Regulatory Reform & Economic Development Subcommittee

Wednesday, January 24, 2024
8:00 AM - 10:30 AM
Webster Hall (212 Knott)

Meeting Packet

Paul Renner
Speaker

Tyler Sirois
Chair

The Florida House of Representatives

Commerce Committee

Regulatory Reform & Economic Development Subcommittee

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Meeting Agenda

Wednesday, January 24, 2024
8:00 am – 10:30 am
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I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- HB 59 Provision Of Homeowners' Association Rules and Covenants by Arrington
- HB 295 Disclosure of Estimated Ad Valorem Taxes by Anderson
- HB 367 Household Moving Services by Tant
- HB 429 Timeshare Properties by Robinson, W.
- HB 557 Movable Tiny Homes by Stevenson
- HB 691 Town of Horseshoe Beach, Dixie County by Shoaf
- HB 907 Gaming Licenses and Permits by Sirois
- HB 1007 Nicotine Products by Overdorf
- HB 1053 Location of Medical Marijuana Centers, Retail Vape Shops, and On-premises Consumption of Alcohol by Amesty
- HB 1071 Department of Agriculture and Consumer Services by Alvarez
- HB 1243 Homeowners' Associations by Porras
- HB 1245 Veterinary Professional Associates by Killebrew
- HB 1273 Reciprocity or Endorsement of Licensure by Plasencia
- HB 1563 Construction Contracting by Grant

Consideration of the following proposed committee substitute(s):

- PCS for HB 751 -- Use of Criminal History in Licensing

V. Closing Remarks

VI. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 59 Provision Of Homeowners' Association Rules and Covenants
SPONSOR(S): Arrington and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 50

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Larkin	Anstead
2) Civil Justice Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership. HOAs are authorized to impose assessments that, if unpaid, may become a lien on the parcel. The HOA's declaration of covenants establishes the community's basic covenants and restrictions.

An HOA must maintain certain records which constitute the official records of the HOA, which includes a copy of the HOA's declaration of covenants, amendments, and current HOA rules.

The official records must be maintained within the state for at least 7 years and must be made available to a parcel owner for inspection or photocopying. An HOA may comply by having a copy of the official records available for inspection or copying in the community or, at the option of the HOA, by making the records available to a parcel owner electronically or by allowing the records to be viewed in electronic format on a computer screen and printed upon request.

The bill requires an HOA to provide the following:

- Before October 1, 2024, a physical or digital copy of the HOA's rules and covenants to every member of the HOA.
- A physical or digital copy of the HOA's rules and covenants to every new member of the HOA.
- An updated copy of the amended rules or covenants when an HOA's rules or covenants are amended to every member of the association. An HOA may adopt rules establishing standards for the manner of distribution and timeframe for providing copies of updated rules or covenants.

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

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership. HOAs are authorized to impose assessments that, if unpaid, may become a lien on the parcel.[1]

Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S., the Homeowners' Association Act (HOA Act). Like a condominium, an HOA is administered by an elected board of directors. The powers and duties of an HOA include the powers and duties provided in the HOA Act, and in the association's governing documents, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents.[2]

An HOA must be a Florida corporation and the initial governing documents must be recorded in the official records of the county in which the community is located. The powers and duties of an association include those set forth in the HOA Act and in the governing documents, except as expressly limited or restricted in the HOA Act.

No state agency has direct oversight over HOAs. However, Florida law provides for a limited mandatory binding arbitration program, administered by the Division of Condominiums, Timeshares and Mobile Homes, within the Department of Business and Professional Regulation, for certain election and recall disputes.[3]

HOA Governing Documents

An HOA's governing documents include the:

- Recorded declaration of covenants for a community and all duly adopted amendments thereto;
- HOA's articles of incorporation and bylaws and any duly adopted amendments thereto; and
- Rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and any duly adopted amendments thereto.[4]

The declaration of covenants, much like a constitution, establishes the community's basic covenants and restrictions.[5] The articles of incorporation establish the HOA's existence, basic structure, and governance.[6] The bylaws govern the HOA's operation and administration, while the rules and regulations typically supplement the other documents, addressing matters of everyday policy.[7]

Unless otherwise provided in the governing documents or required by law, an HOA's governing documents may be amended by the affirmative vote of two-thirds of the HOA's voting interests.[8] Within 30 days after recording a governing document amendment, the HOA must give its members copies thereof unless a copy was provided to the members before the vote on the amendment, in which case the HOA must only provide the members with notice of the amendment's adoption.[9]

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[1] S. 720.301(9), F.S.
[2] *See generally* ch. 720, F.S.
[3] S. 720.311, F.S.
[4] S. 720.301(8), F.S.
[5] Joseph Adams, *HOA Governing Documents Explained* (July 1, 2018), https://www.floridacondohoalawblog.com/2018/07/01/hoa-governing-documents-explained/ (last visited Jan. 9, 2024).
[6] *Id.*
[7] *Id.*
[8] S. 720.306(1), F.S.
[9] *Id.*

Official Records

An HOA must maintain each of the following items, when applicable, which constitute the official records of the HOA:[10]

- A copy of the HOA's governing documents:
  - declaration of covenants and each amendment,
  - bylaws and each amendment,
  - articles of incorporation and each amendment, and
  - current rules.
- Copies of any plans, specifications, permits, and warranties related to improvements constructed on the common areas or other property that the HOA is obligated to maintain, repair, or replace.
- The minutes of all meetings of the board of directors and of the members, which minutes must be retained for at least 7 years.
- A current roster of all members and their designated mailing addresses and parcel identifications. A member's designated mailing address is the member's property address, unless the member has sent written notice to the association requesting that a different mailing address be used for all required notices. The association shall also maintain the e-mail addresses and the facsimile numbers designated by members for receiving notice sent by electronic transmission of those members consenting to receive notice by electronic transmission. A member's e-mail address is the e-mail address the member provided when consenting in writing to receiving notice by electronic transmission, unless the member has sent written notice to the association requesting that a different e-mail address be used for all required notices. The e-mail addresses and facsimile numbers provided by members to receive notice by electronic transmission must be removed from association records when the member revokes consent to receive notice by electronic transmission. However, the association is not liable for an erroneous disclosure of the e-mail address or the facsimile number for receiving electronic transmission of notices.
- All of the HOA's insurance policies, which must be retained for at least 7 years.
- A current copy of all contracts to which the HOA is a party, including, without limitation, any management agreement, lease, or other contract under which the HOA has any obligation or responsibility. Bids received by the HOA for work to be performed must also be considered official records and must be kept for a period of 1 year.
- The financial and accounting records of the HOA, kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least 7 years. The financial and accounting records must include:
  - Accurate, itemized, and detailed records of all receipts and expenditures.
  - A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.
  - All tax returns, financial statements, and financial reports of the HOA.
  - Any other records that identify, measure, record, or communicate financial information.
- A copy of the disclosure summary.
- Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by parcel owners, which must be maintained for at least 1 year after the date of the election, vote, or meeting.
- All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3, F.S.
- All other written records of the HOA which are related to the operation of the HOA.

The HOA bylaws must require the HOA to post all notices of board meetings in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency.[11]

[10] S. 720.303(4), F.S.
[11] S. 720.303(2)(c), F.S.

Access to Official Records

The official records must be maintained within the state for at least 7 years and be made available to a parcel owner for inspection or photocopying within 45 miles of the community or within the county in which the HOA is located within 10 business days after receipt by the board or its designee of a written request.

An HOA may comply with these requirements by having a copy of the official records available for inspection or copying in the community or, at the option of the HOA, by making the records available to a parcel owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request.

If the HOA has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages. However, an HOA may impose fees to cover the costs of providing copies of the official records.[12] An association must allow a member or authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of providing the member or authorized representative with a copy of such records. The association may not charge a fee to a member or his or her authorized representative for the use of a portable device.[13]

The failure of an association to provide access to the records within 10 business days after receipt of a written request submitted by certified mail, return receipt requested, creates a rebuttable presumption that the association willfully failed to comply with this requirement.[14]

A member who is denied access to official records is entitled to the actual damages or minimum damages for the HOA's willful failure to comply with this requirement. The minimum damages are to be $50 per calendar day up to 10 days, the calculation to begin on the 11th business day after receipt of the written request.[15]

The HOA may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a parcel owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one 8-hour business day per month.[16]

The following records are not accessible to members or parcel owners:[17]

- Any record protected by the lawyer-client privilege as described in s. 90.502, F.S., and any record protected by the work-product privilege.
- Information obtained in connection with the approval of the lease, sale, or other transfer of a parcel.
- Information obtained in a gated community in connection with guests' visits to parcel owners or community residents.
- Personnel records of HOA or management company employees.
- Medical records of parcel owners or community residents.
- Personal identifying information of a parcel owner other than as provided for HOA notice requirements, excluding the person's name, parcel designation, mailing address, and property address.

[12] The association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and the costs required for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds one-half hour and if the personnel costs do not exceed $20 per hour. Personnel costs may not be charged for records requests that result in the copying of 25 or fewer pages. The association may charge up to 25 cents per page for copies made on the association's photocopier. S. 720.303(5)(c), F.S.
[13] S. 720.303(5), F.S.
[14] S. 720.303(5)(a), F.S.
[15] S. 720.303(5)(b), F.S.
[16] S. 720.303(5)(c), F.S.
[17] S. 720.303(5)(c)1.-9., F.S.

- Any electronic security measure that is used to safeguard data, including passwords.
- The software and operating system which allows the manipulation of data; however, the data is part of the official records.
- All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3, F.S.

Effect of the Bill

The bill requires an HOA to provide the following:

- Before October 1, 2024, a physical or digital copy of the HOA's rules and covenants to every member of the HOA.
- A physical or digital copy of the HOA's rules and covenants to every new member of the HOA.
- An updated copy of the amended rules or covenants when an HOA's rules or covenants are amended to every member of the association.

The bill permits an HOA to adopt rules establishing standards for the manner of distribution and timeframe for providing copies of updated rules or covenants. The requirements to provide copies may be met by posting a complete copy of the rules and covenants, or a direct link thereto, on the homepage of the HOA's website if:

- The website is accessible to association members, and
- The HOA sends notice to the members of its intent to utilize the website for this purpose.
- The notice is sent:
  - via email if the association member has an email address on file and the association member has consented to receive notices by electronic transmission; and
  - via mail to association members' mailing address listed in the official records of the association.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 720.303, F.S., relating to rules and covenants of a homeowners' association.
Section 2: Provides 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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

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 provision of homeowners' association rules and covenants; amending s. 720.303, F.S.; requiring an association to provide copies of the association's rules and covenants to every member before a specified date, and every new member thereafter; requiring an association to provide members with a copy of updated rules and covenants; authorizing an association to adopt rules relating to the standards and manner in which such copies are distributed; authorizing an association to post a complete copy of the association's rules and covenants, or a direct link thereto, on the homepage of the association's website under certain circumstances; requiring an association to provide specified notice to its members; providing an effective date.

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

Section 1. Subsection (13) is added to section 720.303, Florida Statutes, to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.—

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

(13) REQUIREMENT TO PROVIDE COPIES OF RULES AND COVENANTS.—

(a) Before October 1, 2024, an association shall provide a physical or digital copy of the association's rules and covenants to every member of the association.

(b) An association shall provide a physical or digital copy of the association's rules and covenants to every new member of the association.

(c) If an association's rules or covenants are amended, the association must provide every member of the association with an updated copy of the amended rules or covenants. An association may adopt rules establishing standards for the manner of distribution and timeframe for providing copies of updated rules or covenants.

(d) The requirements of this subsection may be met by posting a complete copy of the association's rules and covenants, or a direct link thereto, on the homepage of the association's website if such website is accessible to the members of the association and the association sends notice to each member of the association of its intent to utilize the website for this purpose. Such notice must be sent in both of the following ways:

1. By electronic mail to any member of the association who has consented to receive notices by electronic transmission and provided an electronic mailing address to the association for

that purpose.

2. By mail to all other members of the association at the address identified as the member's mailing address in the official records of the association.

Section 2. This act shall take effect July 1, 2024.

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

HB 295

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 295 Disclosure of Estimated Ad Valorem Taxes
SPONSOR(S): Anderson
TIED BILLS: **IDEN./SIM. BILLS:** SB 380

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Thompson	Anstead
2) Ways & Means Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

The marketplace for real estate has shifted over time in favor of online property listings. There are many large online platforms which list real estate, the most familiar of which being Zillow, Realtor.com, Trulia, and Redfin. In addition to large platforms, many individual realtors have websites which include listings of real estate for sale. These platforms are not unified in the information displayed to the user. Some, but not all, include the property's public tax history, a link to the county property appraiser's website, and an estimate of property taxes. There is currently no requirement that a real property listing platform include a property tax estimate or link to a property appraiser's website.

Estimating an individual's tax estimate requires several pieces of information. These might include the parcel's millage rate, applicable exemptions, the property's value, applicable classified property uses, and other assessments on the property. While there is no requirement to this effect, some property appraisers include on their website a tool or worksheet to assist homeowners in estimating property taxes.

The bill requires online listings of residential property to include an ad valorem tax estimator tool which calculates the ad valorem tax that would be due on the property at current rates, as follows:

- Requires residential property visible on a listing platform to include the estimated ad valorem taxes.
- Prohibits the current owner's ad valorem taxes from being displayed or used to calculate the estimated ad valorem taxes.
- Provides that if using a tax estimator or buyer payment calculator, the listing platform must calculate and display the ad valorem taxes that would be due, both with and without the homestead tax exemption, if the purchaser were taxed on the listing price of the property at current millage rates using the data and formula published by Department of Revenue (DOR).
- Provides that if not using a tax estimator or buyer payment calculator, the listing platform is required to include a link to the local property appraiser's tax estimator.
- Requires DOR to maintain links to each property appraiser's home page and tax estimator.
- Prohibits printed listing materials from including the current owner's ad valorem taxes.
- Requires DOR to annually develop a formula that may be used by a listing platform to calculate the estimated ad valorem taxes.
- Requires DOR to require each property appraiser to provide DOR with any information needed to develop the formula.
- Beginning December 15, 2024, and annually thereafter, requires DOR to publish the formula and the information collected from each property appraiser in accordance with the bill, on its website.
- Authorizes DOR to adopt rules to implement its responsibilities regarding the formula.

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

Except as otherwise provided, the effective date of the bill is July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Online Real Property Listing Platforms

The marketplace for real estate has shifted over time in favor of online listings of property. More than half of all homebuyers in 2022 found the home they purchased on the internet.[1] There are many large online platforms which list real estate, the most familiar of which being Zillow, Realtor.com, Trulia, and Redfin. In addition to large platforms, many individual realtors have websites which include listings of real estate for sale.[2]

Online real property listing platforms are not unified in the information displayed to the user. Some, but not all, include the property's public tax history, a link to the county property appraiser's website, and an estimate of property taxes.[3]

There is currently no requirement that a real property listing platform include a property tax estimate or link to a property appraiser's website.[4]

Disclosure of Ad Valorem Taxes to Prospective Purchasers

Current law governing the "**disclosure**" of ad valorem taxes to prospective purchasers of residential property requires a prospective purchaser to be presented a **disclosure** summary at or before execution of the contract for sale. Unless a substantially similar disclosure summary is included in the contract for sale, a separate disclosure summary must be attached to the contract for sale. The disclosure summary, whether separate or included in the contract, must be in a form substantially similar to the following:[5]

PROPERTY TAX
DISCLOSURE SUMMARY

BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.

The law provides that, unless included in the contract, the disclosure summary must be provided by the seller. If the disclosure summary is not included in the contract for sale, the contract for sale must refer to and incorporate by reference the disclosure summary and include, in prominent language, a statement that the potential purchaser should not execute the contract until he or she has read the disclosure summary.[6]

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[1] National Ass'n of Realtors, *Quick Real Estate Statistics*, Nov. 3, 2022, available at https://www.nar.realtor/research-and-statistics/quick-real-estate-statistics (last visited Jan. 18, 2024).
[2] *Id*. The National Association of Realtors posits that it has more than 1,600,000 members, 70% of brokers and sales agents have a website, and 81% of their members have their own listings on their website.
[3] For example, Zillow's listings include all of the listed information, and the website's mortgage calculator includes estimated property taxes based on the home's value. https://www.zillowhomeloans.com/calculators/mortgage-calculator/ (last visited Jan. 18, 2024).
[4] Florida Department of Revenue, Analysis of 2024 HB 295, p. 2 (Nov. 15, 2023).
[5] S. 689.261(1), F.S.
[6] S. 689.261(2), F.S.

Property Tax Estimates

Estimating an individual's tax estimate requires several pieces of information. These might include the parcel's millage rate, applicable exemptions, the property's value, applicable classified property uses, and other assessments on the property.[7] While there is no requirement to this effect, some property appraisers include on their website a tool or worksheet to assist homeowners in estimating property taxes.[8]

Ad Valorem Taxation

The ad valorem tax or "property tax" is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.[9] The property appraiser annually determines the "just value"[10] of property within the taxing jurisdiction and then applies relevant exclusions, assessment limitations, and exemptions to determine the property's "taxable value."[11] Tax bills are mailed in November of each year based on the previous January 1 valuation, and payment is due by March 31 of the following year.

The Florida Constitution prohibits the state from levying ad valorem taxes,[12] and it limits the Legislature's authority to provide for property valuations at less than just value, unless expressly authorized.[13]

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;[14] however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often results in lower assessments. Properties that receive classified use treatment in Florida include agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes;[15] land used for conservation purposes;[16] historic properties when authorized by the county or municipality;[17] and certain working waterfront property.[18]

Property Tax Exemptions for Homesteads

A homestead exemption is a reduction of assessed value, and therefore tax liability, based on the individual's maintaining a property as their primary residence. Every person having legal and equitable title to real estate and who maintains a permanent residence on the real estate (homestead property) is eligible for a $25,000 tax exemption applicable to all ad valorem tax levies, including levies by school districts.[19] An additional $25,000 exemption applies to homestead property value between $50,000 and $75,000.[20] This exemption does not apply to ad valorem taxes levied by school districts.

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[7] Florida Department of Revenue, *Property Tax Information for First-Time Florida Homebuyers,* available at https://floridarevenue.com/property/Documents/pt107.pdf (last visited Mar. 17, 2023).
[8] *See, e.g.*, Miami-Dade County, *Tax Estimator*, available at https://www.miamidade.gov/Apps/PA/PAOnlineTools/Taxes/TaxEstimator.aspx (last visited Jan. 18, 2024).
[9] Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.
[10] Property must be valued at "just value" for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm's-length transaction. *See Walter v. Shuler,* 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County,* 275 So. 2d 4 (Fla. 1973).
[11] *See* s. 192.001(2) and (16), F.S.
[12] Art. VII, s. 1(a), Fla. Const.
[13] *See* art. VII, s. 4, Fla. Const.
[14] Section 193.011(2), F.S.
[15] Art. VII, s. 4(a), Fla. Const.
[16] Art. VII, s. 4(b), Fla. Const.
[17] Art. VII, s. 4(e), FLA. CONST.
[18] Art. VII, s. 4(j), Fla. Const.
[19] Art VII, s. 6(a), Fla. Const., and s. 196.031, F.S.
[20] Section 196.031(1)(b), F.S.

The Florida Constitution authorizes various additional homestead exemptions, either directly through legislation or through statutory permission for local governments to enact. These homesteads are based largely on the status or profession of the person maintaining the homestead property.[21]

Real Estate Sales Associates and Brokers

The Florida Real Estate Commission (FREC), within the Division of Real Estate (Division), at DBPR, administers and enforces real estate licensing laws applicable to real estate brokers[22] and sales associates[23] (real estate agents).[24] The FREC is also empowered to adopt rules that enable it to implement its statutorily authorized duties and responsibilities.[25]

A person who operates as a broker or sales associate in Florida without having a valid, current, and active license commits a felony of the third degree.[26] FREC may also discipline licensed real estate brokers and sales associates if FREC finds that the broker or sales associate violated the practice act, which violations may include:[27]

- Engaging in dishonest, fraudulent transactions;
- Advertising property or services in a manner which is fraudulent, false, deceptive, or misleading in form or content;
- Making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession;
- Failing to include in any written listing agreement a definite expiration date, description of the property, price and terms, fee or commission, and a proper signature of the principal; or
- Failing to perform any statutory or legal obligation placed upon a licensee.

The FREC may:[28]

- Deny an application for licensure, registration, or permit, or renewal; may place a licensee, registrant, or permittee on probation;
- Suspend a license, registration, or permit for a period not exceeding 10 years;
- Revoke a license, registration, or permit;
- Impose an administrative fine not to exceed $5,000 for each count or separate offense; and
- Issue a reprimand.

Effect of Proposed Changes

The bill defines the term "listing platform" as any public-facing online real property listing platform, including, but not limited to, websites, web applications, and mobile applications.

The bill requires any residential property visible on a listing platform to include the estimated ad valorem taxes for such property.

The bill prohibits the current owner's ad valorem taxes from being displayed or used to calculate the estimated ad valorem taxes.

The bill provides that if the ad valorem taxes are estimated using a tax estimator or buyer payment calculator, the listing platform must calculate and display the ad valorem taxes that would be due, both

[21] *See, e.g.*, art. VII, s. 6(d), Fla. Const.; Ss. 196.081, 196.082, 196.091, and 196.102, F.S.
[22] "Broker" means, in pertinent part, a person who, for another, and for compensation or valuable consideration directly or indirectly paid or promised, expressly or implied, or with an intent to collect or receive a compensation or valuable consideration therefor, appraises, auctions, sells, exchanges, buys, rents any real property or an interest in or concerning the same; or who advertises or holds out to the public by any oral or printed solicitation or representation that she or he is engaged in such business. S. 475.01(1)(a), F.S.
[23] "Sales associate" means a person who performs any act specified in the definition of "broker," but who performs such act under the direction, control, or management of another person. S. 475.01(1)(j), F.S.
[24] Ch. 475, Part I, F.S.
[25] These rules are contained in ch. 61J2, F.A.C.
[26] S. 475.42(1)(a), F.S.
[27] Ss. 475.25 and s. 455.227, F.S.
[28] S. 475.25, F.S.

with and without the homestead tax exemption, if the purchaser were taxed on the listing price of the property at current millage rates using the data and formula published by Department of Revenue (DOR).

The bill provides that the use of such data and formula constitutes a reasonable estimate of ad valorem taxes.

The bill requires the listing platform to include a disclaimer next to the estimated ad valorem taxes that the millage rates of applicable taxing authorities may vary within a county and that the estimated ad valorem taxes do not include all applicable non-ad valorem assessments or exemptions, discounts, and other tax benefits, including, but not limited to, transfer of the homestead assessment difference under s. 4, Art. VII of the State Constitution.

The bill provides that if ad valorem taxes are not estimated using a tax estimator or buyer payment calculator, the listing platform is required to include a link to the property appraiser's tax estimator for the county in which the property is located, if available, or to such property appraiser's home page.

The bill requires DOR to maintain a table of links to each property appraiser's home page and tax estimator, if available, on its website.

The bill prohibits printed listing materials from including the current owner's ad valorem taxes.

The bill requires DOR to annually develop a formula that may be used by a listing platform to calculate the estimated ad valorem taxes required under the bill.

The bill requires DOR to require each property appraiser to provide DOR with any information needed to develop the formula, including, at a minimum, the county name, tax district code, summary school millage rate, and summary millage rate for all other applicable taxing authorities.

Beginning December 15, 2024, and annually thereafter, the bill requires DOR to publish the formula and the information collected from each property appraiser under the bill on its website.

The bill authorizes DOR to adopt rules to implement its responsibilities regarding the formula to be used by a listing platform to calculate the estimated ad valorem taxes required under the bill.

B. SECTION DIRECTORY:

Section 1: Amends s. 689.261, F.S., relating to sale of residential property; disclosure of ad valorem taxes to prospective purchaser.

Section 2: Provides an effective date of July 1, 2024.

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:

Indeterminate. The bill requires DOR to require each property appraiser to provide DOR with any information needed to develop the formula to be used by listing platforms to calculate estimated ad valorem taxes, including, at a minimum, the county name, tax district code, summary school millage rate, and summary millage rate for all other applicable taxing authorities. This could create a cost to property appraisers.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Operators of online real property listings may incur minor expenses in implementing the tax estimator tool.

D. FISCAL COMMENTS:

According to DOR, the bill will not have a fiscal impact to its expenditures and operational expenses.[29] While the DOR and local property appraisers are obligated to take certain actions, these are not likely to incur additional expense.

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 authorizes DOR to adopt rules to implement its responsibilities regarding the formula to be used by a listing platform to calculate the estimated ad valorem taxes. According to DOR, it "will promulgate rules to implement s. 689.261(3)(d), F.S."[30]

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[29] Florida Department of Revenue, Analysis of 2024 HB 295, p. 3 (Nov. 15, 2023).
[30] *Id.*

A bill to be entitled

An act relating to disclosure of estimated ad valorem taxes; amending s. 689.261, F.S.; defining the term "listing platform"; requiring certain listings to include estimated ad valorem taxes; prohibiting the current owner's ad valorem taxes from being displayed or used for certain purposes; providing requirements for listing platforms, the Department of Revenue, and property appraisers; providing construction; prohibiting certain materials from including specified information; requiring, beginning on a specified date, the department to annually publish a formula and certain information on its website; authorizing the department to adopt rules; providing an effective date.

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

Section 1. Subsection (3) is added to section 689.261, Florida Statutes, to read:

689.261 Sale of residential property; disclosure of ad valorem taxes to prospective purchaser.—

(3)(a) As used in this subsection, the term "listing platform" means any public-facing online real property listing platform, including, but not limited to, websites, web

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

applications, and mobile applications.

(b) Any residential property visible on a listing platform must include the estimated ad valorem taxes for such property.

1. The current owner's ad valorem taxes may not be displayed or used to calculate the estimated ad valorem taxes.

2. If the ad valorem taxes are estimated using a tax estimator or buyer payment calculator, the listing platform must calculate and display the ad valorem taxes that would be due, both with and without the homestead tax exemption, if the purchaser were taxed on the listing price of the property at current millage rates using the data and formula published under paragraph (d). The use of such data and formula constitutes a reasonable estimate of ad valorem taxes. The listing platform must include a disclaimer next to the estimated ad valorem taxes that the millage rates of applicable taxing authorities may vary within a county and that the estimated ad valorem taxes do not include all applicable non-ad valorem assessments or exemptions, discounts, and other tax benefits, including, but not limited to, transfer of the homestead assessment difference under s. 4, Art. VII of the State Constitution.

3. If ad valorem taxes are not estimated using a tax estimator or buyer payment calculator as provided in sub-paragraph 2., the listing platform shall include a link to the property appraiser's tax estimator for the county in which the property is located, if available, or to such property

appraiser's home page. The Department of Revenue must maintain a table of links to each property appraiser's home page and tax estimator, if available, on its website.

(c) Printed listing materials may not include the current owner's ad valorem taxes.

(d) The Department of Revenue shall annually develop a formula that may be used by a listing platform to calculate the estimated ad valorem taxes required under this subsection. The department shall require each property appraiser to provide the department with any information needed to develop the formula, including, at a minimum, the county name, tax district code, summary school millage rate, and summary millage rate for all other applicable taxing authorities. Beginning December 15, 2024, and annually thereafter, the department shall publish the formula and the information collected from each property appraiser under this paragraph on its website.

(e) The Department of Revenue may adopt rules to implement paragraph (d).

Section 2. This act shall take effect July 1, 2024.

HB 367

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 367 Household Moving Services
SPONSOR(S): Tant
TIED BILLS: **IDEN./SIM. BILLS:** SB 304

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Larkin	Anstead
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

In order for an intrastate mover to operate in Florida, the mover must register with the Department of Agriculture and Consumer Services (DACS) and comply with the provisions of chapter 507, which applies to the operations of any mover or moving broker engaged in the intrastate transportation or shipment of household goods originating in this state and terminating in this state. Movers and brokers engaged in the interstate transportation of household goods are regulated by the Federal Motor Carrier Safety Administration within the United States Department of Transportation.

The bill:

- Revises requirements related to estimates and contracts for moving services prepared by a registered mover.
- Provides certain requirements for moving broker advertisements.
- Requires each moving broker to provide the Florida Department of Agriculture and Consumer Services (DACS) a list of registered movers that the broker is associated with in some capacity.
- Requires DACS to publish and maintain a list of all moving brokers and registered movers each moving broker is contracted with on its website.
- Revises alternative coverages for movers and moving brokers.
- Provides that DACS must immediately suspend the registration of a moving broker or registered mover that does not maintain a performance bond, certificate of deposit, or liability insurance.
- Requires the shipper, mover, and moving broker, if applicable, to sign or electronically acknowledge, and date the estimate and the contract, and provide other detailed information.
- Provides that the broker can only arrange a move with a registered mover and cannot give estimates or provide a consumer with a contract for services; the registered mover may only provide those documents.
- Creates a third degree felony for movers who refuse to relinquish a shipper's household goods after a request by law enforcement who has determined that the shipper has tendered payment of the written estimate or contract and any amendments reflecting price adjustments that are signed by the shipper.

The bill has no fiscal impact on local governments and may have an indeterminant fiscal impact on state government.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Moving Scams

The Better Business Bureau (BBB) has seen a marked increase in complaints and negative reviews about movers in recent years.[1] Moving scams were projected to have increased 35% year over year in 2023, according to analysis by Hire-A-Helper, which researches and analyzes Better Business Bureau complaints filed about movers. Scams are being blamed for bilking consumers out of an expected $1.59 million in 2023, a 42% jump over 2022. The average victim says they've lost $836 in a moving scam this year, the survey shows.

The most common scams are:

- No-shows: Incidents of movers not showing up for a scheduled move accounted for 26% of the scams reported. This is when a moving company asks the customer to make a deposit or to pay an upfront fee but then fails to show up for the job. Often, the so-called moving company is later unreachable, too.
- Mover fraud: This is when fake moving companies pose as real businesses and perform the work of moving people's possessions—but then demand a ransom for consumers to get their belongings back. This is also known as "hostage load," as these movers extort customers for additional charges. These comprised 24% of BBB complaints in 2023. The growth in these reports has prompted the Federal Motor Carrier Safety Administration to launch a crackdown(link is external) this spring.
- Change-of-address scam: This is when scammers trick people who have recently moved into paying a fee (usually around $100 or more) in order to have their address changed to their new residence. Victims are directed to a website disguised to look like the U.S. Postal Service. (The USPS offers a change-of-address service for free in person or at a modest fee of $1.05 online.) Change of address scams accounted for 31% of complaints—the highest percentage—but that is down from 37% last year, the report notes.[2]

The report warns of other scams, like movers who fail to adhere to the terms of the contract, overcharge or bribe customers with discounts for positive reviews. The report notes that moving scams this year are the most prevalent in Wyoming (among one in every 4,426 moves), followed by Vermont, South Dakota and Oregon.

To avoid being duped by a moving scam, researchers offer the following tips:

- Compare multiple quotes from moving companies, and be skeptical of significantly lower or higher quotes, lack of details, absence of written contracts and excessive down payments.
- Check the company's online presence, and look up verified customer reviews on websites such as the Better Business Bureau(link is external).
- Keep a detailed inventory, including photos, of your possessions in case anything goes missing. Lock up your most expensive valuables.
- Consider buying moving insurance as added protection.

[1] Melissa Dittmann Tracey, National Association of Realtors, Realtor Magazine, Real Estate News, *Moving Costs, Scams Create Relocation Challenges,* Aug. 1, 2023, https://www.nar.realtor/magazine/real-estate-news/moving-costs-scams-create-relocation-challenges (last visited Jan. 18, 2024).

[2] *Id.*

In 2022, nearly 15,198 complaints were filed with the BBB against moving companies,[3] which also reported the following frequent scams:

- An initial low-ball estimate (usually provided without an in-person visit to review the belongings that need to be moved) that turns into a demand for a much higher price once all of the household belongings are on the moving truck and awaiting delivery. The truck driver can simply drive away if the consumer refuses to pay the higher price.[4,5]
- Requiring the shipper to sign a blank or incomplete estimate or contract, which results in a higher than expected price demanded at the time of delivery.[6]

In March of 2021, the Florida Consumer Protection Division within the Office of the Attorney General secured four judgments against moving companies that used deceptive advertising, failed to provide proper estimates, failed to relinquish household goods, and failed to provide timely pick-up or delivery of goods in accordance with service contracts.

In December, 2022, Attorney General Moody filed legal action against three individuals, two holding companies, and multiple fraudulent moving brokerage businesses.[7] According to the consumer protection investigation, the businesses acted as a common enterprise to deceive more than 400 Floridians into believing the company professionally handled moving services, and promised to provide refunds if anything went wrong. Instead, the companies hired third parties to complete the moving services at subpar quality and refused to provide refunds.[8]

Mover Regulations

In order for an intrastate mover to operate in Florida, the mover must register with the Department of Agriculture and Consumer Services (DACS) and comply with the provisions of ch. 507, which applies to the operations of any mover or moving broker engaged in the intrastate transportation or shipment of household goods originating in this state and terminating in this state. Movers and brokers engaged in the interstate transportation of household goods are regulated by the Federal Motor Carrier Safety Administration within the United States Department of Transportation.

Movers and moving brokers who do business in Florida must register annually with DACS.[9] As of December 4, 2023, there were 1,348 movers and 39 moving brokers with active Florida registrations.[10] In order to obtain a registration certificate, the mover or moving broker must file an application, pay a

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[3] Better Business Bureau, *BBB Scam Alert: Avoid Moving Scams this National Moving Month* (May 17, 2023) https://www.bbb.org/article/scams/24198-bbb-scam-alert-avoid-moving-scams-this-national-moving-month (last visited Jan. 18, 2024).

[4] Better Business Bureau, *Know Your Mover: BBB Study Reveals Scammers Price Gouge, Take Belongings Hostage, and Destroy Goods* (Jun. 30, 2020), https://www.bbb.org/article/news-releases/22659-know-your-mover-bbb-study-reveals-scammers-price-gouge-take-belongings-hostage-and-destroy-goods (last visited Jan. 18, 2024).

[5] *See, e.g.*, Jackie Callaway, *Record Number of People File Complaints About Florida Movers in 2021; BBB rates 1,300 Companies 'F'*, (Dec. 2, 2021), *available at* https://www.abcactionnews.com/money/consumer/taking-action-for-you/record-number-of-people-file-complaints-about-florida-movers-in-2021-bbb-rates-1-300-companies-f (last visited Jan. 18, 2024).

[6] Florida Attorney General's Office, *Scams at a Glance: On the Move*, http://myfloridalegal.com/webfiles.nsf/WF/TDGT-BYLQQL/$file/Movers_Scams+at+a+Glance_English.pdf (last visited Jan. 18, 2024).

[7] *See* Office of Attorney General Ashley Moody, *Attorney General Moody Takes Action to Shut Down Massive Moving Scam* (Dec. 8, 2022), *News Release - Attorney General Moody Takes Action to Shut Down Massive Moving Scam (myfloridalegal.com)* (last visited Jan. 18, 2024).

[8] *Id.*

[9] Florida Department of Agriculture and Consumer Services (FDACS), *Moving Companies: Who has to Register?*, https://www.fdacs.gov/Business-Services/Moving-Companies (last visited Jan. 18, 2024).

[10] FDACS, *License/Complaint Lookup*, *available at* https://csapp.fdacs.gov/cspublicapp/businesssearch/businesssearch.aspx (last visited Jan. 18, 2024). Search by "program."

$300 annual registration fee, and meet certain statutory qualifications, including proof of insurance coverage.[11]

Chapter 507, F.S., governs the loading, transportation, shipment, unloading, and affiliated storage of household goods as part of intrastate household moves. The chapter applies to any mover or moving broker engaged in intrastate transportation or shipment of household goods that originates and terminates in Florida.[12] These regulations co-exist with federal law, which governs interstate moving of household goods.[13]

A "mover" is a person who, for compensation, contracts for or engages in the loading, transportation, shipment, or unloading of household goods as part of a household move.[14] A "moving broker" arranges for another person to load, transport, ship, or unload household goods as part of a household move or who refers a shipper to a mover by telephone, postal, or electronic mail, website, or other means.[15]

'Household move' means the loading of household goods into a mode of transportation or shipment; the transportation or shipment of those household goods; and the unloading of those household goods, when the transportation or shipment originates and terminates at one of the following ultimate locations:

- From one dwelling to another;
- From a dwelling to a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent; or
- From a storehouse or warehouse that is owned or rented by the shipper or the shipper's agent to a dwelling.

Application for Registration

An applicant for a mover registration must provide:

- its legal business and trade name, mailing address, and business locations;
- the full names, addresses, and telephone numbers of its owners or corporate officers and directors and the Florida agent of the corporation;
- a statement whether it is a domestic or foreign corporation, its state and date of incorporation, its charter number, and, if a foreign corporation, the date it registered with the Department of State;
- the date on which the mover or broker registered its fictitious name if the mover or broker is operating under a fictitious or trade name;
- the name of all other corporations, business entities, and trade names through which each owner of the mover or broker operated, was known, or did business as a mover or moving broker within the preceding 5 years;
- proof of the required insurance or alternative coverages;
- statements attesting to the current and pending history of any mover owners, officers, directors, managing members, or general partners regarding:
    - crimes involving fraud, dishonest dealings, or any act of moral turpitude; and
    - civil fines or penalties arising out of any administrative or enforcement action brought by any government agency or private person based upon conduct involving fraud, dishonest dealing, or any violation of ch. 507, F.S.

DACS may deny, refuse to renew, or revoke the registration of any mover or broker when it determines that the mover or broker, or any of the mover's or broker's directors, officers, owners, or general partners has:

- failed to meet the requirements for registration as provided in ch. 507;

[11] Section 507.03, F.S.
[12] Section 507.02, F.S.
[13] Interstate movers in the U.S. must be licensed by the Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA).
[14] Section 507.01(9), F.S.
[15] Section 507.01(10), F.S.

- been convicted of a crime involving fraud, dishonest dealing, or any other act of moral turpitude[16];
- not satisfied a civil fine or penalty arising out of any administrative or enforcement action brought by any governmental agency or private person based upon conduct involving fraud, dishonest dealing, or any violation of this chapter;
- pending against him or her any criminal, administrative, or enforcement proceedings in any jurisdiction, based upon conduct involving fraud, dishonest dealing, or any other act of moral turpitude; or
- had a judgment entered against him or her in any action brought by DACS or the Department of Legal Affairs under this chapter or the Florida Deceptive and Unfair Trade Practices Act.

Contracts and Estimate Requirements

Section 507.05, F.S., requires an intrastate mover to provide an **estimate and contract** to the perspective shipper in writing and must be signed and dated by the shipper and mover **before commencing the move**. The contract and estimate must include:

- The name, telephone number, and physical address where the mover's employees are available during normal business hours.
- The date prepared and any proposed date of the move.
- The name and address of the shipper, the addresses where the articles are to be picked up and delivered, and a telephone number where the shipper may be reached.
- The name, telephone number, and physical address of any location where the goods will be held pending further transportation, including situations where the mover retains possession of goods pending resolution of a fee dispute with the shipper.
- An itemized breakdown and description and total of all costs and services for loading, transportation or shipment, unloading, and accessorial services to be provided during a household move or storage of household goods;
- acceptable forms of payment, and
- a phrase signifying that the mover is state-registered and identifying the mover's registration number.

A mover must clearly and conspicuously disclose to the shipper in the estimate and contract for services the forms of payments the mover will accept. A mover shall accept a minimum of two of the three following forms of payment:

- Cash, cashier's check, money order, or traveler's check;
- Valid personal check; or
- Valid credit card.

Should a dispute arise over payment or costs, s. 507.06, F.S., provides that the mover may place the shipper's goods in a storage unit until payment is tendered. Because of ambiguity regarding what payment may legally be demanded, some shippers have been taken advantage of by deceptive or fraudulent moving practices. Often, moving fraud manifests as an increased fee assessed by the mover, who then refuses to relinquish the shipper's goods until the inflated price has been paid in full.

While administrative, civil, and criminal penalties exist in ch. 507, F.S., for such fraudulent moving practices and other violations, the aggrieved shipper is not guaranteed the return of his or her goods until after such remedies have been finalized.

Administrative Remedies and Penalties

[16] Crimes of moral turpitude have not been defined by statute. Applicable case law has generally defined them as acts of "baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." The determination that a crime involves moral turpitude is made based on the statutory definition or nature of the crime, not the specific conduct predicating a particular conviction.

DACS is authorized to issue an order for one or more of the following administrative remedies if it finds that a mover or broker, or a person employed or contracted by a mover or broker, has violated ch. 507, F.S., or rules or orders issued pursuant thereunder:

- issuing a notice of noncompliance,
- imposing a Class II administrative fine for each act or omission,
- directing that the person cease and desist specified activities,
- refusing to register or revoking or suspending a registration, and/or
- placing the registrant on probation, subject to the conditions specified by DACS.

Rule 5J-15.002 of the Florida Administrative Code provides the specific penalty guidelines for violations of ch. 507, F.S., or rules promulgated thereunder. DACS may issue a notice of noncompliance for certain first violations. DACS may impose fines for "minor violations" that range from $1,000 to $2,500. For "major violations," DACS may impose an administrative fine that ranges from $1,000 to $5,000 or impose any of the other penalties provided in s. 507.09(1)(b)-(e), F.S.

Insurance Coverage and Liability Limitations

Movers and moving brokers must maintain liability and motor vehicle insurance. A mover who operates more than two vehicles is required to maintain liability insurance of at least $10,000 per shipment, and not less than 60 cents per pound, per article.[17] Movers who operate fewer than two vehicles are required only to carry either a $25,000 performance bond or a $25,000 certificate of deposit in lieu of liability insurance.[18]

Any contractual limitation to a mover's liability for loss incurred to a shipper's goods must be disclosed in writing to the shipper, along with the valuation rate, but a mover's attempt to limit its liability beyond the minimum 60 cents per pound, per article rate is void under s. 507.04(4), F.S. If the mover offers valuation insurance, it must inform the shipper of the opportunity to purchase valuation coverage to compensate the shipper for household goods that are lost or damaged during a household move, prior to execution of the contract for moving services.[19]

Local Ordinances and Regulations

Chapter 507, F.S., preempts local ordinances or regulations that relate to household moving, unless the local regulation was adopted prior to January 1, 2011.[20] Broward,[21] Miami-Dade,[22] Palm Beach,[23] and Pinellas[24] counties currently have such ordinances. Movers or moving brokers whose principal place of business is located in a county or municipality with such an ordinance are required to register under local and state laws. State law also allows for local taxes, fees, and bonding related to movers and moving brokers, so long as any local registration fees are reasonable and do not exceed the cost of administering the ordinance or regulation.[25]

Effect of the Bill

[17] Sections 507.04(1)(a)1. and 507.04(4), F.S.
[18] Section 507.04(1)(b), F.S.
[19] Section 507.04(5), F.S.
[20] Section 507.13, F.S.
[21] Broward County Government, *Movers*, https://www.broward.org/Consumer/ConsumerProtection/Movers/Pages/default.aspx (last visited Dec. 4, 2023).
[22] Miami-Dade County, *Moving Companies—Laws & Tips*, https://www.miamidade.gov/global/economy/consumer-protection/moving-companies.page#:~:text=Movers%20must%20insure%20your%20property,the%20value%20of%20your%20property.&text=The%20amount%20of%20added%20value%20you%20purchase%20is%20up%20to%20you. (last visited Jan. 18, 2024).
[23] Palm Beach County, *Moving*, *available at* https://discover.pbcgov.org/publicsafety/consumeraffairs/pages/moving.aspx (last visited Dec. 4, 2023).
[24] Pinellas County, *Moving*, https://www.pinellascounty.org/consumer/moving.htm (last visited Jan. 18, 2024).
[25] Section 507.13, F.S.

The bill requires contracts and estimates to be prepared by registered movers, which prohibits such documents from being prepared by moving brokers. It also updates the following definition:

- "Moving broker" or "broker" means a person who, for compensation, arranges **with a registered mover for loading, transporting or shipping, or unloading of** household goods as part of a household move or who, for compensation, refers a shipper to a **registered** mover.

The bill clarifies that each estimate or contract of a "mover" must include a phrase that contains the following:

- The name of the firm;
- A statement that indicates the firm is registered with the State of Florida as a mover; and
- A Florida mover registration number.

The bill requires all moving brokers to be registered and clarifies that any document from a "moving broker" must include:

- The name of the firm;
- A statement that indicates the firm is registered with the State of Florida as a moving broker; and
- A Florida moving broker registration number.

Each advertisement of a "moving broker" must include the following:

- A Florida moving broker registration number;
- The name of the firm; and
- A phrase that states the firm is paid by a shipper to arrange, or offer to arrange, the transportation of property by a registered mover.

The bill requires each moving broker to provide DACS with:

- a complete list of registered movers that the moving broker has contracted or is affiliated with, advertises on behalf of, arranges moves for, or refers shippers to, including each mover's complete name, address, telephone number, email address, and registration number and the name of each mover's owners, corporate officers, and directors.
- any changes to the provided information.

DACS must publish and maintain a list of all moving brokers and the registered movers each moving broker contracts with on its website.

The bill requires DACS to immediately issue a cease and desist order to a person upon finding that such person is operating as a mover or moving broker without registering. Additionally, DACS may seek an immediate injunction from the appropriate circuit court that prohibits the person from operating in Florida until the person complies with the registration requirement, and may impose a civil penalty not to exceed $5,000, and court costs.

The bill authorizes a mover that operates two or fewer vehicles to maintain one of the following alternative coverages, in lieu of maintaining liability insurance coverage:

- A performance bond in the amount of **$50,000**, up from the current $25,000, by a Florida-approved surety company; or
- A certificate of deposit in a Florida banking institution in the amount of **$50,000**, up from the current $25,000.

The bill also requires a moving broker to maintain alternative coverages similar to a mover.

The bill requires DACS to immediately suspend a mover's or moving broker's registration if the mover or moving broker fails to maintain the required performance bond, certificate of deposit, or the appropriate insurance. In such cases, the mover or moving broker must immediately cease operating as a mover or moving broker in Florida. Additionally, DACS may seek an immediate injunction from the appropriate circuit court that prohibits the person from operating in Florida until the person complies with the aforementioned requirements, a civil penalty not to exceed $5,000, and court costs.

Estimates and Contracts for Service

The bill requires that an estimate and a contract must be prepared by a registered mover and provided to a prospective shipper in writing, and **the shipper, mover, and moving broker must sign** or electronically acknowledge and date the estimate and contract.

The bill requires the estimate and contract for service to include the following:

- The name, telephone number, and physical address where the mover's and moving broker's employees are available during normal business hours;
- The date the **estimate and contract** were prepared **by the mover** and the proposed date **or dates** of the **shipper's household** move, **including, but not limited to, loading, transportation, shipment, and unloading of household goods and accessorial services**;
- The name and address of the shipper, the addresses where the articles are to be picked up and delivered, and a telephone number where the shipper may be reached;
- The name, telephone number, and physical address of the location where the household goods will be held pending further transportation, including situations in which the mover retains possession of household goods pending resolution of a fee dispute with the shipper;
- An itemized breakdown and description and total of all costs and services for loading, transportation or shipment, unloading, and accessorial services to be provided during a household move or storage of household goods, including the fees of a moving broker, if used; and
- Acceptable forms of payment, which must be clearly and conspicuously disclosed to the shipper on the binding estimate and the contract for services.

The bill:

- Limits a moving broker to only arrange with a registered mover for the loading, transportation, shipment, or unloading of household goods as part of a household move or refer a shipper to a registered mover.
- Prohibits moving brokers from giving a verbal estimate or preparing a written estimate or contract for services that sets forth the total costs and describes the basis of those costs relating to a shipper's household move, including, but not limited to, the loading, transportation, shipment, or unloading of household goods and accessorial services.
- Requires a moving broker, before providing any service to a prospective shipper, to disclose to the shipper that the broker may only arrange, or offer to arrange, the transportation of property by a registered mover.
- Prohibits a moving broker's fees from including the cost of the shipper's household move, including, but not limited to, the loading, transportation, shipment, or unloading of household goods and accessorial services.

The bill requires any document provided to a shipper by a moving broker to include the following:

- The name of the moving broker and the moving broker's registration number;
- The following statement displayed at the top of the document:
    - The name of the moving broker firm and that the firm is not a mover; and
    - The name of the moving broker firm and a phrase stating the moving broker is paid by the shipper to arrange, or offer to arrange, the transportation of property by a registered mover and that the moving broker's fees do not include the cost of the shipper's household move, including, but not limited to, the loading, transportation, shipment, or unloading of household goods and accessorial services;
- The name, telephone number, and physical address where the moving broker's employees are available during normal business hours;
- An itemized breakdown and description and total of all costs for the moving broker's fees to arrange with a registered mover for the loading, transportation, shipment, or unloading of household goods as part of a household move or to refer the shipper to a registered mover;
- A list of all of the registered movers the moving broker has contracted with or is affiliated with, advertises on behalf of, arranges moves for, or refers shippers to, including each mover's

complete name, address, telephone number, email address, Florida Intrastate Registration Number, and the name of each mover's owners, corporate officers, and directors; and
- A list of acceptable forms of payment, which must include all of the forms of payment listed in at least two of the following subparagraphs:
    - Cash, cashier's check, money order, or traveler's check;
    - Valid personal check; and
    - Valid credit card.

The bill provides that upon notification and subsequent written verification by a law enforcement agency, a court, a state attorney, or the Department of Law Enforcement, the DACS must immediately suspend a registration or the processing of an application for a registration if the registrant, applicant, or officer or director of the registrant or applicant is formally charged with a crime involving:
- Fraud;
- Theft;
- Larceny;
- Embezzlement;
- Fraudulent conversion;
- Misappropriation of property; or
- A crime arising from conduct during a movement of household goods until final disposition of the case or removal or resignation of that officer or director.

The bill amends the criminal penalties section to clarify that it is a felony of the third degree, if a mover or mover's employee, agent, or contractor refuses to comply with an order from a law enforcement officer to relinquish a shipper's household goods in the following scenarios:
- After the officer determines that the shipper has tendered payment of the amount of a written estimate or contract, and, if applicable, amendments to the contract for services reflecting the price adjustment signed by the shipper; or
- If the officer determines that the mover did not produce a signed or electronically acknowledged binding estimate or contract for service and, if applicable, amendments to the contract for services reflecting the price adjustment signed by the shipper.

B. SECTION DIRECTORY:

Section 1: amends s. 507.01, F.S, relating to definitions.
Section 2: amends 507.02, F.S., relating to intent.
Section 3: amends 507.03, F.S., relating to registration.
Section 4: amends 507.04, F.S., relating to liability insurance.
Section 5: amends 507.05, F.S., relating to estimates and contracts for service.
Section 6: amends 507.06, F.S., relating to moving brokers and services.
Section 7: amends 507.07, F.S., relating to violations.
Section 8: amends 507.09, F.S., relating to administrative remedies and penalties.
Section 9: amends 507.10, F.S., relating to liability insurance and registration suspension.
Section 10: amends 507.11, F.S., relating to criminal penalties.
Section 11: Provides effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Unknown.

2. Expenditures:

   Unknown.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The public may see a faster resolution to moving disputes.

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 expenditure 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:

Rulemaking may be necessary for DACS to update applications to reflect the bill changes.[26]

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that upon notification and subsequent written verification by a law enforcement agency, a court, a state attorney, or the Department of Law Enforcement that a registrant, applicant, or officer or director of the registrant or applicant is formally charged with a crime involving fraud, theft, larceny, embezzlement, or fraudulent conversion, DACS is required to suspend a registration or the processing of an application for registration until final disposition of the case or removal or resignation of that officer or director. However, it is unclear if DACS is receiving notification and subsequent written verification by a law enforcement agency, a court, a state attorney, or the Department of Law Enforcement, or alternatively, if DACS is receiving notification from any person or entity, and then getting a subsequent written verification from one of the aforementioned entities. DACS stated that "notification of exclusionary offenses usually occurs through complaints or news stories that become known to division staff."[27]

In several places throughout the bill, the term "mover" has been modified to "registered mover." These revisions may create unintended consequences.[28]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[26] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2024 House Bill 376, p. 3 (Dec. 7, 2023).
[27] *Id.*, DACS Agency Analysis at 4.
[28] *Id.*

A bill to be entitled

An act relating to household moving services; amending s. 507.01, F.S.; revising definitions; amending s. 507.02, F.S.; providing construction; amending s. 507.03, F.S.; revising requirements for estimates, contracts, and advertisements; conforming a cross-reference; revising requirements relating to lists provided to the Department of Agriculture and Consumer Services by moving brokers; requiring the department to publish and maintain a specified list on its website; prohibiting certain persons from operating as or holding themselves out to be a mover or moving broker without registering with the department; requiring the department to issue cease and desist orders to certain persons under certain circumstances; authorizing the department to seek an immediate injunction under certain circumstances; amending s. 507.04, F.S.; revising alternative coverage requirements; requiring the department to immediately suspend a mover's or moving broker's registration under certain circumstances; authorizing the department to seek an immediate injunction under certain circumstances; amending s. 507.05, F.S.; revising requirements for contracts and estimates for prospective shippers; creating s. 507.056, F.S.;

providing limitations and prohibitions for moving brokers; requiring moving brokers to make a specified disclosure to shippers before providing any services; prohibiting moving brokers' fees from including certain costs; requiring that documents provided to shippers by moving brokers contain specified information; amending s. 507.07, F.S.; providing that it is a violation of ch. 507, F.S., for moving brokers to provide estimates or enter into contracts or agreements that were not prepared and signed or electronically acknowledged by a mover; amending s. 507.09, F.S.; conforming a cross-reference; requiring the department, upon verification by certain entities, to immediately suspend a registration or the processing of an application for a registration in certain circumstances; amending s. 507.10, F.S.; conforming a cross-reference; amending s. 507.11, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsections (4), (6), and (10) of section 507.01, Florida Statutes, are amended to read:

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

(4) "Contract for service" or "bill of lading" means a written document prepared by a registered mover which is approved and electronically acknowledged or signed by the shipper in writing before the performance of any service by the mover and which authorizes ~~services from~~ the named mover to perform ~~and lists~~ the services and lists all costs associated with the household move and accessorial services to be performed.

(6) "Estimate" means a written document prepared by a registered mover that sets forth the total costs and describes the basis of those costs, relating to a shipper's household move, including, but not limited to, the loading, transportation or shipment, and unloading of household goods and accessorial services.

(10) "Moving broker" or "broker" means a person who, for compensation, arranges with a registered mover for loading, transporting or shipping, or unloading of ~~for another person to load, transport or ship, or unload~~ household goods as part of a household move or who, for compensation, refers a shipper to a registered mover ~~by telephone, postal or electronic mail, Internet website, or other means~~.

Section 2. Present paragraph (b) of subsection (1) of section 507.02, Florida Statutes, is redesignated as paragraph (c), and a new paragraph (b) is added to that subsection, to read:

507.02 Construction; intent; application.—

(1) This chapter shall be construed liberally to:

(b) Establish the law of this state governing the brokering of moves of household goods by moving brokers.

Section 3. Subsections (1), (2), (5), (6), (7), (9), and (11) of section 507.03, Florida Statutes, are amended, and subsections (12) and (13) are added to that section, to read:

507.03 Registration.—

(1) Each mover and moving broker must register with the department, providing its legal business and trade name, mailing address, and business locations; the full names, addresses, and telephone numbers of its owners, ~~or~~ corporate officers, and directors and the Florida agent of the corporation; a statement whether it is a domestic or foreign corporation, its state and date of incorporation, its charter number, and, if a foreign corporation, the date it registered with the Department of State; the date on which the mover or moving broker registered its fictitious name if the mover or moving broker is operating under a fictitious or trade name; the name of all other corporations, business entities, and trade names through which each owner of the mover or moving broker operated, was known, or did business as a mover or moving broker within the preceding 5 years; and proof of the insurance or alternative coverages required under s. 507.04.

(2) A certificate evidencing proof of registration shall

be issued by the department and must be prominently displayed in the mover's or moving broker's primary place of business.

(5)(a) Each estimate or contract of a mover ~~or moving broker~~ must include the phrase "...(NAME OF FIRM)... is registered with the State of Florida as a Mover ~~or Moving Broker~~. Fla. Mover Registration No. ....."

(b) Any document from a moving broker must include the phrase "...(NAME OF FIRM)... is registered with the State of Florida as a Moving Broker. Fla. Moving Broker Registration No. ....."

(6)(a) Each advertisement of a mover ~~or moving broker~~ must include the phrase "Fla. Mover Reg. No. ...." or "Fla. IM No. ....." Each of the mover's vehicles must clearly and conspicuously display a sign on the driver's side door which includes at least one of these phrases in lettering of at least 1.5 inches in height.

(b) Each advertisement of a moving broker must include the phrase "Fla. Moving Broker Reg. No. ....(NAME OF MOVING BROKER)... is a moving broker. ...(NAME OF MOVING BROKER)... is paid by a shipper to arrange, or offer to arrange, the transportation of property by a registered mover."

(7) A registration is not valid for any mover or moving broker transacting business at any place other than that designated in the mover's or moving broker's application, unless the department is first notified in writing before any change of

location. A registration issued under this chapter is not assignable, and the mover or moving broker may not conduct business under more than one name except as registered. A mover or moving broker desiring to change its registered name or location or designated agent for service of process at a time other than upon renewal of registration must notify the department of the change.

(9) The department shall deny or refuse to renew the registration of a mover or a moving broker or deny a registration or renewal request by any of the mover's or moving broker's directors, officers, owners, or general partners if the mover or moving broker has not satisfied a civil penalty or administrative fine for a violation of s. 507.07(10) ~~s. 507.07(9)~~.

(11) ~~At the request of the department,~~ Each moving broker shall provide the department with a complete list of the registered movers that the moving broker has contracted or is affiliated with, advertises on behalf of, arranges moves for, or refers shippers to, including each mover's complete name, address, telephone number, ~~and~~ e-mail address, and registration number and the name of each mover's owners, corporate officers, and directors ~~owner or other principal~~. A moving broker must notify the department of any changes to the provided information. The department shall publish and maintain a list of all moving brokers and the registered movers each moving broker

is contracted with on its website.

(12) A person required to register pursuant to this section may not operate as or hold itself out to be a mover or moving broker without first registering with the department pursuant to this section.

(13) The department must immediately issue a cease and desist order to a person upon finding that such person is operating as a mover or moving broker without registering pursuant to this section. In addition, and notwithstanding the availability of any administrative relief under chapter 120, the department may seek from the appropriate circuit court an immediate injunction prohibiting the person from operating in this state until the person complies with this section, a civil penalty not to exceed $5,000, and court costs.

Section 4. Present subsections (3), (4), and (5) of section 507.04, Florida Statutes, are redesignated as subsections (4), (5), and (6), respectively, a new subsection (3) is added to that section, and subsection (1) and present subsections (4) and (5) of that section are amended, to read:

507.04 Required insurance coverages; liability limitations; valuation coverage.—

(1) LIABILITY INSURANCE.—

(a)1. Except as provided in paragraph (b), each mover operating in this state must maintain current and valid liability insurance coverage of at least $10,000 per shipment

for the loss or damage of household goods resulting from the negligence of the mover or its employees or agents.

2. The mover must provide the department with evidence of liability insurance coverage before the mover is registered with the department under s. 507.03. All insurance coverage maintained by a mover must remain in effect throughout the mover's registration period. A mover's failure to maintain insurance coverage in accordance with this paragraph constitutes an immediate threat to the public health, safety, and welfare.

(b) A mover that operates two or fewer vehicles, in lieu of maintaining the liability insurance coverage required under paragraph (a), may~~, and each moving broker must,~~ maintain one of the following alternative coverages:

1. A performance bond in the amount of $50,000 ~~$25,000~~, for which the surety of the bond must be a surety company authorized to conduct business in this state; or

2. A certificate of deposit in a Florida banking institution in the amount of $50,000 ~~$25,000~~.

(c) A moving broker must maintain one of the following coverages:

1. A performance bond in the amount of $50,000, for which the surety of the bond must be a surety company authorized to conduct business in this state; or

2. A certificate of deposit in a Florida banking institution in the amount of $50,000.

The original bond or certificate of deposit must be filed with the department and must designate the department as the sole beneficiary. The department must use the bond or certificate of deposit exclusively for the payment of claims to consumers who are injured by the fraud, misrepresentation, breach of contract, misfeasance, malfeasance, or financial failure of the mover or moving broker or by a violation of this chapter by the mover or moving broker. Liability for these injuries may be determined in an administrative proceeding of the department or through a civil action in a court of competent jurisdiction. However, claims against the bond or certificate of deposit must only be paid, in amounts not to exceed the determined liability for these injuries, by order of the department in an administrative proceeding. The bond or certificate of deposit is subject to successive claims, but the aggregate amount of these claims may not exceed the amount of the bond or certificate of deposit.

(3) REGISTRATION SUSPENSION.—The department must immediately suspend a mover's or moving broker's registration if the mover or moving broker fails to maintain the required performance bond or the certificate of deposit under subsection (1) or the insurance required under subsection (2), and the mover or moving broker must immediately cease operating as a mover or moving broker in this state. In addition, and notwithstanding the availability of any administrative relief

pursuant to chapter 120, the department may seek from a circuit court an immediate injunction prohibiting the mover or moving broker from operating in this state until the mover or moving broker complies with subsections (1) and (2), a civil penalty not to exceed $5,000, and court costs.

(5)~~(4)~~ LIABILITY LIMITATIONS; VALUATION RATES.—A mover may not limit its liability for the loss or damage of household goods to a valuation rate that is less than 60 cents per pound per article. A provision of a contract for moving services is void if the provision limits a mover's liability to a valuation rate that is less than the minimum rate under this subsection. If a mover limits its liability for a shipper's goods, the mover must disclose the limitation, including the valuation rate, to the shipper in writing at the time that the estimate and contract for services are executed and before any moving or accessorial services are provided. The disclosure must also inform the shipper of the opportunity to purchase valuation coverage if the mover offers that coverage under subsection (6)~~(5)~~.

(6)~~(5)~~ VALUATION COVERAGE.—A mover may offer valuation coverage to compensate a shipper for the loss or damage of the shipper's household goods that are lost or damaged during a household move. If a mover offers valuation coverage, the coverage must indemnify the shipper for at least the minimum valuation rate required under subsection (5) ~~(4)~~. The mover must

disclose the terms of the coverage to the shipper in writing at the time that the estimate and contract for services are executed and before any moving or accessorial services are provided. The disclosure must inform the shipper of the cost of the valuation coverage, the valuation rate of the coverage, and the opportunity to reject the coverage. If valuation coverage compensates a shipper for at least the minimum valuation rate required under subsection (5) ~~(4)~~, the coverage satisfies the mover's liability for the minimum valuation rate.

Section 5. Section 507.05, Florida Statutes, is amended to read:

507.05 Estimates and contracts for service.—Before providing any moving or accessorial services, an estimate and a contract ~~and estimate~~ must be prepared by a registered mover and provided to a prospective shipper in writing, and the shipper, mover, and, if applicable, moving broker must sign or electronically acknowledge and date the estimate and contract. At a minimum, the estimate and contract for service ~~must be signed and dated by the shipper and the mover, and~~ must include:

(1) The name, telephone number, and physical address where the mover's and, if applicable, moving broker's employees are available during normal business hours.

(2) The date the estimate and contract were ~~or estimate is~~ prepared by the mover and the ~~any~~ proposed date or dates of the shipper's household move, including, but not limited to,

loading, transportation, shipment, and unloading of household goods and accessorial services.

(3) The name and address of the shipper, the addresses where the articles are to be picked up and delivered, and a telephone number where the shipper may be reached.

(4) The name, telephone number, and physical address of the ~~any~~ location where the household goods will be held pending further transportation, including situations in which ~~where~~ the mover retains possession of household goods pending resolution of a fee dispute with the shipper.

(5) An itemized breakdown and description and total of all costs and services for loading, transportation or shipment, unloading, and accessorial services to be provided during a household move or storage of household goods, including the fees of a moving broker, if used.

(6) Acceptable forms of payment, which must be clearly and conspicuously disclosed to the shipper on the binding estimate and the contract for services. A mover must ~~shall~~ accept at least ~~a minimum of~~ two of the three following forms of payment:

(a) Cash, cashier's check, money order, or traveler's check;

(b) Valid personal check, showing upon its face the name and address of the shipper or authorized representative; or

(c) Valid credit card, which shall include, but not be limited to, Visa or MasterCard.

A mover must clearly and conspicuously disclose to the shipper in the estimate and contract for services the forms of payments the mover will accept, including the forms of payment described in paragraphs (a)-(c).

Section 6. Section 507.056, Florida Statutes, is created to read:

507.056 Moving brokers; services.—

(1) A moving broker may only arrange with a registered mover for the loading, transportation, shipment, or unloading of household goods as part of a household move or refer a shipper to a registered mover. Moving brokers may not give a verbal estimate or prepare a written estimate or contract for services that sets forth the total costs and describes the basis of those costs relating to a shipper's household move, including, but not limited to, the loading, transportation, shipment, or unloading of household goods and accessorial services.

(2) Before providing any service to a prospective shipper, a moving broker must disclose to the shipper that the broker may only arrange, or offer to arrange, the transportation of property by a registered mover. A moving broker's fees may not include the cost of the shipper's household move, including, but not limited to, the loading, transportation, shipment, or unloading of household goods and accessorial services. Any document provided to a shipper by a moving broker must include

all of the following:

(a) The name of the moving broker and the moving broker's registration number.

(b) The following statement displayed at the top of the document: "...(Name of Moving Broker)... is not a mover. ...(Name of Moving Broker)... is paid by the shipper to arrange, or offer to arrange, the transportation of property by a registered mover. The moving broker's fees do not include the cost of the shipper's household move, including, but not limited to, the loading, transportation, shipment, or unloading of household goods and accessorial services."

(c) The name, telephone number, and physical address where the moving broker's employees are available during normal business hours.

(d) An itemized breakdown and description and total of all costs for the moving broker's fees to arrange with a registered mover for the loading, transportation, shipment, or unloading of household goods as part of a household move or to refer the shipper to a registered mover.

(e) A list of all of the registered movers the moving broker has contracted with or is affiliated with, advertises on behalf of, arranges moves for, or refers shippers to, including each mover's complete name, address, telephone number, e-mail address, Florida Intrastate Registration Number, and the name of each mover's owners, corporate officers, and directors.

(f) A list of acceptable forms of payment, which must include all of the forms of payment listed in at least two of the following subparagraphs:

1. Cash, cashier's check, money order, or traveler's check.

2. Valid personal check, showing upon its face the name and address of the shipper or authorized representative.

3. Valid credit card, which shall include, but not be limited to, Visa or MasterCard.

Section 7. Present subsections (8) and (9) of section 507.07, Florida Statutes, are redesignated as subsections (9) and (10), respectively, and a new subsection (8) is added to that section, to read:

507.07 Violations.—It is a violation of this chapter:

(8) For a moving broker to provide an estimate or enter into a contract or agreement for moving, loading, shipping, transporting, or unloading services with a shipper which was not prepared and electronically acknowledged or signed by a mover who is registered with the department pursuant to this chapter.

Section 8. Section 507.09, Florida Statutes, is amended to read:

507.09 Administrative remedies; penalties.—

(1) The department may enter an order doing one or more of the following if the department finds that a mover or moving broker, or a person employed or contracted by a mover or broker,

has violated or is operating in violation of this chapter or the rules or orders issued pursuant to this chapter:

(a) Issuing a notice of noncompliance under s. 120.695.

(b) Imposing an administrative fine in the Class II category pursuant to s. 570.971 for each act or omission. However, the department must impose an administrative fine in the Class IV category for each violation of s. 507.07(10) ~~s. 507.07(9)~~ if the department does not seek a civil penalty for the same offense.

(c) Directing that the person cease and desist specified activities.

(d) Refusing to register or revoking or suspending a registration.

(e) Placing the registrant on probation, subject to the conditions specified by the department.

(2) The department, upon notification and subsequent written verification by a law enforcement agency, a court, a state attorney, or the Department of Law Enforcement, must immediately suspend a registration or the processing of an application for a registration if the registrant, applicant, or officer or director of the registrant or applicant is formally charged with a crime involving fraud, theft, larceny, embezzlement, or fraudulent conversion or misappropriation of property or a crime arising from conduct during a movement of household goods until final disposition of the case or removal

or resignation of that officer or director.

(3) The administrative proceedings that ~~which~~ could result in the entry of an order imposing any of the penalties specified in subsection (1) or subsection (2) are governed by chapter 120.

(4)~~(3)~~ The department may adopt rules under ss. 120.536(1) and 120.54 to administer this chapter.

Section 9. Subsection (2) of section 507.10, Florida Statutes, is amended to read:

507.10 Civil penalties; remedies.—

(2) The department may seek a civil penalty in the Class II category pursuant to s. 570.971 for each violation of this chapter. However, the department must seek a civil penalty in the Class IV category for each violation of s. 507.07(10) ~~s. 507.07(9)~~ if the department does not impose an administrative fine for the same offense.

Section 10. Subsection (1) of section 507.11, Florida Statutes, is amended to read:

507.11 Criminal penalties.—

(1) The refusal of a mover or a mover's employee, agent, or contractor to comply with an order from a law enforcement officer to relinquish a shipper's household goods after the officer determines that the shipper has tendered payment of the amount of a written estimate or contract for service, including any amendments to the estimate or contract reflecting price adjustments signed by the shipper, or after the officer

determines that the mover did not produce such ~~a~~ signed or electronically acknowledged binding estimate or contract for service upon which demand is being made for payment, is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A mover's compliance with an order from a law enforcement officer to relinquish goods to a shipper is not a waiver or finding of fact regarding any right to seek further payment from the shipper.

Section 11. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 429 Timeshare Properties
SPONSOR(S): Robinson, W.
TIED BILLS: **IDEN./SIM. BILLS:** SB 756

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Thompson	Anstead
2) Judiciary Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

Chapter 721, F.S., the Florida Vacation Plan and Timesharing Act (Timeshare Act), administered by the Division of Florida Condominiums, Timeshares, and Mobile Homes (DFCT) within the Department of Business and Professional Regulation (DBPR), establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for full and fair disclosure to purchasers and prospective purchasers.

The Timeshare Act authorizes the board of administration of any owners' association that operates a timeshare condominium, or a timeshare cooperative, to make “material alterations” or “substantial additions” to accommodations or facilities without the approval of the owners' association. Current law does not reference the “deletion” of accommodations or facilities.

The Timeshare Act requires the managing entity of a timeshare plan to provide an “assessment certificate” within 30 days after receiving a written request from a timeshare interest owner, an agent designated in writing by the timeshare interest owner, or a person providing resale transfer services for a consumer timeshare reseller. The assessment certificate must be signed by an officer or agent of the managing entity, to the person requesting the certificate, state the amount of any assessment, transfer fee, or other moneys currently owed to the managing entity, and approved by the managing entity that will be due within the next 90 days.

Condominium and cooperative association purchasers are authorized to request that the seller provide an “estoppel certificate,” from the condominium or cooperative association, which must be provided within 10 days after receiving a written request. An estoppel certificate certifies the amount of any total debt owed to the association for unpaid monetary obligations by a unit or parcel owner as of a specified date.

Operators of public lodging establishments or public food service establishments are authorized to remove or refuse to accommodate persons for offenses such as drug use, or intoxication. The Timeshare Act does not authorize the managing entity of a timeshare project these same rights.

The bill amends the Timeshare Act, as follows:

- Authorizes the board of administration for a condominium or cooperative association to “delete” accommodations or facilities without the approval of the members of the association.
- Grants the managing entity of a timeshare project all of the same rights and remedies to remove and refuse to accommodate that an operator of a public lodging establishment or public food service establishment has.
- Requires the managing entity of a timeshare condominium or timeshare cooperative to provide the assessment certificate required under the Timeshare Act in lieu of the estoppel certificate relating to condominium and cooperative associations.

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

The effective date of the bill is July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Vacation Plan and Timesharing Act

A timeshare interest is a form of ownership of real and personal property.[1] In a timeshare, multiple parties hold the right to use a condominium unit or a cooperative unit. Each owner of a timeshare interest is allotted a period of time (typically one week) during which the owner has the exclusive right to use the property.

Chapter 721, F.S., the Florida Vacation Plan and Timesharing Act (Timeshare Act), administered by the Division of Florida Condominiums, Timeshares, and Mobile Homes (DFCT) within the Department of Business and Professional Regulation (DBPR), is the chapter of Florida law that governs vacation plans and timesharing in the state. The purpose of the Timeshare Act is to:

- Recognize real and personal property timeshare plans in the state;
- Establish procedures for the creation, sale, exchange, promotion and operation of timeshare plans;
- Provide full and fair disclosure to purchasers and prospective purchasers of timeshare plans;
- Require every timeshare plan in the state to be subjected to the provisions of the chapter;
- Require full and fair disclosure of terms, conditions, and services by resale service providers; and
- Recognize that a uniform and consistent method of regulation is necessary to safeguard Florida's tourism industry and the state's economic well-being.[2]

The Act applies to all timeshare plans consisting of more than seven timeshare periods over a period of at least three years when the accommodations and facilities are located or offered within this state.[3] The Act governs vacation plans and timesharing,[4] and multisite vacation and timeshare plans that are also known as vacation clubs.[5]

The term "timeshare plan" means any arrangement, plan, scheme, or similar device, other than an exchange program, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, or right-to-use agreement or by any other means, where a purchaser, for consideration, receives ownership rights in or a right to use accommodations and facilities, if any, for a period of time less than a full year during any given year, but not necessarily for consecutive years.[6] The term includes both personal property timeshare and real property timeshare plans.[7]

A "timeshare unit" is an accommodation of a timeshare plan which is divided into timeshare periods or a condominium unit in which timeshare estates have been created.[8]

A "timeshare estate" is a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof.[9] The term also

[1] *See* s. 721.05(36), F.S.
[2] s. 721.02, F.S.
[3] S. 721.03, F.S.
[4] Ch. 721, part I, F.S.
[5] Ch. 721, part II, F.S.
[6] S. 721.05(39), F.S.
[7] S. 721.05(39)(a), F.S., defines a "personal property timeshare plan," as a timeshare plan in which the accommodations are comprised of personal property that is not permanently affixed to real property. Section 721.05(39)(b), F.S., defines a "real property timeshare plan," as a timeshare plan in which the accommodations of the timeshare plan are comprised of or permanently affixed to real property.
[8] *See* ss. 721.05(41) and 718.103(26), F.S.

includes an interest in a condominium unit, a cooperative unit, or a trust. Whether the term includes both direct and indirect interests in trusts is not specified. An example of an indirect interest in a trust is the interest of a trust beneficiary's spouse or other dependent.

A "timeshare license" is the right to occupy a timeshare unit, which right is not a personal property timeshare interest or a timeshare estate.[10]

A "timeshare interest" is a timeshare estate, a personal property timeshare interest, or a timeshare license.[11]

Board of Administration

Each condominium, cooperative, and homeowners' association is governed by a board of administration elected by the association's members or appointed by a developer prior to turnover to the association. The board has those duties described in statute and in the association's governing documents, including association administration, policy development, and property maintenance.[12] A board director also has a fiduciary responsibility to the association's members and must use the highest degree of good faith in placing the interests of the members above his or her own personal interests.[13]

To ensure that a director is able to faithfully and competently exercise his or her duties, within 90 days of being elected or appointed to the board, each newly elected or appointed director must:

- Certify in writing that he or she has read the association's governing documents; will work to uphold the governing documents to the best of his or her ability; and will faithfully discharge his or her fiduciary responsibility to the association's members; or
- Submit a certificate showing he or she satisfactorily completed the educational curriculum administered by a DFCT-approved[14] education provider within one year before or 90 days after his or her election or appointment date ("educational certificate").[15]

Application of the Condominium and Cooperative Acts

In addition to regulation under the Timeshare Act, a timeshare plan may also be subject to ch. 718, F.S. (the Condominium Act) or ch. 719, F.S. (the Cooperative Act); where this is the case, the timeshare plan must meet the requirements of both chapters unless an exemption applies.[16] Specifically, if a timeshare plan subject to either the Condominium Act or the Cooperative Act is fully compliant with the Timeshare Act, the timeshare plan is exempt from certain provisions of the Condominium Act or the Cooperative Act, including provisions relating to:

- Sales or reservation deposits prior to closing;
- Filing prior to sale or lease;
- Disclosures prior to sale;
- The prospectus or offering circular; and
- Conversions to the condominium or cooperative form of ownership.[17]

Timeshares Under the Condominium Act

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[9] S. 721.05(34), F.S.
[10] S. 721.05(37), F.S.
[11] S. 721.05(36), F.S.
[12] *See generally* chs. 718, 719, and 720, F.S.; Florida DBPR, *FAQs*, http://www.myfloridalicense.com/DBPR/condominiums-and-cooperatives/faqs/#1492784365590-e9ec1083-2ca1 (last visited Jan. 21, 2024).
[13] *Id.*
[14] A DFCT-approved provider must cover specified topics in its education program, which may include budgets; reserves; elections; financial reporting; association operations; dispute resolution; and records maintenance. For a list of DFCT-approved education providers, see *http://www.myfloridalicense.com/dbpr/lsc/documents/CondoCOOPListofApprovedProviders2015.pdf* (last visited Feb. 7, 2022). 61B-19.001 and 61B-75.0051, F.A.C.
[15] This requirement does not apply to the board of directors for a commercial condominium. Ss. 718.112(2)(d), 719.106(1)(d), and 720.3033(1)(a)-(c), F.S.
[16] S. 721.03(2), F.S.
[17] S. 721.03(3), F.S.

Timeshare estates may not be created with respect to any condominium unit except pursuant to provisions in the declaration of condominium expressly permitting the creation of such estates.[18] A declaration must, if timeshare estates will or may be created with respect to any condominium unit:

- Provide a statement in conspicuous type declaring that timeshare estates will or may be created with respect to units in the condominium; and
- Define and describe in detail the degree, quantity, nature, and extent of the timeshare estates that will or may be created.[19]

Unless otherwise provided in the declaration as originally recorded, an amendment to the declaration may not authorize a timeshare estate to be created in any condominium unit unless the record owner of each condominium unit and of liens on each condominium unit join in the amendment's execution.[20]

Timeshares Under the Cooperative Act

Original cooperative documents[21] must describe whether or not timeshare estates will or may be created with respect to any cooperative units and, if so, the degree, quantity, nature, and extent of such estates, specifying the minimum duration of the recurring periods of rights of use, possession or occupancy that may be established with respect to any unit.[22] Unless the creation of timeshare estates in any cooperative unit is authorized by the original cooperative documents an amendment adding phases to a cooperative that authorizes the creation of timeshare estates in any unit of the additional phase requires the execution or consent by all unit owners other than the developer.[23]

Public Offering Statement

Prior to offering any timeshare plan, a developer must submit a public offering statement, which must include certain information and disclosures, to the DFCT.[24] Any amendment to an approved offering statement must be filed with the DFCT for approval prior to becoming effective.[25]

Extension or Termination of Timeshare Plans

The Timeshare Act provides a statutory default provision for timeshare instruments that have been in existence for at least 25 years and are silent as to how the plan terminates or is extended. A vote or written consent of 60 percent of all the voting interests in the timeshare plan is required to extend or terminate the term of a timeshare plan.[26]

If the term of a timeshare plan is extended, all rights, privileges, duties, and obligations created under applicable law or the timeshare instrument continue in full force. If a timeshare plan is terminated, the termination has immediate effect pursuant to applicable law and the timeshare instrument.[27]

A termination, extension vote or consent proposed for a component site of a multisite timeshare plan located in this state is effective only if the person authorized to make additions or substitutions approves.[28]

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[18] The "declaration of condominium" is the instrument creating the condominium, as it is amended from time to time. Ss. 718.103(15) and 718.1045, F.S.
[19] S. 718.104(4)(o), F.S.
[20] S. 718.110(8), F.S.
[21] "Cooperative documents" means the documents: creating the cooperative; evidencing a unit owner's membership or share in the association; or recognizing a unit owner's title or right of possession to his or her unit. S. 719.103(13), F.S.
[22] S. 719.403(2)(f), F.S.
[23] S. 719.403(6)(e), F.S.
[24] ss. 721.07 and 721.55, F.S.
[25] s. 721.07(3)(a)1., F.S.
[26] S. 721.125, F.S.
[27] *Id*.
[28] *Id*.

After termination of a timeshare plan, the board serves as the termination trustee. In that fiduciary capacity, the board may bring a partition action on behalf of the tenants in common in each former timeshare property, or may sell the former timeshare property in any manner and to any person approved by a majority of all the tenants in common. The board also has all other powers reasonably necessary to accomplish the partition or sale, including the power to maintain the property while the partition action or sale is pending, and must adopt reasonable procedures to implement the partition or sale and comply with statutory requirements.[29] All reasonable expenses incurred by the board relating to the performance of its trustee duties, including reasonable fees of attorneys and other professionals, must be paid by the tenants in common, in proportion to their respective ownership interests.[30]

If a timeshare plan is terminated in a timeshare condominium or timeshare cooperative and the underlying condominium or cooperative is not simultaneously terminated, a majority of the tenants in common in each former timeshare unit present and voting in person or by proxy at a meeting of such tenants in common conducted by the termination trustee, or conducted by the board of administration of the condominium or cooperative association, if such association managed the former timeshare property, are required to:[31]

- Designate a voting representative for the unit and file a voting certificate with the condominium or cooperative association.
- Allow the voting representative to vote on all matters at meetings of the condominium or cooperative association, including termination of the condominium or cooperative.

Management of a Timeshare Plan

Current law requires the developer to provide a managing entity for each timeshare plan, which entity may be the developer, a separate manager or management company, or an owners' association.[32] Any owner's association must be created before the first closing of the sale of a timeshare interest.[33] However, with respect to a timeshare plan which is also regulated under chs. 718 or 719, F.S., or which contains a mandatory owner's association, the board is the timeshare plan's managing entity.[34]

The duties of a managing entity include:

- Management and maintenance of all accommodations and facilities constituting the timeshare plan;
- Collection of all assessments for common expenses;
- Providing an itemized annual budget to all purchasers;
- Maintaining all books and records concerning the timeshare plan and making such books and records reasonably available for inspection by any purchaser;
- Arranging for an annual audit of the timeshare plan's financial statement;
- Scheduling timeshare unit occupancy in certain circumstances;
- Performing any other functions and duties necessary to maintain the accommodations or facilities; and
- Entering into ad valorem tax escrow agreements before the receipt of any ad valorem tax escrow payments under certain conditions.

Managing Entity

The Timeshare Act requires the developer to provide a managing entity for each timeshare plan. The managing entity operates or maintains the timeshare plan.[35] The managing entity may be the developer, a separate manager or management firm, or an owners' association.[36]

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[29] S. 721.125(3)(a)1., F.S.
[30] S. 721.125(3)(a)2., F.S.
[31] *Id.*
[32] "Owners' association" means an association made up of all owners of timeshare interests in a timeshare plan, including developers and timeshare plan purchasers. Ss. 721.05(27) and 721.13, F.S.
[33] S. 721.13(1)(a), F.S.
[34] S. 721.13(1)(b), F.S.
[35] *See* s. 721.05(22), F.S., defining the term "managing entity."

The duties of the managing entity include, but are not limited to:[37]

- Management and maintenance of all accommodations and facilities constituting the timeshare plan.
- Collection of all assessments for common expenses.
- Providing annually to all purchasers an itemized annual budget that includes estimated revenues and expenses.
- Maintenance of books and records concerning the timeshare plan so that all such books and records are reasonably available for inspection by any purchaser or their authorized agent.
- Arranging for an annual audit of the financial statements of the timeshare plan by a certified public accountant licensed by the Board of Accountancy of DBPR, in accordance with generally accepted auditing standards as defined by the rules of the Board of Accountancy of DBPR.
- Making available for inspection by the DFCT any books and records of the timeshare plan upon the request of the DFCT.
- Scheduling occupancy of the timeshare units, when purchasers are not entitled to use specific timeshare periods, so that all purchasers will be provided the use and possession of the accommodations and facilities of the timeshare plan which they have purchased.
- Performing any other functions and duties which are necessary and proper to maintain the accommodations or facilities, as provided in the contract and as advertised.
- Entering into an ad valorem tax escrow agreement prior to the receipt of any ad valorem tax escrow payments into the ad valorem tax escrow account, as long as an independent escrow agent is required by s. 192.037, F.S., and submitting to the DFCT the statement of receipts and disbursements regarding the ad valorem tax escrow account.

Managing Entity Emergency Powers

Florida law provides for the exercise of specified emergency powers by the boards of condominium, cooperative, and homeowners' associations in response to damage or injury caused by or anticipated in connection with a declared state of emergency.[38] Such emergency powers include, unless prohibited by other law or the association's governing documents, the power to:

- Conduct board meetings, elections, and membership meetings by telephone, real-time videoconferencing, or similar real-time electronic or video communication with notice given as practicable;
- Cancel and reschedule any association meeting;
- Name as assistant officers person who are not board directors;
- Relocate the association's principal office or designate alternative principal offices;
- Enter into agreements with local governments to assist with debris removal;
- Implement a disaster or emergency plan that may include, but is not limited to, shutting down or off elevators; electricity; water, sewer, or security systems; or air conditioners;
- Determine any portion of the association property is unavailable for entry or occupancy in certain circumstances;
- Require the evacuation of association property in certain circumstances;
- Determine that association property can be safely inhabited, accessed, or occupied, in certain circumstances;
- Mitigate further damage, injury, or contagion;
- Contract for items or services for which the owners are otherwise individually responsible, but which are necessary to prevent further injury, contagion, or damage, and obtain reimbursement;
- Levy special assessments without an owner vote; and
- Borrow money or pledge association assets as collateral to fund emergency repairs and carry out association duties when operating funds are insufficient.[39]

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[36] S. 721.13(1)(a), F.S.
[37] S. 721.13(3), F.S.
[38] Ss. 718.1265, 719.128, and 720.316, F.S.
[39] The powers to require association property evacuation and to contract for items or services for which the owners are otherwise individually responsible are only held by condominium and cooperative associations.

However, the Act does not provide comparable emergency powers for a timeshare plan's managing entity.

Material Alterations or Substantial Additions to Accommodations or Facilities

Notwithstanding anything to the contrary in s. 718.110, F.S.,[40] s. 718.113, F.S.,[41] s. 718.114, F.S.,[42] or s. 719.1055, F.S.,[43] the board of administration of any owners' association that operates a timeshare condominium pursuant to s. 718.111, F.S., or a timeshare cooperative pursuant to s. 719.104, F.S., has the power to make material alterations or substantial additions to the accommodations or facilities of such timeshare condominium or timeshare cooperative without the approval of the owners' association. Current law does not reference the deletion of accommodations or facilities.[44]

If the timeshare condominium or timeshare cooperative contains any residential units that are not subject to the timeshare plan, the board of administration for the condominium or cooperative must obtain the approval of a majority of the owners of such residential units before it can make any material alterations or substantial additions to the accommodations or facilities of such timeshare condominium or timeshare cooperative. However, unless otherwise provided in the timeshare instrument as originally recorded, an amendment may not change the configuration or size of any accommodation in any material fashion, or change the proportion or percentage by which a member of the owners' association shares the common expenses, unless the record owners of the affected units or timeshare interests and all record owners of liens on the affected units or timeshare interests join in the execution of the amendment.[45]

Assessment Certificates

Condominiums and Cooperatives

"Common expenses" are all expenses and assessments properly incurred by a condominium or cooperative association.[46]

An assessment is a unit or parcel owner's share of the funds required for the payment of the association's common expenses.[47] A special assessment is any assessment levied against a unit or parcel owner other than the assessment adopted in the annual budget.[48]

Assessments that are unpaid may become a lien on the unit or parcel.[49] An owner is jointly and severally liable with the previous owner for all unpaid assessments that come due up to the time of

[40] S. 718.110, F.S., provides for the amending of a declaration of condominium and, in part, prohibits any amendment that materially alters or substantially adds to the condominium property, unless all recorded unit owners and all record owners of liens join in and approve the execution of the amendment.
[41] Section 718.113., F.S., sets forth the responsibility of a condominium association to maintain the common elements of the condominium and, in relevant part, prohibits any material alteration or substantial additions to the common elements or to real property which is association property, except in a manner provided in the declaration as originally recorded or as amended under the procedures provided in the declaration. However, if the declaration as originally recorded or as amended does not specify the procedure for approval of material alterations or substantial additions, 75 percent of the total voting interests of the association must approve the alterations or additions before the material alterations or substantial additions are commenced.
[42] Section 718.114, F.S., authorizes condominium associations, with specified conditions, to "enter into agreements to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities, regardless of whether the lands or facilities are contiguous to the lands of the condominium, if such lands and facilities are intended to provide enjoyment, recreation, or other use or benefit to the unit owners."
[43] Section 719.1055, F.S., provides for the amendment of cooperative documents and, in part, prohibits any amendment that materially alters or substantially adds to the cooperative property, unless all recorded unit owners and all record owners of liens join in and approve the execution of the amendment.
[44] S. 721.13(8), F.S.
[45] *Id*.
[46] Ss. 718.103(10) and 719.103(9), F.S., relating to condominium and cooperative associations, respectively.
[47] Ss. 718.103(1) and 719.103(1), F.S., relating to condominium and cooperative associations, respectively.
[48] Ss. 718.103(24) and 719.103(23), F.S., relating to condominium and cooperative associations, respectively.

transfer of title.[50] This liability is without prejudice to an owner's right to recover from the previous owner the amounts paid that were assessed during the time that the previous owner owned the property.[51]

To protect against undisclosed financial obligations and to obtain title to the property free of any lien or encumbrance in favor of the association, purchasers may request that the seller provide an estoppel certificate, also known as an assessment certificate, from the condominium or cooperative association. An estoppel certificate certifies the amount of any total debt owed to the association for unpaid monetary obligations by a unit or parcel owner as of a specified date.[52]

Within 10 days after receiving a written request for an estoppel certificate, the association is required to provide an estoppel certificate signed by an officer or agent of the association stating all assessments and other moneys owed to the association by the owner with respect to the unit or parcel. In addition to specifying the amount of any debt owed to the association, an estoppel certificate must also include specific information about the association and the property to be purchased, including the amount of any regular periodic assessments or other fees.[53]

Timeshares

A purchaser of a timeshare estate or timeshare license is personally liable for all assessments for common expenses which come due while the purchaser is the owner of such interest.[54] A successor in interest of timeshare estate or timeshare license is jointly and severally liable with her or his predecessor in interest for all unpaid assessments against such predecessor up to the time of transfer of the timeshare interest to such successor without prejudice to any right a successor in interest may have to recover from her or his predecessor in interest any amounts assessed against such predecessor and paid by such successor.[55]

The managing entity of a timeshare plan must provide an assessment certificate within 30 days after receiving a written request from:

- A timeshare interest owner;
- An agent designated in writing by the timeshare interest owner; or
- A person providing resale transfer services for a consumer timeshare reseller.

The assessment certificate must be:

- Signed by an officer or agent of the managing entity;
- To the person requesting the certificate;
- State the amount of any assessment, transfer fee, or other moneys:
    - Currently owed to the managing entity; and
    - Approved by the managing entity that will be due within the next 90 days.
- With respect to the designated consumer resale timeshare interest, as well as any information contained in the books and records of the timeshare plan regarding the legal description and use plan related to the designated consumer resale timeshare interest.[56]

The managing entity may charge a fee not to exceed $150 for the preparation and delivery of the certificate, and the amount of the fee must be included on the certificate.[57]

Public Lodging Establishments and Public Food Service Establishments

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[49] Ss. 718.116(5) and 719.108(4), F.S., relating to condominium and cooperative associations, respectively.
[50] Ss. 718.116(1)(a) and 719.108(1), F.S., relating to condominium and cooperative associations, respectively.
[51] *Id.* The term "without prejudice" means "without loss of any rights; in a way that does not harm or cancel the legal rights or privileges of a party." BLACK'S LAW DICTIONARY 770 (10th ed. 2014).
[52] Ss. 718.116(8) and 719.108(6), F.S., relating to condominium and cooperative associations, respectively.
[53] *Id.*
[54] S. 721.15(7), F.S.
[55] *Id.*
[56] *Id.*
[57] *Id.*

The Division of Hotels and Restaurants (DHR) within DBPR is charged with enforcing the provisions of ch. 509, F.S., relating to the regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare.[58]

Public lodging establishments are classified as a hotel, motel, nontransient apartment, transient apartment, bed and breakfast inn, timeshare project, or vacation rental.[59] A "timeshare project" is defined as "a timeshare property, as defined in ch. 721, F.S., that is located in this state and that is also a transient public lodging establishment."[60]

The term "public lodging establishments" includes transient and non-transient public lodging establishments.[61] The principal differences between transient and non-transient public lodging establishments are the number of times that the establishments are rented in a calendar year and the duration of the rentals.

A "transient public lodging establishment" is defined as:[62]

> …any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings *which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month*, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests. (emphasis added)

A "non-transient public lodging establishment" is defined as:[63]

> …any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings *which is rented to guests for periods of at least 30 days or 1 calendar month*, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month. (emphasis added)

Removal or Refusal to Accommodate

Operators of public lodging establishments or public food service establishments are authorized to remove persons from their establishments, including the right to have a law enforcement officer remove a person from the establishments, as follows:

- **Operators may remove or cause to be removed** a person, including any guest of the establishment who, while on the premises of the establishment:[64]
  - Illegally possesses or deals in controlled substances as defined in ch. 893, F.S.;
  - Is intoxicated, profane, lewd, or brawling;
  - Indulges in any language or conduct which disturbs the peace and comfort of other guests or which injures the reputation, dignity, or standing of the establishment;
  - Fails to check out by the time agreed upon in writing by the guest and public lodging establishment at check-in unless an extension of time is agreed to by the public lodging establishment and guest prior to checkout;
  - Fails to make payment for food, beverages, or services; or
  - In the opinion of the operator, is a person the continued entertainment of whom would be detrimental to the establishment.
- **Operators may refuse accommodations or service** to any person who:[65]

[58] S. 509.032(1), F.S.
[59] S. 509.242(1), F.S. *See* s. 509.013(4)(b), F.S., which exempts the several types of establishments from the definition of "public lodging establishment."
[60] S. 509.242(1)(g), F.S.
[61] S. 509.013(4)(a), F.S.
[62] S. 509.013(4)(a)1., F.S.
[63] S. 509.013(4)(a)2., F.S.
[64] S. 509.141, F.S.
[65] S. 509.142, F.S.

    - Displays intoxication, profanity, lewdness, or brawling;
    - Indulges in language or conduct such as to disturb the peace or comfort of other guests;
    - Engages in illegal or disorderly conduct;
    - Illegally possesses or deals in controlled substances as defined in ch. 893, F.S., or
    - Constitutes a nuisance.
- **Operators may take into custody and detain** a person in a reasonable manner and for a reasonable time if:
    - The operator has probable cause to believe that the person was engaging in disorderly conduct in violation of s. 877.03, F.S.,[66] on the premises of the licensed establishment; and
    - Such conduct was creating a threat to the life or safety of the person or others.[67]
- **Law enforcement officers or operators may take a person into custody** on the premises and detain such person in a reasonable manner and for a reasonable period of time if:
    - They have probable cause to believe that theft of personal property belonging to such establishment has been committed by a person; and
    - The officer or operator can recover such property or the reasonable value thereof by taking the person into custody for the purpose of attempting to effect such recovery or for prosecution.[68]

Effect of Proposed Changes

Material Alterations, Additions, and Deletions to Accommodations or Facilities

The bill authorizes the board of administration for a condominium or cooperative association to "delete" accommodations or facilities without the approval of the members of the association.

The bill clarifies that the board of administration for a condominium or cooperative may make material alterations or substantial additions to the accommodations or facilities of such timeshare condominium or timeshare cooperative without the approval of the owners' association if the board of administration of any owners' association operates a timeshare plan including a timeshare condominium. Current law references the board's operation of a "timeshare condominium," not the board's operation of a timeshare "plan including a timeshare condominium."

Removal and Refusal to Accommodate

The bill authorizes the managing entity of a timeshare project to have the same rights and remedies, regarding removal and refusal to accommodate, of an operator of any public lodging establishment or public food service establishment as set forth in ss. 509.141, 509.142, 509.143, and 509.162, F.S., and is entitled to have a law enforcement officer take any action, including arrest or removal from the timeshare property, against any purchaser, including a deeded owner, or guest or invitee of such purchaser or owner who engages in conduct described in those sections or conduct in violation of the timeshare instrument.[69]

Assessment Certificates

The bill requires the managing entity of a timeshare condominium or timeshare cooperative to provide the assessment certificate required under s. 721.15, F.S., in lieu of the estoppel certificate required by s. 718.116(8), F.S., or s. 719.108(6), F.S., relating to condominium and cooperative associations, respectively. The certificate states the amount of moneys owed or due within 90 days to the managing entity on a consumer resale of a timeshare interest.

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[66] Section 877, F.S., provides that a person is guilty of a misdemeanor of the second degree if they commit "such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct."

[67] S. 509.143, F.S.

[68] S. 509.162, F.S.

[69] Section 721.05(35), F.S., defines the term "timeshare instrument" to mean one or more of the documents, by whatever name denominated, creating or governing the operation of a timeshare plan.

B. SECTION DIRECTORY:

Section 1: Amends s. 721.13, F.S., relating to management.

Section 2: Amends s. 721.15, F.S., relating to assessments for common expenses.

Section 3: Provides an effective date of July 1, 2024.

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:

Authorizing the board of administration for a condominium or cooperative association to "delete" accommodations or facilities without the approval of the members of the association, may help alleviate costs to the association and its members, including labor and insurance, of maintaining old or underutilized facilities.

Authorizing the managing entity of a timeshare project to have the same rights and remedies, regarding removal and refusal to accommodate, of an operator of a public lodging establishment or public food service establishment, may reduce the undesirable or illegal behavior associated with these actions and increase the public health and safety of the area.

FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Article I, Section 10, of the Florida Constitution provides, in relevant part, "[n]o . . . law impairing the obligation of contracts shall be passed." This provision empowers the courts to strike laws that

retroactively burden or alter contractual relations.[70] Not all contractual impairments warrant overturning an otherwise valid law. Contract rights are clearly subject to the state's power of taxation.[71] Also, the state has some ability to modify contractual remedies without transgressing the Contract Clause. In *Ruhl v. Perry*,[72] the Florida Supreme Court stated "[i]t is well established that, by legislative enactment, a state may modify existing remedies, including a statute of limitations, without impairing the obligation of contracts so long as a sufficient remedy is left or another sufficient remedy is provided."[73]

State statutes that impair contractual obligations are measured on a sliding scale of scrutiny. The degree of contractual impairment permitted is delineated by the importance of the governmental interests advanced.[74] The court, in *Pomponio v. Claridge of Pompano Condo., Inc.*,[75] enumerated several factors it might weigh when making such determinations:

a. Whether the law was enacted to deal with a broad economic or social problem;

b. Whether the law operates in an area that was already subject to state regulation at the time the contract was entered into; and

c. Whether the effect on the contractual relationship is temporary; not severe, permanent, immediate, and retroactive.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create the need for additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[70] *In re Advisory Op. to the Governor,* 509 So.2d 292 (Fla. 1987); *Daytona Beach Racing & Recreational Facilities Dist. v. Volusia Cnty.*, 372 So.2d 419 (Fla. 1979); *Dewberry v. Auto Owners Ins. Co.*, 363 So.2d 1077 (Fla. 1978).
[71] *Straughn v. Camp,* 293 So.2d 689 (Fla. 1974).
[72] 390 So.2d 353 (Fla. 1980.
[73] *Id*. at 355
[74] *Yellow Cab Co. of Dade Cnty. v. Dade Cnty.*, 412 So.2d 395 (Fla. 3d DCA 1982).
[75] 378 So.2d 774 (Fla. 1980).

A bill to be entitled

An act relating to timeshare properties; amending s. 721.13, F.S.; broadening the powers of certain boards of administration with respect to timeshare plans; providing that managers and managing entities of certain timeshare projects have the same rights and remedies as operators of certain establishments and may have law enforcement take certain actions against individuals who engage in certain conduct; amending s. 721.15, F.S.; requiring a managing entity of a timeshare condominium or timeshare cooperative to provide a specified certificate to certain interested parties in lieu of an estoppel certificate; providing an effective date.

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

Section 1. Subsection (8) of section 721.13, Florida Statutes, is amended, and subsection (14) is added to that section, to read:

721.13 Management.—

(8) Notwithstanding anything to the contrary in s. 718.110, s. 718.113, s. 718.114, or s. 719.1055, the board of administration of any owners' association that operates a timeshare plan including a timeshare condominium pursuant to s.

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

718.111, or a timeshare cooperative pursuant to s. 719.104, shall have the power to make material alterations or substantial additions, or any deletion, to the accommodations or facilities of such timeshare plan ~~condominium or timeshare cooperative~~ without the approval of the members of the owners' association. However, if the timeshare condominium or timeshare cooperative contains any residential units that are not subject to the timeshare plan, such action by the board of administration must be approved by a majority of the owners of such residential units. Unless otherwise provided in the timeshare instrument as originally recorded, no such amendment may change the configuration or size of any accommodation in any material fashion, or change the proportion or percentage by which a member of the owners' association shares the common expenses, unless the record owners of the affected units or timeshare interests and all record owners of liens on the affected units or timeshare interests join in the execution of the amendment.

(14) With regard to any timeshare project as defined in s. 509.242(1)(g), the managing entity or manager has all of the rights and remedies of an operator of any public lodging establishment or public food service establishment as set forth in ss. 509.141, 509.142, 509.143, and 509.162 and is entitled to have a law enforcement officer take any action, including arrest or removal from the timeshare property, against any purchaser, including a deeded owner, or guest or invitee of such purchaser

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

or owner who engages in conduct described in s. 509.141, s. 509.142, s. 509.143, or s. 509.162 or conduct in violation of the timeshare instrument.

Section 2. Paragraph (b) of subsection (7) of section 721.15, Florida Statutes, is amended to read:

721.15 Assessments for common expenses.—

(7)

(b) Within 30 days after receiving a written request from a timeshare interest owner, an agent designated in writing by the timeshare interest owner, or a person providing resale transfer services for a consumer timeshare reseller pursuant to s. 721.17(3), a managing entity must provide a certificate, signed by an officer or agent of the managing entity, to the person requesting the certificate, that states the amount of any assessment, transfer fee, or other moneys currently owed to the managing entity, and of any assessment, transfer fee, or other moneys approved by the managing entity that will be due within the next 90 days, with respect to the designated consumer resale timeshare interest, as well as any information contained in the books and records of the timeshare plan regarding the legal description and use plan related to the designated consumer resale timeshare interest. The managing entity of a timeshare condominium or timeshare cooperative must provide this certificate in lieu of the estoppel certificate required by s. 718.116(8) or s. 719.108(6).

1. A person who relies upon such certificate shall be protected thereby.

2. A summary proceeding pursuant to s. 51.011 may be brought to compel compliance with this paragraph, and in such an action the prevailing party may recover reasonable attorney fees and court costs.

3. The managing entity may charge a fee not to exceed $150 for the preparation and delivery of the certificate. The amount of the fee must be included on the certificate.

Section 3. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 557 Movable Tiny Homes
SPONSOR(S): Stevenson
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Wright	Anstead
2) Transportation & Modals Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Under Florida law, a tiny house affixed to a permanent foundation must meet Florida Building Code standards applicable to tiny houses. A movable tiny home built on a chassis or flatbed trailer must be registered as a "park trailer" under the purview of the Department of Highway Safety and Motor Vehicles (DHSMV).

A "tiny house" is a dwelling that is 400 square feet or less in floor area excluding lofts and must be built to the tiny house standards in the Florida Building Code.

Florida law considers a "park trailer" as a subcategory of recreational vehicles and is described as a transportable unit which is designed to provide seasonal or temporary living quarters. The body width of a park trailer may not exceed 14-feet, and the total area of the park trailer may not exceed either 400 square feet when constructed to American National Standards Institute (ANSI) standards, and 500 square feet when constructed to United States Department of Housing and Urban Development (HUD) standards. The DHSMV has adopted rules setting forth uniform standards for park trailers that are used as a dwelling place in a particular location for more than 45 days, including requirements for anchors and tie-downs.

Because park trailers are considered seasonal or temporary living quarters, movable tiny homes are not permitted to stay in RV and mobile home parks year-round. The bill would allow a certain type of "park trailer", when built in accordance with the Florida Building Code, to be utilized for year-round living.

The bill allows a park trailer to be used as permanent living quarters for no more than one household when connected to utilities necessary for the operation of installed fixtures and appliances. The total area of such unit may not exceed 400 square feet when constructed to ANSI standards, and 500 square feet when constructed to HUD standards. A park trailer meeting this definition is a "movable tiny home."

The bill requires that a movable tiny home be constructed and inspected in accordance with the Florida Building Code, and each movable tiny home must have a sticker or other documentation certifying that the movable tiny home was inspected and certified for compliance with the Florida Building Code by a professional engineer or architect licensed in Florida or by a third-party inspector who is qualified to inspect for compliance with the Florida Building Code.

The bill also requires the Florida Building Commission to review and adopt any updates to specified codes for movable tiny homes.

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

The bill has an effective date of October 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Tiny Houses v. Movable Tiny Homes

Under current Florida law, a tiny house affixed to a permanent foundation must meet Florida Building Code standards applicable to tiny houses.[1] A movable tiny home built on a chassis or flatbed trailer must be registered as a "park trailer" under the purview of the Department of Highway Safety and Motor Vehicles (DHSMV).[2]

Park Trailers

Chapter 320, F.S., defines "park trailer" as a type of recreational vehicle that is transportable with a body width not exceeding 14 feet, which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances.[3] The total area of the unit in a setup mode, when measured from the exterior surface of the exterior stud walls at the level of maximum dimensions, not including any bay window, does not exceed 400 square feet when constructed to American National Standards Institute (ANSI)[4] A-119.5 standards, and 500 square feet when constructed to United States Department of Housing and Urban Development (HUD) Standards.[5]

The DHSMV has adopted rules setting forth uniform standards for the installation of a mobile home, manufactured home, or park trailer that is being used as a dwelling place and that is located on a particular location for a period of time exceeding 14 days, for a mobile or manufactured home, or 45 days, for a park trailer.[6] The must ensure that the home or park trailer is installed on a permanent foundation that resists wind, flood, flotation, overturning, sliding, and lateral movement of the home or park trailer.[7] Such rules are in ch. 15C-1, F.A.C., and include requirements for anchors and tie-downs.[8] A county or municipality is responsible for the onsite inspection of each park trailer installation located within its jurisdiction in order to ensure compliance with the DHSMV's uniform installation standards.[9]

As stated above, the definition of "park trailer" contemplates that it is used as "seasonal or temporary living quarters." Some people live in movable tiny homes year-round but must periodically leave RV and mobile home parks because of the seasonal/temporary nature of their registration as a "park trailer."

Building Standards for Mobile Homes and Recreational Vehicles

For purposes of mobile homes and recreational vehicles, Florida law defines the term "code" to mean the appropriate standards found in:

- The Federal Manufactured Housing Construction and Safety Standards for single-family mobile homes, adopted by HUD;

[1] FBC, Residential, Appendix Q (8th Ed. 2023), https://up.codes/viewer/florida/fl-residential-code-2020/chapter/Q/tiny-houses#AQ102 (last visited Jan. 19, 2024).
[2] S. 320.01(1)(b)7., F.S.
[3] *Id*.
[4] The American National Standards Institute (ANSI) is a private, non-profit organization that administers and coordinates the U.S. voluntary standards and conformity assessment system. The Institute works in close collaboration with stakeholders from industry and government to identify and develop standards- and conformance-based solutions to national and global priorities. American National Standards Institute, *Introduction,* https://www.ansi.org/about/introduction (last visited Jan. 19, 2024).
[5] S. 320.01(1)(b)7., F.S.
[6] S. 320.8325(1)&(5), F.S.
[7] *Id*.
[8] Ch. 15C-1, F.A.C., *available at* https://www.flrules.org/gateway/ChapterHome.asp?Chapter=15c-1.
[9] S. 320.8285(1)&(7), F.S.

- The Uniform Standards Code, as ANSI A-119.2 for recreational vehicles, ANSI A-119.5 for park trailers, and the HUD standard for park trailers; or
- The Mobile and Manufactured Home Repair and Remodeling Code and the Used Recreational Vehicle Code.[10]

Under Florida law, each recreational vehicle-type unit, including park trailers, manufactured in this state or manufactured outside this state but sold or offered for sale in this state must meet the Uniform Standards Code ANSI book A-119.2 or A-119.5, as applicable, approved by the American National Standards Institute. Such standards must include, but are not limited to, standards for the installation of plumbing, heating, and electrical systems and fire and life safety in recreational vehicle-type units and park trailers. However, those park trailers exceeding 400 square feet must meet the Federal Manufactured Home Construction and Safety Standards and have a HUD label.[11]

Tie-Downs

In general, tie-downs are systems of heavy-duty straps and ground anchors that stabilize manufactured homes or trailers during high winds. Failure to properly install and maintain tie-downs results in reduced capacity to resist sliding and overturning.[12]

Building Standards for Tiny Homes

Florida Building Code Provisions Related to Tiny Houses

The 2020 Edition of the Florida Building Code (Building Code) incorporated Appendix Q to outline tiny house standards statewide,[13] which defines "tiny house" as a permanent residential dwelling that is 400 square feet or less in floor area excluding lofts and must be built to the tiny house standards in the Florida Building Code.[14] As a tiny house is a type of residential dwelling, it must be on and permanently affixed to a foundation and comply with building requirements for the superstructure.[15]

Florida Building Code

Since 2000, Florida has operated under a uniform statewide building code. Prior to that, different counties had different building codes.

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.[16]

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's commission 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 Building Code, and that

[10] S. 320.822(2), F.S.
[11] S. 320.8231(1), F.S.
[12] Nick Gromicko and Kenton Shepard, *Tie-Downs for Manufactured Homes*, International Association of Certified Home Inspectors, https://www.nachi.org/manufactured-home-tie-downs.htm#:~:text=Tie%2Ddowns%20are%20systems%20of,to%20resist%20sliding%20and%20overturning. (last visited Jan. 19, 2024).
[13] FBC, Residential, Appendix Q (8th Ed. 2023).
[14] S. AQ101.1, FBC, Residential (8th Ed. 2023).
[15] S. R401.1, FBC, Residential (8th Ed. 2023).
[16] 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 Jan. 19, 2024).

first edition replaced all local codes on March 1, 2002.[17] The current edition of the Building Code is the eighth edition, which is referred to as the 2023 Florida Building Code.[18]

Chapter 553, part IV, 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 of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.[19]

The Florida Building Commission (Commission) was statutorily created to implement the Building Code. The Commission, which is housed within the Department of Business and Professional Regulation (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,[20] 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.[21]

Building Permits

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.[22] Every local government must enforce the Building Code and issue building permits.[23] A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.[24] Any construction work that requires a building permit also requires the review of building plans and inspections of the progress of work completed by the building official, inspector, or plans examiner to ensure the work complies with the Building Code.[25]

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.[26]

To obtain a permit, an applicant must complete an application for the proposed work on the form furnished by the local enforcing agency.[27] A local enforcing agency may not issue a permit until the building official or plans reviewer has reviewed the building plans and determined that they comply with the Building Code.[28] A certificate of completion for a building or structure may be issued when such work passes its final building inspection.[29]

Substructure and Superstructure

The part of the structure that is buried underground is referred to as the substructure, and includes the foundation. The building's weight is dispersed throughout the substructure and the ground underneath

[17] *Id.*
[18] Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspx (last visited Jan. 19, 2024).
[19] *See* s. 553.72(1), F.S.
[20] 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 Jan. 19, 2024).
[21] S. 553.73(7)(a), F.S.
[22] S. 553.72, F.S.
[23] Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.
[24] S. 468.603(2), F.S; S. 202, FBC, Building (8th Ed. 2023).
[25] Ss. 107, 110.1, and 110.3, FBC, Building (8th Ed. 2023).
[26] *See* ss. 125.56(4)(a) and 553.79(1), F.S.
[27] Ss. 125.56(4)(b), 553.79(1), and 713.135(5) and (6), F.S.
[28] S. 553.79(2), F.S.
[29] Passage of a final building inspection includes obtaining approvals for all permits issued for the project (such as building and fire permits and sub-permits such as electrical, mechanical, elevator, plumbing, and roof permits). S. 553.79(17)(a), F.S.; S. 110, Fla. Bldg. Code, 7th Ed. (2020).

it.[30] A building's foundation serves to transmit loads from the superstructure to the ground underneath. The Building Code requires foundations to be capable of resisting all loads from roof uplift and building overturn.[31]

The superstructure is the whole part of a structure that is above ground or above the foundation. Beams, columns, finishes, windows, doors, the roof, and floors, are considered to be part of the superstructure.[32]

Effect of the Bill

The bill would allow a certain type of "park trailer", when built in accordance with the Florida Building Code, to be utilized for year-round living.

The bill amends s. 320.01(1)(b)7, F.S., defining the term "park trailer" to incorporate the permanent nature of some movable tiny homes. Under the bill, a park trailer may be used as permanent living quarters for no more than one household when connected to utilities necessary for the operation of installed fixtures and appliances. The total area of such unit may not exceed 400 square feet when constructed to standards specified below, and 500 square feet when constructed to HUD Standards. A park trailer meeting this definition may be referred to as a "movable tiny home."

The bill amends the statutory definition of the term "code" to incorporate standards for movable tiny homes.

The bill requires that a movable tiny home be constructed and inspected in accordance with the Florida Building Code, and each movable tiny home must have a sticker or other documentation certifying that the movable tiny home was inspected and certified for compliance with the Florida Building Code by a professional engineer or architect licensed in Florida or by a third-party inspector who is qualified to inspect for compliance with the Florida Building Code.

The bill also requires the Florida Building Commission to review and adopt any updates to specified codes which pertain to the superstructure requirements for movable tiny homes.

The bill has an effective date of October 1, 2024.

B. SECTION DIRECTORY:

Section 1	Amends s. 320.01, F.S., relating to definitions, general.
Section 2	Amends s. 320.822, F.S., relating to definitions; ss. 320.822-320.862.
Section 3	Amends s. 320.8231, F.S., relating to establishment of uniform standards for recreational vehicle-type units and park trailers.
Section 4	Amends s. 553.73, F.S., relating to Florida Building Code.
Section 5	Provides an effective date of October 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

[30] Civil Engineering Forum, *WHAT IS SUPERSTRUCTURE AND SUBSTRUCTURE?*, Nov. 20, 2022, https://www.civilengineeringforum.me/superstructure-and-substructure/ (last visited Jan. 19, 2024).
[31] S. R401.2, FBC, Residential (8th Ed. 2023).
[32] Civil Engineering Forum, *supra* note 33.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals who live in a movable tiny home may be able to live in one location for as long as they choose.

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:

DHSMV will likely need to amend its rules regarding park trailers to conform to provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Since DHSMV regulations provide requirements for foundations, anchors, and tie downs for park trailers, including movable tiny homes, lines 123-125 should be amended to clarify that the only the *superstructure* of a movable tiny home must be constructed and inspected in accordance with the Florida Building Code. The sponsor has indicated an intent to make this clarification.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to movable tiny homes; amending s. 320.01, F.S.; revising definitions; providing that a park trailer may be used as permanent living quarters under certain circumstances; providing that such a park trailer may be referred to as a "movable tiny home"; amending s. 320.822, F.S.; revising the definition of the term "code"; amending s. 320.8231, F.S.; providing requirements for construction and inspection of a movable tiny home; requiring a movable tiny home to have a sticker or other documentation certifying compliance therewith; amending s. 553.73, F.S.; requiring the Florida Building Commission to review and adopt updates to certain codes which pertain to the superstructure requirements for movable tiny homes; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) of section 320.01, Florida Statutes, is amended to read:

320.01 Definitions, general.—As used in the Florida Statutes, except as otherwise provided, the term:

(1) "Motor vehicle" means:

(b) A recreational vehicle-type unit primarily designed as

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

temporary living quarters for recreational, camping, or travel use, or designed to be used as provided in sub-sub-subparagraph 7.a.(II), which either has its own motive power or is mounted on or drawn by another vehicle. Recreational vehicle-type units, when traveling on the public roadways of this state, must comply with the length and width provisions of s. 316.515~~, as that section may hereafter be amended~~. As defined below, the basic entities are:

1. The "travel trailer," which is a vehicular portable unit, mounted on wheels, of such a size or weight as not to require special highway movement permits when drawn by a motorized vehicle. It is primarily designed and constructed to provide temporary living quarters for recreational, camping, or travel use. It has a body width of no more than 8 1/2 feet and an overall body length of no more than 40 feet when factory-equipped for the road.

2. The "camping trailer," which is a vehicular portable unit mounted on wheels and constructed with collapsible partial sidewalls which fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.

3. The "truck camper," which is a truck equipped with a portable unit designed to be loaded onto, or affixed to, the bed or chassis of the truck and constructed to provide temporary living quarters for recreational, camping, or travel use.

4. The "motor home," which is a vehicular unit which does not exceed the length, height, and width limitations provided in s. 316.515, is a self-propelled motor vehicle, and is primarily designed to provide temporary living quarters for recreational, camping, or travel use.

5. The "private motor coach," which is a vehicular unit which does not exceed the length, width, and height limitations provided in s. 316.515(9), is built on a self-propelled bus type chassis having no fewer than three load-bearing axles, and is primarily designed to provide temporary living quarters for recreational, camping, or travel use.

6. The "van conversion," which is a vehicular unit which does not exceed the length and width limitations provided in s. 316.515, is built on a self-propelled motor vehicle chassis, and is designed for recreation, camping, and travel use.

7.a. The "park trailer," which is a transportable unit that ~~which~~ has a body width not exceeding 14 feet and that ~~which~~ is built on a single chassis and is:

(I) Designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances. The total area of such ~~the~~ unit may ~~in a setup mode, when measured from the exterior surface of the exterior stud walls at the level of maximum dimensions, not including any bay window, does~~ not exceed 400 square feet when constructed to ANSI A-119.5 standards, and 500

square feet when constructed to United States Department of Housing and Urban Development Standards; or

(II) Used as permanent living quarters for no more than one household when connected to utilities necessary for operation of installed fixtures and appliances. The total area of such unit may not exceed 400 square feet when constructed to standards specified in s. 320.8231(3), and 500 square feet when constructed to United States Department of Housing and Urban Development Standards. A park trailer under this sub-sub-subparagraph may be referred to as a "movable tiny home."

b. The total area of a park trailer is measured from the exterior surface of the exterior stud walls at the level of maximum dimensions, not including any bay window, when the unit is in setup mode. The length of a park trailer means the distance from the exterior of the front of the body (nearest to the drawbar and coupling mechanism) to the exterior of the rear of the body (at the opposite end of the body), including any protrusions.

8. The "fifth-wheel trailer," which is a vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, of such size or weight as not to require a special highway movement permit, of gross trailer area not to exceed 400 square feet in the setup mode, and designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the tow

vehicle's rear axle.

Section 2. Subsection (2) of section 320.822, Florida Statutes, is amended to read:

320.822 Definitions; ss. 320.822-320.862.—In construing ss. 320.822-320.862, unless the context otherwise requires, the following words or phrases have the following meanings:

(2) "Code" means the appropriate standards found in:

(a) The Federal Manufactured Housing Construction and Safety Standards for single-family mobile homes, adopted ~~promulgated~~ by the Department of Housing and Urban Development;

(b) The Uniform Standards Code approved by the American National Standards Institute, ANSI A-119.2 for recreational vehicles and ANSI A-119.5 for park trailers or the United States Department of Housing and Urban Development standard for park trailers certified as meeting that standard; ~~or~~

(c) The Mobile and Manufactured Home Repair and Remodeling Code and the Used Recreational Vehicle Code; or

(d) The standards provided in s. 320.8231(3).

Section 3. Subsections (3) and (4) are added to section 320.8231, Florida Statutes, to read:

320.8231 Establishment of uniform standards for recreational vehicle-type units and park trailers.—

(3) A movable tiny home described in s. 320.01(1)(b)7.a.(II) must be constructed and inspected in accordance with the Florida Building Code.

(4) A movable tiny home described in s. 320.01(1)(b)7.a.(II) must have a sticker or other documentation certifying that the movable tiny home was inspected and certified for compliance with subsection (3) by a professional engineer or architect licensed in this state or by a third-party inspector who is qualified to inspect for compliance with the Florida Building Code.

Section 4. Paragraph (a) of subsection (7) of section 553.73, Florida Statutes, is amended to read:

553.73 Florida Building Code.—

(7)(a) The commission shall adopt an updated Florida Building Code every 3 years through review of the most current updates of the International Building Code, the International Fuel Gas Code, the International Existing Building Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association. At a minimum, the commission shall adopt any updates to such codes or any other code necessary to maintain eligibility for federal funding and discounts from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development. The commission shall also review and adopt any updates to such codes which pertain to the

superstructure requirements for movable tiny homes. The commission shall also review and adopt updates based on the International Energy Conservation Code (IECC); however, the commission shall maintain the efficiencies of the Florida Energy Efficiency Code for Building Construction adopted and amended pursuant to s. 553.901. Every 3 years, the commission may approve updates to the Florida Building Code without a finding that the updates are needed in order to accommodate the specific needs of this state. The commission shall adopt updated codes by rule.

Section 5. This act shall take effect October 1, 2024.

REGULATORY REFORM AND ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 557 by Rep. Stevenson
Movable Tiny Homes

AMENDMENT SUMMARY
January 24, 2024

Amendment 1 by Rep. Stevenson (strike-all):

- Moves the new definition for “movable tiny homes” to be a subset of “trailers,” from a subset of “park trailers.”
- Requires movable tiny homes to be built to the Florida Building Code, as opposed to ANSI or HUD standards.

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: Regulatory Reform & Economic Development Subcommittee
Representative Stevenson offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (b) of subsection (1) and subsection (4) of section 320.01, Florida Statutes, are amended to read:

320.01 Definitions, general.—As used in the Florida Statutes, except as otherwise provided, the term:

(1) "Motor vehicle" means:

(b) A recreational vehicle-type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. Recreational vehicle-type units, when traveling on the public roadways of this state, must comply with

the length and width provisions of s. 316.515~~, as that section may hereafter be amended~~. As defined below, the basic entities are:

1. The "travel trailer," which is a vehicular portable unit, mounted on wheels, of such a size or weight as not to require special highway movement permits when drawn by a motorized vehicle. It is primarily designed and constructed to provide temporary living quarters for recreational, camping, or travel use. It has a body width of no more than 8 1/2 feet and an overall body length of no more than 40 feet when factory-equipped for the road.

2. The "camping trailer," which is a vehicular portable unit mounted on wheels and constructed with collapsible partial sidewalls which fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.

3. The "truck camper," which is a truck equipped with a portable unit designed to be loaded onto, or affixed to, the bed or chassis of the truck and constructed to provide temporary living quarters for recreational, camping, or travel use.

4. The "motor home," which is a vehicular unit which does not exceed the length, height, and width limitations provided in s. 316.515, is a self-propelled motor vehicle, and is primarily designed to provide temporary living quarters for recreational, camping, or travel use.

5. The "private motor coach," which is a vehicular unit which does not exceed the length, width, and height limitations provided in s. 316.515(9), is built on a self-propelled bus type chassis having no fewer than three load-bearing axles, and is primarily designed to provide temporary living quarters for recreational, camping, or travel use.

6. The "van conversion," which is a vehicular unit which does not exceed the length and width limitations provided in s. 316.515, is built on a self-propelled motor vehicle chassis, and is designed for recreation, camping, and travel use.

7. The "park trailer," which is a transportable unit that ~~which~~ has a body width not exceeding 14 feet and that ~~which~~ is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances. The total area of such ~~the~~ unit may ~~in a setup mode, when measured from the exterior surface of the exterior stud walls at the level of maximum dimensions, not including any bay window, does~~ not exceed 400 square feet when constructed to ANSI A-119.5 standards, and 500 square feet when constructed to United States Department of Housing and Urban Development Standards. The length of a park trailer means the distance from the exterior of the front of the body (nearest to the drawbar and coupling mechanism) to the exterior of the rear of the body (at the opposite end of the body), including any protrusions.

8. The "fifth-wheel trailer," which is a vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, of such size or weight as not to require a special highway movement permit, of gross trailer area not to exceed 400 square feet in the setup mode, and designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle.

(4)(a) "Trailer" means any vehicle without motive power designed to be coupled to or drawn by a motor vehicle and constructed so that no part of its weight or that of its load rests upon the towing vehicle.

(b) "Movable tiny home" means a trailer with a house affixed to a single chassis which is a transportable unit that has a body width not exceeding 14 feet and is designed to provide permanent living quarters for no more than one household when connected to utilities necessary for operation of installed fixtures and appliances. The total area of the unit in a setup mode, when measured from the exterior surface of the exterior stud walls at the level of maximum dimensions, not including any bay window, does not exceed 500 square feet when constructed to standards specified in s. 320.8201. The length of a movable tiny home means the distance from the exterior of the front of the body (nearest to the drawbar and coupling mechanism) to the exterior of the rear of the body (at the opposite end of the

body), including any protrusions.

Section 2. Section 320.8201, Florida Statutes, is created to read:

320.8201 Movable tiny homes; construction and inspection.—A movable tiny home as defined in s. 320.01(4)(b) must be constructed and inspected in accordance with the Florida Building Code and must have a sticker or other documentation certifying that the movable tiny home was inspected and certified for compliance with the Florida Building Code by a professional engineer or architect licensed in this state or by a third-party inspector who is qualified to inspect for compliance with the Florida Building Code.

Section 3. Paragraph (a) of subsection (7) of section 553.73, Florida Statutes, is amended to read:

553.73 Florida Building Code.—

(7)(a) The commission shall adopt an updated Florida Building Code every 3 years through review of the most current updates of the International Building Code, the International Fuel Gas Code, the International Existing Building Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association. At a minimum, the commission shall adopt any updates to such codes or any other

code necessary to maintain eligibility for federal funding and discounts from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development. The commission shall also review any updates to such codes which pertain to requirements for movable tiny homes. The commission shall also review and adopt updates based on the International Energy Conservation Code (IECC); however, the commission shall maintain the efficiencies of the Florida Energy Efficiency Code for Building Construction adopted and amended pursuant to s. 553.901. Every 3 years, the commission may approve updates to the Florida Building Code without a finding that the updates are needed in order to accommodate the specific needs of this state. The commission shall adopt updated codes by rule.

Section 4. This act shall take effect October 1, 2024.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to movable tiny homes; amending s. 320.01, F.S.; revising the definition of the term "park trailer"; defining the term "movable tiny home"; creating s. 320.8201, F.S.; providing requirements for construction and inspection of a movable tiny home;

requiring a movable tiny home to have a sticker or other documentation certifying compliance therewith; amending s. 553.73, F.S.; requiring the Florida Building Commission to review updates to certain codes which pertain to requirements for movable tiny homes; providing an effective date.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 691 Town of Horseshoe Beach, Dixie County
SPONSOR(S): Shoaf
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	16 Y, 0 N	Burgess	Darden
2) Regulatory Reform & Economic Development Subcommittee		Phelps	Anstead
3) State Affairs Committee			

SUMMARY ANALYSIS

Florida's Beverage Law limits the number of "quota licenses" that the Department of Business and Professional Regulation (DBPR) may issue per county. A quota license allows a business to serve any alcoholic beverage regardless of alcoholic content, including liquor. DBPR is not limited by the Beverage Law on the number of licenses it may issue for businesses that serve only malt beverages and wine.

The bill creates an exception to the quota limitation and requires DBPR to issue a special alcoholic beverage license to a bona fide restaurant within the jurisdictional boundaries of the Town of Horseshoe Beach that meets the following requirements:

- Licensed by the Division of Hotels and Restaurants;
- Occupies at least 1,700 square feet of contiguous space used as part of the food service establishment;
- Equipped to serve meals to 50 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 each 12-month operating period thereafter.

Such license is subject to revocation by the DBPR. If the DBPR revokes, or denies an application for a food service alcohol license, the applicant cannot reapply for 120 days.

The bill takes effect upon becoming law.

According to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. Since this bill creates an exemption to general law, the provisions of House Rule 5.5(b) apply.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Beverage Law

The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale of alcoholic beverages within the state.[1] Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law.

Under the Beverage Law, DBPR is not limited on the number of licenses it issues to businesses selling malt beverages or wine. However, the statute limits the number of licenses that may be issued under s. 565.02(1)(a)-(f), F.S., to one license per 7,500 residents per county with a minimum of three licenses per county that has approved the sale of intoxicating liquors.[2] This license, often referred to as a "quota license," allows a business to sell any alcoholic beverage regardless of alcoholic content, including liquor or distilled spirits.[3]

There are several exceptions to the quota license limitation,[4] and businesses that meet the requirements set out in one of the exceptions may be issued a special license by DBPR, allowing the business to serve any alcoholic beverages regardless of alcohol content. A food service establishment may qualify for an exemption if the building has at least 2,500 square feet of service area, is equipped to serve meals to 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages during the first 120-day operating period and the first 12-month operating period thereafter.[5]

There are several exceptions to the Beverage Law created by special laws, which are applicable to specific local areas. Many reduce certain licensing requirements for special zones in local jurisdictions. For example, ch. 2022-259, L.O.F., allows DBPR to issue an SFS license to restaurants within the Kings Avenue Commercial Corridor in Jacksonville that:

- Have 1,000 square feet;
- Are equipped to serve 50 persons at one time; and
- Derive at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages.

Effect of the Bill

The bill permits DBPR to issue a special alcoholic beverage license to a bona fide restaurant within the jurisdictional boundaries of the Town of Horseshoe Beach if it:

- Is licensed by the Division of Hotels and Restaurants;
- Occupies at least 1,700 square feet of contiguous space used as part of the food service establishment;
- Equipped to serve meals to 50 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 each 12 -month operating period thereafter.

A failure to meet the required 51 percent requirement shall result in the:

[1] S. 561.02, F.S.
[2] S. 561.20(1), F.S.
[3] S. 561.20, F.S.
[4] S. 561.20(2), F.S.
[5] S. 561.20(2)(a)4., F.S. *See* Rule 61A-3.0141, F.A.C.

- Revocation of the license; or
- Denial of the pending application of for a permanent license of a licensee operating with a temporary license.

Any person required to qualify on the special food service alcohol license application is ineligible to have any interest in a subsequent application for such license for 120 days after the date of the final denial or revocation.

The bill takes effect upon becoming law.

B. SECTION DIRECTORY:

Section 1. Creates an exception to general law, providing space, seating and minimum gross revenues requirements for special alcoholic beverage licenses for a bona fide restaurant within the Town of Horseshoe Beach, Dixie County.

Section 2. Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN? October 26, 2023 & November 2, 2023.

WHERE? The *Dixie County Advocate*, a newspaper published at Cross City in Dixie County.

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes [X] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. Since this bill creates an exemption to general law, the provisions of House Rule 5.5(b) apply.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to the Town of Horseshoe Beach, Dixie County; providing an exception to general law; requiring the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to issue a special alcoholic beverage license to certain restaurants in the town which meet certain space, seating, and minimum gross revenue requirements; providing conditions for revocation of such license or denial of a pending application for such license; providing an effective date.

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

Section 1. Notwithstanding s. 561.20(1), Florida Statutes, the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation shall issue a special alcoholic beverage license to a bona fide restaurant located within the jurisdictional boundaries of the Town of Horseshoe Beach which is licensed by the Division of Hotels and Restaurants, occupies at least 1,700 square feet of contiguous space used as a part of the food service establishment, is equipped to serve meals to 50 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-

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

day operating period and each 12-month operating period thereafter. Failure of a licensee who is issued this special license to meet the required percentage of food and nonalcoholic beverage gross revenues during the applicable operating period shall result in the revocation of the license or denial of the pending application for a permanent license of a licensee operating with a temporary license. A licensee whose license is revoked, or an applicant whose pending application for a permanent license is denied, or any person required to qualify on the special food service alcohol license application, is ineligible to have any interest in a subsequent application for such license for 120 days after the date of the final denial or revocation.

Section 2. This act shall take effect upon becoming a law.

HB 907

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 907 Gaming Licenses and Permits
SPONSOR(S): Sirois
TIED BILLS: **IDEN./SIM. BILLS:** SB 804

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Thompson	Anstead
2) State Administration & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Florida Gaming Control Commission (Commission) is responsible for exercising all regulatory and executive powers of the state with respect to gambling, including pari-mutuel wagering, cardrooms, and slot machine facilities. The Florida Pari-mutuel Wagering Act (Act) provides specific permitting and licensure requirements for the pari-mutuel industry. Pari-mutuel wagering activities are limited to operators who have received a permit from the Commission, which is then subject to ratification by county referendum. Permitholders apply for an operating license annually to conduct pari-mutuel wagering activities. Certain permitholders are authorized to operate cardrooms and slot machines at their facility.

The bill revises provisions related to pari-mutuel wagering licenses, permit and application procedures, and removes obsolete provisions, as follows:

- Authorizes the Commission to penalize a licensee when a person falsely swears on an application.
- Establishes email as the primary service of legal filings for the Commission, including final agency action.
- Extends the submission period for pari-mutuel operating license application dates from December 15 - January 4, to January 15 - February 4, and extends the issuance date from March 15 to April 15.
- Authorizes the Commission to approve minor changes in performance dates for pari-mutuel wagering permitholders, removes the ability for permitholders to object to such changes, and makes it permissive, instead of mandatory, for the Commission to consider the impact of such changes to state revenues.
- Authorizes the Commission to take action against a racetrack occupational licensee who has been subject to certain federal horseracing penalties, including for a finding of a prohibited substance in an animal.
- Establishes a single audit and reporting requirement for pari-mutuel and slot machine permitholders, clarifies what is required in the report, and requires the deadline for the report to be 120 days after the end of the fiscal year.
- Revises the application and issuance fiscal year, submission, and issuance dates of nonwagering licenses to line up with the pari-mutuel operating license timeframes.
- Removes the authority of the Commission to conduct an eligibility investigation relating to new ownership or management interest in a nonwagering permit.
- Authorizes the Commission to waive the disqualifying offenses for slot machine occupational license applicants.
- Removes the provision that allows certain facilities to amend their 2006-2007 operating license.
- Repeals the section of law related to greyhound permitholders unclaimed tickets.
- Removes provisions related to the Greyhound Permitholder Tax Credit, and makes conforming changes.
- Removes an outdated provision relating to thoroughbred permitholder performances.

The bill does not appear to have a significant fiscal impact on state or local government. The bill may have a positive fiscal impact on the private sector.

The effective date of the bill is July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

General Overview of Gaming in Florida

Gambling is generally prohibited in Florida, unless specifically authorized. Section 7, Art. X, of the Florida Constitution prohibits lotteries, other than pari-mutuel pools, from being conducted in Florida. Chapter 849, F.S., includes prohibitions against slot machines, keeping a gambling house and running a lottery. However, a constitutional amendment approved by voters in 1986 authorized state-operated lotteries, and a constitutional amendment in 2004 authorized slot machines in Miami-Dade and Broward Counties.

The following gaming activities are also authorized by law and regulated by the state:

- Pari-mutuel[1] wagering;[2]
- Gaming on tribal reservations in accordance with the Indian Gaming and Regulatory Act and the 2010 Gaming Compact with the Seminole Tribe of Florida;
- Slot machine gaming at certain licensed pari-mutuel locations in Miami-Dade County and Broward County;[3] and
- Cardrooms[4] at certain pari-mutuel facilities.

Chapter 849, F.S., also authorizes, under specific and limited conditions, the conduct of penny-ante games,[5] bingo,[6] charitable drawings,[7] game promotions (sweepstakes),[8] bowling tournaments,[9] and skill-based amusement games and machines at specified locations.[10]

In 2013, the legislature clarified that Internet café style gambling machines were illegal in the state. The legislation clarified existing sections of law regarding slot machines, charitable drawings, game promotions, and amusement machines and created a rebuttable presumption that machines used to simulate casino-style games in schemes involving consideration and prizes are prohibited slot machines.[11]

In 2015, the legislature determined that the regulation of the operation of skill-based amusement games and machines would ensure compliance with Florida's limitations on gambling and prevent the expansion of casino-style gambling. The legislature clarified regulations related to the operation and use of amusement games or machines to ensure that regulations would not be interpreted as creating an exception to the state's general prohibitions against gambling.[12]

Amendment to Florida Constitution Prohibiting Racing of and Wagering on Greyhounds or Other Dogs

[1] "Pari-mutuel" is defined in Florida law as "a system of betting on races or games in which the winners divide the total amount bet, after deducting management expenses and taxes, in proportion to the sums they have wagered individually and with regard to the odds assigned to particular outcomes. *See* s. 550.002(22), F.S.

[2] *See* ch. 550, F.S., relating to the regulation of pari-mutuel activities.

[3] *See* FLA. CONST., art. X, s. 23, and ch. 551, F.S.

[4] S. 849.086(2)(c), F.S., defines "cardroom" to mean "a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charged a fee for participation by the operator of such facility."

[5] S. 849.085, F.S.

[6] S. 849.0931, F.S.

[7] S. 849.0935, F.S.

[8] S. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.

[9] S. 849.141, F.S.

[10] S. 546.10, F.S.

[11] Florida House of Representatives Select Committee on Gaming, Final Bill Analysis of 2013 CS/HB 155, p. 1 (Apr. 19, 2013).

[12] S. 546.10, F.S.

During the 2018 General Election, the voters approved an initiative constitutional amendment, Amendment 13, Prohibition on Racing of and Wagering on Greyhounds or Other Dogs, which has been codified in the State Constitution as Article X, Section 32.[13]

Article X, Section 32 states:

> Prohibition on racing of and wagering on greyhounds or other dogs.—The humane treatment of animals is a fundamental value of the people of the State of Florida. After December 31, 2020, a person authorized to conduct gaming or pari-mutuel operations may not race greyhounds or any member of the *Canis Familiaris* subspecies in connection with any wager for money or any other thing of value in this state, and persons in this state may not wager money or any other thing of value on the outcome of a live dog race occurring in this state. The failure to conduct greyhound racing or wagering on greyhound racing after December 31, 2018, does not constitute grounds to revoke or deny renewal of other related gaming licenses held by a person who is a licensed greyhound permitholder on January 1, 2018, and does not affect the eligibility of such permitholder, or such permitholder's facility, to conduct other pari-mutuel activities authorized by general law. By general law, the legislature shall specify civil or criminal penalties for violations of this section and for activities that aid or abet violations of this section.

As of January 1, 2021, wagering on live greyhound racing in Florida is completely prohibited. However, cardroom and slot machine facilities by such permitholders may continue to operate after the closure of racing activities.

Pari-mutuel Wagering

Since approximately 1931, pari-mutuel wagering has been authorized in Florida for jai alai, greyhound racing, and horseracing. These activities are overseen and regulated[14] by the Division of Pari-Mutuel Wagering (Division) at the Florida Gaming Control Commission (Commission), which is housed within the Department of Legal Affairs, Office of the Attorney General.[15] The Commission is tasked with exercising all regulatory and executive powers of the state on all forms of gambling authorized by the State Constitution or law including pari-mutuel wagering, card rooms, slot machine facilities, and the oversight of gaming compacts under the federal Indian Gaming Regulatory Act but excluding state lottery games authorized by the State Constitution.[16]

Pari-Mutuel Wagering State Revenue

License fees and taxes collected by pari-mutuel wagering permitholders, including slot machine and cardroom permitholders, are deposited with the Chief Financial Officer, to the credit of the Pari-mutuel Wagering Trust Fund. Slot machine tax revenue is transferred from the Pari-mutuel Wagering Trust Fund to the Educational Enhancement Trust Fund to supplement public education funding statewide. Taxes collected by cardrooms are split between the Pari-mutuel Wagering Trust Fund and the General Revenue Fund. During the 2022-2023 fiscal year, the pari-mutuel industry operated 447 racing and gaming days, which resulted in state revenue of $6,291,327, total paid attendance of 61,775, and total pari-mutuel handle of $469,498,714.[17]

Pari-Mutuel Wagering Live Performance Requirements

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[13] See the text of Amendment 13, now codified as art. X, s. 32, at http://www.leg.state.fl.us/Statutes/index.cfm?Mode=Constitution&Submenu=3&Tab=statutes#A10S32 (last visited Jan. 12, 2024).
[14] From 1932 to 1969, Florida's pari-mutuel industry was regulated by the State Racing Commission. In 1970, the commission became a division within the Department of Business Regulation, which, in 1993, became DBPR.
[15] *See* ss. 16.71-16.716, F.S.
[16] S. 16.712, F.S.
[17] Florida Gaming Control Commission, *Annual Report Fiscal Year 2022-2023*, https://flgaming.gov/pmw/annual-reports/docs/2022-2023%20FGCC%20Annual%20Report.pdf (last visited Jan. 12, 2024).

Currently, only thoroughbred permitholders are required to conduct live racing.[18] Greyhound permitholders may not conduct live racing, and jai alai permitholders, harness horse racing permitholders, or quarter horse racing permitholders may elect not to conduct live racing or games.

A greyhound permitholder, jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder that does not conduct live racing or games:[19]

- Retains its permit;
- Is a pari-mutuel facility as defined in s. 550.002(23), F.S.;
- Is eligible, but not required, to be a guest track, and if the permitholder is a harness horse racing permitholder, is eligible to be a host track for purposes of intertrack wagering and simulcasting pursuant to ss. 550.3551, 550.615, 550.625, and 550.6305, F.S.; and
- Remains eligible for a cardroom license.

A permitholder or licensee may not conduct live greyhound racing or dogracing in connection with any wager for money or any other thing of value in the state. The Division is authorized to deny, suspend, or revoke any permit or license in ch. 550, F.S., for conducting live greyhound racing or dogracing in violation of this provision. In addition to, or in lieu of, denial, suspension, or revocation of such permit or license, the Division is authorized to impose a civil penalty of up to $5,000. All penalties imposed and collected must be deposited with the Chief Financial Officer to the credit of the General Revenue Fund.[20]

Pari-mutuel Wagering Permitting and Licensure

The Florida Pari-mutuel Wagering Act (Act)[21] provides specific permitting and licensing requirements for the conduct of the pari-mutuel industry.[22] Pari-mutuel wagering activities are limited to operators who have received a permit from the Division, which is then subject to ratification by county referendum.[23] Permitholders apply for an operating license annually to conduct pari-mutuel wagering activities.[24] Certain permitholders are also authorized to operate cardrooms[25] and slot machines at their facility.[26]

During Fiscal Year 2021-2022, the following 39 pari-mutuel permitholders were licensed to operate:[27]

- Nineteen Greyhound Racing permits.
- Three Thoroughbred Horse Racing permits.
- One Harness Horse Racing permit.
- Six Quarter Horse Racing permits.
- Ten Jai-Alai permits.

The Division is authorized to revoke or suspend any permit or license upon the willful violation by the permitholder or licensee of any provision of the Act, or any administrative rule adopted by the Division, and may impose a civil penalty against the permitholder or license up to $1,000 for each offense.[28]

During Fiscal Year 2022-2023, the Division issued 22 rulings and five consent orders with assessed fines and/or imposed license suspensions for violations.[29]

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[18] S. 550.01215(1)(b)1., F.S.
[19] *Id*.
[20] S. 550.01215(1)(b)2., F.S.
[21] Ch. 550, F.S.
[22] S. 550.054(1), F.S.
[23] S. 550.054(2), F.S.
[24] S. 550.0115, F.S.
[25] S. 849.086, F.S.
[26] S. 551.104, F.S.
[27] Florida Gaming Control Commission, *Annual Report Fiscal Year 2022-2023*, https://flgaming.gov/pmw/annual-reports/docs/2022-2023%20FGCC%20Annual%20Report.pdf (last visited Jan. 12, 2024).
[28] S. 550.054(9)(b), F.S.
[29] Florida Gaming Control Commission, *Annual Report Fiscal Year 2022-2023*, https://flgaming.gov/pmw/annual-reports/docs/2022-2023%20FGCC%20Annual%20Report.pdf (last visited Jan. 12, 2024).

False Swearing On Applications

Present Situation

Currently, the Division does not appear to have the authority to deny applications and suspend or revoke professional licenses that it issues when it has found that an applicant or licensee has provided false information on an application that was signed under oath.

Prior to July 1, 2022, the Division was a part of the Department of Business and Professional Regulation (DBPR), which has the authority to take these actions.[30] Specifically, the law provides that any license **issued by DBPR**, which is issued or renewed in response to an application upon which the person signing under oath or affirmation has falsely sworn to a material statement, including, but not limited to, the names and addresses of the owners or managers of the licensee or applicant, is subject to denial of the application or suspension or revocation of the license, and the person falsely swearing is subject to any other penalties provided by law.[31]

On July 1, 2022, the Division was transferred out of DBPR and to the Commission.[32] However the Division did not retain the ability to take these actions. According to the Commission, it "is responsible for the regulation of licensees, permit holders, and persons participating in pari-mutuel wagering, slot machine gaming, or cardroom activity in the state of Florida. To regulate the industry, the Florida Gaming Control Commission needs to have the ability to apply the appropriate penalties when a person makes a false material statement on an application."[33]

Proposed Changes

The bill authorizes the Commission to deny any application or suspend or revoke any license that it issues when a person falsely swears to a material statement on an application. Specifically, the bill provides that any person who submits an application for a license to the Commission, or any person issued a license or renewal by the Commission in response to an application, and upon which application the person signing under oath or affirmation has falsely sworn to a material statement, including, but not limited to, the criminal history of the applicant or licensee, is subject to denial of his or her application or to suspension or revocation of his or her license, and is subject to any other penalties provided by law.

Legal Notices

Present Situation

Currently, the Commission does not have the authority to require service by e-mail from applicants and licensees for official communications. Chapter 455, F.S., which applies to the regulation of professions by DBPR, provides this authority to DBPR. Specifically, each licensee of DBPR is solely responsible for notifying DBPR in writing of the licensee's current mailing address, e-mail address, and place of practice, as defined by rule of the board or the department when there is no board.[34]

A licensee's failure to notify DBPR of a change of address constitutes a violation, and the licensee may be disciplined by the board or the department when there is no board.[35]

Notwithstanding any other provision of law, service by regular mail or e-mail to a licensee's last known mailing address or e-mail address of record with DBPR constitutes adequate and sufficient notice to the

[30] S. 559.791, F.S.
[31] *Id*.
[32] Ch. 2021-269, Laws of Fla.
[33] Florida Gaming Control Commission, Agency Package, Issue 1: False swearing on application; penalties.
[34] S. 455.275(1), F.S.
[35] *Id*.

licensee for any official communication to the licensee by the board or the department except when other service is required pursuant to disciplinary proceedings under s. 455.225, F.S.[36]

Notwithstanding any provision of law, when an administrative complaint is served on a licensee of DBPR, DBPR is required to provide service by regular mail to the licensee's last known address of record, by certified mail to the last known address of record, and, if possible, by e-mail.[37]

If the licensee does not provide DBPR with proof of service, DBPR is required to:[38]

- Call the last known telephone number of record.
- Cause a short, plain notice to the licensee to be posted on the front page of DBPR's website.
- Send notice via e-mail to all newspapers of general circulation and all news departments of broadcast network affiliates in the county of the licensee's last known address of record.

Proposed Changes

The bill establishes e-mail as the Commission's primary service of legal filings, including final agency action, similar to the method that DBPR is authorized to use. Specifically, the bill:

- Requires each applicant for a license with the Commission and each licensee of the Commission is responsible to notify the Commission in writing of the applicant's or licensee's current mailing address, e-mail address, and place of employment.
- Provides that an applicant's failure to notify the Commission constitutes a violation, and the applicant's application may be denied.
- Provides that a licensee's failure to notify the Commission of any change to the e-mail or mailing address of record constitutes a violation, and the licensee may be disciplined by the Commission as described in s. 550.0251(10), F.S.
- Provides that notwithstanding any provision of law to the contrary, service by e-mail to an applicant's or licensee's e-mail address of record with the Commission constitutes sufficient notice to the applicant or licensee for any official communication.
- Authorizes the Commission to, in its discretion, provide service for any official communication by regular mail to an applicant's or licensee's last known mailing address.
- Clarifies that the Commission is not required to provide service by both e-mail and regular mail.
- Provides that notwithstanding any provision of law to the contrary, when an administrative complaint or other document setting forth intended or final agency action is to be served on an applicant or a licensee, the Commission is only required to provide service by e-mail to the applicant's or licensee's e-mail address on record with the commission.
- Specifies that e-mail service constitutes sufficient notice to the person or persons upon whom an administrative complaint or any other document setting forth intended or final agency action is served.
- Authorizes the commission to, in its discretion, provide service of an administrative complaint or any other documents setting forth intended or final agency action by regular mail to an applicant's or licensee's last known mailing address.
- Clarifies that the Commission is not required to provide service by both e-mail and regular mail.

Deadline for Submitting Pari-Mutuel Wagering Operating License Application

Present Situation

Currently, each permitholder is required to annually, during the period between December 15 and January 4, file in writing with the Commission its application for an operating license for a pari-mutuel facility for the conduct of pari-mutuel wagering during the next state fiscal year, including intertrack and simulcast race wagering.[39]

[36] S. 455.275(2), F.S.
[37] S. 455.275(3)(a), F.S.
[38] S. 455.275(3)(b), F.S.
[39] S. 550.01215(1), F.S.

Each application for live performances must specify:[40]

- The number, dates, and starting times of all live performances that the permitholder intends to conduct.
- Which performances will be conducted as charity or scholarship performances.

Each application for an operating license also must include:[41]

- For each permitholder, whether the permitholder intends to accept wagers on intertrack or simulcast events.
- For each permitholder that elects to operate a cardroom, the dates and periods of operation the permitholder intends to operate the cardroom.
- For each thoroughbred racing permitholder that elects to receive or rebroadcast out-of-state races, the dates for all performances that the permitholder intends to conduct.

The Commission is required to issue each license no later than March 15.[42]

Proposed Changes

The bill extends the submission period for pari-mutuel operating license application dates from December 15 through January 4, to instead January 15 through February 4, and extends the date the Commission is required to issue a license from March 15 to April 15.

Changes in Racing Dates

Present Situation

Current law authorizes the Commission to approve minor changes in racing dates after a license has been issued when there is no objection from any operating permitholder that is conducting live racing or games and that is located within 50 miles of the permitholder requesting the changes in operating dates. In the event of an objection, the Commission is required to approve or disapprove the change in operating dates based upon the impact on operating permitholders located within 50 miles of the permitholder requesting the change in operating dates. In making the determination to change racing dates, the Commission is required to take into consideration the impact of such changes on state revenues.[43]

Proposed Changes

The bill revises the authority of the Commission to approve minor changes in racing dates for pari-mutuel wagering permitholders to also allow such changes for performance dates.

The bill removes the ability for the impacted permitholders to object to changes in performance dates, and makes it permissive, instead of mandatory, for the Commission to consider the impact of changes to performance dates to state revenues.

Greyhound Permitholder Tax Credit

Present Situation

Current law provides for a daily license fee tax credit for greyhound permitholders. Specifically, in addition to the tax exemption specified in s. 550.09514(1), F.S., of $360,000 or $500,000 per greyhound permitholder per state fiscal year, each greyhound permitholder is required to receive in the current state fiscal year a tax credit equal to the number of live greyhound races conducted in the

[40] *Id.*
[41] *Id.*
[42] S. 550.01215(3), F.S.
[43] *Id.*

previous state fiscal year times the daily license fee specified for each dograce in this subsection applicable for the previous state fiscal year.[44]

Current law establishes tax rates relating to live greyhound racing performances. Each permitholder is required to pay a tax on contributions to pari-mutuel pools, the aggregate of which is referred to as "handle," on races or games conducted by the permitholder. The tax is imposed daily and is based on the total contributions to all pari-mutuel pools conducted during the daily performance. If a permitholder conducts more than one performance daily, the tax is imposed on each performance separately. The tax on handle for dogracing is 5.5 percent of the handle, except that for live charity performances held pursuant to s. 550.0351, F.S., and for intertrack wagering on such charity performances at a guest greyhound track within the market area of the host, the tax is 7.6 percent of the handle.[45]

Proposed Changes

The bill removes provisions related to:

- The Greyhound Permitholder Tax Credit, and makes conforming changes.
- Live charity performances for greyhound permitholders and intertrack wagering on such charity performances.

Daily License Fee Payments

Present Situation

Each person engaged in the business of conducting race meetings or jai alai games is required to pay to the Commission, for the use of the commission, a daily license fee on each live or simulcast pari-mutuel event of $100 for each horserace and $80 for each dograce and $40 for each jai alai game conducted at a racetrack or fronton licensed.[46]

Payments imposed by this section are required to be paid to the Commission, and the Commission is required to deposit these sums with the Chief Financial Officer, to the credit of the Pari-mutuel Wagering Trust Fund. The permitholder musts remit to the Commission payment for the daily license fee, the admission tax, the tax on handle, and the breaks tax.

Such payments must be remitted by 3 p.m. Wednesday of each week for taxes imposed and collected for the preceding week ending on Sunday.

Beginning on July 1, 2012, such payments must be remitted by 3 p.m. on the 5th day of each calendar month for taxes imposed and collected for the preceding calendar month.

Proposed Changes

The bill removes:

- The requirement that such payments be remitted by 3 p.m. Wednesday of each week for taxes imposed and collected for the preceding week ending on Sunday.
- The July 1, 2012, date that such payments must be remitted by each month.

Thoroughbred Horse Taxes

Present Situation

Current law provides that if a thoroughbred permitholder fails to operate all performances on its 2001-2002 license, failure to pay tax on handle for a full schedule of live races for those performances in the 2001-2002 fiscal year does not constitute failure to pay taxes on handle for a full schedule of live races

[44] S. 550.0951(1)(a), F.S.
[45] S. 550.0951(3)(b)1., F.S.
[46] S. 550.0951(1)(a), F.S.

in a fiscal year. This may not be construed as forgiving a thoroughbred permitholder from paying taxes on performances conducted at its facility pursuant to its 2001-2002 license other than for failure to operate all performances on its 2001-2002 license. This subsection expired on July 1, 2003.

Proposed Changes

The bill removes this provision.

Occupational Licenses of Racetrack Employees

Present Situation

Occupational Licenses

Currently, each person connected with a racetrack or jai alai fronton is required to purchase from the commission an occupational license. All moneys collected pursuant to this section each fiscal year shall be deposited into the Pari-mutuel Wagering Trust Fund. Pursuant to the rules adopted by the commission, an occupational license may be valid for a period of up to 3 years for a fee that does not exceed the full occupational license fee for each of the years for which the license is purchased. The occupational license is valid during its specified term at any pari-mutuel facility.[47]

The following licenses are issued to persons or entities with access to the backside, racing animals, jai alai players' room, jockeys' room, drivers' room, totalisator room, the mutuels, or money room, or to persons who, by virtue of the position they hold, might be granted access to these areas or to any other person or entity in one of the following categories and with fees not to exceed the following amounts for any 12-month period:[48]

- **Business licenses**: any business such as a vendor, contractual concessionaire, business owning racing animals, trust or estate, totalisator company, stable name, or other fictitious name: $50.
- **Professional occupational licenses**: professional persons with access to the backside of a racetrack or players' quarters in jai alai such as trainers, officials, veterinarians, doctors, nurses, EMT's, jockeys and apprentices, drivers, jai alai players, owners, trustees, or any management or officer or director or shareholder or any other professional-level person who might have access to the jockeys' room, the drivers' room, the backside, racing animals, or managers or supervisors requiring access to mutuels machines, the money room, or totalisator equipment: $40.
- **General occupational licenses**: general employees with access to the jockeys' room, the drivers' room, racing animals, the backside of a racetrack or players' quarters in jai alai, such as grooms, leadouts, pelota makers, cesta makers, or ball boys, or a practitioner of any other occupation who would have access to the animals or the backside, or who would provide the security or maintenance of these areas, or mutuel employees, totalisator employees, money-room employees, or any employee with access to mutuels machines, the money room, or totalisator equipment or who would provide the security or maintenance of these areas: $10.

Individuals and entities that are licensed require heightened state scrutiny, including the submission by the individual licensees or persons associated with the entities described in this chapter of fingerprints for a Federal Bureau of Investigation criminal records check.[49]

If the state racing commission or racing authority of such other state or jurisdiction extends to the Commission reciprocal courtesy to maintain the disciplinary control, the Commission is authorized to:[50]

- Deny, revoke, suspend, or place conditions or restrictions upon a license of any person who has been refused a license by any other state racing commission or racing authority;

[47] S. 550.105(1), F.S.
[48] S. 550.105(2)(a), F.S.
[49] *Id*.
[50] S. 550.105(5)(a), F.S.

- Deny, suspend, or place conditions on a license of any person who is under suspension or has unpaid fines in another jurisdiction.

The commission may also deny, declare ineligible, or revoke any occupational license if the applicant for such license has been convicted of a felony or misdemeanor in this state, in any other state, or under the laws of the United States, if such felony or misdemeanor is related to gambling or bookmaking, as contemplated in s. 849.25, F.S., or involves cruelty to animals.[51]

If the applicant establishes that she or he is of good moral character, has been rehabilitated, and the crime is not related to pari-mutuel wagering and is not a capital offense, the restrictions excluding offenders may be waived by the **director** of the Commission.

Horseracing Integrity and Safety Act

The federal Horseracing Integrity and Safety Act of 2020 (Act) requires the Horseracing Integrity and Safety Authority (HISA) to develop and implement uniform safety and integrity rules applicable to every thoroughbred racing participant and racetrack facility in the U.S. HISA is required to develop rules related to horseracing, including anti-doping, medication control and racetrack safety. The Federal Trade Commission (FTC) is given oversight over the Authority.[52]

HISA began implementing its Racetrack Safety Program on July 1, 2022, and its Anti-Doping and Medication Control Program on May 22, 2023. This established a national, uniform set of integrity and safety rules.[53] Every thoroughbred that races in the U.S. is required to be registered in a centralized database. More than 32,000 Covered Persons and 48,000 Covered Horses have been registered with HISA. In accordance with HISA's rules, every thoroughbred is required to have a pre-race veterinary inspection every time it races, at any track. Veterinarians across the country have conducted more than 33,400 pre-race inspections since July 1, 2022.[54]

Violations of the Act include the following:[55]

- With respect to a covered horse, strict liability for covered trainers for the:
  - Presence of a prohibited substance or method in a sample or the use of a prohibited substance or method;
  - Presence of a permitted substance in a sample in excess of the amount allowed by the horseracing anti-doping and medication control program; and
  - Use of a permitted method in violation of the applicable limitations established under the horseracing anti-doping and medication control program.
- Attempted use of a prohibited substance or method on a covered horse.
- Possession of any prohibited substance or method.
- Attempted possession of any prohibited substance or method.
- Administration or attempted administration of any prohibited substance or method on a covered horse.
- Refusal or failure, without compelling justification, to submit a covered horse for sample collection.
- Failure to cooperate with the Authority or an agent of the Authority during any investigation.
- Failure to respond truthfully, to the best of a covered person's knowledge, to a question of the Authority or an agent of the Authority with respect to any matter under the jurisdiction of the Authority.
- Tampering or attempted tampering with the application of the safety, performance, or anti-doping and medication control rules or process adopted by the Authority, including:

[51] S. 550.105(5)(c), F.S.
[52] *See* 15 U.S.C., § 3051–3060.
[53] Horseracing Integrity and Safety Authority (HISA), *Overseeing national, uniform integrity and safety rules for Thoroughbred racing in the U.S.*, https://hisaus.org/ (last visited Jan. 20, 2024).
[54] *Id.*
[55] 15 U.S.C., § 3057(a)(2).

- Intentional interference, or an attempt to interfere, with an official or agent of the Authority;
- Procurement or the provision of fraudulent information to the Authority or agent; and
- Intimidation of, or an attempt to intimidate, a potential witness.

The Act requires HISA to establish uniform rules imposing civil sanctions against covered persons or covered horses for safety, performance, and anti-doping and medication control rule violations. Civil sanctions may include:[56]

- Lifetime bans from horseracing, disgorgement of purses, monetary fines and penalties, and changes to the order of finish in covered races; and
- With respect to anti-doping and medication control rule violators, an opportunity to reduce the applicable civil sanctions that is comparable to the opportunity provided by the Protocol for Olympic Movement Testing of the United States Anti-Doping Agency.

In addition to these civil sanctions, the Act authorizes HISA to commence a civil action against a covered person or racetrack that has engaged, is engaged, or is about to engage, in acts or practices constituting a violation in the proper federal district court:[57]

- To enjoin such acts or practices;
- To enforce any civil sanctions imposed; and
- For all other relief to which HISA is entitled.

Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.[58]

According to the Commission, HISA is authorized to suspend people from Florida racetracks for violations associated with the track safety and anti-doping programs. However, the Commission provides that it does not have reciprocity to take action on those individuals' licenses.

The rules of HISA preempt any provision of State law or regulation with respect to matters within the jurisdiction of HISA.[59]

According to the Commission, effective May 22, 2023, HISA preempts the Commission from investigating and adjudicating prohibited substance violations in equines, which includes testing equine samples at a commission laboratory.

Proposed Changes

The bill authorizes the Commission to do the following, if the state racing commission or racing authority of such other state or jurisdiction extends to the commission reciprocal courtesy to maintain the disciplinary control:

- Deny a license to, or revoke, suspend, or place conditions upon or restrictions on a license of any person who has been subject to a provisional suspension or period of ineligibility by HISA or any other such authority designated by the FTC;
- Deny, suspend, or place conditions on a license of any person who is subject to a provisional suspension or period of ineligibility under HISA related to the finding of a prohibited substance in an animal's hair or bodily fluids. Any such suspension expires on the date that the provisional suspension or period of ineligibility imposed by HISA expires.

The bill removes the provision that only allows such actions if the state racing commission or racing authority of such other state or jurisdiction extends to the commission reciprocal courtesy to maintain the disciplinary control.

[56] 15 U.S.C., § 3057(d).
[57] 15 U.S.C., § 3054(j).
[58] *Id*.
[59] 15 U.S.C., § 3054(b).

The bill also requires, if an occupational license is summarily suspended under this provision, the Commission to offer the licensee a postsuspension hearing within 72 hours after commencement of the suspension.

The bill requires the occupational licensee to have the burden of proving by clear and convincing evidence that she or he is not subject to a provisional suspension or period of ineligibility imposed by HISA. The standard of review for the Commission is whether the commission's action was an abuse of its discretion.

Pari-mutuel Wagering Audit Reports

Present Situation

Currently, each permitholder that conducts race meetings or jai alai exhibitions is required to keep records that clearly show the:[60]

- Total number of admissions and the total amount of money contributed to each pari-mutuel pool on each race or exhibition separately; and
- Amount of money received daily from admission fees.

Within 120 days after the end of the fiscal year, such permitholders are required to submit to the Commission a complete annual report of its accounts, audited by a certified public accountant licensed to practice in the state.[61]

Proposed Changes

The bill establishes a single audit and reporting requirement for pari-mutuel and slot machine permitholders that clarifies what is required in the report, and requires the deadline for the report to be 120 days after the end of the fiscal year. The bill:

- Removes the requirement for each permitholder issued a pari-mutuel operating license to include the total number of admissions in the report.
- Requires the records to include cardroom gross receipts, and slot machine revenues.
- Removes the requirement that the records be on each pari-mutuel pool on each race or exhibition separately and the amount of money received daily from admission fees.
- Retains the requirement that within 120 days after the end of its fiscal year, each permitholder submit to the Commission a complete annual report of its accounts, audited by a certified public accountant licensed to practice in the state.

Greyhound Permitholders Unclaimed Tickets

Present Situation

Current law requires all money or other property represented by any unclaimed, uncashed, or abandoned pari-mutuel ticket which has remained in the custody of or under the control of any greyhound permitholder authorized to conduct pari-mutuel wagering in this state for a period of 1 year after the date the pari-mutuel ticket was issued, if the rightful owner or owners thereof have made no claim or demand for such money or other property within that period of time, to be remitted to the state pursuant to s. 550.1645, F.S.[62]

Such permitholder is entitled to a credit in each state fiscal year in an amount equal to the actual amount remitted in the prior state fiscal year which may be applied against any taxes imposed pursuant to this chapter. In addition, each permitholder is required to pay, from any source, an amount not less

[60] S. 550.125(2)(a), F.S.
[61] *Id*.
[62] S. 550.1647, F.S.

than 10 percent of the amount of the credit provided by this section to any bona fide organization that promotes or encourages the adoption of greyhounds.[63]

Proposed Changes

The bill repeals this section of law.

Nonwagering Permits

Present Situation

Current law authorizes the Commission to issue permits for the conduct of horseracing meets without pari-mutuel wagering or any other form of wagering being conducted in conjunction. Such permits are known as nonwagering permits and may be issued only for horseracing meets. A horseracing permitholder need not obtain an additional permit from the Commission to conduct nonwagering racing, but must apply to the Commission for the issuance of a license. The holder of a nonwagering permit is prohibited from conducting pari-mutuel wagering or any other form of wagering in conjunction with racing conducted under the permit.[64]

The holder of a nonwagering permit is exempt from the occupational license requirements in s. 550.105, F.S., and from the imposition of daily license fees and admission tax.[65]

Upon receipt of a nonwagering permit, the permitholder is required to apply to the Commission before June 1 of each year for an annual nonwagering license for the next succeeding calendar year. Such application must set forth the days and locations at which the permitholder will conduct nonwagering horseracing and must indicate any changes in ownership or management of the permitholder occurring since the date of application for the prior license.[66]

On or before August 1 of each year, the Commission is required to issue a license authorizing the nonwagering permitholder to conduct nonwagering horseracing during the succeeding calendar year during the period and for the number of days set forth in the application. [67]

The commission is authorized to conduct an eligibility investigation to determine the qualifications of any new ownership or management interest in the permit. [68]

Proposed Changes

The bill:

- Changes the application and issuance deadlines of nonwagering licenses from a calendar year basis to a fiscal year.
- Revises the nonwagering license application deadline to be consistent with the live operating dates license applications, during the period of January 15 through February 4 annually, and extends the date the Commission must issue a license from August 1 to April 15.
- Authorizes the Commission to extend a nonwagering license from calendar year 2024 to state fiscal year 2024-2025 upon application by the non-wagering license holder.
- Removes the authority of the Commission to conduct an eligibility investigation to determine the qualifications of any new ownership or management interest in the permit.

[63] *Id.*, As used in this chapter, the term "bona fide organization that promotes or encourages the adoption of greyhounds" means any organization that provides evidence of compliance with chapter 496 and possesses a valid exemption from federal taxation issued by the Internal Revenue Service. Such bona fide organization, as a condition of adoption, must provide sterilization of greyhounds by a licensed veterinarian before relinquishing custody of the greyhound to the adopter. The fee for sterilization may be included in the cost of adoption.
[64] S. 550.505(1)(b), F.S.
[65] S. 550.505(1)(c), F.S.
[66] S. 550.505(3)(a), F.S.
[67] S. 550.505(3)(b), F.S.
[68] S. 550.505(3)(c), F.S.

License to Conduct Slot Machine Gaming

Present Situation

Upon application and a finding by the Commission after investigation that the application is complete and the applicant is qualified and payment of the initial license fee, the Commission is authorized to issue a license to conduct slot machine gaming in the designated slot machine gaming area of the eligible facility.[69]

An application may be approved by the Commission only after the voters of the county where the applicant's facility is located have authorized by referendum slot machines within pari-mutuel facilities in that county as specified in s. 23, Art. X of the State Constitution.[70]

Slot machine licenses are only allowed to be issued to licensed pari-mutuel permitholders, and slot machine gaming may be conducted only at the eligible facility at which the permitholder is authorized under its valid pari-mutuel wagering permit to conduct pari-mutuel wagering activities.[71]

As a condition of licensure and to maintain continued authority for the conduct of slot machine gaming, the slot machine licensee is required to continue to be in compliance with the chapter of law governing slot machines and the chapter of law governing pari-mutuel wagering.[72]

Notwithstanding any contrary provision of law and in order to expedite the operation of slot machines at eligible facilities, any eligible facility is entitled within 60 days after the effective date of this act to amend its 2006-2007 pari-mutuel wagering operating license issued by the Commission under ss. 550.0115 and 550.01215, F.S. The Commission must issue a new license to the eligible facility to effectuate any approved change.[73]

Proposed Changes

The bill:

- Establishes a single audit and reporting requirement that clarifies what is required in the report and requires the deadline for the report to be 120 days after the end of the fiscal year.
- Removes the provision that allows an eligible facility within 60 days after the effective date of this act to amend its 2006-2007 pari-mutuel wagering operating license issued by the Commission under ss. 550.0115 and 550.01215, F.S.
- Specifies that the certified public accountant that the audit must be provided by must be licensed under ch. 473, F.S.

Slot Machine Occupational License

Present Situation

Current law requires the following slot machine occupational licenses to be issued to persons or entities that, by virtue of the positions they hold, might be granted access to slot machine gaming areas or to any other person or entity in one of the following categories:[74]

- **General occupational licenses** for general employees, including food service, maintenance, and other similar service and support employees having access to the slot machine gaming area.

[69] S. 551.104(1), F.S.
[70] S. 551.104(2), F.S.
[71] S. 551.104(3), F.S.
[72] S. 551.104(4), F.S.
[73] *Id*.
[74] S. 551.107(2)(a), F.S.

- **Professional occupational licenses** for any person, proprietorship, partnership, corporation, or other entity that is authorized by a slot machine licensee to manage, oversee, or otherwise control daily operations as a slot machine manager, a floor supervisor, security personnel, or any other similar position of oversight of gaming operations, or any person who is not an employee of the slot machine licensee and who provides maintenance, repair, or upgrades or otherwise services a slot machine or other slot machine equipment.
- **Business occupational licenses** for any slot machine management company or company associated with slot machine gaming, any person who manufactures, distributes, or sells slot machines, slot machine paraphernalia, or other associated equipment to slot machine licensees, or any company that sells or provides goods or services associated with slot machine gaming to slot machine licensees.

The commission is authorized to deny, suspend, revoke, or refuse to renew any slot machine license if the applicant has:[75]

- Violated the provisions of this chapter or the rules of the Commission governing the conduct of persons connected with slot machine gaming.
- Been convicted in this state, in any other state, or under the laws of the United States of a capital felony, a felony, or an offense in any other state that would be a felony under the laws of this state involving:
    - Arson;
    - Trafficking in, conspiracy to traffic in, smuggling, importing, conspiracy to smuggle or import, or delivery, sale, or distribution of a controlled substance;
    - Racketeering; or
    - A crime involving a lack of good moral character, or has had a gaming license revoked by this state or any other jurisdiction for any gaming-related offense.
- Been convicted of a felony or misdemeanor in this state, in any other state, or under the laws of the United States if such felony or misdemeanor is related to gambling or bookmaking as described in s. 849.25.

This provision does not appear to allow the Commission to issue a waiver for certain disqualifying offenses.

Proposed Changes

The bill authorizes the Commission to waive the restrictions for slot machine occupational licensee applicants if the applicant establishes that she or he:

- Is of good moral character,
- Has been rehabilitated, and
- The crime is not related to slot machine gaming and is not a capital offense.

Reenactments

The bill reenacts ss. 212.04(2)(c), 550.0351(4), 550.09511(2), 550.09512(4), 550.09514(1) and (2)(e), 550.09516(3), 550.135(1), 550.1625(2), 550.3551(2)(b), (3)(c), and (4), 550.26352(3)-(6), and 550.375(4), F.S., relating to admissions taxes and rates, charity racing days, jail alai taxes, harness horse taxes, greyhound dog racing taxes and purse requirements, thoroughbred horse taxes, daily licensing fees collected from pari-mutuel racing, dogracing taxes, transmitting racing and jai alai information and commingling pari-mutuel pools, authorizing Breeders' Cup Meet pools, and operating certain harness tracks, respectively, to incorporate the amendment made to s. 550.0951, F.S.

B. SECTION DIRECTORY:

Section 1: Creates s. 16.717, F.S., relating to Florida Gaming Control Commission; penalties for false oath or affirmation of applicants for licensure; licensees.

[75] S. 551.107(6), F.S.

Section 2: Creates s. 16.718, F.S., relating to Florida Gaming Control Commission; notification of applicants' or licensees' addresses and place of employment; service.

Section 3: Amends s. 550.01215, F.S., relating to license application; periods of operation; license fees; bond.

Section 4: Amends s. 550.0951, F.S., relating to payment of daily license fee and taxes; penalties.

Section 5: Amends s. 550.09515, F.S., relating to thoroughbred horse taxes; abandoned interest in a permit for nonpayment of taxes.

Section 6: Amends s. 550.105, F.S., relating to occupational licenses of racetrack employees; fees; denial, suspension, and revocation of license; penalties and fines.

Section 7: Amends s. 550.125, F.S., relating to uniform reporting system; bond requirement.

Section 8: Repeals s. 550.1647, F.S., relating to greyhound permitholders; unclaimed tickets; breaks.

Section 9: Amends s. 550.505, F.S., relating to nonwagering permits.

Section 10: Amends s. 551.104, F.S., relating to license to conduct slot machine gaming.

Section 11: Amends s. 551.107, F.S., relating to slot machine occupational license; findings; application; fee.

Section 12: Amends s. 212.04, F.S., relating to admissions tax; rate, procedure, enforcement.

Section 13: Reenacts s. 550.0351, F.S., relating to charity racing days.

Section 14: Reenacts s. 550.09511, F.S., relating to jai alai taxes; abandoned interest in a permit for nonpayment of taxes.

Section 15: Reenacts s. 550.09512, F.S., relating to harness horse taxes; abandoned interest in a permit for nonpayment of taxes.

Section 16: Reenacts s. 550.09514, F.S., relating to greyhound dogracing taxes; purse requirements.

Section 17: Reenacts s. 550.09516, F.S., relating to credit for eligible permitholders conducting thoroughbred racing.

Section 18: Reenacts s. 550.135, F.S., relating to division of moneys derived under this law.

Section 19: Reenacts s. 550.1625, F.S., relating to dogracing; taxes.

Section 10: Reenacts s. 550.3551, F.S., relating to transmission of racing and jai alai information; commingling of pari-mutuel pools.

Section 21: Reenacts s. 550.26352, F.S., relating to Breeders' Cup Meet; pools authorized; conflicts; taxes; credits; transmission of races; rules; application.

Section 22: Reenacts s. 550.375, F.S., relating to operation of certain harness tracks.

Section 23: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Insignificant. According to the Commission, there will be a "minimal decrease in expenditures due to expected decrease in use of certified mail, posting notices in local newspapers, and manhours for hand service of official communication, documents, final orders, and final agency action of the commission."[76]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Extending pari-mutuel wagering operating license application dates may reduce costs for permitholders and the Commission related to complying with the earlier deadlines.

Consolidating pari-mutuel wagering and slot machine license audit reporting requirements and timeframes may reduce redundancy and related costs to the licensees and the Commission.

Authorizing the Commission to waive restrictions for disqualifying offenses for slot machine occupational licensee applicants may result in additional applicants and a positive fiscal impact to the individuals that gain employment, and businesses that want to hire them.

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:

[76] Florida Gaming Control Commission, Agency Analysis of HB 907, p. 6 (Jan. 11, 2024).

According to the Commission, it "may need to update rules in chapter 75 of the Florida Administrative Code as a result of the bill becoming law."[77]

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[77] *Id.*, at 6.

A bill to be entitled

An act relating to gaming licenses and permits; creating s. 16.717, F.S.; providing penalties for persons who falsely swear on an application for, or a renewal of, a license submitted to the Florida Gaming Control Commission; creating s. 16.718, F.S.; requiring applicants for licenses and licensees to notify the commission of certain contact information and of any change in such contact information and providing penalties for failure to comply; providing that delivery of correspondence to the licensee's or applicant's e-mail or mailing address on record with the commission constitutes sufficient notice for official communications, including administrative complaints or other documents setting forth intended or final agency action; amending s. 550.01215, F.S.; revising the timeframe during which a permitholder is required to annually file an application for an operating license for a pari-mutuel facility during the next state fiscal year; revising the date by which the commission is required to issue such license; authorizing, rather than requiring, the commission to take into consideration the impact of such change on state revenues when determining whether to change a performance date; making technical changes; amending

s. 550.0951, F.S.; removing a specified tax credit for greyhound permitholders; making technical changes; reenacting and amending s. 550.09515, F.S.; removing obsolete language; amending s. 550.105, F.S.; expanding the commission's authority to deny, revoke, suspend, or place conditions on certain licenses; authorizing the commission to take such action when a person has been subject to a provisional suspension or period of ineligibility imposed by the federal Horseracing Integrity and Safety Authority related to the finding of a prohibited substance in an animal's hair or bodily fluids; providing an appeals process for a licensee who has been summarily suspended; providing a standard of review for the commission for such appeals; amending s. 550.125, F.S.; revising requirements for maintaining certain financial records and applying such requirements to all, rather than specified, pari-mutuel wagering permitholders; repealing s. 550.1647, F.S., relating to greyhound racing permitholders' unclaimed tickets and breaks; amending s. 550.505, F.S.; revising the timeframe for nonwagering permitholders to apply for a nonwagering license; requiring permitholders to demonstrate that locations designated for nonwagering horseracing are available for such use; revising the timeframe during

which the commission is required to issue certain nonwagering licenses; authorizing the commission to extend a certain nonwagering license for a specified fiscal year; amending s. 551.104, F.S.; removing obsolete language; requiring audits of licensees' receipts and distributions of slot machine revenues to be conducted by a certified public accountant licensed under ch. 473, F.S.; revising the timeframe within which the audit may be filed with the commission; amending s. 551.107, F.S.; authorizing the waiver of required action on the part of the commission under certain circumstances; reenacting ss. 212.04(2)(c), 550.0351(4), 550.09511(2), 550.09512(4), 550.09514(1) and (2)(e), 550.09516(3), 550.135(1), 550.1625(2), 550.3551(2)(b), (3)(c), and (4), 550.26352(3)-(6), and 550.375(4), F.S., relating to admissions taxes and rates, charity racing days, jail alai taxes, harness horse taxes, greyhound dog racing taxes and purse requirements, thoroughbred horse taxes, daily licensing fees collected from pari-mutuel racing, dogracing taxes, transmitting racing and jai alai information and commingling pari-mutuel pools, authorizing Breeders' Cup Meet pools, and operating certain harness tracks, respectively, to incorporate the amendment made to s. 550.0951, F.S., in references

thereto; providing an effective date.

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

Section 1. Section 16.717, Florida Statutes, is created to read:

16.717 Florida Gaming Control Commission; penalties for false oath or affirmation of applicants for licensure; licensees.—Any person who submits an application for a license to the commission, or any person issued a license or renewal by the commission in response to an application, and upon which application the person signing under oath or affirmation has falsely sworn to a material statement, including, but not limited to, the criminal history of the applicant or licensee, is subject to denial of his or her application or to suspension or revocation of his or her license, and is subject to any other penalties provided by law.

Section 2. Section 16.718, Florida Statutes, is created to read:

16.718 Florida Gaming Control Commission; notification of applicants' or licensees' addresses and place of employment; service.—

(1) Each applicant for a license with the commission and each licensee of the commission is responsible for notifying the commission in writing of the applicant's or licensee's current

mailing address, e-mail address, and place of employment. An applicant's failure to notify the commission constitutes a violation of this section, and the applicant's application may be denied. A licensee's failure to notify the commission of any change to the e-mail or mailing address of record constitutes a violation of this section, and the licensee may be disciplined by the commission as described in s. 550.0251(10).

(2) Notwithstanding any provision of law to the contrary, service by e-mail to an applicant's or licensee's e-mail address of record with the commission constitutes sufficient notice to the applicant or licensee for any official communication. The commission may, in its discretion, provide service for any official communication by regular mail to an applicant's or licensee's last known mailing address. The commission is not required to provide service by both e-mail and regular mail.

(3) Notwithstanding any provision of law to the contrary, when an administrative complaint or other document setting forth intended or final agency action is to be served on an applicant or a licensee, the commission is only required to provide service by e-mail to the applicant's or licensee's e-mail address on record with the commission. E-mail service constitutes sufficient notice to the person or persons upon whom an administrative complaint or any other document setting forth intended or final agency action is served. The commission may, in its discretion, provide service of an administrative

complaint or any other documents setting forth intended or final agency action by regular mail to an applicant's or licensee's last known mailing address. The commission is not required to provide service by both e-mail and regular mail.

Section 3. Subsections (1) and (3) of section 550.01215, Florida Statutes, are amended to read:

550.01215 License application; periods of operation; license fees; bond.—

(1) Each permitholder shall annually, during the period between January ~~December~~ 15 and February ~~January~~ 4, file in writing with the commission its application for an operating license for a pari-mutuel facility for the conduct of pari-mutuel wagering during the next state fiscal year, including intertrack and simulcast race wagering. Each application for live performances must specify the number, dates, and starting times of all live performances that the permitholder intends to conduct. It must also specify which performances will be conducted as charity or scholarship performances.

(a) Each application for an operating license also must include:

1. For each permitholder, whether the permitholder intends to accept wagers on intertrack or simulcast events.

2. For each permitholder that elects to operate a cardroom, the dates and periods of operation the permitholder intends to operate the cardroom.

3. For each thoroughbred racing permitholder that elects to receive or rebroadcast out-of-state races, the dates for all performances that the permitholder intends to conduct.

(b)1. A greyhound permitholder may not conduct live racing. A jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder may elect not to conduct live racing or games. A thoroughbred permitholder must conduct live racing. A greyhound permitholder, jai alai permitholder, harness horse racing permitholder, or quarter horse racing permitholder that does not conduct live racing or games retains its permit; is a pari-mutuel facility as defined in s. 550.002(23); if such permitholder has been issued a slot machine license, the facility where such permit is located remains an eligible facility as defined in s. 551.102(4), continues to be eligible for a slot machine license pursuant to s. 551.104(3), and is exempt from ss. 551.104(4)(c) and (10) and 551.114(2); is eligible, but not required, to be a guest track and, if the permitholder is a harness horse racing permitholder, to be a host track for purposes of intertrack wagering and simulcasting pursuant to ss. 550.3551, 550.615, 550.625, and 550.6305; and remains eligible for a cardroom license.

2. A permitholder or licensee may not conduct live greyhound racing or dogracing in connection with any wager for money or any other thing of value in the state. The commission may deny, suspend, or revoke any permit or license under this

chapter if a permitholder or licensee conducts live greyhound racing or dogracing in violation of this subparagraph. In addition to, or in lieu of, denial, suspension, or revocation of such permit or license, the commission may impose a civil penalty of up to $5,000 against the permitholder or licensee for a violation of this subparagraph. All penalties imposed and collected must be deposited with the Chief Financial Officer to the credit of the General Revenue Fund.

(c) Permitholders may amend their applications through February 28.

(d) Notwithstanding any other provision of law, other than a permitholder issued a permit pursuant to s. 550.3345, a pari-mutuel permitholder may not be issued an operating license for the conduct of pari-mutuel wagering, slot machine gaming, or the operation of a cardroom if the permitholder did not hold an operating license for the conduct of pari-mutuel wagering for fiscal year 2020-2021. This paragraph does not apply to a purchaser, transferee, or assignee holding a valid permit for the conduct of pari-mutuel wagering approved pursuant to s. 550.054(15)(a).

(3) The commission shall issue each license no later than April ~~March~~ 15. Each permitholder shall operate all performances at the date and time specified on its license. ~~The commission shall have the authority to approve minor changes in racing dates after a license has been issued.~~ The commission may

approve changes in performance ~~racing~~ dates after a license has been issued ~~when there is no objection from any operating permitholder that is conducting live racing or games and that is located within 50 miles of the permitholder requesting the changes in operating dates~~. ~~In the event of an objection, the commission shall approve or disapprove the change in operating dates based upon the impact on operating permitholders located within 50 miles of the permitholder requesting the change in operating dates.~~ In making the determination to change performance ~~racing~~ dates, the commission may ~~shall~~ take into consideration the impact of such changes on state revenues.

Section 4. Subsection (1), paragraph (b) of subsection (3), and subsection (5) of section 550.0951, Florida Statutes, are amended to read:

550.0951 Payment of daily license fee and taxes; penalties.—

(1) DAILY LICENSE FEE.—

(a) Each person engaged in the business of conducting race meetings or jai alai games under this chapter, hereinafter referred to as the "permitholder," "licensee," or "permittee," shall pay to the commission, for the use of the commission, a daily license fee on each live or simulcast pari-mutuel event of $100 for each horserace and $80 for each dograce and $40 for each jai alai game conducted at a racetrack or fronton licensed under this chapter. The ~~In addition to the tax exemption~~

~~specified in s. 550.09514(1) of $360,000 or $500,000 per greyhound permitholder per state fiscal year, each greyhound permitholder shall receive in the current state fiscal year a tax credit equal to the number of live greyhound races conducted in the previous state fiscal year times the daily license fee specified for each dograce in this subsection applicable for the previous state fiscal year. This~~ tax ~~credit and the~~ exemption in s. 550.09514(1) applies ~~shall be applicable~~ to any tax imposed by this chapter or the daily license fees imposed by this chapter except during any charity or scholarship performances conducted pursuant to s. 550.0351. Each permitholder shall pay daily license fees not to exceed $500 per day on any simulcast races or games on which such permitholder accepts wagers regardless of the number of out-of-state events taken or the number of out-of-state locations from which such events are taken. This license fee shall be deposited with the Chief Financial Officer to the credit of the Pari-mutuel Wagering Trust Fund.

(b) Each permitholder that cannot utilize the full amount of the exemption of $360,000 or $500,000 provided in s. 550.09514(1) ~~or the daily license fee credit provided in this section~~ may, after notifying the commission in writing, elect once per state fiscal year on a form provided by the commission to transfer such exemption or credit or any portion thereof to any greyhound permitholder which acts as a host track to such

permitholder for the purpose of intertrack wagering. Once an election to transfer such exemption or credit is filed with the commission, it shall not be rescinded. The commission shall disapprove the transfer when the amount of the exemption or credit or portion thereof is unavailable to the transferring permitholder or when the permitholder who is entitled to transfer the exemption or credit or who is entitled to receive the exemption or credit owes taxes to the state pursuant to a deficiency letter or administrative complaint issued by the commission. Upon approval of the transfer by the commission, the transferred tax exemption or credit is ~~shall be~~ effective for the ~~first performance of the~~ next payment period as specified in subsection (5). The exemption or credit transferred to such host track may be applied by such host track against any taxes imposed by this chapter or daily license fees imposed by this chapter. The greyhound permitholder host track to which such exemption or credit is transferred shall reimburse such permitholder the exact monetary value of such transferred exemption or credit as actually applied against the taxes and daily license fees of the host track. The commission shall ensure that all transfers of exemption or credit are made in accordance with this subsection and has ~~shall have~~ the authority to adopt rules to ensure the implementation of this section.

(3) TAX ON HANDLE.—Each permitholder shall pay a tax on contributions to pari-mutuel pools, the aggregate of which is

hereinafter referred to as "handle," on races or games conducted by the permitholder. The tax is imposed daily and is based on the total contributions to all pari-mutuel pools conducted during the daily performance. If a permitholder conducts more than one performance daily, the tax is imposed on each performance separately.

(b)1. The tax on handle for dogracing is 5.5 percent of the handle~~, except that for live charity performances held pursuant to s. 550.0351, and for intertrack wagering on such charity performances at a guest greyhound track within the market area of the host, the tax is 7.6 percent of the handle~~.

2. The tax on handle for jai alai is 7.1 percent of the handle.

(5) PAYMENT AND DISPOSITION OF FEES AND TAXES.—Payments imposed by this section must ~~shall~~ be paid to the commission. The commission shall deposit these sums with the Chief Financial Officer, to the credit of the Pari-mutuel Wagering Trust Fund, hereby established. The permitholder shall remit to the commission payment for the daily license fee, the admission tax, the tax on handle, and the breaks tax. Such p~~ayments shall be remitted by 3 p.m. Wednesday of each week for taxes imposed and collected for the preceding week ending on Sunday. Beginning on July 1, 2012, such~~ payments must ~~shall~~ be remitted by 3 p.m. on the 5th day of each calendar month for taxes imposed and collected for the preceding calendar month. If the 5th day of

the calendar month falls on a weekend, payments must ~~shall~~ be remitted by 3 p.m. the first Monday following the weekend. Permitholders shall file a report under oath by the 5th day of each calendar month for all taxes remitted during the preceding calendar month. Such payments must ~~shall~~ be accompanied by a report under oath showing the total of all admissions, the pari-mutuel wagering activities for the preceding calendar month, and such other information as may be prescribed by the commission.

Section 5. Subsection (7) of section 550.09515, Florida Statutes, is amended, and subsection (4) of that section is reenacted for the purpose of incorporating the amendment made by this act to section 550.0951, Florida Statutes, to read:

550.09515 Thoroughbred horse taxes; abandoned interest in a permit for nonpayment of taxes.—

(4) In the event that a court of competent jurisdiction determines any of the provisions of this section to be unconstitutional, it is the intent of the Legislature that the provisions contained in this section shall be null and void and that the provisions of s. 550.0951 shall apply to all thoroughbred horse permitholders beginning on the date of such judicial determination. To this end, the Legislature declares that it would not have enacted any of the provisions of this section individually and, to that end, expressly finds them not to be severable.

~~(7) If a thoroughbred permitholder fails to operate all~~

~~performances on its 2001-2002 license, failure to pay tax on handle for a full schedule of live races for those performances in the 2001-2002 fiscal year does not constitute failure to pay taxes on handle for a full schedule of live races in a fiscal year for the purposes of subsection (3). This subsection may not be construed as forgiving a thoroughbred permitholder from paying taxes on performances conducted at its facility pursuant to its 2001-2002 license other than for failure to operate all performances on its 2001-2002 license. This subsection expires July 1, 2003.~~

Section 6. Paragraphs (a) and (c) of subsection (5) of section 550.105, Florida Statutes, are amended, and paragraph (g) is added to that subsection, to read:

550.105 Occupational licenses of racetrack employees; fees; denial, suspension, and revocation of license; penalties and fines.—

(5)(a) The commission may do the following, if the state racing commission or racing authority of such other state or jurisdiction extends to the commission reciprocal courtesy to maintain the disciplinary control:

1. Deny a license to or revoke, suspend, or place conditions upon or restrictions on a license of any person who has been refused a license by any other state racing commission or racing authority or has been subject to a provisional suspension or period of ineligibility by the federal Horseracing

Integrity and Safety Authority (HISA), or another such authority designated by the Federal Trade Commission.~~;~~

2. Deny, suspend, or place conditions on a license of any person who is under suspension, ~~or~~ has unpaid fines in another jurisdiction, or is subject to a provisional suspension or period of ineligibility under HISA related to the finding of a prohibited substance in an animal's hair or bodily fluids. Any suspension imposed pursuant to this subparagraph expires on the date that the provisional suspension or period of ineligibility imposed by HISA expires.~~;~~

~~if the state racing commission or racing authority of such other state or jurisdiction extends to the commission reciprocal courtesy to maintain the disciplinary control.~~

(c) The commission may deny, declare ineligible, or revoke any occupational license if the applicant for such license has been convicted of a felony or misdemeanor in this state, in any other state, or under the laws of the United States, if such felony or misdemeanor is related to gambling or bookmaking, as contemplated in s. 849.25, or involves cruelty to animals. If the applicant establishes that she or he is of good moral character, that she or he has been rehabilitated, and that the crime she or he was convicted of is not related to pari-mutuel wagering and is not a capital offense, the restrictions excluding offenders may be waived by ~~the director of~~ the

commission.

(g) If an occupational license is summarily suspended under this subsection, the commission must offer the licensee a postsuspension hearing within 72 hours after commencement of the suspension. The occupational licensee has the burden of proving by clear and convincing evidence that she or he is not subject to a provisional suspension or period of ineligibility imposed by HISA. The standard of review for the commission under this paragraph is whether the commission's action was an abuse of its discretion.

Section 7. Paragraph (a) of subsection (2) of section 550.125, Florida Statutes, is amended to read:

550.125 Uniform reporting system; bond requirement.—

(2)(a) Each permitholder issued an operating license ~~that conducts race meetings or jai alai exhibitions~~ under this chapter shall keep records that clearly show the ~~total number of admissions and the~~ total amount of money contributed to ~~each~~ pari-mutuel pools, cardroom gross receipts, and slot machine revenues ~~on each race or exhibition separately and the amount of money received daily from admission fees~~ and, within 120 days after the end of its fiscal year, shall submit to the commission a complete annual report of its accounts, audited by a certified public accountant licensed to practice in the state.

Section 8. Section 550.1647, Florida Statutes, is repealed.

Section 9. Subsection (3) of section 550.505, Florida Statutes, is amended to read:

550.505 Nonwagering permits.—

(3)(a) Upon receipt of a nonwagering permit, the permitholder shall apply annually between January 15 and February 4 ~~must apply to the commission before June 1~~ of each year for a ~~an annual~~ nonwagering license for the next state fiscal ~~succeeding calendar~~ year. Such application must set forth the days and locations at which the permitholder will conduct nonwagering horseracing, must demonstrate that any location to which the nonwagering license applies is available for such use, and must indicate any changes in ownership or management of the permitholder occurring since the date of application for the prior license.

(b) On or before April 15 ~~August 1~~ of each year, the commission shall issue a license authorizing the nonwagering permitholder to conduct nonwagering horseracing during the next state fiscal ~~succeeding calendar~~ year during the period and for the number of days set forth in the application, subject to ~~all other provisions of~~ this section.

(c) The commission may extend a nonwagering license during the 2024 calendar year through the 2024-2025 fiscal year upon application for such extension by the nonwagering permitholder ~~conduct an eligibility investigation to determine the qualifications of any new ownership or management interest in~~

~~the permit~~.

Section 10. Paragraph (b) of subsection (4) and subsection (8) of section 551.104, Florida Statutes, are amended to read:

551.104 License to conduct slot machine gaming.—

(4) As a condition of licensure and to maintain continued authority for the conduct of slot machine gaming, the slot machine licensee shall:

(b) Continue to be in compliance with chapter 550, when ~~where~~ applicable, and maintain the pari-mutuel permit and license in good standing pursuant to ~~the provisions of~~ chapter 550. ~~Notwithstanding any contrary provision of law and in order to expedite the operation of slot machines at eligible facilities, any eligible facility shall be entitled within 60 days after the effective date of this act to amend its 2006-2007 pari-mutuel wagering operating license issued by the commission under ss. 550.0115 and 550.01215. The commission shall issue a new license to the eligible facility to effectuate any approved change.~~

(8) A slot machine licensee shall file with the commission an audit of the receipt and distribution of all slot machine revenues provided by an independent certified public accountant licensed under chapter 473 verifying compliance with all financial and auditing provisions of this chapter and ~~the~~ associated rules ~~adopted under this chapter~~. The audit must include verification of compliance with all statutes and rules

regarding all required records of slot machine operations. Such audit must ~~shall~~ be filed within 120 ~~60~~ days after the end of its fiscal year ~~completion of the permitholder's pari-mutuel meet~~.

Section 11. Paragraph (b) of subsection (6) of section 551.107, Florida Statutes, is amended to read:

551.107 Slot machine occupational license; findings; application; fee.—

(6)

(b) The commission may deny, revoke, or refuse to renew any slot machine occupational license if the applicant for such license or the licensee has been convicted of a felony or misdemeanor in this state, in any other state, or under the laws of the United States if such felony or misdemeanor is related to gambling or bookmaking as described in s. 849.25. The restrictions authorized in this paragraph may be waived by the commission if the applicant establishes that she or he is of good moral character, that she or he has been rehabilitated, and that the crime she or he was convicted of is not related to slot machine gaming and is not a capital offense.

Section 12. For the purpose of incorporating the amendment made by this act to section 550.0951, Florida Statutes, in a reference thereto, paragraph (c) of subsection (2) of section 212.04, Florida Statutes, is reenacted to read:

212.04 Admissions tax; rate, procedure, enforcement.—

(2)

(c) The taxes imposed by this section shall be collected in addition to the admission tax collected pursuant to s. 550.0951, but the amount collected under s. 550.0951 shall not be subject to taxation under this chapter.

Section 13. For the purpose of incorporating the amendment made by this act to section 550.0951, Florida Statutes, in a reference thereto, subsection (4) of section 550.0351, Florida Statutes, is reenacted to read:

550.0351 Charity racing days.—

(4) The total of all profits derived from the conduct of a charity day performance must include all revenues derived from the conduct of that racing performance, including all state taxes that would otherwise be due to the state, except that the daily license fee as provided in s. 550.0951(1) and the breaks for the promotional trust funds as provided in s. 550.2625(3), (4), (5), (7), and (8) shall be paid to the commission. All other revenues from the charity racing performance, including the commissions, breaks, and admissions and the revenues from parking, programs, and concessions, shall be included in the total of all profits.

Section 14. For the purpose of incorporating the amendment made by this act to section 550.0951, Florida Statutes, in a reference thereto, subsection (2) of section 550.09511, Florida Statutes, is reenacted to read:

550.09511 Jai alai taxes; abandoned interest in a permit for nonpayment of taxes.—

(2) Notwithstanding the provisions of s. 550.0951(3)(b), wagering on live jai alai performances shall be subject to the following taxes:

(a)1. The tax on handle per performance for live jai alai performances is 4.25 percent of handle per performance. However, when the live handle of a permitholder during the preceding state fiscal year was less than $15 million, the tax shall be paid on the handle in excess of $30,000 per performance per day.

2. The tax rate shall be applicable only until the requirements of paragraph (b) are met.

(b) At such time as the total of admissions tax, daily license fee, and tax on handle for live jai alai performances paid to the commission by a permitholder during the current state fiscal year exceeds the total state tax revenues from wagering on live jai alai performances paid or due by the permitholder in fiscal year 1991-1992, the permitholder shall pay tax on handle for live jai alai performances at a rate of 2.55 percent of the handle per performance for the remainder of the current state fiscal year. For purposes of this section, total state tax revenues on live jai alai wagering in fiscal year 1991-1992 shall include any admissions tax, tax on handle, surtaxes on handle, and daily license fees.

(c) If no tax on handle for live jai alai performances

were paid to the commission by a jai alai permitholder during the 1991-1992 state fiscal year, then at such time as the total of admissions tax, daily license fee, and tax on handle for live jai alai performances paid to the commission by a permitholder during the current state fiscal year exceeds the total state tax revenues from wagering on live jai alai performances paid or due by the permitholder in the last state fiscal year in which the permitholder conducted a full schedule of live games, the permitholder shall pay tax on handle for live jai alai performances at a rate of 3.3 percent of the handle per performance for the remainder of the current state fiscal year. For purposes of this section, total state tax revenues on live jai alai wagering shall include any admissions tax, tax on handle, surtaxes on handle, and daily license fees. This paragraph shall take effect July 1, 1993.

(d) A permitholder who obtains a new permit issued by the commission subsequent to the 1991-1992 state fiscal year and a permitholder whose permit has been converted to a jai alai permit under the provisions of this chapter, shall, at such time as the total of admissions tax, daily license fee, and tax on handle for live jai alai performances paid to the commission by the permitholder during the current state fiscal year exceeds the average total state tax revenues from wagering on live jai alai performances for the first 3 consecutive jai alai seasons paid to or due the commission by the permitholder and during

which the permitholder conducted a full schedule of live games, pay tax on handle for live jai alai performances at a rate of 3.3 percent of the handle per performance for the remainder of the current state fiscal year.

(e) The payment of taxes pursuant to paragraphs (b), (c), and (d) shall be calculated and commence beginning the day in which the permitholder is first entitled to the reduced rate specified in this section and the report of taxes required by s. 550.0951(5) is submitted to the commission.

(f) A jai alai permitholder paying taxes under this section shall retain the breaks and pay an amount equal to the breaks as special prize awards which shall be in addition to the regular contracted prize money paid to jai alai players at the permitholder's facility. Payment of the special prize money shall be made during the permitholder's current meet.

(g) For purposes of this section, "handle" shall have the same meaning as in s. 550.0951, and shall not include handle from intertrack wagering.

Section 15. For the purpose of incorporating the amendment made by this act to section 550.0951, Florida Statutes, in a reference thereto, subsection (4) of section 550.09512, Florida Statutes, is reenacted to read:

550.09512 Harness horse taxes; abandoned interest in a permit for nonpayment of taxes.—

(4) In the event that a court of competent jurisdiction

determines any of the provisions of this section to be unconstitutional, it is the intent of the Legislature that the provisions contained in this section shall be null and void and that the provisions of s. 550.0951 shall apply to all harness horse permitholders beginning on the date of such judicial determination. To this end, the Legislature declares that it would not have enacted any of the provisions of this section individually and, to that end, expressly finds them not to be severable.

Section 16. For the purpose of incorporating the amendment made by this act to section 550.0951, Florida Statutes, in a reference thereto, subsection (1) and paragraph (e) of subsection (2) of section 550.09514, Florida Statutes, is reenacted to read:

550.09514 Greyhound dogracing taxes; purse requirements.—

(1) Wagering on greyhound racing is subject to a tax on handle for live greyhound racing as specified in s. 550.0951(3). However, each permitholder shall pay no tax on handle until such time as this subsection has resulted in a tax savings per state fiscal year of $360,000. Thereafter, each permitholder shall pay the tax as specified in s. 550.0951(3) on all handle for the remainder of the permitholder's current race meet. For the three permitholders that conducted a full schedule of live racing in 1995, and are closest to another state that authorizes greyhound pari-mutuel wagering, the maximum tax savings per state fiscal

year shall be $500,000. The provisions of this subsection relating to tax exemptions shall not apply to any charity or scholarship performances conducted pursuant to s. 550.0351.

(2)

(e) In addition to the purse requirements of paragraphs (a)-(c), each greyhound permitholder shall pay as purses an amount equal to one-third of the amount of the tax reduction on live and simulcast handle applicable to such permitholder as a result of the reductions in tax rates provided by this act through the amendments to s. 550.0951(3). With respect to intertrack wagering when the host and guest tracks are greyhound permitholders not within the same market area, an amount equal to the tax reduction applicable to the guest track handle as a result of the reduction in tax rate provided by this act through the amendment to s. 550.0951(3) shall be distributed to the guest track, one-third of which amount shall be paid as purses at the guest track. However, if the guest track is a greyhound permitholder within the market area of the host or if the guest track is not a greyhound permitholder, an amount equal to such tax reduction applicable to the guest track handle shall be retained by the host track, one-third of which amount shall be paid as purses at the host track. These purse funds shall be disbursed in the week received if the permitholder conducts at least one live performance during that week. If the permitholder does not conduct at least one live performance during the week

in which the purse funds are received, the purse funds shall be disbursed weekly during the permitholder's next race meet in an amount determined by dividing the purse amount by the number of performances approved for the permitholder pursuant to its annual license, and multiplying that amount by the number of performances conducted each week. The commission shall conduct audits necessary to ensure compliance with this paragraph.

Section 17. For the purpose of incorporating the amendment made by this act to section 550.0951, Florida Statutes, in a reference thereto, subsection (3) of section 550.09516, Florida Statutes, is reenacted to read:

550.09516 Credit for eligible permitholders conducting thoroughbred racing.—

(3) Beginning July 1, 2023, and each July 1 thereafter, each permitholder granted a credit pursuant to this section may apply the credit to the taxes and fees due under ss. 550.0951, 550.09515, and 550.3551(3), less any credit received by the permitholder under s. 550.09515(6), and less the amount of state taxes that would otherwise be due to the state for the conduct of charity day performances under s. 550.0351(4). The unused portion of the credit may be carried forward and applied each month as taxes and fees become due. Any unused credit remaining at the end of a fiscal year expires and may not be used.

Section 18. For the purpose of incorporating the amendment made by this act to section 550.0951, Florida Statutes, in a

reference thereto, subsection (1) of section 550.135, Florida Statutes, is reenacted to read:

550.135 Division of moneys derived under this law.—All moneys that are deposited with the Chief Financial Officer to the credit of the Pari-mutuel Wagering Trust Fund shall be distributed as follows:

(1) The daily license fee revenues collected pursuant to s. 550.0951(1) shall be used to fund the operating cost of the commission; however, other collections in the Pari-mutuel Wagering Trust Fund may also be used to fund the operation of the commission in accordance with authorized appropriations.

Section 19. For the purpose of incorporating the amendment made by this act to section 550.0951, Florida Statutes, in a reference thereto, subsection (2) of section 550.1625, Florida Statutes, is reenacted to read:

550.1625 Dogracing; taxes.—

(2) A permitholder that conducts a dograce meet under this chapter must pay the daily license fee, the admission tax, the breaks tax, and the tax on pari-mutuel handle as provided in s. 550.0951 and is subject to all penalties and sanctions provided in s. 550.0951(6).

Section 20. For the purpose of incorporating the amendment made by this act to section 550.0951, Florida Statutes, in a reference thereto, paragraph (b) of subsection (2), paragraph (c) of subsection (3), and subsection (4) of section 550.3551,

Florida Statutes, is reenacted to read:

550.3551 Transmission of racing and jai alai information; commingling of pari-mutuel pools.—

(2) Any horse track or fronton licensed under this chapter may transmit broadcasts of races or games conducted at the enclosure of the licensee to locations outside this state.

(b) Wagers accepted by any out-of-state pari-mutuel permitholder or licensed betting system on a race broadcasted under this subsection may be, but are not required to be, included in the pari-mutuel pools of the horse track in this state that broadcasts the race upon which wagers are accepted. The handle, as referred to in s. 550.0951(3), does not include any wagers accepted by an out-of-state pari-mutuel permitholder or licensed betting system, irrespective of whether such wagers are included in the pari-mutuel pools of the Florida permitholder as authorized by this subsection.

(3) Any horse track licensed under this chapter may receive broadcasts of horseraces conducted at other horse racetracks located outside this state at the racetrack enclosure of the licensee during its racing meet.

(c) All forms of pari-mutuel wagering are allowed on races broadcast under this section, and all money wagered by patrons on such races shall be computed as part of the total amount of money wagered at each racing performance for purposes of taxation under ss. 550.0951, 550.09512, and 550.09515. Section

550.2625(2)(a), (b), and (c) does not apply to any money wagered on races broadcast under this section. Similarly, the takeout shall be increased by breaks and uncashed tickets for wagers on races broadcast under this section, notwithstanding any contrary provision of this chapter.

(4) Any greyhound permitholder or jai alai permitholder licensed under this chapter may receive at its licensed location broadcasts of dograces or jai alai games conducted at other tracks or frontons located outside the state. All forms of pari-mutuel wagering are allowed on dograces or jai alai games broadcast under this subsection. All money wagered by patrons on dograces broadcast under this subsection shall be computed in the amount of money wagered each performance for purposes of taxation under ss. 550.0951 and 550.09511.

Section 21. For the purpose of incorporating the amendment made by this act to section 550.0951, Florida Statutes, in a reference thereto, subsections (3) through (6) of section 550.26352, Florida Statutes, are reenacted to read:

550.26352 Breeders' Cup Meet; pools authorized; conflicts; taxes; credits; transmission of races; rules; application.—

(3) If the permitholder conducting the Breeders' Cup Meet is located within 35 miles of one or more permitholders scheduled to conduct a thoroughbred race meet on any of the 3 days of the Breeders' Cup Meet, then operation on any of those 3 days by the other permitholders is prohibited. As compensation

for the loss of racing days caused thereby, such operating permitholders shall receive a credit against the taxes otherwise due and payable to the state under ss. 550.0951 and 550.09515. This credit shall be in an amount equal to the operating loss determined to have been suffered by the operating permitholders as a result of not operating on the prohibited racing days, but shall not exceed a total of $950,000. The determination of the amount to be credited shall be made by the commission upon application by the operating permitholder. The tax credits provided in this subsection shall not be available unless an operating permitholder is required to close a bona fide meet consisting in part of no fewer than 10 scheduled performances in the 15 days immediately preceding or 10 scheduled performances in the 15 days immediately following the Breeders' Cup Meet. Such tax credit shall be in lieu of any other compensation or consideration for the loss of racing days. There shall be no replacement or makeup of any lost racing days.

(4) Notwithstanding any provision of ss. 550.0951 and 550.09515, the permitholder conducting the Breeders' Cup Meet shall pay no taxes on the handle included within the pari-mutuel pools of said permitholder during the Breeders' Cup Meet.

(5) The permitholder conducting the Breeders' Cup Meet shall receive a credit against the taxes otherwise due and payable to the state under ss. 550.0951 and 550.09515 generated during said permitholder's next ensuing regular thoroughbred

race meet. This credit shall be in an amount not to exceed $950,000 and shall be utilized by the permitholder to pay the purses offered by the permitholder during the Breeders' Cup Meet in excess of the purses which the permitholder is otherwise required by law to pay. The amount to be credited shall be determined by the commission upon application of the permitholder which is subject to audit by the commission.

(6) The permitholder conducting the Breeders' Cup Meet shall receive a credit against the taxes otherwise due and payable to the state under ss. 550.0951 and 550.09515 generated during said permitholder's next ensuing regular thoroughbred race meet. This credit shall be in an amount not to exceed $950,000 and shall be utilized by the permitholder for such capital improvements and extraordinary expenses as may be necessary for operation of the Breeders' Cup Meet. The amount to be credited shall be determined by the commission upon application of the permitholder which is subject to audit by the commission.

Section 22. For the purpose of incorporating the amendment made by this act to section 550.0951, Florida Statutes, in a reference thereto, subsection (4) of section 550.375, Florida Statutes, is reenacted to read:

550.375 Operation of certain harness tracks.—

(4) The permitholder conducting a harness horse race meet must pay the daily license fee, the admission tax, the tax on

breaks, and the tax on pari-mutuel handle provided in s. 550.0951 and is subject to all penalties and sanctions provided in s. 550.0951(6).

Section 23. This act shall take effect July 1, 2024.

HB 1007

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1007 Nicotine Products
SPONSOR(S): Overdorf
TIED BILLS: **IDEN./SIM. BILLS:** SB 1006

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Larkin	Anstead
2) Appropriations Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) is the state agency responsible for the regulation and enforcement of tobacco products under part I of ch. 569, F.S., and nicotine products under part II of ch. 569, F.S.

The bill:

- Provides definitions for “nicotine products manufacturer”, “wholesale nicotine products dealer", and “wholesale nicotine products dealer permit”.
- Requires manufacturers to certify nicotine products with the Division and provide evidence that they have sought approval with the Food and Drug Administration (FDA).
- Creates a new wholesale nicotine product permit and requires wholesalers who do not have tobacco permit to register, and only buy products on the directory.
- Provides that the Division is permitted to conduct unannounced inspections of nicotine product manufacturers who submitted their certification paperwork or are on the directory.
- Provides administrative fines and imposes criminal penalties for violations of certain provisions.
- Mandates retail nicotine product permit holders, other than nicotine manufacturers selling direct to consumers, to purchase only from permitted wholesalers and only purchase registered products.
- Modifies retail nicotine product dealer permit requirements.
- Allows law enforcement to seize and destroy non-registered nicotine products.

The bill provides an effective date of October 1, 2024.

The bill may have an insignificant indeterminate fiscal impact on the state government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Federal Regulation of Tobacco Products

The Family Smoking Prevention and Tobacco Control Act of 2009 (Tobacco Control Act) gives the U.S. Food and Drug Administration (FDA) authority to regulate the manufacture, distribution, and marketing of tobacco products to protect the public health. The Tobacco Control Act provides advertising and labeling guidelines, provides standards for tobacco products, and requires face-to-face transactions for tobacco sales with certain exceptions.[1]

On August 8, 2016, the FDA extended the definition of "**tobacco product[s]"** regulated under the Act to **include electronic nicotine delivery systems** (ENDS). ENDS include e-cigarettes, e-cigars, e-hookah, vape pens, personal vaporizers and electronic pipes. Additionally, the definition of tobacco products includes components and parts such as e-liquids, tanks, cartridges, pods, wicks, and atomizers. On April 14, 2022, the FDA's authority was further expanded to include tobacco products containing nicotine from any source, including synthetic nicotine.[2]

Federal law preempts states from providing additional or different requirements for tobacco products in regards to "standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products." However, federal law explicitly preserves the right of states, or any political subdivision of a state, to enact laws, rules, regulations or other measures related to prohibiting the sale, distribution, possession, exposure to, access to, advertising and promotion of tobacco products which are more stringent than federal requirements.[3]

Registration by Manufacturers

Under federal law, manufacturers[4] are required initially and annually thereafter to register the name[5], places of business, and all such establishments of that manufacturer in any State with the FDA.[6] These manufacturers are required to register any additional places which they own or operate and start to manufacture, prepare, compound, or process a tobacco product or tobacco products.[7]

FDA Premarket Review Application Process for Tobacco Products[8]

Before a new tobacco product[9] can be distributed into interstate commerce, the manufacturer is required to submit a marketing application to the FDA and receive authorization.[10] These applications

[1] Federal Food, Drug, and Cosmetic Act, 21 USC § 351 et seq; 15 U.S.C. s. 1333, s. 1335; 21 U.S.C. s. 387g, s. 387f.
[2] "NTN is the term used to describe nicotine that did not come from a tobacco plant. NTN includes 'synthetic' nicotine." U.S. Food and Drug Administration. *Regulation and Enforcement of Non-Tobacco Nicotine (NTN) Products*, U.S. Food and Drug Administration, www.fda.gov/tobacco-products/products-ingredients-components/regulation-and-enforcement-non-tobacco-nicotine-ntn-products (last visited Jan. 19, 2024).
[3] 21 U.S.C. § 387p.
[4] "The term 'manufacture, preparation, compounding, or processing' shall include repackaging or otherwise changing the container, wrapper, or labeling of any tobacco product package in furtherance of the distribution of the tobacco product from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user." 21 USCA § 387e(a)(1).
[5] "The term 'name' shall include in the case of a partnership the name of each partner and, in the case of a corporation, the name of each corporate officer and director, and the State of incorporation." 21 USCA § 387e(a)(2).
[6] 21 USCA § 387e(b)(c).
[7] 21 USCA § 387e(d).
[8] *See generally*, 21 U.S.C. § 387j.
[9] "A 'new tobacco product' is defined as any product not commercially marketed in the U.S. as of Feb. 15, 2007, or the modification of a tobacco product where the modified product was commercially marketed in the U.S. after Feb. 15, 2007." 21 U.S.C. § 387j(1).

are reviewed by the FDA to determine whether the product meets the proper requirements to receive marketing authorization. Marketing authorization can be achieved through a Premarket Tobacco Product Application (PMTA), Substantial Equivalence (SE) Report, or Exemption from Substantial Equivalence Request (EX REQ).[11] The FDA may issue a marketing granted order, temporarily suspend a marketing order, withdraw a marketing granted order, or issue a marketing denial order.[12] Preexisting tobacco products were required to submit marketing applications to the FDA and receive authorization by a particular date depending on the kind of tobacco product. A tobacco manufacturer may challenge the FDA's marketing denial.[13] Manufactures must hold onto records that show their tobacco products are legally on the market. [14]

An applicant may submit a PMTA to demonstrate that a new tobacco product meets the requirements to receive a marketing granted order.[15] The PMTA must contain certain information[16] for the FDA to ascertain whether there are any applicable grounds for a marketing denial order. "A PMTA must demonstrate the new tobacco product would be appropriate for the protection of the public health and takes into account the increased or decreased likelihood that existing users of tobacco products will stop using such products, as well as the increased or decreased likelihood that those who do not use tobacco products will start using such products."[17]

A SE Report can be submitted by the tobacco manufacturer to seek an FDA substantially equivalent order. The applicant must provide information on the new tobacco product's characteristics and compare its characteristics to another tobacco product.[18] The SE Report must contain certain information to allow the FDA to determine whether the new tobacco product is substantially equivalent to a tobacco product that was commercially marketed in the United States as of February 15, 2007.[19]

On the other hand, FDA may exempt from the requirements relating to the demonstration that a tobacco product is substantially equivalent tobacco products that are modified by adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive if certain conditions are met. A request for an exemption (Ex Req) from the requirement of showing a substantial equivalence may be made only by the manufacturer of a legally marketed tobacco product for a minor modification to that tobacco product.[20]

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[10] *Market and Distribute a Tobacco Product*, U.S. Food and Drug Administration, www.fda.gov/tobacco-products/products-guidance-regulations/market-and-distribute-tobacco-product (last visited Jan. 19, 2024).
[11] https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/tobacco-products-marketing-orders
[12] 21 U.S.C. § 387j.
[13] *See* Melissa Kress, *Bat to Challenge FDA's Marketing Denial Order for Flavored Vuse Products*, Convenience Store News, (Oct. 13, 2023), https://csnews.com/bat-challenge-fdas-marketing-denial-order-flavored-vuse-products (last visited Jan. 20, 2024).
[14]
[15] 21 CFR 1114.5.
[16] The PMTA must include information, such as, full reports of investigations of health risks, effect on the population as a whole, product formulation, statement of compliance and certification, and manufacturing. *See* 21 CFR § 1114.7(a).
[17] *Supra* note 9.
[18] *See* 21 CFR 1107.16 and 21 CFR 1107.18.
[19] 21 CFR 1107.18.
[20] 21 CFR 1107.1.

Florida Regulation of Tobacco and Nicotine Products

The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) is the state agency responsible for the regulation and enforcement of tobacco products under part I of ch. 569, F.S., and nicotine products under part II of ch. 569, F.S. Under Florida law, tobacco products and nicotine products have different definitions. This differs from federal law where tobacco products include nicotine products.

Regulation of Tobacco Products

"Tobacco products" include loose tobacco leaves, and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.[21]

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

"Tobacco products" in either definition does not include nicotine products or nicotine dispensing devices.

Under Section 210.01, F.S.:

"Wholesale dealer" means any person located inside or outside this state who sells cigarettes[22] to retail dealers or other persons for purposes of resale only. Such term shall not include any cigarette manufacturer, export warehouse proprietor, or importer with a valid permit [23]if such person sells or distributes cigarettes in this state only to dealers who are agents and who hold valid and current permits under s. 210.15, F.S. or to any cigarette manufacturer, export warehouse proprietor, or importer who holds a valid and current permit under 26 U.S.C. s. 5712.[24]

"Distributing agent" means every person, firm or corporation in this state who acts as an agent for any person, firm or corporation outside or inside the state by receiving cigarettes in interstate or intrastate commerce and storing such cigarettes subject to distribution or delivery upon order from said principal to wholesale dealers and other distributing agents inside or outside this state.[25]

Cigarette and Tobacco Products Wholesalers, Distributors, and Manufacturers

A person must obtain a permit from the Division in order to distribute tobacco products, not including cigarettes or cigars. A person must obtain a permit for each place of business. The fee for such permit is $25.[26]

A person must obtain a cigarette permit from the Division in order to import, export, manufacture, deal at wholesale, or distribute cigarettes in the state. A person must obtain a permit for each place of business in the state or its principal place of business if the person does not have a business in this state. The fee for such permit is $100. The Division may only issue permits to persons who are 18 years or older or corporations with officers who are 21 years or older.[27]

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[21] S. 569.002(6), F.S.

[22] "'Cigarette" means any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient. S. 210.01(1), F.S.

[23] 26 U.S.C. s. 5712.

[24] S. 210.01(6), F.S.

[25] S. 210.01(14), F.S.

[26] S. 210.40, F.S.

[27] S. 210.15, F.S.

Retail Tobacco Products Dealers

In order to sell tobacco products at retail or operate a tobacco products vending machine in Florida, a person must obtain a retail tobacco products dealer permit from the Division. A tobacco products dealer permit holder is allowed to sell nicotine products and nicotine dispensing devices, in addition to tobacco products. A person must obtain a permit for each place of business or premises where tobacco products are sold. Any person who owns, leases, furnishes, or operates a vending machines that dispense tobacco products must also obtain a permit for each machine. The fee for such permit is $50.[28] The Division may only issue permits to persons who are 21 years or older or corporations with officers who are 21 years or older.[29]

Anyone who deals in tobacco products at retail or allows a vending machine on the premises without a permit is subject to a $500 fine.[30]

DBPR is required to submit an annual report to the Governor and Legislature regarding the enforcement of tobacco products, including:[31]

- The number and results of compliance visits by the Division;
- The number of violations for failure of a retailer to hold a valid license;
- The number of violations for selling tobacco products to anyone under the age of 21 and the results of administrative hearings on such violations; and
- The number of people under the age of 21 cited, including sanctions imposed as a result of such citation, for misrepresenting their age, purchasing tobacco products underage, and misrepresenting military service for the purpose of obtaining tobacco products underage.

Florida also has an excise tax and surcharge on cigarettes and other tobacco products, not including cigars. The tax and surcharge for cigarettes is $0.1695 to $0.42375 per pack and a surcharge of $0.50 to $1.25 per pack depending on the number of cigarettes in the pack. The excise tax for tobacco products is 25 percent of the wholesale price and the surcharge is 60 percent of the wholesale price. There is no excise tax or surcharge for nicotine products or nicotine dispensing devices.[32]

Nicotine Regulations

"Nicotine dispensing device" means any product that employs an electronic, chemical, or mechanical means to produce vapor or aerosol from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.

"Nicotine product" means any product that contains nicotine, including liquid nicotine, which is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means.

Retail Nicotine Products Dealers

The regulations for the sale of nicotine products and nicotine dispensing devices mirror the regulations for the sale of tobacco products. However, nicotine products **do not** have a tax or permit fee similar to tobacco products.

Administrative Penalties

[28] S. 569.003, F.S.
[29] S. 569.003, F.S.
[30] S. 569.005, F.S.
[31] S. 569.19, F.S.
[32] Ss. 210.011, 210.02, 210.276, and 210.30, F.S.; DBPR, Alcoholic Beverages & Tobacco – Tax & Reporting Information For Licensees, http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/tax-and-reporting-information-for-licensees/#1510753842753-25986d10-086f (last visited Jan. 20, 2024).

The Division may suspend or revoke the permit of the retail tobacco products dealer or retail nicotine product dealer upon sufficient cause appearing of the violation of chapter 569.The Division may also assess and accept administrative fines of up to $1,000 against a dealer for each violation. The Division shall deposit all fines collected into the General Revenue Fund as collected. An order imposing an administrative fine becomes effective 15 days after the date of the order. The Division may suspend the imposition of a penalty against a dealer, conditioned upon the dealer's compliance with terms the Division considers appropriate.[33]

Consent to inspection and search without warrant

The place or premises covered by a permit for a retail tobacco products dealer or a permit for a retail nicotine product dealer is subject to inspection and search without a search warrant by the Division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with requirements for and dealing.[34]

Effect of the Bill

Definitions

The bill modifies the definition of "nicotine product" by providing that "each individual stock keeping unit is considered a separate nicotine product." The bill provides the following definitions:

- "Nicotine products manufacturer" means any person that manufactures nicotine products.
- "Wholesale nicotine products dealer" means the holder of a wholesale nicotine products dealer permit who purchases nicotine dispensing devices or nicotine products from any nicotine products manufacturer.
- "Wholesale nicotine products dealer permit" means a permit issued by the division under s. 569.316.

Nicotine Directory

Submission of Form and Applicable Copy Page for Certification

The bill requires every nicotine products manufacturer that sells nicotine products in Florida to execute and deliver a form, prescribed by the Division under penalty of perjury for each nicotine product sold that meets either of the following criteria:

- The nicotine product manufacturer has applied for a marketing order for the nicotine product derived from a tobacco source or nontobacco source by submitting a premarket tobacco product application to the FDA under certain conditions, AND
    - The premarket tobacco product application for the nicotine product remains under review by the FDA, and neither a marketing authorization nor a marketing denial order has been issued, OR
    - The FDA issued a marketing denial order for the nicotine product, but the FDA or a federal court issued a stay or an injunction during the pendency of the manufacturer's appeal of the marketing denial order or either the order has been appealed to the FDA or a challenge to the order has been filed with a federal court and the appeal or challenge is still pending
- The nicotine products manufacturer has received a marketing authorization or other authorization, such as the SE or EX REQ, for the nicotine product from the FDA.

The Division's form must require each nicotine products manufacturer to set forth:

- the name under which the nicotine products manufacturer transacts or intends to transact business,
- the address of the location of the nicotine products manufacturer's principal place of business,
- the nicotine products manufacturer's e-mail address,
- and any other information the division requires

[33] Ss. 569.006 and 569.35, F.S.
[34] Ss. 569.004 and 569.33, F.S.

The bill provides that the Division may allow a nicotine products manufacturer to group its nicotine products on its certification.

In addition to completing the form prescribed by the Division each nicotine products manufacturer is required to provide a copy of the cover page of the premarket tobacco application with evidence of the receipt of the application by the FDA, or a copy of the cover page of the marketing authorization or other authorization issued by the FDA, whichever is applicable.

After the nicotine manufacturer submits the form and the applicable cover page ("the certification") as prescribed under the bill to the Division, nicotine manufacturer must notify the Division of any material change to the certification, including, but not limited to, issuance by the FDA of any of the following:

- A market authorization or authorization;
- An marketing order requiring a nicotine products manufacturer to remove a product from the market either temporarily or permanently;
- Any notice of action taken by the FDA affecting the ability of the nicotine product to be introduced or delivered in this state for commercial distribution;
- Any change in policy which results in a nicotine product no longer being exempt from federal enforcement oversight; or
- Any other change deemed material by the division pursuant to a rule of the Division.

The bill provides that a nicotine products manufacturer that falsely represents any of the information in the form prescribed by the Division or the applicable copy page in the certification process commits a felony of the third degree for each false representation.

Directory

The bill requires the Division to develop and maintain a directory listing all the nicotine products certified with the Division which comply with the requirements discussed above. On January 1, 2025, the Division must make the directory available on the DBPR website, and update the directory as necessary.

The bill provides that a determination by the Division not to include or remove from the directory a nicotine products manufacturer or nicotine product is subject to review under the Florida Administrative Procedure Act. If a nicotine products manufacturer seeks review of the decision to remove it from the directory, the division must keep the nicotine product on the directory until conclusion of the hearing.

Process for Removal from the Directory

The bill requires that the Division provide a nicotine products manufacturer notice and an opportunity to cure deficiencies before removing the manufacturer or its nicotine product from the directory. The Division may not remove the nicotine products manufacturer or its nicotine product from the directory until at least 15 days after the nicotine products manufacturer has been given notice of an intended action. Notice is sufficient and deemed immediately received by a nicotine products manufacturer if the notice is sent either electronically or by facsimile to an e-mail address or facsimile number provided by the nicotine products manufacturer in its most recent certification filed. The bill provides that the nicotine products manufacturer has 15 days from the date of service of the notice of the Division's intended action to establish that the nicotine products manufacturer or its nicotine product should be included in the directory.

The bill provides a process for retailers and wholesalers if a nicotine product is removed from the directory. Each retailer and wholesaler have 21 days from when the such product is removed from the directory to remove the product from its inventory and return the nicotine product to the nicotine products manufacturer. Each nicotine products manufacturer shall provide to the division information regarding the return of such product and how the returned product was disposed of within 21 days after receipt. After 21 days following removal from the directory, the product identified in the notice of removal is contraband.

Nicotine Products Not Listed on the Directory

The bill provides that beginning March 1, 2025, or on the date that the Division first makes the directory available for public inspection on its or the DBPR's website, whichever is later, a nicotine products manufacturer that offers for sale a nicotine product not listed on the directory is subject to a fine of $1,000 per day for each nicotine product offered for sale in violation of this section until the offending product is removed from the market or until the offending product is properly listed on the directory.

Unannounced Inspections

The bill provides that each retail nicotine products dealer and wholesale nicotine products dealer is subject to unannounced inspections or audit checks by the Division for purposes of enforcing compliance with the certification process and the directory. The Division is required under the bill to conduct unannounced follow-up compliance checks of all noncompliant retail nicotine products dealers or wholesale nicotine products dealers within 30 days after a violation. The bill requires the Division to publish the results of all inspections at least annually and make the results available to the public on request.

Renew Certification

The bill gives the Division rule making authority to develop a procedure to allow nicotine products manufacturers to renew certifications without having to resubmit all the information for the certification process.

Maintenance and inspection of nicotine product records

The bill provides that each nicotine products manufacturer must keep for a period of 3 years, at the address listed on the certification:

- a complete and accurate record of the sales of each nicotine product sold or the amount of nicotine products delivered to a wholesaler in Florida, and
- to whom each nicotine product was sold on a wholesale basis, including the business name, license number, shipping and business addresses, e-mail address, and telephone number for the person or entity to which each product was sold. Such records may be kept in an electronic or paper format.

The bill provides similar maintenance requirements for retail nicotine products dealers; wholesale nicotine products dealers; wholesale dealers, and distributing agent. They must keep a record of the amount of each nicotine product received, delivered, or sold in Florida and to whom each nicotine product was sold or delivered or from whom they received each nicotine product, including the business name, license number, shipping and business addresses, e-mail address, and telephone number for the person or entity to which each product was sold or delivered or from which each product was received. The records are allowed to kept in electronic or paper format.

Upon request by the Division, a nicotine products manufacturer, including a nicotine products manufacturer selling nicotine products directly to consumers; a retail nicotine products dealer; a wholesale nicotine products dealer; a wholesale dealer, and a distributing agent provide such records. The bill provides that the Division is allowed to examine such records, issue subpoenas to such persons or entities; administer oaths; and take depositions of witnesses within or outside of Florida. The For each violation regarding maintenance and inspection of records, the Division may assess an administrative fine of up to $1,000. The Division shall deposit all fines collected into the General Revenue Fund. An order imposing an administrative fine becomes effective 15 days after the date of the order.

Shipment of unregistered nicotine products into Florida

The bill prohibits a nicotine products manufacturer from distributing nicotine products in Florida which:

- there is an FDA order requiring the nicotine products manufacturer to remove the product from the market either temporarily or permanently;
- has not submitted a premarket tobacco product application; or

- has not submitted the certification required for the nicotine product.

The bill states that a nicotine products manufacturer who knowingly distributes an unregistered nicotine product, which is described above, commits a first degree misdemeanor. The Division may also impose an administrative fine up to $5,000 for each violation. The Division shall deposit all fines collected into the General Revenue Fund. An order imposing an administrative fine becomes effective 15 days after the date of the order.

Wholesale nicotine products dealer

The bill creates a wholesale nicotine products dealer permit which is issued by the Division. The bill language for a wholesale nicotine products dealer permits mirrors the requirements for a retail tobacco dealer and a retail nicotine dealer. The bill provides that a wholesale dealer or a distributing agent is not required to have a separate or additional wholesale nicotine products dealer permit to deal, at wholesale, in nicotine products in Florida. Furthermore, the bill states that a wholesale dealer, a distributing agent, or a tobacco products distributor, which deals, at wholesale, in nicotine products is subject to, and must be in compliance with Chapter 569 regarding nicotine and tobacco.

The bill requires that wholesale nicotine products dealer may only purchase and sell nicotine products contained on the directory created by the Division. The Division may suspend or revoke the permit of a wholesale nicotine products dealer if the dealer fails to comply. The Division may also impose an administrative fine up to $5,000 for each violation. The Division shall deposit all fines collected into the General Revenue Fund. An order imposing an administrative fine becomes effective 15 days after the date of the order.

The bill provides that the place or premises covered by a permit for a wholesale nicotine product dealer is subject to inspection and search without a search warrant by the Division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with requirements.

Retail nicotine products dealer

The bill provides that retail nicotine products dealer permits may be renewed each year. Under the bill, a retail nicotine products dealer that does not timely renew its permit must pay a late fee of $5 for each month or portion of a month occurring after expiration, and before renewal, of the dealer's permit. The Division shall establish by rule a renewal procedure that, to the greatest extent feasible, combines the application and permitting procedure for permits with the application and licensing system for alcoholic beverages. The bill forbids the Division from granting an exemption from the permit fees for any applicant.

The bill provides that on or after March 1, 2025, it is unlawful for a person, a firm, an association, or a corporation to deal, at retail, in nicotine products that are not listed on the Division’s directory. Any person who knowingly ships or receives such nicotine products commits a misdemeanor of the second degree.

The bill provides that on or after January 1, 2025, it is unlawful for a retail nicotine products dealer to purchase nicotine products from a wholesaler, manufacturer, or other source that is not a wholesale nicotine products dealer permitholder, a wholesale dealer, a distributing agent, or a tobacco products distributor. The bill states that any person who knowingly ships or receives nicotine products in violation of this section commits a misdemeanor of the second degree. The Division may suspend or revoke a retail nicotine products permit and may also assess an administrative fine of up to $1,000 for each violation.

Seizure and destruction of contraband nicotine products

The bill declares all nicotine products sold in contravention of Chapter 569 to be contraband. The contraband may be searched and seized per the Florida Contraband Forfeiture Act. The bill requires that a Judge order the destruction and forfeiture of contraband nicotine products. The bill requires that the Division document the place where the contraband was seized, the kind and quantities of

contraband seized, the cost of destruction, the time, place, and manner of destruction, the chain of custody of the contraband, and the cost of destruction.

B. SECTION DIRECTORY:

Section 1: amending s. 569.31, F.S., relating to definitions.
Section 2: creating s. 569.311, F.S., relating to nicotine directory.
Section 3: creating s. 569.312, F.S., relating to maintenance and inspection of nicotine product records.
Section 4: creating s. 569.313, F.S., relating to shipment of unregistered nicotine products.
Section 5: creating s. 569.316, relating to wholesale nicotine products dealer permits.
Section 6: creating s. 569.317, relating to wholesale nicotine products dealer permitholder and administrative penalties.
Section 7: amending s. 569.32, F.S., relating to retail nicotine products dealer permits.
Section 8: amending s. 569.33, F.S., relating to consent to inspection and search without warrant.
Section 9: amending s. 569.34, F.S., relating to operating without a retail nicotine products dealer permit.
Section 10: creating s. 569.345, F.S., relating to contraband nicotine products.
Section 11: amending s. 569.31, F.S., relating to definitions.
Section 12: providing effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. This may slightly increase revenues because wholesale nicotine dealers would have to obtain a permit from DBPR.

2. Expenditures:

Indeterminate. There may be an increase in expenditures for DBPR to create a nicotine directory and enforce the provisions of this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Businesses that are distributing nicotine products and operating as manufacturers, retailers, or wholesales will be penalized by fines or a criminal offense if they are distributing nicotine products without being on the directory or without proper permitting.

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:

The bill empowers the Division to develop and maintain a directory listing all the certified nicotine products and to develop a procedure to allow nicotine products manufacturers to renew certifications without having to resubmit all the information for the certification process. The bill provides that the Division must develop a form for the nicotine manufacturers to certify their businesses and nicotine products.

C. DRAFTING ISSUES OR OTHER COMMENTS:

There are parts of the bill that have unclear language or misuse legal terms. The bill also uses the term "certification" and "registration" interchangeably.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to nicotine products; reordering and amending s. 569.31, F.S.; revising and defining terms for purposes of part II of ch. 569, F.S.; creating s. 569.311, F.S.; requiring nicotine products manufacturers to execute and deliver a form, under penalty of perjury, to the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation for each product sold within this state which meets certain criteria; specifying requirements for the form prescribed by the division; requiring manufacturers to submit certain additional materials when submitting the form to the division; requiring a manufacturer to notify the division of certain events; requiring the division to develop and maintain a directory listing certified nicotine products manufacturers and certified nicotine products by a specified date; specifying requirements for the directory; providing procedures and notice to manufacturers for removal of the manufacturer or any of its products from the directory; providing for administrative review of action by the division regarding the directory; requiring manufacturers to take certain actions upon a product's removal from the directory; providing penalties for certain violations

by manufacturers; subjecting retail and wholesale nicotine products dealers to inspections or audits to ensure compliance; requiring the division to publish findings of such inspections and audits and make them available to the public; authorizing the division to adopt certain procedures by rule; creating s. 569.312, F.S.; requiring specified manufacturers and dealers of nicotine products to maintain certain records for a specified timeframe; requiring such manufacturers and dealers to timely comply with division requests to produce records; authorizing the division to examine such records for specified purposes; providing for enforcement; authorizing the division to assess administrative fines for noncompliance and to deposit them into the General Revenue Fund; creating s. 569.313, F.S.; prohibiting the sale, shipment, or distributing of certain nicotine products into this state; providing a criminal penalty; authorizing the division to assess fines and deposit them into the General Revenue Fund; creating s. 569.316, F.S.; requiring persons or entities that seek to deal or sell certain nicotine products or dispensing devices to retail dealers to obtain a wholesale nicotine products dealer permit; specifying requirements and limitations regarding the issuance of such permits;

specifying conditions under which the division may refuse to issue a permit; providing requirements and limitations for permitholders; providing construction; creating s. 569.317, F.S.; requiring wholesale nicotine products dealer permitholders to sell only nicotine products listed in the division's directory; authorizing the division to revoke or suspend a permit if a violation is deemed to have occurred; authorizing the division to assess administrative penalties for violations and to deposit them into the General Revenue Fund; amending s. 569.32, F.S.; requiring that retail nicotine products dealer permits be issued annually; providing procedures for the renewal of permits; requiring the division to levy a delinquent fee under certain circumstances; requiring the division to adopt by rule a certain procedure for the submittal of applications; prohibiting the division from granting exemptions from permit fees; amending s. 569.33, F.S.; providing that holders of a wholesale nicotine products dealer permit must consent to certain inspections and searches without a warrant; amending s. 569.34, F.S.; providing criminal penalties for the unlawful sale or dealing of unlisted nicotine products; providing criminal penalties for the unauthorized purchase of certain nicotine products;

authorizing the division to suspend or revoke a permit of a permitholder upon sufficient cause of a violation of part II of ch. 569, F.S.; authorizing the division to assess an administrative penalty for violations and deposit them into the General Revenue Fund; creating s. 569.345, F.S.; providing for the seizure and destruction of unlawful nicotine products in accordance with the Florida Contraband Forfeiture Act; requiring a court with jurisdiction to take certain action; requiring the division to maintain certain records; requiring that costs be borne by the person who held the seized products; amending s. 569.002, F.S.; conforming cross-references to changes made by the act; providing an effective date.

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

Section 1. Section 569.31, Florida Statutes, is reordered and amended to read:

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

(2)~~(1)~~ "Dealer" is synonymous with the term "retail nicotine products dealer."

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

(4) "FDA" means the United States Food and Drug Administration.

(5) ~~(3)~~ "Nicotine dispensing device" means any product that employs an electronic, chemical, or mechanical means to produce vapor or aerosol from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.

(6) ~~(4)~~ "Nicotine product" means any product that contains nicotine, including liquid nicotine, which is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means. The term also includes any nicotine dispensing device. For purposes of this definition, each individual stock keeping unit is considered a separate nicotine product. The term does not include a:

(a) Tobacco product, as defined in s. 569.002;

(b) Product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act; or

(c) Product that contains incidental nicotine.

(7) "Nicotine products manufacturer" means any person that

manufactures nicotine products.

(8)~~(5)~~ "Permit" is synonymous with the term "retail nicotine products dealer permit."

(9)~~(6)~~ "Retail nicotine products dealer" means the holder of a retail nicotine products dealer permit.

(10)~~(7)~~ "Retail nicotine products dealer permit" means a permit issued by the division under s. 569.32.

(11)~~(8)~~ "Self-service merchandising" means the open display of nicotine products, whether packaged or otherwise, for direct retail customer access and handling before purchase without the intervention or assistance of the dealer or the dealer's owner, employee, or agent. An open display of such products and devices includes the use of an open display unit.

(12) "Wholesale nicotine products dealer" means the holder of a wholesale nicotine products dealer permit who purchases nicotine dispensing devices or nicotine products from any nicotine products manufacturer.

(13) "Wholesale nicotine products dealer permit" means a permit issued by the division under s. 569.316.

(1)~~(9)~~ "Any person under the age of 21" does not include any person under the age of 21 who:

(a) Is in the military reserve or on active duty in the Armed Forces of the United States; or

(b) Is acting in his or her scope of lawful employment.

Section 2. Section 569.311, Florida Statutes, is created

to read:

569.311 Nicotine product directory.—

(1) Every nicotine products manufacturer that sells nicotine products in this state shall execute and deliver a form, prescribed by the division, under penalty of perjury for each nicotine product sold that meets either of the following criteria:

(a) A nicotine product which contains nicotine derived from a tobacco source and was on the market in the United States as of August 8, 2016, and the manufacturer has applied for a marketing order pursuant to 21 U.S.C. s. 387j for the nicotine product by submitting a premarket tobacco product application on or before September 9, 2020, to the FDA, or the nicotine product contains nicotine derived from a non-tobacco source and was on the market in the United States as of April 14, 2022, and the manufacturer has applied for a marketing order pursuant to 21 U.S.C. s. 387j for the nicotine product containing nicotine derived from a non-tobacco source by submitting a premarket tobacco product application on or before May 14, 2022, and:

1. The premarket tobacco product application for the nicotine product remains under review by the FDA, and neither a marketing authorization nor a marketing denial order has been issued; or

2. The FDA issued a marketing denial order for the nicotine product, but the FDA or a federal court issued a stay

or an injunction during the pendency of the manufacturer's appeal of the marketing denial order or either the order has been appealed to the FDA or a challenge to the order has been filed with a federal court and the appeal or challenge is still pending.

(b) The nicotine products manufacturer has received a marketing authorization or other authorization under 21 U.S.C. s. 387j for the nicotine product from the FDA.

(2) The form prescribed by the division pursuant to subsection (1) must require each nicotine products manufacturer to set forth the name under which the nicotine products manufacturer transacts or intends to transact business, the address of the location of the nicotine products manufacturer's principal place of business, the nicotine products manufacturer's e-mail address, and any other information the division requires. The division may allow a nicotine products manufacturer to group its nicotine products on its certification.

(3) In addition to completing the form prescribed by the division pursuant to subsection (1), each nicotine products manufacturer shall provide a copy of the cover page of the premarket tobacco application with evidence of the receipt of the application by the FDA, or a copy of the cover page of the marketing authorization or other authorization issued pursuant to 21 U.S.C. s. 387j, whichever is applicable.

(4) Any nicotine products manufacturer submitting a certification pursuant to subsection (1) shall notify the division within 30 days after any material change to the certification, including, but not limited to, issuance by the FDA of any of the following:

(a) A market authorization or authorization pursuant to 21 U.S.C. s. 387j;

(b) An order requiring a nicotine products manufacturer to remove a product from the market either temporarily or permanently;

(c) Any notice of action taken by the FDA affecting the ability of the nicotine product to be introduced or delivered in this state for commercial distribution;

(d) Any change in policy which results in a nicotine product no longer being exempt from federal enforcement oversight; or

(e) Any other change deemed material by the division pursuant to a rule of the division.

(5) The division shall develop and maintain a directory listing all nicotine products manufacturers and the nicotine products certified with the division which comply with this section. The division shall make the directory available January 1, 2025, on its or the Department of Business and Professional Regulation's website. The division shall update the directory as necessary.

(6) The division shall provide a nicotine products manufacturer notice and an opportunity to cure deficiencies before removing the manufacturer or its nicotine product from the directory.

(a) The division may not remove the nicotine products manufacturer or its nicotine product from the directory until at least 15 days after the nicotine products manufacturer has been given notice of an intended action. Notice is sufficient and deemed immediately received by a nicotine products manufacturer if the notice is sent either electronically or by facsimile to an e-mail address or facsimile number provided by the nicotine products manufacturer in its most recent certification filed under subsection (1).

(b) The nicotine products manufacturer has 15 days from the date of service of the notice of the division's intended action to establish that the nicotine products manufacturer or its nicotine product should be included in the directory.

(c) A determination by the division not to include or to remove from the directory a nicotine products manufacturer or nicotine product is subject to review under chapter 120. If a nicotine products manufacturer seeks review of removal from the directory, the division must keep the nicotine product on the directory until conclusion of the hearing.

(d) If a nicotine product is removed from the directory, each retailer and wholesaler has 21 days from the day such

product is removed from the directory to remove the product from its inventory and return the product to the manufacturer. Each nicotine products manufacturer shall provide to the division information regarding the return of such product and how the returned product was disposed of within 21 days after receipt. After 21 days following removal from the directory, the product identified in the notice of removal is contraband and subject to s. 569.345.

(7) Beginning March 1, 2025, or on the date that the division first makes the directory available for public inspection on its or the Department of Business and Professional Regulation's website, whichever is later, a nicotine products manufacturer that offers for sale a nicotine product not listed on the directory is subject to a fine of $1,000 per day for each nicotine product offered for sale in violation of this section until the offending product is removed from the market or until the offending product is properly listed on the directory.

(8) A nicotine products manufacturer that falsely represents any of the information required by subsection (1) or subsection (2) commits a felony of the third degree for each false representation, punishable as provided in s. 775.082 or s. 775.083.

(9) Each retail nicotine products dealer and wholesale nicotine products dealer is subject to unannounced inspections or audit checks by the division for purposes of enforcing this

section. The division shall conduct unannounced follow-up compliance checks of all noncompliant retail nicotine products dealers or wholesale nicotine products dealers within 30 days after any violation of this section. The division shall publish the results of all inspections or audits at least annually and shall make the results available to the public on request.

(10) The division may establish by rule a procedure to allow nicotine products manufacturers to renew certifications without having to resubmit all the information required by this section.

Section 3. Section 569.312, Florida Statutes, is created to read:

569.312 Maintenance and inspection of nicotine product records.—

(1) Each nicotine products manufacturer shall maintain and keep for a period of 3 years, at the address listed on the certification required pursuant to s. 569.311, a complete and accurate record of the amount of each nicotine product sold or delivered to a wholesaler in this state and to whom each nicotine product was sold on a wholesale basis, including the business name, license number, shipping and business addresses, e-mail address, and telephone number for the person or entity to which each product was sold. Such records may be kept in an electronic or paper format.

(2) Each retail nicotine products dealer; wholesale

nicotine products dealer; wholesale dealer, as defined in s. 210.01(6); and distributing agent, as defined in s. 210.01(14), shall maintain and keep for a period of 3 years at its principal place of business a complete and accurate record of the amount of each nicotine product received, delivered, or sold in this state and to whom each nicotine product was sold or delivered or from whom they received each nicotine product, including the business name, license number, shipping and business addresses, e-mail address, and telephone number for the person or entity to which each product was sold or delivered or from which each product was received. Such records may be kept in an electronic or paper format.

(3) Nicotine products manufacturers; retail nicotine products dealers; wholesale nicotine products dealers; wholesale dealers, as defined in s. 210.01(6); and distributing agents, as defined in s. 210.01(14), who sell or deliver nicotine products directly to consumers are not required to keep and maintain the name, address, e-mail address, and telephone number of consumers who purchase or receive nicotine products.

(4) Upon request by the division, a nicotine products manufacturer, including a nicotine products manufacturer selling nicotine products directly to consumers; a retail nicotine products dealer; a wholesale nicotine products dealer; a wholesale dealer, as defined in s. 210.01(6); and a distributing agent, as defined in s. 210.01(14), shall timely provide to the

division or its duly authorized representative copies of records related to the nicotine products received, delivered, or sold in this state and to whom those nicotine products were sold or delivered or from whom they were received.

(5) The division, or a designated employee thereof, may examine the records required to be maintained by each nicotine products manufacturer, retail nicotine products dealer, wholesale nicotine products dealer, wholesale dealer, as defined in s. 210.01(6), and distributing agent, as defined in s. 210.01(14); issue subpoenas to such persons or entities; administer oaths; and take depositions of witnesses within or outside of this state. The civil law of this state regarding enforcing obedience to a subpoena lawfully issued by a judge or other person duly authorized to issue subpoenas under the laws of this state in civil cases applies to a subpoena issued by the division, or any designated employee thereof. The subpoena may be enforced by writ of attachment issued by the division, or any designated employee, for such witness to compel him or her to attend before the division, or any designated employee, and give his or her testimony and to bring and produce such records as may be required for examination. The division, or any designated employee, may bring an action against a witness who refuses to appear or give testimony by citation before the circuit court which shall punish such witness for contempt as in cases of refusal to obey the orders and process of the circuit court. The

division may in such cases pay such attendance and mileage fees as are permitted to be paid to witnesses in civil cases appearing before the circuit court.

(6) The division may assess an administrative fine of up to $1,000 for each violation of this section. The division shall deposit all fines collected into the General Revenue Fund. An order imposing an administrative fine becomes effective 15 days after the date of the order.

Section 4. Section 569.313, Florida Statutes, is created to read:

569.313 Shipment of unregistered nicotine products into this state.—

(1) A nicotine products manufacturer may not sell, ship, or otherwise distribute a nicotine product in this state for which:

(a) The FDA has entered an order requiring the nicotine products manufacturer to remove the product from the market either temporarily or permanently, which order has not been stayed by the FDA or a court of competent jurisdiction;

(b) The nicotine products manufacturer has not submitted a premarket tobacco product application; or

(c) The nicotine products manufacturer has not submitted the certification required under this chapter for the nicotine product.

(2) Any person who knowingly ships or receives nicotine

products in violation of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) The division may also assess an administrative fine of up to $5,000 for each violation. The division shall deposit all fines collected into the General Revenue Fund. An order imposing an administrative fine becomes effective 15 days after the date of the order.

Section 5. Section 569.316, Florida Statutes, is created to read:

569.316 Wholesale nicotine products dealer permits; application; qualifications; renewal; duplicates.—

(1)(a) Each person, firm, association, or corporation that seeks to deal, at wholesale, in nicotine products within this state, or to sell nicotine products or nicotine dispensing devices to any retail nicotine products dealer, must obtain a wholesale nicotine products dealer permit for each place of business or premises at which nicotine products are sold.

(b) Application for a wholesale nicotine products dealer permit must be made on a form furnished by the division and must set forth the name under which the applicant transacts or intends to transact business, the address of the location of the applicant's place of business, the applicant's e-mail address, and any other information the division requires. If the applicant has or intends to have more than one place of business

dealing in nicotine products, a separate application must be made for each place of business. If the applicant is a firm or an association, the application must set forth the names, e-mail addresses, and addresses of the persons constituting the firm or association. If the applicant is a corporation, the application must set forth the names, e-mail addresses, and addresses of the principal officers of the corporation. The application must also set forth any other information prescribed by the division for the purpose of identifying the applicant firm, association, or corporation. The application must be signed and verified by oath or affirmation by the owner, if a sole proprietor; or, if the owner is a firm, association, or partnership, by the members or partners thereof; or, if the owner is a corporation, by an executive officer of the corporation or by a person authorized by the corporation to sign the application, together with the written evidence of this authority.

(2)(a) Wholesale nicotine products dealer permits may be issued only to persons who are 21 years of age or older or to corporations the officers of which are 21 years of age or older.

(b) The division may refuse to issue a wholesale nicotine products dealer permit to any person, firm, association, or corporation whose permit has been revoked; to any corporation an officer of which has had such permit revoked; or to any person who is or has been an officer of a corporation whose permit has been revoked. The division must revoke any wholesale nicotine

products dealer permit issued to a firm, an association, or a corporation prohibited from obtaining such permit under this chapter.

(3) Upon approval of an application for a wholesale nicotine products dealer permit, the division shall issue to the applicant a wholesale nicotine products dealer permit for the place of business or premises specified in the application. A wholesale nicotine products dealer permit is not assignable and is valid only for the person in whose name the wholesale nicotine products dealer permit is issued and for the place designated in the wholesale nicotine products dealer permit. The wholesale nicotine products dealer permit must be conspicuously displayed at all times at the place for which it is issued.

(4) A wholesale dealer, as defined in s. 210.01(6), or a distributing agent, as defined in s. 210.01(14), is not required to have a separate or additional wholesale nicotine products dealer permit to deal, at wholesale, in nicotine products within this state. A wholesale dealer, as defined in s. 210.01(6), a distributing agent, as defined in s. 210.01(14), or a tobacco products distributor, as defined in s. 210.25(5), which deals, at wholesale, in nicotine products is subject to, and must be in compliance with, this chapter.

Section 6. Section 569.317, Florida Statutes, is created to read:

569.317 Wholesale nicotine products dealer permitholder;

administrative penalties.—A wholesale nicotine products dealer permitholder may only purchase and sell nicotine products contained on the directory created by the division pursuant to s. 569.311. The division may suspend or revoke the wholesale nicotine products dealer permit of a wholesale nicotine products dealer permitholder upon sufficient cause appearing of a violation of this part by a wholesale nicotine products dealer permitholder or its agent or employee. The division may also assess an administrative fine of up to $5,000 for each violation. The division shall deposit all fines collected into the General Revenue Fund. An order imposing an administrative fine becomes effective 15 days after the date of the order. The division may suspend the imposition of a penalty against a wholesale nicotine products dealer permitholder, conditioned upon compliance with terms the division considers appropriate.

Section 7. Section 569.32, Florida Statutes, is amended to read:

569.32 Retail nicotine products dealer permits; application; qualifications; renewal; duplicates.—

(1)(a) Each person, firm, association, or corporation that seeks to deal, at retail, in nicotine products within this ~~the~~ state, or to allow a nicotine products vending machine to be located on its premises in this ~~the~~ state, must obtain a retail nicotine products dealer permit for each place of business or premises at which nicotine products are sold. Each dealer

owning, leasing, furnishing, or operating vending machines through which nicotine products are sold must obtain a permit for each machine and shall post the permit in a conspicuous place on or near the machine; however, if the dealer has more than one vending machine at a single location or if nicotine products are sold both over the counter and through a vending machine at a single location, the dealer need obtain only one permit for that location.

(b) Application for a permit must be made on a form furnished by the division and must set forth the name under which the applicant transacts or intends to transact business, the address of the location of the applicant's place of business within this ~~the~~ state, and any other information the division requires. If the applicant has or intends to have more than one place of business dealing in nicotine products within this ~~the~~ state, a separate application must be made for each place of business. If the applicant is a firm or an association, the application must set forth the names and addresses of the persons constituting the firm or association; if the applicant is a corporation, the application must set forth the names and addresses of the principal officers of the corporation. The application must also set forth any other information prescribed by the division for the purpose of identifying the applicant firm, association, or corporation. The application must be signed and verified by oath or affirmation by the owner, if a

sole proprietor; or, if the owner is a firm, association, or partnership, by the members or partners thereof; or, if the owner is a corporation, by an executive officer of the corporation or by a person authorized by the corporation to sign the application, together with the written evidence of this authority.

(c) Permits must be issued annually.

(d) The holder of a permit may renew the permit each year. A dealer that does not timely renew its permit must pay a late fee of $5 for each month or portion of a month occurring after expiration, and before renewal, of the dealer's permit. The division shall establish by rule a renewal procedure that, to the greatest extent feasible, combines the application and permitting procedure for permits with the application and licensing system for alcoholic beverages.

(e) The division may not grant an exemption from the permit fees prescribed in this subsection for any applicant.

(2)(a) Permits may be issued only to persons who are 21 years of age or older or to corporations the officers of which are 21 years of age or older.

(b) The division may refuse to issue a permit to any person, firm, association, or corporation the permit of which has been revoked; to any corporation an officer of which has had his or her permit revoked; or to any person who is or has been an officer of a corporation the permit of which has been

revoked. Any permit issued to a firm, an association, or a corporation prohibited from obtaining a permit under this chapter must ~~shall~~ be revoked by the division.

(3) Upon approval of an application for a permit, the division shall issue to the applicant a permit for the place of business or premises specified in the application. A permit is not assignable and is valid only for the person in whose name the permit is issued and for the place designated in the permit. The permit must ~~shall~~ be conspicuously displayed at all times at the place for which issued.

Section 8. Section 569.33, Florida Statutes, is amended to read:

569.33 Consent to inspection and search without warrant.—An applicant for a retail nicotine products dealer permit or a wholesale nicotine products dealer permit, by accepting the permit when issued, agrees that the place or premises covered by the permit is subject to inspection and search without a search warrant by the division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with this part.

Section 9. Section 569.34, Florida Statutes, is amended to read:

569.34 Operating without a retail nicotine products dealer permit; penalty.—

(1) It is unlawful for a person, a firm, an association,

or a corporation to deal, at retail, in nicotine products, in any manner, or to allow a nicotine products vending machine to be located on its premises, without having a retail nicotine product dealer permit as required by s. 569.32. A person who violates this subsection ~~section~~ commits a noncriminal violation, punishable by a fine of not more than $500.

(2) A retail tobacco products dealer, as defined in s. 569.002(4), is not required to have a separate or additional retail nicotine products dealer permit to deal, at retail, in nicotine products within this ~~the~~ state, or allow a nicotine products vending machine to be located on its premises in this ~~the~~ state. Any retail tobacco products dealer that deals, at retail, in nicotine products or allows a nicotine products vending machine to be located on its premises in this ~~the~~ state, is subject to, and must be in compliance with, this part.

(3) Any person who violates subsection (1) must ~~this section shall~~ be cited for such infraction and must ~~shall~~ be cited to appear before the county court. The citation may indicate the time, date, and location of the scheduled hearing and must indicate that the penalty for a noncriminal violation is a fine of not more than $500.

(a) A person cited for a violation of subsection (1) ~~for an infraction under this section~~ may:

1. Post a $500 bond; or

2. Sign and accept the citation indicating a promise to

appear.

(b) A person cited for violating this section may:

1. Pay the fine, either by mail or in person, within 10 days after receiving the citation; or

2. If the person has posted bond, forfeit the bond by not appearing at the scheduled hearing.

(c) If the person pays the fine or forfeits bond, the person is deemed to have admitted violating this section and to have waived the right to a hearing on the issue of commission of the violation. Such admission may not be used as evidence in any other proceeding.

(d) The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven beyond a reasonable doubt, the court may impose a civil penalty in an amount that may not exceed $500.

(e) If a person is found by the court to have committed the infraction, that person may appeal that finding to the circuit court.

(4) On or after March 1, 2025, it is unlawful for a person, a firm, an association, or a corporation to deal, at retail, in nicotine products that are not listed on the directory created pursuant to s. 569.311. Any person who knowingly ships or receives nicotine products in violation of this section commits a misdemeanor of the second degree,

punishable as provided in s. 775.082 or s. 775.083.

(5) On or after January 1, 2025, it is unlawful for a retail nicotine products dealer, other than a nicotine products manufacturer that also is permitted as a retail nicotine products dealer and is selling its own products directly to consumers, to buy nicotine products from a wholesaler, manufacturer, or other source that is not a wholesale nicotine products dealer permitholder, a wholesale dealer, as defined in s. 210.01(6), a distributing agent, as defined in s. 210.01(14), or a tobacco products distributor, as defined in s. 210.25(5). Any person who knowingly ships or receives nicotine products in violation of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) The division may suspend or revoke the permit of a retail nicotine products dealer permitholder, upon sufficient cause appearing of a violation of this part by a retail nicotine products dealer permitholder, or its agent or employee. The division may also assess an administrative fine of up to $1,000 for each violation. The division shall deposit all fines collected into the General Revenue Fund. An order imposing an administrative fine becomes effective 15 days after the date of the order.

Section 10. Section 569.345, Florida Statutes, is created to read:

569.345 Seizure and destruction of contraband nicotine

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

products.—All nicotine products sold, delivered, possessed, or distributed contrary to any provisions of this chapter are declared to be contraband, are subject to seizure and confiscation under the Florida Contraband Forfeiture Act by any person whose duty it is to enforce the provisions of this chapter, and must be disposed of as follows:

(1) A court having jurisdiction shall order such nicotine products forfeited and destroyed. A record of the place where such nicotine products and any accompanying nicotine dispensing devices were seized, the kinds and quantities of nicotine products and accompanying nicotine dispensing devices destroyed, and the time, place, and manner of destruction must be kept, and a return under oath reporting the destruction must be made to the court by the officer who destroys them.

(2) The division shall keep a full and complete record of all nicotine products and nicotine dispensing devices showing:

(a) The exact kinds, quantities, and forms of such nicotine products or nicotine dispensing devices;

(b) The persons from whom they were received and to whom they were delivered;

(c) By whose authority they were received, delivered, and destroyed; and

(d) The dates of the receipt, disposal, or destruction, which record must be open to inspection by all persons charged with the enforcement of tobacco and nicotine product laws.

(3) The cost of seizure, confiscation, and destruction of contraband nicotine products is borne by the person from whom such products are seized.

Section 11. Subsections (3) and (4) of section 569.002, Florida Statutes, are amended to read:

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

(3) "Nicotine product" has the same meaning as provided in s. 569.31 ~~s. 569.31(4)~~.

(4) "Nicotine dispensing device" has the same meaning as provided in s. 569.31 ~~s. 569.31(3)~~.

Section 12. This act shall take effect October 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1053 Location of Medical Marijuana Centers, Retail Vape Shops, and On-premises Consumption of Alcohol
SPONSOR(S): Amesty
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Thompson	Anstead
2) Health & Human Services Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

According to the Centers for Disease Control and Prevention (CDC), the use of e-cigarettes (vapes) is unsafe for kids, teens, and young adults. Most vapes contain nicotine, and nicotine is highly addictive and can harm adolescent brain development. Young people who use vapes may be more likely to smoke cigarettes in the future, and research has found that vapes are significantly easier for underage youth to purchase than cigarettes. Other states have addressed this issue by limiting the distance of vape stores to schools. Florida does not do this for vape stores. However, Florida does limit the distance of certain activities and businesses from schools, as follows:

- **The Florida Clean Indoor Air Act** prohibits any person under the age of 21 from smoking tobacco or vaping within 1,000 feet of real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight.
- **The Medical Marijuana Treatment Center (MMTC) law** prohibits MMTC cultivating, processing, or dispensing facilities from being located within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school, unless the county or municipality approves such MMTC dispensing locations as promoting the public health, safety, and general welfare of the community.
- **The Florida Beverage law** prohibits businesses licensed for on-premises consumption of alcoholic beverages from being located within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school, unless the county or municipality approves the location as promoting the public health, safety, and general welfare of the community.

The bill, effective July 1, 2024, prohibits the following retail shops or facilities from being located within 1,500 feet of the real property that comprises a religious institution or a public or private day care facility, elementary school, middle school, or secondary school, or postsecondary school:

- A new MMTC cultivating, processing, or dispensing facility.
- A new retail vape shop.
- A new location for on-premises consumption of alcoholic beverages.

The bill does not appear to have a fiscal impact on state or local government. The bill may reduce the number of youth who use nicotine products and thereby improve public health and safety and related public and private sector costs.

The effective date of the bill is July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Youth Access to Vaping Products

E-cigarettes (vaping products) have been found to be significantly easier for underage youth to purchase than cigarettes. Underage purchase attempts of vaping products are 35 percent less likely to trigger an ID request and 42 percent more likely to result in a sales violation, compared to purchase attempts for cigarettes.[1] In 2023, over half (54.7 percent) of 10th grade students reported that it would be easy for them to get vaping devices.[2]

For youth who purchase their own e-cigarettes, gas stations, convenience stores and vape shops are the most common sources for illegal sales to minors. According to the 2021 National Youth Tobacco Survey (NYTS), 22.2 percent of high school e-cigarette users reported obtaining e-cigarettes from a vape shop or tobacco shop in the past month and 17.7 percent from a gas station or convenience store.[3] A study in the Journal of the American Medical Association (JAMA) Pediatrics found that in California, e-cigarette sales to minors violations are significantly higher in tobacco and vape shops than any other type of retailer, with 44.7 percent selling to underage buyers.[4]

An assessment of vape shops in six cities across the US found that one-third of vape shops were within two blocks of schools.[5] However, e-cigarettes are widely available in other retailers, including convenience stores. Stanford researchers found that in 30 large U.S. cities on average approximately:[6]

- 62 percent of public schools are within 1,000 feet (about 2 city blocks) of a tobacco retailer.
- 70 percent of city residents live within a half mile (about a 10 minute walk) from a tobacco retailer.

A study in New Jersey found that e-cigarette retailer density around schools was positively associated with ever and past-month use of e-cigarettes.[7]

Research has also shown that tobacco retailer density and marketing is higher in minority and low income neighborhoods. Stanford researchers recently found that in 30 large U.S. cities, there are on average nearly five times more tobacco retailers per square mile in the lowest-income neighborhoods than in the highest-income neighborhoods.[8]

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[1] Campaign for Tobacco-Free Kids, *Youth Access and Exposure to E-cigarettes at the Point of Sale*, https://assets.tobaccofreekids.org/factsheets/0412.pdf (last visited Jan. 17, 2024).
[2] University of Michigan, 2023 Monitoring the Future Study, *Trends in Availability of Drugs as Perceived by 10th Graders*, https://monitoringthefuture.org/wp-content/uploads/2023/12/mtf2023table8.pdf (last visited Jan. 17, 2024).
[3] Centers for Disease Control and Prevention, *Tobacco Product Use and Associated Factors Among Middle and High School Students—National Youth Tobacco Survey, United States, 2021*, (Mar. 11, 2022), https://www.cdc.gov/mmwr/volumes/71/ss/pdfs/ss7105a1-H.pdf (last visited Jan. 17, 2024).
[4] The Journal of the American Medical Association (JAMA) Pediatrics, *Assessment of Underage Sales Violations in Tobacco Stores and Vape Shops*, https://jamanetwork.com/journals/jamapediatrics/article-abstract/2735684 (last visited Jan. 17, 2024).
[5] Berg, C, et al., "Exploring the Point-of-Sale Among Vape Shops Across the United States: Audits Integrating a Mystery Shopper Approach," Nicotine & Tobacco Research, published online February 28, 2020.
[6] Advancing Science & Policy in the Retail Environment (ASPiRE) Center, *Retail Tobacco Density & Access* (Aug. 2020), http://aspirecenter.org/wp-content/uploads/2020/08/ASPiRE_RetailTobaccoDensityandAccess_ExecSumm.pdf (last visited Jan. 17, 2024).
[7] Giovenco, DP, et al., "Association Between Electronic Cigarette Marketing Near Schools and E-Cigarette Use Among Youth," Journal of Adolescent Health 59(6):627-634, 2016.
[8] Campaign for Tobacco-Free Kids, *Youth Access and Exposure to E-cigarettes at the Point of Sale*, https://assets.tobaccofreekids.org/factsheets/0412.pdf (last visited Jan. 17, 2024).

Research shows that making the obtaining of tobacco and nicotine products as inconvenient, difficult and expensive as possible for kids reduces the number of kids who try or regularly use such products.[9]

Medical Marijuana Treatment Centers

Art. X, Sec. 29 of the Florida Constitution establishes Florida's Medical Marijuana Use Program. The law implementing these provisions[10] authorizes patients with any of the following debilitating medical conditions to obtain medical marijuana from Medical Marijuana Treatment Centers (MMTC):[11]

- Cancer.
- Epilepsy.
- Glaucoma.
- Positive status for human immunodeficiency virus.
- Acquired immune deficiency syndrome.
- Post-traumatic stress disorder.
- Amyotrophic lateral sclerosis.
- Crohn's disease.
- Parkinson's disease.
- Multiple sclerosis.
- Medical conditions of the same kind or class as or comparable to those enumerated above.

To obtain marijuana for medical use from a MMTC, and maintain the immunity from criminal prosecution, the patient must obtain a physician certification from a qualified physician[12] and an identification card from the Department of Health (DOH).

A MMTC is defined in the Florida Constitution as:[13]

> …an entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their caregivers and is registered by the Department.

DOH is required to license MMTCs to ensure reasonable statewide accessibility and availability as necessary for qualified patients registered in the medical marijuana use registry and who are issued a physician certification.[14]

According to DOH's Office of Medical Marijuana Use, licensed MMTCs are vertically integrated and are the only businesses in Florida authorized to dispense medical marijuana and low-THC cannabis to qualified patients and caregivers. Each MMTC is required to receive authorization at the following three stages prior to dispensing low-THC cannabis or medical marijuana:[15]

- Cultivation;
- Processing; and
- Dispensing.

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[9] *Id.*
[10] S. 381.986, F.S.
[11] S. 381.986(2), F.S.
[12] To certify patients for medical use of marijuana, a physician must hold an active, unrestricted license as an allopathic physician under chapter 458 or as an osteopathic physician under chapter 459 and comply with certain physician education requirements. See ss. 381.986(1)(m), F.S. and 381.986(3)(a), F.S.
[13] Art. X, s. 29, Fla. Const.
[14] S. 381.986(8)(a), F.S.
[15] Florida Department of Health, Office of Medical Marijuana Use, *About Medical Marijuana in Florida*, https://knowthefactsmmj.com/resources/ (last visited Jan. 17, 2024).

DOH is authorized to impose reasonable fines up to $10,000 on a MMTC for violations of the MMTC law or DOH rule,[16] and may suspend, revoke, or refuse to renew a MMTC license for such violations.[17]

Age Restrictions

Florida law does not restrict access to the Medical Marijuana Use Program based on age. However, Florida law has specific requirements for the medical use of marijuana by minors. These requirements include:

- A qualified physician must determine that the medical use of marijuana would likely outweigh the potential health risks for all patients. If the patient is younger than 18 years of age, a second physician must concur with this determination and such concurrence must be documented in the patient's medical record.[18]
- A qualified physician may not issue a physician certification for marijuana in a form for smoking to a patient under 18 years of age unless the patient is diagnosed with a terminal condition, the qualified physician determines that smoking is the most effective route of administration for the patient, and a second physician who is a board-certified pediatrician concurs with such determination. Such determination and concurrence must be documented in the patient's medical record and in the medical marijuana use registry.[19]
- The parent or legal guardian of a qualified minor patient must provide the OMMU with written consent for the patient to use medical marijuana. The patient's qualified physician must submit the parent's/guardian's Consent for Minor Patient (CMP) form to the OMMU prior to the minor patient beginning an MMUR ID Card application.[20]
- Qualified patients who are under the age of 18 must designate a caregiver in the qualified patient's application and in the Medical Marijuana Use Registry.[21]
- If a qualified patient is younger than 18 years of age, only a caregiver may purchase or administer medical marijuana for the qualified patient. Patients who are minors may not purchase marijuana.[22]

Distance From Schools

The regulation of the cultivation, processing, and delivery of marijuana by MMTCs is preempted to the state, except local governments are authorized to restrict the distance of certain MMTC facilities from schools as follows:

- **MMTC cultivating or processing facilities** are prohibited from being located within **500 feet** of the real property that comprises a public or private elementary school, middle school, or secondary school.[23]
- **MMTC dispensing facilities** are prohibited from being located within **500 feet** of the real property that comprises a public or private elementary school, middle school, or secondary school.
    - However; the county or municipality is authorized to approve such MMTC dispensing locations through a formal proceeding open to the public at which the county or municipality determines that the location promotes the public health, safety, and general welfare of the community.[24]

A county or municipality may, by ordinance, **ban** MMTC dispensing facilities from being located within the boundaries of that county or municipality.[25]

[16] S. 381.986(10(f), F.S.
[17] S. 381.986(10(g), F.S.
[18] S. 381.986(4)(a)3., F.S.
[19] S. 381.986(4)(d), F.S.
[20] S. 381.986(7)(b), F.S.
[21] S. 381.986(6), F.S.
[22] S. 381.986(6)(f), F.S.
[23] S. 381.986(11)(a), F.S.
[24] S. 381.986(11)(c), F.S.
[25] S. 381.986(11)(b)1., F.S.

If a county or municipality **does not ban** dispensing facilities under this provision, it **may not place specific limits**, by ordinance, on the number of dispensing facilities that may locate within that county or municipality.[26]

Counties and municipalities are authorized to determine by ordinance the **criteria for the location** of, and **other permitting requirements** that do not conflict with state law or DOH rule for, **MMTC dispensing facilities** located within their boundaries.[27]

Except for the 500 feet limitation on the distance from certain schools, a county or municipality is prohibited from enacting ordinances for **permitting or determining the location of dispensing facilities** which are more restrictive than its ordinances permitting or determining the locations for pharmacies licensed under chapter 465, F.S.[28]

A municipality or county is prohibited from charging a MMTC a license or permit fee in an amount greater than the fee charged by such municipality or county to pharmacies.[29]

These preemption provisions do not prohibit any local jurisdiction from ensuring MMTC facilities comply with the Florida Building Code, the Florida Fire Prevention Code, or any local amendments to the Florida Building Code or the Florida Fire Prevention Code.[30]

Vape Shops

The Division of Alcoholic Beverages and Tobacco (ABT) within the Department of Business and Professional Regulation (DBPR) is responsible for the regulation of nicotine products.[31] Retailers that sell or deal, at retail, in nicotine products are required to have a retail nicotine products dealer permit issued by ABT and are required to comply with certain provisions related to the sale of such products.[32]

ABT enforces the nicotine regulations. Operating without a permit is a noncriminal violation, punishable by a fine of not more than $500.[33] ABT is authorized to suspend or revoke the permit of a dealer upon sufficient cause for violations.[34]

"Nicotine product" is defined as any product that contains nicotine, including liquid nicotine, which is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means. The term also includes any nicotine dispensing device.[35]

"Nicotine dispensing device" is defined as any product that employs an electronic, chemical, or mechanical means to produce vapor or aerosol from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.[36]

According to the Centers for Disease Control (CDC):[37]

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[26] *Id.*
[27] S. 381.986(11)(b)2., F.S.
[28] *Id.*
[29] *Id.*
[30] S. 381.986(11)(d), F.S.
[31] *See* ch. 569, F.S.
[32] S. 569.32, F.S.
[33] S. 569.34, F.S.
[34] S. 569.35, F.S.
[35] S. 569.31(4), F.S.
[36] S. 569.31(3), F.S.
[37] Centers for Disease Control, *Quick Facts on the Risks of E-cigarettes for Kids, Teens, and Young Adults*, https://www.cdc.gov/tobacco/basic_information/e-cigarettes/Quick-Facts-on-the-Risks-of-E-cigarettes-for-Kids-Teens-and-Young-Adults.html (last visited Jan. 18, 2024).

- The use of e-cigarettes is unsafe for kids, teens, and young adults.
- Most e-cigarettes contain nicotine. Nicotine is highly addictive and can harm adolescent brain development, which continues into the early to mid-20s.
- E-cigarettes can contain other harmful substances besides nicotine.
- Young people who use e-cigarettes may be more likely to smoke cigarettes in the future.

Age Restrictions

The establishment of the minimum age for purchasing or possessing, and the regulation for the marketing, sale, or delivery of, nicotine products is preempted to the state.[38]

It is unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, to any person who is under 21 years of age, any nicotine product. Violations are a second degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083. Subsequent violations are a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083.[39]

It is unlawful for any person under 21 years of age to knowingly possess any nicotine product. Violations are a noncriminal violation, punishable by 16 hours of community service or, instead of community service, a $25 fine. In addition, the person must attend a school-approved anti-tobacco and anti-nicotine program, if locally available.[40]

It is unlawful for any person under 21 years of age to misrepresent his or her age or military service in order to purchase a nicotine product. Violations are a noncriminal violation, punishable by 16 hours of community service or, instead of community service, a $25 fine and, in addition, the person must attend a school-approved anti-tobacco and anti-nicotine program, if available.[41]

In order to prevent persons under 21 years of age from purchasing or receiving nicotine products, the sale or delivery of nicotine products is prohibited, except:[42]

- When under the direct control or line of sight of the dealer or the dealer's agent or employee; or
- Sales from a vending machine are prohibited and only permissible from a machine that is equipped with an operational lockout device that is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine by triggering the lockout device to allow the dispensing of one nicotine product.

A dealer that sells nicotine products may not sell, permit to be sold, offer for sale, or display for sale such products or devices by means of self-service merchandising.[43]

A dealer that sells nicotine products may not place such products or devices in an open display unit unless the unit is located in an area that is inaccessible to customers.[44]

These provisions do not apply to an establishment that prohibits persons under 21 years of age on the licensed premises.[45]

A dealer or a dealer's agent or employee must require proof of age of a purchaser of a nicotine product before selling the product to that person, unless the purchaser appears to be 30 years of age or older.[46]

[38] S. 569.315, F.S.
[39] S. 569.41
[40] S. 569.42(1), F.S.
[41] S. 569.42(2), F.S.
[42] S. 569.37(1), F.S.
[43] S. 569.31(2)(a), F.S.
[44] S. 569.31(2)(b), F.S.
[45] S. 569.31(3), F.S.
[46] S. 569.31(4), F.S.

Nicotine products dealers are required to post a sign in each place of business at which such products are sold that states the sale of nicotine products or nicotine dispensing devices to persons under the age of 21 is illegal, and that proof of age is required for purchase.[47]

Distance From Schools

It does not appear that Florida law addresses the distance of vape shop locations from schools.

However, Article X, section 20 of the Florida Constitution prohibits tobacco smoking and the use of vapor-generating electronic devices in enclosed indoor workplaces. This provision allows the adoption of ordinances that impose more restrictive regulation on the use of vapor-generating electronic devices. However, tobacco smoking and the use of vapor-generating electronic devices are allowed in private residences whenever they are not being used commercially to provide child care, adult care, or health care, and retail tobacco shops, vapor-generating electronic device retailers, designated smoking guest rooms at hotels and other public lodging establishments, and stand-alone bars. The owner, lessee, or other person in control of the use of an enclosed indoor workplace may prohibit or limit smoking or the use of vapor-generating electronic devices.

The Florida Clean Indoor Air Act (FCIAA), implements article X, section 20 of the Florida Constitution. The FCIAA also prohibits any person under the age of 21 from smoking tobacco or vaping within 1,000 feet of real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. This does not apply to any person occupying a moving vehicle or within a private residence.[48]

A violation of this prohibition is punishable by a maximum noncriminal civil penalty not to exceed $25, or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco "alternative to suspension" program.[49]

The Beverage Law

Florida's Beverage Law[50] regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.[51] The Division of Alcoholic Beverages and Tobacco (ABT) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.[52]

All parties that plan to engage in the sale of alcoholic beverages in Florida must first obtain:
- Permission from the local government county or city.[53]
- A license from ABT.[54]

The Beverage Law classifies licensees in three distinct categories:
- Manufacturers.[55]
- Distributors.[56]
- Retailers.[57]

[47] S. 569.43(1), F.S.
[48] S. 386.212(1), F.S.
[49] S. 386.212(3), F.S.
[50] S. 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561-568, F.S.
[51] *See* s. 561.14, F.S.
[52] S. 561.02, F.S.
[53] Section 5(a), Article VIII, Fla. Const., provides the exclusive means for a county to authorize or prohibit the sale of alcoholic beverages
[54] S. 561.17(1), F.S.
[55] S. 561.14(1), F.S.
[56] S. 561.14(2), F.S.
[57] S. 561.14(3), F.S.

Retailers (vendors) sell alcohol beverages only at retail.[58] Retailers are further classified in the industry as either:

- **On-premise retailers**. On-premise retailers sell beer, wine, or spirits, or some combination of all three for patrons to consume on the licensed premises. Examples of on-premise retail establishments include:
  - bars;
  - restaurants; and
  - nightclubs.
- **Off-premise retailers**. Off-premise retailers sell alcohol in sealed containers for off-premise consumption only. Examples of off premise retail establishments include:
  - liquor stores; and
  - grocery stores.

Violations of any provision of the Beverage Law for which no penalty has been provided are a second degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083. Subsequent violations are a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.[59]

Age Restrictions

A person under 21 years old who possesses alcohol, unless acting within the scope of his or her employment, commits a second degree misdemeanor, punishable by up to 60 days in county jail and a $500 fine; a second offense is a first degree misdemeanor, punishable by up to one year in county jail and a $1,000 fine.[60] A conviction results in the withholding of an offender's driving privilege.[61]

A person who sells, gives, serves, or permits the service or consumption of alcohol to a person under 21 years old commits a second degree misdemeanor.[62] A person committing the same offense within one year of a previous conviction commits a first degree misdemeanor.[63] A conviction may result in the withholding of an offender's driving privilege.[64]

Distance From Schools

Local governments generally control the sale of alcoholic beverages through zoning. Approval to sell is typically granted if the property is zoned commercial and meets certain distance separation requirements that are established to presumably ensure that no adverse impacts occur on surrounding areas resulting from the sale of alcohol. These separation requirements are typically in the range of 250 feet to 1,000 feet from residentially zoned or institutional uses (such as schools, parks, day cares, and governmentally owned property), and that the property is also a certain distance (often as far as 1,000 feet) from other establishments authorized by the local government to sell alcohol.

Nothing contained in the Beverage Law may be construed to affect or impair the power or right of any county or incorporated municipality of the state to enact ordinances regulating the hours of business and location of place of business, and prescribing sanitary regulations, of any licensee under the Beverage Law within the county or corporate limits of such municipality.[65]

Except for premises licensed on or before July 1, 1999, and except for locations licensed as restaurants, which derive at least 51 percent of their gross revenues from the sale of food and nonalcoholic beverages, pursuant to chapter 509, F.S., relating to lodging and food service establishments, **a location for on-premises consumption of alcoholic beverages may not be located within 500 feet of the real property that comprises a public or private elementary school,**

[58] *Id*.
[59] S. 562.45(1), F.S.
[60] Ss. 562.111(1), 775.082, and 775.083, F.S.
[61] S. 562.111(3), F.S.
[62] S. 562.11(1), F.S
[63] *Id*.
[64] Ss. 562.11(1)(a)2.–3. and 562.11(2)(c)2., F.S.
[65] S. 562.45(2)(a), F.S.

middle school, or secondary school unless the county or municipality approves the location as promoting the public health, safety, and general welfare of the community under proceedings as provided in s. 125.66(5), F.S., for counties, and s. 166.041(3)(c), F.S., for municipalities.[66]

This restriction may not, however, be construed to prohibit the issuance of temporary permits to certain nonprofit organizations as provided for in s. 561.422, F.S. ABT is prohibited from issuing a change in the series of a license or approving a change of a licensee's location unless the licensee provides documentation of proper zoning from the appropriate county or municipal zoning authorities.[67]

Other State and Local Laws

Other states and local jurisdictions have limited the distance of vaping advertisements, products, and stores to schools. In addition, some states ban giving away free samples of vaping products within a certain proximity of a school or places primarily used by minors. The following are examples of such state and local policies:

- **New York** restricts the public display of tobacco and vaping product advertisements and the display of smoking paraphernalia within 500 feet of a school in New York City and within 1,500 feet of a school in the rest of the state.[68]
- **Indiana** prohibits tobacco and vaping shops from being located within 1,000 feet of public schools (increased from 200 feet).[69]
- **Montgomery County, Maryland** prohibits a manufacturer from distributing any flavored electronic cigarette to any retail store within 0.5 miles of any elementary, middle, or high school, library, or recreational facility in the County.[70]
- **Utah** requires tobacco retail shops to be located 1,000 feet away from schools, churches, playgrounds, youth centers, and other community locations; 600 feet away from other tobacco stores; and 600 feet away from property used for agricultural or residential purposes.[71]
- **South Dakota** prohibits the distribution of tobacco product samples in or on a public street, sidewalk, or park that is within five hundred feet of a playground, school, or other facility when the facility is being used primarily by persons under the age of twenty-one.[72]

Effect of Proposed Changes

MMTC Cultivating or Processing Facilities

Effective July 1, 2024, the bill prohibits a new MMTC cultivating or processing facility from being located within 1,500 feet of the real property that comprises a religious institution or a public or private day care facility, elementary school, middle school, or secondary school, or postsecondary school.

MMTC Dispensing Facilities

Effective July 1, 2024, the bill prohibits a new MMTC dispensing facility from being located within 1,500 feet of the real property that comprises a religious institution or a public or private day care facility, elementary school, middle school, or secondary school, or postsecondary school.

The bill also removes the authority of a county or municipality to approve such locations.

Retail Vape Shops

[66] *Id.*
[67] *Id.*
[68] N.Y. Public Health Law, ch. 45., Art. 13-F.
[69] Ind. Code §. 35-46-1-11.4.
[70] Montgomery County Code Ch. 24, Health and Sanitation §. 24-15, 24-16.
[71] Utah Code Ann. §§ 17-50-333(4)(a), 10-8-41.6(4)(a), 17-50-333(7), 10-8-41.6(7).
[72] S.D. Codified Laws §. 34-46-2.

Effective July 1, 2024, the bill prohibits a new retail vape shop as defined under s. 386.203, F.S., from being located within 1,500 feet of the real property that comprises a religious institution or a public or private day care facility, elementary school, middle school, secondary school, or postsecondary school.

The bill specifies that this section does not apply to a retail vape shop operating before July 1, 2024.

Beverage Law

Effective July 1, 2024, the bill prohibits a new location for on-premises consumption of alcoholic beverages from being located within 1,500 feet of the real property that comprises a religious institution or a public or private day care facility, elementary school, middle school, or secondary school, or postsecondary school.

The bill also removes the authority of a county or municipality to approve such locations.

B. SECTION DIRECTORY:

Section 1: Amends s. 381.986, F.S., relating to preemption.

Section 2: Creates s. 386.2065, F.S., relating to the regulation of retail vape shops; applicability.

Section 3: Amends s. 562.45, F.S., relating to penalties for violating Beverage Law; local ordinances; prohibiting regulation of certain activities or business transactions; requiring nondiscriminatory treatment; providing exceptions.

Section 4: Provides an effective date of July 1, 2024.

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.

D. FISCAL COMMENTS:

Making the obtaining of tobacco, nicotine, marijuana, and alcohol products as difficult as possible for kids may reduce the number of kids who try or regularly use such products and thereby improve public health and safety and related public and private sector costs.

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

A bill to be entitled

An act relating to location of medical marijuana centers, retail vape shops, and on-premises consumption of alcohol; amending s. 381.986, F.S.; revising the authorized distance between the location of certain medical marijuana treatment centers and specified religious or educational institutions upon a specified date; creating s. 386.2065, F.S.; specifying the authorized distance between the location of retail vape shops and specified religious or educational institutions upon a specified date; providing applicability; amending s. 562.45, F.S.; revising the authorized distance between the location of businesses that allow on-premises consumption of alcoholic beverages and specified religious or educational institutions upon a specified date; removing local governments' ability to approve such a location for specified purposes; providing an effective date.

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

Section 1. Paragraphs (a) and (c) of subsection (11) of section 381.986, Florida Statutes, are amended to read:

381.986 Medical use of marijuana.—

(11) PREEMPTION.—Regulation of cultivation, processing,

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

and delivery of marijuana by medical marijuana treatment centers is preempted to the state except as provided in this subsection.

(a)1. A medical marijuana treatment center cultivating or processing facility may not be located within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school.

2. Effective July 1, 2024, a new medical marijuana treatment center cultivating or processing facility may not be located within 1,500 feet of the real property that comprises a religious institution or a public or private day care facility, elementary school, middle school, or secondary school, or postsecondary school

(c)1. A medical marijuana treatment center dispensing facility may not be located within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school.

2. Effective July 1, 2024, a new medical marijuana treatment center dispensing facility may not be located within 1,500 feet of the real property that comprises a religious institution or a public or private day care facility, elementary school, middle school, ~~or~~ secondary school, or postsecondary school ~~unless the county or municipality approves the location through a formal proceeding open to the public at which the county or municipality determines that the location promotes the public health, safety, and general welfare of the community~~.

Section 2. Section 386.2065, Florida Statutes, is created to read:

386.2065 Regulation of retail vape shops; applicability.—

(a) Effective July 1, 2024, a new retail vape shop as defined under s. 386.203 may not be located within 1,500 feet of the real property that comprises a religious institution or a public or private day care facility, elementary school, middle school, secondary school, or postsecondary school.

(b) This section does not apply to a retail vape shop operating before July 1, 2024.

Section 3. Paragraph (a) of subsection (2) of section 562.45, Florida Statutes, is amended to read:

562.45 Penalties for violating Beverage Law; local ordinances; prohibiting regulation of certain activities or business transactions; requiring nondiscriminatory treatment; providing exceptions.—

(2)(a) Nothing contained in the Beverage Law may be construed to affect or impair the power or right of any county or incorporated municipality of the state to enact ordinances regulating the hours of business and location of place of business, and prescribing sanitary regulations therefor, of any licensee under the Beverage Law within the county or corporate limits of such municipality. However, except for premises licensed on or before July 1, 1999, and except for locations licensed as restaurants, which derive at least 51 percent of

their gross revenues from the sale of food and nonalcoholic beverages, pursuant to chapter 509, a location for on-premises consumption of alcoholic beverages may not be located within 500 feet of the real property that comprises a public or private elementary school, middle school, ~~or~~ secondary school. Effective July 1, 2024, a new location for on-premises consumption of alcoholic beverages may not be located within 1,500 feet of the real property that comprises a religious institution or a public or private day care facility, elementary school, middle school, ~~or~~ secondary school, or postsecondary school ~~unless the county or municipality approves the location as promoting the public health, safety, and general welfare of the community under proceedings as provided in s. 125.66(5), for counties, and s. 166.041(3)(c), for municipalities~~. This restriction may not, however, be construed to prohibit the issuance of temporary permits to certain nonprofit organizations as provided for in s. 561.422. The division may not issue a change in the series of a license or approve a change of a licensee's location unless the licensee provides documentation of proper zoning from the appropriate county or municipal zoning authorities.

Section 4. This act shall take effect July 1, 2024.

REGULATORY REFORM AND ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 1053 by Rep. Amesty
Location of Medical Marijuana Centers, Retail Vape Shops, and On-premises Consumption of Alcohol

AMENDMENT SUMMARY
January 24, 2024

Amendment 1 by Rep. Amesty (strike-all):

- Provides uniformity by clarifying that the distance restrictions in the bill do not apply to any of the facilities that were operating before July 1, 2024.

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: Regulatory Reform & Economic Development Subcommittee
Representative Amesty offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraphs (a) and (c) of subsection (11) of section 381.986, Florida Statutes, are amended to read:

381.986 Medical use of marijuana.—

(11) PREEMPTION.—Regulation of cultivation, processing, and delivery of marijuana by medical marijuana treatment centers is preempted to the state except as provided in this subsection.

(a)1. A medical marijuana treatment center cultivating or processing facility may not be located within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school.

2. Effective July 1, 2024, a new medical marijuana treatment center cultivating or processing facility may not be located within 1,500 feet of the real property that comprises a religious institution or a public or private day care facility, elementary school, middle school, or secondary school, or postsecondary school. This subparagraph does not apply to a medical marijuana treatment center cultivating or processing facility that was in operation before July 1, 2024.

(c)1. A medical marijuana treatment center dispensing facility may not be located within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school.

2. Effective July 1, 2024, a new medical marijuana treatment center dispensing facility may not be located within 1,500 feet of the real property that comprises a religious institution or a public or private day care facility, elementary school, middle school, ~~or~~ secondary school, or postsecondary school. This subparagraph does not apply to a medical marijuana treatment center dispensing facility that was in operation before July 1, 2024 ~~unless the county or municipality approves the location through a formal proceeding open to the public at which the county or municipality determines that the location promotes the public health, safety, and general welfare of the community~~.

Section 2. Section 386.2065, Florida Statutes, is created

to read:

386.2065 Regulation of retail vape shops; applicability.- Effective July 1, 2024, a new retail vape shop as defined under s. 386.203 may not be located within 1,500 feet of the real property that comprises a religious institution or a public or private day care facility, elementary school, middle school, secondary school, or postsecondary school. This section does not apply to a retail vape shop that was in operation before July 1, 2024.

Section 3. Paragraph (a) of subsection (2) of section 562.45, Florida Statutes, is amended to read:

562.45 Penalties for violating Beverage Law; local ordinances; prohibiting regulation of certain activities or business transactions; requiring nondiscriminatory treatment; providing exceptions.—

(2)(a) Nothing contained in the Beverage Law may be construed to affect or impair the power or right of any county or incorporated municipality of the state to enact ordinances regulating the hours of business and location of place of business, and prescribing sanitary regulations therefor, of any licensee under the Beverage Law within the county or corporate limits of such municipality. However, except for premises licensed on or before July 1, 1999, and except for locations licensed as restaurants, which derive at least 51 percent of their gross revenues from the sale of food and nonalcoholic

beverages, pursuant to chapter 509, a location for on-premises consumption of alcoholic beverages may not be located within 500 feet of the real property that comprises a public or private elementary school, middle school, ~~or~~ secondary school. Effective July 1, 2024, a new location for on-premises consumption of alcoholic beverages may not be located within 1,500 feet of the real property that comprises a religious institution or a public or private day care facility, elementary school, middle school, secondary school, or postsecondary school; however, this prohibition does not apply to a location for on-premises consumption of alcoholic beverages that was in operation before July 1, 2024 ~~unless the county or municipality approves the location as promoting the public health, safety, and general welfare of the community under proceedings as provided in s. 125.66(5), for counties, and s. 166.041(3)(c), for municipalities~~. This restriction may not, however, be construed to prohibit the issuance of temporary permits to certain nonprofit organizations as provided for in s. 561.422. The division may not issue a change in the series of a license or approve a change of a licensee's location unless the licensee provides documentation of proper zoning from the appropriate county or municipal zoning authorities.

Section 4. This act shall take effect July 1, 2024.

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

Remove lines 8-18 and insert:

specified date; providing applicability; creating s. 386.2065, F.S.; specifying the authorized distance between the location of retail vape shops and specified religious or educational institutions upon a specified date; providing applicability; amending s. 562.45, F.S.; revising the authorized distance between the location of businesses that allow on-premises consumption of alcoholic beverages and specified religious or educational institutions upon a specified date; removing local governments' ability to approve such a location for specified purposes; providing applicability; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1071 Department of Agriculture and Consumer Services
SPONSOR(S): Alvarez and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1084

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Thompson	Anstead
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) Infrastructure Strategies Committee			

SUMMARY ANALYSIS

The bill contains modifications to several agricultural, consumer services, and licensure activities under the jurisdiction of the Department of Agriculture and Consumer Services (DACS), as follows:

- Preempts the regulation of electric vehicle charging stations to the state.
- Allows pest control certificateholders flexibility in the types of chemicals and equipment they can use.
- Reduces continuing education requirements for certain pest control certificateholders.
- Requires written documentation from certain pest control certificateholders to the property owner after each inspection or treatment for the presence or absence of wood destroying organisms.
- Prohibits certain pest control certificates from operating past the expiration date, and extends recertification grace periods.
- Makes it a violation, and authorizes DACS to take administrative action, for providing false information or cheating on pest control or pesticide licensure examinations.
- Allows a Class “G” statewide firearm licensee to qualify for up to two calibers of firearms in one 4-hour firearm requalification class.
- Allows DACS to appoint tax collectors to accept private security, private investigative and recovery services licenses, and to collect certain fees and provide certain services for concealed weapon or firearm licenses.
- Revises the information that charitable organizations are required to provide to DACS.
- Prohibits and creates penalties for the manufacture, sale, hold or offer for sale, or distribution of cultivated meat in this state.
- Prohibits movers from placing a shipper's goods in a self-service storage unit owned by anyone other than the mover.
- Revises the information that must be provided to DACS on a motor vehicle repair shop registration application, requires the registration fee to be calculated for each location, and raises the threshhold value of repair work which requires such shops to provide a customer with a written repair estimate.
- Criminalizes the destroying, harvesting, or selling saw palmetto berries.
- Includes poultry in the definition of “livestock” as governed by the DACS Division of Animal Industry.
- Reduces the number of trespassing signs required for lands classified as commercial agricultural property, and increases criminal penalties for trespassing on such property with intent to commit a crime.

The bill may have an indeterminate fiscal impact on state and local government, and the private sector.

Unless otherwise provided, the effective date of the bill is July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Electric Vehicle Charging Stations

Consumers and fleets considering electric vehicles (EVs), including all-electric vehicles and plug-in hybrid electric vehicles (PHEVs), need access to charging equipment. For most drivers, this starts with charging at home or at fleet facilities. Charging stations at workplaces, public destinations, and along highways offer more flexible charging opportunities at commonly visited locations.[1]

EV charging equipment is classified based on the following rates of charge:[2]

- Alternating Current (AC) Level 1 equipment provides charging through a common 120 volt AC outlet. Most, if not all, EVs come with a portable Level 1 cord, so no additional charging equipment is required. Level 1 chargers can take 40-50 hours to charge an all-electric vehicle from empty and 5-6 hours to charge a PHEV from empty.[3]
- AC Level 2 equipment offers charging through 240 volt (in residential applications) or 208 volt charging. As of 2022, 80 percent of public EV charging ports in the country were Level 2.[4] Level 2 chargers can charge an all-electric vehicle from empty in 4-10 hours and a PHEV from empty in 1-2 hours.[5]
- Direct-current (DC) fast charging equipment enables rapid charging along heavy traffic corridors at installed stations. As of 2022, more than 20 percent of public EV charging ports in the country were DC fast chargers.[6] DC fast charging equipment can charge an all-electric vehicle to 80 percent in 20 minutes to 1 hour.[7]

Charging times vary depending on the depletion level of the battery, how much energy the battery holds, the type of battery, temperature, and the type of supply equipment.

Florida's EV Law

According to the US Department of Energy, 44 of Florida's 67 counties[8] have 3,230 EV public charging stations offering a total of 8,981 charging ports. AC Level 2 charging ports comprise 6,793 of these ports, and DC fast charging ports comprise 2,164 of these ports.[9]

Florida law governing electric vehicle charging stations (EV law) requires the Department of Agriculture and Consumer Services (DACS) to adopt rules to provide definitions, methods of sale, labeling requirements, and price-posting requirements for EV charging stations to provide consistency for consumers and the industry.[10]

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[1] U.S. Dept. of Energy (DOE), Alternative Fuels Data Center, *Developing Infrastructure to Charge Electric Vehicles*, https://afdc.energy.gov/fuels/electricity_infrastructure.html (last visited Jan. 18, 2024).
[2] U.S. Environmental Protection Agency (EPA), *Plug-in Electric Vehicle Charging*, https://www.epa.gov/greenvehicles/plug-electric-vehicle-charging-basics (last visited Jan. 18, 2024).
[3] U.S. Dept. of Transportation (USDOT), *Electric Vehicle Charging Speeds*, https://www.transportation.gov/rural/ev/toolkit/ev-basics/charging-speeds (last visited Jan. 18, 2024).
[4] DOE, *supra* note 1.
[5] DOT *supra* note 3.
[6] DOE, *supra* note 1.
[7] DOT, *supra* note 3.
[8] Florida Department of Agriculture and Consumer Services (FDACS), Transportation, *Alternative Fueling Stations and Electric Vehicle Charging Stations*, https://www.fdacs.gov/Business-Services/Energy/Florida-Energy-Clearinghouse/Transportation (last visited Jan. 18, 2024)
[9] U.S. Dept. of Energy, Alternative Fuels Data Center (AFDC), *Alternative Fueling Station Counts by State*, https://afdc.energy.gov/stations/states (last visited Jan. 18, 2024).
[10] S. 366.94, F.S.

The EV law clarifies that the provision of electric vehicle charging to the public by a nonutility is not the retail sale of electricity for the purposes of chapter 366, F.S., which governs public utilities. The rates, terms, and conditions of electric vehicle charging services by a nonutility are not subject to regulation under that chapter.[11]

The EV law does not affect the ability of individuals, businesses, or governmental entities to acquire, install, or use an electric vehicle charger for their own vehicles.[12]

The EV law makes it unlawful for a person to stop, stand, or park a vehicle that is not capable of using an electrical recharging station within any parking space specifically designated for charging an electric vehicle. Violations are a noncriminal traffic infraction, punishable as provided in s. 316.008(4) or s. 318.18.[13]

Preemption

A local government enactment may be inconsistent with state law if the:

- Local enactment conflicts with state statutes; or
- The Legislature has preempted the particular area of law that is the subject of the enactment.

Such state preemption precludes a local government from exercising authority in the preempted area.[14]

Florida law recognizes two types of state preemption: express and implied. Express preemption requires an express legislative statement of intent to preempt a specific area of law; it cannot be implied or inferred.[15] Implied preemption, on the other hand, exists where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the legislature.[16] Courts determining the validity of local government ordinances enacted in the face of state preemption, whether express or implied, have found such ordinances to be null and void.[17]

Pest Control

Licensure

Chapter 482, F.S., the "Structural Pest Control Act," (Pest Control Act) is the chapter of Florida law that authorizes DACS to regulate pest control professionals. The Pest Control Act defines the term "pest control" to include:[18]

- The use of any method or device or the application of any substance to prevent, destroy, repel, mitigate, curb, control, or eradicate any pest in, on, or under a structure, lawn, or ornamental;
- The identification of or inspection for infestations or infections in, on, or under a structure, lawn, or ornamental;
- The use of any pesticide, economic poison, or mechanical device for preventing, controlling, eradicating, identifying, inspecting for, mitigating, diminishing, or curtailing insects, vermin, rodents, pest birds, bats, or other pests in, on, or under a structure, lawn, or ornamental;
- All phases of fumigation, including:
    - The treatment of products by vault fumigation; and

[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009), https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/ (last visited March 20, 2023).
[15] *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).
[16] *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880 (Fla. 2010).
[17] *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami,* 812 So. 2d 504 (Fla. 3d DCA 2002).
[18] S. 482.021(22), F.S.

    - The fumigation of boxcars, trucks, ships, airplanes, docks, warehouses, and common carriers; and
- The advertisement of, the solicitation of, or the acceptance of remuneration for any work described in this subsection, but does not include the solicitation of a bid from a licensee to be incorporated in an overall bid by an unlicensed primary contractor to supply services to another.

The Pest Control Act requires, in part, that each pest control business:

- Be licensed by DACS;[19]
- Carry the required insurance coverage ($250,000 per person and $500,000 per occurrence for bodily injury and $250,000 per occurrence and $500,000 in the aggregate for property damage, or a combined single limit coverage of $500,000 in the aggregate);[20] and
- Pay the following licensing fees, established by DACS:[21]
    - Initial fee of $300.
    - Renewal fee of $75.

The Pest Control Act prohibits DACS from issuing or renewing a license to engage in the pest control business unless the applicant's pest control activities are under a certified operator or operators in charge who are certified in the categories of the licensee.[22]

The Pest Control Act defines "category" as a distinct branch or phase of pest control for which a pest control operator's certificate may be issued such as:[23]

- Fumigation;
- General household pest control;
- Termites and other wood-destroying organisms pest control;
- Lawn and ornamental pest control; and
- Such a combination or division of such branches of pest control as the department may by rule establish.

Each employee who performs pest control for a licensee must have an identification card.[24]

Pest Control Operator's Certificate

The Pest Control Act requires DACS to issue a pest control operator's certificate to each individual who qualifies under the act. Before issuance of an original certificate, an individual must complete an application for examination, pay the examination fee, and pass the examination. Before engaging in pest control work, each certified operator must be certified.[25]

Annually, on or before an anniversary date set by DACS, an individual that is issued a pest control operator's certificate is required to apply to DACS for certificate renewal. After a grace period of up to 30 calendar days following the renewal date, a late renewal charge of $50 must be assessed and paid in addition to the renewal fee.[26]

Unless timely renewed, a certificate automatically expires 180 calendar days after the anniversary renewal date. Subsequent to such expiration, a certificate may be issued only upon successful reexamination and upon payment of the examination and issuance fees due.[27]

[19] S. 482.071(1)and(2), F.S.
[20] S. 482.071(4), F.S.
[21] S. 482.071(2)(b), F.S.
[22] S. 482.071(2)(e), F.S.
[23] S. 482.021(3), F.S.
[24] *See* S. 482.091, F.S.
[25] S. 482.111(1), F.S.
[26] S. 482.111(3), F.S.
[27] S. 482.111(4), F.S.

The Pest Control Act specifies that prior to the expiration date of a certificate, the certificateholder is required to:[28]

- Complete 2 hours of approved continuing education on legislation, safety, pesticide labeling, and integrated pest management and 2 hours of approved continuing education in each category of her or his certificate; or
- Pass an examination given by DACS.

Special Identification Card for Fumigation

The Pest Control Act requires individuals who perform fumigation to be a special identification cardholder, unless such individual is a certified operator who is certified in the category of fumigation. When performing fumigation, the Pest Control Act authorizes a special identification cardholder or certified operator to act only under the direction and supervision of the certified operator in charge.[29]

The Pest Control Act requires application to DACS for renewal of a special identification card to be made on or before an anniversary date set by DACS. Renewal fees for a special identification card are set by DACS as follows:[30]

- May not be more than $100 or less than $50.
- Until a rule setting this fee is adopted by DACS, the renewal fee shall be $50.
- After a grace period of up to 30 calendar days following the renewal date, DACS is required to assess a late renewal charge of $25, which must be paid in addition to the renewal fee.

Regarding expirations, the Pest Control Act provides:

- Unless timely renewed, a special identification card automatically expires 180 calendar days after the anniversary renewal date.[31]
- Subsequent to such expiration, a special identification card may be issued only upon successful reexamination and upon payment of examination and issuance fees due.[32]

Regarding continuing education, prior to the expiration date of a special identification card, the cardholder must:[33]

- Complete 2 hours of approved continuing education on legislation, safety, and pesticide labeling and 2 hours of approved continuing education in the fumigation category; or
- Pass an examination in fumigation given by DACS.

Limited Certification for Governmental Pesticide Applicators or Private Applicators

The Pest Control Act requires DACS to establish limited certification categories for:[34]

- Persons who apply pesticides only as governmental employees.
- Persons who apply pesticides only to their own private property, and employees who apply pesticides to private property owned by their employers. This includes properties such as public buildings, schools, hospitals, nursing homes, grocery stores, restaurants, apartments, and common areas of condominiums and any other private properties where the public may be exposed to pesticide applications.

The Pest Control Act requires a person seeking limited certification to pass an examination given or approved by DACS. Each application for examination must be accompanied by an examination fee set by DACS, as follows:[35]

- The amount may not be more than $150 or less than $50.

[28] S. 482.111(10), F.S.
[29] S. 482.151(1), F.S.
[30] S. 482.151(6), F.S.
[31] S. 482.151(7), F.S.
[32] *Id*.
[33] S. 482.151(7), F.S.
[34] S. 482.155(1)(a), F.S.
[35] S. 482.155(1)(b), F.S.

- A recertification fee of $25 every 4 years.
- Until rules setting these fees are adopted by the department, the examination fee is $50.

Regarding continuing education, the Pest Control Act requires:[36]
- Application for recertification to be accompanied by proof of having completed 4 classroom hours of acceptable continuing education.
- DACS to provide the appropriate reference material and make the examination readily accessible and available to all applicants at least quarterly or as necessary in each county.

Limited Certification for Commercial Landscape Maintenance Personnel

The Pest Control Act requires DACS to establish a limited certification category for individual commercial landscape maintenance personnel to authorize them to:[37]
- Apply herbicides for controlling weeds in plant beds; and
- Perform integrated pest management on ornamental plants using insecticides and fungicides having the signal word "caution" but not having the word "warning" or "danger" on the label.

Regarding authorized equipment that may be used under this certification, the Pest Control Act:[38]
- Only allows:
  - Portable, handheld 3-gallon compressed air sprayers; or
  - Backpack sprayers having no more than a 5-gallon capacity.
- Does not include power equipment.

The Pest Control Act requires a person seeking such limited certification to pass an examination given by DACS. Each application for examination must be accompanied by an examination fee set by DACS, that may not be more than $150 or less than $50.[39]

The Pest Control Act specifies that prior to DACS issuing such a limited certification, each person applying is required to furnish proof of having a certificate of insurance which states that the employer meets the requirements for minimum financial responsibility for bodily injury and property damage required by the Pest Control Act.[40]

Regarding eligibility to qualify to take the examination, the Pest Control Act:
- Requires applicants to:[41]
  - Complete 6 classroom hours of plant bed and ornamental continuing education training approved by DACS; and
  - Provide sufficient proof, according to criteria established by DACS rule.
- Requires DACS to provide the appropriate reference materials for the examination and make the examination readily accessible and available to applicants at least quarterly or as necessary in each county.

Regarding recertification, the Pest Control Act:[42]
- Requires application to be made annually.
- Requires a recertification fee set by DACS rule, in an amount of not more than $75 or less than $25.
- Requires applicants to provide proof of having completed 4 classroom hours of acceptable continuing education and the same proof of having a certificate of insurance as is required for issuance of this certification.

[36] S. 482.155(1)(b), F.S.
[37] S. 482.156(1), F.S.
[38] *Id*.
[39] S. 482.156(2)(a), F.S.
[40] *Id*.
[41] S. 482.156(2)(b), F.S.
[42] S. 482.156(3), F.S.

- Authorizes a grace period of up to 30 calendar days following the annual date that recertification is due, after which a late renewal charge of $50 must be assessed and paid in addition to the renewal fee.
- Provides that unless timely recertified, a certificate automatically expires 180 calendar days after the anniversary recertification date. Subsequent to such expiration, a certificate may be issued only upon successful reexamination and upon payment of the examination fees due.

The Pest Control Act requires persons certified under this section to maintain records available for review by the department upon request that document the following:[43]
- Pests and areas treated; and
- Methods and materials applied for control of such pests.

Limited Certification for Commercial Wildlife Management Personnel

The Pest Control Act requires DACS to establish a limited certificate that authorizes a person who engages in the commercial trapping of wildlife to use nonchemical methods, including traps, mechanical or electronic devices, and exclusionary techniques to control commensal rodents.[44]

Regarding recertification, the Pest Control Act:[45]
- Requires application for recertification to be made annually.
- Requires a recertification fee of at least $75, but not more than $150, as prescribed by DACS rule.
- Requires proof of completion of the required 4 classroom hours of acceptable continuing education and the required proof of insurance.
- Authorizes a grace period not exceeding 30 calendar days after the recertification renewal date, after which DACS is required to assess a late fee of $50 in addition to the renewal fee.
- Provides that a certificate automatically expires 180 days after the recertification date if the renewal fee has not been paid.
- Requires after expiration, DACS to issue a new certificate only if the applicant successfully passes a reexamination and pays the examination fee and late fee.

Violations for False Statements on Applications and Cheating on Exams

The Pest Control Act authorizes DACS to issue a written warning, impose a fine, or deny licensure of a licensee, certified operator, limited certificateholder, identification cardholder, or special identification cardholder or any other person, or suspend, revoke, or deny such issuance or renewals, in accordance with chapter 120, F.S., the Administrative Procedure Act, upon any of the following grounds:[46]
- Violation of any provision or DACS rule of the Pest Control Act.
- Conviction in any court within this state of a violation of the Pest Control Act.
- Habitual intemperance or addiction to narcotics.
- Conviction in any court in any state or in any federal court of a felony, unless civil rights have been restored.
- Knowingly:
    - Making false or fraudulent claims with respect to pest control;
    - Misrepresenting the effects of materials or methods used in pest control; or
    - Failing to use materials or methods suitable for the pest control undertaken.
- Performing pest control in a negligent manner.
- Failure to give to DACS, or its authorized representative, true information upon request regarding methods and materials used, work performed, or other information essential to the administration of the Pest Control Act.
- Fraudulent or misleading advertising relative to pest control or advertising in an unauthorized category of pest control.

[43] S. 482.156(5), F.S.
[44] S. 482.157(1), F.S.
[45] S. 482.157(3), F.S.
[46] S. 482.161(1), F.S.

- Failure to pay an administrative fine imposed pursuant to subsection (7).
- Impersonation of a DACS employee.

The Pest Control Act makes it unlawful to solicit, practice, perform, or advertise in pest control except as provided in the act. Such violations of the act or DACS rule are a second degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083.[47]

Wood-destroying Organism Preventive or Control Contracts

Inspection for wood destroying organisms is regulated as a pest control activity under the Pest Control Act.[48] When an inspection for wood-destroying organisms is made by a licensee for purposes of a real estate transaction and either a fee is charged for the inspection or a written report is requested by the customer, the act requires a wood-destroying organism inspection report to be provided by the licensee or its representative. The act also requires a copy of the inspection report to be retained by the licensee for a period of not less than 3 years.[49]

These provisions include requirements as to what the report must include and a requirement that a notice of the inspection be posted in the access area to the attic or crawl area or other accessible area of the structure inspected.[50] If treatment is made to the structure at the time of the inspection, the report must include information on the name of each WDO for which treatment was provided at the time of the inspection, the name of the pesticide used, and the conditions and terms associated with that treatment.[51]

Licensees who perform wood destroying organism inspections for real estate transactions are required to have a minimum of $50,000 in insurance coverage (or a bond) for professional liability for errors and omissions, or demonstrate an equity or net worth of no less than $100,000.[52]

Regarding wood-destroying organisms preventive or control contracts, the Pest Control Act provides that if periodic reinspections or retreatments are specified in wood-destroying organisms preventive or such contracts, the licensee is required to furnish the property owner or the property owner's authorized agent, after each such reinspection or retreatment, a signed report indicating the:[53]

- Presence or absence of wood-destroying organisms covered by the contract;
- Whether retreatment was made; and
- Common or brand name of the pesticide used.

The Pest Control Act specifies prohibits a person from performing periodic reinspections or retreatments unless she or he has an identification card issued under s. 482.091(9), F.S.

Florida Pesticide Law

Violations for False Statements on Applications and Cheating on Exams

Chapter 487, part I, the "Florida Pesticide Law" (Pesticide Law)[54] regulates the distribution, sale, and use of pesticides, except as provided in chapters 388, F.S., relating to mosquito control, and 482, F.S., the Pest Control Act, and protects people and the environment from the adverse effects of pesticides.[55] The Pesticide Law is administered by DACS.[56]

[47] S. 482.191, F.S.
[48] *See* S. 482.226, F.S.
[49] S. 482.226(1), F.S.
[50] S. 482.226(4), F.S.
[51] S. 482.226(2)(b), F.S.
[52] S. 482.226(6), F.S.
[53] S. 482.226(3), F.S.
[54] Chapter 487, part I, F.S.
[55] S. 487.12, F.S.
[56] S. 487.011, F.S.

Under the Pesticide Law, every pesticide distributed, sold, or offered for sale within the state, or transported in intrastate commerce must be registered with FDACS and renewed annually.[57]

The Pesticide Law makes it unlawful for any person to:[58]

- Make a false or fraudulent claim through any medium, misrepresenting the effect of materials or methods used;
- Make a pesticide recommendation or application not in accordance with the label, except as provided in this section, or not in accordance with recommendations of the United States Environmental Protection Agency or not in accordance with the specifications of a special local need registration;
- Operate faulty or unsafe equipment;
- Operate in a faulty, careless, or negligent manner;
- Apply any pesticide directly to, or in any manner cause any pesticide to drift onto, any person or area not intended to receive the pesticide;
- Fail to disclose to an agricultural crop grower, prior to the time pesticides are applied to a crop, full information regarding the possible harmful effects to human beings or animals and the earliest safe time for workers or animals to reenter the treated field;
- Refuse or, after notice, neglect to comply with the provisions of this part, the rules adopted under this part, or any lawful order of DACS;
- Refuse or neglect to keep and maintain the records or reports required;
- Make false or fraudulent records, invoices, or reports;
- Use fraud or misrepresentation in making an application for licensure;
- Refuse or neglect to comply with any limitations or restrictions on or in a duly issued license;
- Aid, abet, combine, or conspire with a licensed or unlicensed person to evade the provisions of this part, or allow a license to be used by an unlicensed person;
- Make false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land;
- Make false or misleading statements, or fail to report, pursuant to this part, any suspected or known damage to property or illness or injury to persons caused by the application of pesticides;
- Impersonate any state, county, or city inspector or official;
- Fail to maintain a current liability insurance policy or surety bond as provided for in this part;
- Fail to adequately train, as provided for in this part, unlicensed applicators or mixer-loaders applying restricted-use pesticides under the direct supervision of a licensed applicator; or
- Fail to provide authorized representatives of DACS with records required by this part or with free access for inspection and sampling of any pesticide, areas treated with or impacted by these materials, and equipment used in their application.

DACS is authorized to take the following actions regarding violations:[59]

- Deny an application for licensure.
- Revoke or suspend a license.
- Issue a warning letter.
- Place the licensee on probation and require the licensee to attend educational classes to demonstrate competency through a written or practical examination, or to work under the direct supervision of another licensee.
- Impose an administrative fee not to exceed $10,000 for each violation.
- Bring an action to enjoin the violation or threatened violation of the Pesticide Law in the circuit court of the county in which the violation occurs or is about to occur.[60]

[57] S. 487.041, F.S.
[58] S. 487.031(13), F.S.
[59] S. 487.175(1), F.S.
[60] S. 487.175(3), F.S.

Violations of the Pesticide Law are a second degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083, F.S., and subsequent violations are a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083.[61]

Firearm Licensing

Chapter 493 Licensees

The Division of Licensing (DOL) within DACS administers Florida's concealed weapon licensing program[62] and oversees Florida's private investigative, private security, and recovery services industries.[63] The DOL's regulatory oversight of those services includes licensing, enforcing compliance standards, and ensuring public protection from unethical business practices and unlicensed activity.[64]

Currently, the DOL offers 22 different types of private investigative, private security, and recovery services licenses and four different types of concealed weapon or firearm licenses. As of December 31, 2023, the DOL had issued a total of 186,842 private investigative, private security, and recovery services licenses and 2,514,687 concealed weapon permits, to qualified applicants. The following chart provides a breakdown of the total number of each license type.[65]

License Type	License Title	Total
C	Private Investigators	6,926
CC	Private Investigator Interns	1,324
A	Private Investigative Agencies	2,637
AA	Private Investigative Agency Branch Offices	22
MA	Private Investigative Agency Managers	72
M	Private Investigative/Security Agency Managers	452
D	Security Officers	141,778
B	Security Agencies	2,130
BB	Security Agency Branch Offices	178
MB	Security Managers	1,505
AB	Security Agency/Private Investigative Agency Branch Offices	8
DS	Security Officer Schools	457
DI	Security Officer Instructors	1,777
G	Statewide Firearm Licenses	25,431
K	Firearms Instructors	682
E	Recovery Agents	767
EE	Recovery Agent Interns	351
R	Recovery Agencies	293
RR	Recovery Agency Branch Offices	33
MR	Recovery Agency Managers	4
RS	Recovery Agent Schools	6
RI	Recovery Agent Instructors	9
Subtotal of Private Investigative, Private Security, and Recovery Services Licenses		**186,842**
W	Concealed Weapon or Firearm	2,501,201

[61] S. 487.175(2), F.S.
[62] S. 790.06, F.S.
[63] Ch. 493, F.S.
[64] Office of Program Policy Analysis and Government Accountability, Government Program Summaries, *Department of Agriculture and Consumer Services Licensing*, https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=4101 (last visited Jan. 19, 2024).
[65] The Florida Department of Agriculture and Consumer Services, *Division of Licensing Statistical Reports*, https://www.fdacs.gov/Divisions-Offices/Licensing/Statistical-Reports (last visited Jan. 19, 2024).

WJ	Concealed Weapon or Firearm/Circuit and County Judges	833
WR	Concealed Weapon or Firearm/Retired Law Enforcement and Correctional Officers	12,647
WS	Concealed Weapon or Firearm/Consular Security Official	6
Subtotal of Concealed Weapon Licenses		**2,514,687**
Total Number of Licenses		**2,701,529**

A security officer is an individual who advertises for, or performs: bodyguard services, personal or property protection; theft and loss prevention; armored car staffing; or transportation of prisoners.[66] Law enforcement officers engaged in their official duties or off-duty security activities that have been approved by appropriate superiors are not considered security officers.[67] Additionally, unarmed security officers who are employed by, and perform their work entirely on the premises of either their employer's business, a church or denominational organization, or a church cemetery are not required to be licensed as a security officer under ch. 493, F.S.[68]

A private investigator is an individual who investigates a person for the purpose of obtaining information with reference to the following specific matters:[69]

- Crimes or wrongdoings against the United States or any state or territory, when operating under express authority of a governmental official;
- The identity, habits, conduct, movement, and other characteristics of any society, person, or group of persons;
- The credibility of a witness or other person;
- The whereabouts of a missing person, owner of unclaimed or escheated property, or heirs to an estate;
- The location or recovery of lost or stolen property;
- The causes and origin of fires, libel, slander, losses, accidents, damage, or injuries to real or personal property; or
- Securing evidence to be used before an investigating committee or board, or in a civil or criminal trial.

Class "G" Statewide Firearm License

A Class "G" license is a supplemental license that permits specific licensees to carry a firearm during the course of their licensed, employment-related activity. A Class "G" license is available only to individuals who currently hold one of the following licenses: private investigator (Class "C"), private investigator intern (Class "CC"), security officer (Class "D"), private investigative or security agency manager (Class "M"), private investigative agency manager (Class "MA"), or security agency manager (Class "MB").[70] The "Class G" license must be renewed every 2 years.

Application and Training Requirements for Class "G" Licensees

An initial applicant for a Class "G" license must complete firearm training, which must include at least 28 hours of range and classroom training (range training must be 8 hours) that is administered by a Class "K" licensee.[71]

[66] S. 493.6101(19), F.S.; *see also*, DACS, *Private Security Licenses*, https://www.fdacs.gov/Business-Services/Private-Security-Licenses (last visited Jan. 19, 2024).
[67] S. 493.6102(1), F.S.
[68] S. 493.6102(4), (13), F.S.
[69] S. 493.6101(16), F.S. *See also*, DACS, *Private Investigation* (Dec. 2017), https://licensing.freshfromflorida.com/forms/P-01721.pdf (last visited Jan. 19, 2024).
[70] S. 493.6115(2), F.S.
[71] S. 493.6105(5), F.S. *See also* R. 5N-1.132(1)(a), F.A.C.

Class "G" licensees must annually complete 4 hours of firearms requalification training for each caliber of firearm that he or she carries in the course of his or her duties.[72]

A Class "G" licensee is subject to a biennial statewide firearm license fee of $112, but there is no application fee.[73] The applicant for a Class "G" license must submit a fingerprint processing ($42) and retention ($10.75) fee, however—this fee is waived if the applicant has otherwise paid these fees for any other license under ch. 493, F.S., within the last 6 months.[74]

Regulation of Class "G" Licensees

A Class "G" licensee may only carry two firearms when performing his or her licensed duties. Unless DACS grants specific approval otherwise, the types of weapons a Class "G" licensee may use are limited to the following:

- .38 caliber revolver;
- .380 caliber or .9 mm semiautomatic pistol;
- .357 caliber revolver used with .38 caliber ammunition;
- .40 caliber handgun; or
- .45 ACP handgun.[75]

If a Class "G" licensee discharges his or her firearm during the course of her or his duties, the licensee must file an incident report with DACS.[76]

Class "G" licensees are subject to penalties, ranging from a fine to the suspension or revocation of their license, for the following violations of administrative rule:[77]

- Conviction of, or adjudication of guilt withheld, on a crime directly related to the business for which the license is held;
- Improper exhibition of a firearm;
- Careless or improper handling of a firearm resulting in a discharge;
- Firing an unjustifiable warning shot while on duty;
- Impersonating a law enforcement officer or government employee; and
- Commission of an act of violence not in the lawful protection of one's self or another.

Concealed Weapon and Firearm License

Florida is a "shall issue"[78] state for applications for concealed weapon and firearm licenses.[79] DACS is required to review and either issue or deny a license within 90 days of receiving an application.[80]

DACS is required to issue a license, which expires after 7 years,[81] if an applicant:

- Is a citizen of the United States, permanent resident alien, or consular security official of a foreign government;
- Is 21 years of age or older;
- Does not suffer from a physical infirmity which prevents the safe handling of a weapon or firearm;

[72] S. 493.6113(3)(b), F.S.
[73] R. 5N-1.116(2)(a)6. and (2)(c), F.A.C.
[74] R. 5N-1.116(3)(a), F.A.C.
[75] S 493.6115(6), F.S. *See also*, FDACS, *Approved Firearms for Class "G" License Holders*, https://www.fdacs.gov/Business-Services/Private-Investigation-Licenses/Approved-Firearms-for-Class-G-License-Holders (last visited Jan. 19, 2024).
[76] S 493.6115(9), F.S.
[77] R. 5N-1.113, F.S. *See also*, s. 493.6118(1), F.S.
[78] Generally, states issue a permit, or license, to carry a concealed weapon such as a firearm on either a "shall issue," or "may issue" basis. The key difference is that shall issue states must issue the permit or license if the applicant meets the requirements; whereas, may issue states have much more discretion to deny an application even if the applicant meets the requirements under the law.
[79] S. 790.06(2), F.S.
[80] S. 790.06(6)(c), F.S.
[81] S. 790.06(1), F.S.

- Has not been convicted of a felony;
- Has not been found guilty of a controlled substances crime within the previous 3 years;
- Has not been committed for the abuse of a controlled substance;[82]
- Does not suffer from chronic and habitual use of alcohol or other substances to the extent that their normal faculties are impaired;[83]
- Desires to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrates competency with a firearm;[84]
- Has not been adjudicated as an incapacitated person;
- Has not been committed to a mental institution;[85]
- Has not had an adjudication of guilt withheld or a suspended sentence on a felony unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been expunged;
- Has not had an adjudication of guilt withheld or an imposition of sentence suspended on a misdemeanor crime of domestic violence, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or the record has been expunged;
- Has not been issued an injunction that is currently in force and effect that restrains that applicant from committing acts of domestic violence or acts of repeat violence; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.[86]

DACS is required to suspend a license or the processing of an application for a license if the licensee or applicant is arrested or formally charged with a crime that would disqualify such person from having a license until final disposition of the case.[87] The Department is also required to suspend a license or the processing of an application for a license if the licensee or applicant is issued an injunction that restrains the licensee or applicant from committing acts of domestic violence or acts of repeat violence.[88]

Once obtained, the licensee must carry the license with valid identification at all times when the licensee is in actual possession of a concealed weapon or firearm.[89] The license, however, "does not authorize any person to carry a concealed weapon or firearm into" the following places:[90]

- Any place of nuisance;[91]
- Any police, sheriff, or highway patrol station;
- Any detention facility, prison, or jail;
- Any courthouse;
- Any courtroom;[92]
- Any polling place;

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[82] An applicant granted relief of firearms disabilities pursuant to s. 790.065(2)(a)4.d., F.S., after having been adjudicated mentally defective or committed to a mental institution is deemed not to be committed for the abuse of a controlled substance.

[83] The law presumes that a person chronically and habitually uses alcoholic beverages or other substances to the point of impairment if the applicant has been convicted of using a firearm while under the influence of alcoholic beverages, chemical substances, or controlled substances or has been deemed a habitual offender of disorderly intoxication under s. 856.011(3), F.S., or has had two or more convictions of driving under the influence within a 3-year period preceding the date which the application is submitted. *See*, s. 790.06(2)(f), F.S.

[84] There are several methods of demonstrating competency with a firearm, including completion of a hunter education or safety course approved by the Fish and Wildlife Conservation Commission, completion of any law enforcement firearms safety or training course, or completion of firearms training safety courses using instructors certified by the National Rifle Association, Criminal Justice Standards and Training Commission, or the Department.

[85] An applicant who has been granted relief from firearms disabilities pursuant to s. 790.065(2)(a)4.d., F.S., after having been adjudicated mentally defective or committed to a mental institution is deemed not to have been committed in a mental institution.

[86] S. 790.06(2)(n), F.S.

[87] S. 790.06(3), F.S.

[88] *Id*.

[89] S. 790.06(1), F.S.

[90] S. 790.06(12)(a), F.S.

[91] *See* s. 823.05, F.S., for an extensive description of places of nuisance.

[92] However, judges may carry a concealed weapon and allow others to do so within their courtroom. Section 790.06(12)(a)5., F.S.

- Any meeting of the governing body of a county, public school district, municipality, or special district;
- Any meeting of the Legislature or a committee thereof;
- Any school, college, or professional athletic event not related to firearms;
- Any elementary or secondary school facility or administration building;
- Any career center;
- Any portion of an establishment licensed to dispense alcoholic beverages for consumption on the premises, which portion of the establishment is primarily devoted to such purpose;
- Any college or university facility;[93]
- The inside of the passenger terminal and sterile area of any airport; or
- Any place where the carrying of firearms is prohibited by federal law.[94]

Appointment of Tax Collectors to Accept Applications for a Concealed Weapon or Firearm License

DACS is authorized to appoint tax collectors,[95] to accept applications on behalf of the DOL for concealed weapon or firearm licenses. A tax collector appointed under s. 790.0625, F.S., may collect and retain a convenience fee of $22 for each new application and $12 for each renewal application.[96]

A tax collector seeking to be appointed must submit a written request to the DOL stating his or her name, address, telephone number, each location within the county at which the tax collector wishes to accept applications, and other information as required by the DOL.[97]
If the written request is approved by the DOL, the tax collector will be permitted to accept applications for new or renewal concealed weapon or firearm licenses on behalf of DACS.[98]

A tax collector is prohibited from maintaining a list or record of persons who apply for or are granted a new or renewal license to carry a concealed weapon or firearm.[99] Upon receipt of a completed renewal or replacement application, a new color photograph, and appropriate payment of required fees, an authorized tax collector may, upon approval and confirmation of license issuance by DACS, print and deliver a concealed weapon or firearm license to a licensee renewing his or her license at the tax collector's office.[100]

Solicitation of Contributions Act

The Division of Consumer Services (DCS) within DACS is the state's clearinghouse for consumer complaints, information and protection. The DCS regulates various businesses, including charitable organizations. Organizations that intend to solicit donations in Florida are required to register with DACS pursuant to the Solicitation of Contributions Act (SCA).[101] The SCA contains basic registration, financial disclosures, and notification requirements for charitable organizations and sponsors,[102] fundraising consultants, and solicitors.

Registration Statements

[93] However, a "student, employee, or faculty member" may carry a stun gun or nonlethal electric weapon designed for defensive purposes as long as the weapon does not fire a dart or projectile.
[94] S. 790.06(12)(a)1.-15., F.S.
[95] *See* s. Art. VIII, § 1(d), Fla. Const.
[96] S. 790.0625(5), F.S.
[97] S. 790.0625(3), F.S.
[98] S. 790.0625(3)(a), F.S.
[99] S. 790.0625(6)(a), F.S.
[100] S. 790.0625(8), F.S.
[101] *See* s. 496.401, F.S.
[102] S. 496.404(25), F.S., provides that a sponsor is a group or person who is or holds itself out to be soliciting contributions by the use of a name that implies that the group or person is in any way affiliated with or organized for the benefit of emergency service employees or law enforcement officers and the group or person is not a charitable organization. The term includes a chapter, branch, or affiliate that has its principal place of business outside the state if the chapter, branch, or affiliate solicits or holds itself out to be soliciting contributions in the state.

The SCA requires a charitable organization or sponsor, unless exempted pursuant to s. 496.406, F.S., which intends to solicit contributions to first file an initial registration statement, and a renewal statement annually, with DACS.[103]

The SCA requires initial registration statements to be submitted to DACS and include a financial report, a statement of the purpose of the charity, how donations will be used, names of individuals in charge of solicitation activities, and proof of federal tax exempt status. The charity must also identify any professional solicitors and fundraising consultants the charity will use, along with the terms of the arrangements for compensation to be paid to the consultant and solicitor. The registration must include a statement related to the charity's activity in other states, including whether the charity is authorized to operate in another state; whether the charity's registration has been denied, suspended, or revoked in another state; and whether the charity or any person associated with the charity has been subject to any adverse administrative actions or criminal convictions in any state.[104]

The following charitable organizations and sponsors are exempt from the registration requirements: A person who is soliciting for a named individual;

- A charitable organization or sponsor that limits solicitations of contributions to the membership of the charitable organization or sponsor;
- Any division, department, post, or chapter of certain veterans' service organizations are exempt from the registration requirements; or
- A charitable organization that has less than $50,000 in total revenue so long as they did not employ professional solicitors or have paid employees.[105]

Before soliciting contributions, the charitable organization or sponsor claiming the exemption must provide DACS with certain financial and identifying information including the name, address, and telephone number of the charitable organization or sponsor, the name under which it intends to solicit contributions, the purpose for which it is organized, and the purpose for which the contributions to be solicited will be used.[106]

Financial Statements

A charitable organization or sponsor that is required to register or renew registration must file an annual financial statement for the immediate preceding year with DACS. The statement must include:

- A balance sheet;
- A statement of support, revenue and expenses;
- Names and addresses of any charities, professional fundraising consultants, professional solicitors, and commercial co-ventures used and the amounts received from each of them; and
- A statement of functional expenses that must include program service costs, management and general costs, and fundraising costs.[107]

Upon the showing of good cause by a charitable organization or sponsor, is authorized to extend the time for the filing of a financial statement by up to 180 days.[108]

Disclosure Requirements of Charitable Organizations and Sponsors

Charitable organizations or sponsors can solicit contributions only for the purpose expressed in the solicitation for contributions or the registration statement. The following disclosures must be included at the point of solicitation:[109]

[103] S. 496.405(1), F.S.
[104] Section 496.405(2), F.S.
[105] Section 496.406(1), F.S.
[106] S. 496.406(2), F.S.
[107] S. 496.407(1), F.S.
[108] S. 496.407(3), F.S.
[109] S. 496.411, F.S.

- The name of the organization or sponsor and principal place of business of the organization or sponsor;
- A description of the purpose for which the solicitation is being made;
- The name and address or telephone number of a person to whom inquiries may be addressed;
- The amount of the contribution which may be deducted from federal income tax; and
- The source from which a written financial statement may be obtained.

Professional Fundraising Consultants

Professional fundraising consultants[110] are required to annually register and pay a $300 fee to DACS before operating in Florida.[111] Additionally, professional fundraising consultants who enter into agreements with charities may do so only if the charity has complied with the SCA, and has obtained approval from DACS of a registration statement.[112]

Applications for registration or renewal must be signed by an authorized official of the professional fundraising consultant and must include certain identifying information such as:[113]

- The names and residence addresses of all principals of the applicant, including all officers, directors, and owners;
- The form of the applicant's business; and
- The street address and telephone number of the principal place of business of the applicant and any Florida street addresses if the principal place of business is located outside of Florida.

After receiving the registration statement, DACS has 15 business days to either approve the registration or notify the consultant that the registration requirements are not satisfied. If, after 15 days DCS is not notified by the consultant, the registration is deemed approved.[114]

Professional Solicitors

Professional solicitors[115] must annually register and pay a $300 fee to DACS before operating in Florida.[116] Information that must be provided for registration or renewal includes the following:[117]

- The street address and telephone number of the business;
- The form of the applicant's business;
- The place and date when the applicant was legally established;
- The names and residence addresses of all principals, including officers, directors, and owners, and
- A list of all telephone numbers to be used by the applicant to solicit contributions as well as the physical address associated with each telephone number.

After receiving the registration statement, DACS has 15 business days to either approve the registration or notify the solicitor that the registration requirements are not satisfied. If, after 15 days DACS has not notified the solicitor, the registration is deemed approved.[118]

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[110] S. 496.404(20), F.S., provides that a professional fundraising consultant is a person retained by a charitable organization or sponsor for a fixed fee or rate under a written agreement to plan, manage, conduct, carry on, advise, consult, or prepare material for a solicitation of contributions in Florida but who does not solicit contributions or employ, procure, or engage any compensated person to solicit contributions and who does not at any time have custody or control of contributions.

[111] S. 496.409(1),(3), F.S.

[112] *See* s. 496.409(6), F.S.

[113] S. 496.409(2), F.S.

[114] S. 496.409(6), F.S.

[115] S. 496.404(21), F.S., provides that a professional solicitor is a person who, for compensation, performs for a charitable organization or sponsor a service in connection with which contributions are or will be solicited in, or from a location in, Florida by the compensated person or by a person it employs, procures, or otherwise engages, directly or indirectly, to solicit contributions, or a person who plans, conducts, manages, carries on, advises, consults, directly or indirectly, in connection with the solicitation of contributions for or on behalf of a charitable organization or sponsor but who does not qualify as a professional fundraising consultant.

[116] S. 496.410, F.S.

[117] S. 496.410(2), F.S.

[118] S. 496.410(5), F.S.

Solicitors must also file a solicitation notice with DACS at least 15 days before beginning a solicitation campaign or event. The notice must include identifying information including residence addresses.[119] During each solicitation campaign, and for not less than three years after its completion, the solicitor must maintain certain records including addresses of contributors and employees involved in the solicitation.[120] Additionally, if solicitors sell tickets to events and represents that the tickets will be donated for use by another person, the solicitor must maintain records including addresses of contributors and of organizations that receive the donated tickets.[121]

A solicitor license must be obtained from DACS by each officer, director, trustee, or owner of a professional solicitor and any employee of a professional solicitor conducting telephonic solicitations during which a donor's or potential donor's personal financial information is requested or provided is required. Among other information, the license application must include the name, home address, date of birth, and identification number of a government-issued ID of the applicant.[122]

Collection Receptacles for Donations

The SCA defines a "collection receptacle" as a receptacle used to collect donated clothing, household items, or other goods for resale.[123] The SCA requires all collection receptacles for donations to display a permanent sign on each side of the receptacle. For receptacles used by a charity required to register under ch. 496, F.S., the sign must provide the name, address, telephone number, and registration number of the charity.[124]

Solicitation of Funds within Public Transportation Facilities

Any person wanting to solicit funds within a public transportation facility[125] must obtain a written permit from the authority responsible for the administration of the facility.[126] The application for the permit submitted to the authority must "set forth" the:[127]

- Full name, mailing address, and telephone number of the person or organization;
- Full name, mailing address, and telephone number of each person participating in the activity as well as the person in charge of the activity;
- A description of the proposed activities;
- Dates and hours of the activities; and
- Number of persons engaged in such activities.

While conducting the activities, each solicitor must display prominently a badge or insignia provided by the authority that describes the solicitor by name, age, height, weight, eye color, hair color, address, and principal occupation and indicating the name of the organization for which the funds are solicited.[128]

Cultivated Meat

[119] S. 496.410(6), F.S.
[120] S. 496.410(10), F.S.
[121] S. 496.410(11), F.S.
[122] S. 496.4101, F.S.
[123] S. 496.4121(1), F.S.
[124] S. 496.4121(2)(a), F.S.
[125] S. 496.425(1)(b), F.S., defines "facility" as any public transportation facility, including, but not limited to, railroad stations, bus stations, ship ports, ferry terminals, roadside welcome stations, highway service plazas, airports served by scheduled passenger service, or highway rest stations.
[126] *See* s. 496.425, F.S.
[127] S. 496.425(2), F.S.
[128] S. 496.425(6), F.S.

The US Department of Agriculture (USDA) describes human food made with cultured animal cells as the ability to take a small number of cells from living animals and grow them in a controlled environment to create food.[129] The USDA summarizes the process of making cultured meat below:

- Step 1: Scientists typically start with a sample of cells from the tissue of an animal or fish, a process that typically does not permanently harm or kill the animal. Some cells from the sample are selected, screened, and grown to make a "bank" of cells to store for later use.
- Step 2: To make food, a small number of cells are taken from the cell bank and placed in a tightly controlled and monitored environment (e.g., a very large, sealed vessel) that supports growth and cellular multiplication by supplying appropriate nutrients and other factors.
- Step 3: After the cells have multiplied many times over into billions or trillions of cells, additional factors (e.g., protein growth factors, new surfaces for cell attachment, additional nutrients) are added to the controlled environment to enable the cells to differentiate into various cell types and assume characteristics of muscle, fat, or connective tissue cells.
- Step 4: Once the cells have differentiated into the desired type, the cellular material can be harvested from the controlled environment and prepared using conventional food processing and packaging methods.[130]

In 2019 the US Food and Drug Administration (FDA) and the USDA's Food Safety and Inspection Service agreed to establish a joint regulatory framework for human foods made from cultured cells of livestock and poultry to help ensure that any such products brought to market are safe, unadulterated, and truthfully labeled.[131]

As of 2024, there are currently several states that have laws related to the proper labeling of meat and lab grown meat products.[132] However, wide adoption of the creation of meat at the cellular level is not expected to happen soon. Reasons for this include, the product is expensive to create, scientific challenges regarding simulating the complex structure of meat, and government regulations. According to reports, "while many people who have tried it say they like it, others find the idea distasteful. A recent poll from The Associated Press-NORC Center for Public Affairs Research found that half of adults in the meat-hungry U.S. would be unlikely to try it. A majority of those who said they wouldn't said "it just sounds weird."[133]

Recently, there have been efforts by proponents of cultivated meats to reduce carbon emissions of the US livestock industry by increasing the amount of cultivated meat that is eaten. Bill Gates, an investor in such companies as Beyond Meats, Carbon Engineering, Impossible Foods, Memphis Meats, promotes production and consumption of cultivated meats. According to Gates, "I do think all rich countries should move to 100% synthetic beef. You can get used to the taste difference."[134]

Household Moving Services

Chapter 507, F.S., is the chapter of Florida law governing Household Moving Services (Moving Law). The Moving Law defines:

- "Mover" as a person who, for compensation, contracts for or engages in the loading, transportation or shipment, or unloading of household goods as part of a household move. The term does not include a postal, courier, envelope, or package service that does not advertise itself as a mover or moving service. [135]

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[129] USDA, *Human Food Made with Cultured Animal Cells*, https://www.fsis.usda.gov/inspection/compliance-guidance/labeling/labeling-policies/human-food-made-cultured-animal-cells (last visited January 19, 2024).
[130] *Id*.
[131] *Id*.
[132] Penn State Law, Scope of the Meat Labeling Law Issue Tracker, *available at*, https://aglaw.psu.edu/research-by-topic/issue-tracker/meat-labeling-law-2018-present/ (last visited January 19, 2024).
[133] Associated Press, *Meat Without Animals*, https://projects.apnews.com/features/2023/the-protein-problem/lab-grown-cultivated-meat/index.html (last visited Jan. 19, 2024).
[134] Massachusetts Institute of Technology, MIT Technology Review, *Bill Gates: Rich nations should shift entirely to synthetic beef*, https://www.technologyreview.com/2021/02/14/1018296/bill-gates-climate-change-beef-trees-microsoft/ (last visited Jan. 19, 2024).
[135] S. 507.01(9), F.S.

- "Moving broker" as a person who, for compensation, arranges for another person to load, transport or ship, or unload household goods as part of a household move or who, for compensation, refers a shipper to a mover by telephone, postal or electronic mail, Internet website, or other means.[136]
- "Shipper" as a person who uses the services of a mover to transport or ship household goods as part of a household move.[137]

The Moving Law provides requirements that household movers must comply with in order to operate, including:

- Registration.[138]
- Required insurance coverages.[139]
- Estimates and contracts for service.[140]
- Requirements for delivery and storage of goods.[141]

The Moving Law makes the following acts a violation:

- To conduct business, or advertise to engage in the business of moving, without being registered.
- To knowingly make any false statement, representation, or certification in any application, document, or record required to be submitted or retained.
- To misrepresent or deceptively represent:
  - The contract for services, bill of lading, or inventory of household goods for the move estimated.
  - The timeframe or schedule for delivery or storage of household goods estimated.
  - The price, size, nature, extent, qualities, or characteristics of accessorial or moving services offered.
  - The nature or extent of other goods, services, or amenities offered.
  - A shipper's rights, privileges, or benefits.
- To fail to honor and comply with all provisions of the contract for services or bill of lading regarding the purchaser's rights, benefits, and privileges thereunder.
- To withhold delivery of household goods or in any way hold goods in storage against the expressed wishes of the shipper if payment has been made as delineated in the estimate or contract for services.
- To include in any contract any provision purporting to waive or limit any right or benefit provided to shippers.
- To seek or solicit a waiver or acceptance of limitation from a shipper concerning rights or benefits.
- To use a local mailing address, registration facility, drop box, or answering service in the promotion, advertising, solicitation, or sale of contracts, unless the mover's, and, if applicable, the moving broker's, fixed business address is clearly disclosed during any telephone solicitation and is prominently and conspicuously disclosed on all solicitation materials and on the contract.
- To commit any other act of fraud, misrepresentation, or failure to disclose a material fact.
- To refuse or fail, or for any of the mover's or broker's principal officers to refuse or fail, after notice, to produce any document or record or disclose any information required to be produced or disclosed.
- To knowingly make a false statement in response to any request or investigation by the department, the Department of Legal Affairs, or the state attorney.
- For a moving broker to enter into a contract or agreement for moving, loading, shipping, transporting, or unloading services with a mover who is not registered with the department pursuant to this chapter.

[136] S. 507.01(10), F.S.
[137] S. 507.01(12), F.S.
[138] S. 507.03, F.S.
[139] S. 507.04, F.S.
[140] S. 507.05, F.S.
[141] S. 507.06, F.S.

- For a mover to enter into a contract or agreement for moving, loading, shipping, transporting, or unloading services with a moving broker who is not registered with the department pursuant to this chapter.
- For a mover or a moving broker to knowingly refuse or fail to disclose in writing to a customer before a household move that the mover, or an employee or subcontractor of the mover or moving broker, who has access to the dwelling or property of the customer, including access to give a quote for the move, has been convicted of a felony listed in s. 775.21(4)(a)1. or convicted of a similar offense of another jurisdiction, regardless of when such felony offense was committed.

Penalties for violations of the Moving Law, can include penalties under the Florida Deceptive and Unfair Trade Practices Act.[142] DACS is also authorized to do the following if it finds a violation:[143]

- Issue a notice of noncompliance under s. 120.695, F.S.
- Impose an administrative fine in the Class II category pursuant to s. 570.971 for each act or omission. However, DACS must impose an administrative fine in the Class IV category for each violation of s. 507.07(9), if it does not seek a civil penalty for the same offense.
- Direct that the person cease and desist specified activities.
- Refuse to register or revoking or suspending a registration.
- Place the registrant on probation, subject to the conditions specified by DACS.

It is a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S., for a mover or a mover's employee, agent, or contractor to refuse to comply with an order from a law enforcement officer to relinquish a shipper's household goods after the officer determines that the:

- Shipper has tendered payment of the amount of a written estimate or contract; or
- Mover did not produce a signed estimate or contract upon which demand is being made for payment.

Sunset of Weights and Measures Act

Chapter 531, F.S., the "Weights and Measures Act of 1971" (WMA) is the chapter of Florida law which governs the methods and devices that monitor the accuracy of Florida's gas pumps, scales, price scanners, and other commercial weighing and measuring devices to promote a fair and equitable marketplace and protect consumers.[144]

The DACS Bureau of Standards is responsible for the inspection of weights and measures devices or instruments in Florida.[145] "Weights and measures" are defined as all weights and measures of every kind, instruments, and devices for weighing and measuring, and any appliance and accessories associated with any or all such instruments and devices, excluding taximeters, transportation measurement systems, and those weights and measures used for the purpose of inspecting the accuracy of devices used in conjunction with aviation fuel.[146] The weights and measures program is funded through permit fees.[147]

The WMA, including provisions related to general permitting, initial and renewal applications, maximum permit fees, suspensions, penalties, revocations, and exemptions, is set to expire on July 1, 2025.[148]

Motor Vehicle Repair Shop Registration and Written Repair Estimates

[142] S. 507.08, F.S.
[143] S. 507.09, F.S.
[144] Florida Department of Agriculture and Consumer Services, *Weights and Measures*, https://www.fdacs.gov/Business-Services/Weights-and-Measures (last visited Jan. 18, 2024).
[145] Ch. 531, F.S. "Weights and Measures Act of 1971"
[146] S. 531.37(1), F.S.
[147] S. 531.63, F.S.
[148] S. 531.67, F.S.

Chapter 59, part IX, the "Florida Motor Vehicle Repair Act" (MVRA) is the chapter of Florida law that governs the registration of motor vehicle repair shops in Florida. The MVRA requires anyone who is paid to repair motor vehicles owned by other individuals to register with DACS.[149] Registration applications must include the:

- Name of the applicant;
- Name under which the applicant is doing business;
- Business address; copies of all licenses, permits, and certifications; and
- Number of employees which the applicant intends to employ or currently employed.[150]

Each application must be accompanied by a registration fee calculated on a per-year basis.[151]

For repairs costing more than $100, repair shops are required to prepare a written repair estimate that includes the estimated cost of repair work, including diagnostic work, before beginning any diagnostic work or repair. The repair shop must then give the customer the option of:

- Requesting a written estimate;
- Being notified by the shop if the repair exceeds an amount the customer specifies; or
- Not requiring a written estimate at all. [152]

Florida Agricultural Museum

The Florida Agricultural Museum was established in 1983 by a group of concerned agriculturalists and historians at the request of Agricultural Commissioner Doyle Conner to help preserve this important part of Florida's heritage.[153] Originally located in Tallahassee, the museum was part of DACS.[154] The Museum, now located in Flagler County, is a private non-profit 501(c)(3) corporation led by a board of trustees.[155]

The Florida Agricultural Museum is designated as the museum of agriculture and rural history of the State of Florida and is established within DACS.[156] DACS is authorized to establish direct support organizations in order to provide assistance, funding, and promotion support for the programs of DACS, including support for the Florida Agricultural Museum.[157]

Saw Palmetto Berries

Saw palmetto berries collected from forests in Florida and Georgia are the most abundantly harvested medicinal non-timber forest products (NTFPs) in terms of dry weight. Saw palmetto berries are the fruit of a commonly occurring understory plant in Florida flatwoods. They are the source of certain medicinal compounds used in Native American, herbal and alternative medical treatments for prostate and other urologic conditions.[158]

Effective July 2018, DACS requires a permit to harvest and sell saw palmetto berries in Florida.[159] The Endangered Plant Advisory Council unanimously recommended adding saw palmetto to the FDACS

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[149] S. 559.904, F.S.
[150] S. 559.904(1), F.S.
[151] S. 559.904(3), F.S.
[152] S. 559.905, F.S.
[153] Florida Agricultural Museum, *About the Museum*, https://www.floridaagmuseum.org/about-the-museum/ (last visited January 19, 2024).
[154] *Id*.
[155] *Id*.
[156] S. 570.692, F.S.
[157] S. 570.691, F.S.
[158] Florida Department of Agriculture and Consumer Services, *Non-Timber Forest Products (NTFP): Additional Potential Revenue Sources for Forest Landowners*, https://www.fdacs.gov/Forest-Wildfire/Our-Forests/Working-Forest/Non-Timber-Forest-Products-NTFP (last visited January 19, 2024).
[159] Florida Department of Agriculture and Consumer Services, *Saw Palmetto Berry Harvesting*, https://www.fdacs.gov/Agriculture-Industry/Plant-Industry-Permits/Saw-Palmetto-Berry-Harvesting (last visited January 19, 2024).

commercially exploited plant list.[160] There is no application fee to apply for a permit. The permit expires twelve months after the date of issuance and is not transferable.[161]

According to reports, saw palmetto berries have been used as a natural remedy for centuries, which makes them valuable. Unfortunately, that also makes them a tempting target for thieves. Recently, the problem has been growing in Florida. For example, the Indian River County Sheriff's Office recently apprehended more than a dozen people stealing hundreds of pounds of these berries from private property and government land.[162]

Livestock

The DACS Division of Animal Industry (DAI) is responsible for enforcing animal health regulations in Florida and protecting the state from animal pests and diseases.[163] District veterinarians and animal health inspectors throughout the state work with producers, animal owners and private veterinarians to monitor and enhance the health and welfare of Florida's animals.[164]

Under Florida's Comprehensive Emergency Management Plan, the DAI serves as the lead agency for animal and agricultural issues, planning and coordinating the state's response to emergencies ranging from hurricanes to animal disease outbreaks.[165]

Chapter 585, part II, F.S., relating to disease, inspection, control, and eradication of animal diseases, authorizes the DAI to:[166]

- Establish, maintain, and enforce quarantine areas within the state, or the entire state.
- Adopt, amend, repeal, and enforce rules governing the:
    - Introduction of animals into or within the state, which rules, when deemed necessary by the department, may require that all animals moved into the state be covered by an official certificate of veterinary inspection and requisite test chart approved by the chief livestock regulatory official of the state or country of origin; and
    - Disposal or destruction of carcasses of animals which are condemned or die from or while afflicted with any contagious, infectious, or communicable disease, in such manner as to prevent the spread or continuance of the contagion or infection.
- Condemn and destroy any animal affected with any contagious, infectious, or communicable disease, or which has been exposed to and is liable to spread any contagious, infectious, or communicable disease.
- Condemn and destroy any barn, yard, shed, corral, or pen which, in the opinion of the department, is liable to convey infection or contagion.
- Condemn and destroy any animal that is liable to spread any contagious, infectious, or communicable disease based upon sound epidemiological facts and conclusions to prevent the further spread of disease when a state or agricultural declaration of emergency has been declared by the Governor or the Commissioner of Agriculture.

This law defines "livestock" as grazing animals, such as cattle, horses, sheep, swine, goats, other hoofed animals, ostriches, emus, and rheas which are raised for private use or commercial purposes.[167] The definition does not include poultry.

Trespassing on Agricultural Land

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[160] *Id.*
[161] *Id.*
[162] Dylan Huberman, *Berry Burglars: Saw palmetto berry theft increases as thieves eye lucrative natural remedy*, 12News, https://cbs12.com/news/local/saw-palmetto-berries-berry-burglars-thieves-targeting-saw-palmetto-berries-in-indian-river-county-sheriffs-office-destroying-property-to-steal-them-lucrative-natural-remedy-september-28-2023 (last visited Jan. 19, 2024).
[163] S. 570.36, F.S.
[164] Florida Department of Agriculture and Consumer Services, *Division of Animal Industry*, https://www.fdacs.gov/Divisions-Offices/Animal-Industry (last visited Jan. 19, 2024).
[165] S. 252.3569, F.S.
[166] S. 585.08, F.S.
[167] S. 585.01(13), F.S.

Agricultural Lands

Under Florida's greenbelt law,[168] only lands that are used primarily for bona fide agricultural purposes may be classified agricultural. The law defines "bona fide agricultural purposes" to mean good faith commercial agricultural use of the land.[169] Various factors are considered when determining if land is being used for a bona fide agricultural use, including:[170]

- The length of time the land has been so used;
- Whether the use has been continuous;
- The purchase price paid;
- Size, as it relates to specific agricultural use, but a minimum acreage is not required;
- Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices; and
- Whether the land is leased and, if so, the effective length, terms, and conditions of the lease.

Nonresidential buildings, structures, or facilities constructed on a farm for agritourism activities constitute a bona fide agricultural use of the land so long as the buildings, structures, or facilities are an integral part of the agricultural operation.[171]

Criminal Trespass

Any person who, without being authorized, licensed, or invited, willfully enters upon or remains in any property, other than a structure or conveyance, as to which notice against entering or remaining is given in the form of "no trespassing signs" or other such postings commits the offense of trespass on property other than a structure or conveyance.[172] The unauthorized entry by any person into or upon any enclosed and "posted land" is prima facie evidence of the intent to commit trespass.[173] The offense is a first-degree misdemeanor,[174] punishable by up to one year in county jail[175] or a fine up to $1,000.[176]

Posted lands are lands that have signs posted not more than 500 feet apart along, and at each corner of, the boundaries of the land.[177] Such signs must have "no trespassing" in letters not less than 2 inches with the name of the owner, lessee, or occupant of the land on the sign.[178] No trespassing signs must be posted so they are in a position that is clearly noticeable from the outside boundary line[179] or there may be a conspicuous no trespassing notice painted on the trees or posts on the property with certain specifications.[180] Such notices are not necessary on any enclosed lands or lands not exceeding five acres in an area on which there is a dwelling house.[181]

Any person who willfully removes, destroys, mutilates, or commits any act designed to remove, mutilate, or reduce the legibility or effectiveness of any posted notice placed by the owner, tenant,

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[168] S. 193.461, F.S.
[169] S. 193.461(3)(b), F.S.
[170] *Id*.
[171] S. 570.87(1), F.S.
[172] S. 810.09(1)(a)1., F.S.
[173] S. 810.12(1), F.S.
[174] S. 810.09(2)(a), F.S.
[175] S. 775.082(4)(a), F.S.
[176] S. 775.083(1)(d), F.S.
[177] S. 810.011(5)(a)1., F.S.
[178] *Id*.
[179] *Id*.
[180] Section 810.011(5)(a)2.a., F.S. Notices painted on trees or posts must be painted in an international orange color and display the stenciled words "No Trespassing" in letters no less than two inches high and one inch wide, placed so the bottom of the painted notice is not less than three feet from the ground or more than five feet from the ground and placed at locations that are readily visible to any person approaching the property and no more than 500 feet apart on agricultural land. A person using such signs must still post "no trespassing" signs at all places where entry to the property is normally expected.
[181] S. 810.011(5)(b), F.S.

lessee, or occupant of legally posted land commits a first-degree misdemeanor,[182] punishable by up to one year in county jail[183] or a fine up to $1,000.[184]

Public School Attendance Policies

Florida law directs district school boards to establish attendance policies defining excused or unexcused absences or tardiness.[185] Specific criteria for determining whether an absence or tardiness is excused or unexcused are determined by the district school board.[186] The parent of a student who is absent from school must justify the absence, and the absence is evaluated based on the school board's attendance policies.[187] However, a parent is not responsible for the student's nonattendance at school if:

- The absence was with permission of the head of the school;
- The absence was without the parent's knowledge, consent, or connivance, in which case the student must be dealt with as a dependent child;
- The parent is financially unable to provide necessary clothes; or
- On account of sickness, injury, or other insurmountable conditions.[188]

4-H Youth Development Program

The 4-H Youth Development Program (4-H) is the youth outreach program from the land-grant universities' Cooperative Extension Services and the USDA. Its name is a reference to the occurrence of the initial letter H four times in the organization's original motto "head, heart, hands, and health." The organization is administered by the National Institute of Food and Agriculture of the USDA.[189]

The mission of 4-H is to provide meaningful opportunities for all youth and adults to work together to create sustainable community change. This is accomplished within three primary content areas, or mission areas:[190]

- Civic engagement and leadership.
- Healthy living.
- Science.

Though typically thought of as an agriculturally focused organization, 4-H today focuses on citizenship, healthy living, science, engineering, and technology programs. Clubs in today's 4-H world consist of a wide range of options each allowing for personal growth and career success.[191] There are approximately 230,000 4-H members in Florida and 6.5 million in the US. Florida 4-H is the youth development program of Florida Cooperative Extension, a part of the University of Florida Institute of Food and Agricultural Sciences (IFAS).[192]

Future Farmers of America

The Future Farmers of America (FFA) National FFA Organization is a youth leadership organization that helps young people develop their potential for leadership, personal growth, and career success through agriculture education. The FFA motto is "learning to do, doing to learn, earning to live, living to serve."[193]

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[182] S. 810.10(1)-(2), F.S.
[183] S. 775.082(4)(a), F.S.
[184] S. 775.083(1)(d), F.S.
[185] S. 1003.24, F.S.
[186] *Id*.
[187] S. 1003.26, F.S.
[188] S. 1003.24, F.S.
[189] USDA, *4-H and Positive Youth Development*, https://www.nifa.usda.gov/grants/programs/4-h-positive-youth-development (last visited Jan. 19, 2024).
[190] *Id*.
[191] Washington State University, *4-H Youth Development*, https://extension.wsu.edu/island/youth/ (last visited Jan. 19, 2024).
[192] Florida 4-H, What is 4-H?, https://florida4h.ifas.ufl.edu/about-us/ (last visited January 9, 2024).
[193] FFA, *About FFA*, https://www.ffa.org/about/ (last visited Jan. 19, 2024).

FFA is an intracurricular student organization for those interested in agriculture and leadership. It is one of the three components of agricultural education. The official name of the organization is the National FFA Organization. The letters "FFA" stand for Future Farmers of America.[194]

The Florida FFA Association is governed by a board of directors comprised of teachers and students, charters local chapters and provides direction, program materials, and support for local chapters. Its headquarters are in Gainesville, Florida, and its Leadership Training Center is located in Haines City, Florida. There are approximately 26,000 Florida FFA members.[195]

Effect of Proposed Changes

Electric Vehicle Charging Stations

The bill:

- Preempts the regulation of electric vehicle charging stations to the state.
- Prohibits a local governmental entity from enacting or enforcing an ordinance or regulation related to electric vehicle charging stations.

Pest Control

Pest Control Operator's Certificate

The bill provides an expiration date of the pest control operator's certificate and amends requirements for its renewal, as follows:

- Specifies that a pest control operator's certificate expires 1 year after the date of issuance.
- Requires the certificateholder to apply to DACS for renewals on or before the 1 year anniversary of the date of issuance.
- Expands the 30 day grace period for renewals to 60 days.
- Specifies that DACS is required to assess the late renewal charge.
- Specifies that the "certificateholder" must "pay the late renewal charge" in addition to the renewal fee.
- Provides that if a certificateholder fails to renew his or her certificate and provide proof of completion of the required continuing education within 60 days after the certificate's expiration date, the certificateholder may be recertified only after reexamination.
- Removes the provision that requires a certificate that is not timely renewed to automatically expire 180 calendar days after the anniversary renewal date.
- Removes the provision that requires the 2 hours of continuing education to be completed prior to the expiration date of a certificate and instead only requires the continuing education in order to renew a certificate.

Special Identification Card for Fumigation

The bill provides an expiration date of the special identification card for fumigation and amends requirements for its renewal, as follows:

- Specifies that a special identification card expires 1 year after the date of issuance.
- Requires the cardholder to apply to DACS for renewals on or before the 1 year anniversary of the date of issuance.
- Expands the 30 day grace period for renewals to 60 days.
- Specifies that the late charge must be paid by the "cardholder" in addition to the renewal fee.
- Provides that if a cardholder fails to renew his or her card and provide proof of completion of the required continuing education within 60 days after the card's expiration date, the cardholder may be reissued a special identification card only after reexamination.

[194] *Id*.
[195] Florida FFA, *Who We Are*, https://flaffa.org/foundation/about-us/ (last visited Jan. 19, 2024).

- Removes the provision that requires a card that is not timely renewed to automatically expire 180 calendar days after the anniversary renewal date.
- Removes the provision that requires the 2 hours of continuing education or renewal training to be completed prior to the expiration date of a card and instead only requires this in order to renew a certificate.

Limited Certification of Government Pesticide Applicators or Private Applicators

The bill provides an expiration date of the limited certification for governmental pesticide applicators or private applicators and amends requirements for its renewal, as follows:

- A limited certificate expires 4 years after the date of issuance.
- If the certificateholder fails to renew his or her certificate and provide proof of completion of the required continuing education units within 60 days after the expiration date, the certificateholder may be recertified only after reexamination.

Limited Certification of Commercial Landscape Personnel

The bill authorizes individual commercial landscape maintenance personnel to apply herbicides in certain areas and to use certain pesticides. The bill also sets the expiration date of the limited certification for commercial landscape maintenance personnel and amends requirements for its renewal. Specifically, the bill:

- Authorizes individual commercial landscape maintenance personnel to apply herbicides for controlling weeds in additional areas, including, driveways, sidewalks, and patios.
- Authorizes individual commercial landscape maintenance personnel to perform integrated pest management on ornamental plants using pesticides, instead of insecticides and fungicides, and allows this for pesticides that both do and do not have the signal word “warning” or “danger” on the label.
- Revises the application equipment that may be used by:
    - Removing authorization to use 3 gallon compressed air sprayers, and instead allowing handheld application equipment.
    - Removing the requirement that backpack sprayers have no more than a 5 gallon capacity.
    - Specifies that the prohibition the use of power equipment applies to any type of such equipment.
- Removes the provision that requires each person applying for the certification to furnish proof of having a certificate of insurance prior to DACS issuing a limited certification, and instead only requires this before DACS issues the card.
- Removes the requirement for an applicant to complete 6 classroom hours of plant bed and ornamental continuing education training in order to be eligible to take the examination.
- Specifies that a certificate expires 1 year after the date of issuance.
- Requires a certificateholder to apply to DACS to renew his or her certificate on or before the 1-year anniversary of the date of issuance.
- Extends the 30 day grace period for recertification to 60 days.
- Requires a certificateholder who fails to renew his or her certificate and provide proof of completing the required continuing education units within 60 days after the expiration date, to be recertified **only** after reexamination.
- Removes the requirement for a certificate to automatically expire 180 calendar days after the anniversary recertification date if not timely recertified.
- Removes the provision requiring a certificate holder to maintain records documenting the pests and areas treated, and the methods and materials applied.

Limited Certification for Commercial Wildlife Management Personnel

The bill provides an expiration date of the limited certification for commercial wildlife management personnel and amends requirements for its renewal, as follows:

- Specifies that a certificate expires 1 year after the date of issuance.

- Requires a certificateholder to apply to the department to renew his or her certificate on or before the 1-year anniversary of the date of issuance.
- Extends the 30 day grace period for recertification to 60 days.
- Requires a certificateholder who fails to renew a certificate and provide proof of completing the required continuing education units within 60 days after the expiration date, to be recertified **only** after reexamination.
- Removes the requirement that a certificate automatically expire 180 days after the recertification date if the renewal fee has not been paid.

Violations for False Statements on Applications and Cheating on Exams

The bill provides the following additional disciplinary grounds related to licensure or licensure renewal applications under the Pest Control Act:

- Swearing to or affirming a false statement in an application for a license.
- Cheating on an examination required for licensure or violating a published test center or examination procedure provided orally, in writing, or electronically at the test site and affirmatively acknowledged by the examinee.

The bill:

- Prohibits swearing to or affirming a false statement in an application for a license or certificate issued pursuant to the Pest Control Act.
    - Specifies that a false statement contained in an application for such license or certificate renders the application, license, or certificate void.
- Prohibits cheating on an examination required for licensure or violating a published test center or examination procedure provided orally, in writing, or electronically at the test site and affirmatively acknowledged by an examinee.
    - Specifies that violations render the examinee's exam attempt void.
- Requires DACS to adopt rules establishing penalties for examinees who are in violation.
- Authorizes DACS to exercise discretion in assessing penalties based on the nature and frequency of the violation.

Wood-destroying Organism Preventative or Control Contracts

The bill requires that a signed report be supplied to the property owner after each inspection or treatment for the presence or absence of wood destroying organisms.

Florida Pesticide Law

Violations for False Statements on Applications and Cheating on Exams

The bill prohibits pesticide applicator license applicants from swearing or affirming a false statement on an application. This provision also prohibits cheating on an examination required for licensure. Specifically, the bill prohibits:

- Swearing to or affirming a false statement in an application for a license.
- Cheating on an examination required for licensure or violating a published test center or examination procedure provided orally, in writing, or electronically at the test site and affirmatively acknowledged by the examinee.

The bill:

- Prohibits swearing to or affirming a false statement in an application for a license or certificate.
    - Specifies that a false statement contained in an application for such license or certificate renders the application, license, or certificate void.
- Prohibits cheating on an examination required for licensure or violating a published test center or examination procedure provided orally, in writing, or electronically at the test site and affirmatively acknowledged by an examinee.
    - Specifies that violations render the examinee's exam attempt void.

- Requires DACS to adopt rules establishing penalties for examinees who are in violation.
- Authorizes DACS to exercise discretion in assessing penalties based on the nature and frequency of the violation.

Firearm Licensing

The bill provides that a Class "K" instructor has discretion to allow a Class "G" licensee to qualify for up to two calibers of firearms in one 4-hour firearm requalification class if the licensee successfully completes training for each firearm, including a separate course of fire for each caliber of firearm.

Appointment of Tax Collectors for Licenses Issued Under Ch. 493, F.S.

The bill:

- Authorizes DACS to appoint tax collectors, county officers as described in s. 1(d), Art. VIII of the State Constitution, to accept new, renewal, and replacement license applications on behalf of DACS for licenses issued under ch. 493, F.S. Such appointments must be for specified locations that will best serve the public interest and convenience in persons applying for these licenses.
- Requires DACS to establish by rule the type of new, renewal, or replacement licenses a tax collector appointed under this section is authorized to accept.
- Requires a tax collector seeking to be appointed to submit a written request to DACS stating his or her name, address, telephone number, each location within the county at which the tax collector wishes to accept applications, and other information as required by DACS.
- Requires DACS to review each written request upon receipt.
- Authorizes DACS to decline to enter into a memorandum of understanding, or may approve the written request and enter into a memorandum of understanding with the tax collector to accept applications for new or renewal licenses on behalf of the Department. However, the Department may rescind a memorandum of understanding for any reason at any time.
- Provides that information and records provided pursuant to ss. 493.6105 and 493.6113, F.S., remain confidential pursuant to s. 493.6122, F.S., or any other state or federal law.
- Prohibits any person from handling an application for a license issued under ch. 493, F.S., for a fee or compensation of any kind unless he or she has been appointed by DACS to do so.
- Authorized an appointed tax collector to collect and retain the following convenience fees:
    - $22 for each new application.
    - $12 for each renewal application.
    - $12 for each replacement license.
    - $9 for fingerprinting services associated with the completion of an application submitted online or by mail.
    - $9 for photographing services associated with the completion of an application submitted online or by mail.
- Requires, each week, the tax collector to remit the license fees to DACS to be deposited in the Division of Licensing Trust Fund.
- Provides that a person who willfully violates these provisions commits a second degree misdemeanor.
- Provides that upon receipt of a completed renewal or replacement application, a new color photograph, and appropriate payment of required fees, an authorized tax collector may, upon approval and confirmation of license issuance by DACS, print and deliver a license to a licensee renewing or replacing his or her license at the tax collector's office.

Appointment of Tax Collectors to Accept Applications for Concealed Weapon or Firearm License

The bill:

- Provides that a tax collector appointed under s. 790.0625, F.S., may collect and retain:
    - $12 for each replacement license.

    - $9 for fingerprinting services associated with the completion of an application submitted online or by mail.
    - $9 for photographing services associated with the completion of an application submitted online or by mail.
- Clarifies that a tax collector is authorized to accept renewal applications from an applicant for the renewal of a concealed weapon or firearm license.
- Provides that if an applicant is approved by DACS and completes a renewal application, provides a color photograph, and pays the required fees, then the tax collector is authorized to print and deliver a concealed weapon or firearm license to a licensee renewing his or her license at the tax collector's office.
- Authorizes a tax collector to print and deliver a concealed weapon or firearm license to a licensee whose license has been lost or destroyed if a statement is received by DACS made under oath and payment of the required fees is received. The Department must confirm and approve that the aforementioned license is in good standing. Additionally, a tax collector who is authorized to accept an application for a concealed weapon or firearm license may provide fingerprinting and photographing services to aid concealed weapon and firearm applicants and licensees with initial and renewal applications submitted online or by mail.

Solicitation of Contributions Act

The bill:

- Defines the term "street address" as the physical location where activities subject to regulation under ch. 496, F.S., are conducted or where an applicant, licensee, or other referenced individual actually resides. The term does not include a virtual office, a post office box, or a mail drop.
- Revises the information charitable organizations and sponsors must provide to DACS in an initial registration statement to include the name and street addresses of each institution where banking or similar monetary transactions are done by the charitable organization or sponsor, and account numbers associated with all transactions.
- Revises the information charitable organizations and sponsors must provide DACS when claiming certain exemptions to include street addresses.
- Revises the financial information charitable organizations and sponsors must provide DACS to include street addresses, and removes the requirement that a charitable organization or sponsor must show good cause in order to receive a filing extension from DACS.
- Revises the information professional fundraising consultants must include in applications for registration or renewals of registration to include street addresses rather than residence addresses.
- Revises the information that professional solicitors must include in applications for registration, renewals of registration, and solicitation notices provided to DACS, and that solicitors are required to maintain in their records to include street addresses rather than physical or residence addresses.
- Revises the information that must be included in certain solicitor license applications to include street addresses rather than home addresses.
- Revises the information that disclosures of charitable organizations or sponsors soliciting in Florida must include street addresses.
- Revises the information that must be displayed on certain collection receptacles to include street addresses.
- Provides that a person who solicits funds within a public transportation facility must provide in an application to the authority and must display prominently on the person's bade or insignia, to include street addresses.

Cultivated Meat

Effective upon this act becoming law, the bill:

- Defines "cultivated meat" to mean any meat or food product produced from cultured animal cells.

- Makes it unlawful to manufacture, sell, hold or offer for sale, or distribute cultivated meat in this state.
- Makes violations second degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083, F.S.
- Provides that a food establishment that manufactures, distributes, or sells cultivated meat in violation of this section is subject to disciplinary action pursuant to s. 500.121, F.S.
- In addition to the penalties provided in this section, the bill subjects the license of any restaurant, store, or other business to suspension as provided in the applicable licensing law upon the conviction of an owner or employee of that business for a violation in connection with that business.
- Provides that a product found to be in violation of this section is subject to s. 500.172, F.S., and an immediate stop-sale order.
- Authorizes DACS to adopt rules to implement these provisions.

Household Moving Services

The bill prohibits a mover from placing a shipper's goods in a self-service storage unit or self-contained storage unit owned by anyone other than the mover unless those goods are stored in the name of the shipper and the shipper contracts directly with the owner of the self-service storage unit or self-contained storage unit.

Sunset of Weights and Measures Act

The bill repeals the provision that requires the Weights and Measures Act to expire on July 1, 2025.

Motor Vehicle Repair Shop Registration and Written Repair Estimates

The bill:

- Removes the requirement for a motor vehicle repair shop to provide copies of licenses, permits, and certifications obtained by the applicant or employees of the applicant on the registration application.
- Specifies that the registration fee must be calculated for each location, and based on the number of employees, the business employs, who perform repairs.
- Increases the threshold value of repair work which requires a motor vehicle repair shop to provide a customer with a written repair estimate from $100 to $150.

The Florida Agricultural Museum

The bill changes the name of the Florida Agriculture Museum to the Florida Agriculture Legacy Learning Center, and makes conforming changes.

Saw Palmetto Berries

The bill criminalizes the destroying, harvesting, or selling saw palmetto berries, on private or public land, as follows:

Violation

The bill makes it unlawful for any person to willfully destroy, harvest, or sell saw palmetto berries on the private land of another or on any public land without first obtaining written permission from the landowner or legal representative of the landowner and a permit from DACS.

Landowner Permission

The bill requires the landowner's written permission to include all of the following information:

- The name, address, and telephone number of the landowner.
- The start date, end date, and location, including county, of the harvest.

- The landowner's actual or electronic signature.

Bill of Lading

The bill requires a saw palmetto berry dealer that purchases saw palmetto berries from a landowner or a person harvesting saw palmetto berries from another's property to maintain a bill of lading, a copy of the harvester's entire permit, a copy of the landowner's written permission to harvest, and all of the following:

- The name, address, and telephone number of the seller.
- The date or dates of harvesting.
- The weight, quantity, or volume and a description of the type of saw palmetto berries harvested.
- A scan or photocopy of a valid government-issued photo identification card of such person.
    - Such persons must maintain the information to retain such records for at least 2 years from the date the harvest ends.

Law Enforcement

The bill authorizes any law enforcement officer or authorized employee of DACS who finds that any saw palmetto berries are being harvested, offered for sale, or exposed for sale in violation of this provision, to seize or order such saw palmetto berries be held at a designated location until the individual:

- Provides the officer or employee with the required permit and landowner's written permission to harvest, within 7 calendar days following the seizure; or
- Legally disposes of the saw palmetto berries.
    - Requires a law enforcement officer or authorized DACS employee to release the saw palmetto berries when the requirements of this section are met.

The bill provides that unlawfully harvested saw palmetto berries constitute contraband and are subject to seizure and disposal by the seizing law enforcement agency or DACS.

The bill provides that notwithstanding any other provision of law, a law enforcement agency that seizes saw palmetto berries harvested or possessed in violation, or in violation of any other state or federal law, is authorized to sell such saw palmetto berries and retain the proceeds of the sale for the enforcement of these provisions.

The bill provides that law enforcement agencies selling contraband saw palmetto berries are exempt from s. 581.185, F.S.

The bill requires law enforcement agencies that seize unlawfully harvested saw palmetto berries to submit annually to DACS, in the manner prescribed by DACS rule:

- The quantity and a description of the saw palmetto berries seized; and
- The location from which the saw palmetto berries were harvested, if known.

Penalties for Violations

The bill provides the following penalties for violations:

- A harvester that exchanges or offers to exchange saw palmetto berries with a saw palmetto dealer, seller, or processor for money or any other valuable consideration without first presenting to the saw palmetto berry dealer, seller, processor the person's entire permit, as provided in s. 581.185, F.S., or the landowner's written permission commits a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083, F.S.
- A person required to maintain records as required that fails to maintain such record for the 2 year time period commits a first degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083, F.S.
- A person that willfully destroys or harvests saw palmetto berries without first obtaining the landowner's written permission to harvest as required or a permit as required commits a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

- A saw palmetto berry dealer, buyer, processor, harvester, or seller that presents a false, forged, or altered document purporting to be a landowner's written permission or the permit commits a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.
- A saw palmetto berry dealer, transporter, or processor that exchanges, offers to exchange for money or any other valuable consideration, or possesses unlawfully harvested saw palmetto berries commits a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.
- A person convicted of a violation of this section responsible for:
    - All reasonable costs incurred by the responding law enforcement agencies and the department, including, but not limited to, investigative costs; and
    - Restitution to the landowner in an amount equal to the fair market value of the saw palmetto berries unlawfully harvested.
    - Defines the term "convicted" to mean that there has been a determination of guilt as a result of trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.
- Provides that these provisions do not affect any other person that legally harvests or handles saw palmetto berries from up to two plants for home or personal use.

Rulemaking

The bill requires DACS to adopt rules to administer these provisions.

Definitions

The bill provides the following definitions:
- "Harvest" or "harvesting" means to dig up, remove, or cut and remove saw palmetto berries from the place where they are grown.
- "Harvester" means a person, firm, or corporation that takes, harvests, or attempts to take or harvest saw palmetto berries.
- "Landowner" means:
    - The public agency administering any public lands; or
    - The person who holds legal title to the real property from which saw palmetto berries are harvested or the person having possession, control, or use of that land which has lawful authority to grant permission to harvest saw palmetto berries from the land.
- "Person" means an individual, a partnership, a corporation, an association, or any other legal entity.
- "Saw palmetto berries" means the fruit of the plant Serenoa repens, commonly known as the saw palmetto.
- "Saw palmetto berry dealer" means a person that purchases or otherwise obtains saw palmetto berries from a seller for the purpose of selling the saw palmetto berries at retail or for the purpose of selling the saw palmetto berries to another saw palmetto berry dealer or for both such purposes. This term also includes a person who purchases saw palmetto berries directly from a landowner for the purpose of selling the saw palmetto berries at retail.
- "Seller" means a person that exchanges or offers to exchange saw palmetto berries for money or for any other valuable consideration.

Livestock

The bill includes poultry in the definition of “livestock.”

Trespassing on Agricultural Land

The bill:
- Adds lands classified as agricultural to the definition of “posted land,” and allows signs for such land to be placed at each point of ingress and at each corner of the boundaries of the agricultural land.

- Creates a third degree felony, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S., for trespassing on land classified as commercial agricultural property if the offender trespasses with the intent to commit a crime on commercial agricultural property.
- Requires such property to be legally posted and identified by signs in letters of at least 2 inches at each pedestrian and vehicle entrance in substantially the following manner: "THIS AREA IS A DESIGNATED COMMERCIAL AGRICULTURAL PROPERTY, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."
- Requires a first-time offender who is under 18 years of age at the time he or she commits the crime to be given the option of participating in a diversion program described in s. 958.12, s. 985.125, s. 985.155, or s. 985.16, F.S., or a program to which a referral is made by a state attorney under s. 985.15, F.S.
- Defines “commercial agricultural property” as property cleared of its natural vegetation or fenced for the purposes of planting, growing, harvesting, processing, raising, producing, or storing plant or animal commercial commodities.
- Makes conforming changes.

4-H and FFA Participation in School

The bill provides that a student’s participation in a 4-H or FFA activity is an excused absence from school. A 4-H or FFA representative must provide documentation as proof of a student’s participation in a 4-H or FFA activity upon request by a school principal or the principal’s designee. The 4-H representative must be officially recognized or designated by the Florida Cooperative extension Service 4-H Program as a 4-H professional or a 4-H adult volunteer.

Reenactments

The bill reenacts:
- Section 493.6115(6), F.S., relating to weapons and firearms, to incorporate the amendment made to s. 493.6113, F.S.;
- Section 496.4055(2), F.S., relating to charitable organization or sponsor board duties, to incorporate the amendment made to s. 496.405, F.S.
- Section 559.907(1)(b), F.S., relating to the charges for motor vehicle repair estimates, to incorporate the amendment made to s. 559.905, F.S.
- Sections 468.382(6), 534.47(3), 767.01, and 767.03, F.S., relating to the definition of the term "livestock" for auctions, livestock markets, dog owner's liability for damages to livestock, and defenses for killing dogs, respectively, to incorporate the amendment made to s. 585.01, F.S.

Effective Date

The bill provides that except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 366.94, F.S., relating to electric vehicle charging stations.

Section 2: Amends s. 482.111, F.S., relating to pest control operator's certificate.

Section 3: Amends s. 482.151, F.S., relating to special identification card for performance of fumigation.

Section 4: Amends s. 482.155, F.S., relating to limited certification for governmental pesticide applicators or private applicators.

Section 5: Amends s. 482.156, F.S., relating to limited certification for commercial landscape maintenance personnel.

Section 6: Amends s. 482.157, F.S., relating to limited certification for commercial wildlife management personnel.

Section 7: Amends s. 482.161, F.S., relating to disciplinary grounds and actions; reinstatement.

Section 8: Amends s. 482.191, relating to violation and penalty.

Section 9: Amends s. 482.226, F.S., relating to wood-destroying organism inspection report; notice of inspection or treatment; financial responsibility.

Section 10: Amends s. 487.031, F.S., relating to prohibited acts.

Section 11: Amends s. 487.175, F.S., relating to penalties; administrative fine; injunction.

Section 12: Amends s. 493.6113, F.S., relating to renewal application for licensure.

Section 13: Creates s. 493.6127, F.S., relating to appointment of tax collectors to accept applications and renewals for licenses; fees; penalties.

Section 14: Amends s. 496.404, F.S., relating to definitions.

Section 15: Amends s. 496.405, F.S., relating to registration statements by charitable organizations and sponsors.

Section 16: Amends s. 496.406, F.S., relating to exemption from registration.

Section 17: Amends s. 496.407, F.S., relating to financial statement.

Section 18: Amends s. 496.409, F.S., relating to registration and duties of professional fundraising consultant.

Section 19: Amends s. 496.410, F.S., relating to registration and duties of professional solicitors.

Section 20: Amends s. 496.4101, F.S., relating to licensure of professional solicitors and certain employees thereof.

Section 21: Amends s. 496.411, F.S., relating to disclosure requirements and duties of charitable organizations and sponsors.

Section 22: Amends s. 496.4121, F.S., relating to collection receptacles used for donations.

Section 23: Amends s. 496.425, F.S., relating to solicitation of funds within public transportation facilities.

Section 24: Amends s. 500.03, relating to definitions; construction; applicability.

Section 25: Creates s. 500.452, F.S., relating to cultivated meat; prohibition; penalties.

Section 26: Amends s. 507.07, F.S., relating to violations.

Section 27: Repeals s. 531.67, F.S., relating to expiration of sections.

Section 28: Amends s. 559.904, relating to motor vehicle repair shop registration; application; exemption.

Section 29: Amends s. 559.905, F.S., relating to written motor vehicle repair estimate and disclosure statement required.

Section 30: Amends s. 570.69, F.S., relating to definitions.

Section 31: Amends s. 570.691, F.S., relating to direct-support organization.

Section 32: Amends s. 570.692, F.S., relating to Florida Agricultural Museum.

Section 33: Creates s. 581.189, F.S., relating to dealing in, buying, transporting, and processing saw palmetto berries.

Section 34: Amends s. 585.01, F.S., relating to definitions.

Section 35: Amends s. 790.0625, F.S., relating to appointment of tax collectors to accept applications for a concealed weapon or firearm license; fees; penalties.

Section 36: Amends s. 810.011, F.S., relating to definitions.

Section 37: Amends s. 810.09, F.S., relating to trespass on property other than structure or conveyance.

Section 38: Amends s. 1003.24, F.S., relating to parents responsible for attendance of children; attendance policy.

Section 39: Amends s. 379.3004, F.S., relating to voluntary Authorized Hunter Identification Program.

Section 40: Amends s. 812.014, F.S., relating to theft.

Section 41: Amends s. 921.0022, F.S., relating to criminal Punishment Code; offense severity ranking chart.

Section 42: Reenacts s. 493.6115, F.S., relating to weapons and firearms.

Section 43: Reenacts s. 496.4055, F.S., relating to charitable organization or sponsor board duties.

Section 44: Reenacts s. 559.907, F.S., relating to charges for motor vehicle repair estimate; requirement of waiver of rights prohibited.

Section 45: Reenacts s. 468.382, F.S., relating to definitions.

Section 46: Reenacts s. 534.47, F.S., relating to definitions.

Section 47: Reenacts s. 767.01, F.S., relating to dog owner's liability for damages to persons, domestic animals, or livestock.

Section 48: Reenacts s. 767.03, F.S., relating to good defense for killing dog.

Section 49: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

EV Charging Stations

Preempting the regulation of EV charging stations to the state may create uniformity in the regulation of such facilities and reduce the negative fiscal impact on private businesses resulting from disparate regulations in local jurisdictions.

Pest Control

Allowing certain certificateholders to apply less toxic chemicals may have a positive fiscal impact on these businesses.

Allowing certain certificateholders who apply chemicals flexibility in the use of smaller chemical spray equipment may have a positive fiscal impact on the private sector.

Reducing record-keeping requirements for certain certificateholders who apply chemicals that are low in toxicity may reduce expenditures related to such requirements.

Reducing continuing education requirements for certain certificateholders may have a positive fiscal impact on these individuals.

Requiring written documentation from certain certificateholders to the property owner after each inspection or treatment for the presence or absence of wood destroying organisms may:

- Help consumers protect their structures and reduce costs related to such infestations.
- Create an indeterminate cost to the businesses resulting from providing the documentation.

Prohibiting certain certificates from operating past their expiration date, and extending recertification grace periods, may prevent the performance of unlicensed work and reduce related costs to the licensee and consumers that may occur otherwise.

Making it a violation, and authorizing DACS to take administrative action, for falsely swearing or affirming false statements on an application for pest control or pesticide licensure, or cheating on such licensure examinations, may:

- Create an indeterminate cost to DACS for administration and enforcement.
- Reduce costs related to bad work performed by unqualified licensees.

Firearm Licensing

Allowing a Class "G" licensee to qualify for up to two calibers of firearms in one 4-hour firearm requalification class may reduce administrative costs to DACS, the licensees, and license applicants.

Appointment of Tax Collectors for Licenses Issued Under Ch. 493, F.S.

Expanding the types of private security, private investigative and recovery services licenses that tax collectors are allowed to issue may reduce administrative costs to DACS, the licensees, and license applicants.

Appointment of Tax Collectors to Accept Applications for Concealed Weapon or Firearm License

Authorizing certain appointed tax collectors to collect certain fees and provide certain services for concealed weapon or firearm licenses on behalf of DACS may:

- Reduce administrative expenses for DACS, the licensees, and license applicants; and
- Have an indeterminate positive fiscal impact on local tax collectors.

Solicitation of Contributions Act

Revising certain information that charitable organizations, sponsors, professional fundraising consultants, and professional solicitors are required to provide to DACS may create efficiencies and a positive fiscal impact for DACS and charitable organizations.

Cultivated Meat

Prohibiting the manufacture, sale, hold or offer for sale, or distribution of cultivated meat in this state, and creating penalties for violations, may:

- Reduce the impact that such sales may have on the state's livestock industry.
- Create in indeterminate negative fiscal impact to DACS for administration and enforcement.

Household Moving Services

Prohibiting movers from placing a shipper's goods in a self-service storage unit owned by anyone other than the mover, may:

- Protect the shipper's property and streamline the moving process.
- Create an indeterminate positive fiscal impact to these businesses and consumers.

Motor Vehicle Repair Shop Registration and Written Repair Estimates

Revising the information that must be provided to DACS on a motor vehicle repair shop registration application, requiring the registration fee to be calculated for each location, and increasing the cost of repair work which requires a motor vehicle repair shop to provide a customer with a written repair estimate, may reduce costs to the businesses by more accurately representing the scale of the businesses and the diagnostic costs.

Saw Palmetto Berries

Criminalizing the destroying, harvesting, or selling saw palmetto berries, on private or public land, may:

- Prevent illegal harvesting of such fruit and reduce related costs to the state and the saw palmetto berry industry.
- Create in indeterminate negative fiscal impact to DACS for administration and enforcement.

Requiring harvesters to obtain written permission from the landowner and a permit from DACS may create an indeterminate negative impact to the harvesters, and to DACS resulting from administrative costs.

Livestock

Including poultry in the definition of "livestock" in ch. 585, part II, F.S., under the DACS Division of Animal Industry, may:

- Protect the state and private sector from related animal pests and diseases, thereby reducing costs to the state and private sector that would result otherwise.
- Increase costs indeterminately to DACS for related oversight of an additional industry, only to the extent they are not already incurring such expenses.

Trespassing on Agricultural Land

Reducing the number of trespassing signs required for lands classified as commercial agricultural property, and increasing criminal penalties for trespassing on such land with intent to commit a crime, may reduce related costs to such landowners and help protect the state's food supply.

The bill may lead to more arrests of persons who are trespassing but did not see a trespassing sign.

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:

   Article VII, s. 19 of the Florida Constitution requires the authorization of a state tax or fee be contained in a separate bill that contains no other subject and be approved by 2/3 of the membership of each house of the Legislature. These provisions do not apply to any tax or fee authorized to be imposed by a county. This bill authorizes county tax collectors approved by the Department to collect certain fees for processing applications.

B. RULE-MAKING AUTHORITY:

The bill requires DACS to adopt rules establishing penalties for examinees who violate provisions related to swearing or affirming a false statement, and cheating on examinations, for certain pest control and pesticide licenses.

The bill requires DACS to establish by rule the type of new, renewal, or replacement licenses a tax collector appointed to accept ch. 493, F.S., applications, is authorized to accept.

The bill authorizes DACS to adopt rules to implement the provisions related to cultivated meat.

The bill requires law enforcement agencies that seize unlawfully harvested saw palmetto berries to submit certain information on seized items annually to DACS, in the manner prescribed by DACS rule.

The bill authorizes DACS to adopt rules to administer the provisions related to saw palmetto berries.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Department of Agriculture and Consumer Services; amending s. 366.94, F.S.; preempting the regulation of electric vehicle charging stations to the state; prohibiting local governmental entities from enacting or enforcing such regulations; amending ss. 482.111, 482.151, and 482.155, F.S.; providing that a pest control operator's certificate, a special identification card, and certain limited certifications for pesticide applicators, respectively, expire a specified length of time after issuance; revising renewal requirements for such certificates and cards; amending s. 482.156, F.S.; revising the tasks, pesticides, and equipment that individual commercial landscape maintenance personnel with limited certifications may perform and use; revising the initial and renewal certification requirements for such personnel; deleting a requirement that certificateholders maintain certain records; amending s. 482.157, F.S.; providing that a limited certification for commercial wildlife management personnel expires a specified length of time after issuance; revising renewal certification requirements for such personnel; amending s. 482.161, F.S.; authorizing the department to take disciplinary

action against a person who swears to or affirms a false statement on certain applications, cheats on a required examination, or violates certain procedures under certain circumstances; amending s. 482.191, F.S.; providing penalties for a person who swears to or affirms a false statement on certain applications; providing that cheating on certain examinations or violating certain examination procedures voids an examinee's exam attempt; authorizing the department to adopt rules establishing penalties for such a violation; authorizing the department to exercise discretion in assessing penalties in certain circumstances; amending s. 482.226, F.S.; requiring pest control licensees to provide property owners or their agents with a signed report that meets certain requirements after each inspection or treatment; amending s. 487.031, F.S.; prohibiting a person from swearing to or affirming a false statement on certain pesticide applicator license applications, cheating on a required examination, or violating certain procedures; making technical changes; amending s. 487.175, F.S.; providing penalties for a person who swears to or affirms a false statement on certain applications; providing that cheating on certain examinations or violating certain examination

procedures voids an examinee's exam attempt; requiring the department to adopt rules establishing penalties for such a violation; authorizing the department to exercise discretion in assessing penalties in certain circumstances; amending s. 493.6113, F.S.; authorizing Class "G" licensees to qualify for multiple calibers of firearms in one requalification class under certain circumstances; creating s. 493.6127, F.S.; authorizing the department to appoint tax collectors to accept new, renewal, and replacement license applications under certain circumstances; requiring the department to establish by rule the types of licenses the tax collectors may accept; providing an application process for tax collectors who wish to perform such functions; providing that certain confidential information contained in the records of an appointed tax collector retains its confidentiality; prohibiting any person not appointed to do so from accepting an application for a license for a fee or compensation; authorizing tax collectors to collect and retain certain convenience fees; requiring the tax collectors to remit certain fees to the department for deposit in the Division of Licensing Trust Fund; providing penalties; amending s. 496.404, F.S.; defining the term "street address"; amending ss. 496.405 and

496.406, F.S.; revising the information that charitable organizations and sponsors must provide to the department in an initial registration statement and when claiming certain exemptions, respectively, to include certain street addresses; amending s. 496.407, F.S.; revising the information charitable organizations or sponsors are required to provide to the department when initially registering or annually renewing a registration; revising circumstances under which the department may extend the time for filing a required final statement; amending ss. 496.409, 496.410, 496.4101, 496.411, 496.4121, and 496.425, F.S.; revising the information that professional fundraising consultants must include in applications for registration or renewals of registration, that professional solicitors must include in applications for registration, renewals of registration, and solicitation notices provided to the department, that professional solicitors are required to maintain in their records, that must be included in certain solicitor license applications, that disclosures of charitable organizations or sponsors soliciting in this state must include, that must be displayed on certain collection receptacles, and that a person desiring to solicit funds within a facility must

provide in an application to the department and must display prominently on his or her badge or insignia, respectively, to include street addresses; amending s. 500.03, F.S.; defining the term "cultivated meat"; creating s. 500.452, F.S.; prohibiting the manufacture, sale, holding or offering for sale, or distribution of cultivated meat in this state; providing criminal penalties; providing for disciplinary action and additional licensing penalties; providing that such products are subject to certain actions and orders; authorizing the department to adopt rules; amending s. 507.07, F.S.; prohibiting a mover from placing a shipper's goods in a self-service storage unit or self-contained unit not owned by the mover unless certain conditions are met; repealing s. 531.67, F.S., relating to the scheduled expiration of certain statute sections related to weights, measurements, and standards; amending s. 559.904, F.S.; revising the information that must be provided to the department on a motor vehicle repair shop registration application; providing that the registration fee must be calculated for each location; amending s. 559.905, F.S.; revising the cost of repair work which requires a motor vehicle repair shop to provide a customer with a written repair estimate;

amending s. 570.69, F.S.; defining the term "center"; deleting the definition of the term "museum"; amending s. 570.691, F.S.; conforming provisions to changes made by the act; amending s. 570.692, F.S.; renaming the Florida Agricultural Museum as the Florida Agricultural Legacy Learning Center; creating s. 581.189, F.S.; defining terms; prohibiting the willful destruction, harvest, or sale of saw palmetto berries without first obtaining written permission from the landowner or legal representative and a permit from the department; specifying the information that the landowner's written permission must include; requiring an authorized saw palmetto berry dealer to maintain certain information for a specified timeframe; authorizing law enforcement officers or authorized employees of the department to seize or order to be held for a specified timeframe saw palmetto berries harvested, sold, or exposed for sale in violation of specified provisions; declaring that unlawfully harvested saw palmetto berries constitute contraband and are subject to seizure and disposal; authorizing law enforcement agencies that seize such saw palmetto berries to sell the berries and retain the proceeds to implement certain provisions; providing that such law enforcement agencies are exempt from certain

provisions; requiring the law enforcement agencies to submit certain information annually to the department; providing criminal penalties; providing that individuals convicted of such violations are responsible for specified costs; defining the term "convicted"; providing construction; requiring the department to adopt rules; amending s. 585.01, F.S.; revising the definition of the term "livestock" to include poultry; amending s. 790.0625, F.S.; authorizing certain tax collectors to collect and retain certain convenience fees for certain concealed weapon or firearm license applications; authorizing such tax collectors to print and deliver replacement licenses to licensees under certain circumstances; authorizing such tax collectors to provide fingerprinting and photographing services; amending s. 810.011, F.S.; revising the definition of the term "posted land" to include land classified as agricultural which has specified signs placed at specified points; amending s. 810.09, F.S.; providing criminal penalties for trespassing with the intent to commit a crime on commercial agricultural property under certain circumstances; defining the term "commercial agricultural property"; amending s. 1003.24, F.S.; providing that a student's

participation in a 4-H or Future Farmers of America activity is an excused absence from school; defining the term "4-H representative"; amending ss. 379.3004, 812.014, and 921.0022, F.S.; conforming cross-references; reenacting s. 493.6115(6), F.S., relating to weapons and firearms, to incorporate the amendment made to s. 493.6113, F.S., in a reference thereto; reenacting s. 496.4055(2), F.S., relating to charitable organization or sponsor board duties, to incorporate the amendment made to s. 496.405, F.S., in references thereto; reenacting s. 559.907(1)(b), F.S., relating to the charges for motor vehicle repair estimates, to incorporate the amendment made to s. 559.905, F.S., in a reference thereto; reenacting ss. 468.382(6), 534.47(3), 767.01, and 767.03, F.S., relating to the definition of the term "livestock" for auctions, livestock markets, dog owner's liability for damages to livestock, and defenses for killing dogs, respectively, to incorporate the amendment made to s. 585.01, F.S., in references thereto; providing effective dates.

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

Section 1. Subsection (2) of section 366.94, Florida

Statutes, is amended to read:

366.94 Electric vehicle charging stations.—

(2) The regulation of electric vehicle charging stations is preempted to the state.

(a) A local governmental entity may not enact or enforce an ordinance or regulation related to electric vehicle charging stations.

(b) The Department of Agriculture and Consumer Services shall adopt rules to provide definitions, methods of sale, labeling requirements, and price-posting requirements for electric vehicle charging stations to allow for consistency for consumers and the industry.

Section 2. Subsections (3), (4), and (10) of section 482.111, Florida Statutes, are amended to read:

482.111 Pest control operator's certificate.—

(3) A certificate expires 1 year after the date of issuance. Annually, on or before the 1-year ~~an~~ anniversary of the date of issuance ~~set by the department~~, an individual ~~so~~ issued a pest control operator's certificate must apply to the department on a form prescribed by the department to renew the ~~for renewal of such~~ certificate. After a grace period not exceeding 60 ~~30~~ calendar days following such renewal date, the department shall assess a late renewal charge of $50 ~~shall be assessed~~ and the certificateholder must pay the late renewal charge ~~be paid~~ in addition to the renewal fee.

(4) If a certificateholder fails to renew his or her certificate and provide proof of completion of the required continuing education units under subsection (10) within 60 days after the certificate's expiration date, the certificateholder may be recertified only after reexamination ~~Unless timely renewed, a certificate automatically expires 180 calendar days after the anniversary renewal date. Subsequent to such expiration, a certificate may be issued only upon successful reexamination and upon payment of the examination and issuance fees due~~.

(10) In order to renew ~~Prior to the expiration date of~~ a certificate, the certificateholder must complete 2 hours of approved continuing education on legislation, safety, pesticide labeling, and integrated pest management and 2 hours of approved continuing education in each category of her or his certificate or must pass an examination given by the department. The department may not renew a certificate if the continuing education or examination requirement is not met.

(a) Courses or programs, to be considered for credit, must include one or more of the following topics:

1. The law and rules of this state pertaining to pest control.

2. Precautions necessary to safeguard life, health, and property in the conducting of pest control and the application of pesticides.

3. Pests, their habits, recognition of the damage they cause, and identification of them by accepted common name.

4. Current accepted industry practices in the conducting of fumigation, termites and other wood-destroying organisms pest control, lawn and ornamental pest control, and household pest control.

5. How to read labels, a review of current state and federal laws on labeling, and a review of changes in or additions to labels used in pest control.

6. Integrated pest management.

(b) The certificateholder must submit with her or his application for renewal a statement certifying that she or he has completed the required number of hours of continuing education. The statement must be on a form prescribed by the department and must identify at least the date, location, provider, and subject of the training and must provide such other information as required by the department.

(c) The department shall charge the same fee for examination as provided in s. 482.141(2).

Section 3. Subsections (6), (7), and (8) of section 482.151, Florida Statutes, are amended to read:

482.151 Special identification card for performance of fumigation.—

(6) A special identification card expires 1 year after the date of issuance. A cardholder must apply ~~An application~~ to the

department to renew his or her ~~for renewal of a~~ special identification card ~~must be made~~ on or before the 1-year ~~an~~ anniversary of the date of issuance ~~set by the department~~. The department shall set the fee for renewal of a special identification card ~~shall be set by the department~~ but the fee may not be more than $100 or less than $50; however, until a rule setting this fee is adopted by the department, the renewal fee is ~~shall be~~ $50. After a grace period not exceeding 60 ~~30~~ calendar days following such renewal date, the department shall assess a late renewal charge of $25, which the cardholder must pay ~~be paid~~ in addition to the renewal fee.

(7) If a cardholder fails to renew his or her card and provide proof of completion of the continuing education units required by subsection (8) within 60 days after the expiration date, the cardholder may be reissued a special identification card only after reexamination ~~Unless timely renewed, a special identification card automatically expires 180 calendar days after the anniversary renewal date. Subsequent to such expiration, a special identification card may be issued only upon successful reexamination and upon payment of examination and issuance fees due, as provided in this section~~.

(8) In order to renew ~~Prior to the expiration date of~~ a special identification card, the cardholder must do at least one of the following:

(a) Complete 2 hours of approved continuing education on

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

legislation, safety, and pesticide labeling and 2 hours of approved continuing education in the fumigation category.~~; or~~

(b) Pass an examination in fumigation given by the department.

Section 4. Paragraph (b) of subsection (1) of section 482.155, Florida Statutes, is amended to read:

482.155 Limited certification for governmental pesticide applicators or private applicators.—

(1)

(b) A person seeking limited certification under this subsection must pass an examination given or approved by the department. Each application for examination must be accompanied by an examination fee set by the department, in an amount of not more than $150 or less than $50; and a recertification fee of $25 every 4 years. Until rules setting these fees are adopted by the department, the examination fee is $50. Application for recertification must be accompanied by proof of having completed 4 classroom hours of acceptable continuing education. The limited certificate expires 4 years after the date of issuance. If the certificateholder fails to renew his or her certificate and provide proof of completion of the required continuing education units within 60 days after the expiration date, the certificateholder may be recertified only after reexamination. The department shall provide the appropriate reference material and make the examination readily accessible and available to all

applicants at least quarterly or as necessary in each county.

Section 5. Subsections (1), (2), (3), and (5) of section 482.156, Florida Statutes, are amended to read:

482.156 Limited certification for commercial landscape maintenance personnel.—

(1) The department shall establish a limited certification category for individual commercial landscape maintenance personnel to authorize them to apply herbicides for controlling weeds in plant beds, driveways, sidewalks, and patios and to perform integrated pest management on ornamental plants using pesticides that do not have a ~~insecticides and fungicides having the~~ signal word or that have the signal word "caution" but do not have ~~having~~ the signal word "warning" or "danger" on the label. The application equipment that may be used by a person certified pursuant to this section is limited to portable, handheld application equipment and ~~3-gallon compressed air sprayers or~~ backpack sprayers but ~~having no more than a 5-gallon capacity and~~ does not include any type of power equipment.

(2)~~(a)~~ A person seeking limited certification under this section must pass an examination given by the department. Each application for examination must be accompanied by an examination fee set by rule of the department, in an amount of not more than $150 or less than $50. Before the department issues ~~Prior to the department's issuing~~ a limited certification under this section, each person applying for the certification

must furnish proof of having a certificate of insurance which states that the employer meets the requirements for minimum financial responsibility for bodily injury and property damage required by s. 482.071(4).

~~(b) To be eligible to take the examination, an applicant must have completed 6 classroom hours of plant bed and ornamental continuing education training approved by the department and provide sufficient proof, according to criteria established by department rule.~~ The department shall provide the appropriate reference materials for the examination and make the examination readily accessible and available to applicants at least quarterly or as necessary in each county.

(3) A certificate expires 1 year after the date of issuance. A certificateholder must apply to the department to renew his or her certificate on or before the 1-year anniversary of the date of issuance. The ~~An~~ application ~~for recertification under this section~~ must ~~be made annually and~~ be accompanied by a recertification fee set by rule of the department, in an amount of not more than $75 or less than $25. The application must also be accompanied by proof of having completed 4 classroom hours of acceptable continuing education and the same proof of having a certificate of insurance as is required for issuance of this certification. After a grace period not exceeding 60 ~~30~~ calendar days following the annual date that recertification is due, a late renewal charge of $50 shall be assessed and must be paid in

addition to the renewal fee. If a certificateholder fails to renew his or her certificate and provide proof of completing the required continuing education units within 60 days after the expiration date, the certificateholder may be recertified only after reexamination ~~Unless timely recertified, a certificate automatically expires 180 calendar days after the anniversary recertification date~~. ~~Subsequent to such expiration, a certificate may be issued only upon successful reexamination and upon payment of the examination fees due.~~

~~(5) A person certified under this section shall maintain records documenting the pests and areas treated, plus the methods and materials applied for control of such pests, which records must be available for review by the department upon request.~~

Section 6. Subsection (3) of section 482.157, Florida Statutes, is amended to read:

482.157 Limited certification for commercial wildlife management personnel.—

(3) A certificate expires 1 year after the date of issuance. A certificateholder must apply to the department to renew his or her certificate on or before the 1-year anniversary of the date of issuance. The ~~An~~ application ~~for recertification~~ must ~~be made annually and~~ be accompanied by a recertification fee of at least $75, but not more than $150, as prescribed by the department by rule. The application must also be accompanied

by proof of completion of the required 4 classroom hours of acceptable continuing education and the required proof of insurance. After a grace period not exceeding 60 ~~30~~ calendar days after the recertification renewal date, the department shall assess a late fee of $50 in addition to the renewal fee. If a certificateholder fails to renew his or her certificate and provide proof of completing the required continuing education units within 60 days after the expiration date, the certificateholder may be recertified only after reexamination ~~A certificate automatically expires 180 days after the recertification date if the renewal fee has not been paid. After expiration, the department shall issue a new certificate only if the applicant successfully passes a reexamination and pays the examination fee and late fee.~~

Section 7. Paragraphs (k) and (l) are added to subsection (1) of section 482.161, Florida Statutes, to read:

482.161 Disciplinary grounds and actions; reinstatement.—

(1) The department may issue a written warning to or impose a fine against, or deny the application for licensure or licensure renewal of, a licensee, certified operator, limited certificateholder, identification cardholder, or special identification cardholder or any other person, or may suspend, revoke, or deny the issuance or renewal of any license, certificate, limited certificate, identification card, or special identification card that is within the scope of this

chapter, in accordance with chapter 120, upon any of the following grounds:

(k) Swearing to or affirming any false statement in an application for a license issued pursuant to this chapter.

(l) Cheating on an examination required for licensure under this chapter or violating a published test center or examination procedure provided orally, in writing, or electronically at the test site and affirmatively acknowledged by the examinee.

Section 8. Section 482.191, Florida Statutes, is amended to read:

482.191 Violation and penalty.—

(1) It is unlawful to do any of the following:

(a) Solicit, practice, perform, or advertise in pest control except as provided by this chapter.

(b) Swear to or affirm a false statement in an application for a license or certificate issued pursuant to this chapter. A false statement contained in an application for such license or certificate renders the application, license, or certificate void.

(c) Cheat on an examination required for licensure under this chapter or violate a published test center or examination procedure provided orally, in writing, or electronically at the test site and affirmatively acknowledged by an examinee. Violating this paragraph renders the examinee's exam attempt

void. The department shall adopt rules establishing penalties for examinees who violate this subsection. The department may exercise discretion in assessing penalties based on the nature and frequency of the violation.

(2) Except as provided in paragraph (1)(c), a person who violates ~~any provision of~~ this chapter commits ~~is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A ~~Any~~ person who violates any rule of the department relative to pest control commits ~~is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 9. Subsection (3) of section 482.226, Florida Statutes, is amended to read:

482.226 Wood-destroying organism inspection report; notice of inspection or treatment; financial responsibility.—

(3) A ~~If periodic reinspections or retreatments are specified in wood-destroying organisms preventive or control contracts, the~~ licensee shall furnish a ~~the~~ property owner or the property owner's authorized agent, after each inspection ~~such reinspection~~ or treatment ~~retreatment~~, with a signed report indicating the presence or absence of wood-destroying organisms covered by the wood-destroying organism preventive or control contract, whether treatment ~~retreatment~~ was made, and the common or brand name of the pesticide used. Such report need not be on

a form prescribed by the department. A person may not perform inspections ~~periodic reinspections~~ or treatments ~~retreatments~~ unless she or he has an identification card issued under s. 482.091(9).

Section 10. Subsection (13) of section 487.031, Florida Statutes, is amended to read:

487.031 Prohibited acts.—It is unlawful:

(13) For any person to do any of the following:

(a) Make a false or fraudulent claim through any medium, misrepresenting the effect of materials or methods used.~~;~~

(b) Make a pesticide recommendation or application not in accordance with the label, except as provided in this section, or not in accordance with recommendations of the United States Environmental Protection Agency or not in accordance with the specifications of a special local need registration.~~;~~

(c) Operate faulty or unsafe equipment.~~;~~

(d) Operate in a faulty, careless, or negligent manner.~~;~~

(e) Apply any pesticide directly to, or in any manner cause any pesticide to drift onto, any person or area not intended to receive the pesticide.~~;~~

(f) Fail to disclose to an agricultural crop grower, before ~~prior to the time~~ pesticides are applied to a crop, full information regarding the possible harmful effects to human beings or animals and the earliest safe time for workers or animals to reenter the treated field.~~;~~

(g) Refuse or, after notice, neglect to comply with ~~the provisions of~~ this part, the rules adopted under this part, or any lawful order of the department.~~;~~

(h) Refuse or neglect to keep and maintain the records required by this part or to submit reports when and as required.~~;~~

(i) Make false or fraudulent records, invoices, or reports.~~;~~

(j) Use fraud or misrepresentation in making an application for a license or license renewal.~~;~~

(k) Swear to or affirm a false statement in an application for a license issued pursuant to this chapter.

(l) Cheat on an examination required for licensure under this chapter or violate a published test center or examination procedure provided orally, in writing, or electronically at the test site and affirmatively acknowledged by the examinee.

(m) Refuse or neglect to comply with any limitations or restrictions on or in a duly issued license.~~;~~

(n)~~(l)~~ Aid or abet a licensed or unlicensed person to evade ~~the provisions of~~ this part, or combine or conspire with a licensed or unlicensed person to evade ~~the provisions of~~ this part, or allow a license to be used by an unlicensed person.~~;~~

(o)~~(m)~~ Make false or misleading statements during or after an inspection concerning any infestation or infection of pests found on land.~~;~~

(p)~~(n)~~ Make false or misleading statements, or fail to report, pursuant to this part, any suspected or known damage to property or illness or injury to persons caused by the application of pesticides.~~;~~

(q)~~(o)~~ Impersonate any state, county, or city inspector or official.~~;~~

(r)~~(p)~~ Fail to maintain a current liability insurance policy or surety bond required by ~~as provided for in~~ this part.~~;~~

(s)~~(q)~~ Fail to adequately train, as required by ~~provided for in~~ this part, unlicensed applicators or mixer-loaders applying restricted-use pesticides under the direct supervision of a licensed applicator.~~; or~~

(t)~~(r)~~ Fail to provide authorized representatives of the department with records required by this part or with free access for inspection and sampling of any pesticide, areas treated with or impacted by these materials, and equipment used in their application.

Section 11. Section 487.175, Florida Statutes, is amended to read:

487.175 Penalties; administrative fine; injunction.—

(1) In addition to any other penalty provided in this part, when the department finds any person, applicant, or licensee has violated any provision of this part or rule adopted under this part, it may enter an order imposing any one or more of the following penalties:

(a) Denial of an application for licensure.

(b) Revocation or suspension of a license.

(c) Issuance of a warning letter.

(d) Placement of the licensee on probation for a specified period of time and subject to conditions the department may specify by rule, including requiring the licensee to attend continuing education courses, to demonstrate competency through a written or practical examination, or to work under the direct supervision of another licensee.

(e) Imposition of an administrative fine in the Class III category pursuant to s. 570.971 for each violation. When imposing a fine under this paragraph, the department shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator benefited from by noncompliance, whether the violation was committed willfully, and the compliance record of the violator.

(2) It is unlawful for a person to swear to or affirm a false statement in an application for a license or certificate issued pursuant to this chapter. A false statement contained in an application for such license or certificate renders the application, license, or certificate void.

(3) Cheating on an examination required for licensure under this chapter or violating a published test center or examination procedure provided orally, in writing, or

electronically at the test site and affirmatively acknowledged by the examinee renders the examinee's exam attempt void. The department shall adopt rules establishing penalties for examinees who violate this section. The department may exercise discretion in assessing penalties based on the nature and frequency of the violation.

(4) Except as provided under subsection (3), a ~~Any~~ person who violates ~~any provision of~~ this part or rules adopted pursuant thereto commits a misdemeanor of the second degree and upon conviction is punishable as provided in s. 775.082 or s. 775.083. For a subsequent violation, such person commits a misdemeanor of the first degree and upon conviction is punishable as provided in s. 775.082 or s. 775.083.

(5)~~(3)~~ In addition to the remedies provided in this part and notwithstanding the existence of any adequate remedy at law, the department may bring an action to enjoin the violation or threatened violation of ~~any provision of~~ this part, or rule adopted under this part, in the circuit court of the county in which the violation occurred or is about to occur. Upon the department's presentation of competent and substantial evidence to the court of the violation or threatened violation, the court shall immediately issue the temporary or permanent injunction sought by the department. The injunction shall be issued without bond. A single act in violation of ~~any provision of~~ this part is ~~shall be~~ sufficient to authorize the issuance of an injunction.

Section 12. Paragraph (b) of subsection (3) of section 493.6113, Florida Statutes, is amended to read:

493.6113 Renewal application for licensure.—

(3) Each licensee is responsible for renewing his or her license on or before its expiration by filing with the department an application for renewal accompanied by payment of the renewal fee and the fingerprint retention fee to cover the cost of ongoing retention in the statewide automated biometric identification system established in s. 943.05(2)(b). Upon the first renewal of a license issued under this chapter before January 1, 2017, the licensee shall submit a full set of fingerprints and fingerprint processing fees to cover the cost of entering the fingerprints into the statewide automated biometric identification system pursuant to s. 493.6108(4)(a) and the cost of enrollment in the Federal Bureau of Investigation's national retained print arrest notification program. Subsequent renewals may be completed without submission of a new set of fingerprints.

(b) Each Class "G" licensee shall additionally submit proof that he or she has received during each year of the license period a minimum of 4 hours of firearms requalification training taught by a Class "K" licensee and has complied with such other health and training requirements that the department shall adopt by rule. Proof of completion of firearms requalification training shall be submitted to the department

upon completion of the training. A Class "G" licensee must successfully complete this requalification training for each type and caliber of firearm carried in the course of performing his or her regulated duties. At the discretion of a Class "K" instructor, a Class "G" licensee may qualify for up to two calibers of firearms in one 4-hour firearm requalification class if the licensee successfully completes training for each firearm, including a separate course of fire for each caliber of firearm. If the licensee fails to complete the required 4 hours of annual training during the first year of the 2-year term of the license, the license is ~~shall be~~ automatically suspended. The licensee must complete the minimum number of hours of range and classroom training required at the time of initial licensure and submit proof of completion of such training to the department before the license may be reinstated. If the licensee fails to complete the required 4 hours of annual training during the second year of the 2-year term of the license, the licensee must complete the minimum number of hours of range and classroom training required at the time of initial licensure and submit proof of completion of such training to the department before the license may be renewed. The department may waive the firearms training requirement if:

1. The applicant provides proof that he or she is currently certified as a law enforcement officer or correctional officer under the Criminal Justice Standards and Training

Commission and has completed law enforcement firearms requalification training annually during the previous 2 years of the licensure period;

2. The applicant provides proof that he or she is currently certified as a federal law enforcement officer and has received law enforcement firearms training administered by a federal law enforcement agency annually during the previous 2 years of the licensure period;

3. The applicant submits a valid firearm certificate among those specified in s. 493.6105(6)(a) and provides proof of having completed requalification training during the previous 2 years of the licensure period; or

4. The applicant provides proof that he or she has completed annual firearms training in accordance with the requirements of the federal Law Enforcement Officers Safety Act under 18 U.S.C. ss. 926B-926C.

Section 13. Section 493.6127, Florida Statutes, is created to read:

493.6127 Appointment of tax collectors to accept applications and renewals for licenses; fees; penalties.—

(1) The department may appoint a tax collector, a county officer as described in s. 1(d), Art. VIII of the State Constitution, to accept new, renewal, and replacement license applications on behalf of the department for licenses issued under this chapter. Such appointment shall be for specified

locations that will best serve the public interest and convenience in persons applying for these licenses. The department shall establish by rule the type of new, renewal, or replacement licenses a tax collector appointed under this section is authorized to accept.

(2) A tax collector seeking to be appointed to accept applications for new, renewal, or replacement licenses must submit a written request to the department stating his or her name, address, telephone number, each location within the county at which the tax collector wishes to accept applications, and other information as required by the department.

(a) Upon receipt of a written request, the department shall review it and may decline to enter into a memorandum of understanding or, if approved, may enter into a memorandum of understanding with the tax collector to accept applications for new or renewal licenses on behalf of the department.

(b) The department may rescind a memorandum of understanding for any reason at any time.

(3) All information provided pursuant to s. 493.6105 or s. 493.6113 and contained in the records of a tax collector appointed under this section which is confidential pursuant to s. 493.6122, or any other state or federal law, retains its confidentiality.

(4) A person may not handle an application for a license issued pursuant to this chapter for a fee or compensation of any

kind unless he or she has been appointed by the department to do so.

(5) A tax collector appointed under this section may collect and retain a convenience fee of $22 for each new application, $12 for each renewal application, $12 for each replacement license, $9 for fingerprinting services associated with the completion of an application submitted online or by mail, and $9 for photographing services associated with the completion of an application submitted online or by mail, and shall remit weekly to the department the license fees pursuant to s. 790.06 for deposit in the Division of Licensing Trust Fund.

(6) A person who willfully violates this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(7) Upon receipt of a completed renewal or replacement application, a new color photograph, and appropriate payment of required fees, a tax collector authorized to accept renewal or replacement applications for licenses under this section may, upon approval and confirmation of license issuance by the department, print and deliver a license to a licensee renewing or replacing his or her license at the tax collector's office.

Section 14. Subsection (28) is added to section 496.404, Florida Statutes, to read:

496.404 Definitions.—As used in ss. 496.401-496.424, the

term:

(28) "Street address" means the physical location where activities subject to regulation under this chapter are conducted or where an applicant, licensee, or other referenced individual actually resides. The term does not include a virtual office, a post office box, or a mail drop.

Section 15. Present paragraphs (d) through (g) of subsection (2) of section 496.405, Florida Statutes, are redesignated as paragraphs (e) through (h), respectively, a new paragraph (d) is added to that subsection, and paragraphs (b) and (d) of subsection (1), subsection (3), and paragraph (b) of subsection (7) of that section are amended, to read:

496.405 Registration statements by charitable organizations and sponsors.—

(1) A charitable organization or sponsor, unless exempted pursuant to s. 496.406, which intends to solicit contributions in or from this state by any means or have funds solicited on its behalf by any other person, charitable organization, sponsor, commercial co-venturer, or professional solicitor, or that participates in a charitable sales promotion or sponsor sales promotion, must, before engaging in any of these activities, file an initial registration statement, and a renewal statement annually thereafter, with the department.

(b) Any changes to the information submitted to the department pursuant to paragraph (2)(d) or paragraph (2)(e) on

the initial registration statement or the last renewal statement must be reported to the department on a form prescribed by the department within 10 days after the change occurs.

(d) The registration of a charitable organization or sponsor may not continue in effect and shall expire without further action of the department under either of the following circumstances:

1. After the date the charitable organization or sponsor should have filed, but failed to file, its renewal statement in accordance with this section.

2. For failure to provide a financial statement within any extension period provided under s. 496.407.

(2) The initial registration statement must be submitted on a form prescribed by the department, signed by an authorized official of the charitable organization or sponsor who shall certify that the registration statement is true and correct, and include the following information or material:

(d) The name and street address of each institution where banking or similar monetary transactions are done by the charitable organization or sponsor, as well as the account numbers associated with all transactions.

(3) Each chapter, branch, or affiliate of a parent organization ~~that is~~ required to register under this section must file a separate registration statement and financial statement or report the required information to its parent

organization, which shall then file, on a form prescribed by the department, a consolidated registration statement for the parent organization and its Florida chapters, branches, and affiliates. A consolidated registration statement filed by a parent organization must include or be accompanied by financial statements as specified in s. 496.407 for the parent organization and each of its Florida chapters, branches, and affiliates that solicited or received contributions during the preceding fiscal year. However, if all contributions received by chapters, branches, or affiliates are remitted directly into a depository account that feeds directly into the parent organization's centralized accounting system from which all disbursements are made, the parent organization may submit one consolidated financial statement on a form prescribed by the department. The consolidated financial statement must comply with s. 496.407 and must reflect the activities of each chapter, branch, or affiliate of the parent organization, including all contributions received in the name of each chapter, branch, or affiliate; all payments made to each chapter, branch, or affiliate; and all administrative fees assessed to each chapter, branch, or affiliate. A copy of Internal Revenue Service Form 990 and all attached schedules filed for the preceding fiscal year, or a copy of Internal Revenue Service Form 990-EZ and Schedule O for the preceding fiscal year, for the parent organization and each Florida chapter, branch, or affiliate ~~that~~

~~is~~ required to file such forms must be attached to the consolidated financial statement.

(7)

(b) If a charitable organization or sponsor discloses information specified in subparagraphs (2)(e)2.-7. ~~subparagraphs (2)(d)2.-7.~~ in the initial registration statement or annual renewal statement, the time limits set forth in paragraph (a) are waived, and the department must ~~shall~~ process such initial registration statement or annual renewal statement in accordance with the time limits set forth in chapter 120. The registration of a charitable organization or sponsor shall be automatically suspended for failure to disclose any information specified in subparagraphs (2)(e)2.-7. ~~subparagraphs (2)(d)2.-7.~~ until such time as the required information is submitted to the department.

Section 16. Paragraph (a) of subsection (2) of section 496.406, Florida Statutes, is amended to read:

496.406 Exemption from registration.—

(2) Before soliciting contributions, a charitable organization or sponsor claiming to be exempt from the registration requirements of s. 496.405 under paragraph (1)(d) must submit annually to the department, on forms prescribed by the department:

(a) The name, street address, and telephone number of the charitable organization or sponsor, the name under which it intends to solicit contributions, the purpose for which it is

organized, and the purpose or purposes for which the contributions to be solicited will be used.

Section 17. Paragraph (a) of subsection (1) and subsection (3) of section 496.407, Florida Statutes, are amended to read:

496.407 Financial statement.—

(1) A charitable organization or sponsor that is required to initially register or annually renew registration must file an annual financial statement for the immediately preceding fiscal year on a form prescribed by the department.

(a) The statement must include the following:

1. A balance sheet.

2. A statement of support, revenue and expenses, and any change in the fund balance.

3. The names and street addresses of the charitable organizations or sponsors, professional fundraising consultant, professional solicitors, and commercial co-venturers used, if any, and the amounts received therefrom, if any.

4. A statement of functional expenses that must include, but is not limited to, expenses in the following categories:

a. Program service costs.

b. Management and general costs.

c. Fundraising costs.

(3) ~~Upon a showing of good cause by a charitable organization or sponsor,~~ The department may extend the time for the filing of a financial statement required under this section

~~by up to 180 days~~, during which time the previous registration shall remain active. The registration must ~~shall~~ be automatically suspended for failure to file the financial statement within the extension period.

Section 18. Paragraph (c) of subsection (2) of section 496.409, Florida Statutes, is amended to read:

496.409 Registration and duties of professional fundraising consultant.—

(2) Applications for registration or renewal of registration must be submitted on a form prescribed by the department, signed by an authorized official of the professional fundraising consultant who shall certify that the report is true and correct, and must include the following information:

(c) The names and street ~~residence~~ addresses of all principals of the applicant, including all officers, directors, and owners.

Section 19. Paragraphs (d) and (j) of subsection (2), paragraph (c) of subsection (6), paragraphs (a), (b), and (h) of subsection (10), and subsection (11) of section 496.410, Florida Statutes, are amended to read:

496.410 Registration and duties of professional solicitors.—

(2) Applications for registration or renewal of registration must be submitted on a form prescribed by rule of the department, signed by an authorized official of the

professional solicitor who shall certify that the report is true and correct, and must include the following information:

(d) The names and street ~~residence~~ addresses of all principals of the applicant, including all officers, directors, and owners.

(j) A list of all telephone numbers the applicant will use to solicit contributions as well as the actual street ~~physical~~ address associated with each telephone number and any fictitious names associated with such address.

(6) No less than 15 days before commencing any solicitation campaign or event, the professional solicitor must file with the department a solicitation notice on a form prescribed by the department. The notice must be signed and sworn to by the contracting officer of the professional solicitor and must include:

(c) The legal name and street ~~residence~~ address of each person responsible for directing and supervising the conduct of the campaign.

(10) During each solicitation campaign, and for not less than 3 years after its completion, the professional solicitor shall maintain the following records:

(a) The date and amount of each contribution received and the name, street address, and telephone number of each contributor.

(b) The name and ~~residence~~ street address of each

employee, agent, and any other person, however designated, who is involved in the solicitation, the amount of compensation paid to each, and the dates on which the payments were made.

(h) If a refund of a contribution has been requested, the name and street address of each person requesting the refund, and, if a refund was made, its amount and the date it was made.

(11) If the professional solicitor sells tickets to any event and represents that the tickets will be donated for use by another person, the professional solicitor also must ~~shall~~ maintain for the same period as specified in subsection (10) the following records:

(a) The name and street address of each contributor who purchases or donates tickets and the number of tickets purchased or donated by the contributor.

(b) The name and street address of each organization that receives the donated tickets for the use of others, and the number of tickets received by the organization.

Section 20. Paragraph (a) of subsection (2) of section 496.4101, Florida Statutes, is amended to read:

496.4101 Licensure of professional solicitors and certain employees thereof.—

(2) Persons required to obtain a solicitor license under subsection (1) shall submit to the department, in such form as the department prescribes, an application for a solicitor license. The application must include the following information:

(a) The true name, date of birth, unique identification number of a driver license or other valid form of identification, and street ~~home~~ address of the applicant.

Section 21. Paragraph (c) of subsection (2) of section 496.411, Florida Statutes, is amended, and paragraph (e) of that subsection is reenacted, to read:

496.411 Disclosure requirements and duties of charitable organizations and sponsors.—

(2) A charitable organization or sponsor soliciting in this state must include all of the following disclosures at the point of solicitation:

(c) Upon request, the name and either the street address or telephone number of a representative to whom inquiries may be addressed.

(e) Upon request, the source from which a written financial statement may be obtained. Such financial statement must be for the immediate preceding fiscal year and must be consistent with the annual financial statement filed under s. 496.407. The written financial statement must be provided within 14 days after the request and must state the purpose for which funds are raised, the total amount of all contributions raised, the total costs and expenses incurred in raising contributions, the total amount of contributions dedicated to the stated purpose or disbursed for the stated purpose, and whether the services of another person or organization have been contracted

to conduct solicitation activities.

Section 22. Paragraph (a) of subsection (2) of section 496.4121, Florida Statutes, is amended to read:

496.4121 Collection receptacles used for donations.—

(2) A collection receptacle must display a permanent sign or label on each side which contains the following information printed in letters that are at least 3 inches in height and no less than one-half inch in width, in a color that contrasts with the color of the collection receptacle:

(a) For a collection receptacle used by a person required to register under this chapter, the name, street ~~business~~ address, telephone number, and registration number of the charitable organization or sponsor for whom the solicitation is made.

Section 23. Paragraph (a) of subsection (2) and subsection (6) of section 496.425, Florida Statutes, are amended to read:

496.425 Solicitation of funds within public transportation facilities.—

(2) Any person desiring to solicit funds within a facility shall first obtain a written permit therefor from the authority responsible for the administration of the facility.

(a) An application in writing for such permit must ~~shall~~ be submitted to the authority and must state ~~shall set forth~~:

1. The full name, street ~~mailing~~ address, and telephone number of the person or organization sponsoring, promoting, or

conducting the proposed activities;

2. The full name, street ~~mailing~~ address, and telephone number of each person who will participate in such activities and of the person who will have supervision of and responsibility for the proposed activities;

3. A description of the proposed activities indicating the type of communication to be involved;

4. The dates on and the hours during which the activities are proposed to be carried out and the expected duration of the proposed activities; and

5. The number of persons to be engaged in such activities.

(6) Each individual solicitor shall display prominently on her or his person a badge or insignia, provided by the solicitor and approved by the authority, bearing the signature of a responsible officer of the authority and that of the solicitor and describing the solicitor by name, age, height, weight, eye color, hair color, street address, and principal occupation and indicating the name of the organization for which funds are solicited.

Section 24. Effective upon this act becoming a law, present paragraphs (k) through (y) of subsection (1) of section 500.03, Florida Statutes, are redesignated as paragraphs (l) through (z), respectively, and a new paragraph (k) is added to that subsection, to read:

500.03 Definitions; construction; applicability.—

(1) For the purpose of this chapter, the term:

(k) "Cultivated meat" means any meat or food product produced from cultured animal cells.

Section 25. Effective upon this act becoming a law, section 500.452, Florida Statutes, is created to read:

500.452 Cultivated meat; prohibition; penalties.—

(1) It is unlawful for any person to manufacture, sell, hold or offer for sale, or distribute cultivated meat in this state.

(2) A person who violates this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A food establishment that manufactures, distributes, or sells cultivated meat in violation of this section is subject to disciplinary action pursuant to s. 500.121.

(4) In addition to the penalties provided in this section, the license of any restaurant, store, or other business may be suspended as provided in the applicable licensing law upon the conviction of an owner or employee of that business for a violation of this section in connection with that business.

(5) A product found to be in violation of this section is subject to s. 500.172 and an immediate stop-sale order.

(6) The department may adopt rules to implement this section.

Section 26. Subsection (10) is added to section 507.07,

Florida Statutes, to read:

507.07 Violations.—It is a violation of this chapter:

(10) For a mover to place a shipper's goods in a self-service storage unit or self-contained storage unit owned by anyone other than the mover unless those goods are stored in the name of the shipper and the shipper contracts directly with the owner of the self-service storage unit or self-contained storage unit.

Section 27. Section 531.67, Florida Statutes, is repealed.

Section 28. Paragraphs (d) and (e) of subsection (1) and paragraph (a) of subsection (3) of section 559.904, Florida Statutes, are amended to read:

559.904 Motor vehicle repair shop registration; application; exemption.—

(1) Each motor vehicle repair shop engaged or attempting to engage in the business of motor vehicle repair work must register with the department prior to doing business in this state. The application for registration must be on a form provided by the department and must include at least the following information:

(d) ~~Copies of all licenses, permits, and certifications obtained by the applicant or employees of the applicant.~~

~~(e)~~ Number of employees who perform repairs at each location or whom ~~which~~ the applicant intends to employ ~~or which are currently employed~~.

(3)(a) Each application for registration must be accompanied by a registration fee for each location calculated on a per-year basis as follows:

1. If the place of business has 1 to 5 employees who perform repairs: $50.

2. If the place of business has 6 to 10 employees who perform repairs: $150.

3. If the place of business has 11 or more employees who perform repairs: $300.

Section 29. Subsections (1) and (2) of section 559.905, Florida Statutes, are amended to read:

559.905 Written motor vehicle repair estimate and disclosure statement required.—

(1) When any customer requests a motor vehicle repair shop to perform repair work on a motor vehicle, the cost of which repair work will exceed $150 ~~$100~~ to the customer, the shop shall prepare a written repair estimate, which is a form setting forth the estimated cost of repair work, including diagnostic work, before effecting any diagnostic work or repair. The written repair estimate must ~~shall~~ also include all of the following items:

(a) The name, address, and telephone number of the motor vehicle repair shop.

(b) The name, address, and telephone number of the customer.

(c) The date and time of the written repair estimate.

(d) The year, make, model, odometer reading, and license tag number of the motor vehicle.

(e) The proposed work completion date.

(f) A general description of the customer's problem or request for repair work or service relating to the motor vehicle.

(g) A statement as to whether the customer is being charged according to a flat rate or an hourly rate, or both.

(h) The estimated cost of repair which must ~~shall~~ include any charge for shop supplies or for hazardous or other waste removal and, if a charge is included, the estimate must ~~shall~~ include the following statement:

"This charge represents costs and profits to the motor vehicle repair facility for miscellaneous shop supplies or waste disposal."

If a charge is mandated by state or federal law, the estimate must ~~shall~~ contain a statement identifying the law and the specific amount charged under the law.

(i) The charge for making a repair price estimate or, if the charge cannot be predetermined, the basis on which the charge will be calculated.

(j) The customer's intended method of payment.

(k) The name and telephone number of another person who may authorize repair work, if the customer desires to designate such person.

(l) A statement indicating what, if anything, is guaranteed in connection with the repair work and the time and mileage period for which the guarantee is effective.

(m) A statement allowing the customer to indicate whether replaced parts should be saved for inspection or return.

(n) A statement indicating the daily charge for storing the customer's motor vehicle after the customer has been notified that the repair work has been completed. However, ~~no~~ storage charges may not ~~shall~~ accrue or be due and payable for a period of 3 working days from the date after ~~of~~ such notification.

(2) If the cost of repair work will exceed $150 ~~$100~~, the shop must ~~shall~~ present to the customer a written notice conspicuously disclosing, in a separate, blocked section, only the following statement, in capital letters of at least 12-point type:

PLEASE READ CAREFULLY, CHECK ONE OF THE STATEMENTS BELOW, AND SIGN:

I UNDERSTAND THAT, UNDER STATE LAW, I AM ENTITLED TO A WRITTEN ESTIMATE IF MY FINAL BILL WILL EXCEED $150 ~~$100~~.

.... I REQUEST A WRITTEN ESTIMATE.

.... I DO NOT REQUEST A WRITTEN ESTIMATE AS LONG AS THE REPAIR COSTS DO NOT EXCEED $ ..... THE SHOP MAY NOT EXCEED THIS AMOUNT WITHOUT MY WRITTEN OR ORAL APPROVAL.

.... I DO NOT REQUEST A WRITTEN ESTIMATE.

SIGNED ..... DATE ....

Section 30. Section 570.69, Florida Statutes, is amended to read:

570.69 Definitions; ss. 570.69 and 570.691.—For the purpose of this section and s. 570.691:

(1) "Center" means the Florida Agricultural Legacy Learning Center.

(2) "Designated program" means the departmental program that ~~which~~ a direct-support organization has been created to support.

(3) ~~(2)~~ "Direct-support organization" or "organization" means an organization that ~~which~~ is a Florida corporation not for profit incorporated under chapter 617 and approved by the department to operate for the benefit of a museum or a designated program.

~~(3) "Museum" means the Florida Agricultural Museum, which~~

~~is designated as the museum for agriculture and rural history of the State of Florida.~~

Section 31. Subsections (1), (2), (4), (5), and (7) of section 570.691, Florida Statutes, are amended to read:

570.691 Direct-support organization.—

(1) The department may authorize the establishment of direct-support organizations to provide assistance, funding, and promotional support for ~~the museums and other~~ programs of the department. The following provisions ~~shall~~ govern the creation, use, powers, and duties of the direct-support organizations:

(a) The department shall enter into a memorandum or letter of agreement with the direct-support organization, which must ~~shall~~ specify the approval of the department, the powers and duties of the direct-support organization, and rules with which the direct-support organization must comply.

(b) The department may authorize, without charge, appropriate use of property, facilities, and personnel of the department by the direct-support organization. The use must ~~shall~~ be for the approved purposes of the direct-support organization and may not be made at times or places that would unreasonably interfere with opportunities for the general public to use department facilities.

(c) The department shall prescribe by agreement conditions with which the direct-support organization must comply in order to use property, facilities, or personnel of the department.

Such conditions must ~~shall~~ provide for budget and audit review and oversight by the department.

(d) The department may not authorize the use of property, facilities, or personnel of the center ~~museum~~, department, or designated program by the direct-support organization that does not provide equal employment opportunities to all persons regardless of race, color, religion, sex, age, or national origin.

(2)(a) The direct-support organization may conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and make expenditures to or for the direct or indirect benefit of the center ~~museum~~ or designated program.

(b) Notwithstanding ~~the provisions of~~ s. 287.025(1)(e), the direct-support organization may enter into contracts to insure property of the center ~~museum~~ or designated programs and may insure objects or collections on loan from others in satisfying security terms of the lender.

(4) A department employee, direct-support organization or center ~~museum~~ employee, volunteer, or director, or designated program may not do either of the following:

(a) Receive a commission, fee, or financial benefit in connection with the sale or exchange of real or personal

property or historical objects to the direct-support organization, the center ~~museum~~, or the designated program.~~; or~~

(b) Be a business associate of any individual, firm, or organization involved in the sale or exchange of real or personal property to the direct-support organization, the center ~~museum~~, or the designated program.

(5) All moneys received by the direct-support organization shall be deposited into an account of the direct-support organization and must ~~shall~~ be used by the organization in a manner consistent with the goals of the center ~~museum~~ or designated program.

(7) The Commissioner of Agriculture, or the commissioner's designee, may serve on the board of trustees and the executive committee of any direct-support organization established to benefit the center ~~museum~~ or any designated program.

Section 32. Section 570.692, Florida Statutes, is amended to read:

570.692 Florida Agricultural Legacy Learning Center ~~Museum~~.~~—~~The Florida Agricultural Legacy Learning Center ~~Museum~~ is designated as the legacy learning center for ~~museum of~~ agriculture and rural history of this ~~the~~ state ~~of Florida~~ and is ~~hereby~~ established within the department.

Section 33. Section 581.189, Florida Statutes, is created to read:

581.189 Dealing in, buying, transporting, and processing

saw palmetto berries.—

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

(a) "Harvest" or "harvesting" means to dig up, remove, or cut and remove saw palmetto berries from the place where they are grown.

(b) "Harvester" means a person, firm, or corporation that takes, harvests, or attempts to take or harvest saw palmetto berries.

(c) "Landowner" means:

1. The public agency administering any public lands; or

2. The person who holds legal title to the real property from which saw palmetto berries are harvested or the person having possession, control, or use of that land which has lawful authority to grant permission to harvest saw palmetto berries from the land.

(d) "Person" means an individual, a partnership, a corporation, an association, or any other legal entity.

(e) "Saw palmetto berries" means the fruit of the plant *Serenoa repens*, commonly known as the saw palmetto.

(f) "Saw palmetto berry dealer" means a person that purchases or otherwise obtains saw palmetto berries from a seller for the purpose of selling the saw palmetto berries at retail or for the purpose of selling the saw palmetto berries to another saw palmetto berry dealer or for both such purposes. This term also includes a person who purchases saw palmetto

berries directly from a landowner for the purpose of selling the saw palmetto berries at retail.

(g) "Seller" means a person that exchanges or offers to exchange saw palmetto berries for money or for any other valuable consideration.

(2) It is unlawful for any person to willfully destroy, harvest, or sell saw palmetto berries on the private land of another or on any public land without first obtaining written permission from the landowner or legal representative of the landowner and a permit from the department as provided in s. 581.185. The landowner's written permission must include all of the following information:

(a) The name, address, and telephone number of the landowner.

(b) The start date, end date, and location, including county, of the harvest.

(c) The landowner's actual or electronic signature.

(3)(a) A saw palmetto berry dealer that purchases saw palmetto berries from a landowner or a person harvesting saw palmetto berries from another's property shall:

1. Maintain a bill of lading, a copy of the harvester's entire permit, as provided in s. 581.185, a copy of the landowner's written permission to harvest, and all of the following:

a. The name, address, and telephone number of the seller.

b. The date or dates of harvesting.

c. The weight, quantity, or volume and a description of the type of saw palmetto berries harvested.

d. A scan or photocopy of a valid government-issued photo identification card of such person.

(b) A person required to maintain the information under paragraph (a) shall retain such records for at least 2 years from the date the harvest ends.

(4)(a) When any law enforcement officer or any authorized employee of the department finds that any saw palmetto berries are being harvested, offered for sale, or exposed for sale in violation of this section, the law enforcement officer or authorized department employee may seize or order such saw palmetto berries be held at a designated location until the individual:

1. Provides the officer or employee with the required permit and landowner's written permission to harvest, within 7 calendar days following the seizure; or

2. Legally disposes of the saw palmetto berries in accordance with this section.

(b) A law enforcement officer or authorized department employee shall release the saw palmetto berries when the requirements of this section are met.

(5) Unlawfully harvested saw palmetto berries constitute contraband and are subject to seizure and disposal by the

seizing law enforcement agency or the department.

(a) Notwithstanding any other provision of law, a law enforcement agency that seizes saw palmetto berries harvested or possessed in violation of this section or unlawfully harvested in violation of s. 581.185, or in violation of any other state or federal law, may sell such saw palmetto berries and retain the proceeds of the sale for the enforcement of this section. Law enforcement agencies selling contraband saw palmetto berries are exempt from s. 581.185.

(b) Law enforcement agencies that seize unlawfully harvested saw palmetto berries shall submit annually to the department, in the manner prescribed by department rule:

1. The quantity and a description of the saw palmetto berries seized; and

2. The location from which the saw palmetto berries were harvested, if known.

(6)(a) A harvester that exchanges or offers to exchange saw palmetto berries with a saw palmetto dealer, seller, or processor for money or any other valuable consideration without first presenting to the saw palmetto berry dealer, seller, processor the person's entire permit, as provided in s. 581.185, or the landowner's written permission commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person required to maintain records as required in

this section that fails to maintain such record for the time period specified in paragraph (3)(b) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) A person that willfully destroys or harvests saw palmetto berries without first obtaining the landowner's written permission to harvest as required by subsection (2) or a permit as required by s. 581.185 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) A saw palmetto berry dealer, buyer, processor, harvester, or seller that presents a false, forged, or altered document purporting to be a landowner's written permission or the permit required by s. 581.185 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(e) A saw palmetto berry dealer, transporter, or processor that exchanges, offers to exchange for money or any other valuable consideration, or possesses unlawfully harvested saw palmetto berries commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7)(a) A person convicted of a violation of this section is responsible for:

1. All reasonable costs incurred by the responding law enforcement agencies and the department, including, but not limited to, investigative costs; and

2. Restitution to the landowner in an amount equal to the fair market value of the saw palmetto berries unlawfully harvested.

(b) For the purposes of this subsection, the term "convicted" means that there has been a determination of guilt as a result of trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

(8) This section does not affect any other person that legally harvests or handles saw palmetto berries from up to two plants for home or personal use.

(9) The department shall adopt rules to administer this section.

Section 34. Subsection (13) of section 585.01, Florida Statutes, is amended to read:

585.01 Definitions.—In construing this part, where the context permits, the word, phrase, or term:

(13) "Livestock" means grazing animals, such as cattle, horses, sheep, swine, goats, other hoofed animals, poultry, ostriches, emus, and rheas, which are raised for private use or commercial purposes.

Section 35. Subsections (5) and (8) of section 790.0625, Florida Statutes, are amended, and subsections (9) and (10) are added to that section, to read:

790.0625 Appointment of tax collectors to accept applications for a concealed weapon or firearm license; fees;

penalties.—

(5) A tax collector appointed under this section may collect and retain a convenience fee of $22 for each new application, ~~and~~ $12 for each renewal application, $12 for each replacement license, $9 for fingerprinting services associated with the completion of an application submitted online or by mail, and $9 for photographing services associated with the completion of an application submitted online or by mail, and shall remit weekly to the department the license fees pursuant to s. 790.06 for deposit in the Division of Licensing Trust Fund.

(8) Upon receipt of a completed renewal application, a new color photograph, and ~~appropriate~~ payment of required fees, a tax collector authorized to accept renewal applications for concealed weapon or firearm licenses under this section may, upon approval and confirmation of license issuance by the department, print and deliver a concealed weapon or firearm license to a licensee renewing his or her license at the tax collector's office.

(9) Upon receipt of a statement under oath to the department and payment of required fees, a tax collector authorized to accept an application for a concealed weapon or firearm license under this section may, upon approval and confirmation from the department that a license is in good standing, print and deliver a concealed weapon or firearm

license to a licensee whose license has been lost or destroyed.

(10) Tax collectors authorized to accept an application for a concealed weapon or firearm license under this section may provide fingerprinting and photographing services to aid concealed weapon and firearm applicants and licensees with initial and renewal applications submitted online or by mail.

Section 36. Paragraph (a) of subsection (5) of section 810.011, Florida Statutes, is amended to read:

810.011 Definitions.—As used in this chapter:

(5)(a) "Posted land" is land upon which any of the following are placed:

1. Signs placed not more than 500 feet apart along and at each corner of the boundaries of the land or, for land owned by a water control district that exists pursuant to chapter 298 or was created by special act of the Legislature, signs placed at or near the intersection of any district canal right-of-way and a road right-of-way or, for land classified as agricultural pursuant to s. 193.461, signs placed at each point of ingress and at each corner of the boundaries of the agricultural land, which prominently display in letters of not less than 2 inches in height the words "no trespassing" and the name of the owner, lessee, or occupant of the land. The signs must be placed along the boundary line of posted land in a manner and in such position as to be clearly noticeable from outside the boundary line; or

2.a. A conspicuous no trespassing notice is painted on trees or posts on the property, provided that the notice is:

(I) Painted in an international orange color and displaying the stenciled words "No Trespassing" in letters no less than 2 inches high and 1 inch wide either vertically or horizontally;

(II) Placed so that the bottom of the painted notice is not less than 3 feet from the ground or more than 5 feet from the ground; and

(III) Placed at locations that are readily visible to any person approaching the property and no more than 500 feet apart on agricultural land.

b. When a landowner uses the painted no trespassing posting to identify a no trespassing area, those painted notices must be accompanied by signs complying with subparagraph 1. and must be placed conspicuously at all places where entry to the property is normally expected or known to occur.

Section 37. Subsection (2) of section 810.09, Florida Statutes, is amended to read:

810.09 Trespass on property other than structure or conveyance.—

(2)~~(a)~~ Except as provided in this subsection, trespass on property other than a structure or conveyance is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(a) ~~(b)~~ If the offender defies an order to leave, personally communicated to the offender by the owner of the premises or by an authorized person, or if the offender willfully opens any door, fence, or gate or does any act that exposes animals, crops, or other property to waste, destruction, or freedom; unlawfully dumps litter on property; or trespasses on property other than a structure or conveyance, the offender commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) ~~(c)~~ If the offender is armed with a firearm or other dangerous weapon during the commission of the offense of trespass on property other than a structure or conveyance, he or she commits ~~is guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any owner or person authorized by the owner may, for prosecution purposes, take into custody and detain, in a reasonable manner, for a reasonable length of time, any person when he or she reasonably believes that a violation of this paragraph has been or is being committed, and that the person to be taken into custody and detained has committed or is committing the violation. If a person is taken into custody, a law enforcement officer must ~~shall~~ be called as soon as is practicable after the person has been taken into custody. The taking into custody and detention in compliance with the requirements of this paragraph does not result in criminal or civil liability for false arrest,

false imprisonment, or unlawful detention.

(c)~~(d)~~ The offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property trespassed is a construction site that is:

1. Greater than 1 acre in area and is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."; or

2. One acre or less in area and is identified as such with a sign that appears prominently, in letters of not less than 2 inches in height, and reads in substantially the following manner: "THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY." The sign must ~~shall~~ be placed at the location on the property where the permits for construction are located. For construction sites of 1 acre or less as provided in this subparagraph, it may ~~shall~~ not be necessary to give notice by posting as defined in s. 810.011(5).

(d)~~(e)~~ The offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property trespassed upon is commercial horticulture property and the property is legally posted and identified in substantially the following manner: "THIS AREA IS DESIGNATED COMMERCIAL PROPERTY FOR HORTICULTURE PRODUCTS, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

(e) ~~(f)~~ The offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property trespassed upon is an agricultural site for testing or research purposes that is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED AGRICULTURAL SITE FOR TESTING OR RESEARCH PURPOSES, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

(f) ~~(g)~~ The offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property trespassed upon is a domestic violence center certified under s. 39.905 which is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED RESTRICTED SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

(g) ~~(h)~~ Any person who in taking or attempting to take any animal described in s. 379.101(19) or (20), or in killing, attempting to kill, or endangering any animal described in s. 585.01(13) knowingly propels or causes to be propelled any potentially lethal projectile over or across private land without authorization commits trespass, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For purposes of this paragraph, the term "potentially lethal projectile" includes any projectile launched from any firearm, bow, crossbow, or similar tensile device. This section does not apply to any governmental agent or employee acting

within the scope of his or her official duties.

(h) ~~(i)~~ The offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property trespassed upon is an agricultural chemicals manufacturing facility that is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED AGRICULTURAL CHEMICALS MANUFACTURING FACILITY, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

(i)1. ~~(j)1.~~ The offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the offender trespasses with the intent to injure another person, damage property, or impede the operation or use of an aircraft, runway, taxiway, ramp, or apron area, and the property trespassed upon is the operational area of an airport that is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED OPERATIONAL AREA OF AN AIRPORT, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

2. For purposes of this paragraph, the term "operational area of an airport" means any portion of an airport to which access by the public is prohibited by fences or appropriate signs and includes runways, taxiways, ramps, apron areas, aircraft parking and storage areas, fuel storage areas, maintenance areas, and any other area of an airport used or intended to be used for landing, takeoff, or surface maneuvering

of aircraft.

(j) The offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the offender trespasses with the intent to commit a crime on commercial agricultural property that is legally posted and identified by signs in letters of at least 2 inches at each pedestrian and vehicle entrance in substantially the following manner: "THIS AREA IS A DESIGNATED COMMERCIAL AGRICULTURAL PROPERTY, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

1. A first-time offender who is under 18 years of age at the time he or she commits the crime specified in this paragraph must be given the option of participating in a diversion program described in s. 958.12, s. 985.125, s. 985.155, or s. 985.16 or a program to which a referral is made by a state attorney under s. 985.15.

2. For the purpose of this paragraph, the term "commercial agricultural property" means property cleared of its natural vegetation or fenced for the purposes of planting, growing, harvesting, processing, raising, producing, or storing plant or animal commercial commodities.

Section 38. Subsection (5) is added to section 1003.24, Florida Statutes, to read:

1003.24 Parents responsible for attendance of children; attendance policy.—Each parent of a child within the compulsory

attendance age is responsible for the child's school attendance as required by law. The absence of a student from school is prima facie evidence of a violation of this section; however, criminal prosecution under this chapter may not be brought against a parent until the provisions of s. 1003.26 have been complied with. A parent of a student is not responsible for the student's nonattendance at school under any of the following conditions:

(5) AGRICULTURAL SCHOOL ACTIVITIES.—

(a) A student who participates in an activity or program sponsored by 4-H or Future Farmers of America (FFA) must be credited with an excused absence by the school in which he or she is enrolled in the same manner as any other excused absence is credited. Any such participation in an activity or program sponsored by 4-H or FFA may not be counted as an unexcused absence, for any day, portion of a day, or days missed from school.

(b) Upon request from a school principal or the principal's designee, a 4-H or FFA representative shall provide documentation as proof of a student's participation in an activity or program sponsored by 4-H or FFA.

(c) As used in this subsection, the term "4-H representative" means an individual officially recognized or designated by the Florida Cooperative Extension Service 4-H Program as a 4-H professional or a 4-H adult volunteer.

Each district school board shall establish an attendance policy that includes, but is not limited to, the required number of days each school year that a student must be in attendance and the number of absences and tardinesses after which a statement explaining such absences and tardinesses must be on file at the school. Each school in the district must determine if an absence or tardiness is excused or unexcused according to criteria established by the district school board.

Section 39. Paragraph (b) of subsection (2) of section 379.3004, Florida Statutes, is amended to read:

379.3004 Voluntary Authorized Hunter Identification Program.—

(2) Any person hunting on private land enrolled in the Voluntary Authorized Hunter Identification Program shall have readily available on the land at all times when hunting on the property written authorization from the owner or his or her authorized representative to be on the land for the purpose of hunting. The written authorization shall be presented on demand to any law enforcement officer, the owner, or the authorized agent of the owner.

(b) Failure by any person hunting on private land enrolled in the program to present written authorization to hunt on that ~~said~~ land to any law enforcement officer or the owner or representative thereof within 7 days after ~~of~~ demand shall be

prima facie evidence of violation of s. 810.09(2)(b) ~~s. 810.09(2)(c)~~, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However, such evidence may be contradicted or rebutted by other evidence.

Section 40. Paragraph (c) of subsection (2) of section 812.014, Florida Statutes, is amended to read:

812.014 Theft.—

(2)

(c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:

1. Valued at $750 or more, but less than $5,000.

2. Valued at $5,000 or more, but less than $10,000.

3. Valued at $10,000 or more, but less than $20,000.

4. A will, codicil, or other testamentary instrument.

5. A firearm, except as provided in paragraph (f).

6. A motor vehicle, except as provided in paragraph (a).

7. Any commercially farmed animal, including any animal of the equine, avian, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; and aquaculture species raised at a certified aquaculture facility. If the property stolen is a commercially farmed animal, including an animal of the equine, avian, bovine, or swine class or other grazing animal; a bee colony of a registered beekeeper; or an aquaculture species raised at a certified aquaculture facility,

a $10,000 fine shall be imposed.

8. Any fire extinguisher that, at the time of the taking, was installed in any building for the purpose of fire prevention and control. This subparagraph does not apply to a fire extinguisher taken from the inventory at a point-of-sale business.

9. Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit.

10. Taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(c) ~~s. 810.09(2)(d)~~.

11. Any stop sign.

12. Anhydrous ammonia.

13. Any amount of a controlled substance as defined in s. 893.02. Notwithstanding any other law, separate judgments and sentences for theft of a controlled substance under this subparagraph and for any applicable possession of controlled substance offense under s. 893.13 or trafficking in controlled substance offense under s. 893.135 may be imposed when all such offenses involve the same amount or amounts of a controlled substance.

However, if the property is stolen during a riot or an aggravated riot prohibited under s. 870.01 and the perpetration of the theft is facilitated by conditions arising from the riot;

or within a county that is subject to a state of emergency declared by the Governor under chapter 252, the property is stolen after the declaration of emergency is made, and the perpetration of the theft is facilitated by conditions arising from the emergency, the offender commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property is valued at $5,000 or more, but less than $10,000, as provided under subparagraph 2., or if the property is valued at $10,000 or more, but less than $20,000, as provided under subparagraph 3. As used in this paragraph, the terms "conditions arising from a riot" and "conditions arising from the emergency" have the same meanings as provided in paragraph (b). A person arrested for committing a theft during a riot or an aggravated riot or within a county that is subject to a state of emergency may not be released until the person appears before a committing magistrate at a first appearance hearing. For purposes of sentencing under chapter 921, a felony offense that is reclassified under this paragraph is ranked one level above the ranking under s. 921.0022 or s. 921.0023 of the offense committed.

Section 41. Paragraphs (b) and (c) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(b) LEVEL 2

Florida Statute	Felony Degree	Description
379.2431 (1)(e)3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
403.413(6)(c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
517.07(2)	3rd	Failure to furnish a prospectus meeting requirements.

590.28(1)	3rd	Intentional burning of lands.
784.03(3)	3rd	Battery during a riot or an aggravated riot.
784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
806.13(1)(b)3.	3rd	Criminal mischief; damage $1,000 or more to public communication or any other public service.
806.13(3)	3rd	Criminal mischief; damage of $200 or more to a

			memorial or historic property.
810.061(2)	3rd		Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
810.09(2)(d) ~~810.09(2)(c)~~	3rd		Trespassing on posted commercial horticulture property.
812.014(2)(c)1.		3rd	Grand theft, 3rd degree; $750 or more but less than $5,000.
812.014(2)(d)		3rd	Grand theft, 3rd degree; $100 or more but less than $750, taken from unenclosed curtilage of dwelling.
812.015(7)	3rd		Possession, use, or attempted use of an antishoplifting or

			inventory control device countermeasure.
817.234(1)(a)2.		3rd	False statement in support of insurance claim.
817.481(3)(a)		3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over $300.
817.52(3)		3rd	Failure to redeliver hired vehicle.
817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.	
817.60(5)		3rd	Dealing in credit cards of another.
817.60(6)(a)		3rd	Forgery; purchase goods, services with false card.

817.61	3rd	Fraudulent use of credit cards over $100 or more within 6 months.
826.04	3rd	Knowingly marries or has sexual intercourse with person to whom related.
831.01	3rd	Forgery.
831.02	3rd	Uttering forged instrument; utters or publishes alteration with intent to defraud.
831.07	3rd	Forging bank bills, checks, drafts, or promissory notes.
831.08	3rd	Possessing 10 or more forged notes, bills, checks, or drafts.
831.09	3rd	Uttering forged notes, bills, checks, drafts, or promissory notes.

831.11	3rd	Bringing into the state forged bank bills, checks, drafts, or notes.
832.05(3)(a)	3rd	Cashing or depositing item with intent to defraud.
843.01(2)	3rd	Resist police canine or police horse with violence; under certain circumstances.
843.08	3rd	False personation.
843.19(3)	3rd	Touch or strike police, fire, SAR canine or police horse.
893.13(2)(a)2.	3rd	Purchase of any s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9.,

		(2)(c)10., (3), or (4) drugs other than cannabis.
893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.

(c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights

			activated.
319.30(4)	3rd		Possession by junkyard of motor vehicle with identification number plate removed.
319.33(1)(a)	3rd		Alter or forge any certificate of title to a motor vehicle or mobile home.
319.33(1)(c)	3rd		Procure or pass title on stolen vehicle.
319.33(4)	3rd		With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
327.35(2)(b)	3rd		Felony BUI.
328.05(2)	3rd		Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.

328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)6.	3rd	Possessing any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in the Marine

			Turtle Protection Act.
379.2431 (1)(e)7.	3rd		Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
400.9935(4)(a) or (b)	3rd		Operating a clinic, or offering services requiring licensure, without a license.
400.9935(4)(e)	3rd		Filing a false license application or other required information or failing to report information.
440.1051(3)	3rd		False report of workers' compensation fraud or retaliation for making such a report.
501.001(2)(b)	2nd		Tampers with a consumer product or the container using

			materially false/misleading information.
624.401(4)(a)	3rd		Transacting insurance without a certificate of authority.
624.401(4)(b)1.	3rd		Transacting insurance without a certificate of authority; premium collected less than $20,000.
626.902(1)(a) & (b)	3rd		Representing an unauthorized insurer.
697.08	3rd		Equity skimming.
790.15(3)	3rd		Person directs another to discharge firearm from a vehicle.
794.053	3rd		Lewd or lascivious written solicitation of a person 16 or 17 years of age by a person 24

			years of age or older.
806.10(1)	3rd		Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
806.10(2)	3rd		Interferes with or assaults firefighter in performance of duty.
810.09(2)(b) ~~810.09(2)(c)~~	3rd		Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd		Grand theft; $5,000 or more but less than $10,000.
812.0145(2)(c)	3rd		Theft from person 65 years of age or older; $300 or more but less than $10,000.

812.015(8)(b)	3rd	Retail theft with intent to sell; conspires with others.
812.081(2)	3rd	Theft of a trade secret.
815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than $20,000.
817.233	3rd	Burning to defraud insurer.
817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.

817.234(11)(a)		3rd	Insurance fraud; property value less than $20,000.
817.236	3rd	Filing a false motor vehicle insurance application.	
817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.	
817.413(2)		3rd	Sale of used goods of $1,000 or more as new.
817.49(2)(b)1.	3rd	Willful making of a false report of a crime causing great bodily harm, permanent disfigurement, or permanent disability.	
831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a	

			counterfeit payment instrument with intent to defraud.
831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.	
836.13(2)	3rd	Person who promotes an altered sexual depiction of an identifiable person without consent.	
838.021(3)(b)	3rd	Threatens unlawful harm to public servant.	
860.15(3)	3rd	Overcharging for repairs and parts.	
870.01(2)	3rd	Riot.	
870.01(4)	3rd	Inciting a riot.	
893.13(1)(a)2.	3rd	Sell, manufacture, or	

			deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs).
1790			
	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000 feet of university.
1791			
	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs within 1,000 feet of public housing

			facility.
893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.	
893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.	
893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.	
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.	
893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.	

893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
893.13(8)(a)3.	3rd	Knowingly write a

			prescription for a controlled substance for a fictitious person.
893.13(8)(a)4.		3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
918.13(1)		3rd	Tampering with or fabricating physical evidence.
944.47 (1)(a)1. & 2.		3rd	Introduce contraband to correctional facility.
944.47(1)(c)		2nd	Possess contraband while upon the grounds of a correctional institution.
985.721		3rd	Escapes from a juvenile

facility (secure detention or residential commitment facility).

Section 42. For the purpose of incorporating the amendment made by this act to section 493.6113, Florida Statutes, in a reference thereto, subsection (6) of section 493.6115, Florida Statutes, is reenacted, to read:

493.6115 Weapons and firearms.—

(6) In addition to any other firearm approved by the department, a licensee who has been issued a Class "G" license may carry a .38 caliber revolver; or a .380 caliber or 9 millimeter semiautomatic pistol; or a .357 caliber revolver with .38 caliber ammunition only; or a .40 caliber handgun; or a .45 ACP handgun while performing duties authorized under this chapter. A licensee may not carry more than two firearms upon her or his person when performing her or his duties. A licensee may only carry a firearm of the specific type and caliber with which she or he is qualified pursuant to the firearms training referenced in subsection (8) or s. 493.6113(3)(b).

Section 43. For the purpose of incorporating the amendment made by this act to section 496.405, Florida Statutes, in references thereto, subsection (2) of section 496.4055, Florida Statutes, is reenacted, to read:

496.4055 Charitable organization or sponsor board duties.—

(2) The board of directors, or an authorized committee thereof, of a charitable organization or sponsor required to register with the department under s. 496.405 shall adopt a policy regarding conflict of interest transactions. The policy shall require annual certification of compliance with the policy by all directors, officers, and trustees of the charitable organization. A copy of the annual certification shall be submitted to the department with the annual registration statement required by s. 496.405.

Section 44. For the purpose of incorporating the amendment made by this act to section 559.905, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 559.907, Florida Statutes, is reenacted to read:

559.907 Charges for motor vehicle repair estimate; requirement of waiver of rights prohibited.—

(1) No motor vehicle repair shop shall charge for making a repair price estimate unless, prior to making the price estimate, the shop:

(b) Obtains authorization on the written repair estimate, in accordance with s. 559.905, to prepare an estimate. No motor vehicle repair shop shall impose or threaten to impose any such charge which is clearly excessive in relation to the work involved in making the price estimate.

Section 45. For the purpose of incorporating the amendment

made by this act to section 585.01, Florida Statutes, in a reference thereto, subsection (6) of section 468.382, Florida Statutes, is reenacted to read:

468.382 Definitions.—As used in this act, the term:

(6) "Livestock" means any animal included in the definition of "livestock" by s. 585.01 or s. 588.13.

Section 46. For the purpose of incorporating the amendment made by this act to section 585.01, Florida Statutes, in a reference thereto, subsection (3) of section 534.47, Florida Statutes, is reenacted to read:

534.47 Definitions.—As used in ss. 534.48-534.54, the term:

(3) "Livestock" has the same meaning as in s. 585.01(13).

Section 47. For the purpose of incorporating the amendment made by this act to section 585.01, Florida Statutes, in a reference thereto, section 767.01, Florida Statutes, is reenacted to read:

767.01 Dog owner's liability for damages to persons, domestic animals, or livestock.—Owners of dogs shall be liable for any damage done by their dogs to a person or to any animal included in the definitions of "domestic animal" and "livestock" as provided by s. 585.01.

Section 48. For the purpose of incorporating the amendment made by this act to section 585.01, Florida Statutes, in a reference thereto, section 767.03, Florida Statutes, is

reenacted to read:

767.03 Good defense for killing dog.—In any action for damages or of a criminal prosecution against any person for killing or injuring a dog, satisfactory proof that said dog had been or was killing any animal included in the definitions of "domestic animal" and "livestock" as provided by s. 585.01 shall constitute a good defense to either of such actions.

Section 49. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1243 Homeowners' Associations
SPONSOR(S): Porras and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Larkin	Anstead
2) Appropriations Committee			
3) Judiciary Committee			

SUMMARY ANALYSIS

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership. HOAs are authorized to impose assessments that, if unpaid, may become a lien on the parcel. HOAs may levy fines against or suspend certain access rights of a parcel owner for failing to comply with the HOA's governing documents. In addition, Florida law requires officers and directors of an HOA to comply with certain requirements.

The bill provides educational requirements for community association managers (CAMs) and HOA directors.

The bill requires a CAM that is authorized by contract to provide an HOA community association management services to meet certain conditions.

Related to official records, the bill:

- Requires every HOA, by January 1, 2025, to post a current digital copy of the official records on its website or make such documents available through an application.
- Requires an HOA to ensure that the private information and records that are not allowed to be accessible to parcel owners are not posted on the website or application or are redacted.
- Provides that an HOA must provide a copy of records or otherwise make the records available that are subpoenaed by a law enforcement agency.

The bill requires an HOA that has 2,500 members or more to:

- Use an independent certified public accountant (CPA) to prepare the HOA's annual budget.
- Retain an attorney to advise the HOA and its members on procedural matters relating to the annual budget and to foster communications between the board and the HOA members.

The bill provides that an HOA officer, director, or manager that accepts a kickback that is:

- Valued at least $25 but not more than $1,000 commits a first-degree misdemeanor.
- Valued at $1,000 or more commits a third-degree felony.

Related to an HOA or its architectural, construction improvement, or other similar committee (ARC), the bill:

- Requires an HOA or an ARC to uniformly apply and enforce on all parcel owners the architectural and construction improvement standards.
- Requires an HOA or an ARC to provide specific reasons for a denial of a parcel owner's request for the construction on his or her property.

The bill has no fiscal impact on state or local government.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Community Association Managers- Current Situation

Community association managers (CAMs) are licensed and regulated by the Department of Business and Professional Regulation (DBPR) pursuant to part VIII of ch. 468, F.S. Community association managers are regulated by the seven-member Regulatory Council of Community Association Managers at DBPR.[1]

Section 468.431(2), F.S., defines "community association management" to mean:

> any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration and when the association or associations served contain more than 10 units or have an annual budget or budgets in excess of $100,000: controlling or disbursing funds of a community association, preparing budgets or other financial documents for a community association, assisting in the noticing or conduct of community association meetings, and coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association.

A license is not required for a person who:

- Performs clerical or ministerial functions under the direct supervision and control of a licensed manager, or
- Performs only the maintenance of a community association and does not assist in any of the management services.[2]

To become licensed as a CAM, a license applicant must:

- Submit to a background check to determine good moral character,
- Attend a DBPR-approved in-person training prior to taking the examination, and
- Pass the licensure examination.[3]

CAMs must also complete not more than 10 hours of continuing education hours as approved by the council to renew and maintain their licenses.[4]

Section 468.4334, F.S., outlines the professional practice standards for CAMs and CAM firms, including the duty to "discharge the duties performed on behalf of the association as authorized by [ch. 468, F.S.], loyally, skillfully, and diligently; dealing honestly and fairly; in good faith; with care and full disclosure to the community association; accounting for all funds; and not charging unreasonable or excessive fees."

The license of a CAM or CAM firm may be disciplined, including a suspension or revocation of their license, or denial of a license renewal, for the grounds specified in s. 468.436, F.S., including:

- Committing acts of gross misconduct or gross negligence in connection with the profession.
- Contracting, on behalf of an association, with any entity in which the CAM has a financial interest that is not disclosed.
- Violating any provision of chapter 718 (relating to condominiums), chapter 719 (relating to cooperatives), or chapter 720 (relating to homeowners' associations) during the course of

[1] S. 468.4315(1), F.S.
[2] S. 468.431(2), F.S.
[3] S. 468.433, F.S.
[4] S. 468.4336 and 468.4337, F.S.

performing community association management services pursuant to a contract with a community association.[5]

Community Association Managers- Effect of the Bill

The bill requires CAMs and CAM firms authorized by a contract to provide community association management to an HOA to:

- Attend in person at least one member meeting or board meeting of the homeowners' association annually;
- Provide HOA members:
  - The name and contact information for each CAM or representative of the CAM firm assigned to the HOA.
  - The CAM's or representative's hours of availability.
  - A summary of the duties for which the CAM or representative is responsible.

The bill requires that the HOA post this information on the HOA website or application. The bill requires that a CAM or CAM firm must update the HOA and its members within 14 business days after any change to such information.

A CAM or CAM firm is required to provide the contract between the HOA and the CAM, and the HOA governing documents, upon an HOA member's request.

The bill mandates that every two years, a CAM that provides services to an HOA must complete at least 5 hours of continuing education that pertains specifically to HOAs, 3 hours of which must relate to recordkeeping.

Homeowners' Associations

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership. HOAs are authorized to impose assessments that, if unpaid, may become a lien on the parcel.[6] In Florida, approximately 45 percent of homes are part of an HOA.[7]

Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S., the Homeowners' Association Act (HOA Act). Like a condominium, an HOA is administered by an elected board of directors. The powers and duties of an HOA include the powers and duties provided in the HOA Act, and in the association's governing documents, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents.[8]

An HOA must be a Florida corporation and the initial governing documents must be recorded in the official records of the county in which the community is located. The powers and duties of an association include those set forth in the HOA Act and in the governing documents, except as expressly limited or restricted in the HOA Act.

After control of the HOA is obtained by members other than the developer, the HOA may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all members concerning matters of common interest to the members. The HOA may defend actions in eminent domain or bring inverse condemnation actions. Any individual member or class of members may bring any action without

[5] S. 468.436(2)(b)5.-7., F.S.
[6] S. 720.301(9), F.S.
[7] Patrick Regan, "45% of Florida Homes Are Part of an HOA, the Highest Percentage in the Nation." *South Florida Agent Magazine*, Apr. 21, 2023, https://southfloridaagentmagazine.com/2023/04/20/45-of-florida-homes-are-part-of-an-hoa-the-highest-percentage-in-the-nation/ (last visited Jan. 20, 2024).
[8] *See generally* ch. 720, F.S.

participation by the HOA, but a member does not have authority to act for the HOA by virtue of being a member.[9]

No state agency has direct oversight over HOAs. However, Florida law provides for a limited mandatory binding arbitration program, administered by the Division of Condominiums, Timeshares and Mobile Homes, within the Department of Business and Professional Regulation, for certain election and recall disputes.[10]

HOA Governing Documents

An HOA's governing documents include the:

- Recorded declaration of covenants for a community and all duly adopted amendments thereto;
- HOA's articles of incorporation and bylaws and any duly adopted amendments thereto; and
- Rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and any duly adopted amendments thereto.[11]

The declaration of covenants, much like a constitution, establishes the community's basic covenants and restrictions.[12] The articles of incorporation establish the HOA's existence, basic structure, and governance.[13] The bylaws govern the HOA's operation and administration, while the rules and regulations typically supplement the other documents, addressing matters of everyday policy.[14]

Unless otherwise provided in the governing documents or required by law, an HOA's governing documents may be amended by the affirmative vote of two-thirds of the HOA's voting interests.[15] Within 30 days after recording a governing document amendment, the HOA must give its members copies thereof unless a copy was provided to the members before the vote on the amendment, in which case the HOA must only provide the members with notice of the amendment's adoption.[16]

Official Records- Current Situation

An HOA must maintain each of the following items, when applicable, which constitute the official records of the HOA:[17]

- A copy of the HOA's governing documents:
  - declaration of covenants and each amendment,
  - bylaws and each amendment,
  - articles of incorporation and each amendment, and
  - current rules.
- Copies of any plans, specifications, permits, and warranties related to improvements constructed on the common areas or other property that the HOA is obligated to maintain, repair, or replace.
- The minutes of all meetings of the board of directors and of the members, which minutes must be retained for at least 7 years.
- A current roster of all members and their designated mailing addresses and parcel identifications. A member's designated mailing address is the member's property address, unless the member has sent written notice to the association requesting that a different mailing address be used for all required notices.
  - The association shall also maintain the e-mail addresses and the facsimile numbers designated by members for receiving notice sent by electronic transmission of those

[9] S. 720.303(1), F.S.
[10] S. 720.311, F.S.
[11] S. 720.301(8), F.S.
[12] Joseph Adams, *HOA Governing Documents Explained* (July 1, 2018), https://www.floridacondohoalawblog.com/2018/07/01/hoa-governing-documents-explained/ (last visited Jan. 21, 2024).
[13] *Id.*
[14] *Id.*
[15] S. 720.306(1), F.S.
[16] *Id.*
[17] S. 720.303(4), F.S.

members consenting to receive notice by electronic transmission. A member's e-mail address is the e-mail address the member provided when consenting in writing to receiving notice by electronic transmission, unless the member has sent written notice to the association requesting that a different e-mail address be used for all required notices. The e-mail addresses and facsimile numbers provided by members to receive notice by electronic transmission must be removed from association records when the member revokes consent to receive notice by electronic transmission.

- All of the HOA's insurance policies, which must be retained for at least 7 years.
- A current copy of all contracts to which the HOA is a party, including, without limitation, any management agreement, lease, or other contract under which the HOA has any obligation or responsibility.
    - Bids received by the HOA for work to be performed must also be considered official records and must be kept for a period of 1 year.
- The financial and accounting records of the HOA, kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least 7 years. The financial and accounting records must include:
    - Accurate, itemized, and detailed records of all receipts and expenditures.
    - A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.
    - All tax returns, financial statements, and financial reports of the HOA.
    - Any other records that identify, measure, record, or communicate financial information.
- A copy of the disclosure summary.
- Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by parcel owners, which must be maintained for at least 1 year after the date of the election, vote, or meeting.
- All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3, F.S.
- All other written records of the HOA which are related to the operation of the HOA.

The HOA bylaws must require the HOA to post all notices of board meetings in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency.[18]

The official records must be maintained within the state for at least 7 years and be made available to a parcel owner for inspection or photocopying within 45 miles of the community or within the county in which the HOA is located within 10 business days after receipt by the board or its designee of a written request.

An HOA may comply with these requirements by having a copy of the official records available for inspection or copying in the community or, at the option of the HOA, by making the records available to a parcel owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request.

If the HOA has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages. However, an HOA may impose fees to cover the costs of providing copies of the official records.[19] An association must allow a member or authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of providing the member or

[18] S. 720.303(2)(c), F.S.

[19] The association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and the costs required for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds one-half hour and if the personnel costs do not exceed $20 per hour. Personnel costs may not be charged for records requests that result in the copying of 25 or fewer pages. The association may charge up to 25 cents per page for copies made on the association's photocopier. S. 720.303(5)(c), F.S.

authorized representative with a copy of such records. The association may not charge a fee to a member or his or her authorized representative for the use of a portable device.[20]

The failure of an association to provide access to the records within 10 business days after receipt of a written request submitted by certified mail, return receipt requested, creates a rebuttable presumption that the association willfully failed to comply with this requirement.[21]

A member who is denied access to official records is entitled to the actual damages or minimum damages for the HOA's willful failure to comply with this requirement. The minimum damages are to be $50 per calendar day up to 10 days, the calculation to begin on the 11th business day after receipt of the written request.[22]

The HOA may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a parcel owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one 8-hour business day per month.[23]

The following records are not accessible to members or parcel owners:[24]

- Any record protected by the lawyer-client privilege as described in s. 90.502, F.S., and any record protected by the work-product privilege.
- Information obtained in connection with the approval of the lease, sale, or other transfer of a parcel.
- Information obtained in a gated community in connection with guests' visits to parcel owners or community residents.
- Personnel records of HOA or management company employees.
- Medical records of parcel owners or community residents.
- Personal identifying information of a parcel owner other than as provided for HOA notice requirements, excluding the person's name, parcel designation, mailing address, and property address.
- Any electronic security measure that is used to safeguard data, including passwords.
- The software and operating system which allows the manipulation of data; however, the data is part of the official records.
- All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3, F.S.

Official Records- Effect of the Bill

The bill mandates that the HOA adopt written rules governing the method of retaining official records and length of such retention.

The bill requires every HOA, by January 1, 2025, to:

- Post a current digital copy of the official records on its website accessible on the Internet, or
- Make such documents available through an application that can be downloaded on a mobile device.
- Such application or website must have a subpage or portal inaccessible to the general public, and that is accessible only to HOA parcel owners and employees, and
- Must provide a username and password, upon request.

The bill provides that if an HOA receives a subpoena for records from a law enforcement agency, the HOA must provide a copy of such records or otherwise make the records available to a law

[20] S. 720.303(5), F.S.
[21] S. 720.303(5)(a), F.S.
[22] S. 720.303(5)(b), F.S.
[23] S. 720.303(5)(c), F.S.
[24] S. 720.303(5)(c)1.-9., F.S.

enforcement agency within 5 business days after receipt of the subpoena. The bill requires that an HOA must assist a law enforcement agency in its investigation to the extent permissible by law.

Budget- Current Situation

Every HOA is required to prepare an annual budget that sets out the annual operating expenses. The budget must:[25]

- Reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year.
- Set out separately all fees or charges paid for by the association for recreational amenities, whether owned by the association, the developer, or another person.

The HOA must provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member. In addition to annual operating expenses, the budget may include reserve accounts for capital expenditures and deferred maintenance for which the HOA is responsible.[26] Depending on the HOA's governing documents, an HOA's budget may not provide for reserve accounts.[27] Upon approval by the HOA membership, the board of directors must include the required reserve accounts in the budget in the next fiscal year following the approval and each year thereafter.[28]

Budget- Effect of the Bill

The bill requires an HOA that has 2,500 members or more to:

- Use an independent certified public accountant (CPA) to prepare the HOA's annual budget.
- Retain an attorney to advise the HOA and its members on procedural matters relating to the annual budget and to foster communications between the board and the HOA members.

The bill provides that such CPA and attorney may not be the CAM or an employee of the CAM firm providing community association management services to the HOA.

Powers and Duties of Officers and Directors- Current Situation

The officers and directors of an HOA have a fiduciary relationship to the members who are served by the HOA.[29]

Within 90 days after being elected or appointed to the board, each director shall certify in writing to the secretary of the HOA that:

- he or she has read the association's declaration of covenants, articles of incorporation, bylaws, and current written rules and policies;
- he or she will work to uphold such documents and policies to the best of his or her ability; and
- he or she will faithfully discharge his or her fiduciary responsibility to the HOA members.

Within 90 days after being elected or appointed to the board, in lieu of such written certification, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved education provider within 1 year before or 90 days after the date of election or appointment. The written certification or educational certificate is valid for the uninterrupted tenure of the director on the board. A director who does not timely file the written certification or educational certificate shall be suspended from the board until he or she complies with the requirement. The board may temporarily fill the vacancy during the period of suspension.

[25] S. 720.303(6)(a), F.S.
[26] S. 720.303(6)(b), F.S.
[27] S. 720.303(6)(d), F.S.
[28] S. 720.303(6)(c)(1), F.S.
[29] S. 720.303(1), F.S.

The HOA must retain each director's written certification or educational certificate for inspection by the members for 5 years after the director's election. However, the failure to have the written certification or educational certificate on file does not affect the validity of any board action.[30]

An officer, a director, or a manager who knowingly solicits, offers to accept, or accepts any thing or service of value or kickback for which consideration has not been provided for his or her own benefit or that of his or her immediate family from any person providing or proposing to provide goods or services to the association is subject to monetary damages. If the board finds that an officer or director has violated this condition, the board must immediately remove the officer or director from office. The vacancy must be filled according to law until the end of the director's term of office. However, an officer, director, or manager may accept food to be consumed at a business meeting with a value of less than $25 per individual or a service or good received in connection with trade fairs or education programs.[31]

If the HOA enters into a contract or other transaction with any of its directors or a corporation, firm, association that is not an affiliated HOA, or other entity in which a director is also a director or officer or is financially interested, the board must:[32]

- Comply with the requirements for conflicts of interest in a corporation not for profit.[33]
- Enter certain disclosure requirements into the written minutes of the meeting.
- Approve the contract or other transaction by an affirmative vote of two-thirds of the directors present.
- At the next regular or special meeting of the members, disclose the existence of the contract or other transaction to the members. Upon motion of any member, the contract or transaction must be brought up for a vote and may be canceled by a majority vote of the members present. If the members cancel the contract, the HOA is only liable for the reasonable value of goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other penalty for such cancellation.

The directors and officers of an HOA who are appointed by the developer to disclose to the HOA their relationship to the developer each calendar year in which they serve as a director or an officer. [34]A developer's appointment of an officer or director does not create a presumption that the officer or director has a conflict of interest with regard to the performance of his or her official duties.

Directors and officers of an HOA are required to disclose to the HOA any activity that may reasonably be construed to be a conflict of interest at least 14 days prior to voting on the subject of such conflict or entering into such contract. A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior disclosure to the HOA:[35]

- A director or an officer, or a relative of a director or an officer, enters into a contract for goods or services with the HOA.
- A director or an officer, or a relative of a director or an officer, holds an interest in a corporation, limited liability company, partnership, limited liability partnership, or other business entity that conducts business with the HOA or proposes to enter into a contract or other transaction with the HOA.

Powers and Duties of Officers and Directors- Effect of the Bill

HOA Director Education Requirements

The bill:

[30] S. 720.3033(1)(a)-(c),F.S.
[31] S. 720.3033(3), F.S.
[32] S. 720.3033(2), F.S.
[33] A contract or transaction with a conflict of interest is not voidable if the relationship or interest is disclosed or known to the board; the board authorized, approved, or ratified it by vote or written consent; or the contract or transaction is fair and reasonable at the time it is authorized. Such contract or transaction must be authorized, approved, or ratified by a majority of the directors on the board who have no relationship or interest in such transaction. S. 617.0832, F.S.
[34] S. 720.3033(6)(a), F.S.
[35] S. 720.3033(6)(b), F.S.

- Requires a new elected or appointed director, within 90 days after being elected or appointed, to the board to complete and submit a certificate of having satisfactorily completed the educational curriculum administered by a DBPR-approved education provider.
- Provides that such educational curriculum must include training relating to financial literacy and transparency, recordkeeping, levying of fines, and notice and meeting requirements.
- Provides that the certification of completion for education of newly elected directors is valid up to four years.
- Requires that a newly elected director must complete such educational curriculum at least every four years.
- Requires a newly elected or appointed director of an association that:
    - has **fewer than 1,000** members to complete at least **4 hours** of continuing education annually.
    - has **1,000 members or more** must complete at least **8 hours** of continuing education annually.

Prohibition of Kickbacks

The bill prohibits an HOA officer, director, or manager from accepting kickbacks:
- If a kickback is valued at least $25 but not more than $1,000, it is a first-degree misdemeanor.
- If a kickback is valued at $1,000 or more, it is a third-degree felony.

HOA Architectural and Construction Improvement Covenants and Rules- Current Situation

If the governing documents allow, an HOA or its architectural, construction improvement, or other similar committee (ARC) may:[36]
- Require a review and approval of plans and specifications for the location, size, type, or appearance of any structure or other improvement on a parcel before a parcel owner makes such improvement.
- Enforce standards for the external appearance of any structure or improvement located on a parcel.

The HOA or ARC may not restrict the right of a parcel owner to select from any options given in the governing documents for the use of material, the size of the structure or improvement, the design of the structure or improvement, or the location of the structure or improvement on the parcel.[37]

Each parcel owner is entitled to the rights and privileges set forth in the governing documents concerning the architectural use of the parcel, and the construction of permitted structures and improvements on the parcel and such rights and privileges may not be unreasonably infringed upon or impaired by the HOA or ARC. If the an HOA or ARC unreasonably, knowingly, and willfully infringes upon or impairs such rights and privileges, the adversely affected parcel owner may recover damages, including any costs and reasonable attorney's fees.[38]

An HOA or ARC may not enforce any policy or restriction that is inconsistent with the rights and privileges of a parcel owner set forth in the governing documents, whether uniformly applied or not.[39]

HOA Architectural and Construction Improvement Covenants and Rules- The Effect of Bill

The bill provides:
- An HOA or ARC must uniformly apply and enforce the architectural and construction improvement standards against all parcel owners authorized by the HOA governing documents.
- If the HOA or ARC denies a parcel owner's request or application for the construction of a structure or other improvement on a parcel, the HOA or ARC must provide written notice to the

[36] S. 720.3035(1), F.S.
[37] S. 720. 3035(2), F.S.
[38] S. 720.3035(4), F.S.
[39] S. 720.3035(5), F.

parcel owner stating with specificity the rule or covenant on which the HOA or ARC relied when denying the request or application.

B. SECTION DIRECTORY:

Section 1: amending s. 468.4334, F.S. relating to community association manager requirements.
Section 2: amending s. 468.4337, F.S., relating to continuing education.
Section 3: amending s. 720.303, F.S., relating to official records and budgets.
Section 4: amending s. 720.3033, F.S., relating to education of directors.
Section 5: amending s. 720.3035, F.S., relating to architectural control covenants.
Section 6: amending s. 720.3085, F.S., relating to payment for assessments.
Section 7: Providing 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:

Protections put in place preventing HOA board members from accepting kickbacks, and requiring large HOAs to employ a CPA may prevent unlawful behavior from occurring, and, thus, save HOAs money. However, some HOAs may have to spend money to develop a website and HOAs that have 2,500 members or more may have an increase in expenditures related to retaining a CPA and an attorney.

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 is given rule-making authority to adopt rules to implement and administer an educational curriculum and continuing education requirements for HOA directors.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to homeowners' associations; amending s. 468.4334, F.S.; providing requirements for certain community association managers and community association management firms; amending s. 468.4337, F.S.; requiring certain community association managers to take a specific number of hours of continuing education biennially; amending s. 720.303, F.S.; requiring official records of a homeowners' association to be maintained for a certain number of years; requiring an association to post certain documents on its website or make such documents available through an application by a date certain; providing requirements for an association's website or application; requiring an association to provide certain information to parcel owners upon request; requiring an association to ensure certain information and records are not accessible on the website or application; providing that an association or its agent is not liable for the disclosure of certain information; requiring an association to adopt certain rules; requiring an association to provide or make available subpoenaed records within a certain timeframe; requiring an association to assist in a law enforcement investigation as allowed by law; requiring

that certain associations use an independent certified public accountant to prepare its annual budget; requiring certain associations to retain an attorney for certain purposes; prohibiting certain persons from acting as the accountant or attorney; amending s. 720.3033, F.S.; providing education requirements for newly elected or appointed directors; providing requirements for the educational curriculum; requiring certain newly elected or appointed directors to complete a certain number of hours of continuing education annually; requiring the Department of Business and Professional Regulation to adopt certain rules; providing criminal penalties for certain actions by an officer, a director, or a manager of an association; amending s. 720.3035, F.S.; requiring an association or any architectural, construction improvement, or other such similar committee of an association to apply and enforce certain standards reasonably and equitably; requiring an association or any architectural, construction improvement, or other such similar committee of an association to provide certain written notice to a parcel owner; amending s. 720.3085, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Subsection (3) is added to section 468.4334, Florida Statutes, to read:

468.4334 Professional practice standards; liability; community association manager requirements.—

(3) A community association manager or community association management firm that is authorized by contract to provide community association management services to a homeowners' association must do all of the following:

(a) Attend in person at least one member meeting or board meeting of the homeowners' association annually.

(b) Provide to the members of the homeowners' association the name and contact information for each community association manager or representative of a community association management firm assigned to the homeowners' association, the manager's or representative's hours of availability, and a summary of the duties for which the manager or representative is responsible. The homeowners' association must also post this information on the association's website or application required under s. 720.303(4)(b). The community association manager or community association management firm must update the homeowners' association and its members within 14 business days after any change to such information.

(c) Provide to any member upon request a copy of the

contract between the community association manager or community association management firm and the homeowners' association and include such contract with association's governing documents.

Section 2. Section 468.4337, Florida Statutes, is amended to read:

468.4337 Continuing education.—The department may not renew a license until the licensee submits proof that the licensee has completed the requisite hours of continuing education. ~~No more than 10 hours of continuing education annually shall be required for renewal of a license.~~ The number of continuing education hours, criteria, and course content shall be approved by the council by rule. The council may not require more than 10 hours of continuing education annually for renewal of a license. A community association manager who provides community association management services to a homeowners' association must biennially complete at least 5 hours of continuing education that pertains specifically to homeowners' associations, 3 hours of which must relate to recordkeeping.

Section 3. Subsections (4) and (5) and paragraphs (a), (d), and (f) of subsection (6) of section 720.303, Florida Statutes, are amended to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.—

(4) OFFICIAL RECORDS.—

(a) The association shall maintain each of the following items, when applicable, for at least 7 years, unless the governing documents of the association require a longer period of time, which constitute the official records of the association:

1.~~(a)~~ Copies of any plans, specifications, permits, and warranties related to improvements constructed on the common areas or other property that the association is obligated to maintain, repair, or replace.

2.~~(b)~~ A copy of the bylaws of the association and of each amendment to the bylaws.

3.~~(c)~~ A copy of the articles of incorporation of the association and of each amendment thereto.

4.~~(d)~~ A copy of the declaration of covenants and a copy of each amendment thereto.

5.~~(e)~~ A copy of the current rules of the homeowners' association.

6.~~(f)~~ The minutes of all meetings of the board of directors and of the members~~, which minutes must be retained for at least 7 years~~.

7.~~(g)~~ A current roster of all members and their designated mailing addresses and parcel identifications. A member's designated mailing address is the member's property address, unless the member has sent written notice to the association

requesting that a different mailing address be used for all required notices. The association shall also maintain the e-mail addresses and the facsimile numbers designated by members for receiving notice sent by electronic transmission of those members consenting to receive notice by electronic transmission. A member's e-mail address is the e-mail address the member provided when consenting in writing to receiving notice by electronic transmission, unless the member has sent written notice to the association requesting that a different e-mail address be used for all required notices. The e-mail addresses and facsimile numbers provided by members to receive notice by electronic transmission must be removed from association records when the member revokes consent to receive notice by electronic transmission. However, the association is not liable for an erroneous disclosure of the e-mail address or the facsimile number for receiving electronic transmission of notices.

8.~~(h)~~ All of the association's insurance policies or a copy thereof~~, which policies must be retained for at least 7 years~~.

9.~~(i)~~ A current copy of all contracts to which the association is a party, including, without limitation, any management agreement, lease, or other contract under which the association has any obligation or responsibility. Bids received by the association for work to be performed are ~~must also be~~ considered official records and must be kept for a period of 1

year.

10.~~(j)~~ The financial and accounting records of the association, kept according to good accounting practices. ~~All financial and accounting records must be maintained for a period of at least 7 years.~~ The financial and accounting records must include:

a.~~1.~~ Accurate, itemized, and detailed records of all receipts and expenditures.

b.~~2.~~ A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.

c.~~3.~~ All tax returns, financial statements, and financial reports of the association.

d.~~4.~~ Any other records that identify, measure, record, or communicate financial information.

11.~~(k)~~ A copy of the disclosure summary described in s. 720.401(1).

12.~~(l)~~ Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by parcel owners, which must be maintained for at least 1 year after the date of the election, vote, or meeting.

13.~~(m)~~ All affirmative acknowledgments made pursuant to s.

720.3085(3)(c)3.

14.~~(n)~~ All other written records of the association not specifically included in this subsection which are related to the operation of the association.

(b)1. By January 1, 2025, an association shall post a current digital copy of the documents specified in paragraph (a) on its website or make such documents available through an application that can be downloaded on a mobile device.

2. The association's website or application must be accessible through the Internet and must contain a subpage, web portal, or other protected electronic location that is inaccessible to the general public and accessible only to parcel owners and employees of the association.

3. Upon written request by a parcel owner, the association must provide the parcel owner with a username and password and access to the protected sections of the association's website or application which contains the official documents of the association.

4. The association shall ensure that the information and records described in paragraph (5)(d), which are not allowed to be accessible to parcel owners, are not posted on the association's website or application. If protected information or information restricted from being accessible to parcel owners is included in documents that are required to be posted on the association's website or application, the association must

ensure the information is redacted before posting the documents. Notwithstanding the foregoing, the association or its authorized agent is not liable for disclosing information that is protected or restricted under paragraph (5)(d) unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

(c) The association shall adopt written rules governing the method or policy by which the official records of the association are to be retained and for how long such records must be retained. Such information must be made available to the parcel owners through the association's website or application.

(5) INSPECTION AND COPYING OF RECORDS.—Unless otherwise provided by law or the governing documents of the association, the official records must ~~shall~~ be maintained within the state for at least 7 years and ~~shall~~ be made available to a parcel owner for inspection or photocopying within 45 miles of the community or within the county in which the association is located within 10 business days after receipt by the board or its designee of a written request from the parcel owner. This subsection may be complied with by having a copy of the official records available for inspection or copying in the community or~~,~~ ~~at the option of the association,~~ by making the records available to a parcel owner electronically via the association's website or application ~~Internet~~ or by allowing the records to be viewed in electronic format on a computer screen and printed

upon request. If the association has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a fee to a member or his or her authorized representative for the use of a portable device.

(a) The failure of an association to provide access to the records within 10 business days after receipt of a written request submitted by certified mail, return receipt requested, creates a rebuttable presumption that the association willfully failed to comply with this subsection.

(b) A member who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply with this subsection. The minimum damages are to be $50 per calendar day up to 10 days, the calculation to begin on the 11th business day after receipt of the written request.

(c) The association may adopt reasonable written rules

governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a parcel owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one 8-hour business day per month. The association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and the costs required for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds one-half hour and if the personnel costs do not exceed $20 per hour. Personnel costs may not be charged for records requests that result in the copying of 25 or fewer pages. The association may charge up to 25 cents per page for copies made on the association's photocopier. If the association does not have a photocopy machine available where the records are kept, or if the records requested to be copied exceed 25 pages in length, the association may have copies made by an outside duplicating service and may charge the actual cost of copying, as supported by the vendor invoice. The association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members.

(d) Notwithstanding this subsection ~~paragraph~~, the following records are not accessible to members or parcel owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including, but not limited to, a record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

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

3. Information an association obtains in a gated community in connection with guests' visits to parcel owners or community residents.

4. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association or management company employee or budgetary or financial records that indicate the compensation paid to an association or management company employee.

5. Medical records of parcel owners or community residents.

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

7. Any electronic security measure that is used by the association to safeguard data, including passwords.

8. The software and operating system used by the association which allows the manipulation of data, even if the owner owns a copy of the same software used by the association.

The data is part of the official records of the association.

9. All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3.

(e) ~~(d)~~ The association or its authorized agent is not required to provide a prospective purchaser or lienholder with information about the residential subdivision or the association other than information or documents required by this chapter to be made available or disclosed. The association or its authorized agent may charge a reasonable fee to the prospective purchaser or lienholder or the current parcel owner or member for providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law, if the fee does not exceed $150 plus the reasonable cost of photocopying and any attorney fees incurred by the association in connection with the response.

(f) If an association receives a subpoena for records from a law enforcement agency, the association must provide a copy of such records or otherwise make the records available for inspection and copying to a law enforcement agency within 5 business days after receipt of the subpoena, unless otherwise specified by the law enforcement agency or subpoena. An association must assist a law enforcement agency in its investigation to the extent permissible by law.

(6) BUDGETS.—

(a)1. The association shall prepare an annual budget that

sets out the annual operating expenses. The budget must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges paid for by the association for recreational amenities, whether owned by the association, the developer, or another person. The association shall provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member. The copy must be provided to the member within the time limits set forth in subsection (5).

2. An association that has 2,500 members or more must use an independent certified public accountant to prepare the association's annual budget. Such association must also retain an attorney to advise the association and its members on procedural matters relating to the annual budget and to foster communications between the board and the members of the association. The independent certified public accountant or attorney required under this subparagraph may not be:

a. The community association manager or an employee of the community association management firm providing community association management services to the association; or

b. An officer or a director of the association or an immediate family member of an officer or a director.

(d) An association is deemed to have provided for reserve

accounts upon the affirmative approval of a majority of the total voting interests of the association. Such approval may be obtained by vote of the members at a duly called meeting of the membership or by the written consent of a majority of the total voting interests of the association. The approval action of the membership must state that reserve accounts shall be provided for in the budget and must designate the components for which the reserve accounts are to be established. Upon approval by the membership, the board of directors or the independent certified public accountant, if required under paragraph (a), shall include the required reserve accounts in the budget in the next fiscal year following the approval and each year thereafter. Once established as provided in this subsection, the reserve accounts must be funded or maintained or have their funding waived in the manner provided in paragraph (f).

(f) After one or more reserve accounts are established, the membership of the association, upon a majority vote at a meeting at which a quorum is present, may provide for no reserves or less reserves than required by this section. If a meeting of the parcel ~~unit~~ owners has been called to determine whether to waive or reduce the funding of reserves and such result is not achieved or a quorum is not present, the reserves as included in the budget go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves. Any vote taken pursuant to this

subsection to waive or reduce reserves is applicable only to one budget year.

Section 4. Subsections (1) and (3) of section 720.3033, Florida Statutes, are amended to read:

720.3033 Officers and directors.—

(1)(a) Within 90 days after being elected or appointed to the board, each ~~director shall certify in writing to the secretary of the association that he or she has read the association's declaration of covenants, articles of incorporation, bylaws, and current written rules and policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. Within 90 days after being elected or appointed to the board, in lieu of such written certification, the newly elected or appointed~~ director must ~~may~~ submit a certificate of having satisfactorily completed the educational curriculum administered by a department-approved ~~division-approved~~ education provider.

1. The newly elected or appointed director must complete the department-approved education within 90 days after being elected or appointed.

2. The certificate of completion is valid for a maximum of 4 years.

3. A director must complete such education at least every

4 years.

4. The department-approved educational curriculum must include training relating to financial literacy and transparency, recordkeeping, levying of fines, and notice and meeting requirements.

5. A newly elected or appointed director of an association that has fewer than 1,000 members must complete at least 4 hours of continuing education annually.

6. A newly elected or appointed director of an association that has 1,000 members or more must complete at least 8 hours of continuing education annually ~~within 1 year before or 90 days after the date of election or appointment~~.

(b) ~~The written certification or educational certificate is valid for the uninterrupted tenure of the director on the board.~~ A director who does not timely file the ~~written certification or~~ educational certificate is ~~shall be~~ suspended from the board until he or she complies with the requirement. The board may temporarily fill the vacancy during the period of suspension.

(c) The association shall retain each director's ~~written certification or~~ educational certificate for inspection by the members for 5 years after the director's election. However, the failure to have the written certification or educational certificate on file does not affect the validity of any board action.

(d) The department shall adopt rules to implement and administer the educational curriculum and continuing education requirements under this subsection.

(3) An officer, a director, or a manager may not solicit, offer to accept, ~~or~~ accept, or receive any thing or service of value for which consideration has not been provided for his or her benefit or for the benefit of a member of his or her immediate family from any person providing or proposing to provide goods or services to the association. An officer, a director, or a manager who knowingly solicits, offers to accept, ~~or~~ accepts, or receives any thing or service of value or kickback that is at least $25 but not more than $1,000 for which consideration has not been provided for his or her own benefit or that of his or her immediate family from any person providing or proposing to provide goods or services to the association commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083 and is subject to monetary damages under s. 617.0834. If such thing or kickback is valued at $1,000 or more, the officer, director, or manager commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 and is subject to monetary damages under s. 617.0834. If the board finds that an officer or a director has violated this subsection, the board shall immediately remove the officer or director from office. The vacancy shall be filled according to law until the end of the

officer's or director's term of office. However, an officer, a director, or a manager may accept food to be consumed at a business meeting with a value of less than $25 per individual or a service or good received in connection with trade fairs or education programs.

Section 5. Subsections (1) and (4) of section 720.3035, Florida Statutes, are amended to read:

720.3035 Architectural control covenants; parcel owner improvements; rights and privileges.—

(1) The authority of an association or any architectural, construction improvement, or other such similar committee of an association to review and approve plans and specifications for the location, size, type, or appearance of any structure or other improvement on a parcel, or to enforce standards for the external appearance of any structure or improvement located on a parcel, is ~~shall be~~ permitted only to the extent that the authority is specifically stated or reasonably inferred as to such location, size, type, or appearance in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants. An association or any architectural, construction improvement, or similar committee of an association must reasonably and equitably apply and enforce on all parcel owners the architectural and construction improvement standards authorized by the declaration of covenants or other published guidelines and standards authorized by the

declaration of covenants.

(4) Each parcel owner is ~~shall be~~ entitled to the rights and privileges set forth in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants concerning the architectural use of the parcel, and the construction of permitted structures and improvements on the parcel and such rights and privileges may ~~shall~~ not be unreasonably infringed upon or impaired by the association or any architectural, construction improvement, or other such similar committee of the association. If the association or any architectural, construction improvement, or other such similar committee of the association denies a parcel owner's request or application for the construction of a structure or other improvement on a parcel, the association or committee must provide written notice to the parcel owner stating with specificity the rule or covenant on which the association or committee relied when denying the request or application and the specific aspect or part of the proposed improvement that does not conform to such rule or covenant. If the association or any architectural, construction improvement, or other such similar committee of the association should unreasonably, knowingly, and willfully infringe upon or impair the rights and privileges set forth in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants, the adversely affected parcel

owner is ~~shall be~~ entitled to recover damages caused by such infringement or impairment, including any costs and reasonable attorney ~~attorney's~~ fees incurred in preserving or restoring the rights and privileges of the parcel owner set forth in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants.

Section 6. Paragraph (c) of subsection (3) of section 720.3085, Florida Statutes, is amended to read:

720.3085 Payment for assessments; lien claims.—

(3) Assessments and installments on assessments that are not paid when due bear interest from the due date until paid at the rate provided in the declaration of covenants or the bylaws of the association, which rate may not exceed the rate allowed by law. If no rate is provided in the declaration or bylaws, interest accrues at the rate of 18 percent per year.

(c)1. If an association sends out an invoice for assessments or a parcel's statement of the account described in s. 720.303(4)(a)10.b. ~~s. 720.303(4)(j)2.~~, the invoice for assessments or the parcel's statement of account must be delivered to the parcel owner by first-class United States mail or by electronic transmission to the parcel owner's e-mail address maintained in the association's official records.

2. Before changing the method of delivery for an invoice for assessments or the statement of the account, the association must deliver a written notice of such change to each parcel

owner. The written notice must be delivered to the parcel owner at least 30 days before the association sends the invoice for assessments or the statement of the account by the new delivery method. The notice must be sent by first-class United States mail to the owner at his or her last address as reflected in the association's records and, if such address is not the parcel address, must be sent by first-class United States mail to the parcel address. Notice is deemed to have been delivered upon mailing as required by this subparagraph.

3. A parcel owner must affirmatively acknowledge his or her understanding that the association will change its method of delivery of the invoice for assessments or the statement of the account before the association may change the method of delivering an invoice for assessments or the statement of account. The parcel owner may make the affirmative acknowledgment electronically or in writing.

Section 7. This act shall take effect July 1, 2024.

REGULATORY REFORM & ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 1243 by Rep. Porras, Garcia, and Lopez, V.
Homeowners' Associations

AMENDMENT SUMMARY
January 24, 2024

Amendment 1 by Rep. Porras (line 420):

- Clarifies that a newly elected or appointed director must take the education class approved by the department at least every four years.
- Clarifies that in addition to the newly elected or appointed director class, directors are also responsible for annual continuing education as follows:
    - 4 hours for directors in communities with less than 2,500 members.
    - 8 hours for directors in communities with 2,500 or more.

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: Regulatory Reform & Economic Development Subcommittee
Representative Porras offered the following:

Amendment

Remove lines 420-436 and insert:

1. The newly elected or appointed director must complete the department-approved education for newly elected or appointed directors within 90 days after being elected or appointed.

2. The certificate of completion is valid for a maximum of 4 years.

3. At least every 4 years, a director must complete the education specific to newly elected or appointed directors.

4. The department-approved educational curriculum specific to newly elected or appointed directors must include training

relating to financial literacy and transparency, recordkeeping, levying of fines, and notice and meeting requirements.

5. In addition to the educational curriculum specific to newly elected or appointed directors:

a. A director of an association that has fewer than 2,500 members must complete at least 4 hours of continuing education annually.

b. A director of an association that has 2,500 members or more must complete at least 8 hours of continuing education annually ~~within 1 year before or 90 days~~

HB 1245

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1245 Veterinary Professional Associates
SPONSOR(S): Killebrew and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1038

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Thompson	Anstead
2) Civil Justice Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

In Florida, the practice of "veterinary medicine" means the diagnosis of medical conditions of animals, and the prescribing or administering of medicine and treatment to animals for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease. Veterinarians are regulated by the Board of Veterinary Medicine (Board) in the Department of Business and Professional Regulation (DBPR) pursuant to ch. 474, F.S., relating to veterinary medical practice (practice act).

Currently, there are approximately 13,000 veterinarians in the state of Florida. Some estimates indicate that 70 percent of Florida households own a pet, meaning that there may be at least five million pets in Florida. Many experts believe there are not enough veterinarians to handle the growing pet population in the state.

A veterinary professional health care provider, which is a similar position to the human medical profession's physician assistant (PA), is not currently authorized in the veterinary practice act.

The bill creates the title "veterinary professional associate" and allows such individuals who have obtained this title, working under the supervision of a veterinarian, to practice veterinary medicine on a limited basis, as follows:

- Allows the title "veterinary professional associate" to be used only by an individual who has successfully completed an approved program.
- Unless otherwise prohibited by federal or state law, authorizes a veterinary professional associate to practice veterinary medicine, while working under the supervision of a Florida licensed veterinarian.
- Prohibits a veterinary professional associate from:
  - Prescribing medicinal drugs or controlled substances.
  - Except for sterilizations or dental surgeries, performing a surgical procedure.
- Makes supervising veterinarians using a veterinary professional associate liable for any acts or omissions of the veterinary professional associate acting under the veterinarian's supervision and control.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Practice of Veterinary Medicine

The Board of Veterinary Medicine (Board) in the Department of Business and Professional Regulation (DBPR) implements the provisions of ch. 474, F.S., relating to veterinary medical practice (practice act). The purpose of the practice act is to ensure that every veterinarian practicing in this state meets minimum requirements for safe practices to protect public health and safety.[1]

A "veterinarian" is a health care practitioner licensed by the Board to engage in the practice of veterinary medicine in Florida[2] and they are subject to disciplinary action from the Board for various violations of the practice act.[3]

The practice of "veterinary medicine" is the diagnosis of medical conditions of animals, and the prescribing or administering of medicine and treatment to animals for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease, or holding oneself out as performing any of these functions.[4]

Veterinary medicine includes, with respect to animals:[5]

- Surgery;
- Acupuncture;
- Obstetrics;
- Dentistry;
- Physical therapy;
- Radiology;
- Theriogenology (reproductive medicine); and
- Other branches or specialties of veterinary medicine.

The practice act does not apply to the following categories of persons:

- Veterinary aides, nurses, laboratory technicians, preceptors,[6] or other employees of a licensed veterinarian, who administer medication or provide help or support under the responsible supervision[7] of a licensed veterinarian;
- Certain non-Florida licensed veterinarians who are consulting upon request of a Florida-licensed veterinarian on the treatment of a specific animal or on the treatment on a specific case of the animals of a single owner.
- Faculty veterinarians when they have assigned teaching duties at accredited[8] institutions;
- Certain graduated intern/resident veterinarians of accredited institutions;

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[1] S. 474.201, F.S.
[2] S. 474.202(11), F.S.
[3] Ss. 474.213 & 474.214, F.S.
[4] *See* s. 474.202(9), F.S. Also included is the determination of the health, fitness, or soundness of an animal, and the performance of any manual procedure for the diagnosis or treatment of pregnancy or fertility or infertility of animals.
[5] *See* s. 474.202(13), F.S. S. 474.202(1), F.S., defines "animal" as "any mammal other than a human being or any bird, amphibian, fish, or reptile, wild or domestic, living or dead."
[6] A preceptor is a skilled practitioner or faculty member who directs, teaches, supervises, and evaluates students in a clinical setting to allow practical experience with patients. *See also* https://www.merriam-webster.com/dictionary/preceptor#medicalDictionary (last visited Jan. 16, 2024).
[7] The term "responsible supervision" is defined in s. 474.202(10), F.S., as the "control, direction, and regulation by a licensed doctor of veterinary medicine of the duties involving veterinary services" delegated to unlicensed personnel.
[8] Ss. 474.203(1) and (2), F.S., provide that accreditation of a school or college must be granted by the American Veterinary Medical Association (AVMA) Council on Education, or the AVMA Commission for Foreign Veterinary Graduates.

- Certain students in a school or college of veterinary medicine who perform assigned duties by an instructor or work as preceptors;
- Certain doctors of veterinary medicine employed by a state agency or the United States Government;
- Persons or their employees caring for the persons' own animals, as well as certain part-time or temporary employees, or independent contractors, who are hired by an owner to help with herd management and animal husbandry tasks; and
- Certain entities or persons[9] that conduct experiments and scientific research on animals as part of the development of pharmaceuticals, biologicals, serums, or treatment methods of treatment or techniques to diagnose or treatment of human ailments, or in the study and development of methods and techniques applicable to the practice of veterinary medicine.[10]

Any permanent or mobile establishment where a licensed veterinarian practices must have a premises permit issued by DBPR.[11] Each person to whom a veterinary license or premises permit is issued must conspicuously display such document in her or his office, place of business, or place of employment in a permanent or mobile veterinary establishment or clinic.[12]

By virtue of accepting a license to practice veterinary medicine in Florida, a veterinarian consents to:
- Render a handwriting sample to an agent of the department and, further, to have waived any objections to its use as evidence against her or him.
- Waive the confidentiality and authorize the preparation and release of medical reports pertaining to the mental or physical condition of the licensee when the department has reason to believe that a violation of this chapter has occurred and when the department issues an order, based on the need for additional information, to produce such medical reports for the time period relevant to the complaint.[13]

For Fiscal Year 2022-2023, there were 13,285 actively licensed veterinarians in Florida. DBPR received 484 complaints, which resulted in 16 disciplinary actions.[14]

Immediate Supervision

The practice act defines "immediate supervision" to mean that a "licensed doctor of veterinary medicine is on the premises whenever veterinary services are being provided."[15]

Veterinary tasks requiring immediate supervision include:[16]
- Administering anesthesia and tranquilization by a veterinary aide, nurse, laboratory technician, intern, or other employee of a licensed veterinarian.
- Administering certain vaccinations by a veterinary aide, nurse, technician, intern or other employee of a licensed veterinarian which is not specifically prohibited.

The following tasks may be performed without the licensed veterinarian on the premises:[17]
- Administering medication and treatment, excluding vaccinations, as directed by the licensed veterinarian; and

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[9] *See* s. 474.203(6), F.S., which states that the exemption applies to "[s]tate agencies, accredited schools, institutions, foundations, business corporations or associations, physicians licensed to practice medicine and surgery in all its branches, graduate doctors of veterinary medicine, or persons under the direct supervision thereof...."
[10] *See* s. 474.203, F.S.
[11] S. 474.215(1), F.S.
[12] S. 474.216, F.S.
[13] S. 474.2185, F.S.
[14] Department of Business and Professional Regulation, *Division of Professions Annual Report Fiscal Year 2022-2023*, http://www.myfloridalicense.com/DBPR/os/documents/Division%20Annual%20Report%20FY%2022-23.pdf (last visited Jan. 16, 2024).
[15] S. 4764.202(5), F.S.
[16] R. 61G18-17.005, F.A.C.
[17] *Id.*

- Obtaining samples and the performance of those diagnostic tests, including radiographs, directed by the licensed veterinarian.

Veterinarian Shortage

According to a survey conducted by the American Pet Products Association (APPA), 70 percent of U.S. households, or about 90.5 million families, own a pet. This is an increase from 56 percent of U.S. households in 1988, and 67 percent in 2019.[18] As a result, experts say there is a shortage of veterinarians in the U.S., which is expected to result in the need for approximately 15,000 veterinarians by the year 2030.[19] A study from Banfield Pet Hospital reveals an estimated 75 million pets in the U.S. may not have access to the veterinary care they need by 2030, with an important factor being a critical shortage of veterinarians.[20]

The University of Florida's Dean of the College of Veterinary Medicine, Dana Zimmel, has indicated that there is a shortage of veterinarians in Florida, which in addition to pets has "1.7 million beef cattle and dairy cows, more horses than Kentucky and an alarming decline of manatee." The state's only veterinary medical college, the University of Florida, also reports that due to limited capacity, it must turn away 1,500 qualified candidates a year.[21]

According to the American Veterinary Medical Association (AVMA), "conditions have pushed the idea of a midlevel practitioner to the fore as veterinary practices have struggled to meet service demands. This issue has been compounded by continued inefficiencies in practices as pandemic disruptions persist and client expectations for availability and convenience. Inflation has also increased costs for labor and for products such as medical equipment and medications, creating additional concern around clients' ability to afford needed care. Additionally, retention of veterinary practice staff members and attrition from the profession are ongoing and increasing concerns."[22] The AVMA found that a midlevel practitioner may not be the best option to address these concerns, and that "time and effort should be spent on resources, tools, and programs designed to retain veterinarians and credentialed veterinary technicians; further develop veterinary technician specialties; help veterinary practices operate at optimum efficiency; and effectively collaborate—within practice teams and across the profession—to meet clients' needs for high-quality veterinary services."[23]

However, according to a study conducted by the National Library of Medicine, "the projected shortage of veterinarians has created a need to explore alternatives designed to meet society's future demands. A veterinary professional health care provider, similar to the human medical profession's physician assistant (PA), is one such alternative. It is suggested that perhaps veterinary professional associates, modeled after PAs, could be employed to handle routine veterinary care and thereby allow veterinarians additional time to focus on the more demanding and challenging aspects of veterinary medicine. Perhaps a team approach, similar to the physician/PA team, could help the field of veterinary medicine to better serve both clients and patients. As veterinary medicine directs its attention toward

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[18] Insurance Information Institute, *Facts + Statistics: Pet Ownership and Insurance*, https://www.iii.org/fact-statistic/facts-statistics-pet-ownership-and-insurance#:~:text=Seventy%20percent%20of%20U.S.%20households,and%2067%20percent%20in%202019. (last visited Jan. 16, 2024).

[19] Spectrum News 13, *Mobile 'ElleVet' clinic helps relieve veterinarian shortage*, https://www.mynews13.com/fl/orlando/news/2023/02/03/the-ellevet-project-#:~:text=%E2%80%94%20Experts%20say%20there's%20a%20shortage,States%20may%20not%20get%20care. (last visited Jan. 16, 2024).

[20] Banfield Pet Hospital, *75 million pets may not have access to veterinary care by 2030, New Banfield® study finds*, https://www.banfield.com/en/about-banfield/newsroom/press-releases/2020/75-million-pets-may-not-have-access-to-veterinary (last visited Jan. 16, 2024).

[21] Dana Zimmel, *Florida needs more veterinarians | Column*, Tampa Bay Times (Jan. 3, 2022), https://www.tampabay.com/opinion/2022/01/03/florida-needs-more-veterinarians-column/ (last visited Jan. 21, 2024).

[22] American Veterinary Medical Association, AVMA News, *Idea of midlevel practitioner rejected in favor of better support, engagement of credentialed veterinary technicians* (Jan. 10, 2023), https://www.avma.org/news/idea-midlevel-practitioner-rejected-favor-better-support-engagement-credentialed-veterinary (last visited Jan. 16, 2024).

[23] *Id.*

the new challenges on the horizon, creative solutions will be needed. Perhaps some variation of a veterinary professional associate is worthy of future discussion."[24]

Human PAs

According to the Mayo Clinic, PAs are "licensed medical professionals who hold an advanced degree and are able to provide direct patient care. They work with patients of all ages in virtually all specialty and primary care areas, diagnosing and treating common illnesses and working with minor procedures. With an increasing shortage of health care providers, PAs are a critical part of today's team-based approach to health care. They increase access to quality health care for many populations and communities. The specific duties of a PA are determined by their supervising physician and state law, but they provide many of the same services as a primary care physician. They practice in every state and in a wide variety of clinical settings and specialties."[25]

In Florida, PAs are licensed medical professionals that are authorized to perform services delegated by a supervising physician.[26] PAs are regulated by the Florida Council on Physician Assistants (Council) in conjunction with either the Board of Medicine for PAs licensed under ch. 458, F.S., or the Board of Osteopathic Medicine for PAs licensed under ch. 459, F.S. During fiscal year 2022-2023, there were 11,504 actively licensed PAs in the state, and 1,471 initial PA licenses were issued by the Florida Department of Health.[27]

Effect of the Bill

The bill creates the title "veterinary professional associate" and allows individuals working under the supervision of a veterinarian to practice veterinary medicine on a limited basis, as follows:

- Provides the following legislative findings:

> the practice in this state of veterinary professional associates, with their education, training, and experience in the field of veterinary medicine, will provide increased efficiency of and access to high-quality veterinary medical services at a reasonable cost to consumers.

- Defines the following terms:
  - "Approved program" means a master's program in veterinary clinical care, or the equivalent, in the United States or in its territories or possessions from an accredited school of veterinary medicine.
  - "Supervision" means responsible supervision and control, and, except in cases of emergency, requires the easy availability or physical presence of a licensed veterinarian for consultation and direction of the actions of a veterinary professional associate. For the purposes of this paragraph, the term "easy availability" includes the ability to communicate by way of telecommunication.
  - "Veterinary professional associate" means a person who has earned a master's degree from an approved program or who meets standards approved by the board and is authorized to perform veterinary medical services delegated by a supervising veterinarian.
- Allows the title "veterinary professional associate" to be used only by an individual who has successfully completed an approved program.

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[24] Lori Kogan, Sherry Stewart, *Veterinary professional associates: does the profession's foresight include a mid-tier professional similar to physician assistants?*, National Library of Medicine (2009), https://pubmed.ncbi.nlm.nih.gov/19625672/ (last visited Jan. 16, 2024).

[25] Mayo Clinic College of Medicine and Science, *Physician Assistant*, https://college.mayo.edu/academics/explore-health-care-careers/careers-a-z/physician-assistant/ (last visited Jan. 16, 2024).

[26] Ss. 458.347(2)(e) and 459.022(2)(e).

[27] Florida Department of Health, Division of Medical Quality Assurance, Annual Report and Long-Range Plan, Fiscal Year 2022-2023, https://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/MQAAnnualReport2022-2023.pdf (last visited Jan. 16, 2024).

- Unless otherwise prohibited by federal or state law, authorizes a veterinary professional associate to perform duties or actions, including those identified in s. 474.202(9) and (13), F.S., (practice of veterinary medicine) in which he or she is competent and has the necessary training, current knowledge, and experience to perform, as assigned by a veterinarian licensed in this state while working under the supervision of that veterinarian.
- Prohibits a veterinary professional associate from:
    - Prescribing medicinal drugs or drugs as defined in s. 465.003(15) or a controlled substance listed in s. 893.03.
    - Except for veterinary sterilizations or veterinary dental surgeries, performing a surgical procedure.
- Makes each supervising veterinarian using a veterinary professional associate liable for any acts or omissions of the veterinary professional associate acting under the veterinarian's supervision and control.

B. SECTION DIRECTORY:

Section 1: Creates the title, "Veterinary Workforce Innovation Act."

Section 2: Creates s. 474.2126, F.S., relating to veterinary professional associate.

Section 3: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The bill may reduce the amount of rabies cases and other animal diseases, infections, and illnesses in the state, the associated risks to the health of humans and animals, and related expenses to the public and private sector.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to veterinary professional associates; providing a short title; creating s. 474.2126, F.S.; providing legislative findings; defining terms; authorizing certain individuals to use the title "veterinary professional associate"; authorizing such associates to perform certain duties and actions; prohibiting such associates from prescribing certain drugs or controlled substances or performing surgical procedures; providing exceptions; providing that supervising veterinarians are liable for the acts or omissions of veterinary professional associates under their supervision and control; providing an effective date.

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

Section 1. This act may be cited as the "Veterinary Workforce Innovation Act."

Section 2. Section 474.2126, Florida Statutes, is created to read:

474.2126 Veterinary professional associate.—

(1) The Legislature finds that the practice in this state of veterinary professional associates, with their education, training, and experience in the field of veterinary medicine,

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

will provide increased efficiency of and access to high-quality veterinary medical services at a reasonable cost to consumers.

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

(a) "Approved program" means a master's program in veterinary clinical care, or the equivalent, in the United States or in its territories or possessions from an accredited school of veterinary medicine.

(b) "Supervision" means responsible supervision and control, and, except in cases of emergency, requires the easy availability or physical presence of a licensed veterinarian for consultation and direction of the actions of a veterinary professional associate. For the purposes of this paragraph, the term "easy availability" includes the ability to communicate by way of telecommunication.

(c) "Veterinary professional associate" means a person who has earned a master's degree from an approved program or who meets standards approved by the board and is authorized to perform veterinary medical services delegated by a supervising veterinarian.

(3) The title "veterinary professional associate" may be used only by an individual who has successfully completed an approved program.

(4) Unless otherwise prohibited by federal or state law, a veterinary professional associate may perform duties or actions, including those identified in s. 474.202(9) and (13), in which

he or she is competent and has the necessary training, current knowledge, and experience to perform, as assigned by a veterinarian licensed in this state while working under the supervision of that veterinarian. A veterinary professional associate may not do either of the following:

(a) Prescribe medicinal drugs or drugs as defined in s. 465.003(15) or a controlled substance listed in s. 893.03.

(b) Except for veterinary sterilizations or veterinary dental surgeries, perform a surgical procedure.

(5) Each supervising veterinarian using a veterinary professional associate is liable for any acts or omissions of the veterinary professional associate acting under the veterinarian's supervision and control.

Section 3. This act shall take effect July 1, 2024.

HB 1273

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1273 Reciprocity or Endorsement of Licensure
SPONSOR(S): Plasencia
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Wright	Anstead
2) State Administration & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

An occupational or professional license is a form of government regulation that requires individuals who want to perform certain types of work, such as contractors and cosmetologists, to obtain governmental authorization to work in a specific field. The Florida Department of Business and Professional Regulation (DBPR), through 11 divisions, regulates and licenses businesses and professionals in Florida.

For professional licenses granted by DBPR, a license by endorsement means a license that may be granted to an applicant based on their license and qualifications in another jurisdiction. A reciprocal license is a license that may be granted in Florida based on a license in another jurisdiction subject to a reciprocal agreement with Florida.

The bill requires that before a board, or DBPR if there is no board, denies an application for licensure by reciprocity or by endorsement based on a finding that the requirements of the basis license in another jurisdiction are not substantially equivalent or are otherwise insufficient for a license in Florida, it must submit the finding to the DBPR Secretary for review.

The Secretary may agree with the finding and deny the application for licensure, or disagree with the finding and issue the license. The decision must be entered according to the Secretary's decision.

If the Secretary makes a finding that the requirements of a basis license in another jurisdiction are substantially equivalent to or otherwise sufficient for a license in this state, the board, or the department if there is no board, must make the same finding for similar applicants from the same jurisdiction, unless the requirements of the basis license are changed.

The bill provides that the term "basis license" means the license or the licensure requirements of another jurisdiction which are used to meet the requirements for a license in Florida.

The bill will have an indeterminate fiscal impact on state government and no impact on local governments.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Occupational Licensing

An occupational or professional license is a form of government regulation that requires individuals who want to perform certain types of work, such as contractors and cosmetologists, to obtain governmental authorization to work in a specific field.[1]

An estimated 23.5 percent of the civilian labor force nationwide has an occupational license.[2] Various governmental entities and agencies in Florida license and regulate such individuals practicing in a wide range of professions.[3]

Department of Business and Professional Regulation

The Florida Department of Business and Professional Regulation (DBPR), through 11 divisions, regulates and licenses businesses and professionals in Florida.[4]

The Division of Professions (Professions) licenses and regulates more than 434,000 professionals through the following professional boards and programs:

- Board of Architecture and Interior Design,
- Asbestos Licensing Unit,
- Athlete Agents,
- Board of Auctioneers,
- Barbers' Board,
- Building Code Administrators and Inspectors Board,
- Regulatory Council of Community Association Managers,
- Construction Industry Licensing Board,
- Board of Cosmetology,
- Electrical Contractors' Licensing Board,
- Board of Employee Leasing Companies,
- Home Inspectors,
- Board of Landscape Architecture,
- Mold-Related Services,
- Board of Pilot Commissioners,
- Board of Professional Geologists,
- Talent Agencies,
- Board of Veterinary Medicine, and
- Florida Board of Professional Engineers.[5]

The Division of Regulation is the enforcement authority for the Florida Athletic Commission, Farm Labor Program, Child Labor Program, and any professional boards and programs housed within Professions.[6]

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[1] The White House, *Occupational Licensing: A Framework for Policymakers*, 6 (July 2015) https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf (last visited on Jan. 20, 2024).
[2] Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey, 2021*, Certification and licensing status of the civilian noninstitutional population 16 years and over by employment status (bls.gov), (last visited on Jan. 20, 2024).
[3] Chs. 20, 25, F.S.
[4] S. 20.165, F.S.
[5] Florida Department of Business and Professional Regulation, *Division of Professions*, http://www.myfloridalicense.com/DBPR/division-of-professions/ (last visited Jan. 21, 2024).
[6] Except the Board of Architecture and Interior Design, and the Florida Board of Professional Engineers.

To ensure compliance with applicable laws and rules by those professions and related businesses, the division investigates complaints, utilizes compliance mechanisms, and performs inspections.[7]

The Division of Certified Public Accounting is responsible for the regulation of certified public accountants and accounting firms in the state.[8]

The Division of Real Estate is responsible for the regulation of real estate sales associates, brokers, and appraisers, in conjunction with the Florida Real Estate Commission and the Florida Real Estate Appraisal Board.[9]

DBPR may regulate professions "only for the preservation of the health, safety, and welfare of the public under the police powers of the state."[10] Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.[11]

However, "neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention," or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.[12]

In Fiscal Year 2022-2023, there were 950,380 active licensees regulated by the DBPR or a board within the department, including 39,336 active licensees in the Division of Certified Public Accounting, 486,336 active licensees in the Division of Professions, and 67,827 active licensees under the Board of Professional Engineers.[13]

Chapter 455

Each profession is governed by an individual practice act and by Ch. 455, F.S., which provides the general powers of DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under DBPR.[14] Chapter 455, F.S., applies to the regulation of professions constituting "any activity, occupation, profession, or vocation regulated by DBPR in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation."[15]

License Portability

For professional licenses granted by DBPR, a license by endorsement means a license that may be granted to an applicant based on their license and qualifications in another jurisdiction.

Certain DBPR professional practice acts allow the applicable board to enter into reciprocal licensing agreements with other states under certain circumstances.[16] DBPR or a board thereunder must enter

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[7] Florida Department of Business and Professional Regulation, *Division of Regulation*, http://www.myfloridalicense.com/DBPR/division-of-regulation/ (last visited Jan. 21, 2024).
[8] S. 473.3035, F.S.; Florida Department of Business and Professional Regulation, *Certified Public Accounting*, Certified Public Accounting – MyFloridaLicense.com (last visited Jan. 21, 2024).
[9] S. 475.021, F.S.
[10] S. 455.201(2), F.S.
[11] S. 455.201(2), F.S.
[12] S. 455.201(4)(b), F.S.
[13] *See* Department of Business and Professional Regulation, Division of Professions, Division of Certified Public Accounting, Division of Real Estate, and Division of Regulation, *Annual Report, Fiscal Year 2022-2023*, p. 18, available at http://www.myfloridalicense.com/DBPR/os/documents/Division%20Annual%20Report%20FY%2022-23.pdf (last visited Jan. 21, 2024).
[14] S. 455.203, F.S.
[15] S. 455.01(6), F.S.
[16] *See* Ss. 475.180 and 489.115(1)(c), F.S.

into a reciprocal licensing agreement with other states if the applicable practice act permits such agreement.[17]

If a reciprocal licensing agreement exists, or if DBPR or a board has determined another state's licensing requirements or examinations to be substantially equivalent or more stringent to those under the practice act, DBPR or the board must post on its website which jurisdictions have such reciprocal licensing agreements or substantially similar licenses for a license by endorsement.[18]

In 2023, 9,706 applications for a license by endorsement were approved, and 12 were denied. In 2022, 11,429 applications for a license by endorsement were approved, and 91 were denied. In 2021, 11,743 applications for a license by endorsement were approved, and 172 were denied.[19]

In 2020, an omnibus license deregulation bill[20] was enacted, which instituted greater license portability measures for the following DBPR licenses:

- Veterinarians,
- Construction contractors,
- Electrical contractors,
- Landscape architects,
- Geologists,
- Professional engineers,
- Certified public accountants,
- Home inspectors,
- Building code professionals,
- Cosmetologists, and
- Barbers.

Administrative Procedure Act

Chapter 120, F.S., the Administrative Procedure Act, provides uniform procedures for state agencies, including DBPR, including the conduct of rulemaking, implementing disciplinary actions, and the granting and denial of license applications. Section 120.60, F.S., provides the process for the granting or denial of license applications upon receipt of a license application.

Related to determining if an application is complete:

- An agency must examine the application and, within 30 days after such receipt, notify the applicant of any apparent errors or omissions and request any additional information the agency is permitted by law to require.
- An agency may not deny a license because of an applicant's failure to correct an error or omission or to supply additional information unless the agency has timely notified the applicant within this 30-day period.
- A license application is complete upon receipt by the agency of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired.

Related to approving or denying an application:

- An agency must approve or deny a license application within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law.
    - The 90-day time period is tolled by the initiation of a proceeding under ss. 120.569 and 120.57, F.S.[21]

[17] S. 455.213, F.S.

[18] *Id*.

[19] Email from Chris Kingry, Deputy Legislative Affairs Director, DBPR, RE: Out-of-state applicants (Jan. 11, 2024).

[20] Ch. 2020-125, L.O.F.

[21] S. 120.569 F.S., provides the administrative process for all proceedings in which the substantial interests of a party are determined by an agency, unless the parties are proceeding under the mediation process in s. 120.573, F.S., or the summary hearing process in s.

- Any application for a license is considered approved unless the agency approves or denies the license within whichever of the following timeframes is latest and applicable:
    - Within 90 day after receipt of a completed application,
    - Within 15 days after conclusion of a public hearing held on the application, or
    - Within 45 days after a recommended order is submitted to the agency and the parties.

An agency is required to give a written notice, personally or by mail, that the agency intends to grant or deny, or has granted or denied, the application for license.

The agency must follow the following process for issuing a notice of denial:[22]

- The notice must state with particularity the grounds or basis for the issuance or denial of the license, except when issuance is a ministerial act.
- Unless waived by the applicant, a copy of the notice must be delivered or mailed to each party's attorney of record and to each person who has made a written request for notice of agency action.
- Each notice must inform the recipient of the basis for the agency decision, and inform the recipient of any administrative or judicial which may be available.
    - The notice must indicate the procedures that must be followed, and state the applicable time limits.
- The issuing agency must certify the date the notice was mailed or delivered, and the notice and the certification must be filed with the agency clerk.

Effect of the Bill

The bill amends Ch. 455, F.S., and therefore applies to licenses under the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

The bill requires that before a board, or DBPR if there is no board, denies an application for licensure by reciprocity or by endorsement based on a finding that the requirements of the basis license in another jurisdiction are not substantially equivalent or are otherwise insufficient for a license in Florida, it must submit the finding to the Secretary of DBPR for review.

The Secretary may agree with the finding and deny the application for licensure, or disagree with the finding and issue the license. The decision must be entered according to the Secretary's decision.

If the Secretary makes a finding that the requirements of a basis license in another jurisdiction are substantially equivalent to or otherwise sufficient for a license in this state, the board, or the department if there is no board, must make the same finding for similar applicants from the same jurisdiction, unless the requirements of the basis license are changed.

The bill provides that the term "basis license" means the license or the licensure requirements of another jurisdiction which are used to meet the requirements for a license in Florida.

The bill is effective July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 455.213, F.S.; relating to licensing procedures.
Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

120.574, F.S. Section 120.57, F.S., provides additional procedures for matters involving disputed issues of material fact before an administrative law judge assigned by the Division of Administrative Hearings.

[22] S. 120.60(3), F.S.

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 allow more license out-of-state license applicants to obtain a Florida license to practice their chosen profession.

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:

DBPR will need to amend rules relating to procedures for applications for licenses by reciprocity and endorsement.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to reciprocity or endorsement of licensure; amending s. 455.213, F.S.; providing requirements for the applicable board, or the Department of Business and Professional Regulation if there is no board, relating to licensure by reciprocity and by endorsement; defining the term "basis license"; providing an effective date.

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

Section 1. Subsection (15) of section 455.213, Florida Statutes, is renumbered as subsection (16), and a new subsection (15) is added to that section to read:

455.213 General licensing provisions.—

(15)(a) Before the board, or the department if there is no board, enters a final order to deny an application for licensure by reciprocity or by endorsement based on a finding that the requirements of the basis license in another jurisdiction are not substantially equivalent or otherwise insufficient for a license in this state, the board, or the department if there is no board, must submit the finding to the secretary for review. The secretary may agree with the finding and deny the application for licensure or disagree with the finding and issue the license. The final order must be entered according to the

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

secretary's decision.

(b) If the secretary makes a finding that the requirements of a basis license in another jurisdiction are substantially equivalent to or otherwise sufficient for a license in this state, the board, or the department if there is no board, must make the same finding for similar applicants from the same jurisdiction, unless the requirements of the basis license are changed.

(c) As used in this subsection, the term "basis license" means the license or the licensure requirements of another jurisdiction which are used to meet the requirements for a license in this state.

Section 2. This act shall take effect July 1, 2024.

REGULATORY REFORM AND ECONOMIC DEVELOPMENT SUBCOMMITTEE

HB 1273 by Rep. Plasencia
Reciprocity or Endorsement of Licensure

AMENDMENT SUMMARY
January 24, 2024

Amendment 1 by Rep. Plasencia (lines 17-33):

- Makes a technical change to terminology.
- Makes a grammatical change.

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: Regulatory Reform & Economic Development Subcommittee
Representative Plasencia offered the following:

Amendment

Remove lines 17-33 and insert:

board, denies an application for licensure by reciprocity or by endorsement based on a finding that the requirements of the basis license in another jurisdiction are not substantially equivalent or are otherwise insufficient for a license in this state, the board, or the department if there is no board, must submit the finding to the secretary for review. The secretary may agree with the finding and deny the application for licensure or disagree with the finding and issue the license. The decision must be entered according to the secretary's finding.

(b) If the secretary makes a finding that the requirements of a basis license in another jurisdiction are substantially equivalent to or are otherwise sufficient for a license in this state, the board, or the department if there is no board, must make the same finding for similar applicants from the same jurisdiction, unless the requirements of the basis license change.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1563 Construction Contracting
SPONSOR(S): Grant
TIED BILLS: **IDEN./SIM. BILLS:** SB 1778

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee		Wright	Anstead
2) Judiciary Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

Construction contractors are certified or registered by the Construction Industry Licensing Board housed within Department of Business and Professional Regulation (DBPR). The Florida Homeowners' Construction Recovery Fund, under DBPR, is used to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed contractors, and is funded through a building permit surcharge.

Certain crimes related to construction fraud exist; however, currently, there is no requirement for construction funds to be placed in an escrow account and there are no related criminal penalties.

The bill creates a process to require contractors to keep certain contract funds in an escrow account, under certain circumstances, with criminal penalties.

Specifically, the bill requires a contractor or qualified company that receives $10,000 or more for improvements to residential real property to, before the substantial completion of work under the contract, place such payment in an escrow account with:

- A savings and loan association, bank, or trust company located in the state;
- An attorney who is a member in good standing with The Florida Bar; or
- A real estate broker licensed in the state.

The bill

- Allows such escrow requirements to be waived in writing by the homeowner. However, such contractor or qualified company must obtain a performance bond for the value of the contract.
- Allows a contractor or qualified company to withdraw funds from the escrow account before the substantial completion of work, in certain circumstances.
- Provides that a contractor or qualified company that willfully violates the escrow requirements commits a felony of the third degree.
- Provides that, if a person pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, a construction fraud crime, the court must impose a cost of $51 against the offender in addition to any other cost or penalty required by law, and that the Florida Homeowners' Construction Recovery Fund will be funded through such allotted fees, in addition to DBPR permit surcharges.

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

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Department of Business and Professional Regulation

The Florida Department of Business and Professional Regulation (DBPR), through 11 divisions, regulates and licenses businesses and professionals in Florida. The divisions established under DBPR include:

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

Construction Contractors

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 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 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.[2]

"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.[3]

"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.[4]

Florida Homeowners' Construction Recovery Fund

[1] s. 20.165, F.S.
[2] S. 489.107, F.S.
[3] S. 489.105, F.S.
[4] S. 489.103, F.S.

The Florida Homeowners' Construction Recovery Fund is used to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed contractors. Claims are filed with the DBPR, who reviews for completeness and statutory eligibility. The DBPR then presents the claim to the Construction Industry Licensing Board for review.[5]

Current law requires all local governments to assess and collect a 1% surcharge on any building permit issued by their enforcement agency for the purpose of enforcing the Building Code. The local jurisdictions collect the assessment and remit the surcharge fees to DBPR to fund the activities of the Commission, DBPR's Building Code Compliance and Mitigation Program, and the Florida Fire Prevention Code informal interpretations.[6]

Current law also requires all local governments to assess and collect a separate 1.5% surcharge on any building permit issued by their enforcement agency for the purpose of enforcing the Building Code. The local governments collect the assessment and remit the surcharge fees to DBPR, where it is divided equally to fund the activities of the Building Code Administrators and Inspectors Board (BCAIB) and the Florida Homeowners' Construction Recovery Fund.[7]

Local government are permitted to retain 10% of the amount of the surcharges they collect to fund participation by their agencies in the national and state building code adoption processes and to provide education related to enforcement of the Building Code.[8]

Construction Liens (Ch. 713, F.S.)

Florida law seeks to ensure that people working on construction projects are paid for their work. Any person who provides services, labor, or materials for improving, repairing, or maintaining real property (except public property) may place a construction lien[9] on the property, provided the person complies with statutory procedures.[10] These procedures require the filing or serving of various documents, including a:

- Notice of Commencement;[11]
- Notice to Owner;[12]
- Claim of Lien;[13]
- Notice of Termination;[14]
- Waiver or Release of Lien;[15]
- Notice of Contest of Lien;[16]
- Contractor's Final Payment Affidavit;[17] and
- Demands of Written Statement of Account.[18]

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[5] S. 489.1401(2), F.S.
[6] S. 553.721, F.S.
[7] S. 468.631, F.S.
[8] Ss. 468.631, and 553.721, F.S.
[9] A lien is a claim against property that evidences a debt, obligation, or duty. Fla. Jur. 2d Liens s. 37:1.
[10] Ch. 713, F.S.
[11] S. 713.13, F.S.
[12] To secure construction lien rights, a person working on a construction project who is not in direct contract ("privity") with the owner must serve a notice to owner in the statutory form provided; laborers are exempt from this requirement. The notice informs the owner that someone with whom he or she is not in privity is providing services or materials on the property and that such person expects the owner to ensure he or she is paid. The notice must be served no later than 45 days after the person begins furnishing services or materials and before the date the owner disburses the final payment after the contractor has furnished his or her final payment affidavit. After receiving a notice to owner, the owner must obtain a waiver or release of lien from the notice's sender before paying the contractor, unless a payment bond applies, or risk payments to the contractor constituting improper payments that leave the owner liable to the notice sender if the contractor does not pay such person. *Stocking Bldg. Supply of Florida, Inc. v. Soares Da Costa Construction Services, LLC*, 76 So. 3d 313 (Fla 3d DCA 2011); s. 713.06, F.S.
[13] S. 713.08, F.S.
[14] S. 713.132, F.S.
[15] S. 713.20, F.S.
[16] S. 713.22(2), F.S.
[17] S. 713.06(3), F.S.
[18] S. 713.16, F.S.

Construction Fraud Crimes (Sections 489.126 and 489.127, F.S.)

Moneys Received by Contractors – Commencing Work

A contractor who receives, as initial payment, money totaling more than 10 percent of the contract price for repair, restoration, improvement, or construction to residential real property must:

- Apply for permits necessary to do work within 30 days after the date payment is made, except where the work does not require a permit under the applicable codes and ordinances, and
- Start the work within 90 days after the date all necessary permits for work, if any, are issued, unless:
  - The person who made the payment agreed, in writing, to a longer period to apply for the necessary permits or start the work or to longer periods for both; or
  - The contractor is permitted to show "just cause" as to why they have failed to apply for the necessary permits, starting the work, or refunding the payment.[19]

If a contractor fails to comply with these requirements, the contractee, who is normally the homeowner, must make written demand to the contractor that includes a demand to:[20]

- Apply for the necessary permits,
- Start the work, or
- Refund the payment.

Such demand must be sent via certified mail, return receipt requested, to the address listed in the contracting agreement. If there is no address for the contractor listed in the contracting agreement, or no written agreement exists, it must be sent to the address listed for licensing purposes with DBPR or the local licensing board.[21]

A contractor will not be permitted to show "just cause" for failing to apply for the necessary permits, starting the work, or refunding the payment if the contractor fails to apply for the necessary permits, start the work, or refund payments within 30 days of receiving written demand to apply for the necessary permits, start the work, or refund the payment from the person who made the payment.[22]

A contractor or qualified company who violates these requirements commits:[23]

- A misdemeanor of the first degree, if the total money received is less than $1,000.
- A felony of the third degree, if the total money received is $1,000 or more, but less than $20,000.
- A felony of the second degree, if the total money received is $20,000 or more, but less than $200,000.
- A felony of the first degree, if the total money received is $200,000 or more

Moneys Received by Contractors – Termination

A contractor who receives money for repair, restoration, addition, improvement, or construction of residential real property in excess of the value of the work performed may not fail or refuse to perform any work for any 90-day period or for any period that is mutually agreed upon and specified in the contract.[24]

[19] S. 489.126(2), F.S.
[20] S. 489.126(2)(b)1., F.S.
[21] *Id*.
[22] S. 489.126(2)(b)2., F.S.
[23] S. 489.126(5), F.S.
[24] S. 489.126(3)(a), F.S.

It is prima facie evidence that a contractor received money for the repair, restoration, addition, improvement, or construction of residential real property and that the amount received exceeds the value of the work performed by the contractor when:[25]

- The contractor failed to perform any of the contracted work during any 90-day period or any period that is mutually agreed upon and specified in the contract;
- The failure to perform any such work during the 90-day period or such period that is mutually agreed upon and specified in the contract was not related to the owner's termination of the contract or a material breach of the contract by the owner; and
- The contractor failed to perform for the 90-day period or such period that is mutually agreed upon and specified in the contract without "just cause," or terminated the contract without proper notification to the owner.

Proper notification of termination must be made by the contractor in the form of a letter that includes the reason for termination of the contract or the reason for failure to perform sent via certified mail, return receipt requested, mailed to the address of the owner listed in the contracting agreement. If no written agreement exists, the letter must be mailed to the address where the work was to be performed or the address listed on the permit, if applicable.[26]

If a contractor fails to properly submit a notice of termination, written demand must be made to the contractor to:[27]

- Perform work, or
- Refund the money received in excess of the value of the work performed.

Such demand must be sent via certified mail, return receipt requested, mailed to the address listed in the contracting agreement. If there is no address for the contractor listed in the contracting agreement, or no agreement exists, the letter must be mailed to the address listed with the department for licensing purposes or the local construction industry licensing board, if applicable.[28]

A contractor will not be permitted to show "just cause" to terminate the contract if the contractor fails to perform work, or refund the money received in excess of the value of the work performed, within 30 days after receiving a written demand to perform the work, or refund the money received in excess of the value of the work performed, from the person who made the payment.[29]

A contractor or qualified company who violates these requirement commits:[30]

- A misdemeanor of the first degree, if the total money received exceeding the value of the work performed is less than $1,000.
- A felony of the third degree, if the total money received exceeding the value of the work performed is $1,000 or more, but less than $20,000.
- A felony of the second degree, if the total money received exceeding the value of the work performed is $20,000 or more, but less than $200,000.
- A felony of the first degree, if the total money received exceeding the value of the work performed is $200,000 or more.

Unlicensed Activity

No person shall:[31]

- Falsely hold himself or herself or a business organization out as a licensee, certificateholder, or registrant;
- Falsely impersonate a contractor certificateholder or registrant;

[25] S. 489.126(3), F.S.
[26] S. 489.126(3)(b)3.a., F.S.
[27] S. 489.126(3)(b)3.b., F.S.
[28] *Id*.
[29] S. 489.126(3)(b)3.c., F.S.
[30] S. 489.126(6), F.S.
[31] S. 489.127(1), F.S.

- Present as his or her own the contractor certificate or registration of another;
- Knowingly give false or forged evidence to the CILB or a member thereof;
- Use or attempt to use a contractor certificate or registration that has been suspended or revoked;
- Engage in the business or act in the capacity of a contractor or advertise himself or herself or a business organization as available to engage in the business or act in the capacity of a contractor without being duly registered or certified;
- Operate a business organization engaged in contracting after 60 days following the termination of its only qualifying agent without designating another primary qualifying agent, with certain exceptions;
- Commence or perform work for which a building permit is required without such building permit being in effect; or
- Willfully or deliberately disregard or violate any municipal or county ordinance relating to uncertified or unregistered contractors.

For purposes of these prohibitions, a person or business organization operating on an inactive or suspended certificate or registration is not duly certified or registered and is considered unlicensed.[32]

Any unlicensed person who commits a violation of these prohibitions:[33]
- Commits a misdemeanor of the first degree.
- After having been previously found guilty of such violation, commits a felony of the third degree.
- During the existence of a state of emergency declared by executive order of the Governor, commits a felony of the third degree.
- If such person operates as a pollutant storage systems contractor, precision tank tester, or internal pollutant storage tank lining applicator, commits a felony of the third degree.

Relatedly, a certified or registered contractor may not:[34]
- Enter into an agreement to allow his or her certification number or registration to be used by a person or company who is unlicensed.
- Knowingly allow his or her certification number or registration to be used by a person or company who is unlicensed.
- Apply for or obtain a building permit for a person or company that is unlicensed.[35]

A person who violates these prohibitions:
- Commits a misdemeanor of the first degree.
- After having been previously found guilty of such violation, commits a felony of the third degree.

Escrow Accounts

Escrow is a legal concept describing a financial agreement where an asset or money is held by a third party on behalf of two other parties that are in the process of completing a transaction.[36]

Escrow accounts are managed by the escrow agent. The agent releases the assets or funds upon the fulfillment of predetermined contractual obligations, or receiving appropriate instructions. Money, securities, funds, and other assets may be held in escrow.[37]

Effect of the Bill

[32] *Id*.
[33] S. 489.127(2), F.S.
[34] S. 489.126(4), F.S.
[35] This does not prohibit a contractor from applying for or obtaining a building permit to allow the contractor to perform work for another person without compensation or to perform work on property that is owned by the contractor. *Id*.
[36] Caroline Banton, *How Escrow Protects Parties in Financial Transactions*, Investopedia, Aug. 23, 2023, https://www.investopedia.com/terms/e/escrow.asp (last visited Jan. 22, 2024).
[37] *Id*.

Construction Fraud Crimes

The bill creates a process in s. 713.345, F.S., to require contractors to keep certain contract funds in an escrow account, under certain circumstances, with criminal penalties.

The bill defines "substantial completion" as performance that is nearly equivalent to that which was contracted for and when only minor, corrective, or warranty work remains.

The bill requires a contractor or qualified company that receives $10,000 or more for improvements to residential real property to, before the substantial completion of work under the contract, place such payment in an escrow account with:

- A savings and loan association, bank, or trust company located in the state;
- An attorney who is a member in good standing with The Florida Bar; or
- A real estate broker licensed in the state.

The escrow requirements do not apply to the following:

- A contract for hourly labor provided by the contractor or qualified company, but only to the extent payments are made to subcontractors and for materials before substantial completion of the contract.
- A contractor who owns the real property upon which the improvement or construction is to be completed.
- A cost-plus contract.
- If the escrow requirements are waived in writing by the owner of the residential real property. However, if such escrow requirement is waived, the contractor or qualified company must record a copy of a payment by the owner of the residential real property and a performance bond equal to the value of the contract with an insurer authorized to do business in Florida as surety.

The bill requires the contractor or qualified company, within 10 business days after a deposit has been made, to inform the owner of the residential real property in writing of the name of the depository institution, attorney, or real estate broker with whom the funds have been deposited, unless the contract specifies where such payment must be deposited.

The bill allows a contractor or qualified company to keep funds received from different owners in the same account if the contractor or qualified company has financial or accounting records that clearly show how the funds deposited were allocated to each owner.

The bill provides that a depository institution, an attorney, or a real estate broker who receives such a payment in an amount of $10,000 or more from a contractor or qualified company is not required to:

- Inquire into the validity or propriety of any deposits to or withdrawals from the escrow account or
- Ensure that any withdrawals from such account are used for a specific purpose as required by a contract.

The bill provides that a deposit into the escrow account remains the property of the owner of the residential real property except as otherwise allowed by the bill.

The bill allows a contractor or qualified company to withdraw funds from the escrow account before the substantial completion of work, and therefore have control over the disbursement of funds in escrow, in the following circumstances:

- Under the terms of a payment schedule agreed to in the contract between the contractor or qualified company and the owner of the residential real property;
- When required to make payments to subcontractors or for materials related to the contracted job; or
- Upon substantial completion of the improvements to the residential real property if the owner of such property violates the contract, but only if the amount withdrawn by the contractor or qualified company covers reasonable costs plus liquidated damages not to exceed $500.

The bill provides that if a waiver of the escrow requirement has been executed in writing, the owner of the residential real property may deliver by certified mail, return receipt requested, a written demand for an accounting report of the funds paid to the contractor or qualified company to:

- The address listed in the contract.
- If the address is not provided in the contract, the owner must deliver by certified mail, return receipt requested, the written demand to the address that is listed for the contractor or qualified company with DBPR for licensing purposes.

Within 60 days after receipt of such demand, the bill requires the contractor or qualified company to provide the owner with an accounting record indicating payments that were made to subcontractors and for purchased materials.

The bill provides that a contractor or qualified company that willfully violates the escrow requirements commits a felony of the third degree.[38] The failure of a contractor or qualified company to respond to an owner's written demand for an accounting report creates a rebuttable presumption that a violation of the escrow requirements was willful.

Florida Homeowners' Construction Recovery Fund

The bill provides that the Florida Homeowners' Construction Recovery Fund will be funded through allotted fees from cases related to construction fraud, in addition to DBPR permit surcharges.

The bill provides that, if a person pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, a construction fraud crime in ss. 489.126, 489.127, or 713.345, F.S., a court must impose a cost of $51 against the offender in addition to any other cost or penalty required by law. Payment of such court cost is a condition of probation, community control, or any other court-ordered supervision.

The bill requires the clerk of the court to transfer $50 from the proceeds of the court cost to the Florida Homeowners' Construction Recovery Fund each month. The clerk of the court retains $1 of each sum collected as a service charge.

B. SECTION DIRECTORY:

Section 1: Amends s. 713.01, F.S.; creating a definition.
Section 2: Amends s. 713.345, F.S.; creating escrow requirements for construction payments.
Section 3: Creates s. 938.14, F.S.; relating to court costs.
Section 4: Amends s. 489.140, F.S.; relating to funding mechanisms for the Florida Homeowners' Construction Recovery Fund.
Section 5: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may increase funds available to be disbursed through the Florida Homeowners' Construction Recovery Fund.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

[38] Punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may increase availability of funds from the Florida Homeowners' Construction Recovery Fund for homeowners' who have been financially harmed by a contractor.

D. FISCAL COMMENTS:

The bill may have a positive impact on jail and prison beds by creating new felony offenses relating to construction fraud, which may result in increased admissions to such facilities.

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:

The bill is unclear if the escrow account requirements are applicable to contract amounts of $10,000 or more, payments adding up to $10,000 or more, or only to lump sum payments of $10,000 or more.

The bill is unclear when a contractor may take funds from the escrow account. The bill does not state that the contractor has rights to the funds after substantial completion of the contract for improvements. The bill also lists instances when funds may be withdrawn prior to substantial completion, but then states that funds may only be withdrawn upon substantial completion if the owner of such property violates the contract.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to construction contracting; amending s. 713.01, F.S.; defining the term "substantial completion"; amending s. 713.345, F.S.; requiring contractors and qualified companies that receive a specified amount of money for improvements to residential real property to place such payments in an escrow account with specified institutions or persons or to provide a surety bond; requiring the contractor or qualified company to provide certain written information within a specified timeframe to the owner of the residential real property being improved; authorizing the contractor or qualified company to keep funds received from different owners in the same account under certain circumstances; providing that the institution and person with whom funds were deposited are not required to make certain inquiries; providing that funds deposited into an escrow account remain the property of the owner; authorizing the contractor or qualified company to withdraw funds before the substantial completion of work in certain circumstances; authorizing the owner of the residential real property to request in a specified manner an accounting record from the contractor or qualified company; requiring the contractor or

qualified company to provide such accounting records within a specified timeframe; requiring a contractor or qualified company to record a payment and performance bond in certain circumstances; requiring the owner of the residential real property to pay for the cost of such recording; providing that a contractor or qualified company has control over certain disbursements if certain requirements are met; providing applicability; creating a rebuttable presumption; providing criminal penalties; creating s. 938.14, F.S.; requiring the court to impose an additional court cost for certain offenses; providing that such court cost is a condition of probation, community control, or court-ordered supervision; requiring the clerk of the court to transfer a specified amount to the Florida Homeowners' Construction Recovery Fund; providing for the clerk of the court to retain a service charge; amending s. 489.140, F.S.; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Subsection (30) of section 713.01, Florida Statutes, is renumbered as subsection (31), and a new subsection

(30) is added to that section, to read:

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

(30) "Substantial completion" means performance that is nearly equivalent to that which was contracted for and when only minor, corrective, or warranty work remains.

Section 2. Subsection (2) of section 713.345, Florida Statutes, is renumbered as subsection (3), and a new subsection (2) is added to that section, to read:

713.345 Moneys received for real property improvements; penalty for misapplication; escrow account required for certain funds.—

(2)(a) A contractor or qualified company that receives $10,000 or more for improvements to residential real property must, before the substantial completion of work under the contract, place such payment in an escrow account with a savings and loan association, bank, or trust company located in the state; an attorney who is a member in good standing with The Florida Bar; or a real estate broker licensed in the state, unless such escrow requirement is waived in writing by the owner of the residential real property. If such escrow is waived in writing by the owner of the residential real property, the contractor must provide a copy of a surety bond if required under paragraph (g).

(b) Unless the contract specifies where such payment must be deposited, the contractor or qualified company must, within

10 business days after a deposit has been made, inform the owner of the residential real property in writing of the name of the depository institution, attorney, or real estate broker with whom the funds have been deposited.

(c) The contractor or qualified company may keep funds received from different owners in the same account if the contractor or qualified company has financial or accounting records that clearly show how the funds deposited were allocated to each owner.

(d) A depository institution, an attorney, or a real estate broker who receives a payment in an amount of $10,000 or more from a contractor or qualified company under this subsection for improvements to residential real property is not required to inquire into the validity or propriety of any deposits to or withdrawals from the escrow account or to ensure that any withdrawals from such account are used for a specific purpose as required by a contract. A deposit into the escrow account remains the property of the owner of the residential real property except as otherwise provided in this subsection.

(e) A contractor or qualified company may withdraw funds from the escrow account before the substantial completion of work in the following circumstances:

1. Under the terms of a payment schedule agreed to in the contract between the contractor or qualified company and the owner of the residential real property;

2. When required to make payments to subcontractors or for materials related to the contracted job in order to comply with subsection (1); or

3. Upon substantial completion of the improvements to the residential real property if the owner of such property violates the contract, but only if the amount withdrawn by the contractor or qualified company covers reasonable costs plus liquidated damages not to exceed $500.

(f) If a waiver of the escrow requirement has been executed in writing, the owner of the residential real property may deliver by certified mail, return receipt requested, a written demand to the address listed in the contract for an accounting report of the funds paid to the contractor or qualified company. If the address of the contractor or qualified company is not provided in the contract, or a written contract or agreement does not exist, the owner must deliver by certified mail, return receipt requested, the written demand to the address that is listed for the contractor or qualified company with the department for licensing purposes. Within 60 days after receipt of such demand, the contractor or qualified company must provide the owner with an accounting record indicating payments that were made to subcontractors and for purchased materials.

(g) If the escrow requirement is waived in writing by the owner of the residential real property and the value of the improvement or construction is more than $100,000, a contractor

or qualified company must record a copy of a payment by the owner of the residential real property and a performance bond equal to the value of the contract with an insurer authorized to do business in the state as surety. The owner of the residential real property is responsible for the cost of such recording.

(h) A contractor or qualified company has control over the disbursement of funds in escrow if the contractor or qualified company complies with paragraph (e).

(i) This subsection does not apply to any of the following:

1. A contract for hourly labor provided by the contractor or qualified company, but applies only to payments made to subcontractors and for materials before substantial completion of the contract.

2. A contractor who owns the real property upon which the improvement or construction is to be completed.

3. A cost-plus contract.

(j) The failure of a contractor or qualified company to respond to an owner's written demand for an accounting report as required under paragraph (f) creates a rebuttable presumption that a violation of this subsection was willful.

(k) A contractor or qualified company that willfully violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 3. Section 938.14, Florida Statutes, is created to

read:

938.14 Court cost imposed in cases related to construction fraud.—

(1) If a person pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, an offense in violation of s. 489.126, s. 489.127, or s. 713.345, the court shall impose a court cost of $51 against the offender in addition to any other cost or penalty required by law. Payment of such court cost is a condition of probation, community control, or any other court-ordered supervision.

(2) Each month the clerk of the court shall transfer $50 from the proceeds of the court cost to the Florida Homeowners' Construction Recovery Fund. The clerk of the court shall retain $1 of each sum collected as a service charge.

Section 4. Section 489.140, Florida Statutes, is amended to read:

489.140 Florida Homeowners' Construction Recovery Fund.—There is created the Florida Homeowners' Construction Recovery Fund as a separate account in the Professional Regulation Trust Fund. The recovery fund shall be funded pursuant to ss. 468.631 and 938.14 ~~s. 468.631~~.

Section 5. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 751 Use of Criminal History in Licensing
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Reform & Economic Development Subcommittee		Wright	Anstead

SUMMARY ANALYSIS

An occupational or professional license is a form of government regulation that requires individuals who want to perform certain types of work to obtain governmental authorization to work in a specific field. Generally, a person may be denied a professional license based on his or her prior conviction of a crime if the crime was a felony or first-degree misdemeanor that is directly related to the practice of such profession.

Every four years each state agency is required to prepare a report outlining ex-offender application information and statistics, which is known as the "Jim King Report".

The bill:

- Requires state agencies to produce a Jim King Report every year and requires the report to be publicly posted on the agency's website.
- Changes the required ex-offender applicant information that must be in the report to the following:
  - The total number of applications received by the state agency in the previous calendar year for a license, permit, or certification where the applicant had a prior conviction, or any other adjudication, for a crime.
  - Out of the total number of applications, the number of times it denied, withheld, or refused to grant an application because of the applicant's prior conviction, or any other adjudication, of a crime.
  - The report must also specify the crimes for which each decision to deny, withhold, or refuse to grant an application for a license, permit, or certification was based.
  - Out of the total number of applications, the number of times it granted an application where the applicant had a prior conviction, or any other adjudication, of a crime.
  - The report must also specify the crimes in such applications that were not used as a basis for denial.
  - Information provided by the agency in the report must be broken down by the specific type of application submitted and the types of licenses, permits, or certifications sought, including whether such applicant was a Florida resident or an out-of-state resident.
  - Any other data the state agency deems relevant.
- Allows each board at the Department of Business and Professional Regulation (DBPR), or DBPR when there is no board, to make a finding that an applicant for a license has been rehabilitated and may thus qualify for licensure.
  - Based on such finding, the board, or DBPR when there is no board, may grant a license regardless of an applicant's prior conviction, or any other adjudication, for a crime.

The bill will have an indeterminate fiscal impact on state government and no impact on local governments.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Occupational Licensing

An occupational or professional license is a form of government regulation that requires individuals who want to perform certain types of work, such as nurses, contractors, and cosmetologists, to obtain governmental authorization to work in a specific field.[1]

An estimated 23.5 percent of the civilian labor force nationwide has an occupational license.[2] Various governmental entities and agencies in Florida license and regulate such individuals practicing in a wide range of professions, including:[3]

- Department of Business and Professional Regulation (DBPR),
- Department of Health (DOH),
- Department of Financial Services (DFS),
- Department of Agriculture and Consumer Services (DACS),
- Florida Supreme Court (FSC),
- Department of Environmental Protection (DEP),
- Agency for Healthcare Administration (AHCA),
- Department of Children and Families (DCF),
- Department of Elder Affairs (DEA),
- Department of Highway Safety and Motor Vehicles (DHSMV), and
- Office of Financial Regulation (OFR).

Ex-Offender Report

Section 112.0111, F.S., requires each state agency, including the state agencies responsible for professional and occupational regulatory boards to, every four years, submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report that includes:

- A list of all agency or board statutes or rules that disqualify from employment or licensure persons who have been convicted of a crime and have completed any incarceration and restitution to which they have been sentenced for such crime.
- A determination of whether the disqualifying statutes or rules are readily available to prospective employers and licensees.
- The identification and evaluation of alternatives to the disqualifying statutes or rules which protect the health, safety, and welfare of the general public without impeding the gainful employment of ex-offenders.

Department of Business and Professional Regulation

The Florida Department of Business and Professional Regulation (DBPR), through 11 divisions, regulates and licenses businesses and professionals in Florida.[4]

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[1] The White House, *Occupational Licensing: A Framework for Policymakers*, 6 (July 2015) https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf (last visited on Jan. 20, 2024).

[2] Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey, 2021*, Certification and licensing status of the civilian noninstitutional population 16 years and over by employment status (bls.gov), (last visited on Jan. 20, 2024).

[3] Chs. 20, 25, F.S.

[4] S. 20.165, F.S.

The Division of Professions (Professions) licenses and regulates more than 434,000 professionals through the following professional boards and programs:

- Board of Architecture and Interior Design,
- Asbestos Licensing Unit,
- Athlete Agents,
- Board of Auctioneers,
- Barbers' Board,
- Building Code Administrators and Inspectors Board,
- Regulatory Council of Community Association Managers,
- Construction Industry Licensing Board,
- Board of Cosmetology,
- Electrical Contractors' Licensing Board,
- Board of Employee Leasing Companies,
- Home Inspectors,
- Board of Landscape Architecture,
- Mold-Related Services,
- Board of Pilot Commissioners,
- Board of Professional Geologists,
- Talent Agencies,
- Board of Veterinary Medicine, and
- Florida Board of Professional Engineers.[5]

The Division of Regulation is the enforcement authority for the Florida Athletic Commission, Farm Labor Program, Child Labor Program, and any professional boards and programs housed within Professions.[6] To ensure compliance with applicable laws and rules by those professions and related businesses, the division investigates complaints, utilizes compliance mechanisms, and performs inspections.[7]

The Division of Certified Public Accounting is responsible for the regulation of certified public accountants and accounting firms in the state.[8]

The Division of Real Estate is responsible for the regulation of real estate sales associates, brokers, and appraisers, in conjunction with the Florida Real Estate Commission and the Florida Real Estate Appraisal Board.[9]

Each profession is governed by an individual practice act and by ch. 455, F.S., which provides the general powers of DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under DBPR.[10] Chapter 455, F.S., applies to the regulation of professions constituting "any activity, occupation, profession, or vocation regulated by DBPR in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation."[11]

DBPR may regulate professions "only for the preservation of the health, safety, and welfare of the public under the police powers of the state."[12] Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;

[5] Florida Department of Business and Professional Regulation, *Division of Professions*, http://www.myfloridalicense.com/DBPR/division-of-professions/ (last visited Jan. 21, 2024).
[6] Except the Board of Architecture and Interior Design, and the Florida Board of Professional Engineers.
[7] Florida Department of Business and Professional Regulation, *Division of Regulation*, http://www.myfloridalicense.com/DBPR/division-of-regulation/ (last visited Jan. 21, 2024).
[8] S. 473.3035, F.S.; Florida Department of Business and Professional Regulation, *Certified Public Accounting*, Certified Public Accounting – MyFloridaLicense.com (last visited Jan. 21, 2024).
[9] S. 475.021, F.S.
[10] S. 455.203, F.S.
[11] S. 455.01(6), F.S.
[12] S. 455.201(2), F.S.

- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.[13]

However, "neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention," or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.[14]

In Fiscal Year 2022-2023, there were 950,380 active licensees regulated by the DBPR or a board within the department, including 39,336 active licensees in the Division of Certified Public Accounting, 486,336 active licensees in the Division of Professions, and 67,827 active licensees under the Board of Professional Engineers.[15]

License Denials Based on Criminal History Related to the Profession

Section 455.227(1)(c), F.S., authorizes a board, or the DBPR if there is no board, to take disciplinary action against a licensee if the person is convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession. This grounds for discipline includes a criminal history that occurred prior to obtaining a license.[16] Disciplinary action includes refusal to certify, or to certify with restrictions, an application for a license and suspension or permanent revocation of a license.[17]

Many professional practice acts also specifically permit a license application to be denied if the applicant has a specified criminal history or the applicant's criminal history directly relates to, the practice of the profession, including a license to practice the following professions:

- Architecture issued by the Board of Architecture and Interior Design;[18]
- Asbestos contracting and consulting issued by the DBPR;[19]
- Auctioneering issued by the Florida Board of Auctioneers;[20]
- Barbering issued by the Barbers' Board;[21]
- Community association management issued by the Regulatory Council of Community Association Managers;[22]
- Professional geology issued by the Board of Professional Geologists;[23]
- Home inspection issued by the DBPR;[24]
- Landscape architecture issued by the Board of Landscape Architecture;[25]
- Real estate brokers and agents issued by the Florida Real Estate Commission;[26] and
- Veterinary medicine issued by the Board of Veterinary Medicine.[27]

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[13] S. 455.201(2), F.S.
[14] S. 455.201(4)(b), F.S.
[15] *See* Department of Business and Professional Regulation, Division of Professions, Division of Certified Public Accounting, Division of Real Estate, and Division of Regulation, *Annual Report, Fiscal Year 2022-2023*, p. 18, available at http://www.myfloridalicense.com/DBPR/os/documents/Division%20Annual%20Report%20FY%2022-23.pdf (last visited Jan. 21, 2024).
[16] S. 455.227(2), F.S.
[17] *Id*.
[18] S. 481.225(1)(d), F.S.
[19] S. 469.009(1)(g), F.S.
[20] S. 468.389(1)(l), F.S.
[21] S. 476.144(6)(a)2.b., F.S., provides that the qualifications for a barber license include having no disciplinary history related to barbering for five years.
[22] S. 468.436(2)(b), F.S.
[23] S. 492.113(1)(d), F.S.
[24] S. 468.832(1)(d), F.S.
[25] S. 481.325(1)(d), F.S.
[26] S. 475.25(1)(f), F.S.

Additionally, several professions licensed by the DBPR or a regulatory board require the applicant to be of good moral character, including applicants for a license to practice the following professions:

- Boxing, kickboxing and mixed martial arts issued by the Florida Athletic Commission;[28]
- Construction contracting issued by the Construction Industry Licensing Board;[29]
- Electrical contracting issued by the Electrical Contractors' Board;[30]
- Athlete agents issued by the DBPR;[31]
- Building code administrators and inspectors issued by the Florida Building Code Administrators and Inspectors Board;[32]
- Certified public Accountants issued by the Board of Accountancy;[33]
- Engineer issued by the Board of Professional Engineers;[34] and
- Mold-related services issued by the DBPR.[35]

Several professions regulated by the DBPR, or a board within the DBPR, rely on the grounds for disciplinary action in s. 455.227(1)(c), F.S., as a basis for denial or grant of a license.

Also, DBPR or a board may refuse to issue an initial license to any applicant who is under investigation or prosecution in any jurisdiction for an action that would constitute a violation of ch. 455, F.S., or the professional practice acts administered by the department and the boards, until such time as the investigation or prosecution is complete.[36]

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[27] Ss. 474.214(1)(c), (p) and (2), F.S., authorize the Board of Veterinary Medicine to deny a license application based on criminal history, including conviction on a charge of cruelty to animals.

[28] Section 548.071(3), F.S., provides a basis for the Florida Athletic Commission to disqualify for a license any person who has been convicted of, has pleaded guilty to, has entered a plea of nolo contendere to, or has been found guilty of a crime involving moral turpitude in any jurisdiction within 10 years preceding the suspension or revocation.

[29] Section 489.111(2)(b) and (3), F.S., provides that the Construction Industry Licensing Board may refuse to certify an applicant for failure to satisfy the requirement of good moral character if there is a substantial connection between the lack of good moral character and the professional responsibility of the certified contractor; and the lack of good moral character is supported by clear and convincing evidence. The board may deny a license application if the applicant's criminal history directly relates to the practice of the profession.

[30] S. 489.511(1)(b), F.S. Section 489. 511(3)(a), F.S., defines good moral character as a history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation and specifies that the Electrical Contractors' Licensing Board may refuse to certify an applicant for failure to satisfy the requirement of good moral character if certain requirements are met. The board may deny a license application if the applicant's criminal history directly relates to the practice of the profession.

[31] S. 468.453(2)(b), F.S.

[32] S. 468.609(3)(b), F.S., also permits a license application to be denied if the applicant's criminal history directly relates to the practice of the profession.

[33] S. 473.308(5) and (6), F.S., also permits a license application to be denied if the applicant's criminal history directly relates to the practice of the profession.

[34] S. 471.013(2)(a), F.S.

[35] S. 468.8414(3), F.S.

[36] S. 455.213(4), F.S.

Reporting of Disqualifying Crimes

DBPR and the boards under it are required to compile on their website:
- A list of crimes by rule that do not impair a person's qualifications for licensure,[37] and
- A list of crimes that have been used in the past two years as the basis for a license denial.[38]

Effect of the Bill

Jim King Ex-Offender Report

The bill increases the frequency of that an agency must report certain ex-offender applicant information, to annually, from every 4 years.

The bill removes the requirement that the report be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and instead requires the report to be publicly posted on the agency's website.

The bill provides that the annual report requirements are applicable to each state agency responsible for issuing licenses, permits, or certifications to pursue, practice, or engage in an occupation, trade, vocation, profession, or business.

The bill changes the required ex-offender applicant information that must be in the report to the following:
- The total number of applications received by the state agency in the previous calendar year for a license, permit, or certification where the applicant had a prior conviction,[39] or any other adjudication, for a crime.
- Out of the total number of applications, the number of times it denied, withheld, or refused to grant an application because of the applicant's prior conviction, or any other adjudication, of a crime.
- The report must also specify the crimes for which each decision to deny, withhold, or refuse to grant an application for a license, permit, or certification was based.
- Out of the total number of applications, the number of times it granted an application where the applicant had a prior conviction, or any other adjudication, of a crime.
- The report must also specify the crimes in such applications that were not used as a basis for denial.
- Information provided by the agency in the report must be broken down by the specific type of application submitted and the types of licenses, permits, or certifications sought, including whether such applicant was a Florida resident or an out-of-state resident.
- Any other data the state agency deems relevant.

The bill amends related Legislative intent.

DBPR Consideration of Rehabilitation

The bill allows each board at DBPR, or DBPR when there is no board, to make a finding that an applicant for a license has been rehabilitated after a conviction, or any other adjudication, for a crime. Based on such finding, the board, or DBPR when there is no board, may grant a license regardless of an applicant's prior conviction, or any other adjudication, for a crime.

Such finding must be made based on the following factors:
- The age of the person when he or she committed the offense.
- The amount of time that has elapsed since the person committed the offense.

[37] S. 455.213(3)(d), F.S.

[38] S. 455.213(3)(e), F.S.

[39] For purposes of the bill, the term "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

- The circumstances surrounding and the nature of the offense.
- If the person completed his or her criminal sentence and, if so, the amount of time that has passed since such completion.
- If the person received a certificate of rehabilitation or good conduct.
- If the person completed or is an active participant in a rehabilitative drug or alcohol program.
- Any testimonials or recommendations, including progress reports from the person's probation or parole officer.
- Any education and training the person has received.
- The person's past employment history and his or her employment aspirations.
- The person's family responsibilities.
- If the occupation, trade, vocation, profession, or business for which the person seeks employment requires him or her to be bonded.
- Any other evidence of rehabilitation or information that the person submits to the board or DBPR.

The bill has an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 112.0111, F.S.; relating to an ex-offender agency report.
Section 2: Amends s. 455.213, F.S.; relating to a licensing process.
Section 3: Provides 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 allow more people to be licensed an practice their chose profession.

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:

Rules related to application procedures will need to be amended.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to use of criminal history in licensing; amending s. 112.0111, F.S.; revising legislative intent; revising state agency reporting requirements; amending s. 455.213, F.S.; allowing certain rehabilitation consideration during licensing decisions; providing an effective date.

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

Section 1. Section 112.0111, Florida Statutes, is amended to read:

112.0111 Restrictions on the employment of ex-offenders; legislative intent; state agency reporting requirements.—

(1) The Legislature declares that a goal of this state is to ~~clearly identify the occupations from which ex-offenders are disqualified based on the nature of their offenses. The Legislature seeks to~~ make employment opportunities available to ex-offenders in a manner that preserves and protects ~~serves to preserve and protect~~ the health, safety, and welfare of the general public, yet encourages ex-offenders ~~them~~ to become productive members of society. To this end, state agencies that exercise regulatory authority are ~~in the best position to identify all restrictions on employment imposed by the agencies or by boards that regulate professions and occupations and are~~

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

obligated to protect the health, safety, and welfare of the general public by ~~clearly setting forth those restrictions in~~ keeping with statutory standards and protections determined by the agencies to be in the least restrictive manner.

(2) Each state agency~~, including, but not limited to, those state agencies~~ responsible for issuing licenses, permits, or certifications to pursue, practice, or engage in an occupation, trade, vocation, profession, or business must, annually, ~~professional and occupational regulatory boards, shall ensure the appropriate restrictions necessary to protect the overall health, safety, and welfare of the general public are in place, and by~~ starting March 1, 2025, ~~December 31, 2011, and every 4 years thereafter, submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives~~ post and maintain publicly, on its website, a report that includes all of the following:

(a) The total number of applications received by the state agency in the previous calendar year for a license, permit, or certification where the applicant had a prior conviction, or any other adjudication, for a crime. For purposes of this subsection, the term "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld ~~A list of all agency or board statutes or rules that disqualify from employment or licensure persons who have been convicted of a crime and have completed any~~

~~incarceration and restitution to which they have been sentenced for such crime~~.

(b) Out of the number of applications in paragraph (a), the number of times it denied, withheld, or refused to grant an application because of the applicant's prior conviction, or any other adjudication, of a crime. The report must also specify the crimes for which each decision to deny, withhold, or refuse to grant an application for a license, permit, or certification was based ~~A determination of whether the disqualifying statutes or rules are readily available to prospective employers and licensees~~.

(c) Out of the number of applications in paragraph (a), the number of times the state agency granted an application where the applicant had a prior conviction, or any other adjudication, of a crime. The report must also specify the crimes in such applications that were not used as a basis for denial ~~The identification and evaluation of alternatives to the disqualifying statutes or rules which protect the health, safety, and welfare of the general public without impeding the gainful employment of ex-offenders~~.

(d) Information provided by the agency in accordance with paragraphs (a) through (c) must be broken down by the specific type of application submitted and the types of licenses, permits, or certifications sought, including whether such applicant was a Florida resident or an out-of-state resident.

(e) Any other information or data the state agency deems relevant in fulfilling its purpose under this section.

Section 2. Present subsection (15) is redesignated as subsection (16), and new subsection (15) is added, to section 455.213, Florida Statutes, to read:

455.213 General licensing provisions.—

(15) Each applicable board, or the department when there is no board, may make a finding that an applicant for a license has been rehabilitated for a conviction, or any other adjudication, for a crime. Based on such finding, the board, or the department when there is no board, may grant a license regardless of an applicant's prior convicition, or any other adjudication, for a crime. The finding must be made based on the following factors:

(a) The age of the person when he or she committed the offense.

(b) The amount of time that has elapsed since the person committed the offense.

(c) The circumstances surrounding and the nature of the offense.

(d) If the person completed his or her criminal sentence and, if so, the amount of time that has passed since such completion.

(e) If the person received a certificate of rehabilitation or good conduct.

(f) If the person completed or is an active participant in a rehabilitative drug or alcohol program.

(g) Any testimonials or recommendations, including progress reports from the person's probation or parole officer.

(h) Any education and training the person has received.

(i) The person's past employment history and his or her employment aspirations.

(j) The person's family responsibilities.

(k) If the occupation, trade, vocation, profession, or business for which the person seeks employment requires him or her to be bonded.

(l) Any other evidence of rehabilitation or information that the person submits to the board or department.

For purposes of this subsection, the term "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

(16) For the 2023-2024 and 2024-2025 fiscal years, the department shall waive 50 percent of the initial licensing fee for an applicant applying for an initial license for a profession under this chapter, with such waiver limited to a maximum of $200 per year per license. The department shall waive 50 percent of a licensee's license renewal fee for a profession under this chapter, with such waiver limited to a maximum of $200 per year per license. Such fee waivers shall not include

any applicable unlicensed activity or background check fees. This subsection expires July 1, 2025.

Section 3. This act shall take effect July 1, 2024.