accompanied by the required application fee.~~

~~(6) The department may refuse to issue a certificate of authorization if any facts exist which would entitle the department to suspend or revoke an existing certificate of authorization or if the department, after giving persons involved a full and fair hearing, determines that any of the~~

~~officers or directors of said firm or corporation, or partners of said partnership, have violated the provisions of s. 492.113.~~

Section 89. Subsection (4) of section 492.113, Florida Statutes, is amended to read:

492.113 Disciplinary proceedings.—

(4) The department shall reissue the license of a disciplined professional geologist ~~or business~~ upon certification by the board that the disciplined person has complied with ~~all of~~ the terms and conditions set forth in the final order.

Section 90. Section 492.115, Florida Statutes, is amended to read:

492.115 Roster of licensed professional geologists.—A roster showing the names and places of business or residence of all licensed professional geologists and all properly qualified firms, corporations, or partnerships practicing ~~holding certificates of authorization to practice~~ professional geology in the state shall be prepared annually by the department. A copy of this roster must be made available to ~~shall be obtainable by~~ each licensed professional geologist and each firm, corporation, or partnership qualified by a professional geologist ~~holding a certificate of authorization~~, and copies thereof shall be placed on file with the department.

Section 91. Section 509.102, Florida Statutes, is created to read:

509.102 Mobile food dispensing vehicles.—

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

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

(b) "Mobile food dispensing vehicle" means any vehicle-mounted public food service establishment which is self-propelled or otherwise movable from place to place and includes self-contained utilities, including, but not limited to, gas, water, electricity, and liquid waste disposal.

(2) A municipality, county, or other local government entity may not:

(a) Require a separate license, registration, or permit beyond those established by the division under s. 509.241 as a condition for the mobile food dispensing vehicle's operation within the jurisdiction.

(b) Require a separate license, registration, or permit fee beyond those established by the division under s. 509.251 as a condition for the mobile food dispensing vehicle's operation within the jurisdiction.

(c) Prohibit mobile food dispensing vehicles from operating within the jurisdiction.

(3) Nothing in this section prevents a municipality, county, or other local government from requiring:

1. A mobile food dispensing vehicle operator to comply with local zoning requirements.

2. A one-time vendor fee associated with a special event that the municipality, county, or local government is coordinating.

Section 92. Paragraph (i) of subsection (2) of section 548.003, Florida Statutes, is amended to read:

548.003 Florida State Boxing Commission.—

(2) The Florida State Boxing Commission, as created by subsection (1), shall administer the provisions of this chapter. The commission has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter and to implement each of the duties and responsibilities conferred upon the commission, including, but not limited to:

~~(i) Designation and duties of a knockdown timekeeper.~~

Section 93. Subsection (1) of section 548.017, Florida Statutes, is amended to read:

548.017 Participants, managers, and other persons required to have licenses.—

(1) A participant, manager, trainer, second, ~~timekeeper,~~ referee, judge, ~~announcer,~~ physician, matchmaker, or promoter must be licensed before directly or indirectly acting in such capacity in connection with any match involving a participant. A physician approved by the commission must be licensed pursuant to chapter 458 or chapter 459, must maintain an unencumbered

2395 license in good standing, and must demonstrate satisfactory
2396 medical training or experience in boxing, or a combination of
2397 both, to the executive director before working as the ringside
2398 physician.
2399 Section 94. Paragraph (d) of subsection (1) of section
2400 553.5141, Florida Statutes, is amended to read:
2401 553.5141 Certifications of conformity and remediation
2402 plans.—
2403 (1) For purposes of this section:
2404 (d) "Qualified expert" means:
2405 1. An engineer licensed pursuant to chapter 471.
2406 2. A certified general contractor licensed pursuant to
2407 chapter 489.
2408 3. A certified building contractor licensed pursuant to
2409 chapter 489.
2410 4. A building code administrator licensed pursuant to
2411 chapter 468.
2412 5. A building inspector licensed pursuant to chapter 468.
2413 6. A plans examiner licensed pursuant to chapter 468.
2414 7. An interior designer registered ~~licensed~~ pursuant to
2415 chapter 481.
2416 8. An architect licensed pursuant to chapter 481.
2417 9. A landscape architect licensed pursuant to chapter 481.
2418 10. Any person who has prepared a remediation plan related
2419 to a claim under Title III of the Americans with Disabilities

Act, 42 U.S.C. s. 12182, that has been accepted by a federal court in a settlement agreement or court proceeding, or who has been qualified as an expert in Title III of the Americans with Disabilities Act, 42 U.S.C. s. 12182, by a federal court.

Section 95. Effective January 1, 2021, subsection (1) of section 553.74, Florida Statutes, is amended to read:

553.74 Florida Building Commission.—

(1) The Florida Building Commission is created and located within the Department of Business and Professional Regulation for administrative purposes. Members are appointed by the Governor subject to confirmation by the Senate. The commission is composed of 19 ~~27~~ members, consisting of the following members:

(a) One architect licensed under chapter 481 with at least 5 years of experience in the design and construction of buildings designated for Group E or Group I occupancies by the Florida Building Code ~~registered to practice in this state and actively engaged in the profession~~. The American Institute of Architects, Florida Section, is encouraged to recommend a list of candidates for consideration.

(b) One structural engineer registered to practice in this state and actively engaged in the profession. The Florida Engineering Society is encouraged to recommend a list of candidates for consideration.

(c) One air-conditioning contractor, ~~or~~ mechanical contractor, or mechanical engineer certified to do business in this state and actively engaged in the profession. The Florida Air Conditioning Contractors Association, the Florida Refrigeration and Air Conditioning Contractors Association, ~~and~~ the Mechanical Contractors Association of Florida, and the Florida Engineering Society are encouraged to recommend a list of candidates for consideration.

(d) One electrical contractor or electrical engineer certified to do business in this state and actively engaged in the profession. The Florida Association of Electrical Contractors, ~~and~~ the National Electrical Contractors Association, Florida Chapter, and the Florida Engineering Society are encouraged to recommend a list of candidates for consideration.

~~(e) One member from fire protection engineering or technology who is actively engaged in the profession. The Florida Chapter of the Society of Fire Protection Engineers and the Florida Fire Marshals and Inspectors Association are encouraged to recommend a list of candidates for consideration.~~

(e)~~(f)~~ One certified general contractor or one certified building contractor certified to do business in this state and actively engaged in the profession. The Associated Builders and Contractors of Florida, the Florida Associated General Contractors Council, the Florida Home Builders Association, and

the Union Contractors Association are encouraged to recommend a list of candidates for consideration.

(f) ~~(g)~~ One plumbing contractor licensed to do business in this state and actively engaged in the profession. The Florida Association of Plumbing, Heating, and Cooling Contractors is encouraged to recommend a list of candidates for consideration.

(g) ~~(h)~~ One roofing or sheet metal contractor certified to do business in this state and actively engaged in the profession. The Florida Roofing, Sheet Metal, and Air Conditioning Contractors Association and the Sheet Metal and Air Conditioning Contractors' National Association are encouraged to recommend a list of candidates for consideration.

(h) ~~(i)~~ One certified residential contractor licensed to do business in this state and actively engaged in the profession. The Florida Home Builders Association is encouraged to recommend a list of candidates for consideration.

(i) ~~(j)~~ Three members who are municipal, county, or district codes enforcement officials, one of whom is also a fire official. The Building Officials Association of Florida and the Florida Fire Marshals and Inspectors Association are encouraged to recommend a list of candidates for consideration.

~~(k) One member who represents the Department of Financial Services.~~

~~(l) One member who is a county codes enforcement official. The Building Officials Association of Florida is encouraged to recommend a list of candidates for consideration.~~

(j) ~~(m)~~ One member of a Florida-based organization of persons with disabilities or a nationally chartered organization of persons with disabilities with chapters in this state which complies with or is certified to be compliant with the requirements of the Americans with Disability Act of 1990, as amended.

(k) ~~(n)~~ One member of the manufactured buildings industry who is licensed to do business in this state and is actively engaged in the industry. The Florida Manufactured Housing Association is encouraged to recommend a list of candidates for consideration.

~~(o) One mechanical or electrical engineer registered to practice in this state and actively engaged in the profession. The Florida Engineering Society is encouraged to recommend a list of candidates for consideration.~~

~~(p) One member who is a representative of a municipality or a charter county. The Florida League of Cities and the Florida Association of Counties are encouraged to recommend a list of candidates for consideration.~~

(l) ~~(q)~~ One member of the building products manufacturing industry who is authorized to do business in this state and is actively engaged in the industry. The Florida Building Material

Association, the Florida Concrete and Products Association, and the Fenestration Manufacturers Association are encouraged to recommend a list of candidates for consideration.

(m) ~~(r)~~ One member who is a representative of the building owners and managers industry who is actively engaged in commercial building ownership or management. The Building Owners and Managers Association is encouraged to recommend a list of candidates for consideration.

(n) ~~(s)~~ One member who is a representative of the insurance industry. The Florida Insurance Council is encouraged to recommend a list of candidates for consideration.

~~(t) One member who is a representative of public education.~~

(o) ~~(u)~~ One member who is a swimming pool contractor licensed to do business in this state and actively engaged in the profession. The Florida Swimming Pool Association and the United Pool and Spa Association are encouraged to recommend a list of candidates for consideration.

(p) ~~(v)~~ One member who is a representative of the green building industry and who is a third-party commission agent, a Florida board member of the United States Green Building Council or Green Building Initiative, a professional who is accredited under the International Green Construction Code (IGCC), or a professional who is accredited under Leadership in Energy and Environmental Design (LEED).

(q) ~~(w)~~ One member who is a representative of a natural gas distribution system and who is actively engaged in the distribution of natural gas in this state. The Florida Natural Gas Association is encouraged to recommend a list of candidates for consideration.

~~(x) One member who is a representative of the Department of Agriculture and Consumer Services' Office of Energy. The Commissioner of Agriculture is encouraged to recommend a list of candidates for consideration.~~

~~(y) One member who shall be the chair.~~

Section 96. Subsection (7) of section 558.002, Florida Statutes, is amended to read:

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

(7) "Design professional" means a person, as defined in s. 1.01, licensed or registered in this state as an architect, interior designer, landscape architect, engineer, surveyor, or geologist.

Section 97. Subsection (5) is added to section 823.15, Florida Statutes, to read:

823.15 Dogs and cats released from animal shelters or animal control agencies; sterilization requirement.—

(5)(a) Employees, agents, or contractors of a public or private animal shelter, a humane organization, or an animal control agency operated by a humane organization or by a county, municipality, or other incorporated political subdivision may

implant dogs and cats with a radio frequency identification microchip device as part of their work with such public or private animal shelter, humane organization, or animal control agency.

(b) Notwithstanding s. 474.2165, employees, agents, or contractors of a public or private animal shelter, a humane organization, or an animal control agency operated by a humane organization or by a county, municipality, or other incorporated political subdivision may contact the owner of record listed on a radio frequency identification microchip device to verify pet ownership.

Section 98. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2020.

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

Remove everything before the enacting clause and insert:
An act relating to the deregulation of professions and occupations; providing a short title; amending s. 287.055, F.S.; conforming provisions to changes made by the act; amending s. 322.57, F.S.; defining the term "servicemember"; requiring the Department of Highway Safety and Motor Vehicles to waive certain commercial driver license requirements for servicemembers and veterans under certain

circumstances; requiring rulemaking; amending s. 326.004, F.S.; deleting the requirement for a yacht broker to maintain a separate license for each branch office; deleting the requirement for the division to establish a fee; amending s. 447.02, F.S.; conforming provisions to changes made by the act; repealing ss. 447.04, 447.041, 447.045, and 447.046, F.S., relating to licensure and permit requirements for business agents, hearings for persons or labor organizations denied licensure as a business agent, confidential information obtained during the application process, and required registration of labor organizations, respectively; amending s. 447.09, F.S.; deleting certain prohibited actions relating to the right of franchise of a member of a labor organization; repealing ss. 447.12 and 447.16, F.S., relating to registration fees and applicability; amending s. 447.305, F.S.; deleting a provision that requires notification of registrations and renewals to the department; amending s. 455.213, F.S.; requiring the Department of Business and Professional Regulation or a board to seek reciprocal licensing agreements with other states under certain circumstances; providing requirements; creating s. 455.2278, F.S.; providing definitions; prohibiting the department or a board

from suspending or revoking a person's license solely on the basis of a delinquency or default in the payment of his or her student loan; prohibiting the department or a board from suspending or revoking a person's license solely on the basis of a default in satisfying the requirements of his or her work-conditional scholarship; amending s. 468.401, F.S.; revising definitions; repealing ss. 468.402, 468.403, 468.404, and 468.405, F.S., relating to duties and authority of the Department of Business and Professional Regulation with regard to licensure of talent agencies, licensure requirements, license fees and renewals, and qualification for a talent agency license, respectively; amending s. 468.406, F.S.; requiring an owner or operator of a talent agency to post an itemized schedule of fees, charges, and commissions in a specified place; repealing s. 468.407, F.S., relating to the form and posting requirements for a license; amending s. 468.408, F.S.; conforming provisions to changes made by the act; prohibiting certain bonds from being issued or renewed by a bonding agency to an owner or operator of a talent agency unless the bonding agency verifies that each owner or operator has not been convicted of specified crimes; amending s. 468.409, F.S.; deleting

a requirement for record inspection; amending s. 468.410, F.S.; deleting a requirement to include specified information in a contract between a talent agency and applicant; amending s. 468.412, F.S.; deleting recordkeeping and posting requirements; amending s. 468.413, F.S.; revising criminal penalties; conforming provisions to changes made by the act; repealing s. 468.414, F.S., relating to the deposit of certain funds in the Professional Regulation Trust Fund; amending s. 468.415, F.S.; prohibiting any agent, owner, or operator who commits sexual misconduct in the operation of a talent agency from acting as an agent, owner, or operator of a Florida talent agency; amending s. 468.505, F.S.; providing that certain unlicensed persons are not prohibited or restricted from his or her practice, services, or activities in dietetics and nutrition under certain circumstances; amending 468.524, F.S.; deleting specified exemptions from the time restriction for an employee leasing company to reapply for licensure; amending s. 468.603, F.S.; revising a definition; amending s. 468.609, F.S.; revising certain experience requirements for a person to take the examination for certification; revising the time period a provisional certificate is valid; amending s.

468.613, F.S.; providing for waiver of specified requirements for certification under certain circumstances; amending s. 468.8314, F.S.; requiring an applicant for a license by endorsement to maintain a specified insurance policy; requiring the department to certify an applicant who holds a specified license issued by another state or territory of the United States under certain circumstances; amending s. 471.015, F.S.; revising licensure requirements for engineers who hold specified licenses in another state; amending s. 473.308, F.S.; deleting continuing education requirements for license by endorsement for certified public accountants; amending s. 474.202, F.S.; revising the definition of the term "limited-service veterinary medical practice" to include certain vaccinations or immunizations; amending s. 474.203, F.S.; providing an exemption for a person whose work is solely confined to microchip implantation in dogs and cats; amending s. 474.207, F.S.; revising education requirements for licensure by examination; amending s. 474.217, F.S.; requiring the Department of Business and Professional Regulation to issue a license by endorsement to certain applicants who successfully complete a specified examination; amending s. 476.114, F.S.; revising training

requirements for licensure as a barber; amending s. 476.144, F.S.; requiring the department to license an applicant who is licensed to practice barbering in another state; amending s. 477.013, F.S.; revising the definition of the term "hair braiding"; repealing s. 477.0132, F.S., relating to registration for hair braiding, hair wrapping, and body wrapping; amending s. 477.0135, F.S.; providing additional exemptions from license or registration requirements for specified occupations or practices; amending s. 477.019, F.S.; conforming provisions to changes made by the act; amending s. 477.0201, F.S.; providing requirements for registration as a specialist; amending s. 477.026, F.S.; conforming provisions to changes made by the act; amending s. 477.0263, F.S.; authorizing certain persons to perform specified cosmetology services in a location other than a licensed salon under certain circumstances; amending ss. 477.0265 and 477.029, F.S.; conforming provisions to changes made by the act; amending s. 481.201, F.S.; deleting legislative findings relating to the practice of interior design; amending s. 481.203, F.S.; revising definitions; amending s. 481.205, F.S.; conforming provisions to changes made by the act; amending s. 481.207, F.S.; revising certain fees for

interior designers; amending s. 481.209, F.S.; providing requirements for a certificate of registration and a seal for interior designers; conforming provisions to changes made by the act; amending s. 481.213, F.S.; revising requirements for certification of licensure by endorsement for certain licensees to engage in the practice of architecture; providing that registration is not required for specified persons to practice; amending s. 481.2131, F.S.; requiring certain interior designers to include a specified seal when submitting documents for the issuance of a building permit; amending s. 481.215, F.S.; revising the number of hours of specified courses the board must require for the renewal of a license or certificate of registration; authoring licensees to complete certain courses online; amending s. 481.217, F.S.; conforming provisions to changes made by the act; amending s. 481.219, F.S.; deleting provisions permitting the practice of or offer to practice interior design through certain business organizations; deleting provisions requiring certificates of authorization for certain business organizations offering interior design services to the public; requiring a licensee or applicant in the practice of architecture to qualify a business

organization; providing requirements; amending 481.221, F.S.; requiring registered architects and certain business organizations to display their license number in specified advertisements; amending s. 481.223, F.S.; providing construction; amending s. 481.2251, F.S.; revising acts that constitute grounds for disciplinary actions relating to interior designers; amending ss. 481.229 and 481.231, F.S.; conforming provisions to changes made by the act; amending s. 481.303, F.S.; deleting the definition of the term "certificate of authorization"; amending s. 481.310, F.S.; providing that an applicant who holds a specified degree is not required to demonstrate 1 year of practical experience for licensure; amending s. 481.311, F.S.; requiring the Board of Landscape Architecture to certify an applicant who holds a specified license issued by another state or territory of the United States under certain circumstances; conforming provisions; amending s. 481.313, F.S.; authorizing a landscape architect to receive hour-for-hour credit for certain approved continuing education courses under certain circumstances; 481.317, F.S.; conforming provisions; amending s. 481.319, F.S.; deleting the requirement for a certificate of authorization; authorizing landscape architects to

practice through a corporation or partnership; amending s. 481.321, F.S.; requiring a landscape architect to display their certificate number in specified advertisements; amending s. 481.329, F.S.; conforming a cross-reference; amending s. 489.103, F.S.; revising certain contract prices for exemption; amending s. 489.111, F.S.; providing that an applicant who is exempt from a specified examination is eligible for licensure; amending s. 489.113, F.S.; providing that an applicant holding a specified degree does not have to pass a certain examination; amending s. 489.115, F.S.; requiring the Construction Industry Licensing Board to certify any applicant who holds a specified license to practice contracting issued by another state or territory of the United States under or certain persons licensed by endorsement or reciprocity under certain circumstances; amending s. 489.511, F.S.; requiring the board to certify as qualified for certification by endorsement any applicant who holds a specified license to practice electrical or alarm system contracting issued by another state or territory of the United States under certain circumstances; amending s. 489.517, F.S.; providing a reduction in certain continuing education hours required for certain contractors; amending s.

489.518, F.S.; requiring a person to have completed a specified amount of training within a certain time period to perform the duties of an alarm system agent; amending s. 492.104, F.S.; conforming provisions to changes made by the act; amending 492.108, F.S.; requiring the department to issue a license by endorsement to any applicant who has held a specified license to practice geology in another state, territory, or possession of the United States for a certain period of time; providing that an applicant may take the examination required by the board if they have not met the specified examination requirement; amending s. 492.111, F.S.; deleting the requirements for a certificate of authorization for a professional geologist; amending ss. 492.113 and 492.115, F.S.; conforming provisions; creating s. 509.102, F.S.; providing a definition for the term "mobile food dispensing vehicles"; prohibiting a municipality, county, or other local government entity from requiring a separate license, registration, or permit or fee or from operating within the jurisdiction; providing applicability; amending s. 548.003, F.S.; deleting the requirement that the Florida State Boxing Commission adopt rules relating to a knockdown timekeeper; amending s. 548.017, F.S.; deleting the

licensure requirement for a timekeeper or announcer; amending s. 553.5141, F.S.; conforming provisions to changes made by the act; amending s. 553.74, F.S.; revising the membership and qualifications of the Florida Building Commission; amending ss. 553.79 and 558.002, F.S.; conforming provisions to changes made by the act; amending s. 823.15, F.S.; authorizing certain persons to implant dogs and cats with specified radio frequency identification devices under certain circumstances; authorizing such persons to contact the owner of record listed on such devices; providing effective dates.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1211 Reinsurance
SPONSOR(S): Jones
TIED BILLS: **IDEN./SIM. BILLS:** SB 1376

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N	Fortenberry	Cooper
2) Government Operations & Technology Appropriations Subcommittee	11 Y, 0 N	Helpling	Topp
3) Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

Reinsurance is a transaction between a primary insurer (ceding insurer) and a reinsurer (assuming insurer) whereby the assuming insurer agrees to cover all or part of the ceding insurer's losses or loss adjustment expenses in exchange for a premium. Because of the impact of hurricanes in Florida, the catastrophe protection provided by reinsurance is a significant reason for ceding insurers' purchase of reinsurance within the state. Most reinsurance that United States' (U.S.) ceding insurers acquire is placed with non-U.S. assuming insurers. Because state insurance regulators do not regulate non-U.S. insurers or assuming insurers, the purchase of reinsurance by Florida insurers from such non-U.S. companies provides concern and challenges for state insurance regulators. Depending on their status within Florida, assuming insurers may be authorized or unauthorized. When an assuming insurer is an unauthorized assuming insurer within Florida, the Florida Office of Insurance Regulation (OIR) does not have direct regulatory authority over that assuming insurer. In order to exercise some indirect regulatory authority over these assuming insurers, OIR limits the ceding insurer's credit for reinsurance unless the assuming insurer posts acceptable collateral or security in the amount of the assuming insurer's obligations under the reinsurance agreement. Credit for reinsurance means that a ceding insurer is permitted under statutory accounting rules to recognize the reinsurance as an asset or as a deduction from liability for the amount of the ceded liability or risk transferred.

The bill amends the reinsurance law to add criteria that an assuming insurer must meet in order for a ceding insurer to be given credit for reinsurance ceded to that assuming insurer. These criteria include having its principal office or its domicile and being licensed in, a reciprocal jurisdiction, maintain minimum capital and surplus, meeting minimum solvency or capital ratios, providing prompt notice to OIR if it falls below minimum requirements or has legal action taken against it, meeting certain other written requirements, responding to OIR's document requests, and maintaining a practice of prompt payment of claims. The bill requires that an assuming insurer's regulatory authority confirm to OIR, on an annual basis, that the assuming insurer has complied with the capital and surplus requirements and solvency or capital ratio requirements set forth in the bill. It also establishes that a ceding insurer may only take credit for reinsurance agreements entered into, amended, or renewed on or after the date at which the assuming insurer has met the mandatory criteria set forth within the bill. Credit may only be taken for losses incurred and reserves reported on or after the later of the date upon which the assuming insurer has met these requirements or has entered into a new reinsurance agreement, amendment, or renewal with the ceding insurer. Additionally, OIR may suspend or revoke the assuming insurer's eligibility if the assuming insurer does not continue to meet the mandatory criteria as specified in the bill.

The bill has no impact on state or local government revenues or expenditures. It has no known direct economic impact on the private sector.

The bill has an effective date of January 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Reinsurance

Reinsurance is a transaction between a ceding insurer[1] and an assuming insurer whereby the assuming insurer agrees to cover all or part of the ceding insurer's losses or loss adjustment expenses in exchange for a premium. The purposes of reinsurance include increasing capacity, stabilizing underwriting results, financing, providing catastrophe protection, withdrawing from a line or class of business, spreading risk, and obtaining expertise.[2] Because of the impact of hurricanes in Florida, the catastrophe protection provided by reinsurance is a significant reason for ceding insurers' purchase of reinsurance within the state. While the purchase of reinsurance creates a contractual relationship between the ceding insurer and the assuming insurer, it does not modify the relationship between the ceding insurer and its policyholders.[3] Therefore, the ceding insurer remains obligated to pay policyholder claims and only the ceding insurer may recover from the assuming insurer unless an applicable reinsurance contract specifies otherwise.[4]

Most reinsurance that United States' ceding insurers acquire is placed with non-United States assuming insurers. In fact, in 2018, offshore and non-U.S.-owned[5] assuming insurers assumed 88.9 percent of insurance premiums ceded by United States' insurers.[6] The availability of non-U.S. reinsurance contributes to global diversification of risk, provides claims relief to United States insurers, and mitigates the financial impact of catastrophes.[7] Even though reinsurance provides benefits, because the United States state insurance regulators do not regulate non-U.S. insurers or assuming insurers, the purchase of reinsurance by United States insurers from such non-U.S. companies provides concern and challenges for state insurance regulators.

Regulation of Reinsurance

Direct Regulation of Authorized Assuming insurers and Credit for Reinsurance

Regulations and requirements for reinsurance transactions in Florida are provided in s. 624.610, F.S., and ch. 69O-144, F.A.C. The Florida Office of Insurance Regulation (OIR)[8], directly regulates authorized assuming insurers[9] who are domiciled and licensed in Florida and assuming insurers licensed in Florida who are domiciled in other states.[10] Under current law, a Florida insurer cedes reinsurance to an assuming insurer who is authorized to transact insurance or reinsurance in Florida,

---

[1] National Association of Insurance Commissioners, https://content.naic.org/consumer_glossary.htm#R (last visited January 24, 2020). A ceding insurer is an insurer that transfers risk assumed from policyholders to an assuming insurer. The ceding insurer and assuming insurer may also be referred to as the primary insurer and the reinsurer, respectively. Reinsurance is also colloquially referred to as "insurance for insurers" because of the risk transfer from one insurer to another.

[2] National Association of Insurance Commissioners, https://content.naic.org/cipr_topics/topic_reinsurance.htm (last visited January 24, 2020).

[3] *See* IRMI, *In Defense of Reinsurance*, https://www.irmi.com/articles/expert-commentary/in-defense-of-reinsurance (last visited January 24, 2020).

[4] *Id.*

[5] In the insurance context, a company formed under laws other than those of a United States jurisdiction is known as an alien insurer. *See s. 624.06, F.S.*

[6] Reinsurance Associaton of America, *Offshore Reinsurance in the US Market: 2018 Data*, https://www.reinsurance.org/RAA/Industry_Data_Center/Offshore/_Report_2018_Data.html (last visited January 24, 2020).

[7] International Association of Insurance Supervisors, *Reinsurance and Financial Stability,* https://www.iaisweb.org.file/34046/reinsurance-and-financial-stability (last visited January 24, 2020).

[8] OIR is also referred to as the office in various statutes.

[9] Authorized assuming insurers are licensed or accredited to provide reinsurance in a particular state. *See* s. 624.610, F.S.

[10] S. 624.610, F.S.

and meets other specified requirements, the ceding insurer is permitted to take credit for that reinsurance on its books.[11]

Indirect Regulation of Unauthorized Assuming insurers and Credit for Reinsurance

When an assuming insurer is not an authorized assuming insurer within Florida, OIR does not have direct regulatory authority over that assuming insurer. Pursuant to s. 624.610, F.S., and in order to exercise some indirect regulatory authority over these assuming insurers, OIR limits the ceding insurer's credit for reinsurance unless the assuming insurer posts acceptable collateral or security in the amount of the assuming insurer's obligations under the reinsurance agreement.[12]

National Association of Insurance Commissioners

National Association of Insurance Commissioners Authority, Accreditation, and Model Laws

The National Association of Insurance Commissioners (NAIC) is a "standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia, and five U.S. territories."[13] While the NAIC does not have actual regulatory authority, it allows state regulators to establish standards and best practices, to engage in peer review, and to coordinate regulatory oversight.

The NAIC also maintains an accreditation program that considers key financial authorities and responsibilities of state insurance regulators that warrant national consistency among jurisdictions in order to improve oversight of multi-state insurers and reduce the cost of inefficiencies that is passed on to policyholders.[14] As of November 2019, all 50 states, the District of Columbia and Puerto Rico were all accredited by the NAIC.[15]

The NAIC develops model laws and regulations to promote uniformity among jurisdictions and to balance the needs of insurers operating in multiple jurisdiction with those of the applicable regulatory frameworks.[16] The model laws are considered best practices for insurance regulation and the accreditation program requires compliance with certain model laws, including those that are solvency related.[17]

Credit for Reinsurance Model Law and Regulation and the Covered Agreement

Among the NAIC model laws and regulations that have become part of the accreditation standards are the Credit for Reinsurance Model Law #785 and Credit for Reinsurance Model Regulation #786 (MLMR), amendments to which are designed to modernize reinsurance regulation in the United States.[18]

---

[11] Credit for reinsurance means that a ceding insurer is permitted under statutory accounting rules to recognize the reinsurance as an asset or as a deduction from liability for the amount of the ceded liability or risk transferred. IRMI, https://www.irmi.com/term/insurance-definitions/credit-for-reinsurance (last visited January 24, 2020). *See also* s. 624.610(3), F.S.
[12] *See* s. 624.610(4), F.S.
[13] National Association of Insurance Commissioners, https://content.naic.org/index_about.htm (last visited January 24, 2020).
[14] National Association of Insurance Commissioners, *State Legislative Brief The NAIC Accreditation Program,* https://www.naic.org/documents/cmte_legislative_liaison_brief_accreditation.pdf (last visited January 24, 2020).
[15] *Id.*
[16] National Association of Insurance Commissioners, *NAIC Model Laws,* https://content.naic.org/cipr_topics/topic_naic_model_laws.htm (last visited January 24, 2020).
[17] National Association of Insurance Commissioners, *Accreditation,* https://content.naic.org/cipr_topics/topic_accreditation.htm (last visited January 24, 2020).
[18] National Association of Insurance Commissioners, *Revisions to the Credit for Reinsurance Model Law,* https://www.naic.org/documents/committees_e_reinsurance_related_reinsurance_model_law_160108.pdf (last visited January 24, 2020).

In 2017, the United States entered the Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance (Covered Agreement).[19] In 2019, the NAIC made revisions to MLMR in response to the Covered Agreement. In part, the Covered Agreement commits the United States to phasing-out collateral requirements for European Union assuming insurers by 2022.[20] The Covered Agreement also exempts European Union assuming insurers from current United States domiciliary requirements by creating a classification known as a reciprocal jurisdiction.[21]

Effect of the Bill

The changes to MLMR as a result of the Covered Agreement, necessitate that existing Florida law regarding credit for reinsurance be amended. The bill creates a new subsection within the reinsurance statute that provides the following mandatory criteria that an assuming insurer must meet in order for a ceding insurer to be given credit for reinsurance ceded to that assuming insurer:

- The assuming insurer must have its principal office or its domicile, and must be licensed in, a reciprocal jurisdiction.
- The assuming insurer must have minimum capital and surplus as calculated by the methodology of its domiciliary jurisdiction in an amount specified by commission[22] rule.
- The assuming insurer must have a minimum solvency or capital ratio as specified by the commission.
- The assuming insurer must agree to provide prompt written notice to OIR if it falls below the minimum requirements specified in the bill or if any regulatory action is taken against it for serious noncompliance with applicable law.
- The assuming insurer must consent in writing to:
    - submit to the jurisdiction of Florida courts;
    - designate the Florida Chief Financial Officer as its agent for service or process or an attorney to accept lawful process;
    - pay all final judgments declared enforceable in the jurisdiction where the judgments were obtained;
    - include a provision in each reinsurance agreement that, where necessary, the assuming insurer will provide security in the amount equal to 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to the agreement; and
    - confirm that the assuming insurer is not presently participating in any solvent scheme of arrangement that involves Florida's ceding insurers, and should the

---

[19] U.S. Department of the Treasury, *U.S. and EU Covered Agreement*, https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/us-and-eu-covered-agreement (last visited January 25, 2020). Covered agreements are authorized under 31 U.S.C. §§ 313–314, and are written bilateral or multilateral agreements regarding insurance or reinsurance entered into between the United States and one or more foreign authorities to provide protections for insurance and reinsurance consumers similar to those provided by state insurance regulators within United States jurisdictions.

[20] U.S. Department of the Treasury, *Statement of the United States on the Covered Agreement with the European Union*, https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/us-and-eu-covered-agreement (last visited January 25, 2020).

[21] *Id.* Model Law #785 defines a reciprocal jurisdiction as:

- A non-United States jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or in the case of a covered agreement between the United States and the European Union, is a member state of the European Union;
- A United States jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program;
- A qualified jurisdiction, as determined by an insurance commissioner.

National Association of Insurance Commissioners, *Credit for Reinsurance Model Law-785,* https://www.naic.org/store/free/MDL-785.pdf (last visited January 25, 2020).

[22] The commission referred to is the Financial Services Commission. Section 20.121(3), F.S., establishes that the Financial Services Commission consists of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture.

assuming insurer enter into such arrangement, it will notify OIR and the ceding insurer and will provide appropriate security.

- The assuming insurer must provide documentation to OIR upon request under criteria specified by the commission.
- The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements pursuant to criteria specified by the commission.

The bill requires that an assuming insurer's regulatory authority[23] confirm to OIR on an annual basis that the assuming insurer has complied with the capital and surplus requirements and solvency or capital ratio requirements set forth in the bill. It also establishes that a ceding insurer may only take credit for reinsurance agreements entered into, amended, or renewed on or after the date at which the assuming insurer has met the mandatory criteria set forth within the bill. Additionally, credit may only be taken for losses incurred and reserves reported on or after the later of the date upon which the assuming insurer has met these requirements or has entered into a new reinsurance agreement, amendment, or renewal with the ceding insurer.

Pursuant to the bill, if the ceding insurer is subject to rehabilitation, liquidation, or conservation, the ceding insurer may obtain a court order requiring that the assuming insurer post security for all outstanding ceded liabilities. If OIR determines that the assuming insurer no longer meets one or more of the requirements under the bill, OIR may revoke or suspend the assuming insurer's eligibility under 624.610, F.S. While the eligibility is suspended, any reinsurance agreement issued, amended, or renewed after the effective date of the suspension does not qualify for credit for reinsurance. If the eligibility is revoked, credit for reinsurance may not be granted after the effective date of the revocation for any reinsurance agreements entered into by the assuming insurer, including those entered into before the date of the revocation.

The bill provides that the subsection created within 624.610, F.S., does not:

- preclude an assuming insurer from volunteering information to OIR;
- limit or alter the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms of the reinsurance agreement, except where otherwise prohibited, or to renegotiate the reinsurance agreement; or
- authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement, except as authorized within the agreement.

The bill makes other technical changes to s. 624.610, F.S., including the deletion of an obsolete subsection and the replacement of the word "commissioner" with "office" in several places.

B. SECTION DIRECTORY:

Section 1. Amends s. 624.610, F.S., relating to reinsurance.

Section 2. Provides an effective date of January 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.[24]

[23] The assuming insurer's regulatory authority is the entity that regulates the conduct of insurance companies in the assuming insurer's country of domicile.

[24] OIR, Agency Analysis of 2020 HB 1211, p. 5 (Jan. 10, 2020).

2. Expenditures:

None.[25]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None known.

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:

B. RULE-MAKING AUTHORITY:

Section 624.610(14), F.S., provides that the commission may adopt rules necessary to implement the provisions of that section and "protect the interests of insureds, claimants, ceding insurers, assuming insurers, and the public." The rules must be in "substantial compliance" with the NAIC model regulations relating to credit for reinsurance, the NAIC Accounting Practices and Procedures Manual as of March 2002 and subsequent consistent amendments to it; and the NAIC model regulation for Credit for Reinsurance and Life and Health Reinsurance Agreements.[26] The bill requires the exercise of this authority and the adoption of certain forms. Therefore, the bill will likely result in the changes to the rules in ch. 69O-144, F.A.C.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[25] *Id.*

[26] S. 624.610(14), F.S.

A bill to be entitled

An act relating to reinsurance; amending s. 624.610, F.S.; transferring specified powers and duties of the Commissioner of Insurance Regulation to the Office of Insurance Regulation; requiring credits for reinsurance to be allowed to ceding insurers under certain circumstances; providing requirements for assuming insurers in order for such credits to be allowed; providing the definitions of the terms "reciprocal jurisdiction" and "covered agreement"; requiring assuming insurers to have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, and, if applicable, minimum capital and surplus equivalents and a central fund; requiring assuming insurers to have and maintain on an ongoing basis a minimum solvency or capital ratio; providing additional requirements for assuming insurers; requiring assuming insurers to provide security in a specified amount; specifying circumstances under which credits may be taken; authorizing ceding insurers and their representatives to seek orders requiring assuming insurers to post security for certain liabilities; authorizing the office to revoke and suspend the eligibility of assuming insurers under a specified circumstance; prohibiting credits under

certain circumstances; providing exceptions; deleting obsolete language; providing construction; providing an effective date.

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

Section 1. Subsections (4) through (14) of section 624.610, Florida Statutes, are renumbered as subsection (5) through (15), respectively, subsection (2), paragraphs (c) and (e) of subsection (3), present subsections (4) and (5), paragraph (b) of present subsection (11), present subsection (15), and subsection (16) of that section are amended, and a new subsection (4) is added to that section, to read:

624.610 Reinsurance.—

(2) Credit for reinsurance must be allowed a ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of paragraph (3)(a), paragraph (3)(b), ~~or~~ paragraph (3)(c), or subsection (4). Credit must be allowed under paragraph (3)(a) or paragraph (3)(b) only for cessions of those kinds or lines of business that the assuming insurer is licensed, authorized, or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed or authorized to transact insurance

or reinsurance.

(3)

(c)1. Credit must be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in paragraph (6)(b) ~~(5)(b)~~, for the payment of the valid claims of its United States ceding insurers and their assigns and successors in interest. To enable the office to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the office information substantially the same as that required to be reported on the NAIC Annual Statement form by authorized insurers. The assuming insurer shall submit to examination of its books and records by the office and bear the expense of examination.

2.a. Credit for reinsurance must not be granted under this subsection unless the form of the trust and any amendments to the trust have been approved by:

(I) The insurance regulator of the state in which the trust is domiciled; or

(II) The insurance regulator of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

b. The form of the trust and any trust amendments must be filed with the insurance regulator of every state in which the ceding insurer beneficiaries of the trust are domiciled. The

trust instrument must provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust must vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States ceding insurers and their assigns and successors in interest. The trust and the assuming insurer are subject to examination as determined by the insurance regulator.

c. The trust remains in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year, the trustee of the trust shall report to the insurance regulator in writing the balance of the trust and list the trust's investments at the preceding year end, and shall certify that the trust will not expire before ~~prior to~~ the following December 31.

3. The following requirements apply to the following categories of assuming insurer:

a. The trust fund for a single assuming insurer consists of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers, and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than $20 million. Not less than 50 percent of the funds in the trust covering the assuming insurer's liabilities attributable to

reinsurance ceded by United States ceding insurers and trusteed surplus shall consist of assets of a quality substantially similar to that required in part II of chapter 625. Clean, irrevocable, unconditional, and evergreen letters of credit, issued or confirmed by a qualified United States financial institution, as defined in paragraph (6)(a) ~~(5)(a)~~, effective no later than December 31 of the year for which the filing is made and in the possession of the trust on or before the filing date of its annual statement, may be used to fund the remainder of the trust and trusteed surplus.

b.(I) In the case of a group including incorporated and individual unincorporated underwriters:

(A) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after August 1, 1995, the trust consists of a trusteed account in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group;

(B) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of this section, the trust consists of a trusteed account in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States; and

(C) In addition to these trusts, the group shall maintain in trust a trusteed surplus of which $100 million must be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account.

(II) The incorporated members of the group must not be engaged in any business other than underwriting of a member of the group, and are subject to the same level of regulation and solvency control by the group's domiciliary regulator as the unincorporated members.

(III) Within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the insurance regulator an annual certification by the group's domiciliary regulator of the solvency of each underwriter member or, if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the group.

(e) If the reinsurance is ceded to an assuming insurer not meeting the requirements of paragraph (a), paragraph (b), paragraph (c), or paragraph (d), the office ~~commissioner~~ may allow credit, but only if the assuming insurer holds surplus in excess of $250 million and has a secure financial strength rating from at least two statistical rating organizations deemed acceptable by the office ~~commissioner~~ as having experience and expertise in rating insurers doing business in Florida, including, but not limited to, Standard & Poor's, Moody's

Investors Service, Fitch Ratings, A.M. Best Company, and Demotech. In determining whether credit should be allowed, the office ~~commissioner~~ shall consider the following:

1. The domiciliary regulatory jurisdiction of the assuming insurer.

2. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and the financial surveillance of the reinsurer.

3. The substance of financial and operating standards for reinsurers in the domiciliary jurisdiction.

4. The form and substance of financial reports required to be filed by the reinsurers in the domiciliary jurisdiction or other public financial statements filed in accordance with generally accepted accounting principles.

5. The domiciliary regulator's willingness to cooperate with United States regulators in general and the office in particular.

6. The history of performance by reinsurers in the domiciliary jurisdiction.

7. Any documented evidence of substantial problems with the enforcement of valid United States judgments in the domiciliary jurisdiction.

8. Any other matters deemed relevant by the office ~~commissioner~~. The office ~~commissioner~~ shall give appropriate consideration to insurer group ratings that may have been

issued. The office ~~commissioner~~ may, in lieu of granting full credit under this subsection, reduce the amount required to be held in trust under paragraph (c).

(4) Credit must be allowed when the reinsurance is ceded to an assuming insurer that meets the requirements of this subsection.

(a) The assuming insurer must have its principal office or its domicile, and must be licensed, in a reciprocal jurisdiction. As used in this subsection, the term "reciprocal jurisdiction" means a jurisdiction that meets one of the following requirements:

1. A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union. As used in this paragraph, the term "covered agreement" is an agreement that is:

a. Entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. ss. 313 and 314 in effect on May 24, 2018.

b. Currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into a reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to

recognize credit for reinsurance.

2. A U.S. jurisdiction that meets the requirements for accreditation under the NAIC Financial Regulation Standards and Accreditation Program.

3. A qualified jurisdiction, as determined by the office, that:

a. Is not a jurisdiction in subparagraph 1. or subparagraph 2.

b. Meets additional requirements specified by the commission that are consistent with the terms and conditions of an in-force covered agreement.

(b) The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated according to the methodology of its domiciliary jurisdiction, in an amount specified by commission rule. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain on an ongoing basis minimum capital and surplus equivalents (net of liabilities), calculated according to the methodology applicable in its domiciliary jurisdiction, and a central fund containing a balance in amounts specified by commission rule.

(c) The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, specified by the commission. If the assuming insurer

is an association, including incorporated and individual unincorporated underwriters, it must have and maintain on an ongoing basis a minimum solvency or capital ratio in the jurisdiction where the assuming insurer has its head office or its domicile, as applicable, and is also licensed.

(d) The assuming insurer must agree and provide adequate assurance to the office, in a form specified by the commission, that the assuming insurer:

1. Provides prompt written notice and explanation to the office if the assuming insurer falls below the minimum requirements specified in paragraph (b) or paragraph (c) or if any regulatory action is taken against it for serious noncompliance with applicable law.

2. Consents in writing to:

a. Submit to the jurisdiction of the courts of this state.

b. Designate the Chief Financial Officer under s. 48.151 as the agent for service of process, or designate an attorney as its true and lawful attorney, upon whom a lawful process in an action, suit, or proceeding instituted by or on behalf of the ceding insurer may be served.

c. Pay all final judgments, wherever enforcement is sought, that have been obtained by a ceding insurer or its legal successor and that have been declared enforceable in the jurisdiction where the judgment was obtained.

Sub-subparagraphs a. and b. do not limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except that such agreements are unenforceable under applicable insolvency or delinquency laws.

d. Each reinsurance agreement includes a provision requiring the assuming insurer to provide security in an amount equal to 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or its legal successor on behalf of its resolution estate.

e. The assuming insurer confirms that it is not presently participating in any solvent scheme of arrangement that involves this state's ceding insurers, and agrees to notify the ceding insurer and the office and to provide security in an amount equal to 100 percent of the assuming insurer's liabilities to the ceding insurer should the assuming insurer enter into such a solvent scheme of arrangement. Such security must be consistent with this subsection and subsection (3).

(e) If requested by the office, the assuming insurer or its legal successor must provide to the office, on behalf of itself and any legal predecessors, any documentation pursuant to

criteria specified by the commission.

(f) The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements pursuant to criteria specified by the commission.

(g) The assuming insurer's supervisory authority must confirm to the office on an annual basis, on a form adopted by the commission, that, as of the preceding December 31 or the annual date otherwise statutorily reported to the reciprocal jurisdiction, the assuming insurer complied with the requirements specified in paragraphs (b) and (c).

(h)1. Credit may be taken under this subsection only for reinsurance agreements entered into, amended, or renewed on or after the date on which the assuming insurer has satisfied the requirements to assume reinsurance under this subsection, and only with respect to losses incurred and reserves reported on or after the later of the date on which the assuming insurer has met all eligibility requirements under this subsection, and the effective date of the new reinsurance agreement, amendment, or renewal.

2. This paragraph does not alter or impair a ceding insurer's right to take credit for reinsurance, to the extent that credit is not available under this subsection, as long as the reinsurance qualifies for credit under any other applicable provision of this section.

(i) If subject to a legal process of rehabilitation,

liquidation, or conservation, as applicable, the ceding insurer or its legal successor may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding ceded liabilities.

(j) If the office determines that an assuming insurer no longer meets one or more of the requirements under this subsection, the office may revoke or suspend the eligibility of the assuming insurer for recognition under this subsection.

1. While an assuming insurer's eligibility is suspended, any reinsurance agreement issued, amended, or renewed after the effective date of the suspension does not qualify for credit, except to the extent that the assuming insurer's obligations under the contract are secured in accordance with this subsection.

2. If an assuming insurer's eligibility is revoked, credit for reinsurance may not be granted after the effective date of the revocation with respect to any reinsurance agreement entered into by the assuming insurer, including a reinsurance agreement entered into before the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the office and consistent with this subsection.

(k) This subsection does not:

1. Preclude an assuming insurer from providing the office

with information on a voluntary basis.

2. Limit or in any way alter the capacity of parties to a reinsurance agreement to:

a. Agree on requirements for security or other terms in that reinsurance agreement, except as expressly prohibited by this section or other applicable law or rule of the commission.

b. Renegotiate the reinsurance agreement.

3. Authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement, except as permitted by the terms of the agreement.

(5) ~~(4)~~ An asset allowed or a deduction from liability taken for the reinsurance ceded by an insurer to an assuming insurer not meeting the requirements of subsections (2), ~~and~~ (3), and (4) is allowed in an amount not exceeding the liabilities carried by the ceding insurer. The deduction must be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or, in the case of a trust, held in a qualified United States financial institution, as defined in paragraph (6)(b) ~~(5)(b)~~. This security may be in the form of:

(a) Cash in United States dollars;

(b) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets pursuant to part II of chapter 625;

(c) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in paragraph (6)(a) ~~(5)(a)~~, effective no later than December 31 of the year for which the filing is made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement; or

(d) Any other form of security acceptable to the office.

(6)~~(5)~~(a) For purposes of paragraph (5)(c) ~~(4)(c)~~ regarding letters of credit, a "qualified United States financial institution" means an institution that:

1. Is organized or, in the case of a United States office of a foreign banking organization, is licensed under the laws of the United States or any state thereof;

2. Is regulated, supervised, and examined by United States or state authorities having regulatory authority over banks and trust companies; and

3. Has been determined by either the office or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions

whose letters of credit will be acceptable to the office.

(b) For purposes of those provisions of this law which specify institutions that are eligible to act as a fiduciary of a trust, a "qualified United States financial institution" means an institution that is a member of the Federal Reserve System or that has been determined by the office to meet the following criteria:

1. Is organized or, in the case of a United States branch or agency office of a foreign banking organization, is licensed under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

2. Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

(12) ~~(11)~~

(b) The summary statement must be signed and attested to by either the chief executive officer or the chief financial officer of the reporting insurer. In addition to the summary statement, the office may require the filing of any supporting information relating to the ceding of such risks as it deems necessary. If the summary statement prepared by the ceding insurer discloses that the net effect of a reinsurance treaty or treaties (or series of treaties with one or more affiliated reinsurers entered into for the purpose of avoiding the following threshold amount) at any time results in an increase

of more than 25 percent to the insurer's surplus as to policyholders, then the insurer shall certify in writing to the office that the relevant reinsurance treaty or treaties comply with the accounting requirements contained in any rule adopted by the commission under subsection (15) ~~(14)~~. If such certificate is filed after the summary statement of such reinsurance treaty or treaties, the insurer shall refile the summary statement with the certificate. In any event, the certificate must state that a copy of the certificate was sent to the reinsurer under the reinsurance treaty.

~~(15) Any reinsurer approved pursuant to s. 624.610(3)(a)2., as such provision existed prior to July 1, 2000, which fails to obtain accreditation pursuant to this section prior to December 30, 2003, shall have its approval terminated by operation of law on that date.~~

(16) This section applies ~~act shall apply~~ to all cessions on or after January 1, 2021 ~~2001~~, under reinsurance agreements that have an inception, anniversary, or renewal date on or after January 1, 2021 ~~2001~~.

Section 2. This act shall take effect January 1, 2021.

COMMERCE COMMITTEE

HB 1211 by Rep. Jones
Reinsurance

AMENDMENT SUMMARY
February 20, 2020

Amendment 1 by Rep. Jones (Line 2): The amendment narrows the title of the bill and conforms it to the Senate companion.

Amendment No. 1

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Jones offered the following:

Amendment (with title amendment)

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

Remove line 2 and insert:

An act relating to credit for reinsurance; amending s. 624.610,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1353 Private Security Services
SPONSOR(S): Business & Professions Subcommittee, Polsky
TIED BILLS: **IDEN./SIM. BILLS:** SB 1834

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N, As CS	Thompson	Anstead
2) Agriculture & Natural Resources Appropriations Subcommittee	10 Y, 0 N	White	Pigott
3) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

The Division of Licensing within the Department of Agriculture and Consumer Services (DACS) oversees Florida's private investigative, private security, and recovery services industries. This includes licensing, enforcing compliance standards, and ensuring public protection from unethical and unlicensed activity. Currently, DACS offers 22 different types of private investigative, private security and recovery services licenses, and has issued a total of 183,415 licenses to qualified applicants.

The bill:

- Allows certain military firearm experience to replace Class "K" Firearms Instructor training;
- Requires the Florida Department of Law Enforcement (FDLE) to share results from the National Instant Criminal Background Check System (NICS) and Index with DACS to determine eligibility for a Class "G" Statewide Firearm license or a Class "K" Firearms Instructor license;
- Removes the requirement that DACS provide arrest information to industry businesses;
- During a state of emergency, allows DACS to waive certain experience requirements;
- Authorizes the issuance of certain license cards in digital format;
- Allows DACS to waive the firearms training option for Class "G" Statewide Firearm recertification if the licensee holds a valid Class "K" Firearms Instructor license;
- Gives DACS more flexibility when charging late fees for renewal applications;
- Allows issuance of a temporary Class "G" Statewide Firearm license if the applicant currently holds an individual or business private investigative or security officer license;
- Authorizes DACS to publish the industry newsletter and pamphlet online in lieu of paper format;
- Removes the requirement that applicants complete the full training and examination in order to reinstate their license after a license is invalid for more than one year;
- Authorizes training for initial Class "D" Security Officer licensure to be conducted online;
- Exempts Class "D" Security Officer licensees from the requirement that they be employed by a security agency if they are employed by, and provide security for a church, ecclesiastical or a denominational organization, or church cemetery; and
- Authorizes electronic verification, instead of verification under oath, for certain applications for licensure.

The bill may have an insignificant fiscal impact on state government from reduced expenditures and potential increases in revenues. The bill is not expected to have a fiscal impact on local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Private Investigative, Private Security, and Recovery Services

The Division of Licensing (Division) within the Department of Agriculture and Consumer Services (DACS) oversees Florida's private investigative, private security, and recovery services industries. The regulatory oversight of the private investigative, private security, and recovery services industries includes licensing, enforcing compliance standards, and ensuring public protection from unethical business practices and unlicensed activity.[1]

Currently, the Division offers 22 different types of private investigative, private security, and recovery services licenses. As of December 31, 2019, the Division had issued a total of 183,415 licenses to qualified applicants. The following chart provides a breakdown of the total number of each license type.[2]

License Type	License Title	Total
C	Private Investigators	7,195
CC	Private Investigator Interns	1,369
A	Private Investigative Agencies	2,790
AA	Private Investigative Agency Branch Offices	23
MA	Private Investigative Agency Managers	80
M	Private Investigative/Security Agency Managers	475
D	Security Officers	140,166
B	Security Agencies	1,770
BB	Security Agency Branch Offices	193
MB	Security Managers	1,414
AB	Security Agency/Private Investigative Agency Branch Offices	20
DS	Security Officer Schools	377
DI	Security Officer Instructors	1,678
G	Statewide Firearm Licenses	23,701
K	Firearms Instructors	638
E	Recovery Agents	799
EE	Recovery Agent Interns	351
R	Recovery Agencies	320
RR	Recovery Agency Branch Offices	40
MR	Recovery Agency Managers	2
RS	Recovery Agent Schools	5
RI	Recovery Agent Instructors	9
Total Number of Licenses		**183,415**

[1] The Florida Department of Agriculture and Consumer Services, *Division of Licensing*, https://www.fdacs.gov/Divisions-Offices/Licensing (last visited Jan. 26, 2020).

[2] The Florida Department of Agriculture and Consumer Services, *Division of Licensing Statistical Reports*, https://www.fdacs.gov/Divisions-Offices/Licensing/Statistical-Reports (last visited Jan. 27, 2020).

Initial Application for Licensure for Private Investigative, Private Security and Recovery Services

Current Situation

To obtain any of the 22 license types under ch. 493, F.S., an applicant must complete and submit an application and meet certain requirements. Each individual, partner, or principal officer in a corporation is required to file with DACS a complete application signed and verified by the individual "under oath" as provided in s. 92.525, F.S., which authorizes documents to be verified in the following three ways:

- Under oath or affirmation taken or administered before a judge, clerks or deputy clerk of court, or any notary public;
- Under oath or affirmation taken or administered by law enforcement officer, correctional officer, or traffic officer under electronic means or in the physical presence of the affiant; or
- Signing a written declaration.[3]

However, since the law specifies that applications must be verified "under oath," the law does not allow for electronic verification of applications.

In order to be licensed as an armed security officer, a Class "D" Security Officer must obtain a Class "G" Statewide Firearm license. An applicant for a Class "G" Statewide Firearm license is required to submit an application, a background history check, a full set of fingerprints, and satisfy minimum training criteria for firearms established by DACS rule, including, but not limited to, 28 hours of range and classroom training taught and administered by a Class "K" Firearms Instructor, with no more than 8 hours consisting of range training.[4]

To become licensed as a Class "K" Firearms Instructor, an applicant is required to submit an application, a background history check, a full set of fingerprints, and provide one of the following certificates, which indicates a proficiency with firearms instruction:

- The Florida Criminal Justice Standards and Training Commission Instructor Certificate and written confirmation by the commission that the applicant possesses an active firearms certification;
- A valid National Rifle Association Private Security Firearm Instructor Certificate issued not more than three years before the submission of the applicant's Class "K" application; or
- A valid firearms instructor certificate issued by a federal law enforcement agency issued not more than three years before the submission of the applicant's Class "K" application.[5]

The application for a Class "D" Security Officer license must contain, at a minimum, the following information:

- The name and address of the school or training facility and, if the applicant is an individual, his or her name, address, and social security or alien registration number;
- The street address of the place at which the training is to be conducted; and
- A copy of the training curriculum and final examination to be administered.[6]

Proposed Changes

The bill allows an applicant to verify their application electronically.

The bill requires Class "K" Firearms Instructors to submit proof of each Class "G" Statewide Firearm license student's completion of firearm training to DACS electronically in a manner prescribed by DACS, instead of requiring the applicant to submit proof.

---

[3] S. 493.6105, F.S.
[4] *Id.*
[5] *Id.*
[6] S. 493.6304, F.S.

The bill allows DACS to waive the firearms training requirement for Class "G" Statewide Firearm initial license applicants who provide proof that they hold a valid Class "K" Firearms Instructor license.

The bill allows DACS to waive the firearms training requirement for initial Class "G" Statewide Firearm license applicants who provide proof of completion of annual firearms training in accordance with the requirements of the federal Law Enforcement Officers' Safety Act, 18 U.S.C. ss. 926B and 926C.

The bill authorizes former military firearms instructors to use their experience in the military as a training requirement when applying for a Class "K" Firearms Instructor license. Specifically, the bill allows applicants for a Class "K" Firearms Instructor license to submit a valid DD Form 214 issued by the United States Department of Defense not more than three years before the submission of the applicant's Class "K" application, indicating that the applicant has been honorably discharged and served in the military as a firearms instructor.

The bill requires security officer school, training facility, or instructor license applicants to provide a website address of the place at which training is to be conducted in their application, if applicable.

Criminal Background Checks

Current Situation

Individual applicants for private investigative, private security, and recovery services licensure must be of good moral character, not have a disqualifying criminal history or disqualifying history of mental illness, drug or alcohol abuse, and must be authorized to work in this country. Each applicant must disclose contact and background information, and submit to a state and federal background check. Individuals applying for a Class "G" Statewide Firearm or a Class "K" Firearms Instructor license must not be prohibited from purchasing or possessing a firearm by state or federal law.[7]

The state background check program is administered by the Florida Department of Law Enforcement (FDLE) and is referred to as the Applicant Fingerprint Retention and Notification Program (AFRNP), which allows for retention of applicant fingerprints within FDLE's Biometric Identification System.[8]

The Federal Bureau of Investigation (FBI) administers the federal program as part of its Next Generation Identification project, and retains fingerprints at the national level to provide a nation-wide database that DACS and participating state and local entities may use to identify fingerprints. In order for entities to participate in the federal program, fingerprints must be retained at the state level and subsequently enrolled through the state program into the FBI's program.[9]

The National Instant Criminal Background Check System (NICS) is a national system that checks available records on persons who may be disqualified from receiving firearms, and includes active records in the NICS Indices by state. The FBI developed the system through a cooperative effort with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and local and state law enforcement agencies.[10]

The code of federal regulations (CFR) authorizes access to the NICS database for the purpose of "providing information to federal, state, tribal, or local criminal justice agencies in connection with the issuance of a firearm-related or explosives-related permit or license, including permits or licenses to possess, acquire, or transfer a firearm, or to carry a concealed firearm, or to import, manufacture, deal in, or purchase explosives."[11]

---

[7] S. 493.6106, F.S.
[8] S. 493.6108, F.S.
[9] *Id.*
[10] The Federal Bureau of Investigation, *National Instant Criminal Background Check System (NICS)*, https://www.fbi.gov/services/cjis/nics (last visited Jan. 26, 2020).
[11] 28 C.F.R. § 25.6(j)(1).

Proposed Changes

The bill authorizes FDLE to provide results from the "NICS and Index" to DACS to determine eligibility for a Class "G" Statewide Firearm license or a Class "K" Firearms Instructor license to the extent allowed under federal law.

Notice of Arrest

Current Situation

Private investigative, private security, and recovery services licensees are required to notify their employer within three calendar days if they are arrested. If DACS receives information about an arrest within the state of a licensee for a crime that could potentially disqualify the person from holding such a license, DACS is required to provide the arrest information to the agency that employs the licensee.[12]

Proposed Changes

The bill removes the requirement that DACS provide arrest information to an agency related to their employees. However, licensees will still be required to notify their employer within three calendar days of an arrest.

Reciprocity

Current Situation

DACS is authorized to adopt rules for:

- Entering into reciprocal agreements with other states or territories of the United States for the purpose of licensing persons who are currently licensed to perform similar services in the other states or territories; or
- Allowing a person who is licensed in another state or territory to perform similar services in this state, on a temporary and limited basis, without the need for licensure.[13]

The requirements in the other state or territory must be substantially similar to, or greater than, those established in Florida. The applicant is required to have "engaged in licensed activities for at least 1 year" in the other state or territory with no disciplinary action. The Commissioner of Agriculture or other appropriate authority of the other state or territory must agree to accept service of process for those licensees who are operating in this state on a temporary basis.[14]

Proposed Changes

The bill authorizes DACS to waive the requirement for out-of-state applicants for reciprocal or temporary licensure to have "engaged in licensed activities for at least one year" in the other state or territory during a declared state of emergency. This will make it easier to provide temporary private investigative, private security, and recovery services during a state of emergency.

[12] S. 493.6108, F.S.
[13] S. 493.6109, F.S.
[14] *Id.*

Identification Cards

Current Situation

Currently, DACS provides all private investigative, private security, and recovery services licensees with license identification (ID) cards. The ID cards are required to:

- Be on a form prescribed by DACS; and
- Include the licensee's name, license number, expiration date of the license, and any other information DACS deems necessary.[15]

The following licensees must be in the possession of the related ID card while on duty:

- Class "C" Private Investigators;
- Class "CC" Private Investigator Interns;
- Class "D" Security Officers;
- Class "E" Recovery Agents;
- Class "EE" Recovery Agent Interns;
- Class "M" Private Investigative/Security Agent Managers;
- Class "MA" Private Investigative Managers;
- Class "MB" Security Managers;
- Class "MR" Recovery Agency Managers; and
- Class "G" Statewide Firearms Licenses.[16]

Proposed Changes

The bill authorizes DACS to issue a single ID card indicating that the licensee holds multiple classes of licenses, or an electronic license in a digital format containing a quick-response barcode identifying the individual licensure class or classes.

The bill also authorizes licensees to carry a digital image of the ID card on his or her person in lieu of a physical ID card.

Change of Employment

Current Situation

Each private investigative, private security, and recovery services agency is required to, upon the employment or termination of employment of a licensee, report such within 15 calendar days to DACS. For terminations, the reason for termination must be reported. The report must be submitted electronically in a manner prescribed by DACS.[17]

Proposed Changes

The bill revises the requirement that private investigative, private security, and recovery services agencies notify DACS of a change in employment or termination of a licensed employee. The bill requires notification only in the case of termination for a violation of the law governing the private investigative, private security, and recovery services industry.

---

[15] S. 493.6111(1), F.S.
[16] *Id.*
[17] S. 493.6112(2), F.S.

Renewals

Current Situation

Currently, an applicant for renewal of a Class "G" Statewide Firearm license is required to "submit proof that he or she has received" during each year of the license period:

- A minimum of four hours of firearms recertification training taught by a Class "K" Firearms Instructor licensee; and
- Has complied with such other health and training requirements that DACS must adopt by rule.[18]

Proof of completion of firearms recertification training must be submitted to DACS by the applicant upon completion of the training.[19]

DACS is authorized to waive the firearms training requirement if:

- The applicant provides proof of current certification as a law enforcement officer or correctional officer under the Criminal Justice Standards and Training Commission and has completed law enforcement firearms requalification training annually during the previous two years of the licensure period;
- The applicant provides proof of current certification as a federal law enforcement officer and has received law enforcement firearms training administered by a federal law enforcement agency annually during the previous two years of the licensure period; or
- The applicant submits a valid firearm certificate among those specified for Class "K" Firearms Instructor licenses in s. 493.6105(6)(a), F.S., and provides proof of having completed requalification training during the previous two years of the licensure period.[20]

Additionally, each Class "K" Firearm Instructor licensee is required to submit one of the firearm certificates specified under s. 493.6105(6), F.S., as proof that he or she remains certified to provide firearms instruction.[21]

Failure of a private investigative, private security, and recovery services licensee to renew a license on or before its expiration requires the licensee to:

- Renew his or her license by fulfilling the applicable renewal requirements; and
- Pay a late fee equal to the amount of the license fee.[22]

Proposed Changes

The bill requires Class "K" Firearms Instructors to submit proof of each student's completion of firearm requalification training to DACS electronically in a manner prescribed by DACS, instead of requiring the applicant to submit such proof.

The bill allows DACS to waive the firearms training requirement for Class "G" Statewide Firearm license renewal applicants who provide proof that they hold a valid Class "K" Firearms Instructor license.

The bill allows DACS to waive the firearms training requirement for a Class "G" Statewide Firearm license renewal applicant who provides proof of completion of annual firearms training in accordance with the requirements of the federal Law Enforcement Officers' Safety Act, 18 U.S.C. ss. 926B and 926C.

---

[18] S. 493.6113(3)(b), F.S.
[19] *Id.*
[20] *Id.*
[21] S. 493.6113(3)(d), F.S.
[22] *Id.*

The bill includes an additional option that allows DACS to waive the firearms training requirement for Class "K" Firearms Instructor license renewal applicants who submit proof of having taught at least six 28-hour firearms instruction courses to Class "G" Statewide Firearm license applicants during the previous three-year licensure period.

The bill makes the automatic late fee for late filed private investigative, security, or recovery services license renewal applications discretionary instead of mandatory.

Temporary Class "G" Statewide Firearm License

Current Situation

Currently, DACS is authorized to issue a temporary[23] Class "G" Statewide Firearm license on a case-by-case basis, if:

- The agency or employer has certified that the applicant has been determined to be mentally and emotionally stable by either:
  - A validated written psychological test taken within the previous 12-month period;
  - An evaluation by a psychiatrist or psychologist licensed in this state or by the Federal Government made within the previous 12-month period; or
  - Presentation of a DD form 214, issued within the previous 12-month period, which establishes the absence of emotional or mental instability at the time of discharge from military service;
- DACS has reviewed the mental health and substance abuse data provided by FDLE, as authorized in s. 493.6108(3), F.S., and has determined the applicant is not prohibited from licensure based upon this data;
- The applicant has submitted a complete application for a Class "G" Statewide Firearm license, with a notation that he or she is seeking the license;
- The applicant has completed all Class "G" Statewide Firearm license minimum training requirements; and
- The applicant has received approval from DACS subsequent to its conduct of a criminal history record check as authorized in s. 493.6108(1), F.S.[24]

Proposed Changes

The bill allows issuance of a temporary Class "G" Statewide Firearm license if the applicant currently holds one of the following licenses:

- Class "C" Private Investigators;
- Class "CC" Private Investigator Interns;
- Class "D" Security Officers;
- Class "M" Private Investigative/Security Agent Managers;
- Class "MA" Private Investigative Managers; and
- Class "MB" Security Managers

Industry Newsletter

Current Situation

Currently, DACS is authorized to periodically publish a newsletter to advise private investigative, private security, and recovery services licensees of information that DACS or the Private Investigation,

[23] S. 493.6115(15), F.S., provides that the temporary Class "G" license is valid until the Class "G" license is issued or denied. If the department denies the Class "G" license, any temporary Class "G" license issued to that individual is void, and the individual shall be removed from armed duties immediately.

[24] S. 493.6115(12), F.S.

Recovery and Security Advisory Council [25] determines is of interest to the industry. The newsletter must:

- Contain the name and locality of any licensed or unlicensed person or agency against which DACS has filed a final order relative to an administrative complaint, and the final disposition;
- Be published not less than two, or more than four, times annually; and
- Notice intervening changes to the regulatory situation.[26]

In addition, DACS is required to develop and make available to each Class "C" Private Investigator, Class "D" Security Officer, and Class "E" Recovery Agent licensee, and all interns, a pamphlet detailing in plain language the legal authority, rights, and obligations of each class of licensure. The pamphlet should present situations that the licensee may be expected to commonly encounter, and provide information on legal options, authority, limits to authority, and obligations.[27]

DACS is also required to supplement the pamphlet with citations to statutes and legal decisions, as well as a selected bibliography that would direct the licensee to certain materials, the study of which would enhance his or her professionalism. DACS must provide a single copy of the appropriate pamphlet, without charge, to each individual to whom a license is issued, but may charge for additional copies to recover publication costs. The pamphlet must be updated every two years as necessary to reflect rule or statutory changes, or court decisions.[28]

Proposed Changes

The bill authorizes DACS, at its discretion, to publish all information related to the newsletter and pamphlet online in lieu of paper format.

Private Investigative Intern License Requirements

Current Situation

Before submission of an application to DACS, the applicant for a Class "CC" Private Investigative Intern license must:

- Complete a minimum of 40 hours of professional training pertaining to general investigative techniques and the law governing private investigative, private security, and recovery services, which course is offered by a state university or by a school, community college, college, or university under the purview of the Department of Education; and
- Pass an examination.[29]

The certificate showing satisfactory completion of the 40 hours of professional training must be submitted by the applicant with the application, and may be provided by face-to-face presentation, online technology, or a home study course in accordance with rules and procedures of the Department of Education. The administrator of the examination must verify the identity of each applicant taking the examination.[30]

Upon successful completion of the training and passage of an examination, the school, community college, college, or university is required to issue a certificate of completion to the applicant on a form established by DACS rule.[31]

---

[25] In accordance with s. 493.6104, F.S., DACS has established an advisory council known as the Private Investigation, Recovery and Security Advisory Council.
[26] S. 493.6123, F.S.
[27] *Id.*
[28] *Id.*
[29] S. 493.6203(6)(b), F.S.
[30] *Id.*
[31] *Id.*

DACS is also required to establish by rule the general content of the professional training and the examination criteria.[32]

If the license of an applicant for relicensure is invalid for more than one year, the applicant must complete the full training and examination in order to reinstate their license.[33]

An individual licensed on or before August 31, 2008, is not required to complete additional training hours in order to renew an active license beyond the total required hours. In addition, the timeframe for completion in effect at the time the licensee was licensed applies.[34]

Proposed Changes

The bill requires applicants for a Class "CC" Private Investigative Intern license to complete the required training no more than three years before receipt of the application.

The bill requires the school, community college, college, or university, instead of the applicant, to submit proof of successful completion of the required training to DACS.

The bill removes the requirement that applicants complete the full training and examination in order to reinstate their license after a license is invalid for more than one year.

The bill also removes the exemption from having to complete additional training hours for private investigative intern renewal applicants with active licenses, who were licensed on or before August 31, 2008.

Private Security Services

Current Situation

An initial applicant for a Class "D" Security Officer license is required to submit proof of successful completion of a minimum of 40 hours of professional training at a school or training facility licensed by DACS. DACS must establish by rule the general content and number of hours of each subject area to be taught. Upon reapplication for a license, an individual whose license has been expired for one year or more is considered an initial applicant and must comply with the initial applicant training requirements.[35]

Currently, the law requires that the only way a Class "D" Security Officer licensee can work as a licensed security officer is to own or be an employee of a Class "B" Security Agency or Branch Office. This does not include unarmed individuals pursuant to s. 493.6102(4), F.S., who possess a Class "D" Security Officer license solely for the purpose of holding a Class "G" Statewide Firearm license.

Proposed Changes

The bill requires Class "D" Security Officer license applicants to successfully complete the required training no more than three years before the date of receipt of the application. The bill also requires that, upon successful completion of the training, the schools or training facilities must submit results directly to DACS electronically in a manner prescribed by DACS rule, and provide a copy to the trainee.

---

[32] *Id.*

[33] *Id.*

[34] S. 493.6203(6)(c), F.S.

[35] S. 493.6303(4), F.S.

The bill also authorizes the training of applicants for initial Class "D" Security Officer licensure to be conducted in-person or online, as provided by DACS rule. All approved online training must be conducted through a secure website of the school or training facility, provided that the applicant's identity, attendance, and successful completion of such training are verified.

The bill requires DACS to adopt by rule what portion of the 40 hours of training may be conducted online, the method of delivery and security protocols for online training, and any other rules necessary for the regulation of schools providing in-person or online training.

The bill also removes the requirement that applicants complete the full training and examination in order to reinstate their license after a license is invalid for more than one year.

The bill exempts Class "D" Security Officer licensees from the requirement that they be employed by a Class "B" Security Agency or Branch Office if they are employed as a security officer by one of the following entities:

- A church;
- An ecclesiastical or a denominational organization that has an established physical place of worship in this state at which nonprofit religious services and activities are regularly conducted; or
- A church cemetery.

Recovery Agent and Recovery Agent Interns

Current Situation

Currently, an applicant for a Class "E" Recovery agent or a Class "EE" Recovery Agent Intern license is required to submit proof of successful completion of 40 hours of professional training at a school or training facility licensed by DACS. DACS is required to establish by rule the general content for the training.[36]

Proposed Changes

The bill requires initial license applicants for Class "E" Recovery Agent or Class "EE" Recovery Agent Intern licenses to successfully complete the required training no more than three years before the date of receipt of the application. In addition, the bill requires that upon completion of the training, the schools or training facilities must submit the results directly to DACS electronically in a manner prescribed by rule, and provide a copy to the trainee.

B. SECTION DIRECTORY:

Section 1 Amends s. 493.6105, F.S., relating to initial application for license.

Section 2 Amends s. 493.6106, F.S., relating to license requirements; posting.

Section 3 Amends s. 493.6108, F.S., relating to investigation of applicants by DACS.

Section 4 Amends s. 493.6109, F.S., relating to reciprocity.

Section 5 Amends s. 493.6111, F.S., relating to license; contents; and identification cards.

Section 6 Amends s. 493.6112, F.S., relating to notification of change in employment or termination.

[36] S. 493.6402(2), F.S.

Section 7 Amends s. 493.6113, F.S., relating to renewal applications for licensure.

Section 8 Amends s. 493.6115, F.S., relating to weapons and firearms.

Section 9 Amends s. 493.6123, F.S., relating to the industry newsletter and pamphlets.

Section 10 Amends s. 493.6203, F.S., relating to license requirements.

Section 11 Amends s. 493.6301, F.S., relating to classes of licenses.

Section 12 Amends s. 493.6303, F.S., relating to license requirements.

Section 13 Amends s. 493.6304, F.S., relating to security officer school or training facility.

Section 14 Amends s. 493.6403, F.S., relating to license requirements.

Section 15 Amends s. 493.6406, F.S., relating to recovery agent school or training facility.

Section 16 Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   There may be an indeterminate positive fiscal impact to DACS by allowing relevant military background to count towards firearm training requirements of Class "K" firearms instructor license applicants. This may increase the application rate and related license fees received by DACS, but it is unknown how many applicants will qualify.

2. Expenditures:

   There may be an insignificant positive fiscal impact to DACS from removing the requirement that DACS provide arrest information to industry businesses, and authorizing DACS to publish the industry newsletter and pamphlet online instead of in paper format.

   There may be an insignificant positive fiscal impact to DACS from authorizing DACS to issue license cards in digital format for private investigative, security, or recovery services licenses. It is unknown how many licensed employees will choose to use a digital license. There are currently 183,415 licensed individuals and businesses in the industry.

   There may be an insignificant negative fiscal impact to DACS that can be absorbed within existing resources for the rulemaking requirements of the bill.

   There is an insignificant negative fiscal impact to FDLE that can be absorbed within existing resources to make modifications to existing information technology systems.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Removing the requirement for private investigative, security, or recovery service businesses to notify DACS of a termination of employment will reduce related costs to these businesses.

Increasing eligibility for the firearms training waiver for Class "G" Statewide Firearm license renewal applicants will streamline the license renewal process, and likely have a positive fiscal impact on these individuals.

Allowing Class "K" Firearms Instructor license renewals to submit proof of having taught at least six 28-hour firearms instruction courses to Class "G" Statewide Firearm applicants during the previous three-year licensure period will streamline the license renewal process and likely have a positive fiscal impact on these individuals.

Allowing DACS to use discretion when determining the late fee for private investigative, security, or recovery services license renewal applications will have a positive fiscal impact on the private sector.

Requiring the training entities to submit proof of the trainees' successful completion of the training to DACS will increase expenditures to the training entities. The bill applies this change to the following entities:

- Class "K" Firearms Instructors;
- Schools, community colleges, colleges, or universities; and
- Training facilities.

Allowing Class "D" Security Officer training to be conducted online will likely reduce expenditures to these individuals since they are currently required to provide training in person, and increase revenue to the businesses that provide online training.

Removing the requirement that out-of-state applicants for private investigative, private security and recovery services licensure must have "engaged in licensed activities for at least one year" in the other state or territory, during a declared state of emergency, will streamline the application process and make it easier to provide temporary private investigative, private security and recovery services during a state of emergency, thereby increasing related revenues to these businesses.

Authorizing Class "D" Security Officer licensees to be employed by, and provide armed security on the property of, a church, ecclesiastical or a denominational organization, or church cemetery will likely have an indeterminate positive fiscal impact on:

- Religious institutions to the extent that individual security officers will be less expensive to hire than a licensed security firm; and
- Individual security officers to the extent they are able to generate income that is in addition to the income earned by having to work through a licensed security firm.

The fiscal impact of each of these changes is indeterminate.

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 requires DACS to adopt by rule the following:

- The portion of the Class "D" Security Officer training that may be conducted online;
- The manner in which Class "G" Statewide Firearm license applicants must complete their training, and the manner in which the Class "K" Firearms Instructor must submit the training results to DACS;
- The manner in which Class "CC" Private Investigative Intern license applicants must complete their training, and the manner in which the school, community college, college, or university must submit the training results to DACS;
- The manner in which Class "D" Security Officer license applicants must complete their training, and the manner in which the school, or training facility must submit the training results to DACS; and
- The manner in which Class "E" Recovery Agent or Class "EE" Recovery Agent Intern license applicants must complete their training, and the manner in which the school, or training facility must submit the training results to DACS.

There appears to be sufficient rulemaking authority in the bill and current law.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the Business & Professions Subcommittee adopted one strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Applies provisions uniformly to all license types in the chapter related to applications and submitting proof of training requirements;
- Clarifies provisions and makes conforming, grammatical and technical changes; and
- Authorizes armed Class "D" Security Officer licensees to be employed by a church, ecclesiastical or denominational organization, or church cemetery without the need to be employed by a security agency.

The analysis is drafted to the committee substitute as passed by the Business & Professions Subcommittee.

A bill to be entitled

An act relating to private security services; amending s. 493.6105, F.S.; requiring a licensed Class "K" firearms instructor to submit proof of completion of specified training for certain applicants to the Department of Agriculture and Consumer Services in a specified manner and provide a copy of the training results to the applicant; authorizing the department to waive specified firearms training under certain circumstances; requiring an applicant for a Class "K" firearms instructor license to submit a certain United States Department of Defense form issued within a specified time period before submission of the application; amending s. 493.6106, F.S.; authorizing the Department of Law Enforcement to provide criminal background check results to the Department of Agriculture and Consumer Services to determine eligibility for Class "G" licenses or Class "K" licenses; amending s. 493.6108, F.S.; deleting a provision requiring the department to provide certain information to an agency that employs a licensee; amending s. 493.6109, F.S.; providing an exception to a certain experience requirement for an applicant during a declared state of emergency; amending s. 493.6111, F.S.; authorizing the department to issue a

single license card that includes each license obtained by the cardholder and to issue such license card as an electronic license in a digital format or a physical license card; authorizing a licensee to carry a digital image of his or her license card in lieu of a physical license card; amending s. 493.6112, F.S.; requiring each agency to report a termination of employment for certain violations; amending s. 493.6113, F.S.; revising renewal application requirements for Class "G" and Class "K" licensees; requiring the department to establish by rule the amount of a renewal application late fee; amending s. 493.6115, F.S.; authorizing the department to issue a temporary Class "G" license if the applicant has been issued and currently holds specified licenses; amending s. 493.6123, F.S.; authorizing the department to publish certain information online; amending ss. 493.6203 and 493.6303, F.S.; revising and providing training requirements for an applicant for a Class "CC" or an initial Class "D" license; deleting provisions relating to renewal requirements; amending s. 493.6301, F.S.; specifying that certain ownership and employment requirements do not apply to certain Class "D" licensees; amending s. 493.6304, F.S.; revising application requirements for any school,

training facility, or instructor who offers training for a Class "D" license; amending s. 493.6403, F.S.; revising training requirements for an applicant for an initial Class "E" or a Class "EE" license; amending s. 493.6406, F.S.; deleting the requirement that the licensure application be signed under oath for any school, training facility, or instructor who offers training for Class "E" or Class "EE" applicants; providing an effective date.

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

Section 1. Subsections (2) and (5) and paragraph (a) of subsection (6) of section 493.6105, Florida Statutes, are amended to read:

493.6105 Initial application for license.—

(2) Each application shall ~~must~~ be signed and verified by the applicant ~~individual under oath~~ as provided in s. 92.525.

(5) In addition to the requirements outlined in subsection (3), an applicant for a Class "G" license must satisfy minimum training criteria for firearms established by rule of the department, which training criteria includes, but is not limited to, 28 hours of range and classroom training taught and administered by a licensed Class "K" firearms instructor ~~licensee~~; however, no more than 8 hours of such training shall

consist of range training. Upon completion of such training, the licensed Class "K" firearms instructor must submit proof of completion of training for each applicant to the department electronically in a manner prescribed by the department. The instructor must also provide a copy of the training results to the applicant who completed the training. The department may waive the foregoing firearms training requirement if:

(a) The applicant provides proof that he or she is currently certified as a law enforcement officer or correctional officer pursuant to the requirements of the Criminal Justice Standards and Training Commission or has successfully completed the training required for certification within the last 12 months.

(b) The applicant provides proof that he or she is currently certified as a federal law enforcement officer and has received law enforcement firearms training administered by a federal law enforcement agency.

(c) The applicant holds a valid Class "K" license and submits a valid firearm certificate among those specified in paragraph (6)(a).

(d) The applicant provides proof that he or she has completed annual firearms training in accordance with the requirements of the federal Law Enforcement Officers Safety Act, 18 U.S.C. ss. 926B and 926C.

(6) In addition to the requirements under subsection (3),

an applicant for a Class "K" license must:

(a) Submit one of the following:

1. The Florida Criminal Justice Standards and Training Commission Instructor Certificate and written confirmation by the commission that the applicant possesses an active firearms certification.

2. A valid National Rifle Association Private Security Firearm Instructor Certificate issued not more than 3 years before the submission of the applicant's Class "K" application.

3. A valid firearms instructor certificate issued by a federal law enforcement agency issued not more than 3 years before the submission of the applicant's Class "K" application.

4. A valid DD Form 214 as issued by the United States Department of Defense not more than 3 years before the submission of the applicant's Class "K" application, indicating that the applicant has been honorably discharged and served in the military as a firearms instructor.

Section 2. Paragraph (g) of subsection (1) of section 493.6106, Florida Statutes, is amended to read:

493.6106 License requirements; posting.—

(1) Each individual licensed by the department must:

(g) Not be prohibited from purchasing or possessing a firearm by state or federal law if the individual is applying for a Class "G" license or a Class "K" license. The Department of Law Enforcement is authorized to provide results from the

National Instant Criminal Background Check System and Index to the department to determine eligibility for Class "G" licenses or Class "K" licenses to the extent allowed under federal law.

Section 3. Subsection (5) of section 493.6108, Florida Statutes, is amended to read:

493.6108 Investigation of applicants by Department of Agriculture and Consumer Services.—

(5) A person licensed under this chapter must notify his or her employer within 3 calendar days if he or she is arrested for any offense. ~~If the department receives information about an arrest within the state of a person who holds a valid license issued under this chapter for a crime that could potentially disqualify the person from holding such a license, the department must provide the arrest information to the agency that employs the licensee.~~

Section 4. Paragraph (b) of subsection (2) of section 493.6109, Florida Statutes, is amended to read:

493.6109 Reciprocity.—

(2) The rules authorized in subsection (1) may be promulgated only if:

(b) The applicant has engaged in licensed activities for at least 1 year in the other state or territory with no disciplinary action against him or her; however, during a declared state of emergency, the requirement that an applicant be licensed for at least 1 year may be waived.

Section 5. Subsection (1) of section 493.6111, Florida Statutes, is amended to read:

493.6111 License; contents; identification card.—

(1) All licenses issued pursuant to this chapter shall be on a form prescribed by the department and shall include the licensee's name, license number, expiration date of the license, and any other information the department deems necessary. The department may issue a single license card that includes each license obtained by the cardholder. Such license card may be issued as an electronic license in a digital format that contains a quick-response barcode identifying each individual licensure class or may be issued as a physical license card. Class "C," Class "CC," Class "D," Class "E," Class "EE," Class "M," Class "MA," Class "MB," Class "MR," and Class "G" licenses shall be in the possession of individual licensees while on duty. A licensee may carry a digital image of his or her license card on his or her person in lieu of a physical license card.

Section 6. Subsection (2) of section 493.6112, Florida Statutes, is amended to read:

493.6112 Notification to Department of Agriculture and Consumer Services of changes of partner or officer or employees.—

(2) Each agency shall, upon the ~~employment or~~ termination of employment of a licensee for a violation of this chapter, report such ~~employment or~~ termination within 15 calendar days to

the department and~~, in the case of a termination,~~ report the reason or reasons therefor. The report shall be submitted electronically in a manner prescribed by the department.

Section 7. Paragraphs (b) and (d) of subsection (3) and subsection (4) of section 493.6113, Florida Statutes, are amended to read:

493.6113 Renewal application for licensure.—

(3) Each licensee is responsible for renewing his or her license on or before its expiration by filing with the department an application for renewal accompanied by payment of the renewal fee and the fingerprint retention fee to cover the cost of ongoing retention in the statewide automated biometric identification system established in s. 943.05(2)(b). Upon the first renewal of a license issued under this chapter before January 1, 2017, the licensee shall submit a full set of fingerprints and fingerprint processing fees to cover the cost of entering the fingerprints into the statewide automated biometric identification system pursuant to s. 493.6108(4)(a) and the cost of enrollment in the Federal Bureau of Investigation's national retained print arrest notification program. Subsequent renewals may be completed without submission of a new set of fingerprints.

(b) Each Class "G" licensee shall additionally complete ~~submit proof that he or she has received~~ during each year of the license period a minimum of 4 hours of firearms requalification

training taught by a Class "K" licensee and submit proof that he or she has complied with such other health and training requirements that the department shall adopt by rule. Proof of completion of firearms requalification training by each student shall be submitted electronically to the department by the Class "K" firearms instructor upon completion of the training in a manner prescribed by rule of the department. A Class "G" licensee must successfully complete this requalification training for each type and caliber of firearm carried in the course of performing his or her regulated duties. If the licensee fails to complete the required 4 hours of annual training during the first year of the 2-year term of the license, the license shall be automatically suspended. The licensee must complete the minimum number of hours of range and classroom training required at the time of initial licensure and submit proof of completion of such training to the department before the license may be reinstated. If the licensee fails to complete the required 4 hours of annual training during the second year of the 2-year term of the license, the licensee must complete the minimum number of hours of range and classroom training required at the time of initial licensure and submit proof of completion of such training to the department before the license may be renewed. The department may waive the firearms training requirement if:

1. The applicant provides proof that he or she is

currently certified as a law enforcement officer or correctional officer under the Criminal Justice Standards and Training Commission and has completed law enforcement firearms requalification training annually during the previous 2 years of the licensure period;

2. The applicant provides proof that he or she is currently certified as a federal law enforcement officer and has received law enforcement firearms training administered by a federal law enforcement agency annually during the previous 2 years of the licensure period; ~~or~~

3. The applicant holds a valid Class "K" license and submits a valid firearm certificate among those specified in s. 493.6105(6)(a); or

4. The applicant provides proof that he or she has completed annual firearms training in accordance with the requirements of the federal Law Enforcement Officers Safety Act, 18 U.S.C. ss. 926B and 926C ~~and provides proof of having completed requalification training during the previous 2 years of the licensure period~~.

(d) Each Class "K" licensee shall additionally submit:

1. One of the certificates specified under s. 493.6105(6) as proof that he or she remains certified to provide firearms instruction; or

2. Proof of having taught at least six 28-hour firearms instruction courses to Class "G" applicants during the previous

3-year licensure period.

(4) A licensee who fails to file a renewal application on or before its expiration must renew his or her license by fulfilling the applicable requirements of subsection (3) and may be required to pay ~~by paying~~ a late fee which shall not exceed ~~equal to~~ the amount of the license fee. The department shall establish by rule the amount of the late fee.

Section 8. Paragraph (f) is added to subsection (12) of section 493.6115, Florida Statutes, to read:

493.6115 Weapons and firearms.—

(12) The department may issue a temporary Class "G" license, on a case-by-case basis, if:

(f) The applicant has been issued and currently holds a valid Class "C," Class "CC," Class "D," Class "M," Class "MA," or Class "MB" license.

Section 9. Subsection (3) is added to section 493.6123, Florida Statutes, to read:

493.6123 Publication to industry.—

(3) The department, at its discretion, may publish all information required by this section online in lieu of paper format.

Section 10. Paragraphs (b) and (c) of subsection (6) of section 493.6203, Florida Statutes, is amended to read:

493.6203 License requirements.—In addition to the license requirements set forth elsewhere in this chapter, each

individual or agency shall comply with the following additional requirements:

(6)

(b) Before submission of an application to the department, the applicant for a Class "CC" license must have completed a minimum of 40 hours of professional training pertaining to general investigative techniques and this chapter, which course is offered by a state university or by a school, community college, college, or university under the purview of the Department of Education, and the applicant must pass an examination. Training must have been completed within 3 years before the date of receipt of the application. The certificate evidencing satisfactory completion of the 40 hours of professional training must be submitted to the department by the school, community college, college, or university ~~with the application for a Class "CC" license~~. The training specified in this paragraph may be provided by face-to-face presentation, online technology, or a home study course in accordance with rules and procedures of the Department of Education. The administrator of the examination must verify the identity of each applicant taking the examination.

1. Upon an applicant's successful completion of each part of the approved training and passage of any required examination, the school, community college, college, or university shall issue a certificate of completion to the

applicant. The certificates must be on a form established by rule of the department.

2. The department shall establish by rule the general content of the professional training and the examination criteria.

~~3. If the license of an applicant for relicensure is invalid for more than 1 year, the applicant must complete the required training and pass any required examination.~~

~~(c) An individual licensed on or before August 31, 2008, is not required to complete additional training hours in order to renew an active license beyond the total required hours, and the timeframe for completion in effect at the time he or she was licensed applies.~~

Section 11. Subsection (4) of section 493.6301, Florida Statutes, is amended to read:

493.6301 Classes of licenses.—

(4) A Class "D" licensee must ~~shall~~ own or be an employee of a Class "B" security agency or branch office. However, this subsection does not apply to ~~include those~~ individuals who:

(a) Are exempt under s. 493.6102(4) but who possess a Class "D" license solely for the purpose of holding a Class "G" license; or

(b) Carry a firearm in the course of their duties as a security officer employed by a church or by an ecclesiastical or a denominational organization that has an established physical

place of worship in this state at which nonprofit religious services and activities are regularly conducted or by a church cemetery to provide security on the property of the church, organization, or cemetery.

Section 12. Subsection (4) of section 493.6303, Florida Statutes, is amended to read:

493.6303 License requirements.—In addition to the license requirements set forth elsewhere in this chapter, each individual or agency must comply with the following additional requirements:

(4)(a) An applicant for an initial ~~a~~ Class "D" license must successfully complete ~~submit proof of successful completion of~~ a minimum of 40 hours of professional training at a school or training facility licensed by the department within 3 years before the date of receipt of the application. The department shall by rule establish the general content and number of hours of each subject area to be taught. Upon completion of such training, the school or training facility shall submit the results directly to the department electronically in a manner prescribed by rule of the department. The school or training facility shall also provide a copy of the training results to the trainee.

(b) The training required in paragraph (a) may be conducted by in-person or online instruction, or a combination thereof, as provided by the department in rule. All approved

online training shall be conducted through a secure website of the school or training facility, provided that the applicant's identity, attendance, and successful completion of such training are verified. The department shall adopt by rule what portion of the 40 hours of training may be conducted online, any method of delivery and security protocols for online training, and any other rules necessary for the regulation of schools providing in-person or online training ~~Upon reapplication for a license, an individual whose license has been expired for 1 year or more is considered an initial applicant and must submit proof of successful completion of 40 hours of professional training at a school or training facility licensed by the department as provided in paragraph (a) before a license is issued~~.

Section 13. Subsection (2) of section 493.6304, Florida Statutes, is amended to read:

493.6304 Security officer school or training facility.—

(2) The application shall be signed and verified by the applicant ~~under oath~~ as provided in s. 92.525 and must contain, at a minimum, the following information:

(a) The name and address of the school or training facility and, if the applicant is an individual, her or his name, address, and social security or alien registration number.

(b) The street address and, if applicable, the website address of the place at which the training is to be conducted.

(c) A copy of the training curriculum and final

examination to be administered.

Section 14. Subsection (2) of section 493.6403, Florida Statutes, is amended to read:

493.6403 License requirements.—

(2) An applicant for an initial ~~a~~ Class "E" or a Class "EE" license must successfully complete ~~submit proof of successful completion of~~ 40 hours of professional training at a school or training facility licensed by the department within 3 years before the date of receipt of the application. The department shall by rule establish the general content for the training. Upon completion of such training, the school or training facility shall submit the results directly to the department electronically in a manner prescribed by rule of the department. The school or training facility shall also provide a copy of the training results to the trainee.

Section 15. Subsection (2) of section 493.6406, Florida Statutes, is amended to read:

493.6406 Recovery agent school or training facility.—

(2) The application must be signed and verified by the applicant ~~under oath~~ as provided in s. 92.525 and shall contain, at a minimum, the following information:

(a) The name and address of the school or training facility and, if the applicant is an individual, his or her name, address, and social security or alien registration number.

(b) The street address of the place at which the training

is to be conducted or the street address of the Class "RS" school offering Internet-based or correspondence training.

(c) A copy of the training curriculum and final examination to be administered.

Section 16. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7089 PCB HMR 20-04 Nicotine Products
SPONSOR(S): Health Market Reform Subcommittee, Toledo
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Health Market Reform Subcommittee	14 Y, 1 N	Morris	Calamas
1) Commerce Committee		Brackett DB	Hamon K.W.H.
2) Judiciary Committee			

SUMMARY ANALYSIS

The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) is responsible for the regulation of tobacco products. "Tobacco products" are loose tobacco leaves, products made from tobacco leaves, and cigarette wrappers, which can be used for smoking, sniffing, or chewing. Retailers that sell or deal, at retail, in tobacco products are required to have a permit issued by the Division and are required to comply with certain provisions related to the sale of such products. The Division enforces the tobacco regulations, may issue fines to permit holders for violations, or suspend or revoke such permits.

Nicotine products and nicotine dispensing devices are not included in the definition of tobacco products. Retailers that sell only nicotine products and nicotine dispensing devices are not required to obtain a tobacco retailer permit or a permit from any other state agency. As such, these retailers are not subject to state regulatory oversight.

Punitive damages are damages awarded in a civil case as an enhancement of actual damages when a defendant's wrongful conduct was intentional, malicious, or reckless. They are imposed as a punishment of the defendant and as a deterrent to others. In most cases the cap on punitive damages is the greater of three times the amount of compensatory damages or $500,000.

The bill creates a retail nicotine products dealer permit which must be obtained from the Division to sell nicotine products in this state. This establishes state regulatory oversight for retailers of nicotine products and nicotine dispensing devices. The regulations for the sale of nicotine products and nicotine dispensing devices mirror the regulations for the sale of tobacco products; however, the bill does not impose a tax or licensing fee similar to tobacco products.

The bill authorizes a holder of a tobacco retail permit to sell nicotine products in addition to tobacco products.

The bill allows punitive damages to be awarded in actions for damages against manufacturers of vapor-generating electronic devices, nicotine products, or nicotine dispensing devices up to the greater of four times the amount of compensatory damages or $2 million.

The bill has a significant, indeterminate, negative fiscal impact on DBPR.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Federal Regulation of Tobacco Products

The Family Smoking Prevention and Tobacco Control Act of 2009 (Tobacco Control Act) gives the Food and Drug Administration (FDA) authority to regulate the manufacture, distribution, and marketing of tobacco products to protect the public health. The Tobacco Control Act provides advertising and labeling guidelines, provides standards for tobacco products, and requires face-to-face transactions for tobacco sales with certain exceptions.[1]

On August 8, 2016, the FDA extended the definition of "tobacco product[s]" regulated under the Act to include electronic nicotine delivery systems (ENDS). ENDS include e-cigarettes, e-cigars, e-hookah, vape pens, personal vaporizers and electronic pipes. Additionally, the definition of tobacco products includes components and parts such as e-liquids, tanks, cartridges, pods, wicks, and atomizers.

Federal law requires that a retailer may sell cigarettes and smokeless tobacco only in "direct, face-to-face exchanges between the retailer and the customer." This language explicitly prohibits vending machines and self-service displays.[2] This language is referred to in the industry as the "behind the counter" language; however, this does not specifically require that a retailer place cigarettes or smokeless tobacco behind the counter. A locked display case would likely meet the self-service display prohibition. Facilities that prohibit minors under the age of 18 are exempted from this federal requirement.

Federal law preempts states from providing additional or different requirements for tobacco products in regards to "standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products." However, federal law explicitly preserves the right of states, or any political subdivision of a state, to enact laws, rules, regulations or other measures related to prohibiting the sale, distribution, possession, exposure to, access to, advertising and promotion of tobacco products which are more stringent than federal requirements.[3]

On December 20, 2019, the Federal Food, Drug, and Cosmetic Act was amended to raise the federal minimum age of sale of tobacco products, including ENDS, from 18 to 21 years.[4] The law became effective on January 15, 2020, with the FDA announcing that retailers may no longer sell tobacco products to anyone under the age of 21.[5] Prior to the enactment of this amendment the FDA used minors to ensure that retailers were complying with the law. Despite the change in the law, the FDA will continue to use minors under the age of 18 for compliance checks during the transition period.[6] The FDA did not provide any further guidance but stated that it would be "updating our website and other materials, including our regulations, in the near future to reflect the change in law".[7]

---

[1] Federal Food, Drug, and Cosmetic Act, 21 USC s. 351 et seq; 15 U.S.C. s. 1333, s. 1335 (2017); 21 U.S.C. s. 387g, s. 387f (2017).
[2] 21 C.F.R. § 1140.14.
[3] 21 U.S.C. s. 387p (2017).
[4] *Newly Signed Legislation Raises Federal Minimum Age of Sale of Tobacco Products to 21*, United States Food and Drug Administration, January 15, 2019, available at https://www.fda.gov/tobacco-products/ctp-newsroom/newly-signed-legislation-raises-federal-minimum-age-sale-tobacco-products-21 (last visited February 11, 2020).
[5] *Id.*
[6] Id. The FDA states that it "recognizes that both the agency and some retailers will need to update current practices to implement this new law as FDA will need time to do outreach and education to retailers and update the Agency's programmatic work to reflect this change in law." The FDA does not provide a timeline for how long it anticipates this transition period will last.
[7] *Id.*

The federal government does not require states to enforce the federal minimum age, but states that do not demonstrate that their retailers are complying with the federal minimum age are subject to a possible reduction in funding for Substance Abuse Prevention and Treatment Block Grants.[8] Substance Abuse and Prevention and Treatment Block Grants are administered by the U.S. Department of Health and Human Services, and are federal funds provided to the states to prevent substance abuse.[9] However, the federal government will not reduce a block grant for failing to enforce the federal minimum age for at least three years.[10]

E-Cigarette, or Vaping, Product Use-Associated Lung Injury (EVALI)

As of January 14, 2020, there have been 2,668 cases of EVALI and sixty deaths in the United States. 113 of the cases and two of the deaths have been in Florida. According to the Centers for Disease Control (CDC), tetrahydrocannabinol (THC) and Vitamin E acetate are strongly linked to the outbreak of EVALI. The CDC and FDA recommend that people not use THC-containing vaping products, particularly from informal sources like friends, family, or in-person or online dealers.[11]

Symptoms of the lung injury include:[12]

- Cough, shortness of breath, or chest pain;
- Nausea, vomiting, or diarrhea; and
- Fatigue, fever, or abdominal pain.

The CDC has the following data on the age and sex of 2,668 of the cases:[13]

- 66% of the patients are male;
- The median age of patients is 24 years old and ranges from 13-85 years. However, 76% of the patients are under 35 years old;
- By age group category:
    - 15% of patients are under 18 years old;
    - 37% of patients are 18 to 24 years old;
    - 24% of patients are 25 to 34 years old; and
    - 24% of patients are 35 years or older.

Regulation of Tobacco Products in Florida

The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) is the state agency responsible for the regulation and enforcement of the tobacco products under ch. 569, F.S. "Tobacco products" include loose tobacco leaves, and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.[14]

---

[8] H.R. 1865 Further Consolidated Appropriations Act, 2020, 116th Congress (2019-2020).; 42. U.S.C. § 300x-26.
[9] USDHHS, Substance Abuse Prevention and Treatment Block Grant, https://www.samhsa.gov/grants/block-grants/sabg (last visited Jan. 27, 2020)
[10] H.R. 1865 Further Consolidated Appropriations Act, 2020, 116th Congress (2019-2020).; 42. U.S.C. § 300x-26.
[11] CDC, *Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping, Products*, https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html#latest-outbreak-information (last visited Feb. 7, 2020).Florida Department of Health, *Lung Injury Associated with E-Cigarette Use, or Vaping- Florida*, Florida Department of Health http://www.flhealthcharts.com/ChartsReports/rdPage.aspx?rdReport=ChartsProfiles.LungInjuryE-CigaretteUse (last visited Feb. 7, 2020).
[12] CDC, *For the Public,* https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease/need-to-know/index.html (last visited Feb. 7, 2020).
[13] *Supra,* note 11.
[14] S. 569.002(6), F.S.

Section 210.25(11), F.S., relating to the tax on tobacco products other than cigarettes or cigars, defines the term "tobacco products" differently as "loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing."

"Tobacco products" in either definition does not include nicotine products and nicotine dispensing devices.

An individual must obtain a retail tobacco products dealer permit from the Division for each place of business or the premises where tobacco products are sold to be eligible to sell retail tobacco products, or operate a tobacco products vending machine in Florida. The fee for such a permit is $50.[15] The Division may only issue permits to persons who are 18 years or older or corporations with officers who are 18 years or older.[16] The place or premises covered by a permit is subject to inspection and search without a search warrant by the Division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with requirements for tobacco sales and dealing.[17]

DBPR is required to submit an annual report to the Governor and Legislature regarding the enforcement of tobacco products, including:[18]

- The number and results of compliance visits by the Division;
- The number of violations for failure of a retailer to hold a valid license;
- The number of violations for selling tobacco products to anyone under the age of 18 and the results of administrative hearings on such violations; and
- The number of people under the age of 18 cited, including sanctions imposed as a result of such citation, for misrepresenting their age, purchasing tobacco products underage, and misrepresenting military service for the purpose of obtaining tobacco products underage.

Florida also has an excise tax and surcharge on cigarettes and other tobacco products, not including cigars. The tax and surcharge for cigarettes is $0.1695 to $0.42375 per pack and a surcharge of $0.50 to $1.25 per pack depending on the number of cigarettes in the pack. The excise tax for tobacco products is 25% of the wholesale price and the surcharge is 60% of the wholesale price. There is no excise tax or surcharge for nicotine products or nicotine dispensing devices.[19]

Requirements for Tobacco Products Retailers

Signage

Retail tobacco products dealers (dealers) must post a clear and conspicuous sign that the sale of tobacco products is prohibited to persons under the age of 18 and that proof of age is required for purchase. The Division is required to make the signs available to retailers. Dealers must also have instructional material in the form of a calendar or similar format to assist in determining the age of the person attempting to purchase a tobacco product.[20]

[15] S. 569.003, F.S.
[16] S. 569.003, F.S.
[17] S. 569.004, F.S.
[18] S. 569.19, F.S.
[19] Ss. 210.011, 210.02, 210.276, & 210.30, F.S.; DBPR, Alcholic Beverages & Tobacco – Tax & Reporting Information For Licensees, http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/tax-and-reporting-information-for-licensees/#1510753842753-25986d10-086f (last visited Jan. 28, 2020).
[20] S. 569.14, F.S.

Direct Sales

The sale or delivery of tobacco products is prohibited, except when those products are under the direct control or line of sight of the dealer or the dealer's agent or employee in order to prevent persons under 18 years of age from purchasing or receiving tobacco products. If a tobacco product is sold from a vending machine, the vending machine must have:

- An operational lockout device which is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine by triggering the lockout device to allow the dispensing of one tobacco product;
- A mechanism on the lockout device to prevent the machine from functioning if the power source for the lockout device fails or if the lockout device is disabled;
- A mechanism to ensure that only one tobacco product is dispensed at a time.[21]

These requirements for the sale of tobacco products do not apply to an establishment that prohibits persons under 18 years of age on premises and do not apply to the sale or delivery of cigars and pipe tobacco.[22]

If the Division determines a tobacco product dealer or a tobacco product dealer's employee violated the regulations for tobacco product dealers, the Division can suspend or revoke the dealer's permit or assess a fine up to $1,000 for each violation.[23]

If the Division discovers a tobacco product dealer's employee illegally sold tobacco products to a person under 18 years, the Division may mitigate penalties, if:

- The dealer is qualified as a responsible dealer by establishing and implementing specified practices designed to ensure that the dealer's employees comply with ch. 569, F.S., such as employee training.
- The dealer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation.
- The sale was made through a vending machine equipped with an operational lock-out device.[24]

Mail Order, Internet, and Other Remote Sales of Tobacco Products in Florida

Section 210.095, F.S., provides requirements for the delivery of mail order, Internet, and other remote sales of tobacco products and cigarettes, referred to as "delivery sales." Each person who mails, ships, or otherwise delivers tobacco products or cigarettes in connection with an order for a delivery sale is required to:

- Include, as part of the shipping documents, in a clear and conspicuous manner, the following statement: "Tobacco Products: Florida law prohibits shipping to individuals under 18 years of age and requires the payment of all applicable taxes."
- Use a method of mailing, shipping, or delivery which obligates the delivery service to:
    - Require the signature of an adult who resides at the delivery address and obtain proof of the legal minimum purchase age of the individual accepting delivery, if the individual appears to be under 27 years of age.
    - Require proof that the individual accepting delivery is either the addressee or the adult designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.

[21] S. 569.007(1), F.S.
[22] S. 569.007(2)-(3), F.S.
[23] S. 569.006, F.S.
[24] See s. 569.008(3), F.S.

- Provide to the delivery service, if such service is used, evidence of full compliance with requirements for the collection and remittance of all taxes imposed on tobacco products or cigarettes by this state with respect to the delivery sale.

Before the first delivery to a consumer, the person mailing, shipping, or delivering the tobacco products or cigarettes must also:[25]

- Obtain a certification from the person accepting delivery that includes reliable confirmation that the person accepting delivery is an adult, and a written statement under penalty of perjury providing the person's date of birth, address, and confirmation that the person wants to accept the delivery;
- Make a good faith effort to verify the information in the certification by checking the information against a commercially available database or obtaining a photocopy of the person's ID;
- Provides the person accepting the delivery a notice stating tobacco products are illegal for underage youths and tobacco products are taxable;
- Impose a two-carton minimum on each order of cigarettes;
- Submit to the credit card company necessary information so that the words "tobacco product" appear on the person's credit card statement when a purchase is made using a credit card;
- Make a phone call to the individual who made the order to confirm the order before shipping the order; and
- Receive payment by a credit card or debit card in the name of the person accepting delivery or a personal or company check of the person, if the order is made in accordance with an advertisement on the Internet.

A person who accepts a purchase order for a delivery sale and delivers the tobacco products or cigarettes without using a delivery service must comply with all of the delivery service requirements.[26]

Section 210.095(8), F.S., currently provides that the penalty for the following violations of the delivery sale requirements is a misdemeanor of the third degree:[27]

- A delivery of tobacco products, on behalf of a delivery service, to an individual who is under 18 years of age.
- A person under the age of 18 who knowingly violates any of the provisions of the mail order or internet sales requirements.

These provisions do not apply to nicotine products and nicotine dispensing devices. However, it is illegal for a person to deliver nicotine products or nicotine dispensing devices to persons under 18 years of age.[28]

Tobacco Products and Minors

The sale, delivery, bartering, furnishing or giving of tobacco products or giving sample to products to persons under the age of 18 is prohibited.[29] A violation of this prohibition is a second degree

[25] *Id.*
[26] S. 210.095, F.S.
[27] Section 775.082, F.S., does not provide a third degree misdemeanor. Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S., does not provide a third degree misdemeanor. Section 775.083, F.S., provides that a misdemeanor of the second degree is punishable by a fine not to exceed $500.
[28] S. 877.112(2), F.S.
[29] Ss. 569.0075, 101, F.S.

misdemeanor.[30] A second or subsequent violation within one year of the first violation is a first degree misdemeanor.[31]

It is a complete defense to a person charged with such a violation if the buyer or recipient falsely evidenced that he or she was 18 years of age or older, a prudent person would believe the buyer or recipient to be 18 years of age or older, and the buyer or recipient presented false identification upon which the person relied upon in good faith.[32]

Persons under the age of 18 years are prohibited from knowingly possessing, directly or indirectly, any tobacco products. Person who violate this noncriminal violation are punishable as follows:[33]

- A first violation of this prohibition is a non-criminal violation with a penalty of 16 hours of community service or a $25 fine, and attendance at a school-approved anti-tobacco program, if locally available.
- A second violation within 12 weeks of the first violation is punishable with a $25 fine.
- A court may suspend or withhold issuance of a driver license for persons under 18 years of age who fail to complete the noncriminal penalties for knowingly possessing or misrepresenting their age in order to purchase tobacco products.

However, this does not include any person under the age of 18 who:[34]

- Has had his or her disability of nonage removed under ch. 743, F.S.;
- Is in the military reserve or on active duty in the Armed Forces of the United States;
- Is otherwise emancipated by a court of competent jurisdiction and released from parental care and responsibility; or
- Is acting in his or her scope of lawful employment with an entity licensed under the provisions of ch. 210, F.S., relating to taxation of cigarettes and other tobacco products, or ch. 569, F.S., relating to tobacco products.

Eighty percent of all civil penalties received from violating prohibitions related to the possession or sale of tobacco products by a county court must be remitted to the Department of Revenue for transfer to the Department of Education for teacher training and for research and evaluation to reduce and prevent the use of tobacco products, nicotine products, or nicotine dispensing devices by children.[35] The remaining 20 percent of civil penalties received by a county court must remain with the clerk of the county court to cover administrative costs.[36]

The Florida Clean Indoor Air Act prohibits any person under the age of 18 from smoking tobacco within 1,000 feet of a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. A violation of this prohibition is punishable by a maximum noncriminal civil penalty not to exceed $25, or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco "alternative to suspension" program.[37]

---

[30] S. 775.082, F.S., provides that the penalty for a misdemeanor of the second degree is punishable by a term of imprisonment not exceeding 60 days. Section 775.083, F.S. provides that the penalty for a misdemeanor of the second degree is punishable by a fine not to exceed $500.
[31] S. 775.082, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a term of imprisonment not exceeding one year. Section 775.083, F.S. provides that the penalty for a misdemeanor of the first degree is punishable by a fine not to exceed $1,000.
[32] S. 569.101(3), F.S.
[33] S. 569.11, F.S.
[34] S. 569.002(7), F.S.
[35] S. 569.11(6), F.S.
[36] *Id.*
[37] S. 386.212, F.S.

Nicotine Products Regulation in Florida

Section 877.112, F.S., provides for the regulation of nicotine products and nicotine dispensing devices, such as electronic cigarettes (e-cigarettes). This statute extends the current prohibitions related to tobacco products to the sale, gifting, possession, or use of nicotine products and nicotine dispensing devices to and by persons under 18 years of age.

A "nicotine dispensing device" is:[38]

> any product that employs an electronic, chemical, or mechanical means to produce vapor from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product

A "nicotine product" is any product that contains nicotine, including liquid nicotine intended for human consumption, whether inhaled, chewed, absorbed, dissolved or ingested by any means.[39] The definition does not include a tobacco product under Florida law, a drug or device under federal law, or a product that contains incidental nicotine.[40]

The sale or giving of nicotine products or nicotine dispensing devices to any person under 18 years of age is prohibited and punishable as a second degree misdemeanor.[41] It is a complete defense to a violation if an underage person falsely misrepresented his or her age, the underage person had the appearance to a prudent person to be 18 years of age or older, and the person carefully checked, and relied on, the driver license or identification card of the recipient.[42]

Persons under 18 years of age who knowingly possess, purchase, or misrepresent their age or military service to obtain nicotine products or nicotine dispensing devices commit a noncriminal violation.[43] The penalty is 16 hours of community service or a $25 fine for a first violation, and attendance at a school-approved anti-tobacco and nicotine program, if available. A second violation within 12 weeks of the first violation requires a $25 fine. A court may suspend or withhold issuance of a driver's license for persons under 18 years of age who fail to complete the noncriminal penalties for knowingly possessing or misrepresenting their age in order to purchase tobacco products.[44]

Eighty percent of civil penalties related to the unlawful possession or sale of nicotine products are remitted to the Department of Revenue for transfer to the Department of Education for teacher training and for research and evaluation to reduce and prevent the use of tobacco products, nicotine products, or nicotine dispensing devices by children.[45] The remaining 20 percent of civil penalties received by a county court are retained by the clerk of the county court to cover administrative costs.[46]

Retail dealers of nicotine products and nicotine dispensing devices are required to post signs indicating that the sale of nicotine products and nicotine dispensing devices to persons under 18 years of age is prohibited and that proof of age is required for purchase. Retailers must also have instructional material

---

[38] S. 877.112(1)(a), F.S.
[39] S. 877.112(1)(b), F.S.
[40] *Id.*
[41] Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S. provides that a misdemeanor of the second degree is punishable by a fine not to exceed $500.
[42] S. 877.112(5), F.S.
[43] Ss. 877.112(6), (7), F.S.
[44] *Id.*
[45] S. 877.112(9), F.S.
[46] *Id.*

in the form of a calendar or similar format to assist in determining the age of the person attempting to purchase a nicotine product or nicotine dispensing device.[47]

Nicotine products or nicotine dispensing devices may not be sold or displayed by means of self-service merchandising.[48] Self-service merchandising means the open display of nicotine products or nicotine dispensing devices for direct customer access and handling before the purchase of such product without the assistance of the retailer or the retailer's employee. However, this does not apply to establishments that prohibit persons under the age of 18 on the premises.[49]

Laws related to nicotine products and nicotine dispensing devices are different from tobacco laws in the following ways:

- Nicotine retailers are not required to obtain a tobacco products dealer permit from the Division;
- Nicotine retailers are not subject to inspection without a search warrant.
- The Division does not have authority to discipline a nicotine retailer for violating any of the regulations relating to the retail sale of nicotine products and nicotine dispensing devices.
- The requirements for internet and remote sales of tobacco products do not apply to nicotine products or nicotine dispensing devices.
- There are no exemptions for the prohibition of the purchase and possession of nicotine products and nicotine dispensing products by persons under 18 years old, such as military service.

Youth Vaping

The FDA reports that between 2011 and 2014, the number of high school students who had used an e-cigarette in the last 30 days increased nearly 800 percent, with 13.4 percent of high school students reporting usage in 2014.[50] In 2018, over 4.9 million middle and high school students were current users of e-cigarettes.[51] As of 2018, more than one in four high school seniors and one in ten middle school students used e-cigarettes.[52] In 2019, among middle and high school students, over 5 million were current users of e-cigarettes, and almost 1 million were using e-cigarettes daily.[53]

In order to decrease youth usage of ENDS, the FDA has begun a Youth Tobacco Prevention Plan. The plan has three main components: preventing youth access to tobacco products, ending marketing aimed at youth, educating youth about the dangers of using tobacco and educating retailers about their role in preventing underage usage of tobacco.[54]

Punitive Damages

Punitive damages are damages awarded in a civil case as an enhancement of actual damages when a defendant's wrongful conduct was intentional, malicious, or reckless. They are imposed as a punishment of the defendant and as a deterrent to others.[55]

---

[47] S. 877.112(10), F.S
[48] Ss. 877.112(11), (12), F.S.
[49] *Id.*; S. 877.112(1), F.S.
[50] Food and Drug Administration, 81 C.F.R. 28973, https://www.federalregister.gov/d/2016-10685/p-635 (last visited Mar. 22, 2019).
[51] Food and Drug Administration, *Statement from FDA Commissioner Scott Gottlieb, M.D., on new data demonstrating rising youth use of tobacco products and the agency's ongoing actions to confront the epidemic of youth e-cigarette use,* https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-new-data-demonstrating-rising-youth-use-tobacco (last visited Feb. 7, 2020).
[52] *Id.*
[53] Food and Drug Administration, *Vaporizers, E-Cigarettes, and other Electronic Nicotine Delivery Systems (ENDS),* https://www.fda.gov/tobacco-products/products-ingredients-components/vaporizers-e-cigarettes-and-other-electronic-nicotine-delivery-systems-ends (las visited Feb. 7, 2020).
[54] Food and Drug Administration, *FDA's Youth Tobacco Prevention Plan,* https://www.fda.gov/TobaccoProducts/PublicHealthEducation/ProtectingKidsfromTobacco/ucm608433.htm (last visited Feb. 7, 2020).
[55] 17 Fla. Jur 2d Damages §§ 122 and 123.

Section 768.725, F.S., requires that the right to receive punitive damages must be demonstrated by clear and convincing evidence at trial.[56] The plaintiff must prove the defendant "had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage...would result" or "that the defendant's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference" to the life, safety, or rights of others.[57] Thus, a plaintiff must make a stronger case for punitive damages than he or she must make for actual damages.

Section 768.73(1), F.S., currently provides a general cap on punitive damages of three times the amount of compensatory damages or $500,000, whichever is greater.

This cap may be exceeded where the trier of fact finds that the defendant's wrongful conduct was motivated by a desire for unreasonable financial gain and the defendant knew of the unreasonably dangerous nature of the conduct and the high likelihood of injury. In such cases, the cap on punitive damages increases to four times the amount of compensatory damages or $2,000,000, whichever is greater. However, there is no cap on punitive damages in cases where the defendant had a specific intent to harm the claimant and the defendant's conduct actually harmed the claimant.[58]

Section 768.73(2), F.S., also restricts multiple awards of punitive damages. A defendant in a civil action may avoid subsequent punitive damages if the defendant can establish that punitive damages have previously been awarded against the defendant in any state or federal court for harm from the same act or course of conduct for which the claimant seeks damages. However, subsequent punitive damages may be awarded if the court determines by clear and convincing evidence that the amount of prior punitive damages awarded was insufficient to punish the defendant's behavior. The wrongdoer's cessation of the wrongful conduct may be considered in making this determination. If a subsequent award is permitted, the finder of fact will determine the total punitive damages appropriate to punish the conduct. The court will then enter judgment for that amount less any prior punitive damages awards.

Effect of Proposed Changes

The bill establishes state regulatory oversight for retailers of nicotine products and nicotine dispensing devices. The regulations for the sale of nicotine products and nicotine dispensing devices mirror the regulations for the sale of tobacco products; however, the bill does not impose a tax or licensing fee similar to tobacco products. The bill also includes regulations for the sale and delivery of nicotine products and nicotine dispensing devices through the mail and over the Internet, which are similar to the regulations for tobacco products, to ensure sales and deliveries are not to persons under age.

Nicotine Products Regulation in Florida

The bill creates a retail nicotine products dealer permit which must be obtained from DBPR to be able to sell nicotine products, at retail, in this state. This permit however does not allow for the sale of tobacco products. The bill includes nicotine products, in addition to tobacco products, as those products that may be sold by an individual who holds a retail tobacco products dealer permit.

"Nicotine products" include any product that contains nicotine, including liquid nicotine, which is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means. **This also includes a nicotine dispensing device**, such as an electronic cigarette, that employs an electronic, chemical, or mechanical means to produce a vapor from a nicotine product. Products not considered to be nicotine products include:

---

[56] The "clear and convincing evidence" standard is an intermediate burden of proof requiring that the evidence must be of "such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established." *See S. Fla. Water Mgmt. Dist. v. RLI Live Oak, LLC*, 139 So. 3d 869, 872 (Fla. 2014).

[57] S. 768.72, F.S.

[58] *See also* s. 768.736, F.S. (removing the cap on punitive damages where the defendant was intoxicated); s. 768.735, F.S. (providing for different rules for punitive damages in special cases, such as those involving child abuse and elder abuse).

- Tobacco products;
- Products regulated as a drug or device by the FDA; or
- Products that contain incidental nicotine.

The bill requires a person to obtain a retail nicotine products dealer permit for each place of business or the premises where nicotine products are to be sold face-to-face or through a vending machine. The Division may only issue permits to persons who are 18 years or older or corporations with officers who are 18 years or older.[59] The bill provides for the place or premises covered by a permit be subject to inspection and search without a search warrant by the Division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with requirements for nicotine sales and dealing.

The bill repeals s. 877.112, F.S., which currently regulates nicotine products in this state.

Requirements for Retail Nicotine Products Dealers

Signage

The bill requires nicotine product retailers to post a clear and conspicuous sign that the sale of nicotine products is prohibited to persons under the age of 18 and that proof of age is required for purchase. The Division is required to make the signs available to nicotine product retailers. Nicotine product retailers must also have instructional material in the form of a calendar or similar format to assist in determining the age of the person attempting to purchase a nicotine product.

Direct Sales

The bill prohibits the sale or delivery of nicotine products except when those products are under the direct control or line of sight of the nicotine product retailer or the nicotine product retailer's agent or employee. The bill permits nicotine products to be sold from a vending machine if the vending machine has:

- An operational lockout device which is under the control of the nicotine product retailer or the nicotine product retailer's agent or employee who directly controls the sale of items through the machine by triggering the lockout device to allow the dispensing of one nicotine product;
- A mechanism on the lockout device to prevent the machine from functioning if the power source for the lockout device fails or if the lockout device is disabled; and
- A mechanism to ensure that only one nicotine product is dispensed at a time.

The bill also prohibits nicotine products from being sold or displayed by means of self-service merchandising. Self-service merchandising means the open display of nicotine products or nicotine dispensing devices for direct customer access and handling before the purchase of such product without the assistance of the retailer or the retailer's employee.[60]

The bill exempts establishments that prohibit people under the age of 18 on premises from such sales requirements.

Mitigating Penalties for Underage Sales

If the Division determines a nicotine product retailer or a nicotine product retailer's employee violated the regulations for nicotine product retailers, the Division can suspend or revoke the retailer's permit or assess a fine up to $1,000 for each violation.

[59] S. 569.003, F.S.
[60] S. 877.112(1), F.S.

If the Division discovers a nicotine product retailer's employee illegally sold tobacco products to a person under 18, the bill allows the Division to mitigate penalties if:

- The nicotine product retailer is qualified as a responsible retailer by establishing and implementing specified practices designed to ensure that the nicotine product retailer's employees comply with Florida laws regulating the sale of nicotine products, such as employee training;
- The nicotine product retailer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation; and
- If the sale was made through a vending machine, the machine was equipped with an operational lock-out device.

Nicotine Products and Minors

The bill prohibits the sale, delivery, bartering, furnishing or giving of nicotine products or giving sample to products to anyone under the age of 18. A violation of this prohibition is a second degree misdemeanor. A second or subsequent violation within one year of the first violation is a first degree misdemeanor.

A person charged with such a violation to have a complete defense if:

- The buyer falsely represented that he or she was 18 years of age or older;
- The appearance of the buyer would indicate, to a prudent person, that the buyer was 18 years of age or older; and
- The buyer presented false identification upon which the person relied upon in good faith.

The bill prohibits persons under the age of 18 from knowingly possessing, directly or indirectly, any nicotine products. Any person who violates such prohibition commits a non-criminal violation, punishable as follows:

- A first violation carries a penalty of 16 hours of community service or a $25 fine, and attendance at a school-approved anti-tobacco and anti-nicotine program, if locally available.
- A second violation within 12 weeks of the first violation is punishable with a $25 fine.
- A court may suspend or withhold issuance of a driver's license for persons under 18 years of age who fail to complete the noncriminal penalties for knowingly possessing or misrepresenting their age in order to purchase nicotine products.

However, this does not include any person under the age of 18 who:

- Has had his or her disability of nonage removed under ch. 743, F.S.;
- Is in the military reserve or on active duty in the Armed Forces of the United States;
- Is otherwise emancipated by a court of competent jurisdiction and released from parental care and responsibility; or
- Is acting in his or her scope of lawful employment.

The bill requires eighty percent of all civil penalties received from violating prohibitions related to the possession or sale of nicotine products by a county court to be remitted to the Department of Revenue for transfer to the Department of Education for teacher training and for research and evaluation to reduce and prevent the use of nicotine products and or nicotine products by children. The remaining 20 percent of civil penalties received by a county court is required to remain with the clerk of the county court to cover administrative costs.

Mail Order, Internet, and Other Remote Sales of Nicotine Products in Florida

The bill creates requirements for the delivery of mail order, Internet, and other remote sales of nicotine products, referred to as "delivery sales." Each person who mails, ships, or otherwise delivers nicotine products in connection with an order for a delivery sale must:

- Include, as part of the shipping documents, in a clear and conspicuous manner, the following statement: "Nicotine Products: Florida law prohibits shipping to individuals under 18 years of age."
- Use a method of mailing, shipping, or delivery which obligates the delivery service to:
    - Require the signature of an adult who resides at the delivery address and obtain proof of the legal minimum purchase age of the individual accepting delivery, if the individual appears to be under 27 years of age.
    - Require proof that the individual accepting delivery is either the addressee or the adult designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.
- Provide to the delivery service, if such service is used, evidence of full compliance with such requirements.

Before the first delivery to a consumer, the bill requires the person mailing, shipping, or delivering the nicotine products to:

- Obtain a certification from the person accepting delivery that includes reliable confirmation that the person accepting the delivery is an adult, and a written statement under penalty of perjury providing the person's date of birth, address, and confirmation that the person wants to accept the delivery;
- Make a good faith effort to verify the information in the certification by checking the information against a commercially available database or obtaining a photocopy of the person's ID;
- Provide the person accepting the delivery a notice stating nicotine products are illegal for underage youths and sales of such products are restricted to individuals who provide verifiable proof of legal age to purchase;
- Receive payment by a credit card or debit card in the name of the person accepting the delivery or a personal or company check of the person accepting the delivery, if the order is made in accordance with an advertisement on the Internet;
- Submit to the credit card company necessary information so that the words "nicotine product" appear on the person's credit card statement when a purchase is made using a credit card; and
- Make a phone call to the person accepting the delivery to confirm the order before shipping the order.

The bill requires a person who accepts a purchase order for a delivery sale and delivers the nicotine products without using a delivery service to comply with all of the delivery service requirements.

The bill imposes a penalty for knowingly violating the delivery sale requirements as a misdemeanor of the second degree.

The bill requires the Division to submit an annual report, by December 31, to the Governor and Legislature on the progress of implementing and enforcing the above requirements, including:

- The number and results of compliance visits by the Division;
- The number of violations for failure of a retailer to hold a valid license;
- The number of violations for selling tobacco products to anyone under the age of 18 and the results of administrative hearings on such violations; and

- The number of people under the age of 18 cited, including sanctions imposed as a result of such citation, for misrepresenting their age, purchasing tobacco products underage, and misrepresenting military service for the purpose of obtaining tobacco products underage.

The bill changes the title of ch. 569, F.S., from "Tobacco Products" to "Tobacco and Nicotine Products." The bill directs the Division of Law Revision to create parts I and II of ch. 569, F.S., entitled "Tobacco Products" and "Nicotine Products," respectively.

Punitive Damages

The bill allows punitive damages to be awarded in actions for damages against manufacturers of vapor-generating electronic devices, nicotine products, or nicotine dispensing devices up to the greater of four times the amount of compensatory damages or $2 million.

The bill does not affect current law related to the standard for proving punitive damages, which first requires that certain elements, including intentional misconduct or gross negligence, be proven by clear and convincing evidence prior to a determination of the amount of the award of damages.

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

B. SECTION DIRECTORY:

Section 1: Creates part II of ch. 596, F.S.
Section 2: Directs the Division of Law Revision to create part I of ch. 569, F.S., entitled "Tobacco Products."
Section 3: Directs the Division of Law Revision to create part II of ch. 569, F.S., entitled "Nicotine Products."
Section 4: Amends s. 569.002, F.S., relating to definitions.
Section 5: Amends s. 569.004, F.S., relating to consent to inspection and search without warrant.
Section 6: Amends s. 569.006, F.S., relating to retail tobacco products dealers; administrative penalties.
Section 7: Amends s. 569.0073, F.S., relating to special provisions; smoking pipes and smoking devices.
Section 8: Amends s. 569.009, F.S., relating to rulemaking authority.
Section 9: Amends s. 569.12, F.S., relating to jurisdiction; tobacco product enforcement officers or agents; enforcement.
Section 10: Amends s. 569.14, F.S., relating to posting of a sign stating that the sale of tobacco products to persons under 18 years of age is unlawful; enforcement; penalty.
Section 11: Amends s. 569.19, F.S., relating to annual report.
Section 12: Creates s. 569.30, F.S., relating to definitions.
Section 13: Creates s. 569.31, F.S., relating to retail nicotine products dealer permits.
Section 14: Creates s. 569.32, F.S., relating to consent to inspection and search without warrant.
Section 15: Creates s. 569.33, F.S., relating to operating without a retail nicotine products dealer permit; penalty.
Section 16: Creates s. 569.34, F.S., relating to retail nicotine product dealers; administrative penalties.
Section 17: Creates s. 569.37, F.S., relating to sale or delivery of nicotine products; restrictions.
Section 18: Creates s. 569.38, F.S., relating to gift of sample nicotine products and nicotine dispensing devices.
Section 19: Creates s. 569.381, F.S., relating to responsible retail nicotine products dealers; qualifications; mitigation of disciplinary penalties; diligent management and supervision; presumption.
Section 20: Creates s. 569.39, F.S., relating to rulemaking authority.
Section 21: Creates s. 569.40, F.S., relating to selling, delivering, bartering, furnishing, or giving nicotine products to persons under 18 years of age; criminal penalties; defense.

Section 22: Creates s. 569.41, F.S., relating to possession, misrepresenting age or military service to purchase, and purchase of nicotine products by persons under 18 years of age prohibited; penalties; jurisdiction; disposition of fines.
Section 23: Creates s. 569.42, F.S., relating to posting a sign stating that the sale of nicotine products to persons under 18 years of age is unlawful; enforcement; penalty.
Section 24: Creates s. 569.43, F.S., relating to annual report.
Section 25: Creates s. 569.45, F.S., relating to mail order, Internet, and remote sales of nicotine products; age verification.
Section 26: Amends s. 768.73, F.S., relating to punitive damages; limitation.
Section 27: Repealing s. 877.112, F.S.
Section 28: Provides an effective date of October 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Department of Revenue (DOR) may see an increase in revenue as the bill allows eighty percent of civil penalties received by a county court relating to enforcement of underage possession and purchasing of nicotine products to be remitted to DOR. The impact is indeterminate.

2. Expenditures:

   The bill has a significant, indeterminate, negative fiscal impact on DBPR. The bill creates new duties of the Division relating to the regulation and enforcement of nicotine products and sales which will increase current workload on Division employees. The impact is indeterminate because the number of current retailers who sell nicotine products is unknown as they are not currently regulated by any state agency.

   The bill requires the Division to create a new application for a retail nicotine products dealer permit, and issue such permits, the cost of which may be able to be absorbed within current resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The clerk of the county court may see an increase in revenue as the bill allows twenty percent of civil penalties received by a county court relating to enforcement of underage possession and purchasing of nicotine products to remain with the clerk. The impact is indeterminate.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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:

The Florida Supreme Court has held that the existence of a claim for punitive damages is subject to the authority of the legislature who "may place conditions upon such a recovery or even abolish it altogether."[61]

B. RULE-MAKING AUTHORITY:

The bill provides sufficient rule-making authority for DBPR to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[61] *Gordon v. State*, 585 So. 2d 1033, 1035-36 (3d DCA 1991), *approved*, 608 So. 2d 800 (Fla. 1992).

A bill to be entitled

An act relating to nicotine products; revising the title of ch. 569, F.S.; renaming ch. 569, F.S.; providing directives to the Division of Law Revision; amending s. 569.002, F.S.; providing definitions for "nicotine products" and "nicotine dispensing devices"; amending ss. 569.004, 569.006, and 569.009 F.S.; conforming provisions to changes made by the act; amending s. 569.0073, F.S.; revising an exception to a prohibition of the offer for sale at retail of specified items; amending s. 569.12, F.S.; expanding authority of tobacco product enforcement officers to include nicotine products; amending s. 569.14, F.S.; revising requirements for certain signage; amending s. 569.19, F.S.; conforming a provision to changes made by the act; creating s. 569.31, F.S.; providing definitions; creating s. 569.32, F.S.; requiring retailers of nicotine products to have a permit; providing requirements for such permit; creating s. 569.33, F.S.; providing for consent to inspection and search; creating s. 569.34, F.S.; prohibiting certain persons, firms, associations, or corporations from operating without a permit; providing a penalty; creating s. 569.35, F.S.; providing administrative penalties for retail nicotine product dealers under

certain circumstances; creating s. 569.37, F.S.; providing restrictions of the sale or delivery of nicotine products; creating s. 569.38, F.S.; prohibiting giving nicotine product samples to certain persons; creating s. 569.381, F.S.; providing legislative intent, qualifications for responsible retail nicotine product dealers, and mitigation of disciplinary penalties; creating s. 569.39, F.S.; providing rulemaking authority; creating ss. 569.41 and 569.42, F.S.; providing civil and criminal penalties; creating s. 569.43, F.S.; providing signage requirements; creating s. 569.44, F.S.; requiring an annual report; creating s. 569.45, F.S.; providing requirements for remote sales of nicotine products; providing a criminal penalty for knowingly violating such requirements; amending s. 768.73, F.S.; revising punitive damages; repealing s. 877.112, F.S., relating to nicotine products and nicotine dispensing devices; providing an effective date.

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

Section 1. Chapter 569, entitled "Tobacco Products," is renamed "Tobacco and Nicotine Products."

Section 2. The Division of Law Revision is directed to:

(1) Create part I of chapter 569, Florida Statutes, consisting of ss. 569.002-569.23, Florida Statutes, to be entitled "Tobacco Products."

(2) Create part II of chapter 569, Florida Statutes, consisting of ss. 569.31-569.45, Florida Statutes, to be entitled "Nicotine Products."

Section 3. Section 569.002, Florida Statutes, is amended to read:

569.002 Definitions.—As used in this part ~~chapter~~, the term:

(1) ~~(7)~~ "Any person under the age of 18" does not include any person under the age of 18 who:

(a) Has had his or her disability of nonage removed under chapter 743;

(b) Is in the military reserve or on active duty in the Armed Forces of the United States;

(c) Is otherwise emancipated by a court of competent jurisdiction and released from parental care and responsibility; or

(d) Is acting in his or her scope of lawful employment with an entity licensed under the provisions of chapter 210 or this chapter.

(2) ~~(1)~~ "Dealer" is synonymous with the term "retail tobacco products dealer."

(3) ~~(2)~~ "Division" means the Division of Alcoholic

Beverages and Tobacco of the Department of Business and Professional Regulation.

(4) "Nicotine product" has the same meaning as provided in s. 569.31.

(5)~~(3)~~ "Permit" is synonymous with the term "retail tobacco products dealer permit."

(6)~~(4)~~ "Retail tobacco products dealer" means the holder of a retail tobacco products dealer permit.

(7)~~(5)~~ "Retail tobacco products dealer permit" means a permit issued by the division pursuant to s. 569.003.

(8)~~(6)~~ "Tobacco products" includes loose tobacco leaves, and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.

Section 4. Section 569.004, Florida Statutes, is amended to read:

569.004 Consent to inspection and search without warrant.—An applicant for a permit, by accepting the permit when issued, agrees that the place or premises covered by the permit is subject to inspection and search without a search warrant by the division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with this chapter, including part II of this chapter if the applicant deals, at retail, nicotine products within the state or allows a nicotine products vending machine to be located on its premises

within the state.

Section 5. Section 569.006, Florida Statutes, is amended to read:

569.006 Retail tobacco products dealers; administrative penalties.—The division may suspend or revoke the permit of the dealer upon sufficient cause appearing of the violation of any of the provisions of this chapter, including part II of this chapter if the dealer deals, at retail, nicotine products within the state or allows a nicotine products vending machine to be located on its premises within the state, by a dealer or by a dealer's agent or employee. The division may also assess and accept administrative fines of up to $1,000 against a dealer for each violation. The division shall deposit all fines collected into the General Revenue Fund as collected. An order imposing an administrative fine becomes effective 15 days after the date of the order. The division may suspend the imposition of a penalty against a dealer, conditioned upon the dealer's compliance with terms the division considers appropriate.

Section 6. Subsection (1) of section 569.0073, Florida Statutes, is amended to read:

569.0073 Special provisions; smoking pipes and smoking devices.—

(1) It is unlawful for any person to offer for sale at retail any of the items listed in subsection (2) unless such person:

(a) Has a retail tobacco products dealer permit under s. 569.003. The provisions of this chapter apply to any person that offers for retail sale any of the items listed in subsection (2); and

(b)1. Derives at least 75 percent of its annual gross revenues from the retail sale of cigarettes, cigars, ~~and~~ other tobacco products, or nicotine products; or

2. Derives no more than 25 percent of its annual gross revenues from the retail sale of the items listed in subsection (2).

Section 7. Section 569.009, Florida Statutes, is amended to read:

569.009 Rulemaking authority.—The division shall adopt any rules necessary to administer and enforce the provisions of this part ~~chapter~~.

Section 8. Section 569.12, Florida Statutes, is amended to read:

569.12 Jurisdiction; tobacco product and nicotine product enforcement officers or agents; enforcement.—

(1) In addition to the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation, any law enforcement officer certified under s. 943.10(1), (6), or (8) shall enforce the provisions of this chapter.

(2)(a) A county or municipality may designate certain of

its employees or agents as tobacco product and nicotine product enforcement officers. The training and qualifications of the employees or agents for such designation shall be determined by the county or the municipality. Nothing in this section shall be construed to permit the carrying of firearms or other weapons by a tobacco product and nicotine product enforcement agent, nor does designation as a tobacco product and nicotine product enforcement officer provide the employee or agent with the power of arrest or subject the employee or agent to the provisions of ss. 943.085-943.255. Nothing in this section amends, alters, or contravenes the provisions of any state-administered retirement system or any state-supported retirement system established by general law.

(b) An ~~A tobacco product~~ enforcement officer is authorized to issue a citation to a person under the age of 18 when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of s. 386.212, ~~or~~ s. 569.11, or s. 569.42.

(3) A correctional probation officer as defined in s. 943.10(3) is authorized to issue a citation to a person under the age of 18 when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of s. 569.11 or s. 569.42.

(4) A citation issued to any person violating the

provisions of s. 569.11 or s. 569.42 shall be in a form prescribed by the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation and shall contain:

(a) The date and time of issuance.

(b) The name and address of the person to whom the citation is issued.

(c) The date and time the civil infraction was committed.

(d) The facts constituting reasonable cause.

(e) The number of the Florida statute violated.

(f) The name and authority of the citing officer.

(g) The procedure for the person to follow in order to contest the citation, perform the required community service, attend the required anti-tobacco or anti-tobacco and anti-nicotine program, or to pay the civil penalty.

Section 9. Subsections (2) and (4) of section 569.14, Florida Statutes, are amended to read:

569.14 Posting of a sign stating that the sale of tobacco products or nicotine products to persons under 18 years of age is unlawful; enforcement; penalty.—

(2) A dealer that sells tobacco products and nicotine products ~~or nicotine dispensing devices, as defined in s. 877.112~~, may use a sign that substantially states the following:

THE SALE OF TOBACCO PRODUCTS OR~~,~~ NICOTINE PRODUCTS~~, OR NICOTINE~~

~~DISPENSING DEVICES~~ TO PERSONS UNDER THE AGE OF 18 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

A dealer that uses a sign as described in this subsection meets the signage requirements of subsection (1) and s. 569.43(1) ~~s. 877.112~~.

(4) Any dealer that sells tobacco products shall provide at the checkout counter in a location clearly visible to the dealer or the dealer's agent or employee instructional material in a calendar format or similar format to assist in determining whether a person is of legal age to purchase tobacco products. This point of sale material must contain substantially the following language:

IF YOU WERE NOT BORN BEFORE THIS DATE

(insert date and applicable year)

YOU CANNOT BUY TOBACCO PRODUCTS OR NICOTINE PRODUCTS.

Upon approval by the division, in lieu of a calendar a dealer may use card readers, scanners, or other electronic or automated systems that can verify whether a person is of legal age to purchase tobacco products. Failure to comply with the provisions contained in this subsection shall result in imposition of administrative penalties as provided in s. 569.006.

Section 10. Section 569.19, Florida Statutes, is amended to read:

569.19 Annual report.—The division shall report annually

with written findings to the Legislature and the Governor by December 31, on the progress of implementing the enforcement provisions of this part ~~chapter~~. This must include, but is not limited to:

(1) The number and results of compliance visits.

(2) The number of violations for failure of a retailer to hold a valid license.

(3) The number of violations for selling tobacco products to persons under age 18, and the results of administrative hearings on the above and related issues.

(4) The number of persons under age 18 cited for violations of s. 569.11 and sanctions imposed as a result of citation.

Section 11. Section 569.31, Florida Statutes, is created to read:

569.31 Definitions.—As used in this part, the term:

(1) "A person under the age of 18" does not include a person under 18 years of age who:

(a) Has had his or her disability of nonage removed under chapter 743;

(b) Is in the military reserve or on active duty in the Armed Forces of the United States;

(c) Is otherwise emancipated by a court of competent jurisdiction and released from parental care and responsibility; or

(d) Is acting in his or her scope of lawful employment.

(2) "Dealer" is synonymous with the term "retail nicotine products dealer."

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

(4) "Nicotine dispensing device" means any product that employs an electronic, chemical, or mechanical means to produce vapor or aerosol from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.

(5) "Nicotine product" means any product that contains nicotine, including liquid nicotine, which is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means. The term also includes any nicotine dispensing device. The term does not include a:

1. Tobacco product, as defined in s. 569.002;

2. Product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act; or

3. Product that contains incidental nicotine.

(6) "Permit" is synonymous with the term "retail nicotine products dealer permit."

(5) "Retail nicotine products dealer" means the holder of a retail nicotine products dealer permit.

(6) "Retail nicotine products dealer permit" means a permit issued by the division under s. 569.32.

(7) "Self-service merchandising" means the open display of nicotine products, whether packaged or otherwise, for direct retail customer access and handling before purchase without the intervention or assistance of the retailer or the retailer's owner, employee, or agent. An open display of such products and

Section 12. Section 569.32, Florida Statutes, is created to read:

569.32 Retail nicotine products dealer permits; application; qualifications; renewal; duplicates.—

(1)(a) Each person, firm, association, or corporation that seeks to deal, at retail, in nicotine products within the state, or to allow a nicotine products vending machine to be located on its premises in the state, must obtain a retail nicotine products dealer permit for each place of business or its premises at which nicotine products are sold. Each dealer owning, leasing, furnishing, or operating vending machines through which nicotine products are sold must obtain a permit for each machine and shall post the permit in a conspicuous

place on or near the machine; however, if the dealer has more than one vending machine at a single location or if nicotine products are sold both over the counter and through a vending machine at a single location, the dealer need obtain only one permit for that location.

(b) Application for a permit must be made on a form furnished by the division and must set forth the name under which the applicant transacts or intends to transact business, the address of the location of the applicant's place of business within the state, and any other information the division requires. If the applicant has or intends to have more than one place of business dealing in nicotine products within the state, a separate application must be made for each place of business. If the applicant is a firm or an association, the application must set forth the names and addresses of the persons constituting the firm or association; if the applicant is a corporation, the application must set forth the names and addresses of the principal officers of the corporation. The application must also set forth any other information prescribed by the division for the purpose of identifying the applicant firm, association, or corporation. The application must be signed and verified by oath or affirmation by the owner, if a sole proprietor, or, if the owner is a firm, association, or partnership, by the members or partners thereof, or, if the owner is a corporation, by an executive officer of the

corporation or by any person authorized by the corporation to sign the application, together with the written evidence of this authority.

(2)(a) Permits may be issued only to persons who are 18 years of age or older or to corporations the officers of which are 18 years of age or older.

(b) The division may refuse to issue a permit to any person, firm, association, or corporation the permit of which has been revoked, to any corporation an officer of which has had his or her permit revoked, or to any person who is or has been an officer of a corporation the permit of which has been revoked. Any permit issued to a firm, association, or corporation prohibited from obtaining a permit under this chapter shall be revoked by the division.

(3) Upon approval of an application for a permit, the division shall issue to the applicant a permit for the place of business or premises specified in the application. A permit is not assignable and is valid only for the person in whose name the permit is issued and for the place designated in the permit. The permit shall be conspicuously displayed at all times at the place for which issued.

Section 13. Section 569.33 Florida Statutes, is created to read:

569.33 Consent to inspection and search without warrant.—An applicant for a retail nicotine products dealer permit, by

accepting the permit when issued, agrees that the place or premises covered by the permit is subject to inspection and search without a search warrant by the division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with this part.

Section 14. Section 569.34, Florida Statutes, is created to read:

569.34 Operating without a retail nicotine products dealer permit; penalty.—

(1) It is unlawful for a person, firm, association, or corporation to deal, at retail, in nicotine products, in any manner, or to allow a nicotine products vending machine to be located on its premises, without having a retail nicotine product dealer permit as required by s. 569.32. A person who violates this section commits a noncriminal violation, punishable by a fine of not more than $500.

(2) A retail tobacco products dealer, as defined in s. 569.002, is not required to have a separate or additional retail nicotine products dealer permit to deal, at retail, nicotine products in the state, or allow a nicotine products vending machine to be located on its premises in the state. Any retail tobacco products dealer that deals, at retail, in nicotine products or allows a tobacco products vending machine to be located on its premises in the state, is subject to, and must be in compliance with, this part.

(3) A person who violates this section shall be cited for such infraction and shall be cited to appear before the county court. The citation may indicate the time, date, and location of the scheduled hearing and must indicate that the penalty for a noncriminal violation is a fine of not more than $500.

(a) A person cited for an infraction under this section may:

1. Post a $500 bond; or

2. Sign and accept the citation indicating a promise to appear.

(b) A person cited for violating this section may:

1. Pay the fine, either by mail or in person, within 10 days after receiving the citation; or

2. If the person has posted bond, forfeit the bond by not appearing at the scheduled hearing.

(c) If the person pays the fine or forfeits bond, the person is deemed to have admitted violating this section and to have waived the right to a hearing on the issue of commission of the violation. Such admission may not be used as evidence in any other proceeding.

(d) The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven beyond a reasonable doubt, the court may impose a civil penalty in an amount that may not exceed $500.

(e) If a person is found by the court to have committed the infraction, that person may appeal that finding to the circuit court.

Section 15. Section 569.35, Florida Statutes, is created to read:

569.35 Retail nicotine product dealers; administrative penalties.— The division may suspend or revoke the permit of a dealer, including the retail tobacco products dealer permit of a retail tobacco products dealer as defined in 569.002, upon sufficient cause appearing of the violation of any of the provisions of this part, by a dealer or by a dealer's agent or employee. The division may also assess and accept an administrative fine of up to $1,000 against a dealer for each violation. The division shall deposit all fines collected into the General Revenue Fund as collected. An order imposing an administrative fine becomes effective 15 days after the date of the order. The division may suspend the imposition of a penalty against a dealer, conditioned upon the dealer's compliance with terms the division considers appropriate.

Section 16. Section 569.37, Florida Statutes, is created to read:

569.37 Sale or delivery of nicotine products; restrictions.—

(1) In order to prevent persons under 18 years of age from purchasing or receiving nicotine products, the sale or delivery

of nicotine products is prohibited, except:

(a) When under the direct control or line of sight of the dealer or the dealer's agent or employee; or

(b) Sales from a vending machine are prohibited under paragraph (a) and are only permissible from a machine that is equipped with an operational lockout device that is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine by triggering the lockout device to allow the dispensing of one nicotine product. The lockout device must include a mechanism to prevent the machine from functioning if the power source for the lockout device fails or if the lockout device is disabled, and a mechanism to ensure that only one nicotine product is dispensed at a time.

(2)(a) A dealer that sells nicotine products may not sell, permit to be sold, offer for sale, or display for sale such products or devices by means of self-service merchandising.

(b) A dealer that sells nicotine products may not place such products or devices in an open display unit unless the unit is located in an area that is inaccessible to customers.

(3) The provisions of subsections (1) and (2) shall not apply to an establishment that prohibits persons under 18 years of age on the licensed premises.

(4) A dealer or a dealer's agent or employee may require proof of age of a purchaser of a nicotine product before selling

the product or device to that person.

Section 17. Section 569.38, Florida Statutes, is created to read:

569.38 Gift of sample nicotine products and nicotine dispensing devices.—The gift of sample nicotine products to persons under 18 years of age by an entity permitted under this chapter, or by an employee of such entity, is prohibited and is punishable as provided in s. 569.41.

Section 18. Section 569.381, Florida Statutes, is created to read:

569.381 Responsible retail nicotine products dealers; qualifications; mitigation of disciplinary penalties; diligent management and supervision; presumption.—

(1) It is the intent of the Legislature to prevent the sale of nicotine products to persons under 18 years of age and to encourage retail nicotine products dealers to comply with responsible practices in accordance with this section.

(2) To qualify as a responsible retail nicotine products dealer, the dealer must establish and implement procedures designed to ensure that the dealer's employees comply with this part. The dealer must provide a training program for the dealer's employees which addresses the use and sale of nicotine products and which includes at least the following topics:

(a) Laws covering the sale of nicotine products.

(b) Methods of recognizing and handling customers under 18

years of age.

(c) Procedures for proper examination of identification cards in order to verify that customers are not under 18 years of age.

(d) The use of the age audit identification function on electronic point-of-sale equipment, where available.

(3) In determining penalties under s. 569.35, the division may mitigate penalties imposed against a dealer because of an employee's illegal sale of a nicotine product to persons under 18 years of age if the following conditions are met:

(a) The dealer is qualified as a responsible dealer under this section.

(b) The dealer provided the training program required under subsection (2) to that employee before the illegal sale occurred.

(c) The dealer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation.

(d) If the sale was made through a vending machine, the machine was equipped with an operational lock-out device.

(4) The division shall develop and make available a model nicotine products training program designed to ensure adherence to this chapter by dealers and their employees which, if followed, will qualify dealers as responsible dealers.

(5) Dealers shall exercise diligence in the management and

supervision of their premises and in the supervision and training of their employees, agents, or servants. In proceedings to impose penalties under s. 569.35, proof that employees, agents, or servants of the dealer, while in the scope of their employment, committed at least three violations of s. 569.41 during a 180-day period shall be prima facie evidence of a lack of due diligence by the dealer in the management and supervision of his or her premises and in the supervision and training of employees, agents, officers, or servants.

(6) The division may consider qualification as a responsible retail nicotine products dealer under this section as evidence that the dealer properly exercised the diligence required under this section.

Section 19. Section 569.39, Florida Statutes, is created to read:

569.39 Rulemaking authority.—The division shall adopt any rules necessary to administer and enforce the provisions of this part.

Section 20. Section 569.41, Florida Statutes, is created to read:

569.41 Selling, delivering, bartering, furnishing, or giving nicotine products to persons under 18 years of age; criminal penalties; defense.—

(1) It is unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, to persons under 18 years of age,

any nicotine product.

(2) Any person who violates subsection (1) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. However, any person who violates subsection (1) for a second or subsequent time within 1 year after the first violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) Any person charged with a violation of subsection (1) has a complete defense if, at the time the nicotine product was sold, delivered, bartered, furnished, or given:

(a) The buyer or recipient falsely evidenced that she or he was 18 years of age or older;

(b) The appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be 18 years of age or older; and

(c) Such person carefully checked a driver license or an identification card issued by the state or another state of the United States, a passport, or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 18 years of age or older.

Section 21. Section 569.42, Florida Statutes, is created to read:

569.42 Possession, misrepresenting age or military service

to purchase, and purchase of nicotine products by persons under 18 years of age; penalties; jurisdiction; disposition of fines.—

(1) It is unlawful for a person 18 years of age to knowingly possess any nicotine product. A person under 18 years of age who violates this subsection commits a noncriminal violation as provided in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a $25 fine. In addition, the person must attend a school-approved anti-tobacco and anti-nicotine program, if locally available; or

(b) For a second or subsequent violation within 12 weeks after the first violation, a $25 fine.

Any second or subsequent violation not within the 12-week period after the first violation is punishable as provided for a first violation.

(2) It is unlawful for a person under 18 years of age to misrepresent his or her age or military service for the purpose of inducing a dealer or an agent or employee of the dealer to sell, give, barter, furnish, or deliver any nicotine product, or to purchase, or attempt to purchase, any nicotine product from a person or a vending machine. A person under 18 years of age who violates this subsection commits a noncriminal violation as provided in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service

or, instead of community service, a $25 fine and, in addition, the person must attend a school-approved anti-tobacco and anti-nicotine program, if available; or

(b) For a second or subsequent violation within 12 weeks after the first violation, a $25 fine.

Any second or subsequent violation not within the 12-week period after the first violation is punishable as provided for a first violation.

(3) A person under 18 years of age cited for committing a noncriminal violation under this section must sign and accept a civil citation indicating a promise to appear before the county court or comply with the requirement for paying the fine and must attend a school-approved anti-tobacco and anti-nicotine program, if locally available. If a fine is assessed for a violation of this section, the fine must be paid within 30 days after the date of the citation or, if a court appearance is mandatory, within 30 days after the date of the hearing.

(4) A person charged with a noncriminal violation under this section must appear before the county court or comply with the requirement for paying the fine. The court, after a hearing, shall make a determination as to whether the noncriminal violation was committed. If the court finds the violation was committed, it shall impose an appropriate penalty as specified in subsection (1) or subsection (2). A person who participates

in community service shall be considered an employee of the state for the purpose of chapter 440, for the duration of such service.

(5)(a) If a person under 18 years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to complete community service, pay the fine as required by paragraph (1)(a) or paragraph (2)(a), or attend a school-approved anti-tobacco and anti-nicotine program, if locally available, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 30 consecutive days.

(b) If a person under 18 years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to pay the applicable fine as required by paragraph (1)(b) or paragraph (2)(b), the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 45 consecutive days.

(6) Eighty percent of all civil penalties received by a county court under this section shall be remitted by the clerk of the court to the Department of Revenue for transfer to the Department of Education to provide for teacher training and for research and evaluation to reduce and prevent the use of nicotine products by children. The remaining 20 percent of civil

penalties received by a county court under this section shall remain with the clerk of the county court to cover administrative costs.

Section 22. Section 569.43, Florida Statutes, is created to read:

569.43 Posting a sign stating that the sale of nicotine products to persons under 18 years of age is unlawful; enforcement; penalty.—

(1) A dealer that sells nicotine products shall post a clear and conspicuous sign in each place of business at which such products are sold which substantially states the following:

THE SALE OF NICOTINE PRODUCTS TO PERSONS UNDER 18 YEARS OF AGE IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

(2) The division shall make available to dealers of nicotine products signs that meet the requirements of subsection (1).

(3) Any dealer that sells nicotine products shall provide at the checkout counter in a location clearly visible to the dealer or the dealer's agent or employee instructional material in a calendar format or similar format to assist in determining whether a person is of legal age to purchase nicotine products. This point of sale material must contain substantially the following language:

IF YOU WERE NOT BORN BEFORE THIS DATE

(insert date and applicable year)

YOU CANNOT BUY TOBACCO PRODUCTS OR NICOTINE PRODUCTS.

Upon approval by the division, in lieu of a calendar a dealer may use card readers, scanners, or other electronic or automated systems that can verify whether a person is of legal age to purchase nicotine products. Failure to comply with the provisions contained in this subsection shall result in imposition of administrative penalties as provided in s. 569.35.

(4) The division, through its agents and inspectors, shall enforce this section.

(5) A person who fails to comply with subsection (1) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 23. Section 569.44, Florida Statutes, is created to read:

569.44 Annual report.—The division shall report annually with written findings to the Legislature and the Governor by December 31, on the progress of implementing the enforcement provisions of this part. This must include, but is not limited to:

(1) The number and results of compliance visits.

(2) The number of violations for failure of a retailer to

hold a valid permit.

(3) The number of violations for selling nicotine products to persons under 18 years of age, and the results of administrative hearings on the above and related issues.

(4) The number of persons under 18 years of age cited for violations of s. 569.42 and sanctions imposed as a result of citation.

Section 24. Section 569.45, Florida Statutes, is created to read:

569.45 Mail order, Internet, and remote sales of nicotine products; age verification.—

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

(a) "Adult" means an individual who is at least of the legal minimum purchase age for nicotine products.

(b) "Consumer" means a person in the state who comes into possession of any nicotine product who, at the time of possession, is not intending to sell or distribute the nicotine product, or is a retailer.

(c) "Delivery sale" means any sale of nicotine products to a consumer in the state for which:

1. The consumer submits the order for the sale by telephonic or other voice transmission, mail, delivery service, or the Internet or other online service; or

2. The nicotine products are delivered by use of mail or a delivery service.

(d) "Delivery service" means any person engaged in the commercial delivery of letters, packages, or other containers.

(e) "Legal minimum purchase age" means the minimum age at which an individual may legally purchase nicotine products in the state.

(f) "Retailer" means any person who is required to obtain a retail nicotine products dealer permit or a retail tobacco products dealer permit, as defined in s. 569.002.

(g) "Shipping container" means a container in which nicotine products are shipped in connection with a delivery sale.

(h) "Shipping document" means a bill of lading, airbill, United States Postal Service form, or any other document used to verify the undertaking by a delivery service to deliver letters, packages, or other containers.

(2)(a) A sale of nicotine products constituting a delivery sale under paragraph (1)(c) is a delivery sale regardless of whether the person accepting the order for the delivery sale is located inside or outside the state.

(b) A retailer must obtain a retail nicotine products dealer permit or a retail tobacco products dealer permit, as defined in 569.002, from the division under the requirements of this chapter before accepting an order for a delivery sale.

(c) A person may not make a delivery sale of nicotine products to any individual who is not an adult.

(d) Each person accepting an order for a delivery sale must comply with each of the following:

1. The age verification requirements set forth in subsection (3).

2. The disclosure requirements set forth in subsection (4).

3. The shipping requirements set forth in subsection (5).

(3) A person may not mail, ship, or otherwise deliver nicotine products in connection with an order for a delivery sale unless, before the first delivery to the consumer, the person accepting the order for the delivery sale:

(a) Obtains from the person submitting the order a certification that includes:

1. Reliable confirmation that the person is an adult; and

2. A statement signed by the person in writing and under penalty of perjury which:

a. Certifies the address and date of birth of the person; and

b. Confirms that the person wants to receive delivery sales from a nicotine products company and understands that, under the laws of the state, the following actions are illegal:

(I) Signing another person's name to the certification;

(II) Selling nicotine products to individuals who are not adults; and

(III) Purchasing nicotine products, if the person making

the purchase is not an adult.

(b) Makes a good faith effort to verify the information contained in the certification provided by the individual under paragraph (a) against a commercially available database that may be reasonably relied upon for accurate age information or obtains a photocopy or other image of a valid government-issued identification card stating the date of birth or age of the individual.

(c) Provides to the individual, via electronic mail or other means, a notice meeting the requirements of subsection (4).

(d) If an order for nicotine products is made pursuant to an advertisement on the Internet, receives payment for the delivery sale from the consumer by a credit or debit card issued in the name of the consumer, or by personal or company check of the consumer.

(e) The person accepting the order for delivery sale shall submit, to each credit card acquiring company with which the person has credit card sales, identification information in an appropriate form and format so that the words "nicotine product" may be printed in the purchaser's credit card statement when a purchase of a nicotine product is made by credit card payment.

(f) Makes a telephone call after 5 p.m. to the purchaser confirming the order before shipping the nicotine products. The telephone call may be a person-to-person call or a recorded

message. The person accepting the order for delivery sale is not required to speak directly with a person and may leave a message on an answering machine or through voice mail.

In addition to the requirements of this subsection, a person accepting an order for a delivery sale may request that a consumer provide an electronic mail address.

(4) The notice described in paragraph (3)(c) must include prominent and clearly legible statements that sales of nicotine products are:

(a) Illegal if made to individuals who are not adults.

(b) Restricted to those individuals who provide verifiable proof of age in accordance with subsection (3).

(5) Each person who mails, ships, or otherwise delivers nicotine products in connection with an order for a delivery sale must:

(a) Include as part of the shipping documents, in a clear and conspicuous manner, the following statement: "Nicotine Products: Florida law prohibits shipping to individuals under 18 years of age."

(b) Use a method of mailing, shipping, or delivery which obligates the delivery service to require:

1. The individual submitting the order for the delivery sale or another adult who resides at the individual's address to sign his or her name to accept delivery of the shipping

container. Proof of the legal minimum purchase age of the individual accepting delivery is required only if the individual appears to be under 27 years of age.

2. Proof that the individual is either the addressee or the adult designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.

(c) Provide to the delivery service, if such service is used, evidence of full compliance with this subsection.

If the person accepting a purchase order for a delivery sale delivers the nicotine products without using a delivery service, the person must comply with all of the requirements of this section which apply to a delivery service. Any failure to comply with a requirement of this section constitutes a violation thereof.

(6) This section does not apply to delivery sales of nicotine products to a retail nicotine products dealer or a retail tobacco products dealer, as defined in s. 569.002.

(7) An adult 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.

(8) The Attorney General, the Attorney General's designee, or a state attorney may bring an action in the appropriate court

in the state to prevent or restrain violations of this section by any person.

Section 25. Subsection (1) of section 768.73, Florida Statutes, is amended to read:

768.73 Punitive damages; limitation.—

(1)(a) Except as provided in paragraphs (b), ~~and~~ (c), and (d), an award of punitive damages may not exceed the greater of:

1. Three times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or

2. The sum of $500,000.

(b) Where the fact finder determines that the wrongful conduct proven under this section was motivated solely by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was actually known by the managing agent, director, officer, or other person responsible for making policy decisions on behalf of the defendant, it may award an amount of punitive damages not to exceed the greater of:

1. Four times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or

2. The sum of $2 million.

(c) Where the fact finder determines that the wrongful

conduct proven under this section was committed by a manufacturer of a vapor-generating electronic device as defined in s. 386.203, or a manufacturer of a nicotine product or nicotine dispensing device as defined in s. 569.31, it may award against such manufacturer an amount of punitive damages not to exceed the greater of:

1. Four times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or

2. The sum of $2 million.

(d) ~~(c)~~ Where the fact finder determines that at the time of injury the defendant had a specific intent to harm the claimant and determines that the defendant's conduct did in fact harm the claimant, there shall be no cap on punitive damages.

(e) ~~(d)~~ This subsection is not intended to prohibit an appropriate court from exercising its jurisdiction under s. 768.74 in determining the reasonableness of an award of punitive damages that is less than three times the amount of compensatory damages.

Section 26. Section 877.112, Florida Statutes, is repealed.

Section 27. This act shall take effect October 1, 2020.

PCS for
CS/HB 1139

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 1139 Economic Development
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Willson MW	Hamon K. W.H.

SUMMARY ANALYSIS

The Regional Rural Development Grants Program is a state matching grant program established to provide funding to build the professional capacity of regional economic development organizations. The Rural Infrastructure Fund assists units of local government with the planning, preparing, and financing of infrastructure projects that encourage job creation and capital investment. Both programs are administered by the Department of Economic Opportunity (DEO).

The bill amends the Regional Rural Development Grants Program to clarify how regional economic development organizations may build their professional capacity and to expand grant use for technical assistance. It also defines a "regional economic development organization" to mean an economic development organization located in or contracted to serve a rural area of opportunity (RAO).

The bill increases the total annual grant award available to the three regional economic development organizations recognized by DEO as serving an entire RAO, decreases the annual grant award available to other organizations located in or contracted to serve a RAO, and eliminates grant eligibility for organizations representing rural counties or communities that are not located in a RAO. The bill reduces the percentage of grant funds that must be matched with non-state funds, from 100% to 25% of the state's contribution.

The bill amends the Rural Infrastructure Fund by increasing the percentage of total infrastructure costs that may be funded by a grant award, expanding eligible projects and uses to include broadband internet service, and requiring a review of the grant program and procedures by September 1, 2021.

CareerSource is a not-for-profit corporation that serves as Florida's state-level workforce investment board. CareerSource is responsible for developing and implementing a 5-year plan for the statewide workforce system in collaboration with DEO, the local workforce development boards, and one-stop career centers to ensure that workforce services provided are consistent with state and local plans.

The bill replaces the board of directors for CareerSource with a "state board", and requires CareerSource to support and work at the direction of the state board, in consultation with DEO. The bill reassigns many of CareerSource's powers, duties and policy-making responsibilities to DEO or the state board, or a combination of the two. The bill also makes a number of conforming changes to reflect this adjustment in the relationship between DEO, CareerSource Florida, and the state board.

The Florida Development Finance Corporation (FDFC) is a statewide development financing authority. The FDFC operates as a conduit bond issuer that issues bonds on behalf of borrowers. FDFC is governed by a five-member board of directors who are appointed by the Governor and confirmed by the Senate for four-year terms.

The bill requires DEO to establish annual performance standards and develop a detailed report of the performance of FDFC each year. The bill increases the membership of the FDFC board from five to seven, adding the executive director of DEO (to serve as chair of the board) and the director of the Division of Bond Finance. The bill provides that s. 288.9604, F.S., the statute creating and authorizing the FDFC, stands repealed October 1, 2022, and every fourth year thereafter, unless reviewed and saved from repeal by the Legislature.

The bill has no fiscal impact on state funds. The bill may have a positive fiscal impact on local governments and the private sector. *See* Fiscal Comments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Regional Economic Development Organizations

Three regional economic development organizations operate in Florida. Each coincides respectively with one of the state's three Rural Areas of Opportunity (RAO). A RAO is a rural community, or a region comprised of rural communities, which has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster, or that presents a unique economic development opportunity of regional impact.[1] The Governor may designate up to three RAOs, establishing each region as a priority assignment for Rural Economic Development Initiative agencies. The Governor can waive the criteria, requirements, or similar provisions of any economic development incentive for projects in a RAO.[2]

The three designated RAOs are:[3]

- Northwest RAO: Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington counties, and the City of Freeport in Walton County.
- South Central RAO: DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, and the cities of Pahokee, Belle Glade, and South Bay (Palm Beach County), and Immokalee (Collier County).
- North Central RAO: Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union counties.

Coinciding with the RAOs are three regional economic development organizations which are public/private 501(c)(6) organizations that provide economic development support to the local governments represented in the RAOs. Opportunity Florida serves the Northwest RAO; Florida's Heartland Regional Economic Development Initiative, Inc. serves the South Central RAO; and North Florida Economic Development Partnership serves the North Central RAO.

Regional Rural Development Grants Program

The Regional Rural Development Grants Program is a state matching grant program established to provide funding to build the professional capacity of regional economic development organizations.[4] Additionally, grants may be used by an economic development organization to provide technical assistance to businesses within the rural counties and communities that it serves.[5]

Applications submitted to DEO must provide proof:

- of official commitments of support from each local government represented by the regional organization;
- that each local government has made a financial or in-kind commitment to the regional organization;
- that the private sector has made financial or in-kind commitments to the regional organization;
- that the regional organization is in existence and actively involved in economic development activities serving the region; and

[1] S. 288.0656(2)(d), F.S.
[2] S. 288.0656(7)(a), F.S.
[3] Department of Economic Opportunity, *Rural Areas of Opportunity*, http://www.floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity (last visited Jan. 27, 2020).
[4] S. 288.018, F.S.
[5] S. 288.018(1), F.S.

- the manner in which the regional organization coordinates its efforts with those of other local and state organizations.[6]

An organization may receive up to $50,000 a year or $150,000 if located in a RAO.[7] Grants must be matched by an equivalent amount of non-state resources.[8] DEO is authorized to spend up to $750,000 each fiscal year from funds appropriated to the Rural Community Development Revolving Loan Fund to carry out this program.[9]

Rural Infrastructure Fund

The Rural Infrastructure Fund is a grant program created to facilitate the planning, preparing, and financing of infrastructure projects in rural communities.[10] The program provides access to federal and state infrastructure funding programs, including, but not limited to, those offered by the U.S. Departments of Agriculture, and Commerce.[11] The program funds total infrastructure project grants, infrastructure feasibility grants, and preclearance review grants.

DEO may award grants for up to 30 percent of the total infrastructure project cost. If an application is for a catalyst site,[12] up to 40 percent of the total infrastructure project cost may be awarded.[13] Projects must be related to specific job-creation or job-retention opportunities. Additionally, projects may include improving any inadequate infrastructure that has resulted in regulatory action that prohibits economic or community growth or reducing the costs to community users of proposed infrastructure improvements that exceed such costs in comparable communities.[14]

Eligible uses of funds include improvements to public infrastructure for industrial or commercial sites and upgrades to or development of public tourism infrastructure.[15] Infrastructure can include public or public-private partnership facilities, like storm water systems, telecommunication, broadband, roads, and nature-based tourism.[16]

The infrastructure feasibility grant provides awards of up to 30 percent of the total project costs for infrastructure feasibility studies, design and engineering activities, or other infrastructure planning and preparation activities.[17] Maximum awards are dependent on the number of jobs that a business commits to create and may be up to $300,000 if the project is located in a RAO. The total project participation grant may be used in conjunction with the infrastructure feasibility grant.

The preclearance review grant provides awards to help a local government participate in expedited permitting processes through technical assistance in preparing permit applications and local comprehensive plan amendments.[18] Grants may be used for surveys, feasibility studies, and other activities related to the identification and preclearance review of land use modifications. Grants are

---

[6] S. 288.018(2), F.S.
[7] S. 288.018(1), F.S.
[8] *Id.*
[9] S. 288.018(4), F.S.
[10] *See* s. 288.0655, F.S.
[11] S. 288.0655(2)(b), F.S.
[12] S. 288.0656(2)(b), F.S., defines "catalyst site" as a parcel or parcels of land within a rural area of opportunity that has been prioritized as a geographic site for economic development through partnerships with state, regional, and local organizations. The site must be reviewed by the rural economic development initiative and approved by DEO for the purposes of locating a catalyst project.
[13] S. 288.0655(2)(b), F.S.
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] S. 288.0655(2)(c), F.S.
[18] S. 288.0655(2)(e), F.S. Expedited permitting is pursuant to s. 403.9739(18), F.S.

limited to $75,000 and must be matched 50 percent with local funds. However, projects in a RAO may receive up to $300,000 and must be matched 33 percent with local funds.[19]

Grant applications are reviewed and certified by DEO in consultation with: Enterprise Florida, Inc., VISIT Florida, the Department of Environmental Protection, and the Florida Fish and Wildlife Conservation Commission. Reviews include an evaluation of the economic benefit of the projects and their long-term viability.[20]

Effect of Proposed Changes

Regional Rural Development Grants Program

The bill amends the Regional Rural Development Grants Program to clarify how regional economic development organizations may build their professional capacity, expand grant use for technical assistance, increase the annual grant awards for regional economic development organizations, and reduce match requirements. It also defines a "regional economic development organization" to mean an economic development organization that is located in, or contracted to serve, a RAO.

One authorized use of the matching grant program is to build the professional capacity of regional economic development organizations. The bill specifies that efforts to build professional capacity hiring professional staff to develop, deliver, and provide needed economic development professional services, including technical assistance, education and leadership development, marketing, and project recruitment.

Regional economic development organizations may currently use grant funds to provide technical assistance to businesses within the rural counties and communities it serves. The bill expands this by allowing technical assistance to local governments, local economic development organizations, and existing and prospective businesses.

The bill increases the maximum annual grant award from $150,000 to $250,000 for any three regional economic development organizations recognized by DEO as serving an entire region of a RAO. These organizations are: Opportunity Florida, Florida's Heartland Regional Economic Development Initiative, Inc., and North Florida Economic Development Partnership.

For organizations located in or contracted to serve a RAO, but not recognized as serving the entire RAO, the bill reduces the maximum annual grant amount from $150,000 to $50,000.

Under the bill, any organizations that represent rural counties and communities, but are not located in or serve a RAO, would not meet the definition of "regional economic development organizations" and therefore would no longer be eligible to receive any grant funds.

The bill reduces the required match for a grant under this program to a 25% match of the state contribution, instead of the current one-to-one match requirement.

Rural Infrastructure Fund

The bill amends the Rural Infrastructure Fund by revising grant award percentages, expanding eligible projects and uses to include broadband internet service, and requiring a review of the grant program and procedures by a specific date.

Currently, grants awarded under the Rural Infrastructure Fund program are limited to 30 percent of the total infrastructure project cost, or up to 40 percent if funding is for a catalyst site. The bill increases the

[19] S. 288.0655(2)(e), F.S.
[20] S. 288.0655(3), F.S.

percentage for all grants awarded, including catalyst sites, to 50 percent of the total infrastructure project cost.

The bill specifies that eligible projects may include improving certain inadequate infrastructure that reduces costs to community users of proposed infrastructure improvements that exceeds costs in comparable communities, and improving access to and the availability of broadband Internet service. Further, eligible uses are expanded to include improvements to broadband Internet service and access in unserved or underserved rural communities. These projects must be conducted through a partnership or partnerships with one or more dealers of communications services[21], established by a publicly noticed and competitive selected process.

The bill requires DEO to reevaluate the Rural Infrastructure Fund application guidelines and criteria by September 1, 2021. The review is to be done in consultation with Enterprise Florida, Inc., VISIT Florida, the Department of Environmental Protection, and the Florida Fish and Wildlife Conservation Commission and must include specific factors such as:

- the project's potential for enhanced job creation or increased capital investment;
- the demonstration and level of local public and private commitment;
- whether the project is located in a community development corporation service area or in an urban high-crime area;
- the unemployment rate of the county the project would be located; and
- the poverty rate of the community.

Contracts or Agreements - Regional Rural Development Grants Program and Rural Infrastructure Fund

The bill amends both the Regional Rural Development Grant Program and the Rural Infrastructure Fund to include the same requirements for contracts or agreements that expend grant funds.

A contract or agreement that involves the expenditure of grant funds must include:

- The purpose of the contract or agreement.
- Specific performance standards and responsibilities for each entity under the agreement.
- A detailed project or contract budget, if applicable.
- The value of any services provided.
- The projected travel expenses for employees and board members, if applicable.

These required contract provisions apply to any contract or agreement that expends grant funds, including any contract or agreement between another entity and a regional economic development organization, a unit of local government, or an economic development organization substantially underwritten by a unit of local government.

All contracts and agreements are required to be posted on the contracting regional economic development organization's website at least 14 days before execution. However, specific contracts or agreements that exceed $35,000 must be posted in "plain-language." This applies to a contract or agreement with a private entity, a municipality, or a vendor of services, supplies, or programs, including marketing, or for the purchase or lease or use of lands, facilities, or properties.

Additionally, the bill repeals obsolete language relating to enterprise zones.

Present Situation

Florida's Workforce Development System

[21] S. 202.11(2), F.S., defines a "dealer" as a person registered with the Florida Department of Revenue as a provider of communications services in this state.

The federal Workforce Investment Act of 1998 (WIA) was passed by Congress in an effort to improve the quality of the nation's workforce through implementation of a comprehensive workforce investment system.[22] WIA required each state to establish an investment board at the state level and to also establish workforce investment boards to represent local service areas.[23] WIA also called for the delivery of workforce development services through a system of "one-stop" centers in local communities.[24] Some key principles of WIA were to better integrate workforce services, empower individuals, provide universal access to participants, increase accountability, and improve youth programs.[25]

In response to WIA, Florida established a workforce development system under the Workforce Investment Act of 2000.[26] The act aimed to better connect the state's economic development strategies with its workforce development system and to implement the principles of the federal WIA.[27]

Federal Workforce Innovation and Opportunity Act of 2014

In 2014, Congress passed the Workforce Innovation and Opportunity Act (WIOA), which superseded the Workforce Investment Act of 1998.[28] WIOA requires each state to develop a single, unified plan for aligning workforce services through the identification and evaluation of core workforce programs.[29] In general, WIOA maintains the one-stop framework of WIA, and encompasses provisions aimed at streamlining services, easing reporting requirements, and reducing administrative barriers.[30] WIOA officially became effective on July 1, 2015, the first full program year after enactment.

Core Programs

WIOA identifies four core programs that must coordinate and complement each other in a manner that ensures job seekers have access to needed resources.[31] The core programs are:

- Adult, Dislocated Worker and Youth Programs;
- Employment Services under the Wagner-Peyser Employment Act;
- Vocational Rehabilitation Services; and
- Adult Education and Literacy Activities.

Performance Measures

In an effort to promote transparency and accountability, WIOA created a single set of common measures for the evaluation of core programs.[32] WIOA requires performance reports to be provided at the state, local, and trainer provider levels. The performance measures that now apply across all core programs are:

- The percentage of participants in unsubsidized employment during second quarter after exit;
- The percentage of participants in unsubsidized employment during fourth quarter after exit;
- The median earnings of participants during second quarter after exit;
- The percentage of participants who obtain a postsecondary credential or secondary school diploma within 1 year after exit;
- The achievement of measureable skill gains toward credentials or employment; and

---

[22] Workforce Investment Act of 1998, 29 U.S.C. § 2801 (1998), *repealed by* Workforce Innovation and Opportunity Act, Pub. L. No. 113-128, H.R. 803, 113th Cong. (July 22, 2014)(codified at 29 U.S.C. § 3101, et seq.).
[23] *See* 29 U.S.C. § 2821 and 29 U.S.C. § 2832 (1998).
[24] *See* 29 U.S.C. § 2841 (1998).
[25] *See* 29 U.S.C. § 2811 (1998).
[26] Ch. 2000-165, Laws of Fla.
[27] *See* s. 445.003, F.S.
[28] Workforce Innovation and Opportunity Act, 29 U.S.C. § 3101 et seq. (2014).
[29] *See* 29 U.S.C. § 3112(a).
[30] *See* 29 U.S.C. § 3111.
[31] *See* 29 U.S.C. § 3102(13).
[32] *See* 29 U.S.C. § 3141.

- The effectiveness in serving employers.

State Workforce Development Plan

Using the common performance measures for core programs, WIOA requires each state to develop and submit a unified state plan based on a 4-year strategy for workforce development.[33] The state plan must describe an overall strategy for the core programs and how the strategy will meet needs for workers, job seekers, and employers.[34] WIOA also provides an option for states to submit a combined plan that outlines plans for the core programs along with additional workforce programs.[35]

Regional Planning and Local Workforce Development Boards

WIOA requires states to identify regional planning areas for workforce development strategies.[36] Within each area, a local workforce development board must be established.[37] Each local workforce development board is required to coordinate planning and service delivery strategies within their area.[38] Formulated strategies are then used by the local workforce development board to develop and submit a local plan for the delivery of workforce services.[39]

One-Stop Delivery System

WIOA aims to strengthen the one-stop delivery system by requiring each local area to have at least one comprehensive one-stop delivery provider.[40] A comprehensive one-stop delivery provider supplies physical access to services provided by core partners, as well as other mandatory partners.[41] WIOA mandates that each partner shares in the funding of services and infrastructure costs of the one-stop delivery system.[42]

Florida's Implementation of WIOA

In 2016, Florida made changes to the workforce development system to conform to the new federal guidelines established by WIOA.[43] Under the current workforce development system, DEO, CareerSource, and 24 local workforce development boards act as partners in administering Florida's comprehensive system for the delivery of workforce strategies, services, and programs.

Department of Economic Opportunity (DEO)

DEO serves as Florida's lead workforce agency.[44] DEO is responsible for the fiscal and administrative affairs of the workforce development system.[45] DEO receives and distributes federal funds for employment-related programs to the local workforce development boards.[46] Additionally, under the direction of CareerSource, DEO must annually meet with each local workforce development board to

---

[33] *See* 29 U.S.C. § 3112(a).
[34] *See* 29 U.S.C. § 3112(b).
[35] *See* 29 U.S.C. § 3113.
[36] *See* 29 U.S.C. § 3121.
[37] *Id.*
[38] *See* 29 U.S.C. § 3122.
[39] *See* 29 U.S.C. § 3123.
[40] *See* 29 U.S.C. § 3151.
[41] Other mandatory partners may include programs under the Older Americans Act, Department of Housing and Urban Development, Social Security Act, Perkins Career and Technical Education Act, the Community Service Block Grant Act, and certain adult education and literacy activities. 29 U.S.C. § 3151(b).
[42] *See* 29 U.S.C. § 3151(2).
[43] Ch. 2016-216, Laws of Fla.
[44] Primarily through the Division of Workforce Services. *See* s. 20.60, F.S.
[45] S. 445.009(3)(c), F.S.
[46] *See* s. 445.003, F.S.

review the board's performance and to certify that the board is in compliance with applicable state and federal law.[47]

CareerSource Florida, Inc. (CareerSource)

CareerSource Florida, Inc., a not-for-profit corporation, serves as Florida's state-level workforce development board.[48] CareerSource is responsible for the development of a 4-year plan that is consistent with the requirements of WIOA[49] and collaborates with DEO, the local workforce development boards, and one-stop service providers to ensure workforce services are consistent with state and local plans.[50] CareerSource also provides state-level policy direction, planning, and performance evaluation of the delivery of workforce services.[51]

Local Workforce Development Boards

Twenty-four local workforce development boards deliver Florida's workforce development services through over 100 one-stop service providers.[52] The one-stop service providers give Floridians access to available workforce services, including job placement, career counseling, and skills training.[53] Collectively, the local workforce development boards operate under a charter approved by CareerSource.[54] Each local workforce development board formulates a local budget and oversees the one-stop delivery system within its local area.[55]

Review of CareerSource Tampa Bay and CareerSource Pinellas

In response to a series of articles by the *Tampa Bay Times,*[56] reporting on questionable practices, violations and malfeasance by CareerSource Tampa Bay and CareerSource Pinellas, the US Department of Labor conducted a review of the two local workforce development boards. The review found "fake" job placements, falsified records, and a number of other violations of WIA and WIOA, resulting in over $17 million in questionable costs.[57]

In summary, the US Department of Labor reported that "The improper administration of Federal employment and training funds by the two local workforce boards lead to blatant non-compliance with WIOA requirements. This was further compounded by the lack of fiduciary oversight which fostered an environment vulnerable to mismanagement, waste, fraud, and abuse to occur undetected." [58] The report detailed 17 findings of non-compliance and 3 areas of concern.

Florida Development Finance Corporation

---

[47] *See* s. 445.007(3), F.S.
[48] S. 445.004(5)(a), F.S. Prior to 2014, CareerSource was known as Workforce Florida, Inc.
[49] S. 445.003(2), F.S.
[50] *See* s. 445.004, F.S.
[51] *Id.*
[52] DEO, *CareerSource Florida Network Directory*, http://lcd.floridajobs.org/ (last visited Jan. 17, 2020).
[53] *See* s. 445.009, F.S.
[54] *See* s. 445.004, F.S.
[55] S. 445.007(12), F.S.
[56] Puente and Sampson, *CareerSource: Read the entire investigation,* TAMPA BAY TIMES (Dec. 21, 2018), https://www.tampabay.com/investigations/2018/12/20/careersource-read-the-entire-investigation/ (last visited Jan. 22, 2020).
[57] U.S. Dept. of Labor, *Compliance Review of CareerSource Tampa Bay and CareerSource Pinellas* (May 15, 2019), http://floridajobs.org/docs/default-source/lwdb-resources/program-monitoring-and-reports/2019-usdol-compliance-review-and-deo-response/final-florida-compliance-review---cstb-csp-workforce-areas---16-may-2019.pdf?sfvrsn=2 (last visited Jan. 22, 2020)
[58] *Id.*

The Florida Development Finance Corporation (FDFC) is a statewide development financing authority created by the Legislature in 1993.[59] The original purpose of the FDFC was to foster the growth of manufacturing and other strong job-creating businesses in Florida by brokering private-activity bond financing through inter-local agreements with counties, municipalities, and other local political subdivisions.[60]

The FDFC is governed by a five-member board of directors who are appointed by the Governor and confirmed by the Senate for four-year terms.[61] At least three of the FDFC's directors must be bankers selected from a list of candidates nominated by the Enterprise Florida, Inc. (EFI), and one must be an economic development specialist.[62] The directors are vested with the FDFC's powers, and may take action on behalf of the corporation by a vote of a majority of the directors present at a meeting, unless otherwise required by the FDFC's bylaws.[63] The directors do not receive compensation for their service, but are entitled to necessary expenses, including travel expenses.[64] Lastly, the board is empowered to employ a staff to facilitate the FDFC's functions.[65]

The FDFC must provide an annual report to the Governor, the Legislature, the Auditor General, and the governing body of each public entity with which it has an interlocal agreement, which details:

- The FDFC's activities, operations, and accomplishments, including the specific number of businesses that the FDFC assisted;
- The FDFC's assets, liabilities, income, and operating expenses, including a description of all outstanding revenue bonds; and
- Any findings made by the Auditor General in an audit conducted pursuant to s. 11.45, F.S.

In the 2010 legislative session, the FDFC's responsibilities were broadened to allow it to participate in a federal Department of Energy guaranteed loan program for the development of renewable energy infrastructure projects, and related energy projects that may be eligible under federal law.[66] The FDFC has the power to function within the corporate limits of any public agency including local governments with which it enters into an inter-local agreement.[67]

Pursuant to s. 288.9605, F.S., the FDFC operates as a conduit bond issuer that issues bonds on behalf of borrowers.[68] While the FDFC functions as a mechanism to help borrowers access capital markets, it does not take on responsibility of debt repayment, even when a borrower fails to repay.[69] Conversely, the FDFC does not guarantee the bonds it issues but certain borrowers may opt in to the guaranty fund established by the FDFC pursuant to s. 288.9607, F.S., which guarantees that the bonds issued will be repaid. This guaranty fund consists of premiums paid by businesses that wish to participate in the fund and by a property interest in the infrastructure built with the insured bond's proceeds.[70]

---

[59] Ch. 288, part X, F.S. The corporation was created as a "public body corporate and politic" meaning that it is a legal entity or corporation with a public function. Ch. 93-187, ss. 24-45, Laws of Fla.

[60] S. 288.9602, F.S., generally expresses the legislative intent of the FDFC.

[61] S. 288.9604(2), F.S.

[62] S. 288.9604(2), F.S.

[63] S. 288.9604(3), F.S.

[64] S. 288.9604(3)(a)1., F.S.

[65] S. 288.9604(3)(c), F.S.

[66] Ch. 2010-139, ss. 2-10, Laws of Fla.

[67] S. 288.9605(2)(e), F.S.

[68] "[The] FDFC facilitated the issuance of debt obligations...[t]hese bonds do not constitute a general debt, liability or obligation of FDFC, the state, or any local government." Florida Development Finance Corporation, *Financial Statements for the Year Ended June 30, 2019*, 12 (on file with the Senate Committee on Commerce and Tourism). *See also*, FDFC, *Bond Financing*, https://www.fdfcbonds.com/traditional-bonds (last visited Jan. 21, 2020).

[69] *Id.*

[70] The guaranty may not exceed 5% of the aggregate principal amount of bonds or other indebtedness relating to any capital project. S. 288.9607, F.S.

A majority of the FDFC's financial assistance results from the issuance of municipal bonds, of which it may issue either a taxable revenue bond or a tax-exempt bond.[71] The bonds issued can provide financing for projects that further public purposes and are issued on behalf of a range of organizations.

Tax exempt bonds, known also as Private Activity Bonds, require additional borrower qualification processes, including approval pursuant to the Tax Equity and Fiscal Responsibility Act of 1986 (TEFRA) and allocation from the Florida State Board of Administration's Division of Bond Finance. These bonds are more lucrative financing options because they tend to have a lower interest rate than bank loans or taxable fixed-income securities, and investors benefit by not paying income taxes on interest payments.[72] The FDFC helps its borrowers pursue Private Activity Bonds by assisting them with the additional qualification processes.[73] In the fiscal year ending June 30, 2019, the FDFC facilitated the issuance of $2,885,710,000 in eight new money bonds.

The FDFC also administers the Property Assessed Clean Energy (PACE) program, for which it also may issue bonds and other financial assistance that supports energy conservation.[74] The PACE Program was launched June 29, 2017, and allows a property owner to use equity accrued from the original purchase as the basis for an extension of credit.[75] The PACE Program facilitated $19,353,886 in five taxable residential bonds for the 2018-19 fiscal year.[76]

FDFC's revenues are generated exclusively by fees it charges for the issuance of bonds.[77] The fees assessed are a $1,500 application fee and a tiered issuance fee due at the time of closing (sale of bonds). The tiered issuance fee is based on the face value of the bond issued: bonds valued from $0 - $2.5 million pay 75 basis points (0.75%); bonds valued from $2.5-$32.5 million pay 25 basis points (0.25%); and bonds valued over $32.5 million pay 10 basis points (0.10%).[78]

Division of Bond Finance

The Division of Bond Finance (Division) was created by the Legislature in 1969 to issue bonds on behalf of local governments and agencies of the State of Florida. It assumed the powers of its predecessor, the Florida Development Commission. The Division has been administratively housed within the State Board of Administration since 1992, and operates under the control of a governing board which consists of the Governor and Cabinet.[79] The Division has the power to:

- Sue and be sued;
- Issue any bonds of the state, and to issue bonds on behalf of any state agency;
- Exercise all of the powers relating to the issuance of bonds of any state agency;
- Employ a director of the division to be designated by the Governor;
- Employ or retain persons, firms, or corporations;
- Prepare resolutions and other necessary proceedings relating to the issuance and sale of bonds;
- Sell all state bonds authorized by law;
- Request assistance related to bond issuance from any state agency;

---

[71] FDFC, *About Us*, https://www.fdfcbonds.com/copy-of-about-us (last visited Jan. 21, 2020).

[72] Steven Maguire and Joseph Hughes, Congressional Research Service, *Private Activity Bonds: An Introduction* (July 13, 2018), https://fas.org/sgp/crs/misc/RL31457.pdf (last visited Jan. 21, 2020).

[73] FDFC, *Bond Financing, supra.*

[74] FDFC, *Property Assessed Clean Energy "PACE"- Commercial PACE*, https://www.fdfcbonds.com/pace-commerical (last visited Jan. 21, 2020). *See also*, s. 288.9606(7), F.S.

[75] *Id.*

[76] FDFC, *Financial Statements for the Year Ended June 30, 2019, supra,* at 3.

[77] *Id.* at 6.

[78] FDFC, *Conduit Issuance Policy*, 6-7 (Feb. 26, 2019), https://ca5cce56-0e6c-4988-82a7-74892bf1d07e.filesusr.com/ugd/b1b27e_0b227d45ff2b4e139bb36f2846f70b4b.pdf (last visited Jan. 21, 2020).

[79] Division of Bond Finance, *About the Division of Bond Finance,* https://www.sbafla.com/bond/Home/About-the-Division-of-Bond-Finance (last visited January 21, 2020).

- Exercise the power of eminent domain;
- Remit the proceeds of any bonds sold for any state agency;
- Exercise control over the state's arbitrage compliance program; and
- Undertake investigations.[80]

The Division also determines the allocations for private activity bonds permitted to be issued in Florida under the Internal Revenue Code.[81]

Effect of Proposed Changes

Florida's Workforce Development System

The bill defines the term "state board" to mean the state workforce development board established pursuant to the Workforce Innovation and Opportunity Act, Pub. L. No. 113-128, Title I, s. 101. The bill provides that the state board will be supported by CareerSource, which works at the direction of the state board in consultation with DEO.

The bill reassigns many of CareerSource powers, duties and responsibilities to DEO, the state board, or the state board in consultation with DEO and makes a number of conforming changes to reflect this adjustment in the relationship between DEO, CareerSource, and the state board.

The bill specifies that CareerSource must operate under an agreement with DEO and repeals the provision in current law which states that CareerSource is not subject to the control, supervision, or direction of DEO.

The bill provides for the state board to serve as the board of directors of CareerSource. The bill also provides for the state board to hire an executive director for CareerSource, who will serve as the president, the chief executive officer, and an employee of CareerSource.

The bill directs CareerSource to:
- operate at the direction of the state board;
- provide support, including administrative support, to the state board;
- work at the direction of the state board in consultation with DEO when appropriate; and
- implement the policy directives of the state board and administer state workforce development programs as authorized by law, in accordance with its agreement with DEO.

The bill authorizes the state board to hire a director and staff to assist in carrying out the functions and spending the funds made available through WIOA. The bill also directs the state board to authorize the director and staff to work with the department in carrying out the functions of WIOA.

The bill requires that the state board notify the Governor and DEO of statewide or local workforce development and training needs that may require policy changes or an update to the state plan required under s. 445.003, F.S. The bill also requires CareerSource to report all donations and grants they receive to the state board and DEO.

The bill authorizes the chief elected official of a local workforce development board to remove, for cause, a member of the local board, the executive director of the local board, or the designated person responsible for the operational and administrative functions of the local board.

[80] S. 215.64, F.S.

[81] S. 159.804, F.S. *See also*, Division of Bond Finance, *Tax Equity and Fiscal Responsibility Act (TEFRA) Approval*, https://www.sbafla.com/bondfinance/Other-Functions/TEFRA (last visited Jan. 21, 2020).

The bill defines the term "for cause" to include, but not limited to, engaging in fraud or other criminal acts, incapacity, unfitness, neglect of duty, official incompetence and irresponsibility, misfeasance, malfeasance, nonfeasance, or lack of performance.

The bill also deletes a number of obsolete provisions.

Florida Development Finance Corporation

Relating to the board of directors of the Florida Development Finance Corporation, the bill:

- Increases the board of directors from five to seven members.
- Provides that the executive director of DEO, or his or her designee, serve as the chair of the board.
- Provides that the director of the Division of Bond Finance, or his or her designee, serve on the board.
- Specifies that the Governor will appoint the remaining five members, subject to confirmation by the Senate. Of the five appointed members:
    - Three or more must be bankers or persons with experience in finance.
    - One must be an economic development specialist.
- Specifies that the board may remove appointed directors under certain circumstances.

The bill requires DEO to develop a detailed report concerning the performance of FDFC each year, and to include the report, along with an existing summary report of FDFC, in its annual report to the Governor, President and Speaker. The bill also requires DEO to establish annual performance standards for FDFC and to annually report on how such performance measures are being met.

The bill provides that s. 288.9604, F.S., the statute creating and authorizing the FDFC, stands repealed October 1, 2022, and every fourth year thereafter, unless reviewed and saved from repeal by the Legislature.

The bill specifies that an FDFC contract or interlocal agreement in existence before July 1, 2020, will remain in effect and be binding on successors.

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

B. SECTION DIRECTORY:

Section 1 Amends subsections (1) and (3) of s. 288.018, F.S., relating to the Regional Rural Development Grants Program.

Section 2 Amends s. 288.0655, F.S., relating to the Rural Infrastructure Fund.

Section 3 Amends s. 445.002, F.S., defining the terms "for cause" and "state board".

Section 4 Amends s. 445.003, F.S., replacing CareerSource Florida, Inc., with the state board or the Department of Economic Opportunity in provisions relating to the implementation of the federal Workforce Innovation and Opportunity Act; authorizing, rather than requiring, certain funds to be reserved for the Incumbent Worker Training Program; conforming provisions to changes made by the act; authorizing the state board to hire a director and staff; requiring the state board to authorize the director and staff to work with the department for specified reasons.

Section 5 Amends s. 445.004, F.S., revising provisions relating to the operation of CareerSource Florida, Inc.; revising the purpose of CareerSource Florida, Inc.; providing purpose for the state board; revising the organizational structure of CareerSource Florida, Inc.; providing requirements for the organizational structure of the state board; providing the

state board with powers and authority previously held by CareerSource Florida, Inc.; revising the requirements related to such powers and authority; requiring the state board, rather than CareerSource Florida, Inc., to submit an annual report to the Governor and the Legislature; authorizing the Auditor General to conduct an audit of the state board and programs or entities created by the state board; requiring the state board, rather than CareerSource Florida, Inc., to establish certain uniform performance accountability measures; requiring the state board, in consultation with the department, to design the workforce development strategy for the state; requiring that the strategy be approved by the Governor; revising requirements relating to the workforce development system; authorizing the department to consult with the state board to issue certain technical assistance letters.

Section 6 Amends s. 445.006, F.S., requiring that the state board, rather than CareerSource Florida, Inc., take certain actions relating to the state plan for workforce development.

Section 7 Amends s. 445.007, F.S., replacing CareerSource Florida, Inc., with the state board or the department in provisions relating to local workforce development boards; deleting the definition of the term "cause"; authorizing a chief elected official for a local workforce development board to remove certain persons from the board for cause; requiring the department to provide certain guidance to specified entities; deleting an obsolete provision; making technical changes.

Section 8 Amends s. 445.0071, F.S., replacing CareerSource Florida, Inc., with the state board or the department in provisions relating to the Florida Youth Summer Jobs Pilot Program.

Section 9 Amends s. 445.008, F.S., revising authority relating to the Workforce Training Institute; requiring that certain donations and grants be reported to the state board and the department.

Section 10 Amends s. 445.009, F.S., replacing CareerSource Florida, Inc., with the state board or the department in provisions relating to one-stop delivery systems; deleting an obsolete provision.

Section 11 Amends s. 445.011, F.S., replacing CareerSource Florida, Inc., with the department in provisions relating to workforce information systems; requiring the department to consult with the state board in implementing certain automated information systems; deleting a provision requiring CareerSource Florida, Inc., to take certain actions when procuring workforce information systems.

Sections 12-34 Conforms provisions to changes made by the act.

Section 35 Amends s. 20.60, F.S., requiring the executive director of the Department of Economic Opportunity to serve as the chair of the board of directors of the Florida Development Finance Corporation; requiring the department to include specified information in its annual report and develop annual performance standards for the corporation; conforming provisions to changes made by the act.

Section 36 Amends s. 288.9604, F.S., revising the membership of the board of directors of the Florida Development Finance Corporation; conforming provisions to changes made by the act; providing for future repeals; requiring the current chair and vice chair of the board of directors of the Florida Development Finance Corporation to serve as appointed directors after a specified date.

Section 37 Provides construction.

Section 38 Amends s. 288.9610, F.S., requiring the Florida Development Finance Corporation to submit an annual report containing specified information to the Department of Economic Opportunity.

Section 39 Provides that certain contracts and interlocal agreements remain in effect and binding under certain circumstances.

Section 40 Provides an effective date of July 1, 2020.

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:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The bill reduces the required match under the Regional Rural Development Grant Program to a 25 percent match of the state contribution, instead of the current one-to-one match requirement.

The bill also increases the allowable grant award for Rural Infrastructure Fund projects from 30 percent to 50 percent of the total infrastructure project cost.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to economic development; amending s. 288.018, F.S.; defining the term "regional economic development organization"; specifying the duties of a regional economic development organization; specifying authorized uses of matching grants; revising the required amount of nonstate matching funds; requiring certain information to be included in contracts or agreements involving grant funds; specifying the information that must be posted on a regional economic development organization's website before execution of certain contracts or agreements; deleting an obsolete provision; increasing the amount of funds the Department of Economic Opportunity may expend each fiscal year from the Rural Community Development Revolving Loan Fund for certain purposes; amending s. 288.0655, F.S.; increasing the maximum percent of total infrastructure project costs for which the department may award a grant; repealing a provision addressing certain increased maximum percentages; specifying that improving availability of broadband Internet services is an eligible project for certain grant funds; providing that grants for improvements to broadband Internet service and access must be conducted through certain partnerships; extending the

date by which the department is required to reevaluate certain guidelines; requiring certain information to be included in contracts or agreements involving grant funds; specifying the information that must be posted on a regional economic development organization's website before execution of certain contracts or agreements; amending s. 445.002, F.S.; defining the terms "for cause" and "state board"; amending s. 445.003, F.S.; replacing CareerSource Florida, Inc., with the state board or the department in provisions relating to the implementation of the federal Workforce Innovation and Opportunity Act; authorizing, rather than requiring, certain funds to be reserved for the Incumbent Worker Training Program; conforming provisions to changes made by the act; authorizing the state board to hire a director and staff; requiring the state board to authorize the director and staff to work with the department for specified reasons; amending s. 445.004, F.S.; revising provisions relating to the operation of CareerSource Florida, Inc.; revising the purpose of CareerSource Florida, Inc.; providing purpose for the state board; revising the organizational structure of CareerSource Florida, Inc.; providing requirements for the organizational structure of the state board; providing the state

board with powers and authority previously held by CareerSource Florida, Inc.; revising the requirements related to such powers and authority; requiring the state board, rather than CareerSource Florida, Inc., to submit an annual report to the Governor and the Legislature; authorizing the Auditor General to conduct an audit of the state board and programs or entities created by the state board; requiring the state board, rather than CareerSource Florida, Inc., to establish certain uniform performance accountability measures; requiring the state board, in consultation with the department, to design the workforce development strategy for the state; requiring that the strategy be approved by the Governor; revising requirements relating to the workforce development system; authorizing the department to consult with the state board to issue certain technical assistance letters; amending s. 445.006, F.S.; requiring that the state board, rather than CareerSource Florida, Inc., take certain actions relating to the state plan for workforce development; amending s. 445.007, F.S.; replacing CareerSource Florida, Inc., with the state board or the department in provisions relating to local workforce development boards; deleting the definition of the term "cause";

authorizing a chief elected official for a local workforce development board to remove certain persons from the board for cause; requiring the department to provide certain guidance to specified entities; deleting an obsolete provision; making technical changes; amending s. 445.0071, F.S.; replacing CareerSource Florida, Inc., with the state board or the department in provisions relating to the Florida Youth Summer Jobs Pilot Program; amending s. 445.008, F.S.; revising authority relating to the Workforce Training Institute; requiring that certain donations and grants be reported to the state board and the department; amending s. 445.009, F.S.; replacing CareerSource Florida, Inc., with the state board or the department in provisions relating to one-stop delivery systems; deleting an obsolete provision; amending s. 445.011, F.S.; replacing CareerSource Florida, Inc., with the department in provisions relating to workforce information systems; requiring the department to consult with the state board in implementing certain automated information systems; deleting a provision requiring CareerSource Florida, Inc., to take certain actions when procuring workforce information systems; amending s. 445.014, F.S.; replacing CareerSource Florida, Inc., with the state

board in provisions relating to the establishment of one-stop delivery systems; amending s. 445.021, F.S.; replacing CareerSource Florida, Inc., with the state board in provisions relating to the relocation assistance program; amending s. 445.022, F.S.; replacing CareerSource Florida, Inc., with the state board in provisions relating to Retention Incentive Training Accounts; amending s. 445.024, F.S.; replacing CareerSource Florida, Inc., with the state board in provisions relating to certain contract exceptions; amending s. 445.026, F.S.; replacing CareerSource Florida, Inc., with the state board in provisions relating to cash assistance severance benefits; amending s. 445.028, F.S.; replacing CareerSource Florida, Inc., with the department in provisions relating to transitional benefits and services; amending s. 445.030, F.S.; replacing CareerSource Florida, Inc., with the state board in provisions relating to transitional education and training; amending s. 445.033, F.S.; replacing CareerSource Florida, Inc., with the state board in provisions relating to evaluations of TANF-funding programs; amending s. 445.035, F.S.; replacing CareerSource Florida, Inc., with the state board in provisions relating to data collection and reporting;

amending s. 445.048, F.S.; replacing CareerSource Florida, Inc., with the state board in provisions relating to the Passport to Economic Progress program; amending s. 445.051, F.S.; replacing CareerSource Florida, Inc., with the state board in provisions relating to individual development accounts; amending s. 445.055, F.S.; replacing CareerSource Florida, Inc., with the state board in provisions relating to the establishment of an employment advocacy and assistance program targeting a certain group; amending ss. 11.45, 288.901, 331.369, 413.405, 414.045, 420.622, 443.171, 443.181, 446.71, 1011.80, and 1011.801, F.S.; conforming provisions to changes made by the act; amending s. 20.60, F.S.; requiring the executive director of the department to serve as the chair of the board of directors of the Florida Development Finance Corporation; requiring the department to include specified information in its annual report and develop annual performance standards for the corporation; conforming provisions to changes made by the act; amending s. 288.9604, F.S.; revising the membership of the board of directors of the corporation; conforming provisions to changes made by the act; providing for future repeals; requiring the current chair and vice chair of the board of directors

of the corporation to serve as appointed directors after a specified date; providing construction; amending s. 288.9610, F.S.; requiring the corporation to submit an annual report containing specified information to the department; providing that certain contracts and interlocal agreements remain in effect and binding under certain circumstances; providing an effective date.

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

Section 1. Subsections (1) and (3) of section 288.018, Florida Statutes, are amended to read:

288.018 Regional Rural Development Grants Program.—

(1)(a) For the purposes of this section, the term "regional economic development organization" means an economic development organization located in or contracted to serve a rural area of opportunity, as defined in s. 288.0656(2)(d).

(b) The department shall establish a matching grant program to provide funding to regional ~~regionally based~~ economic development organizations ~~representing rural counties and communities~~ for the purpose of building the professional capacity of those ~~their~~ organizations. Building the professional capacity of a regional economic development organization includes hiring professional staff to develop, deliver, and

provide needed economic development professional services, including technical assistance, education and leadership development, marketing, and project recruitment. ~~Such~~ Matching grants may also be used by a regional ~~an~~ economic development organization to provide technical assistance to local governments, local economic development organizations, and existing and prospective businesses ~~within the rural counties and communities that it serves~~.

(c) A regional economic development organization may apply annually to the department for a matching grant. The department is authorized to approve, on an annual basis, grants to such regional ~~regionally based~~ economic development organizations. The maximum amount an organization may receive in any year will be $50,000, or $250,000 for any three regional economic development organizations that serve an entire region of a rural area of opportunity designated pursuant to s. 288.0656(7) if they are recognized by the department as serving such a region.

(d) Grant funds received by a regional economic development organization ~~$150,000 in a rural area of opportunity recommended by the Rural Economic Development Initiative and designated by the Governor, and~~ must be matched each year by ~~an equivalent amount of~~ nonstate resources in an amount equal to 25 percent of the state contribution.

(3)(a) A contract or agreement that involves the expenditure of grant funds provided under this section,

including a contract or agreement entered into between another entity and a regional economic development organization, a unit of local government, or an economic development organization substantially underwritten by a unit of local government, must include:

1. The purpose of the contract or agreement.

2. Specific performance standards and responsibilities for each entity under the contract or agreement.

3. A detailed project or contract budget, if applicable.

4. The value of any services provided.

5. The projected travel expenses for employees and board members, if applicable.

(b) At least 14 days before executing a contract or agreement, the contracting regional economic development organization shall post on its website:

1. Any contract or agreement that involves the expenditure of grant funds provided under this section.

2. A plain-language version of any contract or agreement that is estimated to exceed $35,000 with a private entity, a municipality, or a vendor of services, supplies, or programs, including marketing, or for the purchase or lease or use of lands, facilities, or properties which involves the expenditure of grant funds provided under this section and which is estimated to exceed $35,000 ~~The department may also contract for the development of an enterprise zone web portal or websites for~~

~~each enterprise zone which will be used to market the program for job creation in disadvantaged urban and rural enterprise zones. Each enterprise zone web page should include downloadable links to state forms and information, as well as local message boards that help businesses and residents receive information concerning zone boundaries, job openings, zone programs, and neighborhood improvement activities~~.

Section 2. Subsections (5) and (6) of section 288.0655, Florida Statutes, are renumbered as subsections (6) and (7), respectively, paragraph (b) of subsection (2) and subsection (4) are amended, and a new subsection (5) is added to that section, to read:

288.0655 Rural Infrastructure Fund.—

(2)

(b) To facilitate access of rural communities and rural areas of opportunity as defined by the Rural Economic Development Initiative to infrastructure funding programs of the Federal Government, such as those offered by the United States Department of Agriculture and the United States Department of Commerce, and state programs, including those offered by Rural Economic Development Initiative agencies, and to facilitate local government or private infrastructure funding efforts, the department may award grants for up to 50 ~~30~~ percent of the total infrastructure project cost. ~~If an application for funding is for a catalyst site, as defined in s. 288.0656, the department~~

~~may award grants for up to 40 percent of the total infrastructure project cost.~~ Eligible projects must be related to specific job-creation or job-retention opportunities. Eligible projects may also include improving any inadequate infrastructure that has resulted in regulatory action that prohibits economic or community growth, ~~or~~ reducing the costs to community users of proposed infrastructure improvements that exceed such costs in comparable communities, and improving access to and the availability of broadband Internet service. Eligible uses of funds shall include improvements to public infrastructure for industrial or commercial sites, upgrades to or development of public tourism infrastructure, and improvements to broadband Internet service and access in unserved or underserved rural communities. Improvements to broadband Internet service and access must be conducted through a partnership or partnerships with one or more dealers of communications services, as defined in s. 202.11(2), and the partnership or partnerships must be established by a publicly noticed and competitively selected process ~~and upgrades to or development of public tourism infrastructure~~. Authorized infrastructure may include the following public or public-private partnership facilities: storm water systems; telecommunications facilities; broadband facilities; roads or other remedies to transportation impediments; nature-based tourism facilities; or other physical requirements necessary to

facilitate tourism, trade, and economic development activities in the community. Authorized infrastructure may also include publicly or privately owned self-powered nature-based tourism facilities, publicly owned telecommunications facilities, and broadband facilities, and additions to the distribution facilities of the existing natural gas utility as defined in s. 366.04(3)(c), the existing electric utility as defined in s. 366.02, or the existing water or wastewater utility as defined in s. 367.021(12), or any other existing water or wastewater facility, which owns a gas or electric distribution system or a water or wastewater system in this state where:

1. A contribution-in-aid of construction is required to serve public or public-private partnership facilities under the tariffs of any natural gas, electric, water, or wastewater utility as defined herein; and

2. Such utilities as defined herein are willing and able to provide such service.

(4) By September 1, 2021 ~~2012~~, the department shall, in consultation with the organizations listed in subsection (3), and other organizations, reevaluate existing guidelines and criteria governing submission of applications for funding, review and evaluation of such applications, and approval of funding under this section. The department shall consider factors including, but not limited to, the project's potential for enhanced job creation or increased capital investment, the

demonstration and level of local public and private commitment, whether the project is located ~~in an enterprise zone,~~ in a community development corporation service area, or in an urban high-crime area as designated under s. 212.097, the unemployment rate of the county in which the project would be located, and the poverty rate of the community.

(5)(a) A contract or agreement that involves the expenditure of grant funds provided under this section, including a contract or agreement entered into between another entity and a regional economic development organization, a unit of local government, or an economic development organization substantially underwritten by a unit of local government, must include:

1. The purpose of the contract or agreement.

2. Specific performance standards and responsibilities for each entity.

3. A detailed project or contract budget, if applicable.

4. The value of any services provided.

5. The projected travel expenses for employees and board members, if applicable.

(b) At least 14 days before execution, the contracting regional economic development organization shall post on its website:

1. Any contract or agreement that involves the expenditure of grant funds provided under this section.

2. A plain-language version of a contract or agreement that is estimated to exceed $35,000 with a private entity, a municipality, or a vendor of services, supplies, or programs, including marketing, or for the purchase or lease or use of lands, facilities, or properties which involves the expenditure of grant funds provided under this section and which is estimated to exceed $35,000.

Section 3. Subsections (2) and (3) of section 445.002, Florida Statutes, are renumbered as subsections (3) and (5), respectively, and new subsections (2) and (4) are added to that section to read:

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

(2) "For cause" includes, but is not limited to, engaging in fraud or other criminal acts, incapacity, unfitness, neglect of duty, official incompetence and irresponsibility, misfeasance, malfeasance, nonfeasance, or lack of performance.

(4) "State board" means the state workforce development board established pursuant to the Workforce Innovation and Opportunity Act, Pub. L. No. 113-128, Title I, s. 101. The state board shall be supported by CareerSource Florida, Inc., which works at the direction of the state board in consultation with the department as required by this chapter.

Section 4. Subsections (2) through (5) of section 445.003, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

445.003 Implementation of the federal Workforce Innovation and Opportunity Act.—

(2) FOUR-YEAR PLAN.—The state board ~~CareerSource Florida, Inc.,~~ shall prepare and submit a 4-year plan, consistent with the requirements of the Workforce Innovation and Opportunity Act. Mandatory and optional federal partners shall be fully involved in designing the plan's one-stop delivery system strategy. The plan must clearly define each program's statewide duties and role relating to the system. The plan must detail a process that would fully integrate all federally mandated and optional partners.

(3) FUNDING.—

(a) Title I, Workforce Innovation and Opportunity Act funds; Wagner-Peyser funds; and NAFTA/Trade Act funds will be expended based on the 4-year plan of the state board ~~CareerSource Florida, Inc~~. The plan must outline and direct the method used to administer and coordinate various funds and programs that are operated by various agencies. The following provisions apply to these funds:

1. At least 50 percent of the Title I funds for Adults and Dislocated Workers which are passed through to local workforce development boards shall be allocated to and expended on Individual Training Accounts unless a local workforce development board obtains a waiver from the state board ~~CareerSource Florida, Inc~~. Tuition, books, and fees of training

providers and other training services prescribed and authorized by the Workforce Innovation and Opportunity Act qualify as Individual Training Account expenditures.

2. Fifteen percent of Title I funding shall be retained at the state level and dedicated to state administration and shall be used to design, develop, induce, and fund innovative Individual Training Account pilots, demonstrations, and programs. Of such funds retained at the state level, $2 million may ~~shall~~ be reserved for the Incumbent Worker Training Program created under subparagraph 3. Eligible state administration costs include the costs of funding for the state board and state board staff ~~of CareerSource Florida, Inc.~~; operating fiscal, compliance, and management accountability systems through the department ~~CareerSource Florida, Inc.~~; conducting evaluation and research on workforce development activities; and providing technical and capacity building assistance to local workforce development areas at the direction of the state board ~~CareerSource Florida, Inc~~. Notwithstanding s. 445.004, such administrative costs may not exceed 25 percent of these funds. An amount not to exceed 75 percent of these funds shall be allocated to Individual Training Accounts and other workforce development strategies for other training designed and tailored by the department in consultation with the state board ~~CareerSource Florida, Inc.~~, including, but not limited to, programs for incumbent workers, nontraditional employment, and

enterprise zones. The department, in consultation with the state board ~~CareerSource Florida, Inc.~~, shall design, adopt, and fund Individual Training Accounts for distressed urban and rural communities.

3. The Incumbent Worker Training Program is created for the purpose of providing grant funding for continuing education and training of incumbent employees at existing Florida businesses. The program will provide reimbursement grants to businesses that pay for preapproved, direct, training-related costs.

a. The Incumbent Worker Training Program will be administered by CareerSource Florida, Inc., which may, at its discretion, contract with a private business organization to serve as grant administrator.

b. The program shall be administered pursuant to s. 134(d)(4) of the Workforce Innovation and Opportunity Act. Priority for funding shall be given to businesses with 25 employees or fewer, businesses in rural areas, businesses in distressed inner-city areas, businesses in a qualified targeted industry, businesses whose grant proposals represent a significant upgrade in employee skills, or businesses whose grant proposals represent a significant layoff avoidance strategy.

c. All costs reimbursed by the program must be preapproved by CareerSource Florida, Inc., or the grant administrator. The

program may not reimburse businesses for trainee wages, the purchase of capital equipment, or the purchase of any item or service that may possibly be used outside the training project. A business approved for a grant may be reimbursed for preapproved, direct, training-related costs including tuition, fees, books and training materials, and overhead or indirect costs not to exceed 5 percent of the grant amount.

d. A business that is selected to receive grant funding must provide a matching contribution to the training project, including, but not limited to, wages paid to trainees or the purchase of capital equipment used in the training project; must sign an agreement with CareerSource Florida, Inc., or the grant administrator to complete the training project as proposed in the application; must keep accurate records of the project's implementation process; and must submit monthly or quarterly reimbursement requests with required documentation.

e. All Incumbent Worker Training Program grant projects shall be performance-based with specific measurable performance outcomes, including completion of the training project and job retention. CareerSource Florida, Inc., or the grant administrator shall withhold the final payment to the grantee until a final grant report is submitted and all performance criteria specified in the grant contract have been achieved.

f. The state board ~~CareerSource Florida, Inc.,~~ may establish guidelines necessary to implement the Incumbent Worker

Training Program.

g. No more than 10 percent of the Incumbent Worker Training Program's total appropriation may be used for overhead or indirect purposes.

4. At least 50 percent of Rapid Response funding shall be dedicated to Intensive Services Accounts and Individual Training Accounts for dislocated workers and incumbent workers who are at risk of dislocation. The department ~~CareerSource Florida, Inc.,~~ shall also maintain an Emergency Preparedness Fund from Rapid Response funds, which will immediately issue Intensive Service Accounts, Individual Training Accounts, and other federally authorized assistance to eligible victims of natural or other disasters. At the direction of the Governor, these Rapid Response funds shall be released to local workforce development boards for immediate use after events that qualify under federal law. Funding shall also be dedicated to maintain a unit at the state level to respond to Rapid Response emergencies and to work with state emergency management officials and local workforce development boards. All Rapid Response funds must be expended based on a plan developed by the state board in consultation with the department ~~CareerSource Florida, Inc.,~~ and approved by the Governor.

(b) The administrative entity for Title I, Workforce Innovation and Opportunity Act funds, and Rapid Response activities is the department ~~of Economic Opportunity~~, which

shall provide direction to local workforce development boards regarding Title I programs and Rapid Response activities ~~pursuant to the direction of CareerSource Florida, Inc~~.

(4) FEDERAL REQUIREMENTS, EXCEPTIONS AND REQUIRED MODIFICATIONS.—

(a) The state board ~~CareerSource Florida, Inc.,~~ may provide indemnification from audit liabilities to local workforce development boards that act in full compliance with state law and board policy.

(b) The state board, in consultation with the department ~~CareerSource Florida, Inc.~~, may make modifications to the state's plan, policies, and procedures to comply with federally mandated requirements that in its judgment must be complied with to maintain funding provided pursuant to Pub. L. No. 113-128. The state board shall provide written notice to the Governor, the President of the Senate, and the Speaker of the House of Representatives within 30 days after any such changes or modifications.

(c) The state board ~~CareerSource Florida, Inc.,~~ shall enter into a memorandum of understanding with the Florida Department of Education to ensure that federally mandated requirements of Pub. L. No. 113-128 are met and are in compliance with the state plan for workforce development.

(5) LONG-TERM CONSOLIDATION OF WORKFORCE DEVELOPMENT.—The state board ~~CareerSource Florida, Inc.,~~ may recommend workforce-

related divisions, bureaus, units, programs, duties, commissions, boards, and councils for elimination, consolidation, or privatization.

(6) AUTHORITY TO HIRE DIRECTOR AND STAFF.—The state board may hire a director and staff to assist in carrying out the functions of the Workforce Innovation and Opportunity Act and in using funds made available through the act. The state board shall authorize the director and staff to work with the department in carrying out the functions of the Workforce Innovation and Opportunity Act.

Section 5. Section 445.004, Florida Statutes, is amended to read:

445.004 CareerSource Florida, Inc., and the state board; creation; purpose; membership; duties and powers.—

(1) CareerSource Florida, Inc., is created as a not-for-profit corporation, which shall be registered, incorporated, organized, and operated in compliance with chapter 617 and shall operate at the direction of the state board. CareerSource Florida, Inc., is not a unit or entity of state government and is exempt from chapters 120 and 287. CareerSource Florida, Inc., shall apply the procurement and expenditure procedures required by federal law for the expenditure of federal funds. CareerSource Florida, Inc., shall be administratively housed within the department and shall operate under agreement with ~~of Economic Opportunity; however, CareerSource Florida, Inc., is~~

~~not subject to control, supervision, or direction by~~ the department ~~in any manner~~. The Legislature finds that public policy dictates that CareerSource Florida, Inc., operate in the most open and accessible manner consistent with its public purpose. To this end, the Legislature specifically declares that CareerSource Florida, Inc., its board, councils, and any advisory committees or similar groups created by CareerSource Florida, Inc., are subject to the provisions of chapter 119 relating to public records, and those provisions of chapter 286 relating to public meetings.

(2) CareerSource Florida, Inc., provides administrative support for the state board, ~~is~~ the principal workforce policy organization for the state. The purpose of the state board ~~CareerSource Florida, Inc.,~~ is to design and implement strategies that help Floridians enter, remain in, and advance in the workplace, so that they may become more highly skilled and successful, which benefits these Floridians, Florida businesses, and the entire state, and fosters the development of the state's business climate. CareerSource Florida, Inc., shall, consistent with its agreement with the department, implement the policy directives of the state board and administer state workforce development programs as authorized by law.

(3)(a) ~~CareerSource Florida, Inc., shall be governed by a board of directors, whose membership and appointment must be consistent with Pub. L. No. 113-128, Title I, s. 101(b).~~ Members

of the state board described in Pub. L. No. 113-128, Title I, s. 101(b)(1)(C)(iii)(I)(aa) are ~~shall be~~ nonvoting members. The number of members is ~~directors shall be~~ determined by the Governor, who shall consider the importance of minority, gender, and geographic representation in making appointments to the state board. When the Governor is in attendance, he or she shall preside at all meetings of the state board ~~of directors~~.

(b) The state board ~~of directors of CareerSource Florida, Inc.,~~ shall be chaired by a ~~board~~ member designated by the Governor pursuant to Pub. L. No. 113-128. A member may not serve more than two terms.

(c) Members appointed by the Governor may serve no more than two terms and must be appointed for 3-year terms. However, in order to establish staggered terms for state board members, the Governor shall appoint or reappoint one-third of the state board members for 1-year terms, one-third of the state board members for 2-year terms, and one-third of the state board members for 3-year terms beginning July 1, 2016. Subsequent appointments or reappointments shall be for 3-year terms, except that a member appointed to fill a vacancy on the state board shall be appointed to serve only the remainder of the term of the member whom he or she is replacing, and may be appointed for a subsequent 3-year term. Private sector representatives of businesses, appointed by the Governor pursuant to Pub. L. No. 113-128, shall constitute a majority of the membership of the

state board. Private sector representatives shall be appointed from nominations received by the Governor, including, but not limited to, those nominations made by the President of the Senate and the Speaker of the House of Representatives. Private sector appointments to the state board must be representative of the business community of this state; no fewer than one-half of the appointments must be representative of small businesses, and at least five members must have economic development experience. Members appointed by the Governor serve at the pleasure of the Governor and are eligible for reappointment.

(d) The state board must include the vice chairperson of the board of directors of Enterprise Florida, Inc., and one member representing each of the Workforce Innovation and Opportunity Act partners, including the Division of Career and Adult Education, and other entities representing programs identified in the Workforce Innovation and Opportunity Act, as determined necessary.

(e) A member of the state board ~~of directors of CareerSource Florida, Inc.,~~ may be removed by the Governor for cause. Absence from three consecutive meetings results in automatic removal. The chair of the state board ~~CareerSource Florida, Inc.,~~ shall notify the Governor of such absences.

(f) Representatives of businesses appointed to the state board ~~of directors~~ may not include providers of workforce services.

(g) The state board serves as the board of directors of CareerSource Florida, Inc. The state board shall hire an executive director for CareerSource Florida, Inc. The executive director serves as the president, the chief executive officer, and an employee of CareerSource Florida, Inc. The president of CareerSource Florida, Inc., serves at the pleasure of the Governor.

(4) ~~(a) The president of CareerSource Florida, Inc., shall be hired by the board of directors of CareerSource Florida, Inc., and shall serve at the pleasure of the Governor in the capacity of an executive director and secretary of CareerSource Florida, Inc.~~

(a) ~~(b)~~ The state board ~~of directors of CareerSource Florida, Inc.,~~ shall meet at least quarterly and at other times upon the call of its chair. The state board and its committees, subcommittees, or other subdivisions may use any method of telecommunications to conduct meetings, including establishing a quorum through telecommunications, if the public is given proper notice of the telecommunications meeting and is given reasonable access to observe and, if appropriate, participate.

(b) ~~(c)~~ A majority of the total current membership of the state board ~~of directors of CareerSource Florida, Inc.,~~ constitutes a quorum and is required to organize and conduct the business of the state board, except that a majority of the executive committee is required to adopt or amend the bylaws.

~~(d) A majority of those voting is required to organize and conduct the business of the board, except that a majority of the entire board of directors is required to adopt or amend the bylaws.~~

(c) ~~(e)~~ Except as delegated or authorized by the state board ~~of directors of CareerSource Florida, Inc.~~, individual members have no authority to control or direct the operations of CareerSource Florida, Inc., or the actions of its officers and employees~~, including the president~~.

(d) ~~(f)~~ Members of the state board ~~of directors of CareerSource Florida, Inc.,~~ and its committees serve without compensation, but these members and~~,~~ the president~~,~~ and ~~the~~ employees of CareerSource Florida, Inc., may be reimbursed for all reasonable, necessary, and actual expenses as provided under ~~pursuant to~~ s. 112.061.

(e) ~~(g)~~ The state board shall ~~of directors of CareerSource Florida, Inc., may~~ establish an executive committee consisting of the chair and at least six additional ~~board~~ members selected by the chair, one of whom must be a representative of organized labor. The executive committee and the president of CareerSource Florida, Inc., have such authority as the state board delegates to them, except that the state board ~~of directors~~ may not delegate to the executive committee authority to take action that requires approval by a majority of the entire state board ~~of directors~~.

(f) ~~(h)~~ The chair may appoint committees to fulfill the state board's responsibilities, to comply with federal requirements, or to obtain technical assistance, and must incorporate members of local workforce development boards into its structure.

(g) ~~(i)~~ Each member of the state board ~~of directors~~ who is not otherwise required to file a financial disclosure under ~~pursuant to~~ s. 8, Art. II of the State Constitution or s. 112.3144 must file disclosure of financial interests under ~~pursuant to~~ s. 112.3145.

(5) The state board has ~~CareerSource Florida, Inc., shall have~~ all the powers and authority not explicitly prohibited by statute which are necessary or convenient to carry out and effectuate its purposes as determined by statute, Pub. L. No. 113-128, and the Governor, as well as its functions, duties, and responsibilities, including, but not limited to, the following:

(a) Serving as the state's workforce development board pursuant to Pub. L. No. 113-128. Unless otherwise required by federal law, at least 90 percent of workforce development funding must go toward direct customer service.

(b) Providing ~~oversight and~~ policy direction to ensure that the following programs are administered by the department consistent ~~in compliance~~ with approved plans ~~and under contract with CareerSource Florida, Inc.~~:

1. Programs authorized under Title I of the Workforce

Innovation and Opportunity Act, Pub. L. No. 113-128, with the exception of programs funded directly by the United States Department of Labor under Title I, s. 167.

2. Programs authorized under the Wagner-Peyser Act of 1933, as amended, 29 U.S.C. ss. 49 et seq.

3. Activities authorized under Title II of the Trade Act of 2002, as amended, 19 U.S.C. ss. 2272 et seq., and the Trade Adjustment Assistance Program.

4. Activities authorized under 38 U.S.C. chapter 41, including job counseling, training, and placement for veterans.

5. Employment and training activities carried out under funds awarded to this state by the United States Department of Housing and Urban Development.

6. Welfare transition services funded by the Temporary Assistance for Needy Families Program, created under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, Pub. L. No. 104-193, and Title IV, s. 403, of the Social Security Act, as amended.

7. The Florida Bonding Program, provided under Pub. L. No. 97-300, s. 164(a)(1).

8. The Food Assistance Employment and Training Program, provided under the Food and Nutrition Act of 2008, 7 U.S.C. ss. 2011-2032; the Food Security Act of 1988, Pub. L. No. 99-198; ~~and~~ the Hunger Prevention Act, Pub. L. No. 100-435; and the Agriculture Improvement Act of 2018, Pub. L. No. 115-334.

9. The Quick-Response Training Program, provided under ss. 288.046-288.047. Matching funds and in-kind contributions that are provided by clients of the Quick-Response Training Program ~~shall~~ count toward the requirements of s. 288.904, pertaining to the return on investment from activities of Enterprise Florida, Inc.

10. The Work Opportunity Tax Credit, provided under the Tax and Trade Relief Extension Act of 1998, Pub. L. No. 105-277, and the Taxpayer Relief Act of 1997, Pub. L. No. 105-34.

11. Offender placement services, provided under ss. 944.707-944.708.

The department may adopt rules necessary to administer this chapter which relate to implementing and administering the programs listed in this paragraph as well as rules related to eligible training providers and auditing and monitoring subrecipients of the workforce system grant funds.

~~(c) The department may adopt rules necessary to administer this chapter which relate to implementing and administering the programs listed in paragraph (b) as well as rules related to eligible training providers and auditing and monitoring subrecipients of the workforce system grant funds.~~

(c) ~~(d)~~ Contracting with public and private entities as necessary to further the directives of this section. All contracts executed by the state board or CareerSource Florida,

Inc., must include specific performance expectations and deliverables. All ~~CareerSource Florida, Inc.,~~ contracts, including those solicited, managed, or paid by the department under ~~pursuant to~~ s. 20.60(5)(c), are exempt from s. 112.061, but shall be governed by subsection (1).

(d) ~~(e)~~ Notifying the Governor and the department of statewide or local workforce development and training needs that may require policy changes or an update to the state plan required under s. 445.003, and notifying the Governor, the President of the Senate, and the Speaker of the House of Representatives of noncompliance by the department or other agencies or obstruction of the state board's efforts by such agencies. Upon such notification, the Executive Office of the Governor shall assist agencies to bring them into compliance with state board objectives.

(e) ~~(f)~~ Ensuring that the state does not waste valuable training resources. The state board's policy is ~~board shall direct~~ that all resources, including equipment purchased for training Workforce Innovation and Opportunity Act clients, be available for use at all times by eligible populations as first priority users. At times when eligible populations are not available, such resources shall be used for any other state-authorized education and training purpose. The state board ~~CareerSource Florida, Inc.,~~ may authorize expenditures to award suitable framed certificates, pins, or other tokens of

recognition for performance by a local workforce development board, its committees and subdivisions, and other units of the workforce system. The state board ~~CareerSource Florida, Inc.,~~ may also authorize expenditures for promotional items, such as t-shirts, hats, or pens printed with messages promoting the state's workforce system to employers, job seekers, and program participants. However, such expenditures are subject to federal regulations applicable to the expenditure of federal funds.

(f) ~~(g)~~ Establishing a dispute resolution process for all memoranda of understanding or other contracts or agreements entered into between the department and local workforce development boards.

(g) ~~(h)~~ Archiving records with the Bureau of Archives and Records Management of the Division of Library and Information Services of the Department of State.

(6) The state board ~~CareerSource Florida, Inc.,~~ may take action that it deems necessary to achieve the purposes of this section, including, but not limited to:

(a) Creating a state employment, education, and training policy that ensures that programs to prepare workers are responsive to present and future business and industry needs and complement the initiatives of Enterprise Florida, Inc.

(b) Establishing policy direction for a funding system that provides incentives to improve the outcomes of career education, registered apprenticeship, and work-based learning

programs and that focuses resources on occupations related to new or emerging industries that add greatly to the value of the state's economy.

(c) Establishing a comprehensive policy related to the education and training of target populations such as those who have disabilities, are economically disadvantaged, receive public assistance, are not proficient in English, or are dislocated workers. This approach should ensure the effective use of federal, state, local, and private resources in reducing the need for public assistance.

(d) Designating Institutes of Applied Technology composed of public and private postsecondary institutions working together with business and industry to ensure that career education programs use the most advanced technology and instructional methods available and respond to the changing needs of business and industry.

(e) Providing policy direction for a system to project and evaluate labor market supply and demand using the results of the Workforce Estimating Conference created in s. 216.136 and the career education performance standards identified under s. 1008.43.

(f) Reviewing the performance of public programs that are responsible for economic development, education, employment, and training. The review must include an analysis of the return on investment of these programs.

(g) Expanding the occupations identified by the Workforce Estimating Conference to meet needs created by local emergencies or plant closings or to capture occupations within emerging industries.

(7) By December 1 of each year, the state board ~~CareerSource Florida, Inc.,~~ shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Senate Minority Leader, and the House Minority Leader a complete and detailed annual report setting forth:

(a) All audits, including any audit conducted under subsection (8).

(b) The operations and accomplishments of the state board, including the programs or entities specified in subsection (6).

(8) Pursuant to his or her own authority or at the direction of the Legislative Auditing Committee, the Auditor General may conduct an audit of the state board and CareerSource Florida, Inc., or the programs or entities created by the state board ~~CareerSource Florida, Inc~~. The Office of Program Policy Analysis and Government Accountability, pursuant to its authority or at the direction of the Legislative Auditing Committee, may review the systems and controls related to performance outcomes and quality of services of the state board and CareerSource Florida, Inc.

(9) The state board ~~CareerSource Florida, Inc.~~, in

collaboration with the local workforce development boards and appropriate state agencies and local public and private service providers, shall establish uniform performance accountability measures that apply across the core programs to gauge the performance of the state and local workforce development boards in achieving the workforce development strategy.

(a) The performance accountability measures for the core programs consist of the primary indicators of performance, any additional indicators of performance, and a state-adjusted level of performance for each indicator pursuant to Pub. L. No. 113-128, Title I, s. 116(b).

(b) The performance accountability measures for each local area consist of the primary indicators of performance, any additional indicators of performance, and a local level of performance for each indicator pursuant to Pub. L. No. 113-128. The local level of performance is determined by the local board, the chief elected official, and the Governor pursuant to Pub. L. No. 113-128, Title I, s. 116(c).

(c) Performance accountability measures shall be used to generate performance reports pursuant to Pub. L. No. 113-128, Title I, s. 116(d).

(d) The performance accountability measures of success that are adopted by the state board ~~CareerSource Florida, Inc.,~~ or the local workforce development boards must be developed in a manner that provides for an equitable comparison of the relative

success or failure of any service provider in terms of positive outcomes.

(10) The workforce development strategy for the state shall be designed by the state board, in consultation with the department, and approved by the Governor ~~CareerSource Florida, Inc~~. The strategy must include efforts that enlist business, education, and community support for students to achieve long-term career goals, ensuring that young people have the academic and occupational skills required to succeed in the workplace. The strategy must also assist employers in upgrading or updating the skills of their employees and assisting workers to acquire the education or training needed to secure a better job with better wages. The strategy must assist the state's efforts to attract and expand job-creating businesses offering high-paying, high-demand occupations.

(11) The workforce development system must encourage ~~use a charter-process approach aimed at encouraging~~ local design and control of service delivery and targeted activities. The state board, in consultation with the department ~~CareerSource Florida, Inc.~~, is ~~shall be~~ responsible for ensuring that ~~granting charters to~~ local workforce development boards ~~that~~ have a membership consistent with the requirements of federal and state law and have developed a plan consistent with the state's workforce development strategy. The plan must specify methods for allocating the resources and programs in a manner that

eliminates unwarranted duplication, minimizes administrative costs, meets the existing job market demands and the job market demands resulting from successful economic development activities, ensures access to quality workforce development services for all Floridians, allows for pro rata or partial distribution of benefits and services, prohibits the creation of a waiting list or other indication of an unserved population, serves as many individuals as possible within available resources, and maximizes successful outcomes. The state board ~~As part of the charter process, CareerSource Florida, Inc.,~~ shall establish incentives for effective coordination of federal and state programs, outline rewards for successful job placements, and institute collaborative approaches among local service providers. ~~Local decisionmaking and control shall be important components for inclusion in this charter application.~~

(12) CareerSource Florida, Inc., under the direction of the state board, shall enter into agreement with Space Florida and collaborate with vocational institutes, community colleges, colleges, and universities in this state to develop a workforce development strategy to implement the workforce provisions of s. 331.3051.

(13) The department may consult with the state board to issue technical assistance letters on the operation of federal programs and the expenditure of federal funds by the state board or any local workforce development board. A technical assistance

letter must be in writing, must be posted on the department's website, and remains in effect until superseded or terminated. A technical assistance letter is not a rule of general applicability under s. 120.54 and is not a declaratory statement issued under s. 120.565 or an order issued under s. 120.569. Section 120.53 does not apply to technical assistance letters.

Section 6. Section 445.006, Florida Statutes, is amended to read:

445.006 State plan for workforce development.—

(1) STATE PLAN.—The state board ~~CareerSource Florida, Inc.~~, in conjunction with state and local partners in the workforce system, shall develop a state plan that produces an educated and skilled workforce. The state plan must consist of strategic and operational planning elements. The state plan shall be submitted by the Governor to the United States Department of Labor pursuant to the requirements of Pub. L. No. 113-128.

(2) STRATEGIC PLANNING ELEMENTS.—The state board ~~CareerSource Florida, Inc.~~, in conjunction with state and local partners in the workforce system, shall develop strategic planning elements, pursuant to Pub. L. No. 113-128, Title I, s. 102, for the state plan.

(a) The strategic planning elements of the state plan must include, but need not be limited to, strategies for:

1. Fulfilling the workforce system goals and strategies

prescribed in s. 445.004;

2. Aggregating, integrating, and leveraging workforce system resources;

3. Coordinating the activities of federal, state, and local workforce system partners;

4. Addressing the workforce needs of small businesses; and

5. Fostering the participation of rural communities and distressed urban cores in the workforce system.

(b) The strategic planning elements must include criteria for allocating workforce resources to local workforce development boards. With respect to allocating funds to serve customers of the welfare transition program, such criteria may include weighting factors that indicate the relative degree of difficulty associated with securing and retaining employment placements for specific subsets of the welfare transition caseload.

(3) OPERATIONAL PLANNING ELEMENTS.—The state board ~~CareerSource Florida, Inc.~~, in conjunction with state and local partners in the workforce system, shall develop operational planning elements, pursuant to Pub. L. No. 113-128, Title I, s. 102, for the state plan.

Section 7. Subsection (1), paragraph (b) of subsection (2), and subsections (3) through (7) and (9) through (13) of section 445.007, Florida Statutes, are amended, and paragraph (c) is added to subsection (2) of that section, to read:

445.007 Local workforce development boards.—

(1) One local workforce development board shall be appointed in each designated service delivery area and shall serve as the local workforce development board pursuant to Pub. L. No. 113-128. The membership of the local board must be consistent with Pub. L. No. 113-128, Title I, s. 107(b). If a public education or training provider is represented on the local board, a representative of a private education provider must also be appointed to the local board. The state board ~~CareerSource Florida, Inc.,~~ may waive this requirement if requested by a local workforce development board if it is demonstrated that such representatives do not exist in the region. The importance of minority and gender representation shall be considered when making appointments to the local board. The local board, its committees, subcommittees, and subdivisions, and other units of the workforce system, including units that may consist in whole or in part of local governmental units, may use any method of telecommunications to conduct meetings, including establishing a quorum through telecommunications, provided that the public is given proper notice of the telecommunications meeting and reasonable access to observe and, when appropriate, participate. Local workforce development boards are subject to chapters 119 and 286 and s. 24, Art. I of the State Constitution. If the local workforce development board enters into a contract with an organization or

individual represented on the local board ~~of directors~~, the contract must be approved by a two-thirds vote of the local board, a quorum having been established, and the local board member who could benefit financially from the transaction must abstain from voting on the contract. A local board member must disclose any such conflict in a manner that is consistent with the procedures outlined in s. 112.3143. Each member of a local workforce development board who is not otherwise required to file a full and public disclosure of financial interests under ~~pursuant to~~ s. 8, Art. II of the State Constitution or s. 112.3144 shall file a statement of financial interests under ~~pursuant to~~ s. 112.3145. The executive director or designated person responsible for the operational and administrative functions of the local workforce development board who is not otherwise required to file a full and public disclosure of financial interests under ~~pursuant to~~ s. 8, Art. II of the State Constitution or s. 112.3144 shall file a statement of financial interests under ~~pursuant to~~ s. 112.3145.

(2)

(b) The Governor may remove a member of the local board, the executive director of the local board, or the designated person responsible for the operational and administrative functions of the local board for cause. ~~As used in this paragraph, the term "cause" includes, but is not limited to, engaging in fraud or other criminal acts, incapacity, unfitness,~~

~~neglect of duty, official incompetence and irresponsibility, misfeasance, malfeasance, nonfeasance, or lack of performance.~~

(c) The chief elected official for the local workforce development board may remove a member of the local board, the executive director of the local board, or the designated person responsible for the operational and administrative functions of the local board for cause.

(3) The department ~~of Economic Opportunity, under the direction of CareerSource Florida, Inc.,~~ shall assign staff to meet with each local workforce development board annually to review the local board's performance and to certify that the local board is in compliance with applicable state and federal law.

(4) In addition to the duties and functions specified by the state board ~~CareerSource Florida, Inc.,~~ and by the interlocal agreement approved by the local county or city governing bodies, the local workforce development board shall have the following responsibilities:

(a) Develop, submit, ratify, or amend the local plan pursuant to Pub. L. No. 113-128, Title I, s. 108 and this act.

(b) Conclude agreements necessary to designate the fiscal agent and administrative entity. A public or private entity, including an entity established under ~~pursuant to~~ s. 163.01, which makes a majority of the appointments to a local workforce development board may serve as the local board's administrative

entity if approved by the department ~~CareerSource Florida, Inc.,~~ based upon a showing that a fair and competitive process was used to select the administrative entity.

(c) ~~Complete assurances required for the charter process of CareerSource Florida, Inc., and~~ Provide ongoing oversight related to administrative costs, duplicated services, career counseling, economic development, equal access, compliance and accountability, and performance outcomes.

(d) Oversee the one-stop delivery system in its local area.

(5) The department, in conjunction with the state board ~~CareerSource Florida, Inc.~~, shall implement a training program for the local workforce development boards to familiarize local board members with the state's workforce development goals and strategies.

(6) The local workforce development board shall designate all local service providers and may not transfer this authority to a third party. Consistent with the intent of the Workforce Innovation and Opportunity Act, local workforce development boards should provide the greatest possible choice of training providers to those who qualify for training services. A local workforce development board may not restrict the choice of training providers based upon cost, location, or historical training arrangements. However, a local board may restrict the amount of training resources available to any one client. Such

restrictions may vary based upon the cost of training in the client's chosen occupational area. The local workforce development board may be designated as a one-stop operator and direct provider of intake, assessment, eligibility determinations, or other direct provider services except training services. Such designation may occur only with the agreement of the chief elected official and the Governor as specified in 29 U.S.C. s. 2832(f)(2). The state board ~~CareerSource Florida, Inc.,~~ shall establish procedures by which a local workforce development board may request permission to operate under this section and the criteria under which such permission may be granted. The criteria shall include, but need not be limited to, a reduction in the cost of providing the permitted services. Such permission shall be granted for a period not to exceed 3 years for any single request submitted by the local workforce development board.

(7) Local workforce development boards shall adopt a committee structure consistent with applicable federal law and state policies established by the state board ~~CareerSource Florida, Inc~~.

(9) For purposes of procurement, local workforce development boards and their administrative entities are not state agencies and are exempt from chapters 120 and 287. The local workforce development boards shall apply the procurement and expenditure procedures required by federal law and policies

of the department ~~of Economic Opportunity~~ and the state board ~~CareerSource Florida, Inc.,~~ for the expenditure of federal, state, and nonpass-through funds. The making or approval of smaller, multiple payments for a single purchase with the intent to avoid or evade the monetary thresholds and procedures established by federal law and policies of the department ~~of Economic Opportunity~~ and the state board ~~CareerSource Florida, Inc.,~~ is grounds for removal for cause. Local workforce development boards, their administrative entities, committees, and subcommittees, and other workforce units may authorize expenditures to award suitable framed certificates, pins, or other tokens of recognition for performance by units of the workforce system. Local workforce development boards; their administrative entities, committees, and subcommittees; and other workforce units may authorize expenditures for promotional items, such as t-shirts, hats, or pens printed with messages promoting Florida's workforce system to employers, job seekers, and program participants. However, such expenditures are subject to federal regulations applicable to the expenditure of federal funds. All contracts executed by local workforce development boards must include specific performance expectations and deliverables.

(10) State and federal funds provided to the local workforce development boards may not be used directly or indirectly to pay for meals, food, or beverages for ~~board~~

members, staff, or employees of local workforce development boards, the state board ~~CareerSource Florida, Inc.~~, or the department ~~of Economic Opportunity~~ except as expressly authorized by state law. Preapproved, reasonable, and necessary per diem allowances and travel expenses may be reimbursed. Such reimbursement shall be at the standard travel reimbursement rates established in s. 112.061 and shall be in compliance with all applicable federal and state requirements. The department shall provide fiscal and programmatic guidance ~~CareerSource Florida, Inc., shall develop a statewide fiscal policy applicable~~ to the state board, CareerSource Florida, Inc., and all local workforce development boards~~,~~ to hold both the state and local workforce development boards strictly accountable for adherence to the policy and subject to regular and periodic monitoring by the department ~~of Economic Opportunity, the administrative entity for CareerSource Florida, Inc~~. Local boards are prohibited from expending state or federal funds for entertainment costs and recreational activities for local board members and employees as these terms are defined by 2 C.F.R. part 200 ~~230~~.

(11) To increase transparency and accountability, a local workforce development board must comply with the requirements of this section before contracting with a member of the local board or a relative, as defined in s. 112.3143(1)(c), of a local board member or of an employee of the local board. Such contracts may

not be executed before or without the prior approval of the department ~~CareerSource Florida, Inc~~. Such contracts, as well as documentation demonstrating adherence to this section as specified by the department ~~CareerSource Florida, Inc.~~, must be submitted to the department ~~of Economic Opportunity~~ for review and approval ~~recommendation according to criteria to be determined by CareerSource Florida, Inc~~. Such a contract must be approved by a two-thirds vote of the local board, a quorum having been established; all conflicts of interest must be disclosed before the vote; and any member who may benefit from the contract, or whose relative may benefit from the contract, must abstain from the vote. A contract under $25,000 between a local workforce development board and a member of that board or between a relative, as defined in s. 112.3143(1)(c), of a local board member or of an employee of the local board is not required to have the prior approval of the department ~~CareerSource Florida, Inc.~~, but must be approved by a two-thirds vote of the local board, a quorum having been established, and must be reported to the department ~~of Economic Opportunity~~ and the state board ~~CareerSource Florida, Inc.,~~ within 30 days after approval. If a contract cannot be approved by the department ~~CareerSource Florida, Inc.~~, a review of the decision to disapprove the contract may be requested by the local workforce development board or other parties to the disapproved contract.

(12) Each local workforce development board shall develop

a budget for the purpose of carrying out the duties of the local board under this section, subject to the approval of the chief elected official. Each local workforce development board shall submit its annual budget for review to the department ~~CareerSource Florida, Inc.,~~ no later than 2 weeks after the chair approves the budget.

~~(13) By March 1, 2018, CareerSource Florida, Inc., shall establish regional planning areas in accordance with Pub. L. No. 113-128, Title I, s. 106(a)(2). Local workforce development boards and chief elected officials within identified regional planning areas shall prepare a regional workforce development plan as required under Pub. L. No. 113-128, Title I, s. 106(c)(2).~~

Section 8. Subsections (1) and (4) of section 445.0071, Florida Statutes, are amended to read:

445.0071 Florida Youth Summer Jobs Pilot Program.—

(1) CREATION.—Contingent upon appropriations, there is created the Florida Youth Summer Jobs Pilot Program within workforce development district 22 served by the Broward Workforce Development Board. The board shall, in consultation with the state board ~~CareerSource Florida, Inc.~~, provide a program offering at-risk and disadvantaged children summer jobs in partnership with local communities and public employers.

(4) GOVERNANCE.—

(a) The pilot program shall be administered by the local

workforce development board in consultation with the state board ~~CareerSource Florida, Inc~~.

(b) The local workforce development board shall report to the state board and the department ~~CareerSource Florida, Inc.,~~ the number of at-risk and disadvantaged children who enter the program, the types of work activities they participate in, and the number of children who return to school, go on to postsecondary school, or enter the workforce full time at the end of the program. The state board ~~CareerSource Florida, Inc.,~~ shall report to the Legislature by November 1 of each year on the performance of the program.

Section 9. Subsections (1) and (2) of section 445.008, Florida Statutes, are amended to read:

445.008 Workforce Training Institute.—

(1) The state board, through CareerSource Florida, Inc., may create the Workforce Training Institute, which shall be a comprehensive program of workforce training courses designed to meet the unique needs of, and shall include Internet-based training modules suitable for and made available to, professionals integral to the workforce system, including advisors and counselors in educational institutions.

(2) The state board, through CareerSource Florida, Inc., may enter into a contract for the provision of administrative support services for the institute and shall adopt policies for the administration and operation of the institute and establish

admission fees in an amount which, in the aggregate, does not exceed the cost of the program. CareerSource Florida, Inc., may accept donations or grants of any type for any function or purpose of the institute. All donations and grants received by CareerSource Florida, Inc., must be reported to the state board and the department.

Section 10. Subsections (2), (3), and (4), paragraph (b) of subsection (6), subsection (7), paragraphs (a), (c), and (d) of subsection (8), and subsection (9) of section 445.009, Florida Statutes, are amended to read:

445.009 One-stop delivery system.—

(2)(a) Subject to a process designed by the state board ~~CareerSource Florida, Inc.~~, and in compliance with Pub. L. No. 113-128, local workforce development boards shall designate one-stop delivery system operators.

(b) A local workforce development board may designate as its one-stop delivery system operator any public or private entity that is eligible to provide services under any state or federal workforce program that is a mandatory or discretionary partner in the local workforce development area's one-stop delivery system if approved by the department ~~CareerSource Florida, Inc.,~~ upon a showing by the local workforce development board that a fair and competitive process was used in the selection. As a condition of authorizing a local workforce development board to designate such an entity as its one-stop

delivery system operator, the department ~~CareerSource Florida, Inc.,~~ must require the local workforce development board to demonstrate that safeguards are in place to ensure that the one-stop delivery system operator will not exercise an unfair competitive advantage or unfairly refer or direct customers of the one-stop delivery system to services provided by that one-stop delivery system operator. A local workforce development board may retain its current one-stop career center operator without further procurement action if the local board has an established one-stop career center that has complied with federal and state law.

(c) The local workforce development board must enter into a memorandum of understanding with each mandatory or optional partner participating in the one-stop delivery system which details the partner's required contribution to infrastructure costs, as required by Pub. L. No. 113-128, s. 121(h). ~~If the local workforce development board and the one-stop partner are unable to come to an agreement regarding infrastructure costs by July 1, 2017, the costs shall be allocated pursuant to a policy established by the Governor.~~

(3) Local workforce development boards shall enter into a memorandum of understanding with the department ~~of Economic Opportunity~~ for the delivery of employment services authorized by the federal Wagner-Peyser Act. This memorandum of understanding must be performance based.

(a) Unless otherwise required by federal law, at least 90 percent of the Wagner-Peyser funding must go into direct customer service costs.

(b) Employment services must be provided through the one-stop delivery system, under the guidance of one-stop delivery system operators. One-stop delivery system operators shall have overall authority for directing the staff of the workforce system. Personnel matters shall remain under the ultimate authority of the department. However, the one-stop delivery system operator shall submit to the department information concerning the job performance of employees of the department who deliver employment services. The department shall consider any such information submitted by the one-stop delivery system operator in conducting performance appraisals of the employees.

(c) The department shall retain fiscal responsibility and accountability for the administration of funds allocated to the state under the Wagner-Peyser Act. An employee of the department who is providing services authorized under the Wagner-Peyser Act shall be paid using Wagner-Peyser Act funds.

(4) One-stop delivery system partners shall enter into a memorandum of understanding pursuant to Pub. L. No. 113-128, Title I, s. 121, with the local workforce development board. Failure of a local partner to participate cannot unilaterally block the majority of partners from moving forward with their one-stop delivery system, and the state board, in conjunction

with the department, may notify the Governor ~~CareerSource Florida, Inc., pursuant to s. 445.004(5)(e), may make notification~~ of a local partner that fails to participate.

(6)

(b) To expand electronic capabilities, the state board and the department ~~CareerSource Florida, Inc.~~, working with local workforce development boards, shall develop a centralized help center to assist local workforce development boards in fulfilling core services, minimizing the need for fixed-site one-stop delivery system centers.

(7) Intensive services and training provided pursuant to Pub. L. No. 113-128 shall be provided to individuals through Intensive Service Accounts and Individual Training Accounts. The state board ~~CareerSource Florida, Inc.,~~ shall develop an implementation plan, including identification of initially eligible training providers, transition guidelines, and criteria for use of these accounts. Individual Training Accounts must be compatible with Individual Development Accounts for education allowed in federal and state welfare reform statutes.

(8)(a) Individual Training Accounts must be expended on programs that prepare people to enter high-wage occupations identified by the Workforce Estimating Conference created by s. 216.136, and on other programs recommended by the state board and approved by the department ~~as approved by CareerSource Florida, Inc~~.

(c) The department ~~CareerSource Florida, Inc.,~~ shall periodically review Individual Training Account pricing schedules developed by local workforce development boards and present findings and recommendations for process improvement to the President of the Senate and the Speaker of the House of Representatives.

(d) To the maximum extent possible, training providers shall use funding sources other than the funding provided under Pub. L. No. 113-128. The state board ~~CareerSource Florida, Inc.,~~ shall develop a system to encourage the leveraging of appropriated resources for the workforce system and shall report on such efforts as part of the required annual report.

(9)(a) The state board ~~CareerSource Florida, Inc.~~, working with the department, shall coordinate among the agencies a plan for a One-Stop Electronic Network made up of one-stop delivery system centers and other partner agencies that are operated by authorized public or private for-profit or not-for-profit agents. The plan shall identify resources within existing revenues to establish and support this electronic network for service delivery that includes Government Services Direct. If necessary, the plan shall identify additional funding needed to achieve the provisions of this subsection.

(b) The network shall assure that a uniform method is used to determine eligibility for and management of services provided by agencies that conduct workforce development activities. The

Department of Management Services shall develop strategies to allow access to the databases and information management systems of the following systems in order to link information in those databases with the one-stop delivery system:

1. The Reemployment Assistance Program under chapter 443.

2. The public employment service described in s. 443.181.

3. The public assistance information system used by the Department of Children and Families and the components related to temporary cash assistance, food assistance, and Medicaid eligibility.

4. The Student Financial Assistance System of the Department of Education.

5. Enrollment in the public postsecondary education system.

6. Other information systems determined appropriate by the state board, in consultation with the department ~~CareerSource Florida, Inc~~.

Section 11. Section 445.011, Florida Statutes, is amended to read:

445.011 Workforce information systems.—

(1) The department, in consultation with the state board ~~CareerSource Florida, Inc.~~, shall implement, subject to legislative appropriation, automated information systems that are necessary for the efficient and effective operation and management of the workforce development system. These

information systems shall include, but need not be limited to, the following:

(a) An integrated management system for the one-stop service delivery system, which includes, at a minimum, common registration and intake, screening for needs and benefits, case planning and tracking, training benefits management, service and training provider management, performance reporting, executive information and reporting, and customer-satisfaction tracking and reporting.

1. The system should report current budgeting, expenditure, and performance information for assessing performance related to outcomes, service delivery, and financial administration for workforce programs pursuant to s. 445.004(5) and (9).

2. The information system should include auditable systems and controls to ensure financial integrity and valid and reliable performance information.

3. The system should support service integration and case management by providing for case tracking for participants in welfare transition programs.

(b) An automated job-matching information system that is accessible to employers, job seekers, and other users via the Internet, and that includes, at a minimum:

1. Skill match information, including skill gap analysis; resume creation; job order creation; skill tests; job search by

area, employer type, and employer name; and training provider linkage;

2. Job market information based on surveys, including local, state, regional, national, and international occupational and job availability information; and

3. Service provider information, including education and training providers, child care facilities and related information, health and social service agencies, and other providers of services that would be useful to job seekers.

(2) The department ~~In procuring workforce information systems, CareerSource Florida, Inc., shall employ competitive processes, including requests for proposals, competitive negotiation, and other competitive processes to ensure that the procurement results in the most cost-effective investment of state funds.~~

~~(3) CareerSource Florida, Inc.,~~ may procure independent verification and validation services associated with developing and implementing any workforce information system.

(3)~~(4)~~ The department ~~CareerSource Florida, Inc.,~~ shall coordinate development and implementation of workforce information systems with the state chief information officer to ensure compatibility with the state's information system strategy and enterprise architecture.

Section 12. Subsections (1) and (3) of section 445.014, Florida Statutes, are amended to read:

445.014 Small business workforce service initiative.—

(1) Subject to legislative appropriation, the state board ~~CareerSource Florida, Inc.,~~ shall establish a program to encourage local workforce development boards to establish one-stop delivery systems that maximize the provision of workforce and human-resource support services to small businesses. Under the program, a local workforce development board may apply, on a competitive basis, for funds to support the provision of such services to small businesses through the local workforce development area's one-stop delivery system.

(3) The state board ~~CareerSource Florida, Inc.,~~ shall establish guidelines governing the administration of this program and shall establish criteria to be used in evaluating applications for funding. Such criteria must include, but need not be limited to, a showing that the local workforce development board has in place a detailed plan for establishing a one-stop delivery system designed to meet the workforce needs of small businesses and for leveraging other funding sources in support of such activities.

Section 13. Paragraphs (b), (c), and (d) of subsection (2) and subsection (4) of section 445.021, Florida Statutes, are amended to read:

445.021 Relocation assistance program.—

(2) The relocation assistance program shall involve five steps by the local workforce development board, in cooperation

with the Department of Children and Families:

(b) A determination that there is a basis for believing that relocation will contribute to the ability of the applicant to achieve self-sufficiency. For example, the applicant:

1. Is unlikely to achieve economic self-sufficiency at the current community of residence;

2. Has secured a job that provides an increased salary or improved benefits and that requires relocation to another community;

3. Has a family support network that will contribute to job retention in another community;

4. Is determined, pursuant to criteria or procedures established by the state board ~~of directors of CareerSource Florida, Inc.,~~ to be a victim of domestic violence who would experience reduced probability of further incidents through relocation; or

5. Must relocate in order to receive education or training that is directly related to the applicant's employment or career advancement.

(c) Establishment of a relocation plan that includes such requirements as are necessary to prevent abuse of the benefit and provisions to protect the safety of victims of domestic violence and avoid provisions that place them in anticipated danger. The payment to defray relocation expenses shall be determined based on criteria approved by the state board ~~of~~

~~directors of CareerSource Florida, Inc~~. Participants in the relocation program shall be eligible for diversion or transitional benefits.

(d) A determination, pursuant to criteria adopted by the state board ~~of directors of CareerSource Florida, Inc.,~~ that a community receiving a relocated family has the capacity to provide needed services and employment opportunities.

(4) The state board ~~of directors of CareerSource Florida, Inc.,~~ may establish criteria for developing and implementing relocation plans and for drafting agreements to restrict a family from applying for temporary cash assistance for a specified period after receiving a relocation assistance payment.

Section 14. Section 445.022, Florida Statutes, is amended to read:

445.022 Retention Incentive Training Accounts.—To promote job retention and to enable upward job advancement into higher skilled, higher paying employment, the state board ~~of directors of CareerSource Florida, Inc.,~~ and the local workforce development boards may assemble a list of programs and courses offered by postsecondary educational institutions which may be available to participants who have become employed to promote job retention and advancement.

(1) The state board ~~of directors of CareerSource Florida, Inc.,~~ may establish Retention Incentive Training Accounts

(RITAs) to use Temporary Assistance to Needy Families (TANF) block grant funds specifically appropriated for this purpose. RITAs must complement the Individual Training Account required by the federal Workforce Innovation and Opportunity Act, Pub. L. No. 113-128.

(2) RITAs may pay for tuition, fees, educational materials, coaching and mentoring, performance incentives, transportation to and from courses, child care costs during education courses, and other such costs as the local workforce development boards determine are necessary to effect successful job retention and advancement.

(3) Local workforce development boards shall retain only those courses that continue to meet their performance standards as established in their local plan.

(4) Local workforce development boards shall report annually to the Legislature on the measurable retention and advancement success of each program provider and the effectiveness of RITAs, making recommendations for any needed changes or modifications.

Section 15. Paragraph (e) of subsection (5) of section 445.024, Florida Statutes, is amended to read:

445.024 Work requirements.—

(5) USE OF CONTRACTS.—Local workforce development boards shall provide work activities, training, and other services, as appropriate, through contracts. In contracting for work

activities, training, or services, the following applies:

(e) The administrative costs associated with a contract for services provided under this section may not exceed the applicable administrative cost ceiling established in federal law. An agency or entity that is awarded a contract under this section may not charge more than 7 percent of the value of the contract for administration unless an exception is approved by the local workforce development board. A list of any exceptions approved must be submitted to the state board ~~of directors of CareerSource Florida, Inc.,~~ for review, and the state board may rescind approval of the exception.

Section 16. Subsection (6) of section 445.026, Florida Statutes, is amended to read:

445.026 Cash assistance severance benefit.—An individual who meets the criteria listed in this section may choose to receive a lump-sum payment in lieu of ongoing cash assistance payments, provided the individual:

(6) Signs an agreement not to apply for or accept cash assistance for 6 months after receipt of the one-time payment. In the event of an emergency, such agreement shall provide for an exception to this restriction, provided that the one-time payment shall be deducted from any cash assistance for which the family subsequently is approved. This deduction may be prorated over an 8-month period. The state board ~~of directors of CareerSource Florida, Inc.,~~ shall adopt criteria defining the

conditions under which a family may receive cash assistance due to such emergency.

Such individual may choose to accept a one-time, lump-sum payment of $1,000 in lieu of receiving ongoing cash assistance. Such payment shall only count toward the time limitation for the month in which the payment is made in lieu of cash assistance. A participant choosing to accept such payment shall be terminated from cash assistance. However, eligibility for Medicaid, food assistance, or child care shall continue, subject to the eligibility requirements of those programs.

Section 17. Section 445.028, Florida Statutes, is amended to read:

445.028 Transitional benefits and services.—In cooperation with the department ~~CareerSource Florida, Inc.~~, the Department of Children and Families shall develop procedures to ensure that families leaving the temporary cash assistance program receive transitional benefits and services that will assist the family in moving toward self-sufficiency. At a minimum, such procedures must include, but are not limited to, the following:

(1) Each recipient of cash assistance who is determined ineligible for cash assistance for a reason other than a work activity sanction shall be contacted by the workforce system case manager and provided information about the availability of transitional benefits and services. Such contact shall be

attempted prior to closure of the case management file.

(2) Each recipient of temporary cash assistance who is determined ineligible for cash assistance due to noncompliance with the work activity requirements shall be contacted and provided information in accordance with s. 414.065(1).

(3) The department, in consultation with the state board ~~of directors of CareerSource Florida, Inc.~~, shall develop informational material, including posters and brochures, to better inform families about the availability of transitional benefits and services.

(4) The department ~~CareerSource Florida, Inc.~~, in cooperation with the Department of Children and Families, shall, to the extent permitted by federal law, develop procedures to maximize the utilization of transitional Medicaid by families who leave the temporary cash assistance program.

Section 18. Section 445.030, Florida Statutes, is amended to read:

445.030 Transitional education and training.—In order to assist former recipients of temporary cash assistance who are working or actively seeking employment in continuing their training and upgrading their skills, education, or training, support services may be provided for up to 2 years after the family is no longer receiving temporary cash assistance. This section does not constitute an entitlement to transitional education and training. If funds are not sufficient to provide

services under this section, the state board ~~of directors of CareerSource Florida, Inc.,~~ may limit or otherwise prioritize transitional education and training.

(1) Education or training resources available in the community at no additional cost shall be used whenever possible.

(2) Local workforce development boards may authorize child care or other support services in addition to services provided in conjunction with employment. For example, a participant who is employed full time may receive child care services related to that employment and may also receive additional child care services in conjunction with training to upgrade the participant's skills.

(3) Transitional education or training must be job-related, but may include training to improve job skills in a participant's existing area of employment or may include training to prepare a participant for employment in another occupation.

(4) A local workforce development board may enter into an agreement with an employer to share the costs relating to upgrading the skills of participants hired by the employer. For example, a local workforce development board may agree to provide support services such as transportation or a wage subsidy in conjunction with training opportunities provided by the employer.

Section 19. Section 445.033, Florida Statutes, is amended

to read:

445.033 Evaluation.—The state board ~~of directors of CareerSource Florida, Inc.,~~ and the Department of Children and Families shall arrange for evaluation of TANF-funded programs operated under this chapter, as follows:

(1) If required by federal waivers or other federal requirements, the state board ~~of directors of CareerSource Florida, Inc.,~~ and the department may provide for evaluation according to these requirements.

(2) The state board ~~of directors of CareerSource Florida, Inc.,~~ and the department shall participate in the evaluation of this program in conjunction with evaluation of the state's workforce development programs or similar activities aimed at evaluating program outcomes, cost-effectiveness, or return on investment, and the impact of time limits, sanctions, and other welfare reform measures set out in this chapter. Evaluation shall also contain information on the number of participants in work experience assignments who obtain unsubsidized employment, including, but not limited to, the length of time the unsubsidized job is retained, wages, and the public benefits, if any, received by such families while in unsubsidized employment. The evaluation must solicit the input of consumers, community-based organizations, service providers, employers, and the general public, and must publicize, especially in low-income communities, the process for submitting comments.

(3) The state board ~~of directors of CareerSource Florida, Inc.,~~ and the department may share information with and develop protocols for information exchange with the Florida Education and Training Placement Information Program.

(4) The state board ~~of directors of CareerSource Florida, Inc.,~~ and the department may initiate or participate in additional evaluation or assessment activities that will further the systematic study of issues related to program goals and outcomes.

(5) In providing for evaluation activities, the state board ~~of directors of CareerSource Florida, Inc.,~~ and the department shall safeguard the use or disclosure of information obtained from program participants consistent with federal or state requirements. Evaluation methodologies may be used which are appropriate for evaluation of program activities, including random assignment of recipients or participants into program groups or control groups. To the extent necessary or appropriate, evaluation data shall provide information with respect to the state, district, or county, or other substate area.

(6) The state board ~~of directors of CareerSource Florida, Inc.,~~ and the department may contract with a qualified organization for evaluations conducted under this section.

Section 20. Section 445.035, Florida Statutes, is amended to read:

445.035 Data collection and reporting.—The Department of Children and Families and the state board ~~of directors of CareerSource Florida, Inc.,~~ shall collect data necessary to administer this chapter and make the reports required under federal law to the United States Department of Health and Human Services and the United States Department of Agriculture.

Section 21. Subsections (1), (2), and (3), paragraph (b) of subsection (4), and subsection (5) of section 445.048, Florida Statutes, are amended to read:

445.048 Passport to Economic Progress program.—

(1) AUTHORIZATION.—Notwithstanding any law to the contrary, the state board ~~CareerSource Florida, Inc.~~, in conjunction with the department and the Department of Children and Families ~~and the Department of Economic Opportunity~~, shall implement a Passport to Economic Progress program consistent with this section. The state board ~~CareerSource Florida, Inc.,~~ may designate local workforce development boards to participate in the program. Expenses for the program may come from appropriated revenues or from funds otherwise available to a local workforce development board which may be legally used for such purposes. The state board ~~CareerSource Florida, Inc.,~~ must consult with the applicable local workforce development boards and the applicable local offices of the Department of Children and Families which serve the program areas and must encourage community input into the implementation process.

(2) WAIVERS.—If the state board ~~CareerSource Florida, Inc.,~~ in consultation with the Department of Children and Families, finds that federal waivers would facilitate implementation of the program, the department shall immediately request such waivers, and the state board ~~CareerSource Florida, Inc.,~~ shall report to the Governor, the President of the Senate, and the Speaker of the House of Representatives if any refusal of the federal government to grant such waivers prevents the implementation of the program. If the state board ~~CareerSource Florida, Inc.,~~ finds that federal waivers to provisions of the Food Assistance Program would facilitate implementation of the program, the Department of Children and Families shall immediately request such waivers in accordance with s. 414.175.

(3) TRANSITIONAL BENEFITS AND SERVICES.—In order to assist them in making the transition to economic self-sufficiency, former recipients of temporary cash assistance participating in the passport program shall be eligible for the following benefits and services:

(a) Notwithstanding the time period specified in s. 445.030, transitional education and training support services as specified in s. 445.030 for up to 4 years after the family is no longer receiving temporary cash assistance;

(b) Notwithstanding the time period specified in s. 445.031, transitional transportation support services as specified in s. 445.031 for up to 4 years after the family is no

longer receiving temporary cash assistance; and

(c) Notwithstanding the time period specified in s. 445.032, transitional child care as specified in s. 445.032 for up to 4 years after the family is no longer receiving temporary cash assistance.

All other provisions of ss. 445.030, 445.031, and 445.032 apply to such individuals, as appropriate. This subsection does not constitute an entitlement to transitional benefits and services. If funds are insufficient to provide benefits and services under this subsection, the state board ~~of directors of CareerSource Florida, Inc.~~, or its agent, may limit such benefits and services or otherwise establish priorities for the provisions of such benefits and services.

(4) INCENTIVES TO ECONOMIC SELF-SUFFICIENCY.—

(b) The state board ~~CareerSource Florida, Inc.~~, in cooperation with the department and the Department of Children and Families ~~and the Department of Economic Opportunity~~, shall offer performance-based incentive bonuses as a component of the Passport to Economic Progress program. The bonuses do not represent a program entitlement and are contingent on achieving specific benchmarks prescribed in the self-sufficiency plan. If the funds appropriated for this purpose are insufficient to provide this financial incentive, the state board ~~of directors of CareerSource Florida, Inc.,~~ may reduce or suspend the bonuses

in order not to exceed the appropriation or may direct the local workforce development boards to use resources otherwise given to the local workforce development board to pay such bonuses if such payments comply with applicable state and federal laws.

(5) EVALUATIONS AND RECOMMENDATIONS.—The state board ~~CareerSource Florida, Inc.~~, in conjunction with the department, the Department of Children and Families, ~~the Department of Economic Opportunity,~~ and the local workforce development boards, shall conduct a comprehensive evaluation of the effectiveness of the program operated under this section. Evaluations and recommendations for the program shall be submitted by the state board ~~CareerSource Florida, Inc.,~~ as part of its annual report to the Legislature.

Section 22. Subsections (6), (8), and (13) of section 445.051, Florida Statutes, are amended to read:

445.051 Individual development accounts.—

(6) The state board ~~CareerSource Florida, Inc.,~~ shall establish procedures for local workforce development boards to include in their annual program and financial plan an application to offer an individual development account program as part of their TANF allocation. These procedures must include, but need not be limited to, administrative costs permitted for the fiduciary organization and policies relative to identifying the match ratio and limits on the deposits for which the match will be provided in the application process. The state board

~~CareerSource Florida, Inc.,~~ shall establish policies and procedures necessary to ensure that funds held in an individual development account are not withdrawn except for one or more of the qualified purposes described in this section.

(8) The state board ~~CareerSource Florida, Inc.,~~ shall establish procedures for controlling the withdrawal of funds for uses other than qualified purposes, including specifying conditions under which an account must be closed.

(13) Pursuant to policy direction by the state board ~~CareerSource Florida, Inc.~~, the department ~~of Economic Opportunity~~ shall adopt such rules as are necessary to implement this act.

Section 23. Subsection (2) of section 445.055, Florida Statutes, is amended to read:

445.055 Employment advocacy and assistance program targeting military spouses and dependents.—

(2) The state board ~~CareerSource Florida, Inc.,~~ shall establish an employment advocacy and assistance program targeting military spouses and dependents. This program shall deliver employment assistance services through military family employment advocates colocated within selected one-stop career centers. Persons eligible for assistance through this program include spouses and dependents of active duty military personnel, Florida National Guard members, and military reservists.

Section 24. Paragraph (p) of subsection (3) of section 11.45, Florida Statutes, is amended to read:

11.45 Definitions; duties; authorities; reports; rules.—

(3) AUTHORITY FOR AUDITS AND OTHER ENGAGEMENTS.—The Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements as determined appropriate by the Auditor General of:

(p) CareerSource Florida, Inc., the state board as defined in s. 445.002, or the programs or entities created by the state board under ~~CareerSource Florida, Inc., created pursuant to~~ s. 445.004.

Section 25. Paragraph (a) of subsection (5) of section 288.901, Florida Statutes, is amended to read:

288.901 Enterprise Florida, Inc.—

(5) APPOINTED MEMBERS OF THE BOARD OF DIRECTORS.—

(a) In addition to the Governor or his or her designee, the board of directors shall consist of the following appointed members:

1. The Commissioner of Education or his or her designee.

2. The Chief Financial Officer or his or her designee.

3. The Attorney General or his or her designee.

4. The Commissioner of Agriculture or his or her designee.

5. The chairperson of the state board as defined in s. 445.002 ~~board of directors of CareerSource Florida, Inc~~.

6. The Secretary of State or his or her designee.

7. Twelve members from the private sector, six of whom shall be appointed by the Governor, three of whom shall be appointed by the President of the Senate, and three of whom shall be appointed by the Speaker of the House of Representatives. Members appointed by the Governor are subject to Senate confirmation.

All board members shall serve without compensation, but are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 112.061. Such expenses must be paid out of funds of Enterprise Florida, Inc.

Section 26. Subsection (5) of section 331.369, Florida Statutes, is amended to read:

331.369 Space Industry Workforce Initiative.—

(5) The state board as defined in s. 445.002 ~~CareerSource Florida, Inc.~~, as part of its statutorily prescribed annual report to the Legislature, shall provide recommendations for policies, programs, and funding to enhance the workforce needs of the aerospace industry.

Section 27. Paragraph (k) of subsection (1) and subsection (9) of section 413.405, Florida Statutes, are amended to read:

413.405 Florida Rehabilitation Council.—There is created the Florida Rehabilitation Council to assist the division in the planning and development of statewide rehabilitation programs

and services, to recommend improvements to such programs and services, and to perform the functions listed in this section.

(1) The council shall be composed of:

(k) At least one representative of the state board as defined in s. 445.002 ~~board of directors of CareerSource Florida, Inc~~.

(9) In addition to the other functions specified in this section, the council shall, after consulting with the state board as defined in s. 445.002 ~~board of directors of CareerSource Florida, Inc.~~:

(a) Review, analyze, and advise the division regarding the performance of the responsibilities of the division under Title I of the act, particularly responsibilities relating to:

1. Eligibility, including order of selection.

2. The extent, scope, and effectiveness of services provided.

3. Functions performed by state agencies which affect or potentially affect the ability of individuals with disabilities to achieve employment outcomes under Title I.

(b) In partnership with the division:

1. Develop, agree to, and review state goals and priorities in accordance with 34 C.F.R. s. 361.29(c); and

2. Evaluate the effectiveness of the vocational rehabilitation program and submit reports of progress to the Governor, the President of the Senate, the Speaker of the House

of Representatives, and the United States Secretary of Education in accordance with 34 C.F.R. s. 361.29(e).

(c) Advise the department and the division and assist in the preparation of the state plan and amendments to the plan, applications, reports, needs assessments, and evaluations required by Title I.

(d) To the extent feasible, conduct a review and analysis of the effectiveness of, and consumer satisfaction with:

1. The functions performed by state agencies and other public and private entities responsible for performing functions for individuals who have disabilities.

2. Vocational rehabilitation services:

a. Provided or paid for from funds made available under the act or through other public or private sources.

b. Provided by state agencies and other public and private entities responsible for providing vocational rehabilitation services to individuals who have disabilities.

3. The employment outcomes achieved by eligible individuals receiving services under this part, including the availability of health or other employment benefits in connection with those employment outcomes.

(e) Prepare and submit an annual report on the status of vocational rehabilitation programs in the state to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the United States Secretary of Education

and make the report available to the public.

(f) Coordinate with other councils within Florida, including the Florida Independent Living Council, the advisory panel established under s. 612(a)(21) of the Individuals with Disabilities Education Act, 20 U.S.C. s. 1412(a)(21), the State Planning Council described in s. 124 of the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. s. 15024, the state mental health planning council established under s. 1914 of the Public Health Service Act, 42 U.S.C. s. 300x-3, and the state board as defined in s. 445.002 ~~board of directors of CareerSource Florida, Inc~~.

(g) Advise the department and division and provide for coordination and the establishment of working relationships among the department, the division, the Florida Independent Living Council, and centers for independent living in the state.

(h) Perform other functions that are consistent with the duties and responsibilities of the council under this section.

Section 28. Section 414.045, Florida Statutes, is amended to read:

414.045 Cash assistance program.—Cash assistance families include any families receiving cash assistance payments from the state program for temporary assistance for needy families as defined in federal law, whether such funds are from federal funds, state funds, or commingled federal and state funds. Cash assistance families may also include families receiving cash

assistance through a program defined as a separate state program.

(1) For reporting purposes, families receiving cash assistance shall be grouped into the following categories. The department may develop additional groupings in order to comply with federal reporting requirements, to comply with the data-reporting needs of the state board as defined in s. 445.002 ~~board of directors of CareerSource Florida, Inc.~~, or to better inform the public of program progress.

(a) Work-eligible cases.—Work-eligible cases shall include:

1. Families containing an adult or a teen head of household, as defined by federal law. These cases are generally subject to the work activity requirements provided in s. 445.024 and the time limitations on benefits provided in s. 414.105.

2. Families with a parent where the parent's needs have been removed from the case due to sanction or disqualification shall be considered work-eligible cases to the extent that such cases are considered in the calculation of federal participation rates or would be counted in such calculation in future months.

3. Families participating in transition assistance programs.

4. Families otherwise eligible for temporary cash assistance which receive diversion services, a severance payment, or participate in the relocation program.

(b) Child-only cases.—Child-only cases include cases that do not have an adult or teen head of household as defined in federal law. Such cases include:

1. Children in the care of caretaker relatives, if the caretaker relatives choose to have their needs excluded in the calculation of the amount of cash assistance.

2. Families in the Relative Caregiver Program as provided in s. 39.5085.

3. Families in which the only parent in a single-parent family or both parents in a two-parent family receive supplemental security income (SSI) benefits under Title XVI of the Social Security Act, as amended. To the extent permitted by federal law, individuals receiving SSI shall be excluded as household members in determining the amount of cash assistance, and such cases shall not be considered families containing an adult. Parents or caretaker relatives who are excluded from the cash assistance group due to receipt of SSI may choose to participate in work activities. An individual whose ability to participate in work activities is limited who volunteers to participate in work activities shall be assigned to work activities consistent with such limitations. An individual who volunteers to participate in a work activity may receive child care or support services consistent with such participation.

4. Families in which the only parent in a single-parent family or both parents in a two-parent family are not eligible

for cash assistance due to immigration status or other limitation of federal law. To the extent required by federal law, such cases shall not be considered families containing an adult.

5. To the extent permitted by federal law and subject to appropriations, special needs children who have been adopted pursuant to s. 409.166 and whose adopting family qualifies as a needy family under the state program for temporary assistance for needy families. Notwithstanding any provision to the contrary in s. 414.075, s. 414.085, or s. 414.095, a family shall be considered a needy family if:

a. The family is determined by the department to have an income below 200 percent of the federal poverty level;

b. The family meets the requirements of s. 414.095(2) and (3) related to residence, citizenship, or eligible noncitizen status; and

c. The family provides any information that may be necessary to meet federal reporting requirements specified under Part A of Title IV of the Social Security Act.

6. Families in the Guardianship Assistance Program as provided in s. 39.6225.

Families described in subparagraph 1., subparagraph 2., or subparagraph 3. may receive child care assistance or other supports or services so that the children may continue to be

cared for in their own homes or in the homes of relatives. Such assistance or services may be funded from the temporary assistance for needy families block grant to the extent permitted under federal law and to the extent funds have been provided in the General Appropriations Act.

(2) Oversight by the state board as defined in s. 445.002 ~~board of directors of CareerSource Florida, Inc.,~~ and the service delivery and financial planning responsibilities of the local workforce development boards apply to the families defined as work-eligible cases in paragraph (1)(a). The department shall be responsible for program administration related to families in groups defined in paragraph (1)(b), and the department shall coordinate such administration with the state board ~~of directors of CareerSource Florida, Inc.,~~ to the extent needed for operation of the program.

Section 29. Subsection (2) of section 420.622, Florida Statutes, is amended to read:

420.622 State Office on Homelessness; Council on Homelessness.—

(2) The Council on Homelessness is created to consist of 17 representatives of public and private agencies who shall develop policy and advise the State Office on Homelessness. The council members shall be: the Secretary of Children and Families, or his or her designee; the executive director of the Department of Economic Opportunity, or his or her designee, who

shall advise the council on issues related to rural development; the State Surgeon General, or his or her designee; the Executive Director of Veterans' Affairs, or his or her designee; the Secretary of Corrections, or his or her designee; the Secretary of Health Care Administration, or his or her designee; the Commissioner of Education, or his or her designee; the Executive Director of CareerSource Florida, Inc., or his or her designee; one representative of the Florida Association of Counties; one representative of the Florida League of Cities; one representative of the Florida Supportive Housing Coalition; the Executive Director of the Florida Housing Finance Corporation, or his or her designee; one representative of the Florida Coalition for the Homeless; and four members appointed by the Governor. The council members shall be nonpaid volunteers and shall be reimbursed only for travel expenses. The appointed members of the council shall be appointed to staggered 2-year terms, and the council shall meet at least four times per year. The importance of minority, gender, and geographic representation shall be considered in appointing members to the council.

Section 30. Subsections (1) and (4) of section 443.171, Florida Statutes, are amended to read:

443.171 Department of Economic Opportunity and commission; powers and duties; records and reports; proceedings; state-federal cooperation.—

(1) POWERS AND DUTIES.—The Department of Economic Opportunity shall administer this chapter. The department may employ persons, make expenditures, require reports, conduct investigations, and take other action necessary or suitable to administer this chapter. The department shall annually submit information to the state board as defined in s. 445.002 ~~CareerSource Florida, Inc.,~~ covering the administration and operation of this chapter during the preceding calendar year for inclusion in the strategic plan under s. 445.006 and may make recommendations for amendment to this chapter.

(4) EMPLOYMENT STABILIZATION.—The Department of Economic Opportunity, under the direction of the state board as defined in s. 445.002 ~~CareerSource Florida, Inc.~~, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of career training, retraining, and career guidance; to investigate, recommend, advise, and assist municipalities, counties, school districts, and the state in the establishment and operation of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the state in every other way that may be feasible; to refer a claimant entitled to extended benefits to suitable work that meets the criteria of this chapter; and, to these ends, to carry on and publish the results of investigations and research studies.

Section 31. Subsection (1) of section 443.181, Florida Statutes, is amended to read:

443.181 Public employment service.—

(1) The one-stop delivery system established under s. 445.009 is this state's public employment service as part of the national system of public employment offices established under 29 U.S.C. s. 49. The Department of Economic Opportunity, under policy direction from the state board as defined in s. 445.002 ~~CareerSource Florida, Inc.~~, shall cooperate with any official or agency of the United States having power or duties under 29 U.S.C. ss. 49-49l-1 and shall perform those duties necessary to secure to this state the funds provided under federal law for the promotion and maintenance of the state's public employment service. In accordance with 29 U.S.C. s. 49c, this state accepts 29 U.S.C. ss. 49-49l-1. The department is designated the state agency responsible for cooperating with the United States Secretary of Labor under 29 U.S.C. s. 49c. The department shall appoint sufficient employees to administer this section. The department may cooperate with or enter into agreements with the Railroad Retirement Board for the establishment, maintenance, and use of one-stop career centers.

Section 32. Subsection (1) of section 446.71, Florida Statutes, is amended to read:

446.71 Everglades Restoration Agricultural Community Employment Training Program.—

(1) The Department of Economic Opportunity, in cooperation with the state board as defined in s. 445.002 ~~CareerSource Florida, Inc.~~, shall establish the Everglades Restoration Agricultural Community Employment Training Program within the Department of Economic Opportunity. The Department of Economic Opportunity shall use funds appropriated to the program by the Legislature to provide grants to stimulate and support training and employment programs that seek to match persons who complete such training programs to nonagricultural employment opportunities in areas of high agricultural unemployment, and to provide other training, educational, and information services necessary to stimulate the creation of jobs in the areas of high agricultural unemployment. In determining whether to provide funds to a particular program, the Department of Economic Opportunity shall consider the location of the program in proximity to the program's intended participants.

Section 33. Subsection (9) of section 1011.80, Florida Statutes, is amended to read:

1011.80 Funds for operation of workforce education programs.—

(9) The State Board of Education and the state board as defined in s. 445.002 ~~CareerSource Florida, Inc.,~~ shall provide the Legislature with recommended formulas, criteria, timeframes, and mechanisms for distributing performance funds. The commissioner shall consolidate the recommendations and develop a

consensus proposal for funding. The Legislature shall adopt a formula and distribute the performance funds to the State Board of Education for Florida College System institutions and school districts through the General Appropriations Act. These recommendations shall be based on formulas that would discourage low-performing or low-demand programs and encourage through performance-funding awards:

(a) Programs that prepare people to enter high-wage occupations identified by the Workforce Estimating Conference created by s. 216.136 and other programs as approved by the state board as defined in s. 445.002 ~~CareerSource Florida, Inc~~. At a minimum, performance incentives shall be calculated for adults who reach completion points or complete programs that lead to specified high-wage employment and to their placement in that employment.

(b) Programs that successfully prepare adults who are eligible for public assistance, economically disadvantaged, disabled, not proficient in English, or dislocated workers for high-wage occupations. At a minimum, performance incentives shall be calculated at an enhanced value for the completion of adults identified in this paragraph and job placement of such adults upon completion. In addition, adjustments may be made in payments for job placements for areas of high unemployment.

(c) Programs that are specifically designed to be consistent with the workforce needs of private enterprise and

regional economic development strategies, as defined in guidelines set by the state board as defined in s. 445.002 ~~CareerSource Florida, Inc~~. The state board ~~CareerSource Florida, Inc.,~~ shall develop guidelines to identify such needs and strategies based on localized research of private employers and economic development practitioners.

(d) Programs identified by the state board as defined in s. 445.002 ~~CareerSource Florida, Inc.,~~ as increasing the effectiveness and cost efficiency of education.

Section 34. Subsection (3) of section 1011.801, Florida Statutes, is amended to read:

1011.801 Workforce Development Capitalization Incentive Grant Program.—The Legislature recognizes that the need for school districts and Florida College System institutions to be able to respond to emerging local or statewide economic development needs is critical to the workforce development system. The Workforce Development Capitalization Incentive Grant Program is created to provide grants to school districts and Florida College System institutions on a competitive basis to fund some or all of the costs associated with the creation or expansion of workforce development programs that serve specific employment workforce needs.

(3) The State Board of Education shall give highest priority to programs that train people to enter high-skill, high-wage occupations identified by the Workforce Estimating

Conference and other programs approved by the state board as defined in s. 445.002, ~~CareerSource Florida, Inc.,~~ programs that train people to enter occupations under the welfare transition program, ~~,~~ or programs that train for the workforce adults who are eligible for public assistance, economically disadvantaged, disabled, not proficient in English, or dislocated workers. The State Board of Education shall consider the statewide geographic dispersion of grant funds in ranking the applications and shall give priority to applications from education agencies that are making maximum use of their workforce development funding by offering high-performing, high-demand programs.

Section 35. Paragraph (c) of subsection (5), subsection (6), paragraph (b) of subsection (10), and subsection (11) of section 20.60, Florida Statutes, are amended, and paragraph (c) is added to subsection (9) of that section, to read:

20.60 Department of Economic Opportunity; creation; powers and duties.—

(5) The divisions within the department have specific responsibilities to achieve the duties, responsibilities, and goals of the department. Specifically:

(c) The Division of Workforce Services shall:

1. Prepare and submit a unified budget request for workforce development in accordance with chapter 216 for, and in conjunction with, the state ~~CareerSource Florida, Inc., and its~~ board as defined in s. 445.002.

2. Ensure that the state appropriately administers federal and state workforce funding by administering plans and policies of the state board as defined in s. 445.002 ~~CareerSource Florida, Inc., under contract with CareerSource Florida, Inc~~. The operating budget and midyear amendments thereto must be part of such contract.

a. All program and fiscal instructions to local workforce development boards shall emanate from the Department of Economic Opportunity pursuant to plans and policies of the state board as defined in s. 445.002 ~~CareerSource Florida, Inc.~~, which shall be responsible for all policy directions to the local workforce development boards.

b. Unless otherwise provided by agreement with the state board as defined in s. 445.002 ~~CareerSource Florida, Inc.~~, administrative and personnel policies of the Department of Economic Opportunity apply.

3. Implement the state's reemployment assistance program. The Department of Economic Opportunity shall ensure that the state appropriately administers the reemployment assistance program pursuant to state and federal law.

4. Assist in developing the 5-year statewide strategic plan required by this section.

(6)(a) The Department of Economic Opportunity is the administrative agency designated for receipt of federal workforce development grants and other federal funds. The

department shall administer the duties and responsibilities assigned by the Governor under each federal grant assigned to the department. The department shall expend each revenue source as provided by federal and state law and as provided in plans developed by and agreements with the state board as defined in s. 445.002 ~~CareerSource Florida, Inc~~. The department may serve as the contract administrator for contracts entered into by the state board under ~~CareerSource Florida, Inc., pursuant to~~ s. 445.004(5)~~, as directed by CareerSource Florida, Inc~~.

(b) The Department of Economic Opportunity shall serve as the designated agency for purposes of each federal workforce development grant assigned to it for administration. The department shall carry out the duties assigned to it by the Governor, under the terms and conditions of each grant. The department shall have the level of authority and autonomy necessary to be the designated recipient of each federal grant assigned to it and shall disburse such grants pursuant to the plans and policies of the state board as defined in s. 445.002 ~~CareerSource Florida, Inc~~. The executive director may, upon delegation from the Governor and pursuant to agreement with the state board ~~CareerSource Florida, Inc.~~, sign contracts, grants, and other instruments as necessary to execute functions assigned to the department. Notwithstanding other provisions of law, the department shall administer other programs funded by federal or state appropriations, as determined by the Legislature in the

General Appropriations Act or other law.

(9) The executive director shall:

(c) Serve as the chair of the board of directors of the Florida Development Finance Corporation.

(10) The department, with assistance from Enterprise Florida, Inc., shall, by November 1 of each year, submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the condition of the business climate and economic development in the state.

(b) The report must incorporate annual reports of other programs, including:

1. Information provided by the Department of Revenue under s. 290.014.

2. Information provided by enterprise zone development agencies under s. 290.0056 and an analysis of the activities and accomplishments of each enterprise zone.

3. The Economic Gardening Business Loan Pilot Program established under s. 288.1081 and the Economic Gardening Technical Assistance Pilot Program established under s. 288.1082.

4. A detailed report of the performance of the Black Business Loan Program and a cumulative summary of quarterly report data required under s. 288.714.

5. The Rural Economic Development Initiative established under s. 288.0656.

6. The Florida Unique Abilities Partner Program.

7. A detailed report of the performance of the Florida Development Finance Corporation and a summary of the corporation's report that is required under s. 288.9610.

(11) The department shall establish annual performance standards for Enterprise Florida, Inc., CareerSource Florida, Inc., the Florida Tourism Industry Marketing Corporation, the Florida Development Finance Corporation, and Space Florida and report annually on how these performance measures are being met in the annual report required under subsection (10).

Section 36. Subsection (2), paragraphs (a) and (c) of subsection (3), and subsection (4) of section 288.9604, Florida Statutes, are amended, and subsection (5) is added to that section, to read:

288.9604 Creation of the authority.—

(2)(a) The board of directors of the corporation shall consist of seven members. The executive director of the department, or his or her designee, shall serve as chair of the board of directors. The director of the Division of Bond Finance of the State Board of Administration, or his or her designee, shall serve as a director on the board. The Governor, subject to confirmation by the Senate, shall appoint the remaining five members of the board of directors ~~of the corporation, who shall be five in number~~. At least three of the appointed directors of the corporation must be bankers or persons with experience in

finance, and one of the appointed directors must be an economic development specialist.

(b) The terms of office for the appointed directors are for ~~shall be for~~ 4 years after ~~from~~ the date of their appointment. A vacancy occurring during a term of an appointed director shall be filled for the unexpired term. An appointed ~~A~~ director is ~~shall be~~ eligible for reappointment. Each appointed director shall hold office until his or her successor has been appointed ~~At least three of the directors of the corporation shall be bankers who have been selected by the Governor from a list of bankers who were nominated by Enterprise Florida, Inc., and one of the directors shall be an economic development specialist~~.

(3)(a)1. A director may not receive compensation for his or her services, but is entitled to necessary expenses, including travel expenses, incurred in the discharge of his or her duties. ~~Each director shall hold office until his or her successor has been appointed.~~

2. Directors are subject to ss. 112.313(1)-(8), (10), (12), and (15); 112.3135; and 112.3143(2). For purposes of applying ss. 112.313(1)-(8), (10), (12), and (15); 112.3135; and 112.3143(2) to activities of directors, directors are ~~shall be~~ considered public officers and the corporation is ~~shall be~~ considered their agency.

(c) ~~The directors of the corporation shall annually elect~~

~~one of their members as chair and one as vice chair.~~ The corporation may employ a president, technical experts, and such other agents and employees, permanent and temporary, as it requires and determine their qualifications, duties, and compensation. For such legal services as it requires, the corporation may employ or retain its own counsel and legal staff.

(4) The board may remove an appointed ~~a~~ director for inefficiency, neglect of duty, or misconduct in office. An appointed director may be removed only after a hearing and only if he or she has been given a copy of the charges at least 10 days before such hearing and has had an opportunity to be heard in person or by counsel. The removal of an appointed ~~a~~ director creates ~~shall create~~ a vacancy on the board which must ~~shall~~ be filled pursuant to subsection (2).

(5) This section is repealed October 1, 2022, and October 1 of every fourth year thereafter, unless reviewed and saved from repeal by the Legislature.

Section 37. In order to implement the changes made by this act to s. 288.9604, Florida Statutes, the chair and vice chair of the board of directors of the Florida Development Finance Corporation on June 30, 2020, shall serve as appointed directors beginning on July 1, 2020. This act does not affect the terms of the current directors serving on the board on July 1, 2020.

Section 38. Section 288.9610, Florida Statutes, is amended

to read:

288.9610 Annual reports of Florida Development Finance Corporation.—On or before 90 days after the close of the Florida Development Finance Corporation's fiscal year, the corporation shall submit to the Governor, the Legislature, the Auditor General, the Department of Economic Opportunity, and the governing body of each public entity with which it has entered into an interlocal agreement a complete and detailed report setting forth:

(1) The results of any audit conducted under ~~pursuant to~~ s. 11.45.

(2) The activities, operations, and accomplishments of the Florida Development Finance Corporation, including the number of businesses assisted by the corporation.

(3) Its assets, liabilities, income, and operating expenses at the end of its most recent fiscal year, including a description of all of its outstanding revenue bonds.

Section 39. A contract or interlocal agreement that exists before July 1, 2020, between the Florida Development Finance Corporation, or an entity or agent of the corporation, and any other entity or person shall remain in effect and be binding on the successor department, entity, or person responsible for the program, activity, or function that relates to the contract or interlocal agreement.

Section 40. This act shall take effect July 1, 2020.

COMMERCE COMMITTEE

PCS for CS/HB 1139 by Rep. Clemons
Economic Development

AMENDMENT SUMMARY
February 20, 2020

Amendment 1 by Rep. Fischer (Lines 2228 - 2349):

- Provides that the executive director of DEO serves as a member of the board of directors of the Florida Development Finance Corporation (FDFC) instead of its chair, and states that the executive director may designate a DEO employee to serve in this capacity.
- Removes unnecessary language regarding the continuation of contracts between FDFC and others.
- Substitutes "directors" for the term "members" to provide for consistent use of terminology,
- Adds provisions specifying quorum and other requirements for the board of directors of FDFC to conduct its business.
- Changes the date of repeal of the FDFC's authorizing statute from October 1, 2022, to July 1, 2023, and scheduled repeal date every fourth year thereafter from October 1 to July 1.
- Specifies that FDFC may execute contracts and instruments electronically in accordance with the Electronic Signature Act of 1996.
- Amends FDFC's authority regarding the issuance of revenue bonds and imposes new requirements on such issuances.
- Increases the maximum maturity date for revenue bonds issued by FDFC from 30 to 35 years.
- Adds provisions specifying bonds issued by FDFC are not a debt, liability, or obligation of the state or any subdivision, or a pledge of faith and credit of FDFC, the state or any subdivision, and requires bonds to contain a statement to that effect.
- Adds a conflicts of interest provision requiring FDFC directors with a direct or indirect interest with affected parties to publicly disclose such interests and prohibits a director with such a conflict from participating in any action by FDFC regarding the affected party.
- Removes a provision of the bill that specifies a contract or interlocal agreement in effect prior to July 1, 2020 between FDFC and another party shall remain in effect and be binding on the successor entity to FDFC.

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

Committee/Subcommittee hearing bill: Commerce Committee
Representative Fischer offered the following:

Amendment (with title amendment)

Remove lines 2228-2349 and insert:

(c) Serve as a member of the board of directors of the Florida Development Finance Corporation. The executive director may designate an employee of the department to serve in this capacity.

(10) The department, with assistance from Enterprise Florida, Inc., shall, by November 1 of each year, submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the condition of the business climate and economic development in the state.

(b) The report must incorporate annual reports of other programs, including:

1. Information provided by the Department of Revenue under s. 290.014.

2. Information provided by enterprise zone development agencies under s. 290.0056 and an analysis of the activities and accomplishments of each enterprise zone.

3. The Economic Gardening Business Loan Pilot Program established under s. 288.1081 and the Economic Gardening Technical Assistance Pilot Program established under s. 288.1082.

4. A detailed report of the performance of the Black Business Loan Program and a cumulative summary of quarterly report data required under s. 288.714.

5. The Rural Economic Development Initiative established under s. 288.0656.

6. The Florida Unique Abilities Partner Program.

7. A detailed report of the performance of the Florida Development Finance Corporation and a summary of the corporation's report required under s. 288.9610.

(11) The department shall establish annual performance standards for Enterprise Florida, Inc., CareerSource Florida, Inc., the Florida Tourism Industry Marketing Corporation, ~~and~~ Space Florida, and the Florida Development Finance Corporation and report annually on how these performance measures are being met in the annual report required under subsection (10).

Section 36. Subsection (2), paragraphs (a), (b), and (c) of subsection (3), and subsection (4) of section 288.9604, Florida Statutes, are amended, and subsection (5) is added to that section, to read:

288.9604 Creation of the authority.—

(2) The board of directors of the corporation shall consist of seven directors. The executive director of the department, or his or her designee, shall serve as chair of the board of directors of the corporation. The director of the Division of Bond Finance of the State Board of Administration, or his or her designee, shall serve as a director of the board of directors of the corporation. The Governor, subject to confirmation by the Senate, shall appoint the remaining five directors of the board of directors of the corporation~~, who shall be five in number~~. The terms of office for the appointed directors shall be for 4 years from the date of their appointment. A vacancy occurring during a term of an appointed director shall be filled for the unexpired term. A director shall be eligible for reappointment. At least three of the appointed directors of the corporation shall have experience in finance ~~be bankers who have been selected by the Governor from a list of bankers who were nominated by Enterprise Florida, Inc.~~, and one of the directors shall have experience in ~~be an~~ economic development ~~specialist~~.

(3)(a)1. A director may not receive compensation for his or her services, but is entitled to necessary expenses, including travel expenses, incurred in the discharge of his or her duties. Each appointed director shall hold office until his or her successor has been appointed.

2. Directors are subject to ss. 112.313(1)-(8), (10), (12), and (15); 112.3135; and 112.3143(2). For purposes of applying ss. 112.313(1)-(8), (10), (12), and (15); 112.3135; and 112.3143(2) to activities of directors, directors shall be considered public officers and the corporation shall be considered their agency.

(b) The powers of the corporation shall be exercised by the directors thereof. A majority of the directors constitutes a quorum for the purposes of conducting business and exercising the powers of the corporation and for all other purposes. Meetings of the directors may be conducted by teleconference. Action may be taken by the corporation upon a vote of a majority of the directors present, unless in any case the bylaws require a larger number. Any person may be appointed as director if he or she resides, or is engaged in business, which means owning a business, practicing a profession, or performing a service for compensation or serving as an officer or director of a corporation or other business entity so engaged, within the state.

(c) The directors of the corporation shall annually elect, by a majority vote, one of their members as ~~chair and one as~~ vice chair. The corporation may employ a president, technical experts, and such other agents and employees, permanent and temporary, as it requires and determine their qualifications, duties, and compensation. For such legal services as it requires, the corporation may employ or retain its own counsel and legal staff.

(4) The board may remove an appointed ~~a~~ director for inefficiency, neglect of duty, or misconduct in office. Such director may be removed only after a hearing and only if he or she has been given a copy of the charges at least 10 days before such hearing and has had an opportunity to be heard in person or by counsel. The removal of a director shall create a vacancy on the board which shall be filled pursuant to subsection (2).

(5) This section is repealed July 1, 2023, and July 1 of every fourth year thereafter, unless reviewed and saved from repeal by the Legislature.

Section 37. In order to implement the changes made by this act to s. 288.9604, Florida Statutes, the chair and vice chair of the board of directors of the Florida Development Finance Corporation as of June 30, 2020, shall serve as regular members beginning July 1, 2020. Nothing in this act may be construed to affect the terms of the directors serving on the board on July 1, 2020.

Section 38. Subsection (3) is added to section 288.9605, Florida Statutes, to read:

288.9605 Corporation powers.—

(3) Documents, agreements, and instruments executed by the corporation may be executed and delivered in accordance with the Electronic Signature Act of 1996.

Section 39. Subsections (1) and (2) of section 288.9606, Florida Statutes, are amended to read:

288.9606 Issue of revenue bonds.—

(1) When authorized by a public agency pursuant to s. 163.01(7), the corporation has power in its corporate capacity, in its discretion, to issue revenue bonds or other evidences of indebtedness which a public agency has the power to issue, from time to time to finance the undertaking of any purpose of this act, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and plans or preliminary loans, and has the power to issue refunding bonds for the payment or retirement of bonds previously issued. Bonds issued pursuant to this section shall bear the name "Florida Development Finance Corporation Revenue Bonds." The security for such bonds may be based upon such revenues as are legally available. In anticipation of the sale of such revenue bonds, the corporation may issue bond anticipation notes and may renew such notes from time to time, but the maximum maturity of any such note, including renewals

thereof, may not exceed 5 years from the date of issuance of the original note. Such notes shall be paid from any revenues of the corporation available therefor and not otherwise pledged or from the proceeds of sale of the revenue bonds in anticipation of which they were issued. Any bond, note, or other form of indebtedness issued pursuant to this act may not exceed 35 years from their respective dates of issuance ~~shall mature no later than the end of the 30th fiscal year after the fiscal year in which the bond, note, or other form of indebtedness was issued~~.

(2) Bonds issued under this section do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and are not subject to the provisions of any other law or charter relating to the authorization, issuance, or sale of bonds. Bonds issued under ~~the provisions of~~ this act are declared to be for an essential public and governmental purpose. Bonds issued under this act, ~~the interest on which is exempt from income taxes of the United States,~~ together with interest thereon and income therefrom, are exempted from all taxes, except those taxes imposed by chapter 220, on interest, income, or profits on debt obligations owned by corporations, pursuant to s. 159.31. Bonds issued under this part are not a debt, liability, or obligation of the state or any subdivision thereof, or a pledge of faith and credit of the corporation or of the state or of any such political subdivision thereof, but are payable solely from the revenues provided

therefor. Each bond issued under this part shall contain on the face thereof a statement to the effect that the corporation is not obligated to pay the same or interest thereon from the revenues and proceeds pledged therefor, and that the faith and credit or the taxing power of the corporation or of the state or of any political subdivision thereof is not pledged to the payment of the principal of or the interest on such bonds.

Section 40. Section 288.9610, Florida Statutes, is amended to read:

288.9610 Annual reports of Florida Development Finance Corporation.—On or before 90 days after the close of the Florida Development Finance Corporation's fiscal year, the corporation shall submit to the Governor, the Legislature, the Auditor General, the Department of Economic Opportunity, and the governing body of each public entity for which the corporation issues revenue bonds pursuant to s. 288.9606 or with which it has entered into an interlocal agreement a complete and detailed report setting forth:

(1) The results of any audit conducted pursuant to s. 11.45.

(2) The activities, operations, and accomplishments of the Florida Development Finance Corporation, including the number of businesses assisted by the corporation.

(3) Its assets, liabilities, income, and operating expenses at the end of its most recent fiscal year, including a description of all of its outstanding revenue bonds.

Section 41. Section 288.9619, Florida Statutes, is created to read:

288.9619 Conflicts of interest.—If any director has a direct or indirect interest associated with any party to an application on which the corporation has taken or will take action in exercising its power for the issuance of revenue bonds or other evidences of indebtedness, such interest must be publicly disclosed to the corporation and set forth in the minutes of the corporation. The director that has such interest may not participate in any action by the corporation with respect to such party and application.

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

Remove lines 140-157 and insert:

executive director of the department to serve as a member of the board of directors of the Florida Development Finance Corporation; requiring the department to include specified information in its annual report and develop annual performance standards for the corporation; conforming provisions to changes made by the act; amending s. 288.9604, F.S.; revising the membership of the board of directors of the corporation;

conforming provisions to changes made by the act; providing for future repeals; requiring the current chair and vice chair of the board of directors of the corporation to serve as appointed directors after a specified date; providing construction; amending s. 288.9605, F.S.; requiring that documents, agreements, and instruments executed by the corporation be executed and delivered in accordance with the Electronic Signature Act of 1996; amending s. 288.9606, F.S.; providing that a certain forms of indebtedness issued by the corporation may not exceed 35 years from the date of issuance; specifying that certain bonds issued by the corporation are not a debt, liability, or obligation of the state or any subdivision thereof; amending s. 288.9610, F.S.; requiring the corporation to submit an annual report containing specified information to the department; creating s. 288.9619, F.S.; relating to conflicts of interest; providing an