

Commerce Committee

Tuesday, March 16, 2021
3:45 PM – 5:45 PM
Webster Hall (212 Knott)

Meeting Packet

Chris Sprowls
Speaker

Blaise Ingoglia
Chair

The Florida House of Representatives

Commerce Committee

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Meeting Agenda

Tuesday, March 16, 2021
3:45 PM – 5:45 PM
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- HB 77 Diesel Exhaust Fluid by Overdorf
- HB 329 Alcoholic Beverage Licenses by Tomkow
- HB 733 Credit for Reinsurance by Fetterhoff
- HB 735 Preemption of Local Occupational Licensing by Harding
- HB 797 Florida Life and Health Insurance Guaranty Association by Robinson, W.
- CS/HB 823 Alarm System Contractors by Regulatory Reform Subcommittee, Mariano
- HB 855 Barber Services by Morales
- CS/HB 1055 Pub. Rec./Trade Secrets by Government Operations Subcommittee, Gregory
- HB 6073 Individual Wine Containers by LaMarca

V. Closing Remarks

VI. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, FL 32399-1300
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HB 77

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 77 Diesel Exhaust Fluid
SPONSOR(S): Overdorf
TIED BILLS: **IDEN./SIM. BILLS:** SB 1082

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	14 Y, 3 N	Johnson	Keating
2) Infrastructure & Tourism Appropriations Subcommittee	14 Y, 0 N	Davis	Davis
3) Commerce Committee		Johnson	Hamon

SUMMARY ANALYSIS

The United States Environmental Protection Agency requires diesel exhaust fluid (DEF) to be used in newer diesel engines, including diesel-powered vehicles used for aircraft and airport support. DEF is an exhaust additive that reduces diesel emissions by neutralizing nitrogen oxide into harmless nitrogen gas and water.

In recent years, aircraft have experienced engine shutdowns and other engine operability issues resulting from the contamination of jet fuel due to the inadvertent filling of an aircraft fuel truck's anti-icing injection system reservoirs with DEF instead of a fuel system icing inhibitor. The Federal Aviation Administration has made preliminary safety recommendations regarding the use of DEF at airports, including additional training and the adoption of best management practices.

The bill requires certain public airports that utilize DEF to create a DEF safety mitigation and exclusion plan and provides minimum requirements for each plan. The plan must be approved by the governing body of the airport and submitted to the Department of Transportation (DOT). The airport must regularly review its plan and annually certify compliance to DOT.

The bill may have an indeterminate but likely insignificant, negative fiscal impact on state and local governments. Tenants of public airports may incur expenditures associated with complying with DEF safety mitigation and exclusion plans. See Fiscal Analysis for details.

The bill has an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Diesel Exhaust Fluid

Under the Clean Air Act of 1990, the United States Environmental Protection Agency (EPA), in order to curb air pollution, has mandated stronger emission control standards for vehicle engines. Nitrogen oxide (NOx) emissions can be a major pollutant from diesel engines and the EPA has targeted them for significant reductions. In 2007, the EPA mandated that all new on-road heavy duty vehicles manufactured after 2010 meet certain requirements, with light duty vehicles to meet these requirements in 2014. In order to meet these standards, technologies such as selective catalytic reduction have been developed.[1]

In diesel vehicles, selective catalytic reduction reduces NOx emissions by injecting diesel exhaust fluid (DEF) into ammonia, which in the presence of the catalyst, reacts with the exhaust NOx to neutralize it into harmless nitrogen gas and water.[2]

DEF is a nontoxic, nonhazardous, and colorless aqueous solution of automotive grade Urea in deionized water.[3]

Airport Use of Diesel Exhaust Fluid

At public airports, the airport and its tenants use DEF in various diesel-powered vehicles including aircraft refueling equipment, diesel aircraft fire-fighting equipment, life-saving equipment, and emergency generators.[4]

In recent years, aircraft have experienced engine shutdowns and other engine operability issues due to the contamination of jet fuel as a result of the inadvertent filling of aircraft fuel trucks anti-icing injection system with DEF instead of fuel system icing inhibitor.[5]

Due to fuel system designs, some aircraft require fuel system icing inhibitor to prevent engine operability issues in cold weather. Due to this requirement, for many years, airport refueling trucks have been equipped with fuel system icing inhibitor injection systems, which require a fuel system icing inhibitor fluid reservoir mounted on the truck to supply the injection system during refueling. Newer refueling trucks contain a DEF reservoir in addition to the fuel system icing inhibitor reservoir. Since the EPA's mandate for selective catalytic reduction on non-road diesel trucks began in 2014, airport refueling trucks with two reservoirs have begun appearing at airports.[6]

Between November 2017 and May 2019, there were three instances, two in Florida, in which multiple aircraft had jet fuel contaminated with DEF or were refueled using equipment exposed to DEF. Because of these instances, numerous aircraft had to perform emergency landings. The Federal Aviation Administration (FAA) conducted a hazard analysis and issued preliminary recommendations to address the problem, including additional training for ground support crews, adoption of best

[1] Aircraft Diesel Exhaust Fluid Contamination Working Group, *A collaborative Industry Report on the Hazard of Diesel Exhaust Fluid Contamination of Aircraft Fuel*, June 11, 2019, pp. 3-4. Available at: https://download.aopa.org/advocacy/2019/2019_06_11_Aircraft_DEF_Contamination_Working_Group_Report_FINAL.pdf#:~:text=AIRCRAFT%20DIESEL%20EXHAUST%20FLUID%20CONTAMINATION%20WORKING%20GROUP%20REPORT,events%20that%20have%20occurred%20to%20date;%20to%20immediately (last visited February 3, 2021).

[2] *Id.*

[3] *Id.*

[4] Email from Lisa Waters, President/CEO Florida Airports Council, Diesel Exhaust Fluid, Nov. 4, 2019.

[5] Federal Aviation Administration, *Safety Assessment for Jet Fuel Contamination with Diesel Exhaust Fluid*. August 30, 2019, p.4. Available at: https://www.nata.aero/assets/Site_18/files/GIA/NATA_News/2019-08-30_Safety_Risk_Assessment_Report_DEF-Final.pdf (last visited February 3, 2021).

[6] *Id.*

management practices, and dyeing either DEF or fuel system icing inhibitor so they can be distinguished from each other.[7] One recommendation called for the aviation industry to request that EPA issue permanent relief from emission control/system performance inducements (which require the use of DEF) for any non-road diesel powered vehicles at or on airports.[8]

The Florida Airports Council[9] has initiated efforts to address fuel contamination issues and specifically DEF. According to the Council, this effort is broad and intended to call attention to the issue and to educate airports, users, fuel providers and community leaders about the safety concerns and how to avoid fuel contamination. The Council indicates that it is working closely with its industry partners to develop a program of operational best management practices that all Florida airports and fuel providers can add to their training programs.[10]

Effect of the Bill

The bill requires the governing body of certain public airports[11] to create a DEF safety mitigation and exclusion plan for each fixed-base operator[12] that performs onsite treatment of aviation fuel with a fuel system icing inhibitor. This requirement applies to public airports at which:

- Aviation fuels receive onsite treatment with fuel system icing inhibitors;
- Aviation fuel is delivered by a publicly or privately owned fixed-base operator; and
- Any aircraft fuel delivery vehicle or ground service equipment that uses DEF is operated within 150 feet of any aircraft.

At a minimum, each airport's plan must include:

- A full inventory of each fixed-base operator's DEF on the airport's premises.
- Designation of specific areas where the fixed-base operator's DEF may be stored on the airport's premises. To the extent practicable, such areas may not be located within or on a vehicle operated for the fueling or servicing of aircraft or at any aviation fuel transfer facility or bulk aviation fuel storage facility.
- Designation of specific areas where DEF may be added to vehicles. Such areas may not be located in aircraft operating areas.
- Incorporation of best practices for ensuring the proper labeling and storage of diesel exhaust fluid.
- Training in the proper use and storage of DEF for all employees of the fixed-base operator who may come in contact with such fluid in the ordinary course of their duties.
- Designation of specific areas where the fixed-base operator's fuel system icing inhibitor may be stored on the airport's premises.
- Best practices for ensuring the proper labeling and storage of the fixed-base operator's fuel system icing inhibitor.
- Training in the proper use and storage of fuel system icing inhibitors for all employees of the fixed-base operator who may come in contact with fuel system icing inhibitors in the ordinary course of their duties.
- Physical measures to secure fuel system icing inhibitor fill points on the fixed-base operator's aircraft fuel delivery vehicles. Such measures must prevent the addition of any fluid to the fuel system icing inhibitor fill point by unauthorized personnel.

[7] *Id.*
[8] *Id.* at 2
[9] The Florida Airports Council is the official association of Florida's publicly-owned and –operated airports. Florida Airports Council, https://www.floridaairports.org/about-us/ (Last visited January 15, 2021).
[10] Florida Airports Council: https://www.floridaairports.org/ (last visited January 15, 2021).
[11] Section 330.37(6), F.S., defines the term "public airport" as an airport, publicly or privately owned, which is open for use by the public.
[12] The term "fixed base operator" refers to commercial businesses allowed to operate on airport grounds in order to provide services to the airport. Fixed based operators include, but are not limited to, fueling service, aircraft maintenance services and baggage handling. https://www.presidential-aviation.com/fbo/ (last visited December 21, 2020).

Each airport's governing body, by September 1, 2021, must approve the DEF safety mitigation and exclusion plan. By October 1, 2021, the governing body must submit the plan to the Department of Transportation (DOT) and certify that all diesel exhaust fluid within the airport's premises has been secured.

By January 1, 2022, the DEF safety mitigation and exclusion plan must be fully implemented on each airport's premises.

By January 1 of each year, beginning in 2023, each public airport must certify to DOT the airport's compliance with its diesel exhaust fluid safety mitigation and exclusion plan.

B. SECTION DIRECTORY:

Section 1 Creates s. 330.401, F.S., relating to the diesel exhaust fluid safety mitigation and exclusion plans for public airports.

Section 2 Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to impact state government revenues.

2. Expenditures:

   There is an indeterminate, but likely insignificant fiscal impact to DOT associated with reviewing airport DEF safety mitigation and exclusion plans. These expenditures can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to impact local government revenues.

2. Expenditures:

   There is an indeterminate, but likely negative fiscal impact to local governments operating public airports associated with complying with DEF safety mitigation and exclusion plans.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Tenants of public airports, including fuel providers, will incur expenditures associated with complying with the DEF safety mitigation and exclusion plans; however, the impact is indeterminate.

The bill may reduce costs associated with aircraft engine damages caused by DEF contamination and emergency response related to engine failures.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18, of the Florida Constitution may apply because the bill requires public airports to develop DEF safety mitigation and exclusion plans; however, an exemption may apply because there is likely an insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not grant rulemaking authority, nor does it require rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to diesel exhaust fluid; creating s. 330.401, F.S.; requiring the governing body of each public airport that meets certain criteria to create a diesel exhaust fluid safety mitigation and exclusion plan for submission to the Department of Transportation; providing plan requirements; requiring an annual certification of compliance; providing an effective date.

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

Section 1. Section 330.401, Florida Statutes, is created to read:

330.401 Diesel exhaust fluid safety mitigation and exclusion plan; certification.—

(1)(a) The governing body of each public airport as defined in s. 330.27 at which:

1. Aviation fuels receive onsite treatment with fuel system icing inhibitors;

2. Aviation fuel is delivered by a publicly or privately owned fixed-base operator; and

3. Any aircraft fuel delivery vehicle or ground service equipment that uses diesel exhaust fluid is operated within 150 feet of any aircraft

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

shall create a diesel exhaust fluid safety mitigation and exclusion plan for each fixed-base operator that performs onsite treatment of aviation fuel with a fuel system icing inhibitor.

(b) The plan must include, at a minimum:

1. A full inventory of all the fixed-base operator's diesel exhaust fluid on the premises of the airport.

2. Designation of specific areas where the fixed-base operator's diesel exhaust fluid may be stored on the premises of the airport. To the extent practicable, such areas may not be located within or on a vehicle operated for the fueling or servicing of aircraft or at any aviation fuel transfer facility or bulk aviation fuel storage facility.

3. Designation of specific areas where diesel exhaust fluid may be added to vehicles. Such areas may not be located in aircraft operating areas.

4. Incorporation of best practices for ensuring the proper labeling and storage of diesel exhaust fluid.

5. Incorporation of training in the proper use and storage of diesel exhaust fluid for all employees of the fixed-base operator who may come in contact with such fluid in the ordinary course of their duties.

6. Designation of specific areas where the fixed-base operator's fuel system icing inhibitor may be stored on the premises of the airport.

7. Incorporation of best practices for ensuring the proper labeling and storage of the fixed-base operator's fuel system icing inhibitor.

8. Incorporation of training in the proper use and storage of fuel system icing inhibitors for all employees of the fixed-base operator who may come in contact with fuel system icing inhibitors in the ordinary course of their duties.

9. Physical measures to secure fuel system icing inhibitor fill points on the fixed-base operator's aircraft fuel delivery vehicles. Such measures shall prevent the addition of any fluid to the fuel system icing inhibitor fill point by unauthorized personnel.

(2) The diesel exhaust fluid safety mitigation and exclusion plan must be approved by the governing body by September 1, 2021. The governing body must, by October 1, 2021, submit the plan to the Department of Transportation and certify that all diesel exhaust fluid has been secured within the premises of the airport.

(3) The diesel exhaust fluid safety mitigation and exclusion plan must be fully implemented on the premises of each airport by January 1, 2022.

(4) By January 1 of each year, beginning in 2023, each public airport must certify to the department the airport's compliance with its diesel exhaust fluid safety mitigation and exclusion plan.

Section 2. This act shall take effect July 1, 2021.

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

COMMERCE COMMITTEE

HB 77 by Rep. Overdorf
DIESEL EXHAUST FLUID

AMENDMENT SUMMARY
MARCH 16, 2021

Amendment 1 by Rep. Overdorf (Line 62):

- Authorizes the airport's governing body, at its discretion, to delegate the creation and implementation of the diesel exhaust fluid safety mitigation and exclusion plan to the onsite fixed-based operator.

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 Overdorf offered the following:

Amendment (with title amendment)

Between lines 62 and 63, insert:

(c) The governing body may, at its discretion, delegate the creation and implementation of the plan to the onsite fixed-based operator.

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

Remove line 7 and insert:

Transportation; providing plan requirements; authorizing a governing body to delegate creation and implementation of the plan to a fixed-based operator; requiring

HB 329

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 329 Alcoholic Beverage Licenses
SPONSOR(S): Tomkow
TIED BILLS: **IDEN./SIM. BILLS:** SB 134

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	14 Y, 0 N	Willson	Anstead
2) Commerce Committee		Willson	Hamon

SUMMARY ANALYSIS

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

The bill:

- Allows certain restaurants to sell or deliver alcoholic beverages in a sealed container to-go, if accompanied by food.
- Amends s. 564.09, F.S., to specify that a restaurant patron may take home a partially consumed bottle of wine with the purchase of "a meal."
- Allows a restaurant licensed to sell wine to sell or deliver wine bottles, individual servings of wine, and wine-based beverages to-go in a sealed container, if accompanied by food.
- Removes the "full course" part of the meal requirement for taking home an unfinished bottle of wine.
- Allows bars to sell or deliver liquor bottles, individual servings of liquor, or liquor-based beverages to-go in a sealed container, if accompanied by food.

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

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Beverage Law

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

"Alcoholic beverages" are defined in s. 561.01, F.S., as "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume." "Malt beverages" are brewed alcoholic beverages containing malt.[3] "Wine" means "all beverages made from fresh fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States, and includes all sparkling wines, champagnes, combination of the aforesaid beverages, sake, vermouths, and like products.[4]

Restaurants - Off-Premises Consumption of Wine

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

- The patron must have purchased a full-course meal consisting of a salad or vegetable, entrée, a beverage, and bread and consumed a portion of the bottle of wine with the meal;
- Before the partially-consumed bottle of wine is removed from the premises, the bottle must be securely resealed by the licensee, or the licensee's employee, and placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been opened or tampered with after having been sealed;
- A dated receipt for the wine and meal must be attached to the container; and
- The container must be placed in a locked glove compartment, trunk, or other area behind the last upright seat of a motor vehicle that does not have a trunk.[5]

Alcoholic Beverage Deliveries

Vendors, but not manufacturers or distributors, are allowed to make deliveries away from their place of business for sales actually made at their licensed place of business. Telephone, electronic, and mail orders received at a vendor's licensed place of business are construed as a sale actually made at the vendor's licensed place of business. Deliveries may be made in vehicles that are owned or leased by the vendor, or in a third-party vehicle pursuant to a contract with a third party with whom the vendor has contracted to make deliveries, including, but not limited to, common carriers.[6]

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

[1] Section 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.
[2] S. 561.02, F.S.
[3] S. 563.01, F.S.
[4] S. 564.01, F.S.
[5] S. 564.09, F.S.
[6] S. 561.57(1) & (2), 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," (SRX) 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. SRX licensees 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. 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.

Open Containers

Section 316.1936, F.S., prohibits possession[7] of open containers of alcoholic beverages in vehicles and provides certain exceptions, including a provision specifying that a bottle of wine that has been resealed and is transported pursuant to s. 564.09, F.S., is not an open container.[8]

Executive Orders

On March 20, 2020, Governor DeSantis signed Executive Order 20-71[9], which closed restaurants for on-site consumption of food and alcohol, and authorized SRX licensees to sell package sales of alcohol for delivery, take-out, or consumption off-premises if the alcohol is in a sealed container and the order includes food. While restaurants have since been allowed to reopen for on-site consumption of food and alcohol,[10] SRX licensees are still able to sell for delivery, take-out, or consumption off-premises alcohol in sealed containers with the purchase of food.

Effect of the Bill

The bill amends s. 561.20(2)(a)4., F.S., to specify that special restaurant licensees (SRX) may sell or deliver alcoholic beverages by the package in a sealed container for off-premises consumption, including wine-based and liquor-based beverages prepared by the licensee and packaged in a container sealed by the licensee. The sale or delivery of such beverages must be **accompanied by the sale of food**, and the delivery of alcoholic beverages must comply with s. 561.57, F.S. Malt beverages sold or delivered pursuant to this provision must comply with container size, labeling, and filling requirements.

The bill amends s. 564.09, F.S., to specify that a restaurant patron need only purchase "a meal" in order to remove a partially consumed bottle of wine from the restaurant. The bill also authorizes restaurants which are licensed to sell wine for consumption on the premises to sell or deliver a manufacturer-sealed bottle of wine, or an individual serving of wine or wine-based beverage prepared by the licensee, for off-premises consumption if the wine is delivered in a container sealed by the licensee and the sale or delivery is **accompanied by the purchase of a meal**. Such deliveries must comply with s. 561.57, F.S.

The bill amends s. 565.045, F.S., to specify that vendors licensed under s. 565.02(1)(b)-(f), F.S.,[11] generally non package-store quota license holders, may sell or deliver alcoholic beverages in

[7] S. 316.1936(3), F.S. specifies that "An open container shall be considered to be in the possession of the operator of a vehicle if the container is not in the possession of a passenger and is not located in a locked glove compartment, locked trunk, or other locked nonpassenger area of the vehicle."
[8] S. 316.1936(9), F.S.
[9] Executive Order 20-71 expires upon the expiration of Executive Order 20-52, which was most recently extended pursuant to Executive Order 21-45 on Feb. 26, 2021, for an additional 60 days.
[10] *See* Executive Order 20-123 (May 14, 2020).
[11] S. 565.02(1)(b)-(f), F.S., refers to vendors who are permitted to sell any alcoholic beverage regardless of alcoholic content for consumption on the premises.

manufacturer-sealed containers. The bill also authorizes such licensees to sell or deliver an individual serving of liquor or a liquor-based beverage prepared by the licensee for off-premises consumption if the container is sealed by the licensee and accompanied by the sale of food.

The bill has an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1 Amends s. 561.20, F.S.; authorizing certain food service establishments to sell or deliver alcoholic beverages for off-premises consumption if specified requirements are met and deletes a provision prohibiting certain food service establishments from operating as a package store.

Section 2 Amends s. 564.09, F.S.; revising provisions that authorize a restaurant to allow patrons to remove partially consumed bottles of wine from a restaurant for off-premises consumption and authorizing certain restaurants to sell or deliver wine in specified packages under certain circumstances.

Section 3 Amends s. 565.045, F.S.; revising requirements for the sale of alcoholic beverages by certain vendors and authorizing certain vendors to deliver specified alcoholic beverages and liquor under certain circumstances.

Sections 4-5 Reenacts ss. 316.1936(9) and 564.05, F.S., relating to the possession of open containers of alcoholic beverages in vehicles and the limitation of size of individual wine containers, respectively, to incorporate the amendments made to s. 564.09, F.S., in references thereto.

Section 6 Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may enable food service establishments that also hold certain alcoholic beverage licenses to increase their sales revenue through the sale of alcoholic beverages with food delivery orders.

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to alcoholic beverage licenses; amending s. 561.20, F.S.; authorizing certain food service establishments to sell or deliver alcoholic beverages for off-premises consumption if specified requirements are met; deleting a provision prohibiting certain food service establishments from operating as a package store; amending s. 564.09, F.S.; revising provisions that authorize a restaurant to allow patrons to remove partially consumed bottles of wine from a restaurant for off-premises consumption; authorizing certain restaurants to sell or deliver wine in specified packages under certain circumstances; amending s. 565.045, F.S.; revising requirements for the sale of alcoholic beverages by certain vendors; authorizing certain vendors to deliver specified alcoholic beverages and liquor under certain circumstances; reenacting ss. 316.1936(9) and 564.05, F.S., relating to the possession of open containers of alcoholic beverages in vehicles and the limitation of size of individual wine containers, respectively, to incorporate the amendments made to s. 564.09, F.S., in references thereto; providing an effective date.

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

Section 1. 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(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(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 60-day operating period and each 12-month operating period thereafter. A licensee under this subparagraph may sell or deliver alcoholic beverages by the package in a sealed container for off-premises consumption if the sale or delivery is accompanied by the sale of food within the same order. Such authorized sale or delivery includes wine-based and liquor-based beverages prepared by the licensee and packaged in a container sealed by the licensee. Any sale or delivery of malt beverages must comply with the container size, labeling, and filling requirements imposed under s. 563.06. Any delivery of an alcoholic beverage under this subparagraph must comply with s. 561.57. 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 may ~~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 does not ~~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 under ~~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 does not ~~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 may ~~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 before ~~prior to~~ the effective date of this act, if construction of such restaurant has commenced before ~~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 2. Section 564.09, Florida Statutes, is amended to read:

564.09 Restaurants; off-premises consumption of wine.—

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

(2) Notwithstanding any other provision of law, a restaurant licensed to sell wine for consumption on the premises may sell or deliver a manufacturer-sealed bottle of wine, or an individual serving of wine or wine-based beverage prepared by the licensee, for off-premises consumption if the wine is delivered in a container sealed by the licensee and the sale or

delivery is accompanied by the purchase of a meal within the same order. Any delivery made under this subsection must comply with s. 561.57.

Section 3. Subsection (1) of section 565.045, Florida Statutes, is amended to read:

565.045 Regulations for consumption on premises; penalty; exemptions.—

(1) Vendors licensed under s. 565.02(1)(b)-(f):

(a) Shall provide seats for the use of their customers;

(b) ~~. Such vendors~~ May sell or deliver alcoholic beverages by the drink or in manufacturer-sealed ~~sealed~~ containers for consumption on or off the premises where sold; and

(c) May sell or deliver an individual serving of liquor or a liquor-based beverage prepared by the licensee for off-premises consumption if the liquor or liquor-based beverage is in a container sealed by the licensee.

All sales or deliveries of alcoholic beverages made under paragraph (c) for off-premises consumption must be accompanied by the sale of food within the same order.

Section 4. For the purpose of incorporating the amendment made by this act to section 564.09, Florida Statutes, in a reference thereto, subsection (9) of section 316.1936, Florida Statutes, is reenacted and amended to read:

316.1936 Possession of open containers of alcoholic

beverages in vehicles prohibited; penalties.—

(9) A bottle of wine that has been resealed and is transported pursuant to s. 564.09 is not an open container under ~~the provisions of~~ this section.

Section 5. For the purpose of incorporating the amendment made by this act to section 564.09, Florida Statutes, in a reference thereto, section 564.05, Florida Statutes, is reenacted to read:

564.05 Limitation of size of individual wine containers; penalty.—It is unlawful for a person to sell within this state wine in an individual container holding more than 1 gallon of such wine, unless such wine is in a reusable container holding 5.16 gallons. However, qualified distributors and manufacturers may sell wine to other qualified distributors or manufacturers in any size container. Except as provided in s. 564.09, wine sold or offered for sale by a licensed vendor to be consumed off the premises shall be in the unopened original container. A person convicted of a violation of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 6. This act shall take effect July 1, 2021.

COMMERCE COMMITTEE

HB 329 by Rep. Tomkow
Alcoholic Beverage Licenses

AMENDMENT SUMMARY
March 16, 2021

Amendment 1 by Rep. Tomkow (Line 78):
The amendment:

- Specifies that a special restaurant licensee that sells certain alcoholic beverages for off-premises consumption may not sell a factory-sealed bottle of liquor or operate as a package store.

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 Tomkow offered the following:

Amendment (with title amendment)

Remove lines 78-90 and insert:

month operating period thereafter. A licensee under this subparagraph may sell or deliver alcoholic beverages in a sealed container for off-premises consumption if the sale or delivery is accompanied by the sale of food within the same order. Such authorized sale or delivery includes wine-based and liquor-based beverages prepared by the licensee and packaged in a container sealed by the licensee. A licensee under this subparagraph may not sell a bottle of distilled spirits sealed by a manufacturer. Any sale or delivery of malt beverages must comply with the container size, labeling, and filling requirements imposed under s. 563.06. Any delivery of an alcoholic beverage under this

subparagraph must comply with s. 561.57. 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

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

Remove lines 6-8 and insert:
requirements are met; amending s. 564.09, F.S.;
revising

HB 733

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 733 Credit for Reinsurance
SPONSOR(S): Fetterhoff
TIED BILLS: **IDEN./SIM. BILLS:** SB 728

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	16 Y, 0 N	Fortenberry	Luczynski
2) State Administration & Technology Appropriations Subcommittee	14 Y, 0 N	Lee	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 meets certain criteria. Credit for reinsurance means that a ceding insurer is permitted under statutory accounting rules to recognize the reinsurance as an asset or as a reduction 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. These criteria include having its head office or its domicile, and being licensed in, a reciprocal jurisdiction, maintaining 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, responding to OIR's document requests, and maintaining a practice of prompt payment of claims. The bill also specifies certain elements that an assuming insurer must include in its reinsurance agreements in order for the ceding insurer to take credit for reinsurance. The bill requires that an assuming insurer's regulatory authority confirm to OIR that the assuming insurer has complied with the capital and surplus requirements and solvency or capital ratio requirements 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 criteria in the bill. Additionally, OIR may suspend or revoke the assuming insurer's eligibility if the assuming insurer does not continue to meet the mandatory criteria.

If insurers are able to take credit for reinsurance for additional reinsurance transactions, they will be able to recognize additional assets or reductions in liability. The greater an insurer's assets or lower its liabilities, the higher the insurer's surplus. The insurer's surplus provides a measure of financial stability and provides a source of funds in the event that reserves are inadequate.

The bill has no fiscal 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 July 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 (U.S.) ceding insurers acquire is placed with non-U.S. assuming insurers. In fact, in 2018, offshore and non-U.S.-owned[5] assuming insurers assumed 88.9 percent of insurance premiums ceded by U.S. insurers.[6] The availability of non-U.S. reinsurance contributes to global diversification of risk, provides claims relief to U.S. insurers, and mitigates the financial impact of catastrophes.[7] Even though reinsurance provides benefits, because the U.S. state insurance regulators do not regulate non-U.S. insurers or assuming insurers, the purchase of reinsurance by U.S. 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, if a Florida insurer cedes reinsurance to an assuming insurer who is authorized to transact insurance or reinsurance in Florida

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[1] National Association of Insurance Commissioners, https://content.naic.org/consumer_glossary.htm#R (last visited Feb. 22, 2021). 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 Feb. 22, 2021).

[3] *See* IRMI, *In Defense of Reinsurance*, https://www.irmi.com/articles/expert-commentary/in-defense-of-reinsurance (last visited Feb. 22, 2021).

[4] *Id.*

[5] In the insurance context, a company formed under laws other than those of a U.S. jurisdiction is known as an alien insurer. *See s. 624.06, F.S.*

[6] Reinsurance Association of America, *Offshore Reinsurance in the US Market: 2018 Data*, https://www.reinsurance.org/RAA/Industry_Data_Center/Offshore_Report/Offshore_Report_2018_Data.html (last visited Feb. 22, 2021).

[7] International Association of Insurance Supervisors, *Reinsurance and Financial Stability,* https://www.iaisweb.org/file/34046/reinsurance-and-financial-stability (last visited Feb. 22, 2021).

[8] Statutes also refer to OIR as the office.

[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 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 U.S.[18] In 2017, the U.S. 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

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[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 reduction 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 Feb. 26, 2021). *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 Feb. 26, 2021).
[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 Feb. 26, 2021).
[15] *Id*.
[16] National Association of Insurance Commissioners, *NAIC Model Laws*, https://content.naic.org/cipr_topics/topic_naic_model_laws.htm (last visited Feb. 26, 2021).
[17] National Association of Insurance Commissioners, *Accreditation*, https://content.naic.org/cipr_topics/topic_accreditation.htm (last visited Feb. 26, 2021).
[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 Feb. 26, 2021).
[19] U.S. Department of the Treasury, *U.S. – EU Covered Agreement*, https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/covered-agreements/us-eu-covered-agreement (last visited Feb. 26, 2021). Covered agreements are authorized under 31 U.S.C. §§ 313–314, and are written bilateral or multilateral agreements regarding

2019, the NAIC made revisions to MLMR in response to the Covered Agreement. In part, the Covered Agreement commits the U.S. to phasing-out collateral requirements for European Union assuming insurers by 2022.[20] The Covered Agreement also exempts European Union assuming insurers from current U.S. 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 new subsections within the reinsurance statute regarding the circumstances under which ceding insurers can take credit for reinsurance. The bill establishes that a ceding insurer will *not* be permitted to take credit for reinsurance when an assuming insurer is not authorized or accredited to transact insurance or reinsurance in Florida *unless* the assuming insurer agrees to the following in its reinsurance agreements:

- If the assuming insurer fails to perform its obligations under the reinsurance agreement, and at the request of the ceding insurer, the assuming insurer shall submit to the jurisdiction of any U.S. court of competent jurisdiction, comply with the requirements necessary to give that court jurisdiction, and abide by the final decision of that court or any appellate court in the event of an appeal.
- Designate the Florida Chief Financial Officer as its agent for service of process in a suit by a ceding insurer.

The bill also provides that credit for reinsurance must be allowed when reinsurance is ceded to an assuming insurer that meets all of the following criteria:

- The assuming insurer must be licensed in, and have its head office in or be domiciled in, a reciprocal jurisdiction.
- The assuming insurer must have minimum capital and surplus as calculated by the methodology of its domiciliary jurisdiction in the amount of $250 million or in a greater 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

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insurance or reinsurance entered into between the U.S. and one or more foreign authorities to provide protections for insurance and reinsurance consumers similar to those provided by state insurance regulators within U.S. jurisdictions.

[20] U.S. Department of the Treasury, *Statement of the United States on the Covered Agreement with the European Union*, https://ustr.gov/sites/default/files/files/US%20Covered%20Agreement.pdf (last visited Feb. 26, 2021).

[21] *Id.* Model Law #785 defines a reciprocal jurisdiction as:

- A non-U.S. jurisdiction that is subject to an in-force covered agreement with the U.S., each within its legal authority, or in the case of a covered agreement between the U.S. and the European Union, is a member state of the European Union;
- A U.S. 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 Feb. 26, 2021).

[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.

    - confirm that the assuming insurer is not presently participating in any solvent scheme of arrangement[23] that involves Florida's ceding insurers, and should the 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[24] 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 s. 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 s. 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.

By allowing insurers to take credit for reinsurance for additional reinsurance transactions, the bill allows insurers to recognize additional assets or reductions in liability. The greater an insurer's assets or lower its liabilities, the higher the insurer's surplus. The insurer's surplus provides a measure of financial stability and provides a source of funds in the event that reserves are inadequate.

B. SECTION DIRECTORY:

Section 1. Amends s. 624.610, F.S., relating to reinsurance.

Section 2. Provides an effective date of July 1, 2021.

[23] A solvent scheme of arrangement is an English statutory procedure that is used by a solvent company to bring finality to some or all of their insurance business, and by insolvent companies, as an alternative to liquidation. They involve running-off business and making distributions to creditors. Michelle Kierce, et al., *Schemes of arrangement and their ongoing currency*, Insurance and Reinsurance 2010, https://www.sidley.com/~/media/files/publications/2010/01/schemes-of-arrangement-and-their-ongoing-currency/files/view-article/fileattachment/schemes-of-arrangement-and-their-ongoing-currenc__.pdf (last visited Feb. 27, 2021).

[24] The assuming insurer's regulatory authority is the entity that regulates the conduct of insurance companies in the assuming insurer's country of domicile.

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:

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:

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.[25] 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:

None.

[25] S. 624.610(14), F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to credit for reinsurance; amending s. 624.610, F.S.; making a technical change; adding conditions under which a ceding insurer must be allowed credit for reinsurance; transferring specified authority and duties relating to credit for reinsurance from the Commissioner of Insurance to the Office of Insurance Regulation; revising the attorney designation requirement in reinsurance agreements with certain assuming insurers under certain circumstances; defining the terms "reciprocal jurisdiction" and "covered agreement"; requiring the office to publish a list of reciprocal jurisdictions on its website; authorizing the office to remove reciprocal jurisdictions under a specified circumstance; specifying requirements for assuming insurers and reinsurance agreements; specifying documentation requirements; authorizing a ceding insurer or its representative that is subject to rehabilitation, liquidation, or conservation to seek a certain court order; providing construction; specifying a limitation on credit taken by a ceding insurer; requiring the office to publish on its website a list of certain assuming insurers; authorizing the office to revoke or suspend an assuming insurer's eligibility under

certain circumstances; prohibiting credit for reinsurance under certain circumstances; providing exceptions; making technical changes; 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. Subsections (4) through (15) of section 624.610, Florida Statutes, are renumbered as subsections (5) through (16), respectively, subsection (2), paragraphs (c), (e), and (f) of subsection (3), present subsection (4), paragraph (a) of present subsection (5), and paragraph (b) of present subsection (11) 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 reduction ~~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 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).

(f) If the assuming insurer is not authorized or accredited to transact insurance or reinsurance in this state pursuant to paragraph (a) or paragraph (b), the credit permitted by paragraph (c) or paragraph (d) must not be allowed unless the assuming insurer agrees in the reinsurance agreements:

1.a. That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court in the event of an appeal; and

b. To designate the Chief Financial Officer, pursuant to s. 48.151, ~~or a designated attorney~~ as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

2. This paragraph is not intended to conflict with or override the obligation of the parties to a reinsurance

agreement to arbitrate their disputes, if this obligation is created in the agreement.

(4) Credit must be allowed when the reinsurance is ceded to an assuming insurer meeting the requirements of this subsection.

(a) The assuming insurer must be licensed in, and have its head office in or be domiciled in, as applicable, a reciprocal jurisdiction. As used in this subsection, the term "reciprocal jurisdiction" means a jurisdiction that is any of the following:

1. 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, a jurisdiction that is a member state of the European Union. As used in this subsection, the term "covered agreement" means an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. ss. 313 and 314, which is currently in effect or in a period of provisional application and which addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance.

2. A United States jurisdiction that meets the requirements for accreditation under the Financial Regulation

Standards and Accreditation Program of the National Association of Insurance Commissioners.

3. A qualified jurisdiction, as determined by the office, which is not otherwise described in subparagraph 1. or subparagraph 2. and which meets all of the following additional requirements, consistent with the terms and conditions of in-force covered agreements, as specified by commission rule:

a. The jurisdiction allows an insurer domiciled, or having its head office, in the jurisdiction to take credit for reinsurance ceded to an insurer domiciled in the United States in the same manner as reinsurance ceded to insurers domiciled in that jurisdiction.

b. The jurisdiction does not require an assuming insurer domiciled in the United States to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the jurisdiction or as a condition for allowing the ceding insurer to take credit for the ceded risk.

c. The jurisdiction provides written confirmation that it recognizes the state regulatory approach to group supervision and group capital and that insurers and insurance groups domiciled, or maintaining their headquarters, in a jurisdiction accredited by the National Association of Insurance Commissioners are subject only to worldwide prudential insurance group supervision by the domiciliary state and are not subject

to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction.

d. The jurisdiction provides written confirmation that information regarding insurers and their parent, subsidiary, or affiliated entities shall be provided to the office in accordance with a memorandum of understanding or similar document between the office and such qualified jurisdiction.

The office shall timely publish on its website a list of reciprocal jurisdictions. The office may remove a reciprocal jurisdiction determined to no longer meet the requirements of this paragraph.

(b)1. 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 the amount of $250,000,000 or in a greater amount specified by commission rule.

2. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain on an ongoing basis:

a. Minimum capital and surplus equivalents, or net of liabilities, calculated according to the methodology applicable in its domiciliary jurisdiction, in the amount of $250,000,000 or in a greater amount specified by commission rule.

b. A central fund containing a balance of $250,000,000 or a greater amount specified by commission rule.

(c) If credit is allowed for reinsurance ceded to the assuming insurer pursuant to:

1. Subparagraph (a)1., the assuming insurer must maintain a minimum solvency or capital ratio specified in the applicable covered agreement.

2. Subparagraph (a)2., the assuming insurer must maintain a risk-based capital ratio of 300 percent of the authorized control level, calculated in accordance with s. 624.4085.

3. Subparagraph (a)3., the assuming insurer must maintain a solvency or capital ratio determined by the office to be an effective measure of solvency.

(d) The assuming insurer must, in a form specified by the commission:

1. Agree to provide prompt written notice and explanation to the office if the assuming insurer falls below the minimum requirements set forth in paragraph (b) or paragraph (c), or if any regulatory action is taken against it for serious noncompliance with applicable law of any jurisdiction.

2. Consent in writing to the jurisdiction of the courts of this state and to the designation of the Chief Financial Officer, pursuant to s. 48.151, as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

This subparagraph does not limit or alter in any way the capacity of parties to a reinsurance agreement to agree to an alternative dispute resolution mechanism, except to the extent that such agreement is unenforceable under applicable insolvency or delinquency laws.

3. Consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer or its legal successor which have been declared enforceable in the jurisdiction where the judgment was obtained.

4. Confirm in writing that it will include in each reinsurance agreement 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 enforcement of a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its resolution estate.

5. Confirm in writing that it is not presently participating in any solvent scheme of arrangement which involves this state's ceding insurers, and agree 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 if the assuming insurer enters

into such a solvent scheme of arrangement. Such security must be consistent with subsection (5) or as specified by commission rule.

(e) If requested by the office, the assuming insurer or its legal successor must provide, on behalf of itself and any legal predecessors, the following additional documentation:

1. The assuming insurer's annual audited financial statements, for the 2-year period before entering into the reinsurance agreement and on an annual basis thereafter, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report.

2. The solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor, for the 2-year period before entering into the reinsurance agreement.

3. Before entering into the reinsurance agreement and not more than semiannually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more regarding reinsurance assumed from ceding insurers domiciled in the United States.

4. Before entering into the reinsurance agreement and not more than semiannually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable

on paid and unpaid losses by the assuming insurer.

5. Additional information as reasonably required by the office.

(f) The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements and must report to the office reinsurance recoverables that are more than 90 days overdue or that are in dispute, as specified by commission rule.

(g) The assuming insurer must annually provide to the office confirmation from its reciprocal jurisdiction, on a form adopted by the commission or as otherwise specified by commission rule, that, as of the preceding December 31 or as of the annual date otherwise statutorily reported to the reciprocal jurisdiction, the assuming insurer complied with the requirements of paragraphs (b) and (c).

(h) This subsection does not preclude an assuming insurer from providing the office with information on a voluntary basis.

(i) If subject to a legal process of rehabilitation, liquidation, or conservation, as applicable, the ceding insurer or its representative may seek and, if determined appropriate by the court in which the proceedings are pending, obtain an order requiring that the assuming insurer post security for all outstanding ceded liabilities.

(j) This subsection does not limit or alter in any way the capacity of parties to a reinsurance agreement to agree on

requirements for security or other terms in the reinsurance agreement, except as expressly prohibited by this section or other applicable law or commission rule.

(k)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 pursuant to this subsection or 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 for which, and to the extent that, credit is not available under this subsection, if the reinsurance qualifies for credit under any other applicable provision of law or commission rule.

3. This subsection does not authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement, except as authorized by the terms of the agreement.

4. This subsection does not limit or alter in any way the capacity of parties to any reinsurance agreement to renegotiate the agreement.

(l) The office shall timely publish on its website a list

of assuming insurers that meet all of the requirements of this subsection.

(m) If the office determines that an assuming insurer no longer meets one or more of the requirements of this subsection, the office may revoke or suspend the eligibility of the assuming insurer for recognition under this subsection.

1. During the suspension of an assuming insurer's eligibility, a 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 subsection (5).

2. If an assuming insurer's eligibility is revoked, a 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 subsection (5).

(5) ~~(4)~~ An asset allowed or a reduction ~~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 reduction

~~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)(a) ~~(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.

(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.

Section 2. This act shall take effect July 1, 2021.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 735 Preemption of Local Occupational Licensing
SPONSOR(S): Harding
TIED BILLS: **IDEN./SIM. BILLS:** SB 268

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	13 Y, 4 N	Wright	Anstead
2) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

The Florida Constitution grants local governments broad home rule authority. Non-charter county governments may exercise those powers of self-government that are provided by general or special law. Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors. Likewise, municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform functions, provide services, and exercise any power for municipal purposes, except as otherwise provided by law.

General law directs a number of state agencies and licensing boards to regulate many professions and occupations. General law can also authorize or preempt local regulation of professions and occupations, which is typically done specifically and individually by subject matter, business type, or occupation.

The bill expressly preempts the licensing of occupations to the state and supersedes any local government licensing of occupations. However, any licensing of occupations adopted prior to July 1, 2021, will continue to be effective until July 1, 2023, at which time it will expire. Any licensing of occupations authorized by general law is exempt from the preemption.

The bill specifically prohibits local governments from requiring a license for a person whose job scope does not substantially correspond to that of a contractor or journeyman licensed by the Construction Industry Licensing Board, and specifically precludes local governments from requiring a license for: painting, flooring, cabinetry, interior remodeling, handyman services, driveway or tennis court installation, decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, canvas awning installation, and ornamental iron installation.

The bill also expressly authorizes counties and municipalities to issue journeyman licenses in the plumbing, pipe fitting, mechanical and HVAC trades, as well as, the electrical and alarm system trades, which is the current practice by counties and municipalities.

The bill does not appear to have a fiscal impact on state or local governments.

The bill has an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Local Government Authority

The Florida Constitution grants local governments broad home rule authority. Non-charter county governments may exercise those powers of self-government that are provided by general or special law.[1] Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors.[2]

Likewise, municipalities[3] have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform functions, provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[4]

A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary. Special districts are created by general law,[5] special act,[6] local ordinance,[7] or by rule of the Governor and Cabinet.[8] A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.[9]

A "dependent special district" is a special district where the membership of the governing body is identical to the governing body of a single county or municipality, all members of the governing body are appointed by the governing body of a single county or municipality, members of the district's governing body are removable at will by the governing body of a single county or municipality, or the district's budget is subject to the approval of the governing body of a single county or municipality.[10] An "independent special district" is any district that is not a dependent special district.[11]

Revenue Sources Authorized in the Florida Constitution[12]

The Florida Constitution limits the ability of local governments to raise revenue for their operations. The Florida Constitution provides:

> No tax shall be levied except in pursuance of law. No state ad valorem taxes[13] shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law.[14]

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[1] Art. VIII, s. 1(f), Fla. Const.
[2] Art. VIII, s. 1(g), Fla. Const.
[3] A municipality is a local government entity created to perform functions and provide services for the particular benefit of the population within the municipality, in addition to those provided by the county. The term "municipality" may be used interchangeably with the terms "town," "city," and "village."
[4] Art. VIII, s. 2(b), Fla. Const. *See also* s. 166.021(1), F.S.
[5] S. 189.031(3), F.S.
[6] *Id*.
[7] S. 189.02(1), F.S.
[8] S. 190.005(1), F.S. *See*, generally, s. 189.012(6), F.S.
[9] *2018 – 2020 Local Gov't Formation Manual*, p. 62, https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual%20Final.pdf (last visited Dec 19, 2019).
[10] S. 189.012(2), F.S.
[11] S. 189.012(3), F.S.
[12] The Florida Legislature, Office of Economic and Demographic Research, 2019 Local Government Financial Information Handbook, p. 1, http://edr.state.fl.us/Content/local-government/reports/lgfih19.pdf.
[13] "Ad valorem tax" means a tax based upon the assessed value of property." Section 192.001(1), F.S.

> Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.[15]

However, not all local government revenue sources are taxes requiring general law authorization. When a county or municipal revenue source is imposed by ordinance, the question is whether the charge is a valid assessment or fee. As long as the charge is not deemed a tax, the imposition of the assessment or fee by ordinance is within the constitutional and statutory home rule powers of county and municipal governments. If the charge is not a valid assessment or fee, it is deemed a revenue source requiring general law authorization.

Revenue Sources Based on Home Rule Authority

Pursuant to home rule authority, local governments may impose proprietary fees, regulatory fees, and special assessments to pay the cost of providing a facility or service or regulating an activity. A regulatory fee should not exceed the regulated activity's cost and is generally required to be applied solely to the regulated activity's cost for which the fee is imposed.[16]

Preemption

State preemption precludes a local government from exercising authority in a particular area, and requires consistency with the state constitution or state statute.[17] A local government enactment may be found inconsistent with state law if (1) the Legislature has preempted a particular subject area to the state or (2) the local regulation conflicts with a state statute.[18]

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[19] Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.[20] When local ordinances have been enacted in the face of state preemption, the effect has been to find such ordinances null and void.[21]

Implied preemption is a legal doctrine created to address those situations in which the courts may have been concerned by the legislature's failure to expressly preempt areas which, for all intents and purposes, seemed dominated by the state. Findings of implied preemption are for a very narrow class of areas in which the state has legislated pervasively.[22]

Professions and Occupations

General law directs a number of state agencies and licensing boards to regulate certain professions and occupations. For example, the Department of Business and Professional Regulation (DBPR) currently regulates approximately 25 professions and occupations.[23]

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[14] Art. VII, s. 1(a), Fla. Const.
[15] Art. VII, s. 9(a), Fla. Const.
[16] EDR, *supra* note 12, at 9.
[17] James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemption and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009), available at https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/.
[18] *Id.*
[19] *See City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008).
[20] *Mulligan*, 934 So. 2d at 1243.
[21] *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami,* 812 So.2d 504 (Fla. 3d DCA 2002).
[22] Wolf and Bolinder, *supra* note 17.
[23] S. 20.165, F.S.

General law determines whether local governments are able to regulate occupations and businesses, and to what degree.[24] If state law preempts regulation for an occupation, then, generally, local governments may not regulate that occupation.[25] For example, Florida law currently preempts local regulation with regard to the following:

- assessing local fees associated with providing proof of licensure as a contractor, or providing, recording, or filing evidence of worker's compensation insurance coverage by a contractor; [26]
- assessing local fees and rules regarding low-voltage alarm system projects;[27]
- tobacco and nicotine products;[28]
- firearms, weapons, and ammunition;[29]
- employment benefits;[30]
- polystyrene products;[31]
- public lodging establishments and public food service establishments;[32] and
- disposable plastic bags.[33]

Conversely, Florida law also specifically grants local jurisdictions the right to regulate businesses, occupations and professions in certain circumstances.[34] For example, Florida law specifically authorizes regulations relating to:

- zoning and land use;
- the levy of "reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter";[35]
- the levy of local business taxes;[36]
- building code inspection fees;[37]
- tattoo establishments;[38]
- massage practices;[39]
- child care facilities;[40]
- taxis and other vehicles for hire;[41] and
- waste and sewage collection.[42]

Construction Professional Licenses

Chapter 489, F.S., relates to "contracting," with part I addressing the licensure and regulation of construction contracting, and part II addressing the licensure and regulation of electrical and alarm system contracting.

Construction contractors are either certified or registered by the Construction Industry Licensing Board (CILB) housed within DBPR. The CILB consists of 18 members who are appointed by the Governor

[24] Art. VIII, s. 1(f), Fla. Const.; Art. VII, s. 9(a), Fla. Const.; Art. VIII, s. 2(b), Fla. Const.; s. 166.021(1), F.S.
[25] *Id*.; Wolf and Bolinger, *supra* note 17.
[26] S. 553.80(7)(d), F.S.
[27] S. 489.503(14), F.S.
[28] Ch. 569, F.S., and s. 386.209, F.S.
[29] S. 790.33(1), F.S.
[30] S. 218.077, F.S.
[31] S. 500.90, F.S.
[32] S. 509.032, F.S.
[33] S. 403.7033, F.S.
[34] *Supra* note 25.
[35] S. 166.221, F.S.
[36] Ch. 205, F.S.
[37] S. 166.222, F.S.
[38] S. 381.00791, F.S.
[39] S. 480.052, F.S.
[40] S. 402.306, F.S
[41] S. 125.01(1)(n), F.S.
[42] S. 125.01(1)(k), F.S.

and confirmed by the Senate. The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.[43]

"Certified contractors" are individuals who pass the state competency examination and obtain a certificate of competency issued by DBPR. Certified contractors are able to obtain a certificate of competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.[44]

“Certified specialty contractors” are contractors whose scope of work is limited to a particular phase of construction, such as drywall or demolition. Certified specialty contractor licenses are created by the CILB through rulemaking. Certified specialty contractors are permitted to practice in any jurisdiction in the state.

“Registered contractors” are individuals that have taken and passed a local competency examination and can practice the specific category of contracting for which he or she is approved, only in the local jurisdiction for which the license is issued.[45]

The CILB licenses the following types of contractors:[46]

Statutory Licenses	Specialty Licenses
• Air Conditioning- Classes A, B, and C • Building • General • Internal Pollutant Storage Tank Lining Applicator • Mechanical • Plumbing • Pollutant Storage Systems • Pool/Spa- Classes A, B, and C • Precision Tank Tester • Residential • Roofing • Sheet Metal • Solar • Underground Excavation	• Drywall • Demolition • Gas Line • Glass and Glazing • Industrial Facilities • Irrigation • Marine • Residential Pool/Spa Servicing • Solar Water Heating • Structure • Swimming Pool Decking • Swimming Pool Excavation • Swimming Pool Finishes • Swimming Pool Layout • Swimming Pool Piping • Swimming Pool Structural • Swimming Pool Trim • Tower

Current law provides that local jurisdictions may approve or deny applications for licensure as a registered contractor, review disciplinary cases, and conduct informal hearings relating to discipline of registered contractors licensed in their jurisdiction.[47] Local jurisdictions are not barred from issuing and requiring construction licenses that are outside the scope of practice for a certified contractor or certified specialty contractor, such as painting and fence erection licenses. Local governments may only collect licensing fees that cover the cost of regulation.[48]

Locally registered contractors that are required to hold a contracting license to practice their profession in accordance with state law must register with DBPR after obtaining a local license. However, persons

[43] S. 489.107, F.S.
[44] S. 489.105, F.S.
[45] S. 489.103, F.S.
[46] S. 489.105(a)-(q), F.S.; Rr. 61G4-15.015-040, F.A.C.
[47] Ss. 489.117, 489.131 F.S.
[48] EDR, *supra* note 12, at 9.

holding a local construction license whose job scope does not substantially correspond to the job scope of a certified contractor or a certified specialty contractor are not required to register with DBPR.[49]

Electrical contractors, alarm system contractors, and electrical specialty contractors are certified or registered under the ECLB. Certified contractors can practice statewide and are licensed and regulated by ECLB. Registered contractors are licensed and regulated by a local jurisdiction and may only practice within that locality.[50]

Electrical contractors are contractors who have the ability to work on electrical wiring, fixtures, appliances, apparatus, raceways, and conduits which generate, transmit, transform, or utilize electrical energy in any form. The scope of an electrical contractor's license includes alarm system work.[51]

Alarm system contractors are contractors who are able to lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace, or service alarm systems. An "alarm system" is defined as "any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency."[52]

Electrical certified specialty contractors are contractors whose scope of work is limited to a particular phase of electrical contracting, such as electrical signs. The ECLB creates electrical certified specialty contractor licenses through rulemaking. Certified electrical specialty contractors can practice statewide. The ECLB has created the following certified specialty contractor licenses:

- Lighting maintenance specialty contractor;
- Sign specialty electrical contractor;
- Residential electrical contractor;
- Limited energy systems specialty contractor; and
- Utility line electrical contractor.[53]

Journeyman

A journeyman is a skilled worker in a building trade or craft. There is no state requirement for licensure as a journeyman, but the construction and electrical contractor practice acts account for the fact that counties and municipalities issue journeyman licenses. A person with a journeyman license must always work under the supervision of a licensed contractor, but the state does not regulate journeymen activities or issue journeymen licenses.[54]

However, ch. 489, F.S., allows tradesman to be licensed as a journeyman in one local jurisdiction and work in multiple jurisdictions without having to take another examination or pay an additional licensing fee to qualify to work in the other jurisdictions (county or municipality). Specifically, s. 489.1455(1) of part I, F.S., specifies:

- An individual who holds a valid, active journeyman license in the plumbing/pipe fitting, mechanical, or HVAC trades issued by any county or municipality in this state may work as a journeyman in the trade in which he or she is licensed in any county or municipality of this state without taking an additional examination or paying an additional license fee.

The statutory criteria for licensure reciprocity between local jurisdictions for journeymen include:[55]

- scoring at least 75 percent on an approved proctored examination for that construction trade;
- completing a registered apprenticeship program and demonstrating verifiable practical experience in the particular trade;
- completing coursework approved by the Florida Building Commission specific to the discipline; and

[49] Ss. 489.105, & 489.117(4), F.S.
[50] *See generally* s. 489.505, F.S.
[51] Ss. 489.505(12), & 489.537(7), F.S.
[52] S. 489.505(1)-(2), F.S.
[53] S. 489.505(19), & 489.511(4), F.S; Rule 61G6-7.001, F.A.C.
[54] Ss. 489.103, 489.1455, 489.503, & 489.5335, F.S.
[55] S. 489.1455, F.S. A similar reciprocity option applies to journeyman in the electrical trades. S. 489.5335, F.S.

- not having a license suspended or revoked within the last 5 years.

Effect of the Bill

The bill defines the following terms:

- “Local government” means a county, municipality, special district, or political subdivision of the state.
- “Occupation” means a paid job, profession, work, line of work, trade, employment, position, post, career, field, vocation, or craft.
- "Licensing" means any training, education, test, certification, registration, or license that is required for a person to perform an occupation along with any associated fee.

The bill expressly preempts occupational licensing to the state. This preemption supersedes any local government licensing requirement of occupations unless:

- the licensing of occupations by local governments is authorized by general law; or
- the local licensing scheme for an occupation was imposed before July 1, 2021. However, any such local licensing scheme expires on July 1, 2023.

The bill prohibits local governments that license an occupation that qualifies for the exemption until July 1, 2023, from imposing additional licensing requirements on that occupation and from modifying such licensing.

The bill provides that any local licensing of an occupation not authorized under the provisions of the bill or otherwise authorized by general law does not apply and may not be enforced.

The bill provides that the preemption applies to licensing that is outside the scope of state contractor licensing provisions. Specifically, it provides that a county or municipality may not require a license for a person whose job scope does not substantially correspond to a contractor category licensed by the CILB. The bill specifically precludes counties and municipalities from requiring a license for certain job scopes, including, but not limited to, painting, flooring, cabinetry, interior remodeling, handyman services, driveway or tennis court installation, decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, canvas awning installation, and ornamental iron installation.

The bill also expressly authorizes counties and municipalities to issue journeyman licenses in the plumbing, pipe fitting, mechanical and HVAC trades, as well as, the electrical and alarm system trades, which is the current practice by counties and municipalities. The licensing of those specific local journeyman is exempt from the preemption in the bill.

B. SECTION DIRECTORY:

Section 1	Creates s. 163.21, F.S., relating to licensing of occupations preempted to the state.
Section 2	Amends s. 489.117, F.S., relating to registration; specialty contractors.
Section 3	Amends s. 489.1455, F.S., relating to journeyman; reciprocity; standards.
Section 4	Amends s. 489.5335, F.S., relating to journeyman; reciprocity; standards.
Section 5	Provides an effective date of July 1, 2021.

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 will have an indeterminate positive impact on the private sector. Workers may have to pay less in licensing and examination fees in some local jurisdictions. There may be an increase in the number of people in the workforce practicing their chosen professions.

D. FISCAL COMMENTS:

The fiscal impact of the bill on local governments is indeterminate.

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 neither authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to preemption of local occupational licensing; creating s. 163.211, F.S.; providing definitions; preempting licensing of occupations to the state; providing exceptions; prohibiting local governments from imposing additional licensing requirements or modifying licensing unless specified conditions are met; specifying that certain local licensing that does not meet specified criteria does not apply and may not be enforced; amending s. 489.117, F.S.; specifying that certain specialty contractors are not required to register with the Construction Industry Licensing Board; prohibiting local governments from requiring certain specialty contractors to obtain a license under specified circumstances; specifying job scopes for which a local government may not require a license; amending ss. 489.1455 and 489.5335, F.S.; authorizing counties and municipalities to issue certain journeyman licenses; providing an effective date.

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

Section 1. Section 163.211, Florida Statutes, is created to read:

163.211 Licensing of occupations preempted to state.—

(1) DEFINITIONS.-As used in this section:

(a) "Licensing" means any training, education, test, certification, registration, or license that is required for a person to perform an occupation in addition to any associated fee.

(b) "Local government" means a county, municipality, special district, or political subdivision of the state.

(c) "Occupation" means a paid job, profession, work, line of work, trade, employment, position, post, career, field, vocation, or craft.

(2) PREEMPTION OF OCCUPATIONAL LICENSING TO THE STATE.-The licensing of occupations is expressly preempted to the state and this section supersedes any local government licensing requirement of occupations with the exception of the following:

(a) Any local government that imposed licenses on occupations before January 1, 2021. However, any such local government licensing of occupations expires on July 1, 2023.

(b) Any local government licensing of occupations authorized by general law.

(3) EXISTING LICENSING LIMIT.-A local government that licenses occupations and retains such licensing as set forth in paragraph (2)(a) may not impose additional licensing requirements on that occupation or modify such licensing.

(4) LOCAL LICENSING NOT AUTHORIZED.—Local licensing of an

occupation that is not authorized under this section or otherwise authorized by general law does not apply and may not be enforced.

Section 2. Paragraph (a) of subsection (4) of section 489.117, Florida Statutes, is amended to read:

489.117 Registration; specialty contractors.—

(4)(a) A person ~~holding a local license~~ whose job scope does not substantially correspond to either the job scope of one of the contractor categories defined in s. 489.105(3)(a)-(o), or the job scope of one of the certified specialty contractor categories established by board rule, is not required to register with the board ~~to perform contracting activities within the scope of such specialty license~~. A local government, as defined in s. 163.211, may not require a person to obtain a license for a job scope which does not substantially correspond to the job scope of one of the contractor categories defined in s. 489.105(3)(a)-(o) and (q) or authorized in s. 489.1455(1). For purposes of this section, job scopes for which a local government may not require a license include, but are not limited to, painting; flooring; cabinetry; interior remodeling; driveway or tennis court installation; handyman services; decorative stone, tile, marble, granite, or terrazzo installation; plastering; stuccoing; caulking; and canvas awning and ornamental iron installation.

Section 3. Section 489.1455, Florida Statutes, is amended

to read:

489.1455 Journeyman; reciprocity; standards.—

(1) Counties and municipalities are authorized to issue journeyman licenses in the plumbing, pipe fitting, mechanical, or HVAC trades.

(2) ~~(1)~~ An individual who holds a valid, active journeyman license in the plumbing, pipe fitting ~~plumbing/pipe fitting~~, mechanical, or HVAC trades issued by any county or municipality in this state may work as a journeyman in the trade in which he or she is licensed in any county or municipality of this state without taking an additional examination or paying an additional license fee, if he or she:

(a) Has scored at least 70 percent, or after October 1, 1997, at least 75 percent, on a proctored journeyman Block and Associates examination or other proctored examination approved by the board for the trade in which he or she is licensed;

(b) Has completed an apprenticeship program registered with a registration agency defined in 29 C.F.R. s. 29.2 and demonstrates 4 years' verifiable practical experience in the trade for which he or she is licensed, or demonstrates 6 years' verifiable practical experience in the trade for which he or she is licensed;

(c) Has satisfactorily completed specialized and advanced module coursework approved by the Florida Building Commission, as part of the building code training program established in s.

553.841, specific to the discipline or, pursuant to authorization by the certifying authority, provides proof of completion of such coursework within 6 months after such certification; and

(d) Has not had a license suspended or revoked within the last 5 years.

(3) ~~(2)~~ A local government may charge a registration fee for reciprocity, not to exceed $25.

Section 4. Section 489.5335, Florida Statutes, is amended to read:

489.5335 Journeyman; reciprocity; standards.—

(1) Counties and municipalities are authorized to issue journeyman licenses in the electrical and alarm system trades.

(2) ~~(1)~~ An individual who holds a valid, active journeyman license in the electrical or alarm system trade issued by any county or municipality in this state may work as a journeyman in the trade in which he or she is licensed in any other county or municipality of this state without taking an additional examination or paying an additional license fee, if he or she:

(a) Has scored at least 70 percent, or after October 1, 1997, at least 75 percent, on a proctored journeyman Block and Associates examination or other proctored examination approved by the board for the ~~electrical~~ trade in which he or she is licensed;

(b) Has completed an apprenticeship program registered

with a registration agency defined in 29 C.F.R. s. 29.2 and demonstrates 4 years' verifiable practical experience in the ~~electrical~~ trade for which he or she is licensed, or demonstrates 6 years' verifiable practical experience in the ~~electrical~~ trade for which he or she is licensed;

(c) Has satisfactorily completed specialized and advanced module coursework approved by the Florida Building Commission, as part of the building code training program established in s. 553.841, specific to the discipline~~,~~ or, pursuant to authorization by the certifying authority, provides proof of completion of such curriculum or coursework within 6 months after such certification; and

(d) Has not had a license suspended or revoked within the last 5 years.

(3) ~~(2)~~ A local government may charge a registration fee for reciprocity, not to exceed $25.

Section 5. This act shall take effect July 1, 2021.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 797 Florida Life and Health Insurance Guaranty Association
SPONSOR(S): Robinson, W.
TIED BILLS: **IDEN./SIM. BILLS:** SB 1470

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	16 Y, 0 N	Hinshelwood	Luczynski
2) State Administration & Technology Appropriations Subcommittee	14 Y, 0 N	Lee	Topp
3) Commerce Committee		Hinshelwood	Hamon

SUMMARY ANALYSIS

An insurance guaranty association ensures that policyholders' paid insurance premiums are protected and outstanding claims are settled, up to limits provided by law, if their insurer is liquidated. The Florida Life and Health Insurance Guaranty Association (FLAHIGA) is the guaranty association for most insurance companies that write life and health insurance or annuities in Florida. The bill makes the following changes to conform to the Life and Health Insurance Guaranty Association Model Act:

- Adds a definition for the term "Moody's Corporate Bond Yield Average".
- Amends the definition of "person" to include "limited liability company" and "governmental body or entity".
- Clarifies that, in dealing with an impaired domestic insurer, the FLAHIGA may assume or reissue covered policies, in addition to guaranteeing and reinsuring the policies.
- Expressly provides that the FLAHIGA has the right to appear or intervene before a court or agency in another state.
- Provides that, for purposes of the FLAHIGA's standing to appear before any court in this state, the FLAHIGA's powers and duties include reissuing or modifying covered policies.
- Provides that the FLAHIGA may recover payment of improper claims.
- Clarifies that the FLAHIGA has the authority to join an organization of other state guaranty associations to further the purposes and to carry out the powers and duties of the FLAHIGA.
- As to Class A assessments, which pay the FLAHIGA's general administrative expenses, removes the cap of $250, permits the assessments to be made on a pro rata basis, and allows the FLAHIGA's board to credit the assessments against future assessments related to insurer insolvencies.
- Provides that, if an insurer's assessment is deferred because the assessment would endanger the insurer's financial solvency, the insurer must pay the assessment once it regains financial strength.
- Removes the reduced assessment cap for nonprofit annuity insurers that issue policies to educational groups, thus making such insurers subject to the assessment cap for all other annuity insurers.
- Directs that the FLAHIGA establish a procedure for removing a board member if that member becomes impaired or insolvent and establish a policy and procedure to address conflicts of interest.

The bill has no fiscal impact on state or local governments and an indeterminate impact on the private sector.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Insurer Insolvency

States primarily regulate insurance companies, and the state of domicile serves as the primary regulator for insurers. In Florida, the Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers and other risk-bearing entities.[1] The OIR monitors the solvency of insurers, examines insurers, and takes administrative action, if necessary.

Chapter 631, F.S., relating to insurer insolvency and guaranty payments, governs the receivership process for insurance companies in Florida. Federal law specifies that insurance companies cannot file for bankruptcy.[2] Instead, they are either "rehabilitated" or "liquidated" by the state. In Florida, the Division of Rehabilitation and Liquidation of the Department of Financial Services (DFS) is responsible for rehabilitating or liquidating insurance companies.[3]

Florida operates five insurance guaranty funds and associations[4] to ensure that policyholders of liquidated insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law.[5] A guaranty association generally is a not-for-profit corporation created by law and is directed to protect policyholders from financial losses and delays in claims payments and settlements due to the insolvency of an insurance company. A guaranty association accomplishes its mission by assuming responsibility for settling claims and refunding unearned premiums[6] to policyholders. Insurers are required by law to participate in guaranty associations as a condition of transacting business in Florida.

The bill makes changes to one of the five guaranty funds and associations – the Florida Life and Health Insurance Guaranty Association (FLAHIGA), which is the guaranty association for most health and life insurers.

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[1] S. 20.121(3), F.S.

[2] The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. s. 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. *See* 15 U.S.C. ss. 1011-1012.

[3] Typically, insurers are put into liquidation when the company is insolvent whereas insurers are put into rehabilitation for numerous reasons, one of which is an unsound financial condition. The goal of rehabilitation is to return the insurer to a sound financial condition. The goal of liquidation, however, is to dissolve the insurer. *See* s. 631.051, F.S., for the grounds for rehabilitation and s. 631.061, F.S., for the grounds for liquidation.

[4] The FLAHIGA (ss. 631.711 – 631.738, F.S.) generally is responsible for claims settlement and premium refunds for health and life insurers who are insolvent. The HMOCAP (ss. 631.811 – 631.828, F.S.) offers assistance to members of insolvent health maintenance organizations, and the Florida Workers' Compensation Insurance Guaranty Association (ss. 631.901 – 631.932, F.S.) is directed by law to protect policyholders of insolvent workers' compensation insurers. The Florida Self-Insurers Guaranty Association (ss. 440.385 – 440.386, F.S.) protects policyholders of insolvent individual self-insured employers for workers' compensation claims. The Florida Insurance Guaranty Association (ss. 631.50 – 631.70, F.S.) is responsible for paying claims for insolvent insurers for most remaining lines of insurance, including residential and commercial property, automobile insurance, and liability insurance, among others.

[5] "Before the creation of guaranty associations, a typical claimant could have waited for years for payment of a claim and then still receive only a fraction of what was due under the terms of the policy or contract. Guaranty associations, subject to statutory limitations, were created to alleviate these problems and ensure the stability of the insurance market. Specifically, in the event of a life/health insurer liquidation, the guaranty mechanism provides for the continuation of eligible contracts that would otherwise terminate." National Association of Insurance Commissioners, *Guaranty Associations/Funds*, https://www.naic.org/cipr_topics/topic_guaranty_associations.htm (last visited Feb. 26, 2021).

[6] The term "unearned premium" refers to that portion of a premium that is paid in advance, typically for six months or one year, and which is still owed on the unexpired portion of the policy.

The FLAHIGA

Statutory provisions relating to the FLAHIGA, which was created in 1979, are contained in ch. 631, part III, F.S. The FLAHIGA is a nonprofit corporation and is governed by a board of directors composed of at least nine but not more than 11 member insurance companies.[7] All insurance companies (with limited exceptions) licensed to write life and health insurance or annuities in Florida are required, as a condition of doing business in Florida, to be a member of the FLAHIGA.[8]

Plan of Operation

The FLAHIGA's operations are set forth in a plan of operation. Amendments to the plan of operation must be submitted to the DFS for approval and are effective upon written approval by the DFS.[9] The plan of operation must:[10]

- Establish procedures for handling the FLAHIGA's assets.
- Establish the amount and method of reimbursing the FLAHIGA's board members for expenses incurred by them as board members, though board members are not otherwise compensated by the FLAHIGA for their services.[11]
- Establish regular places and times for meetings of the board of directors.
- Establish procedures for keeping records of all financial transactions of the FLAHIGA, its agents, and the board of directors.
- Establish procedures whereby selections for the board of directors are made and submitted to the DFS.
- Establish any additional procedures for assessments.
- Contain additional provisions necessary or proper for the execution of the powers and duties of the FLAHIGA.

Additionally, the plan of operation may delegate duties of the FLAHIGA, except the power to borrow and to assess its members, to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states.[12] This provision contemplates membership in and delegation of duties to the National Organization of Life and Health Insurance Guaranty Associations discussed below.

Insolvency Process

In the event a member insurer is found to be insolvent and is ordered to be liquidated by a court, a receiver takes over the insurer under court supervision and processes the assets and liabilities through liquidation. Upon liquidation, the FLAHIGA automatically becomes liable for the policy obligations that the liquidated insurer owed to its Florida policyholders.[13] The FLAHIGA services the policies, collects premiums, and pays valid claims under the policies. The FLAHIGA's rights under the policies are those that applied to the insurer prior to liquidation. The FLAHIGA may cancel the policy if the insurer could have done so, but normally the FLAHIGA continues the policies until it can transfer to, or substitute the policies with, a new, stable insurer with approval of the OIR.

The FLAHIGA's aggregate liability with respect to one life may not exceed the following:

- Life insurance death benefit: $300,000 per insured life.
- Life insurance cash surrender: $100,000 per insured life.
- Health insurance or long-term care insurance: $300,000 per insured life.

[7] Ss. 631.715(1) and 631.716(1), F.S.
[8] S. 631.715(1), F.S.
[9] S. 631.721(1)(a), F.S.
[10] S. 631.721(3), F.S.
[11] S. 631.716(3), F.S.
[12] S. 631.721(4), F.S.
[13] Generally, the FLAHIGA covers only policyholders and certificate holders that were valid Florida residents on the date that a member insurer is declared insolvent and liquidated. However, non-residents of Florida and beneficiaries of covered persons are covered by the FLAHIGA under limited circumstances. s. 631.713(2), F.S.

- Annuity cash surrender: $250,000 for deferred annuity contracts per contract owner.
- Annuity in benefit: $300,000 per contract owner.
- Basic hospital expense, basic medical-surgical, or major medical expense health insurance policies (other than long-term care insurance policies): $500,000 per insured life.[14]

Additionally, the FLAHIGA will only cover a policy or contract to the extent that:

- The interest rate on which the policy or contract is based, averaged over the four-year period immediately preceding the date on which the member insurer becomes impaired or insolvent, is less than the Moody's Corporate Bond Yield Average (averaged for that same four-year period) minus two percentage points.
- The interest rate on which the policy or contract is based, on and after the date on which the member insurer becomes an impaired or insolvent, is less than the Moody's Corporate Bond Yield Average minus three percentage points.

The FLAHIGA statutes do not currently define the term "Moody's Corporate Bond Yield Average".

Powers and Duties of the FLAHIGA

The FLAHIGA carries out its duties pursuant to authority granted by and directives contained in statute. Among the powers statutorily granted to the FLAHIGA is the authority to:

- Guarantee or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the covered policies of an impaired domestic insurer;[15] and
- Take such legal action as may be necessary to avoid payment of improper claims.[16]

Additionally, the FLAHIGA has standing to appear before any court in this state which has jurisdiction over an impaired or insolvent insurer to which the FLAHIGA is or may become obligated.[17] Such standing extends to all matters germane to the powers and duties of the FLAHIGA, including but not limited to, proposals for reinsuring or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations. While the statute expressly provides the FLAHIGA standing to appear in courts of this state, the statute does not expressly provide the FLAHIGA the right to appear or intervene before a court or agency in another state.

Assessment of Members

By law, the FLAHIGA is divided into three operating accounts:[18]

- The health insurance account;
- The life insurance account; and
- The annuity account.

The FLAHIGA is authorized to levy two types of assessments to carry out its responsibilities:

- Class A assessments may be levied for the purpose of covering the FLAHIGA's general administrative costs and for the cost of examining a member insurer that the FLAHIGA's board believes in good faith may be impaired or insolvent.[19] These assessments may only be made on a non-pro rata basis up to $250 per member per calendar year.[20] Additionally, Class A assessments may not be credited against future Class B assessments.[21]

[14] S. 631.717(12), F.S.; FLAHIGA, *Frequently Asked Questions,* https://www.flahiga.org/FAQ (last visited Feb. 26, 2021).
[15] S. 631.717(1)(a), F.S.
[16] S. 631.717(13)(f), F.S.
[17] S. 631.717(7), F.S.
[18] S. 631.715(2)(a), F.S.
[19] Ss. 631.718(2)(a) and 631.723(3), F.S.
[20] S. 631.718(3)(a), F.S.
[21] *Id.*

- Class B assessments are authorized to fund the FLAHIGA's duties related to a specific insolvency.[22] Except for assessments related to long-term care insurance insolvencies, Class B assessments are based on an insurer's pro rata share of all premiums collected by insurers in this state on policies covered by the account during the three years prior to the assessment.[23] Except for assessments related to long-term care insurance insolvencies, an insurer's assessment for each account may not exceed, in any one calendar year, 1 percent of the insurer's average premiums written in the covered account during the three-year period preceding the year in which the assessment is made.[24] An insurer may offset any assessment against either its premium tax or corporate income tax liability in 5 percent increments over the 20-year period following the year in which the assessment was paid.[25] When assessments related to insolvencies are imposed, the FLAHIGA must issue a certificate of contribution to each insurer paying such assessment for the amount of the assessment paid.[26] A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the OIR approves.[27] However, any amount of assessment offset against the insurer's premium tax or corporate income tax liability may not be shown as an asset of the insurer.[28]

Currently, there is a cap on assessment of any member insurer that is a nonprofit insurance company which issues annuity contracts or group annuity contracts pursuant to s. 121.35, F.S.,[29] or for the benefit of employees of Florida educational institutions.[30] Such nonprofit insurance companies may not be assessed in any one calendar year more than the greater of:[31]

- The amount which the company paid to this state in the previous year as premium tax and corporate tax on the business to which the FLAHIGA statutes apply, or
- 0.1 percent of written premium on such business in this state.

The FLAHIGA may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations.[32] In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers.[33]

National Organization of Life and Health Insurance Guaranty Associations (NOLHGA)[34]

NOLHGA is a voluntary membership organization founded in 1983 when state life and health insurance guaranty associations saw the need for a mechanism to help them coordinate their efforts to provide protection to policyholders when a life or health insurance company insolvency affects people in multiple states. Today, NOLHGA membership includes life and health insurance guaranty associations of all 50 states and the District of Columbia.

When an insurer licensed in multiple states is declared insolvent, NOLHGA, on behalf of affected member state guaranty associations, assembles a task force of guaranty association officials. This task force analyzes the company's commitments to policyholders; ensures that covered claims are paid;

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[22] S. 631.718(2)(b), F.S.
[23] S. 631.718(3)(c), F.S.
[24] S. 631.718(5)(a), F.S.
[25] S. 631.72(1), F.S.
[26] S. 631.718(8), F.S.
[27] *Id.*
[28] *Id.*
[29] Section 121.35, F.S., requires the Department of Management Services to establish an optional retirement program under which contracts providing retirement and death benefits may be purchased for eligible members of the State University System who elect to participate in the program.
[30] S. 631.718(9), F.S.
[31] *Id.*
[32] S. 631.718(4), F.S.
[33] *Id*.
[34] NOLHGA, *About Us*, https://www.nolhga.com/aboutnolhga/main.cfm/location/whatisnolhga (last visited Feb. 26, 2021).

and, where appropriate, arranges for covered policies to be transferred to a healthy insurer. The task force may also support the efforts of the receiver to dispose of the company's assets in a way that maximizes their value. When there is a shortfall of estate assets needed to pay the claims of covered policyholders, guaranty associations assess the licensed insurers in their states a proportional share of the funds needed.

NOLHGA's coordination of the workout of a multi-state insolvency significantly reduces costs to guaranty associations because the NOLHGA task force avoids the need for each state guaranty association to hire its own legal and financial experts. This coordination of effort also helps reduce the length of time a receiver may require to develop a plan of rehabilitation or otherwise resolve a multi-state insolvency.

The National Association of Insurance Commissioners (NAIC) – Life and Health Guaranty Association Model Act

The NAIC is the U.S. 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.[35] Through the NAIC, state insurance regulators establish standards and best practices, conduct peer reviews, and coordinate their regulatory oversight.[36] OIR Commissioner David Altmaier currently serves as the NAIC President.[37]

The NAIC has promulgated and periodically updates a model act for use by states in governing their Life and Health Insurance Guaranty Associations.[38] Below are pertinent provisions in the most recent model act. Italicized words indicate portions of the model act that the bill adds to the FLAHIGA statutes.

- Definitions:
  - *"Moody's Corporate Bond Yield Average" means the monthly average corporates as published by Moody's Investors Service, Inc., or any successor thereto.*[39]
  - "Person" means an individual, corporation, *limited liability company*, partnership, association, *governmental body or entity*, or voluntary organization.[40]
- Powers of the guaranty association state that the association may guarantee, *assume, reissue*, or reinsure, or cause to be guaranteed, assumed, *reissued*, or reinsured, any or all of the policies or contracts of the impaired insurer.[41]
- The guaranty association's standing to appear or intervene before a court or agency in this state extends to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, *reissuing, modifying*, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations.[42] *The guaranty association shall also have the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise.*[43] These provisions enable the guaranty association to protect its interest and the best interests of the policyholders, contract owners, certificate holders, or enrollees in the handling of an impairment or insolvency by providing that the association's standing to appear in courts with jurisdiction over an insolvent insurer will extend to any matters concerning the duties of the association.[44]

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[35] NAIC, *About the NAIC*, https://www.naic.org/index_about.htm (last visited Feb. 26, 2021).
[36] *Id*.
[37] *Id.*
[38] NAIC, *Life and Health Insurance Guaranty Association Model Act,* 2018, http://www.naic.org/store/free/MDL-520.pdf (last visited Feb. 26, 2021).
[39] *Id.* at 9 and 37.
[40] *Id.* at 9 and 38.
[41] *Id*. at 12.
[42] *Id.* at 15.
[43] *Id.*
[44] *Id.* at 20.

- The guaranty association may take such legal action as may be necessary or appropriate to avoid *or recover* payment of improper claims.[45]
- *The guaranty association may join an organization of one or more other state associations of similar purposes, to further the purposes and administer the powers and duties of the association*.[46] This provision is intended to explicitly recognize that prompt and efficient discharge of the guaranty association's obligations will be greatly facilitated, especially in multistate insolvencies, by acting in concert through NOLHGA to develop and, where appropriate, carry out coordinated plans.[47]
- The amount of a Class A assessment shall be determined by the board and may be authorized and called on a *pro rata or* non-pro rata basis. *If pro rata, the board may provide that it be credited against future Class B assessments.*[48]
- The guaranty association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. *Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the Association*.[49]
- The plan of operation shall:
    - *Establish procedures whereby a director may be removed* for cause, including in the case *where a member insurer director becomes an impaired or insolvent insurer*.[50]
    - *Require the board of directors to establish a policy and procedures for addressing conflicts of interest*.[51]

Effect of the Bill

Definitions

In conformity with the NAIC model act, the bill:

- Adds a definition for "Moody's Corporate Bond Yield Average" and defines the term as meaning the monthly average corporate bond yields published by Moody's Investor Services, Inc., or any successor thereto.[52]
- Adds "limited liability company" and "governmental body or entity" to the definition of "person".

Powers and Duties of the FLAHIGA

In conformity with the NAIC model act, the bill adds that:

- The FLAHIGA has authority to assume or reissue, or cause to be reissued, any or all of the covered policies of an impaired domestic insurer.
- The FLAHIGA has right to appear or intervene before a court or agency in another state which has jurisdiction over:
    - An impaired or insolvent insurer for which the FLAHIGA is or may become obligated; or
    - A person or property against whom the FLAHIGA may have rights through subrogation or otherwise.
- For purposes of the FLAHIGA's standing to appear before any court in this state, the FLAHIGA's powers and duties include reissuing or modifying covered policies.

[45] *Id.* at 16.
[46] *Id.*
[47] *Id.* at 20.
[48] *Id.* at 21.
[49] *Id*. at 22.
[50] *Id*. at 24.
[51] *Id.*
[52] The term "Moody's Corporate Bond Yield Average" is used in the context of an interest rate cap on FLAHIGA's coverage of policies or contracts of the impaired or insolvent insurer.

- The FLAHIGA has the power to take such legal action as may be necessary to recover payment of improper claims.
- The FLAHIGA has the power to join an organization of other state guaranty associations to further the purposes and to carry out the powers and duties of the FLAHIGA (i.e., membership in NOLHGA).[53]

Assessments

In conformity with the NAIC model act, the bill removes the cap of $250 on Class A assessments, permits Class A assessments to be made on either a pro rata or non-pro rata basis, and allows the FLAHIGA's board to credit Class A assessments against future Class B assessments. The ability to credit Class A assessments against future Class B assessments provides budget flexibility. However, since Class A assessments are much smaller than Class B assessments, this change may not significantly decrease liability for Class B assessments.

The bill removes the cap on assessment of any member insurer that is a nonprofit insurance company which issues annuity contracts or group annuity contracts pursuant to s. 121.35, F.S., or for the benefit of employees of Florida educational institutions. Such companies would still be subject to assessment caps applicable to all member insurers, and the FLAHIGA maintains its ability to abate or defer the assessment of a member insurer if payment of the assessment would put the member insure at risk of becoming impaired or insolvent.

Also in conformity with the NAIC model act, the bill adds a provision that would cause a member insurer to pay all assessments that were deferred, once the conditions that caused a deferral have been removed or rectified.

Plan of Operation

In conformity with the NAIC model act, the bill directs that the FLAHIGA's plan of operation must:
- Establish a procedure for removing a member of the board of directors when that member becomes an impaired or insolvent insurer.
- Require the board of directors to establish a policy and procedures for addressing conflicts of interest.

B. SECTION DIRECTORY:

Section 1. Amends s. 631.714, F.S., relating to definitions.

Section 2. Amends s. 631.717, F.S., relating to powers and duties of the association.

Section 3. Amends s. 631.718, F.S., relating to assessments.

Section 4. Amends s. 631.721, F.S., relating to plan of operation.

Section 5. Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

[53] The FLAHIGA is already a member of NOLHGA, and the FLAHIGA's plan of operation is already permitted to delegate many of the FLAHIGA's duties to NOLHGA.

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The fiscal impact on the private sector is indeterminate. The bill may result in increased costs to some insurance companies, because it removes the reduced assessment cap for nonprofit annuity insurers that issue policies to educational groups, provides that a member insurer must pay all assessments that were deferred once the insurer regains financial strength, removes the cap on Class A assessments, and allows Class A assessments to be made on a pro rata basis. However, for these same reasons, the bill may equally result in decreased costs to other insurance companies. Overall, the bill may lead to better financial strength of the FLAHIGA, the safety net for insurance companies that write life and health insurance or annuities in Florida.

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 does not confer agency rulemaking authority nor require an agency to promulgate rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Florida Life and Health Insurance Guaranty Association; amending s. 631.714, F.S.; defining the term "Moody's Corporate Bond Yield Average" and redefining the term "person," to apply to provisions relating to life and health insurance guaranty of payments; amending s. 631.717, F.S.; authorizing the Florida Life and Health Insurance Guaranty Association to assume, reissue, and cause to be reissued covered polices of impaired insurers under certain circumstances; revising the association's standing before a court; providing that the association has the right to appear or intervene before a court or agency in another state under certain circumstances; authorizing the association to join certain organizations for specified purposes; amending s. 631.718, F.S.; authorizing the board of directors of the association to credit specified assessments against certain future assessments under certain circumstances; deleting provisions prohibiting credits against future insolvency assessments and provisions limiting the amount assessed; requiring member insurers to pay deferred assessments under certain circumstances; deleting provisions limiting the amount that may be assessed against specified

member insurers; amending s. 631.721, F.S.; providing additional requirements for the association's plan of operation; providing an effective date.

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

Section 1. Subsections (8), (9), and (10) of section 631.714, Florida Statutes, are renumbered as subsections (9), (10), and (11), respectively, present subsection (9) is amended, and a new subsection (8) is added to that section, to read:

631.714 Definitions.—As used in this part, the term:

(8) "Moody's Corporate Bond Yield Average" means the monthly average corporate bond yields published by Moody's Investors Service, Inc., or any successor thereto.

(10) ~~(9)~~ "Person" means any individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.

Section 2. Paragraph (a) of subsection (1), subsection (7), and paragraph (f) of subsection (13) of section 631.717, Florida Statutes, are amended, and paragraph (h) is added to subsection (13) of that section, to read:

631.717 Powers and duties of the association.—

(1) If a domestic insurer is an impaired insurer, the association may, subject to the approval of the impaired insurer and the department:

(a) Guarantee, assume, reissue, or reinsure, or cause to be guaranteed, assumed, reissued, or reinsured, any or all of the covered policies of the impaired insurer;

(7) The association shall have standing to appear before any court in this state which has jurisdiction over an impaired or insolvent insurer to which the association is or may become obligated under this part. Such standing shall extend to all matters germane to the powers and duties of the association, including but not limited to, proposals for reinsuring, reissuing, modifying, or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations. The association also has the right to appear or intervene before a court or agency in another state which has jurisdiction over:

(a) An impaired or insolvent insurer for which the association is or may become obligated; or

(b) A person or property against whom the association may have rights through subrogation or otherwise.

(13) The association may:

(f) Take such legal action as may be necessary to avoid or recover payment of improper claims.

(h) Join an organization of other state guaranty associations to further the purposes and to carry out the powers and duties of the association.

Section 3. Paragraph (a) of subsection (3) and subsections

(4) and (9) of section 631.718, Florida Statutes, are amended, and paragraphs (b) and (c) of subsection (3) of that section are republished, to read:

631.718 Assessments.—

(3)(a) The amount of any Class A assessment shall be determined by the board and may be made on a pro rata or non-pro rata basis. If on a pro rata basis, the board may credit the assessment against future Class B assessments ~~The assessment may not be credited against future insolvency assessments and may not exceed $250 per member insurer in any one calendar year~~.

(b)1. The amount of any Class B assessment, except for assessments related to long-term care insurance, must be allocated for assessment purposes among the accounts pursuant to an allocation formula, which may be based on the premiums or reserves of the impaired or insolvent insurer.

2. The amount of the Class B assessment for long-term care insurance written by the impaired or insolvent insurer must be allocated according to a methodology included in the plan of operation and approved by the department. The methodology must provide for 50 percent of the assessment to be allocated to health member insurers and 50 percent to be allocated to life and annuity member insurers.

3. For the purposes of the methodology outlined in subparagraph 2. and included in the plan of operation, the health member insurers' share of the assessment must be

calculated by including the assessable premiums of member health maintenance organizations of the Florida Health Maintenance Organization Consumer Assistance Plan.

(c) Class B assessments against member insurers for each account must be based upon the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account for the 3 most recent calendar years for which information is available preceding the year of the assessment in proportion to premiums received on business in this state for those calendar years by all assessed member insurers. If the most recent 3 years of premium information is not available for each member insurer, the board of directors may use the premium information that is reasonably available.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the association.

~~(9) Notwithstanding any provision to the contrary, no member insurer that is a nonprofit insurance company which issues annuity contracts or group annuity contracts pursuant to s. 121.35, or for the benefit of employees of educational institutions situated in this state may be assessed in any one calendar year an amount greater than the amount which it paid to this state in the previous year as premium tax and corporate tax on the business to which this part applies or 0.1 percent of written premium on such business in this state, whichever is greater.~~

Section 4. Paragraphs (h) and (i) are added to subsection (3) of section 631.721, Florida Statutes, and subsections (1) and (2) of that section are republished, to read:

631.721 Plan of operation.—

(1)(a) The association shall submit to the department a proposed plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The proposed plan of operation and any amendments thereto shall become effective upon approval in writing by the department.

(b) If at any time the association fails to submit suitable amendments to the plan, the department shall, after notice and hearing, adopt such reasonable rules as are necessary to effectuate the provisions of this part. Such rules shall continue in force until modified by the department or superseded

by a proposed plan submitted by the association and approved by the department.

(2) All member insurers shall comply with the approved plan of operation.

(3) The plan of operation shall, in addition to requirements enumerated elsewhere in this part:

(h) Establish a procedure for removing a member of the board of directors when that member becomes an impaired or insolvent insurer.

(i) Require the board of directors to establish a policy and procedures for addressing conflicts of interest.

Section 5. This act shall take effect July 1, 2021.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 823 Alarm System Contractors
SPONSOR(S): Regulatory Reform Subcommittee, Mariano
TIED BILLS: **IDEN./SIM. BILLS:** SB 998

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	17 Y, 0 N, As CS	Brackett	Anstead
2) Commerce Committee		Brackett	Hamon

SUMMARY ANALYSIS

Electrical contractors, alarm system contractors, and electrical specialty contractors are certified by or registered with the Electrical Contractors' Licensing Board (ECLB) of the Department of Business and Professional Regulation (DBPR). Certified contractors can practice statewide and are licensed and regulated by the ECLB. Registered contractors are licensed and regulated by a local jurisdiction and may practice within that locality. Registered contractors are also required to register their license with the ECLB.

An "alarm system" is defined as "any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, **fire**, robbery, or medical emergency.

The Florida Building Code (Building Code) must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction. Local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare, and to enforce the Building Code. It is unlawful for a person or corporation to construct, alter, repair, or demolish a building without obtaining a permit from the local enforcing agency.

Current law requires an electrical and alarm system contractor to obtain a building permit **before** installing, replacing, or **repairing** a fire alarm system.

Current law also requires electrical and alarm system contractors to include their license number in every offer of service, business proposal, or advertisement, regardless of medium. However, an advertisement does not include business stationery or any promotional novelties such as balloons, pencils, trinkets, or articles of clothing.

The bill:

- Provides that an electrical contractor or an alarm system contractor does not have to include their license number in an advertisement for alarm system contracting, if the advertisement directs consumer's to the contractor's website and the website includes their license number.
- Provides that an electrical or alarm system contractor is not required to obtain a fire alarm permit before beginning repairs on a fire alarm system, if the contractor **applied for** a fire alarm permit prior to beginning the repairs.
- Clarifies that repairs to a fire alarm system are not considered complete until the required fire alarm permit has been obtained and approved by the local enforcement agency.

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

The bill provides for an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Contractors

Contractors are regulated by ch. 489, F.S., which outlines the law pertaining to contractors in the state of Florida. Part I of ch. 489, F.S., covers contracting regulated by the Construction Industry Licensing Board (CILB) and pt. II of ch. 489, F.S., covers contracting regulated by the Electrical Contractors' Licensing Board (ECLB). Both boards are housed in the Department of Business and Professional Regulation (DBPR).

Electrical contractors, alarm system contractors, and electrical specialty contractors are certified by or registered with the ECLB. Certified contractors can practice statewide and are licensed and regulated by ECLB. Registered contractors are licensed and regulated by a local jurisdiction and may practice within that locality.[1]

Electrical contractors may work on electrical wiring, fixtures, appliances, apparatus, raceways, and conduits which generate, transmit, transform, or utilize electrical energy in any form.[2]

Alarm system contractors may lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace, or service alarm systems. An "alarm system" is defined as "any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency."[3]

Electrical certified specialty contractors are contractors whose scope of work is limited to a particular phase of electrical contracting, such as electrical signs. Certified electrical specialty contractors can practice statewide. The ECLB creates electrical certified specialty contractor licenses through rulemaking, and has created the following certified specialty contractor licenses:[4]

- Lighting maintenance specialty contractor;
- Sign specialty electrical contractor;
- Residential electrical contractor;
- Limited energy systems specialty contractor;
- Utility line electrical contractor; and
- Two-Way Radio Communications Enhancement Systems contractor.

The scope of work for certified electrical contractors includes any work that an alarm system contractor is able to perform.[5]

Registered electrical contractors may install raceways for alarm systems.[6] They may also bid on electrical contracts, which include alarm systems as part of the contract, but they must subcontract the work on such alarm systems to an alarm system contractor.[7]

State Fire Marshal

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[1] *See generally* s. 489.505, F.S.
[2] S. 489.505(12), F.S.
[3] S. 489.505(1)-(2), F.S.
[4] Ss. 489.505(19), and 489.511(4), F.S; Rule 61G6-7.001, F.A.C.
[5] S. 489.537(7), F.S.
[6] A "raceway" is an enclosed channel designed to hold wires, cables, or busbars. Mike Holt, Understanding Raceways, EC&M (Feb. 13, 2018) https://www.ecmweb.com/national-electrical-code/code-basics/article/20903368/understanding-raceways#:~:text=The%20NEC%20defines%20a%20raceway,permitted%20in%20this%20Code%20%5BArt. (last visited Mar. 3, 2021).
[7] S. 489.537(2)(b), F.S.

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal (Division within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety, and has the responsibility to minimize the loss of life and property in this state due to fire.[8] Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and fire safety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts fire safety inspections of state property; and operates the Florida State Fire College.

The State Fire Marshal also adopts by rule the Florida Fire Prevention Code (Fire Code), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such fire safety laws and rules.[9]

The State Fire Marshall adopts a new edition of the Fire Code every three years. When adopting a new edition of the Fire Code, the State Fire Marshal must adopt the most recent version of the National Fire Protection Association (NFPA) Standard 1, Fire Prevention Code, and the NFPA 101 Life Safety Code.[10]

State law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the Fire Code as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code.[11] Each county, municipality, and special district with fire safety enforcement responsibilities must employ or contract with a fire safety inspector (certified by the State Fire Marshal) to conduct all fire safety inspections required by law.[12]

The Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.[13]

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.[14] The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.[15]

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act" (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement

[8] S. 633.104, F.S.
[9] Ss. 633.202(1) and (2), F.S.
[10] *Id.* The NFPA is the National Fire Protection Association. Founded in 1896, the NFPA delivers information and knowledge through no more than 300 consensus codes and standards, research, training, education, outreach and advocacy. NFPA, *About NFPA*, https://www.nfpa.org/about-nfpa (last visited Feb. 4, 2021).
[11] The Florida Building Code is the statewide building code for all construction in the state. Every local government must enforce the Florida Building Code and issue building permits. *See generally* ch. 553, F.S.
[12] S. 633.216(1), F.S.
[13] The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs,* p. 4, http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Feb. 15, 2021).
[14] *Id.*; DBPR, *Building Code Information System*, https://floridabuilding.org/c/default.aspx# (last visited on Feb. 15, 2021).
[15] Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspx (last visited Feb. 21, 2021).

of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction. [16]

The Florida Building Commission (Commission) was statutorily created to implement the Building Code. The Commission, which is housed within the DBPR, is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code. The Commission reviews several International Codes published by the International Code Council,[17] the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.[18]

Enforcement of the Florida Building Code

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.[19] Every local government must enforce the Florida Building Code and issue building permits.[20]

Current law also requires State universities, Florida College System institutions, and public school districts to enforce the Building Code for their building projects, including conducting plan review and inspections. State universities, Florida College System institutions, and public school districts must use or contract with licensed building officials, inspectors, and plan examiners, and may elect to use a local government's building department to review plans and perform inspections.[21]

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a building permit from the local government or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.[22]

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.[23] A building official is a local government employee or a person contracted by a government entity who supervises building code activities, including plans review, enforcement, and inspection.[24] Any construction work that requires a building permit also requires plans and inspections by the building official to ensure the work complies with the Building Code.[25] Generally speaking, a permit that passes the required inspections is considered completed or closed.[26]

Time-Period to Review Building Permit Applications

Fire protection systems, including fire alarms, must be installed, repaired, operated, and maintained in accordance with the Fire Code and the Building Code.[27]

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[16] *See* S. 553.72(1), F.S.
[17] The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." International Code Council, *About the ICC*, https://www.iccsafe.org/about/who-we-are/ (last visited Feb. 21, 2021).
[18] Ss. 553.73, and 553.74, F.S.
[19] S. 553.72, F.S.
[20] Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.
[21] S. 553.80(6), F.S.
[22] *See* Ss. 125.56(4)(a) and 553.79(1), F.S.
[23] S. 468.603(2), F.S; S. 202 of the Seventh edition of the Florida Building Code (Building).
[24] S. 468.603(2), F.S.; S. 202 of the Seventh edition of the Florida Building Code (Building).
[25] Ss. 107, 110.1, and 110.3 of the Seventh edition of the Florida Building (Building).
[26] Doug Wise, *Closing Inactive & Excluded Building Permits*, Palm Beach County Planning, Zoning & Building Department, Building Division, http://discover.pbcgov.org/pzb/building/BuildingCodes/PBO-126%20%E2%80%93%20Closing%20Inactive%20and%20Excluded%20Building%20Permits.pdf (last visited Mar. 15, 2019).
[27] Sections 202 and 901.2 of the Seventh edition of the Florida Building Code (Building).

Current law requires local governments to review certain building permit applications within a specific time-period of receiving the applications. Current law has established time-periods for local governments to review applications for the following building permits:[28]

- accessory structure;
- **alarm permit**;
- nonresidential buildings less than 25,000 square feet;
- electric;
- irrigation permit;
- landscaping;
- mechanical;
- plumbing;
- residential units other than a single family unit;
- multifamily residential not exceeding 50 units;
- roofing;
- signs;
- site-plan approvals and subdivision plats not requiring public hearings or public notice; and
- lot grading and site alteration associated with the permit application set forth in this subsection.

When a local government receives an application for one of the above building permits, it must:[29]

- Inform the applicant within **10 days** of receiving the application, what information, if any, is needed to complete the application.
    - If the local government fails to provide written notice to the applicant within the 10-day window, the application is deemed to be properly completed.
- Notify the applicant within **45 days** of the application being deemed complete, if additional information is necessary to determine the sufficiency of the application;
    - If additional information is needed the local government must specify what additional information is necessary.
    - The applicant may submit the additional information to the local government or request that the local government act on the application without the additional information.
- Approve, approve with conditions, or deny the application within **120 days** following receipt of the completed application.
    - This period is tolled during the time an applicant is responding to a request for additional information and may be extended by mutual consent of the parties.

These time-periods do not apply when a law, agency rule, or local ordinance specify different timeframes for review of local building permit applications, for permits for wireless communication facilities, or when both parties agree to an extension.[30]

Uniform Fire Alarm Permit

During the 2019 Legislative Session, the Legislature passed HB 1393, which created s. 553.7921 and created a uniform fire alarm permit application. An electrical or alarm system contractor must file a uniform fire alarm permit application with a local enforcement agency in order to obtain a fire alarm permit.[31]

[28] S. 553.792(2), F.S.
[29] S. 553.792(1), F.S.
[30] *Id.*
[31] S. 553.7921(1); *See* House Analysis of 2019 House Bill 1393 (Jun. 27, 2019).

A local enforcement agency is an agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the Building Code.[32]

The Uniform Fire Alarm Permit Application must include the following information:[33]

- The name and address of the owner of the property;
- The name, address, and license number of the contractor;
- A description sufficient to identify the property to be improved, including the property's address and legal description;
- A description of the work being performed; and
- The owner and the contractor's signature.

An electrical or alarm system contractor cannot install, replace, or **repair** a fire alarm until they obtain a fire alarm permit. Thus, electrical and alarm system contractors are unable to begin repairs on fire alarms until they obtain a permit.[34]

Advertisements

Current law requires construction contractors and electrical and alarm system contractors to have their **license number in every offer of service, business proposal, or advertisement**, regardless of medium. However, advertisement does not include business stationery or any promotional novelties such as balloons, pencils, trinkets, or articles of clothing.[35]

According to DBPR, if an advertisement does not include a contractor's license number, it is a warning sign that the contractor may be an unlicensed contractor.[36]

According to industry members, many states require contractors to include their license number in their advertisements. This results in alarm system companies that operate in multiple states having to create separate advertisements, including television, radio, and print ads, for each state or having to list all of their license numbers in an advertisement.[37]

Effect of the Bill

An electrical or alarm system contractor is not required to obtain a fire alarm permit before beginning repairs on a fire alarm system if:

- the fire alarm was previously permitted by the local enforcement agency; and
- the contractor applied for a fire alarm permit prior to beginning the repairs.

The bill clarifies that repairs to a fire alarm system are not considered complete until the required fire alarm permit has been obtained and approved by the local enforcement agency.

The bill provides that an electrical contractor or an alarm system contractor does not have to include their license number in an advertisement[38] for alarm system contracting if:

- The alarm system contractor maintains a website that contains his or her license number; and
- The alarm system contractor's advertisement directs consumers to the contractor's website.

[32] S. 553.71(5), F.S.
[33] S. 553.7921(2), F.S.
[34] S. 553.7921(1); *See* House Analysis of 2019 House Bill 1393 (Jun. 27, 2019).
[35] Ss. 489.119(5), and 489.521(7)(b), F.S.
[36] Any person without a license who advertises himself or herself or a business organization as available to practice electrical or alarm system contracting commits unlicensed contracting. S. 489.531(1)(b), F.S.; DBPR, *Tips for Hiring a Contractor*, http://www.myfloridalicense.com/dbpr/reg/documents/Construction-Brochure-English.pdf?x40199 (last visited Mar. 3, 2021).
[37] Email from Holly Borgmann, Vice President of Government Affairs, ADT, RE: ADT one pager on advertising, (Mar. 4, 2021).
[38] "Advertisement" includes newspaper, magazine, flyer, billboard, phone book, Internet, and broadcast advertisements.

B. SECTION DIRECTORY:

Section 1. Amends s. 489.521, F.S., providing an exemption to having to include a license number in an alarm system advertisement.

Section 2. Amends s. 553.7921, F.S., provides that a contractor may begin repairs on a fire alarm system under certain conditions.

Section 3. Providing an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact on the private sector by allowing electrical and alarm system contractors to begin repairs on fire alarm systems without having to wait to obtain a permit, and allowing companies to advertise in multiple states using the same advertisement.

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 action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2020, the Regulatory Reform Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The committee substitute:

- Clarifies that electrical contractors that are performing alarm system contracting, in addition to alarm system contractors, are not required to include their license number in an advertisement, if the advertisement includes the contractor's website and the website includes the contractor's license number.
- Clarifies that a repaired alarm system is not compliant with the Florida Building Code, Florida Fire Code, and any other applicable codes, until the local enforcement agency has approved the repair.

The analysis is drafted to the committee substitute as passed by the Regulatory Reform Subcommittee.

A bill to be entitled

An act relating to alarm system contractors; amending s. 489.521, F.S.; providing that advertisements for alarm system contracting do not have to include the contractor's registration or certification number under certain circumstances; amending s. 553.7921, F.S.; authorizing a contractor to begin repairing a specified fire alarm system under certain conditions; providing that a repaired fire alarm system is not compliant with applicable codes and standards until certain conditions are met; 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. Paragraph (b) of subsection (7) of section 489.521, Florida Statutes, is amended to read:

489.521 Business organizations; qualifying agents.—

(7)

(b) The registration or certification number of a contractor shall be stated in each offer of services, business proposal, or advertisement, regardless of medium, used by that contractor. For the purposes of this part, the term "advertisement" does not include business stationery or any promotional novelties such as balloons, pencils, trinkets, or

articles of clothing. This paragraph does not apply to a newspaper, magazine, flyer, billboard, phone book, Internet, or broadcast advertisement for alarm system contracting as long as the contractor maintains an Internet website that contains the contractor's registration or certification number and the advertisement directs consumers to the contractor's Internet website.

(c) The board shall assess a fine of not less than $100 or issue a citation to any contractor who fails to include that contractor's certification or registration number when submitting an advertisement for publication, broadcast, or printing. In addition, any person who claims in any advertisement to be a certified or registered contractor, but who does not hold a valid state certification or registration, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. Section 553.7921, Florida Statutes, is amended to read:

553.7921 Fire alarm permit application to local enforcement agency.—

(1) A contractor must file a Uniform Fire Alarm Permit Application as provided in subsection (2) with the local enforcement agency and must receive the fire alarm permit before~~:~~

~~(a)~~ installing or replacing a fire alarm if the local

enforcement agency requires a plan review for the installation or replacement. If the local enforcement agency requires a fire alarm permit in order to repair~~; or~~

~~(b) Repairing~~ an existing alarm system that was previously permitted by the local enforcement agency, a contractor must file a Uniform Fire Alarm Permit Application as provided in subsection (2) but may begin work before receiving the permit ~~if the local enforcement agency requires a fire alarm permit for the repair~~. A repaired fire alarm system is not in compliance with applicable codes and standards until the required permit has been issued and the local enforcement agency has approved the repair.

(2) A Uniform Fire Alarm Permit Application must be submitted with any drawing, plan, and supporting documentation required by a local enforcement agency for a project for which a plan review or fire alarm permit is required under subsection (1). The application may be submitted electronically or by facsimile and must be signed by the owner, or the owner's authorized representative, and the contractor, or the contractor's agent. The application must contain the following information, in a substantially similar form:

UNIFORM FIRE ALARM

PERMIT APPLICATION

Tax Folio No..... Application No.....

Owner's or Representative's Name.....

Property Address.....

City..... State..... Zip.....

Phone Number.....

Fee Simple Titleholder's Name (if other than owner).....

.....

Fee Simple Titleholder's Address (if other than owner).....

.....

Description of Work.....

....

New Install..... Replacement.....

Addition..... Other.....

Construction Type.....

Proposed Use.....

Alarm Contractor's Name.....

Alarm Contractor's Address.....

City..... State..... Zip.....

Phone Number.....

Alarm Contractor's License Number.....

Application is hereby made to obtain a permit to do the work or installation as indicated. I certify that ~~no work or installation has commenced before the filing of this permit~~

~~application and that~~ all of the foregoing information is true and accurate.

...(Signature of Owner or Owner's Representative)...

Printed Name.....

...(Signature of Contractor or Agent)...

Printed Name.....

Section 3. This act shall take effect July 1, 2021.

HB 855

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 855 Barber Services
SPONSOR(S): Morales and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1176

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	16 Y, 0 N	Wright	Anstead
2) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

Barbers and barbershops are regulated by the Barbers' Board under the Department of Business and Professional Regulation.

A barber's license is required to perform barbering services, all barbering services must be performed in registered barbershops, and arrangements for such services must be made through a registered barbershop.

However, services may be performed outside of a barbershop if they are provided:
- for a client of ill health;
- in connection with the motion picture, fashion photography, theatrical, or television industry;
- for a manufacturer trade show demonstration; or
- for an educational seminar.

The bill:
- allows barbers to shampoo, cut, or arrange hair in a location other than a registered barbershop at any time; and
- allows barbers to do so without making arrangements through a registered barbershop.

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

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Barbering

Barbers and barbershops are regulated by ch. 476, F.S., and licensed by the Barbers' Board (board) under the Department of Business and Professional Regulation (DBPR).

'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."[1]

A barber's license is required to perform barbering services.[2] To be eligible for licensure, barbers must:[3]

- be at least 16 years old,
- complete the required training for barbers, which is between 600 and 900 hours,[4]
- pass the written examination,[5] and
- pay a $218.50 application fee,[6] plus a $5 unlicensed activity fee.[7]

There are 11,713 barbers and 5,434 restricted barbers in the state. For the 2019-2020 Fiscal Year, DBPR received 845 complaints against barbers, and took 112 disciplinary actions.[8]

Barbershops

In Florida, barbershops must be registered.[9] Barbershops are inspected periodically by DBPR, in accordance with sanitary standards set forth by the board.[10]

Generally, all barbering services must performed in registered barbershops, except services provided:[11]

- in a location other than a registered barbershop, including, but not limited to, a nursing home, hospital, or residence, for a client of ill health who is unable to go to a registered barbershop;
    - Arrangements for the performance of such barber services must be made through a registered barbershop.
- in connection with the motion picture, fashion photography, theatrical, or television industry;
- for a manufacturer trade show demonstration; or
- for an educational seminar.

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[1] S. 476.034(2), F.S.
[2] S. 476.144(1), F.S.
[3] S. 476.114, F.S.
[4] Barbers are eligible to take the examination after 600 hours. If their examination is not successful, the full 900 hours must be completed. S. 476.114(2)(c), F.S. There is also an option to be a barber with a restricted license, which is 600 hours training in total and restricts such barbers from applying chemical solutions or preparations to hair. S. 476.144(6), F.S.; R. 61G3-16.006, F.A.C.
[5] R. 61-35.006, F.A.C.
[6] Email from Conner Mann, Legislative Affairs Coordinator, Florida Department of Business and Professional Regulation, RE: Barbers (Mar. 1, 2021).
[7] S. 455.2281, F.S.
[8] DBPR, *supra* note 6.
[9] S. 476.184(1), F.S.
[10] S. 476.184(2), F.S.
[11] S. 476.188, F.S.

Cosmetology and Cosmetology Salons

Cosmetologists, nail specialists, facial specialists, full specialists, and related salons in the state are regulated in accordance with ch. 477, F.S., and licensed by the Board of Cosmetology under DBPR. A cosmetology or specialty license is required to perform cosmetology services.[12]

In Florida, cosmetology and specialty salons must be licensed.[13] Such salons are inspected periodically by DBPR, in accordance with sanitary standards set forth by the Board of Cosmetology.[14]

Generally, cosmetology services must be performed by a cosmetologist or specialist in a licensed cosmetology or specialty salon. However, cosmetologists and specialists are allowed to perform hair shampooing, hair cutting, hair arranging, nail polish removal, nail filing, nail buffing, and nail cleansing **outside of a salon**.[15]

Section 477.0263 specifies the following exceptions to the general rule that cosmetology services be performed in a salon:[16]

- services provided for a client who for reasons of ill health is unable to go to a licensed salon;
- services provided for a motion picture, fashion photography, theatrical, or television industry;
- services provided for a photography studio salon;
- services provided for a manufacturer trade show demonstration;
- services provided for an educational seminar;
- services provided for a special event;[17] and
- hair shampooing, hair cutting, hair arranging, nail polish removal, nail filing, nail buffing, and nail cleansing, regardless of whether the service is in connection with a special event.

Prior to 2020, a cosmetologist or specialist was prohibited from performing cosmetology services outside a salon except in limited circumstances and was required to book appointments or arrangements through a salon for services provided outside the salon, similar to current requirements for barbers.[18] In 2020, the law was changed to allow cosmetologists and specialists to perform a limited number of cosmetology services outside of a salon and to do so without making such arrangements through a salon.

Effect of the Bill

The bill allows barbers to shampoo, cut, or arrange hair **outside of a registered barbershop** at any time, and allows barbers to do so without making arrangements or appointments through a registered barbershop.

The bill provides an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Amends s. 476.188, F.S.; providing an exception to the requirement to make outside bookings through a registered barbershop.
Section 2: Provides an effective date.

[12] S. 477.014, F.S.
[13] S. 477.025(1), F.S.
[14] S. 477.025(9), F.S.; Ch. 61G5-20, F.A.C.
[15] *Id*.
[16] S. 477.0263(1)-(4), F.S.
[17] Defined by board rule as a wedding or fashion show. R. 61G5-20.0015(1), F.A.C.
[18] S. 477.0263(4), F.S. (2019).

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 will allow barbers to practice shampooing, hair cutting, or hair arranging without needing to perform such services in a barbershop or to make appointments for such services through a barbershop, which will bring them in line with current cosmetology requirements. This will provide barbers with more flexibility to offer their customers more services outside a barbershop.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to barber services; amending s. 476.188, F.S.; authorizing a barber to shampoo, cut, or arrange hair in a location other than a registered barbershop without specified arrangements; providing an effective date.

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

Section 1. Subsection (2) of section 476.188, Florida Statutes, is amended to read:

476.188 Barber services to be performed in registered barbershop; exception.—

(2) Pursuant to rules established by the board, barber services may be performed by a licensed barber in a location other than a registered barbershop, including, but not limited to, a nursing home, hospital, or residence, when a client for reasons of ill health is unable to go to a registered barbershop. Arrangements for the performance of barber services in a location other than a registered barbershop shall be made only through a registered barbershop. However, a barber may shampoo, cut, or arrange hair in a location other than a registered barbershop without such arrangements.

Section 2. This act shall take effect July 1, 2021.

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

CS/HB 1055

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1055 Pub. Rec./Trade Secrets
SPONSOR(S): Government Operations Subcommittee, Gregory
TIED BILLS: **IDEN./SIM. BILLS:** SB 1446

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	14 Y, 0 N, As CS	Villa	Smith
2) Commerce Committee		Wright	Hamon
3) State Affairs Committee			

SUMMARY ANALYSIS

Florida law contains a variety of provisions that make trade secret information exempt or confidential and exempt from public record requirements. Some exemptions only protect trade secrets, while others protect "proprietary business information" and define that term to specifically include trade secrets. Some exemptions also provide a specific process that an agency must use when protecting trade secret information under the exemption.

A majority of these exemptions rely on one of two different statutory definitions. Some of the exemptions define the term in accordance with the Uniform Trade Secrets Act, and some define the term in accordance with Florida's Criminal Statutes.

The bill creates a public record exemption for trade secrets held by an agency that would apply to those agencies that do not have an agency specific public record exemption for trade secrets. The bill defines the term "trade secret" to have the same meaning as the definition currently codified in the Uniform Trade Secrets Act.

The bill requires a person who submits a record claimed to contain a trade secret to an agency to mark the record clearly with the words "trade secret" and to submit with the record a notice verifying, under penalty of perjury, that the record contains a trade secret.

The bill provides for repeal of the exemption on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the Florida Constitution.

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

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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.[1] The general law must state with specificity the public necessity justifying the exemption[2] and must be no more broad than necessary to accomplish its purpose.[3]

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, unless the record is exempt. Furthermore, the Open Government Sunset Review Act[4] provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than necessary to meet one of the following purposes:[5]

- 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 Open Government Sunset Review 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.[6]

Trade Secrets

Florida law contains a variety of provisions that make trade secret information exempt or confidential and exempt[7] from public record requirements. Some exemptions only protect trade secrets, while others protect "proprietary business information" and define that term to specifically include trade secrets.

The following are examples of public record exemptions for trade secrets:

- Section 119.071(1)(f), F.S., exempts data processing software that is a trade secret and obtained by an agency under a licensing agreement that prohibits its disclosure, and agency produced data processing software that is sensitive.
- Section 125.0104(9)(d)3., F.S., exempts trade secret information held by a county tourism promotion agency.

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[1] Art. I, s. 24(c), FLA. CONST.
[2] This portion of a public record exemption is commonly referred to as a "public necessity statement."
[3] Art. I, s. 24(c), FLA. CONST.
[4] S. 119.15, F.S.
[5] S. 119.15(6)(b), F.S.
[6] S. 119.15(3), F.S.
[7] 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).

- Section 331.326, F.S., makes trade secrets held by Space Florida or discussed by Space Florida's board confidential and exempt.
- Section 365.174(4), F.S., makes proprietary confidential business information submitted by a provider of voice communication services to the board of directors of the E911 Board, the Division of State Technology within the Department of Management Services, or the Department of Revenue as an agent of the E911 Board confidential and exempt.
- Section 381.83, F.S., makes trade secrets obtained by the Department of Health confidential and exempt.
- Section 403.7046(2) and (3)(b)2., F.S., makes trade secret information contained in certain reports to the Department of Environmental Protection and local governments confidential and exempt.
- Section 499.051(7)(b), F.S., makes trade secret information contained in a complaint or obtained by the Department of Business and Professional Regulation pursuant to an investigation under the Florida Drug and Cosmetic Act confidential and exempt.
- Section 573.123(2), F.S., makes trade secret information subject to a marketing order issued by the Department of Agriculture and Consumer Services confidential and exempt.
- Section 601.10(8)(b), F.S., makes trade secret information held by the Department of Citrus confidential and exempt.
- Section 601.76, F.S., makes certain formulas required to be filed with the Department of Agriculture and Consumer Services confidential and exempt.
- Section 815.04(3), F.S., makes data, programs, and supporting documentation that is a trade secret and resides or exist internal or external to a computer, computer system, computer network, or electronic device and that is held by an agency confidential and exempt.

While some of these exemptions do not define the term "trade secret," a majority of them rely on one of two different statutory definitions. Some of the exemptions define the term in accordance with the Uniform Trade Secrets Act, which defines the term as follows:

> "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.[8]

Other exemptions define the term in accordance with Florida's criminal statutes, which define the term as follows:

> "Trade secret" means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:
> 1. Secret;
> 2. Of value;
> 3. For use or in use by the business; and
> 4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

[8] S. 688.002(4), F.S.

> when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.[9]

In addition, some exemptions provide a specific process that an agency[10] must use when protecting trade secret information under the exemption. For instance, some exemptions require the party that submits information claimed to be a trade secret to designate the information as protected, and some exemptions require the agency to determine whether information claimed to be a trade secret constitutes a trade secret.[11]

Effect of the Bill

The bill creates a public record exemption for trade secrets held by an agency. The public record exemption would apply to those agencies that do not have an agency specific public record exemption for trade secrets.

The bill defines the term "trade secret" to have the same meaning as the definition currently codified in the Uniform Trade Secrets Act, which includes information that is a formula, pattern, compilation, program, device, method, technique, or process that:

- 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
- Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The bill requires a person who submits a record claimed to contain a trade secret to an agency to mark the record clearly with the words "trade secret" and to submit with the record a notice verifying that the record contains a trade secret. Verification occurs by signing a written declaration under penalty of perjury. Failure to submit the notice constitutes a waiver of any claim by the submitter that the record contains a trade secret.

The bill authorizes an agency to disclose a trade secret, together with the notice of trade secret, to an officer or employee of another agency or governmental entity whose use of the trade secret is within the scope of his or her lawful duties and responsibilities.

The bill specifies that an agency employee who, while acting in good faith and in the performance of his or her duties, releases records pursuant to the process created by the bill is not liable, civilly or criminally, for release of the records.

The bill provides a public necessity statement as required by the Florida Constitution, specifying that the public record exemption is necessary to protect trade secret information provided to an agency by an individual or business because disclosure of such information to competitors of those businesses would be detrimental to the business. In addition, the exemption is necessary to protect trade secret information created by an agency in furtherance of the agency's duties and responsibilities, and disclosure of such information would be detrimental to the effective and efficient operation of the agency.

The bill provides for repeal of the exemption on October 2, 2026, unless reviewed and saved form repeal through reenactment by the Legislature.

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[9] S. 812.081(1)(c), F.S.

[10] The term "agency" is defined to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of chapter 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency. S. 119.011(2), F.S.

[11] *See* S. 381.83, F.S.

B. SECTION DIRECTORY:

Section 1 creates s. 688.01, F.S., relating to a trade secret exemption from inspecting or copying public records.

Section 2 amends s. 688.001, F.S., relating to a short title.

Section 3 amends s. 688.006, F.S., relating to preservation of secrecy.

Section 4 provides a public necessity statement.

Section 5 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have an impact on state government revenues.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on agencies because agency staff responsible for complying with public record requests may require training related to creation of the public record exemption. In addition, agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of agencies.

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 spend funds or take action requiring the expenditures of funds; reduce the authority that counties and municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for trade secrets held by an agency. As such, the exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

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

On March 10, 2021, the Government Operations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed the contract or agreement information that was excluded from the definition of the term “trade secret” in the bill. The amendment aligned the definition of trade secret to match the definition in the Uniform Trade Secrets Act.

This analysis is drafted to the committee substitute as approved by the Government Operations Subcommittee.

A bill to be entitled

An act relating to public records; creating s. 688.01, F.S.; providing definitions; providing an exemption from public records requirements for a trade secret held by an agency; providing notice requirements; providing an exception to the exemption; providing that an agency employee is not liable for the release of certain records; providing for future legislative review and repeal of the exemption; amending ss. 688.001 and 688.006, F.S.; conforming cross-references; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 688.01, Florida Statutes, is created to read:

688.01 Trade secret exemption from inspecting or copying public records.—

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

(a) "Agency" has the same meaning as in s. 119.011.

(b) "Trade secret" has the same meaning as in s. 688.002.

(2) PUBLIC RECORD EXEMPTION.—A trade secret held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

(3) SUBMISSION OF TRADE SECRET TO AN AGENCY.—

(a) If a person who submits records to an agency claims that such submission contains a trade secret, such person shall submit to the agency a notice of trade secret at the time he or she submits such records to the agency. Failure to do so constitutes a waiver of any claim by such person that the record contains a trade secret. The notice must provide the name, telephone number, and mailing address of the person claiming the record contains a trade secret. Such person is responsible for updating his or her contact information with the agency.

(b) Each page of a record or specific portion of a record that contains a trade secret must be clearly marked with the words "trade secret."

(c) When submitting a notice of trade secret to the agency, the submitting party must verify to the agency through a written declaration in the manner provided in s. 92.525 the following:

[...I have/my company has...] read the definition of a trade secret in s. 688.01, Florida Statutes, and [...I believe/my company believes...] the information contained in this record is a trade secret as defined in s. 688.01, Florida Statutes.

[...I have/my company has...] taken measures to prevent the disclosure of the record or specific portion of the record

claimed to be a trade secret to anyone other than those who have been selected to have access for limited purposes, and [...I intend/my company intends...] to continue to take such measures.

The record or specific portion of the record claimed to be a trade secret is not, and has not been, reasonably obtainable without [...my/our...] consent by other persons by use of legitimate means.

The record or specific portion of the record claimed to be a trade secret is not publicly available elsewhere.

(4) AGENCY ACCESS.—An agency may disclose a trade secret, together with the notice of trade secret, to an officer or employee of another agency or governmental entity whose use of the trade secret is within the scope of his or her lawful duties and responsibilities.

(5) LIABILITY.—An agency employee who, while acting in good faith and in the performance of his or her duties, releases a record containing a trade secret pursuant to this act is not liable, civilly or criminally, for such release.

(6) OPEN GOVERNMENT SUNSET REVIEW.—This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Section 688.001, Florida Statutes, is amended

to read:

688.001 Short title.—Sections 688.001-688.01 ~~Sections 688.001-688.009~~ may be cited as the "Uniform Trade Secrets Act."

Section 3. Section 688.006, Florida Statutes, is amended to read:

688.006 Preservation of secrecy.—In an action under ss. 688.001-688.01 ~~ss. 688.001-688.009~~, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

Section 4. The Legislature finds that it is a public necessity that trade secrets held by an agency be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature recognizes that an agency may create trade secret information in furtherance of the agency's duties and responsibilities and that disclosure of such information would be detrimental to the effective and efficient operation of the agency. If such trade secret information were made available to the public, the agency could suffer great economic harm. In addition, the Legislature recognizes that in many instances, individuals and businesses provide trade secret information for regulatory or other

purposes to an agency and that disclosure of such information to competitors of those businesses would be detrimental to the businesses. Without the public record exemption, those entities would hesitate to cooperate with an agency, which would impair the effective and efficient administration of governmental functions. As such, the Legislature's intent is to protect trade secret information of a confidential nature that includes a formula, pattern, compilation, program, device, method, technique, or process used that 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. Therefore, the Legislature finds that the need to protect trade secrets is sufficiently compelling to override this state's public policy of open government and that the protection of such information cannot be accomplished without this exemption.

Section 5. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 6073 Individual Wine Containers
SPONSOR(S): LaMarca
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	16 Y, 1 N	Thompson	Anstead
2) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

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

Current law addressing limitations on the size of individual wine containers provides the following:

- The sale of wine in an individual container that holds more than one gallon of wine is prohibited.
- Wine may be sold in a reusable container of 5.16 gallons.
- Distributors and manufacturers are allowed to sell wine to other distributors and manufacturers in containers of any size.
- Except for restaurants in certain situations, wine sold or offered for sale by a licensed vendor to be consumed off the premises must be in the unopened original container.
- Violations are a second-degree misdemeanor.

The bill repeals the law relating to limitations on the size of individual wine containers.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Beverage Law

In Florida, the Beverage Law[1] regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.[2] The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.[3]

"Alcoholic beverages" are defined as "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume." "Malt beverages" are brewed alcoholic beverages containing malt.[4]

The license and registration classifications used in the Beverage Law include the following:

- "Manufacturers" are those "licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute."
- "Distributors" are those "licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages."
- "Importers" are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state.[5]
- "Vendors" are those "licensed to sell alcoholic beverages at retail only" and may not "purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law."[6]

Wine Container Limitations

"Wine" is defined as all beverages made from fresh fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States, and includes all sparkling wines, champagnes, combination of the aforesaid beverages, sake, vermouths, and like products. Sugar, flavors, and coloring materials may be added to wine to make it conform to the consumer's taste, except that the ultimate flavor or the color of the product may not be altered to imitate a beverage other than wine or to change the character of the wine.[7]

Current law prohibits the sale of wine in an individual container that holds more than one gallon. However, wine may be sold in a reusable container of 5.16 gallons.[8]

Distributors and manufacturers are authorized to sell wine to other distributors and manufacturers in containers of any size.[9]

Except for restaurants in certain situations,[10] wine sold or offered for sale by a licensed vendor to be consumed off-premises must be in the unopened original container.[11]

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[1] Section 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.
[2] *See* s. 561.14, F.S.
[3] S. 561.02, F.S.
[4] S. 563.01, F.S.
[5] S. 561.01(5), F.S.
[6] S. 561.14, F.S.
[7] S. 564.01(1), F.S.
[8] S. 564.05, F.S.
[9] *Id*.

Violations are a second-degree misdemeanor, punishable by a maximum $500 fine[12] and 60 days in prison.[13]

Effect of the Bill

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

B. SECTION DIRECTORY:

Section 1 Repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers.

Section 2 Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will allow the sale of wine in an individual container of any size. This may have a positive fiscal impact on businesses that sell wine.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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[10] S. 564.09, F.S. The exception allows restaurant patrons to leave the premises with "one unsealed bottle of wine for consumption off the premises," provided certain conditions are met. The wine bottle must be partially consumed with a full course meal, securely resealed by the licensee or one of its employees, secured in a bag or container, wrapped in a way that shows it was previously opened, attached to a dated receipt indicating the full course meal, and transported in a locked vehicle glove compartment, locked trunk, or behind the last upright seat of a motor vehicle that is not equipped with a trunk.

[11] S. 564.05, F.S.

[12] S. 775.083(1)(e), F.S.

[13] Section 775.082(4)(b), F.S.

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

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

N/A

A bill to be entitled

An act relating to individual wine containers; repealing s. 564.05, F.S., relating to the limitation of size of individual wine containers; providing an effective date.

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

Section 1. Section 564.05, Florida Statutes, is repealed.

Section 2. This act shall take effect July 1, 2021.

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