Regulatory Reform Subcommittee

Wednesday, March 24, 2021
3:45 PM – 6:45 PM
Webster Hall (212 Knott)

Meeting Packet

Chris Sprowls
Speaker

Bob Rommel
Chair

The Florida House of Representatives

Commerce Committee
Regulatory Reform Subcommittee

Chris Sprowls
Speaker

Bob Rommel
Chair

AGENDA

Wednesday, March 24, 2021
3:45 PM – 6:45 PM
Webster Hall (212 Knott)

I. Call to Order & Roll Call

II. Welcoming Remarks

III. Consideration of the following bills(s):

CS/HB 697 by *Professions & Public Health Subcommittee, Rep. Killebrew*
Injured Police Canines

CS/HB 867 by *Civil Justice & Property Rights Subcommittee, Rep. Shoaf*
Community Associations

HB 979 by *Rep. Willhite*
Village of Wellington, Palm Beach County

HB 1517 by *Rep. Duggan*
Department of Business and Professional Regulation

HB 1577 by *Rep. McClain*
Building Construction Standards

HB 7003 by *Government Operations Subcommittee, Rep. Rizo*
OGSR/State Boxing Commission

HB 7007 by *Government Operations Subcommittee, Rep. Chambliss*
OGSR/Department of Agriculture and Consumer Services

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4870 Fax: (850) 410-0096

IV. Consideration of the following proposed committee substitute(s):

PCS for HB 491 -- Florida Real Estate Appraisal Board

PCS for HB 987 -- Age Restrictions on Tobacco and Nicotine Products

PCS for HB 1431 -- Specialty Contracting Services

V. Adjournment

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Regulatory Reform Subcommittee

Start Date and Time:	Wednesday, March 24, 2021 03:45 pm
End Date and Time:	Wednesday, March 24, 2021 06:45 pm
Location:	Webster Hall (212 Knott)
Duration:	3.00 hrs

Consideration of the following bill(s):

CS/HB 697 Injured Police Canines by Professions & Public Health Subcommittee, Killebrew
CS/HB 867 Community Associations by Civil Justice & Property Rights Subcommittee, Shoaf
HB 979 Village of Wellington, Palm Beach County by Willhite
HB 1517 Department of Business and Professional Regulation by Duggan
HB 1577 Building Construction Standards by McClain
HB 7003 OGSR/State Boxing Commission by Government Operations Subcommittee, Rizo
HB 7007 OGSR/Department of Agriculture and Consumer Services by Government Operations Subcommittee, Chambliss

Consideration of the following proposed committee substitute(s):

PCS for HB 491 -- Florida Real Estate Appraisal Board
PCS for HB 987 -- Age Restrictions on Tobacco and Nicotine Products
PCS for HB 1431 -- Specialty Contracting Services

This meeting will be live-streamed on https://thefloridachannel.org/. Persons who wish to attend must register at www.myfloridahouse.gov, at least three hours before the meeting, and pick up a pass at the Legislative Welcome Center on the 4th Floor of the Capitol beginning one hour before the start of the meeting. Audience seating will be socially distanced and will be available on a first-come, first-served basis. Registration closes three hours before the meeting starts.

NOTICE FINALIZED on 03/22/2021 4:05PM by Young.Kimberly

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 697 Injured Police Canines
SPONSOR(S): Professions & Public Health Subcommittee, Killebrew
TIED BILLS: **IDEN./SIM. BILLS:** SB 388

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Professions & Public Health Subcommittee	17 Y, 0 N, As CS	Guzzo	McElroy
2) Regulatory Reform Subcommittee		Thompson	Anstead
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Emergency medical transport services, also known as ambulance services, involve urgent pre-hospital treatment to an injured person by paramedics and emergency medical technicians (EMTs) during transport to a hospital or similar facility. Florida law does not currently address whether an animal may be provided emergency medical transport services; however, paramedics and EMTs are not authorized to provide emergency medical care to animals under their respective licenses.

A veterinarian is a licensed health care practitioner who engages in the maintenance of health and treatment of injury and disease of animals, especially domestic animals. With limited exceptions, only licensed veterinarians may provide care to animals. The Department of Business and Professional Regulation (DBPR) may issue a notice to cease and desist to any person it has probable cause to believe is practicing, or attempting to practice, veterinary medicine without a license. DBPR may also impose an administrative penalty not to exceed $5,000 per incident or may issue a citation.

Specially-trained dogs are used by various agencies and departments throughout the state in their K-9 units. These departments employ dogs to assist with tracking and apprehending offenders, narcotics and bomb detection, and building and article searches. Police canines are used in conjunction with high-intensity, criminal situations and are often deployed by their handlers to chase fleeing felons. As a result, the dogs are often caught in the line of fire while on the job.

HB 697 expressly authorizes an emergency service transport vehicle permit holder to transport a police canine injured in the line of duty to a veterinary clinic or similar facility if no person requires medical attention or transport. The bill authorizes paramedics and EMTs to provide emergency medical care to an injured police canine at the scene of an emergency or while the canine is being transported.

The bill provides civil and criminal immunity for EMTs and paramedics providing emergency care to an injured police canine and exempts them from the application of the veterinary practice act for providing medical care to a police canine injured in the line of duty.

The bill has no fiscal impact on state or local government.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Emergency Medical Transport Services

Prehospital life support transport services fall into two general categories – basic life support services (BLS) and advanced life support services (ALS).

BLS services include the assessment or treatment by a person qualified under part III of ch. 401, F.S., through the use of techniques described in the EMT-Basic National Standard Curriculum or the National Emergency Medical Services (EMS) Education Standards of the U.S. Department of Transportation.[1] The term includes the administration of oxygen and other techniques that have been approved and are performed under specific conditions.[2] BLS services are usually performed by EMTs.[3]

ALS services include patient assessment or treatment including the implementation of advanced medical skills such as endotracheal intubation, the administration of drugs or intravenous fluids, telemetry, cardiac monitoring, cardiac defibrillation, and other techniques described in the EMT-Paramedic National Standard Curriculum or the National EMS Education Standards.[4] ALS services can be performed on site and are usually provided by physicians or paramedics.[5]

To obtain a transport vehicle permit to provide BLS or ALS services, an applicant must provide to the Department of Health the following:

- An application and required fees; and
- Documentation that the vehicle qualifies as follows:
  - Is furnished with essential medical supplies and equipment which is in good working order;
  - Meets appropriate standards for design and construction;
  - Is equipped with an appropriate communication system;
  - Meets appropriate safety standards;
  - Meets sanitation and maintenance standards;
  - Is insured for a minimum of $100,000/$300,000 against injuries to or the death of any person arising out of an accident; and
  - Has been awarded a Certificate of Public Convenience and Necessity (COPCN).[6]

Emergency Medical Technicians and Paramedics

An emergency medical technician (EMT) must be certified by the Department of Health (DOH) to perform basic life support.[7] A paramedic must also be certified by DOH, but in addition to basic life support, a certified paramedic may also perform advanced life support.[8] Applicants for certification as

[1] United States Department of Transportation, National Highway Traffic Safety Administration, *National Emergency Medical Services Education Standards*, (January 2009), *available at* https://www.ems.gov/pdf/National-EMS-Education-Standards-FINAL-Jan-2009.pdf (last visited March 11, 2021).
[2] Sections 401.23(7) and (8), F.S.
[3] Ryynanen, et. al, *Is advanced life support better than basic life support in prehospital care? A systematic review*, Scand J Trauma Resusc. Emerg. Med. 2010; 18: 62, (November 23, 2010), *available at* http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3001418/ (last visited March 11, 2021).
[4] Sections 401.23(1) and (2), F.S.
[5] Ryynanen, et. al, supra note 18.
[6] Section 401.26(2), F.S., and Fla. Admin. Code R. 64J-1.002 and 64J-1.003 (2019).
[7] Section 401.23(11), F.S.
[8] Section 401.23(17), F.S.

an EMT or paramedic are required to complete a training program approved by DOH, which must be equivalent to the most recent EMT-Basic National Standard Curriculum or the National EMS Education Standards of the United States Department of Transportation.[9] They are also required to:

- Certify under oath that he or she is not addicted to alcohol or any controlled substance;
- Certify under oath that he or she is free from any physical or mental defect or disease that might impair the applicant's ability to perform his or her duties; and
- Pass an exam within 2 years after completion of a training program.[10]

An EMT is required to hold a current American Heart Association cardiopulmonary resuscitation course card or an American Red Cross cardiopulmonary resuscitation course card or its equivalent as defined by department rule. Paramedics must hold a certificate of successful course completion in advanced cardiac life support from the American Heart Association or its equivalent.

Current law does not authorize an EMT or a paramedic to provide emergency medical services to animals, including canines.

Veterinary Medical Care and Treatment for Canines

The practice of veterinary medicine is licensed and regulated by the Department of Business and Professional Regulation (DBPR), Board of Veterinary Medicine.[11] A veterinarian is a licensed health care practitioner who engages in the practice of veterinary medicine which the Legislature has determined can be potentially dangerous to the public health and safety if conducted by incompetent and unlicensed practitioners.[12] The practice of veterinary medicine consists of:[13]

- The diagnosis of medical conditions of animals;
- Prescribing, dispensing, or administering drugs, medicine, appliances, and applications for animals;
- The treatment of animals for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease;
- The performance of any manual procedure for the diagnosis of or treatment for pregnancy or fertility or infertility of animals; and
- The determination of the health, fitness, or soundness of an animal.

Veterinary medicine includes:[14]

- Surgery;
- Acupuncture;
- Obstetrics;
- Dentistry;
- Physical therapy;
- Radiology;
- Theriogenology; and
- Any other veterinary medicine specialty.

[9] Section 401.27(4)(a), F.S.
[10] Section 401.27(4)(b)(c) and (d), F.S.
[11] Chapter 474, F.S.; and *see* s. 20.165, F.S.
[12] Ss. 474.201 and 407.202(11), F.S.
[13] S. 474.202(9), F.S.
[14] S. 474.202(13), F.S.

Section 474.202, F.S., defines an animal as a wild or domestic, dead or alive, bird, amphibian, fish, reptile, or mammal, other than a human being. A dog, or canine, is a mammal.[15] It is the responsibility of every veterinarian licensed and practicing in Florida to provide, either personally or through another licensed veterinarian, 24-hour emergency services for all animals under his or her continuing care.[16]

DBPR may issue a notice to cease and desist to any person it has probable cause to believe is practicing, or attempting to practice, veterinary medicine without a license, or aiding and abetting a person to practice veterinary medicine without a license. If the person fails to comply with the notice, DBPR may file a proceeding seeking an injunction or a writ of mandamus. Additionally, DBPR may impose an administrative penalty not to exceed $5,000 per incident or may issue a citation.[17]

Section 474.203, F.S., provides exemptions from veterinary licensure for certain individuals and entities, including: [18]

- Any faculty member who is a graduate of a school or college of veterinary medicine and is practicing only in conjunction with teaching duties at a school or college of veterinary medicine located in this state and accredited by the American Veterinary Medical Association Council on Education;
- A person practicing as an intern or resident veterinarian who is a graduate of a school or college of veterinary medicine;
- A student in a school or college of veterinary medicine while in the performance of duties assigned by her or his instructor or when working as a preceptor under the immediate supervision of a licensee, if such preceptorship is required for graduation from an accredited school or college of veterinary medicine;
- Any doctor of veterinary medicine in the employ of a state agency or the United States Government while actually engaged in the performance of her or his official duties, however, this exemption does not apply to such person when the person is not engaged in carrying out her or his official duties or is not working at the installations for which her or his services were engaged;
- Any person, or the person's regular employee, administering to the ills or injuries of her or his own animals, including, but not limited to, castration, spaying, and dehorning of herd animals;
- A person hired on a part-time or temporary basis, or as an independent contractor, by an owner to assist with herd management and animal husbandry tasks for herd and flock animals, including castration, dehorning, parasite control, and debeaking, or a person hired on a part-time or temporary basis, or as an independent contractor, by an owner to provide farriery and manual hand floating of teeth on equines;
- State 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, which or who conduct experiments and scientific research on animals in the development of pharmaceuticals, biologicals, serums, or methods of treatment, or techniques for the diagnosis or treatment of human ailments, or when engaged in the study and development of methods and techniques directly or indirectly applicable to the problems of the practice of veterinary medicine;
- Any veterinary aide, nurse, laboratory technician, preceptor, or other employee of a licensed veterinarian who administers medication or who renders auxiliary or supporting assistance under the responsible supervision of a licensed veterinarian, including those tasks identified by rule of the board requiring immediate supervision;
- A veterinarian, licensed by and actively practicing veterinary medicine in another state, who is board certified in a specialty recognized by the board and who responds to a request of a

[15] Merriam-Webster On-line Dictionary, Dog or Canine is a highly variable domestic mammal (Canis familiaris) closely related to the gray wolf, *available at* https://www.merriam-webster.com/dictionary/dog (last visited March 11, 2021).
[16] Fla. Admin. Code R. 61G18-19.001 (2019).
[17] S. 455.228, F.S.
[18] Section 474.203, F.S.

veterinarian licensed in this state to assist with the treatment on a specific case of a specific animal or with the treatment on a specific case of the animals of a single owner, as long as the veterinarian licensed in this state requests the other veterinarian's presence; and

- An employee, an agent, or a contractor of a public or private animal shelter, humane organization, or animal control agency operated by a humane organization or by a county, a municipality, or another incorporated political subdivision whose work is confined solely to the implantation of a radio frequency identification device microchip for dogs and cats.

Special K-9 Units

Specially-trained dogs are used by various agencies and departments throughout the state in their K-9 units. These departments employ dogs to assist with tracking and apprehending offenders, narcotics and bomb detection,[19] and building and article searches.[20] Additionally, some fire departments use dogs as part of arson detection programs.[21] Various non-profit organizations also use dogs for the purpose of search and rescue, such as the Community Emergency Response Team, which provides support to the federal Emergency Management Agency.[22]

Police Canines

Section 843.19, F.S., defines the term "police canine" for law enforcement purposes as any canine that is owned, or the service of which is employed, by a law enforcement agency or a correctional agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders.

Police dogs are frequently used in conjunction with high-intensity, criminal situations and are often deployed by their handlers to chase fleeing felons. As a result, the dogs can be caught in the line of fire while on the job. In September 2018, 3-year-old Fang, a member of Jacksonville Sheriff's Office canine unit, was shot and killed by a teenager who was fleeing a scene after carjacking two women at a gas station minutes earlier.[23] Similarly, in December 2018, 3-year-old Cigo with the Palm Beach County Sheriff's Office was shot and killed by an attempted murder suspect outside of a shopping mall.[24] In 2020, 48 police canines were killed in the line of duty in Florida.[25] In 2019, the Legislature, recognizing the ongoing danger to and violence against police canines, increased the penalty for causing harm to or using a deadly weapon against a police canine from a third degree felony to a second degree felony.[26, 27]

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[19] City of Orlando, *K-9 Unit*, *available at* http://www.cityoforlando.net/police/k-9-unit/ (last visited March 11, 2021).
[20] St. Petersburg Police Department, *K-9 Unit*, *available at* http://police.stpete.org/k-9 (last visited March 11, 2021).
[21] City of Orlando, *Accelerant Detection Canines*, *available at* http://www.cityoforlando.net/fire/accelerant-detection-canines/ (last visited March 11, 2021).
[22] Boondocks K9 SAR-CERT Unit, *Community Emergency Response Team (CERT)*, *available at* https://www.boondocksk9.org/ (last visited March 11, 2021).
[23] Tarik Mino and Colette DuChanois, *Audio, video evidence released in case of teen held in K-9's death,* NEWS4JAX (November 12, 2018), *available at* https://www.news4jax.com/news/2018/11/13/audio-video-evidence-released-in-case-of-teen-held-in-k-9s-death/ (last visited March 11, 2021).
[24] Mark Osborne and Jason M. Volack, *Suspect kills police dog in shootout outside mall on Christmas Eve, police say*, ABC NEWS (December 25, 2018), *available at* https://abcnews.go.com/US/suspect-kills-police-dog-shootout-mall-christmas-eve/story?id=60007552 (last visited March 11, 2021).
[25] Officer Down Memorial Page, *Florida Line of Duty Deaths*, *available at* https://www.odmp.org/search/browse/florida (last visited March 11, 2021).
[26] Chapter 2019-9, Laws of Fla. (2019).
[27] A third degree felony is punishable by up to five years imprisonment and up to a $5,000 fine. Sections 775.082, 775.083, and 775.084, F.S. A second degree felony is punishable by up to 15 years imprisonment and up to a $10,000 fine. Sections 775.082 and 775.083, F.S.

Effect of the Bill

The bill creates s. 401.254, F.S., to authorize an emergency service transport vehicle permit holder to transport a police canine injured in the line of duty to a veterinary clinic or similar facility if no person requires medical attention or transport when the canine needs it.

The bill defines the term "police canine" as any canine that is owned, or the service of which is employed, by a state or local law enforcement agency, a correctional agency, a fire department, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of criminal activity, flammable materials, or missing persons; enforcement of laws; investigation of fires; or apprehension of offenders.

The bill authorizes EMTs and paramedics to provide emergency medical care to an injured police canine at the scene of the emergency or while being transported. The bill provides civil and criminal immunity for EMTs and paramedics who act in good faith to provide emergency care to an injured police canine and exempts them from the application of the veterinary practice act for providing medical care to a police canine injured in the line of duty.

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

B. SECTION DIRECTORY:

Section 1: Creates s. 401.254, F.S., related to treatment of injured police canines.
Section 2: Amends s. 474.203, F.S., related to exemptions.
Section 3: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

No additional rule-making authority is needed to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 16, 2021, the Professions and Public Health Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removes the authority for an emergency service transport vehicle permit holder to transport an injured police canine to a hospital emergency department and the related authority for a paramedic or an emergency medical technician to provide emergency medical care during such transport.

The analysis is drafted to the committee substitute as passed by the Professions and Public Health Subcommittee.

A bill to be entitled

An act relating to injured police canines; creating s. 401.254, F.S.; defining the term "police canine"; authorizing licensed life support services to transport injured police canines under certain circumstances; authorizing a paramedic or an emergency medical technician to provide emergency medical care to injured police canines under certain circumstances; providing for immunity from criminal and civil liability under certain circumstances; amending s. 474.203, F.S.; providing applicability; providing an effective date.

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

Section 1. Section 401.254, Florida Statutes, is created to read:

401.254 Treatment of injured police canines.—

(1) As used in this section, the term "police canine" means any canine that is owned, or the service of which is employed, by a state or local law enforcement agency, a correctional agency, a fire department, a special fire district, or the State Fire Marshal for the principal purpose of aiding in the detection of criminal activity, flammable materials, or missing persons; the enforcement of laws; the investigation of

fires; or the apprehension of offenders.

(2) A licensee with a valid permit for the transport vehicle may transport a police canine injured in the line of duty to a veterinary clinic or similar facility if there is no individual requiring medical attention or transport at that time.

(3) Notwithstanding s. 474.213, a paramedic or an emergency medical technician may provide emergency medical care to a police canine injured in the line of duty while at the scene of the emergency or while the police canine is being transported to a veterinary clinic or similar facility. A paramedic or an emergency medical technician who acts in good faith to provide emergency medical care to an injured police canine is immune from criminal or civil liability.

Section 2. Subsection (10) is added to section 474.203, Florida Statutes, to read:

474.203 Exemptions.—This chapter does not apply to:

(10) A paramedic or an emergency medical technician providing emergency medical care to a police canine injured in the line of duty as authorized under s. 401.254.

For the purposes of chapters 465 and 893, persons exempt pursuant to subsection (1), subsection (2), or subsection (4) are deemed to be duly licensed practitioners authorized by the laws of this state to prescribe drugs or medicinal supplies.

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 867 Community Associations
SPONSOR(S): Civil Justice & Property Rights Subcommittee, Shoaf
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 630

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	16 Y, 1 N, As CS	Mawn	Jones
2) Regulatory Reform Subcommittee		Brackett	Anstead
3) Judiciary Committee			

SUMMARY ANALYSIS

The Department of Business and Professional Regulation ("DBPR") broadly regulates condominium ("condo") and cooperative ("co-op") associations and has limited regulatory authority over homeowner's associations ("HOA"). A condo is a form of real property ownership created under ch. 718, F.S., composed of units which may be owned by one or more persons along with an undivided right of access to common elements. A co-op is a form of property ownership created under ch. 719, F.S., where the real property is owned by the co-op association and individual units are leased to the residents who own shares in the association. An HOA is a residential property owners association created under ch. 720, F.S., in which voting membership is made up of parcel owners, membership is a mandatory condition of parcel ownership, and which may impose assessments that, if unpaid, may become a lien on the parcel.

CS/HB 867:

- Requires condo associations to maintain bids for work for one year, instead of seven.
- Prohibits a condo or co-op association from requiring unit owners to state a reason for wanting to inspect official records and modifies the HOA records inaccessible to HOA members.
- Provides that condo board member term limits apply to service starting July 1, 2018.
- Prohibits condo unit owners' insurance policies from providing a right of subrogation in certain circumstances.
- Modifies notice of meeting and notice of board election requirements for condo associations.
- Allows condos and HOAs to post certain documents on applications accessible on mobile devices.
- Modifies a co-op association's quorum requirements to allow a quorum to be achieved by members appearing by video teleconference or other real-time electronic means.
- Increases the transfer fee that condos may charge a buyer or renter from $100 to $150.
- Authorizes mediation of specified condo and co-op disputes in lieu of arbitration with DBPR.
- Allows a condo unit owner to install a natural gas fuel station subject to statutory limitations.
- Modifies an association's emergency powers.
- Clarifies that a multi-condo association may adopt a consolidated declaration of condo under specified circumstances and that such adoption does not merge the condos.
- Allows the condo Ombudsman to maintain a principal office outside of Leon County, Florida.
- Specifies that an interest in a co-op association is an interest in real property.
- Provides that HOA amendments affecting a parcel's rent or lease only apply to certain owners.
- Allows election and recall disputes to be filed in court in lieu of arbitration with DBPR.
- Allows most condominium and cooperative disputes to go through pre-suit mediation.
- Specifies that a developer is not an HOA member for certain transition of HOA control purposes.
- Modifies the allowable uses for specified condo unit sale or reservation deposits.
- Authorizes associations to extinguish discriminatory restrictions in a specified manner.

The bill does not appear to have a fiscal impact on local government, but the bill may have a fiscal impact on state government. The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Community Associations

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

- Condominium associations;
- Cooperative associations;
- Florida mobile home parks and related associations;
- Vacation units and timeshares;
- Yacht and ship brokers and related business entities; and
- Homeowners' associations (limited to the arbitration of election and recall disputes).

Condominiums

A condominium is a form of real property ownership created under ch. 718, F.S. Persons own condominium units along with an undivided right of access to the condominium's common elements.[1] A condominium is created by recording a declaration of condominium, which governs the relationship between condominium unit owners and the condominium association, in the public records of the county where the condominium is located.[2] All unit owners are members of the condominium association, and the association is responsible for common elements operation and maintenance.[3] The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration," which is responsible for the association's administration.[4]

Cooperatives

A cooperative is a form of property ownership created under ch. 719, F.S., in which the real property is owned by the cooperative association and individual units are leased to the residents, who own shares in the association.[5] The lease payment amount is the pro-rata share of the cooperative's operational expenses. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are largely identical to those regulating condominiums.

Homeowners' Associations

A homeowners' association ("HOA") is an association of residential property owners in which voting membership is made up of parcel owners, membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.[6] Like a condominium or cooperative, an HOA is administered by an elected board of directors, and an HOA's powers and duties include those powers and duties provided by law and in the governing documents.[7] Florida law sets procedures and minimum requirements for HOA operation and provides for a mandatory binding arbitration program, administered by the Division, for certain election and recall disputes, but no state agency directly regulates HOAs.[8]

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[1] S. 718.103(11), F.S.
[2] S. 718.104(2), F.S.
[3] S. 718.103(2), F.S.
[4] S. 718.103(4), F.S.
[5] S. 719.103(2) and (26), F.S.
[6] S. 720.301(9), F.S.
[7] Ss. 720.301(8) and 720.303(1), F.S.
[8] *See, generally*, ch. 720, F.S.

Cooperatives as Personal and Real Property Interest

Background

A cooperative association's real property[9] is owned by the cooperative association, not the individual unit owners.[10] Thus, a person who buys into a cooperative does not receive title to a cooperative unit or any portion of the cooperative's building or land. Instead, the purchaser receives shares of the cooperative association and leases a unit from the association.

An ownership interest in a cooperative is an interest in personal property,[11] not real property.[12] At common law, a leasehold, even for as long as 99 years, was not considered an interest in real property.[13] However, a long-term leasehold interest is taxed in the same manner as a fee interest, so courts generally regard long-term leaseholds to be an interest in real property for taxation purposes.[14]

A cooperative is treated as real property for some homestead purposes. Even though the legal definition of homestead follows the common law and requires an interest in real property to qualify for the homestead exemption, the Florida Constitution specifically extends the exemption to a cooperative unit.[15] Florida's homestead laws govern the cooperative for purposes of exemption from forced sale by creditors[16] and for purposes of the ad valorem taxation exemption. However, a cooperative is not subject to Florida's homestead protections and is not considered real property for purposes of devise and descent.[17]

In contrast, the Condominium Act specifically provides that a condominium parcel created by the declaration is a separate parcel of real property.[18] Thus, Florida law expressly converts an ownership interest in a condominium into an interest in real property. Because there is no corresponding cooperative statute, Florida courts have recognized that there is some confusion in this area and a need for clarification on whether a cooperative ownership interest is an interest in real property or personal property.[19]

Effect of Proposed Changes

CS/HB 867 specifies that an interest in a cooperative unit is an interest in real property for all purposes, including devise and descent.

HOA Governing Documents

Background

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

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[9] Real property is anything that is permanent, fixed, and immovable, such as land or a building.
[10] S. 719.103(12), F.S.
[11] Generally, personal property is any object or right that is not real property, including stocks. Am. Jur. 2d Property § 18.
[12] *Downey v. Surf Club Apartments, Inc.*, 667 So.2d 414 (Fla. 1st DCA 1996).
[13] *Williams v. Jones*, 326 So.2d 425, 433 (Fla. 1975); *see generally* The Florida Bar, *Practice Under Florida Probate Code* Chapter 19 (9th ed. 2017).
[14] *Id.*
[15] Art. VII, s. 6(a), Fla. Const. ("The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years.").
[16] Ss. 222.01 and 222.05, F.S.
[17] Devise and descent is the transfer or conveyance of property by will or inheritance. *Southern Walls, Inc. v. Stilwell Corp.*, 810 So. 2d 566, 572 (Fla. 2nd DCA 2002); *Phillips v. Hirshon*, 958 So. 2d 425, 430 (Fla. 3rd DCA 2007); *In re Estate of Wartels*, 357 So.2d 708 (Fla. 1978); Black's Law Dictionary (11th ed. 2019).
[18] S. 718.103(11), F.S.
[19] *Phillips*, 958 So.2d at 425; *Levine v. Hirshon*, 980 So.2d 1053 (Fla. 2008).

- Rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and any duly adopted amendments thereto.[20]

The declaration of covenants, much like a constitution, establishes the community's basic covenants and restrictions.[21] The articles of incorporation establish the HOA's existence, basic structure, and governance.[22] The bylaws govern the HOA's operation and administration, while the rules and regulations typically supplement the other documents, addressing matters of everyday policy.[23]

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.[24] 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.[25]

Effect of Proposed Changes

The bill deletes an HOA's rules and regulations from the definition of "governing documents." This means that provisions regarding governing document amendment would no longer apply to the rules and regulations.

Multicondominiums

Background

A multicondominium is a real estate development with two or more condominiums operated by the same association.[26] For each condominium in a multicondominium, the declaration of condominium must disclose or describe:

- The manner by which the association's assets, liabilities, common surplus, and common expenses will be apportioned among the units within the various condominiums operated by the association;
- Whether unit owners in another condominium will or may have the right to use recreational areas or any other facilities or amenities that are common elements of the condominium and the specific formula by which the other users will share the common expenses related to those facilities or amenities;
- Recreational and other commonly used facilities or amenities which the developer has committed to provide that will be owned, leased, or dedicated by a recorded plat to the association but which are not included within the association's condominium operation; and
- Unit owner voting rights in the election of directors and in other multicondominium association affairs when an owner vote is taken.[27]

A multicondominium may be formed by the merger or consolidation of two or more existing condominium associations.[28]

Effect of Proposed Changes

The bill changes the definition of "multicondominium" to specify that the multicondominium is real property, not a real estate development. The bill also clarifies that a multicondominium association may adopt a consolidated or combined declaration of condominium if the declaration complies with

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[20] S. 720.301(8), F.S.
[21] Joseph Adams, *HOA Governing Documents Explained* (July 1, 2018), https://www.floridacondohoalawblog.com/2018/07/01/hoa-governing-documents-explained/ (last visited Mar. 8, 2021).
[22] *Id.*
[23] *Id.*
[24] S. 720.306(1), F.S.
[25] *Id.*
[26] S. 718.103(20), F.S.
[27] S. 718.405(1), F.S.
[28] S. 718.405(4), F.S.

applicable law and does not serve to merge the condominiums or change the legal description of the condominium parcels, unless accomplished in accordance with law.

Quorum Requirements

Background

Under the Condominium Act, a board member's participation in a meeting by telephone, real time videoconferencing, or similar real-time electronic or video communication counts towards a quorum, and such member may vote as if he or she is actually present at the meeting.[29] A speaker must be used so that the member's conversations can be heard by members and unit owners physically present at the meeting.[30] However, the Cooperative Act only allows board members appearing by telephone to count towards a quorum.[31] Cooperative association board members appearing by telephone may vote by telephone.[32]

Effect of Proposed Changes

The bill modifies the Cooperative Act's board member quorum requirement to mirror that of the Condominium Act, so that cooperative association board members may attend board meetings by real-time videoconferencing or similar real-time electronic or video communication and have their presence counted towards a quorum.

Association Emergency Powers

Background

Condominium associations, cooperative associations, and HOAs have emergency powers they may exercise in response to **damage** caused by an event for which the Governor declares a state of emergency in the area in which the condominium, cooperative, or community is located.[33] These powers include:

- Conducting board or membership meetings after notice of the meetings is provided in as practicable a manner as possible;
- Canceling and rescheduling an association meeting;
- Designating assistant officers who are not directors who have the same authority as the executive officer if the executive officer is incapacitated or unavailable;
- Relocating the association's principal office or designating an alternative principal office;
- Entering into agreements with counties and municipalities to assist with debris removal;
- Implementing a disaster plan before or immediately after the event for which a state of emergency is declared, which may include turning on or shutting off elevators; water, sewer, or security systems; or air conditioners;
- Determining whether association property can be safely inhabited, and determining that any portion of the property is unavailable for entry or occupancy by unit or parcel owners or their family members, tenants, guests, agents, or invitees in order to protect their health, safety, or welfare.
    - Any such determination must be based on the advice of emergency management officials or licensed professionals retained by the board of administration.
- Requiring the evacuation of the property in the event of a mandatory evacuation order in the area where the condominium, cooperative, or community is located;
- Mitigating further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the property;
- Levy special assessments without an owner vote; and

[29] S. 718.112(2)(b)5., F.S.
[30] *Id.*
[31] S. 719.106(1)(b)5., F.S.
[32] *Id.*
[33] Ss. 718.1265(1), 719.128(1), and 720.316(1), F.S.

- Borrow money and pledge association assets as collateral to fund emergency repairs and carry out association duties if operating funds are insufficient.[34]

Additionally, condominium and cooperative association emergency powers include contracting, on behalf of unit owners, for items or services for which the owner is otherwise individually responsible but which are necessary to prevent further association property damage.[35]

On March 20, 2020, Governor DeSantis issued **executive order 20-52** that declared a state of emergency because of COVID-19.[36] After Governor DeSantis issued executive order 20-52, legal experts questioned whether COVID-19 constituted **"damage"** for purposes of granting emergency powers for community association boards. Some legal experts believed the impact of COVID-19 constituted "damage." However, other legal experts did not believe the impact of COVID-19 automatically constituted "damage."[37]

On March 27, 2020, the DBPR Secretary issued an emergency order suspending the requirement that a board's emergency powers be conditioned on "**damage** caused by an event" and giving associations the ability to exercise most of their emergency powers in response to the pandemic.[38]

Effect of Proposed Changes

The bill expands an association's emergency powers by:

- Specifying that the association holds emergency powers in response to either damage or injury, and that such damage or injury may be caused or anticipated in connection with an emergency for which the Governor declares a state of emergency;
- Defining "emergency" to mean any occurrence, or threat thereof, whether natural, technological, or manmade, in war or peace, which results or may result in substantial injury or harm to the population or substantial damage or property loss; and
- Authorizing the association to:
    - Conduct elections and board, committee, and membership meetings by telephone, real-time video teleconferencing, or similar real-time electronic or video communication;
    - Implement an emergency plan before, during, or after the event;
    - Base determinations about access to or use of the association's common areas or facilities on the advice of emergency management, public health officials, or licensed professionals retained by or otherwise available to the board; and
    - Mitigate further injury or contagion, which may include sanitizing the association's common areas or facilities.

However, the bill does not allow an association to prohibit unit or parcel owners or their tenants, guests, agents, or invitees from accessing association common areas and facilities for the purpose of ingress to and egress from the unit or parcel when access is necessary in connection with the unit or parcel's:

- Sale, lease, or other title transfer; or
- Habitability or for the health and safety of such persons unless a governmental order or determination, or a public health directive from the CDC, has been issued prohibiting such access to the unit or parcel. Any such access is subject to reasonable restrictions adopted by the association.

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[34] *Id.*
[35] Ss. 718.1265(1) and 719.128(1), F.S.
[36] Fla. Exec. Order 20-52 (Mar. 20, 2020).
[37] Ryan Poliakoff, *Does HOA have power to restrict access in response to coronavirus emergency?* Florida Today March 21, 2020 https://www.floridatoday.com/story/money/2020/03/21/does-hoa-have-power-restrict-access-response-coronavirus-emergency/2880085001/ (last visited Mar. 13, 2021); Donna Berger, *Legal advice for HOAs: Take coronavirus seriously, but don't panic*, Miami Herald March 14, 2020 https://www.miamiherald.com/news/business/real-estate-news/article240916146.html (last visited Mar. 13, 2021).
[38] DBPR. Emer. Order 20-04 (Mar. 27, 2020), http://www.myfloridalicense.com/dbpr/os/documents/EO_2020-04.pdf (last visited Mar. 8, 2021); *see also* Ryan Poliakoff, *Homeowners Associations May Use Emergency Powers During COVID-19 Pandemic*, Florida Today (Mar. 8, 2021), https://www.floridatoday.com/story/money/2020/04/02/covid-19-pandemic-homeowners-associations-may-use-emergency-powers/5102124002/ (last visited Mar. 8, 2021).

Official Records

Background

Condominiums, cooperatives, and HOAs must maintain official association records for at least seven years, including:

- The articles of incorporation, declaration, bylaws, and rules of the association;
- Meeting minutes;
- A roster of all unit owners or members, including the electronic mailing addresses and fax numbers of unit owners or members consenting to receive notice by electronic transmission;
- A copy of any contracts to which the association is a party or under which the association or the unit owners or members have an obligation;
- The association's accounting records;
- All contracts for work to be performed, including bids for work, materials, and equipment, except that cooperatives and HOAs are only required to maintain bids for one year;
- A copy of the plans, permits, warranties, and other items provided by the developer; and
- All other written records which are related to the association's operation.[39]

The official records for condominiums and cooperatives, but not for HOAs, must also include all ballots, sign-in sheets, voting proxies, and all other documents relating to unit owner voting.[40]

Owners may inspect and copy an association's official records, and the association must make the records available for inspection within ten business days of receiving an inspection request.[41] A condominium unit renter may inspect and copy the association's bylaws and rules. However, a renter may not copy and inspect the declaration of condominium.[42] An association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections, but an HOA may not require an owner to state a reason for inspecting the records.[43]

Effect of Proposed Changes

The bill:

- Conforms condominium law to cooperative and HOA law by requiring that condominiums only maintain bids for work, materials, and equipment for one year instead of seven years;
- Conforms condominium and cooperative law to HOA law by prohibiting a condominium or cooperative from requiring a unit owner to state a reason for inspecting official records; and
- Conforms HOA law to condominium and cooperative law by including all ballots, sign-in sheets, voting proxies, and all other documents relating to voting in the HOA's official records.
- Authorizes a condominium unit renter to inspect and copy the declaration of condominium.
- Specifies that information an HOA obtains in a gated community relating to guests visiting parcel owners or community residents is inaccessible to members.

Condominium Unit Owner Access to Official Records

Background

A condominium association must maintain its official records within the state of Florida and make them available for inspection within 45 miles of the association or within the county where the condominium is located.[44] An association also has the option to make the official records available electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen.[45] Additionally, condominium associations with 150 or more units that do not manage timeshare units

[39] Ss. 718.111(12)(a), 719.104(2), and 720.303(4)-(5), F.S.
[40] *Id.*
[41] *Id.*
[42] S. 718.111(12)(c)1., F.S.
[43] S. 720.303(5), F.S.
[44] S. 718.111(12)(b), F.S.
[45] *Id.*

must post certain documents to a website accessible only to unit owners and condominium association employees.[46] The website must include:

- The recorded declaration of condominium of each condominium operated by the condominium association and each amendment thereto;
- The recorded condominium association bylaws and each amendment to the bylaws;
- The condominium association's articles of incorporation, or other documents creating the condominium association, and each amendment thereto. The copy posted must be a copy of the articles of incorporation filed with the Department of State;
- The condominium association rules;
- Any management agreement, lease, or other contract to which the condominium association is a party or under which the condominium association or the unit owners have an obligation or responsibility;
- Summaries or complete copies of bids for materials, equipment, or services, which must be maintained on the website for one year;
- The annual budget to be considered at the annual meeting;
- The financial report to be considered at a meeting;
- Each director's certification;
- All contracts or transactions between the condominium association and any director, corporation, firm, or condominium association that is not an affiliated condominium association or any other entity in which a condominium association director is also a director or officer and financially interested;
- Any contract or document regarding the conflict of interest or possible conflict of interest of a community association manager or a board member;
- The notice of any unit owner meeting and the meeting's agenda, posted at least 14 days before the meeting in plain view on the front page of the website or on a separate subpage of the website labeled "Notices" which is conspicuously visible and linked on the front page; and
- Any documents to be considered during a meeting or listed on the meeting's agenda, which must be posted at least seven days before the meeting where the document will be considered.[47]

Effect of Proposed Changes

The bill authorizes a condominium association with 150 or more units that do not manage timeshare units to make documents that must currently be posted to a website available through an application that can be downloaded onto a mobile device in lieu of posting the documents to the website.

Discriminatory Restrictions

Background

A "discriminatory restriction" is a provision in a title transaction recorded in this state which restricts the ownership, occupancy, or use of any real property in this state by any natural person on the basis of a characteristic held by the United States Supreme Court or Florida Supreme Court to be protected against discrimination under the Fourteenth Amendment to the United States Constitution or Article I, section 2 of the State Constitution, including race, color, national origin, religion, gender, or physical disability.[48] Florida law provides that a discriminatory restriction is not enforceable in the state, and all such restrictions contained in any title transaction recorded in Florida are unlawful, unenforceable, and null and void.[49]

Under s. 712.065, F.S., upon request of a parcel owner, a discriminatory restriction appearing in a covenant or restriction affecting the parcel may be removed from the covenant or restriction by an amendment approved by a majority vote of the board of directors of the respective property owners'

[46] S. 718.111(12)(g), F.S.
[47] *Id.*
[48] S. 712.065(1), F.S.
[49] S. 712.065(2), F.S.

association or an owners' association in which all owners may voluntarily join, notwithstanding any other requirements for amendment approval.[50] Unless the amendment also changes other covenant or restriction provisions, the recording of the amendment is not a title transaction occurring after the root of title for Marketable Record Title Act purposes.[51]

Effect of Proposed Changes

The bill authorizes condominiums, cooperatives, and HOAs to extinguish a discriminatory restriction in the same manner a property owners' association may do so under s. 712.065, F.S.

Condominium Unit Owner Insurance and Subrogation

Background

A condominium association must use its best efforts to maintain insurance for the association, the association property, and the common elements.[52] If a condominium maintains insurance for the association, it must have coverage for the condominium property as originally installed and all alterations or additions made to the condominium property. However, condominium association insurance coverage does not include personal property within a unit or a unit's limited common elements, floor, walls, ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments. Insurance coverage for such property is the unit owner's responsibility.[53]

Subrogation is "the substitution of one party for another whose debt the party pays, entitling the paying party to rights, remedies, or securities that would otherwise belong to the debtor."[54] In the condominium setting, subrogation allows a unit owner's insurer to stand in the place of the unit owner whose unit has been damaged by a negligent party. The unit owner's insurer pays the unit owner for the damage and stands in the place of the unit owner to seek relief from the party that caused the damage, which may be the condominium association.

Often, a condominium association's declaration requires a unit owner's insurance policy to prohibit subrogation against the condominium association.[55] Prior to 2010, Florida law prohibited a condominium unit owner's insurance policy from providing rights of subrogation against the association, but the prohibition was repealed in and subrogation against a condominium association has been authorized since 2010.[56]

Effect of Proposed Changes

The bill provides that if a condominium association's insurance policy does not provide rights of subrogation against the unit owners, then a unit owner's insurance policy may not provide rights of subrogation against the association.

Condominium Term Limits

Background

Condominium association board members serve one-year terms, but a board member may serve a two-year term if allowed by the association's bylaws or articles of incorporation.[57] In 2017, the Legislature prohibited a condominium association board member from serving more than four

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[50] S. 712.065(3), F.S.
[51] *Id.*
[52] S. 718.111(11), F.S.
[53] *Id.*
[54] *Aurora Loan Services LLC v. Senchuk*, 36 So. 3d 716, 717 (Fla. 1st DCA 2010).
[55] Gary L. Wickert & Kelsey Burazin, *Subrogating Condominium Damage*, Claims Journal (June 4, 2015), https://www.claimsjournal.com/news/national/2015/06/04/263728.htm (last visited Mar. 8, 2021).
[56] S. 718.111(11), F.S. (2009); *see also* Senate Analysis of 2010 Senate Bill 1196 and 1222 (April 9, 2010).
[57] S. 718.112(2)(d), F.S.

consecutive two-year terms unless two-thirds of the total voting interests approve his or her continued service or there are not enough eligible candidates to fill board vacancies.[58] In 2018, the Legislature amended the term limit provision for condominium board members to clarify that a board member could not serve more than eight consecutive years.[59] Uncertainty remains about whether time served on a board prior to the enactment of the term limit provision counts toward the eight-year maximum.[60]

Effect of Proposed Changes

The bill clarifies that only board service occurring on or after July 1, 2018, counts towards a board member's term limits.

Condominium Transfer Fees

Background

A condominium association may not charge a potential buyer or renter a fee in connection with the sale, lease, sublease, or other transfer of a unit unless:

- The fee is $100 or less;
- The fee is provided for in the association's governing documents; and
- The association approves the sale, lease, sublease, or transfer.[61]

A condominium association may require a potential renter to provide the association a security deposit equivalent to one month's rent.[62] The association must place the security deposit in an escrow account maintained by the association.[63]

Effect of Proposed Changes

The bill increases the fee a condominium association may charge a potential buyer or renter from $100 to $150 and specifies that such fee may be adjusted every five years in an amount equal to the total of the annual increases occurring in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items during the five-year period. The bill charges DBPR with calculating the fees and publishing the amounts, as adjusted, on its website.

Condominium Service Providers Conflicts of Interest

Background

Prior to 2017, a condominium association could sign a contract for maintenance or management services with an entity in which a member of the association's board of directors had a financial interest. The contract had to disclose the board member's financial interest, and a discussion of the financial interest had to be in the minutes of the meeting at which the vote to authorize the contract was held. Any contract that failed to disclose such interest was unenforceable.[64] The contract also had to be affirmed by a two-thirds vote of the members of the board of directors present. The board member with a financial interest in the entity could not participate in the vote.[65]

In 2017, the Legislature passed a law prohibiting a condominium association from employing or contracting with any service provider in which a board member, or a relative of a board member within the third degree of consanguinity by blood or marriage, has a financial interest. This restriction does not

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[58] *See* House Analysis of 2017 House Bill 1237 (July 5, 2017).
[59] *See* House Analysis of 2018 House Bill 841 (Mar. 27, 2018).
[60] David G. Muller, *Is new term limit restriction retroactive*, Naples Daily News (Sept. 15, 2018), https://www.naplesnews.com/story/money/real-estate/2018/09/15/new-term-limit-restriction-retroactive/1259991002/ (last visited Mar. 8, 2021).
[61] S. 718.112(2)(i), F.S.
[62] *Id.*
[63] *Id.*
64 S. 718.3026(3), F.S.
65 *Id.*

apply if the board member or relative owns less than one percent of the equity shares of the service provider or to timeshare condominiums.[66]

Effect of the Bill

The bill repeals the provision prohibiting a condominium association from employing or contracting with any service provider in which a board member or a relative of a board member has a financial relationship. However, the bill maintains the provision requiring a board member's financial interest be disclosed in the contract with the association and in the minutes of the meeting at which the board votes on the contract. Any contract that fails to disclose such interest is unenforceable. The contract also requires an affirmative vote of two-thirds of the board of directors present and prohibits a board member with a financial interest from participating in the vote. This restores the law applicable to board member conflicts of interest to its pre-2017 state.

Condominium and HOA Fines and Suspensions

Background

A condominium association and an HOA may levy reasonable fines for failing to comply with the association's governing documents.[67] A fine may not exceed $100 per violation or $1,000 in the aggregate.[68] A condominium association and an HOA may also suspend, for a reasonable time period, the right of a unit or parcel owner or his or her tenant, guest, licensee, or invitee to use common areas and facilities for failure to comply with the governing documents.[69]

A fine or suspension may not be imposed unless the board first gives at least 14 days' notice to the unit or parcel owner and, if applicable, the parcel owner's occupant, licensee, or invitee sought to be fined or suspended and a chance for a hearing before a committee of at least three members appointed by the board who are not association officers, directors, or employees. If the committee approves a proposed fine, the fine is due five days after the fine approval date. The association must give written notice of an approved fine or suspension to the unit or parcel owner and, if applicable, the unit or parcel owner's tenant, licensee, or invitee.[70]

Effect of Proposed Changes

The bill changes when a condominium association or HOA fine is due from five days after the fine approval date to five days after notice of the approved fine is given to the unit or parcel owner and, if applicable, to the unit or parcel owner's tenant, licensee, or invitee.

Condominium Sales or Reservation Deposits

Background

If a developer contracts to sell a condominium unit and the construction, furnishing, and landscaping of the property submitted or proposed to be submitted to condominium ownership has not been substantially completed, the developer must pay into an escrow account all payments up to ten percent of the sale price received by the developer from the buyer.[71] All payments in excess of the ten percent of the sale price described above which have been received by the developer before construction completion must be held in a special escrow account controlled by an escrow agent and may not generally be used by the developer before closing the transaction, except to refund the buyer.[72]

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66 *See* House Analysis, *supra* note 31.
67 Ss. 718.303(3) and 720.305(2), F.S.
68 *Id.*
69 *Id.*
70 *Id.*
71 S. 718.202(1), F.S.
72 S. 718.202(2), F.S.

However, if the sale contract so provides, the developer may withdraw escrow funds in excess of ten percent of the purchase price from the special account when construction of improvements has begun, and may use the funds in the actual construction and development of condominium property in which the unit sold is located.[73] No part of the funds may be used for salaries, commissions, salesperson expenses, or advertising purposes.[74]

Effect of Proposed Changes

The bill clarifies that, if the developer withdraws escrow funds in excess of ten percent of the purchase price from the special account as authorized by law, the developer may use the funds for the actual costs he or she incurred in the construction and development of the condominium property in which the unit sold is located.

The bill defines "actual costs" to include expenditures for demolition, site clearing, permit fees, impact fees, and utility reservation fees, as well as architectural, engineering, and surveying fees directly relating to condominium property construction and development. The bill also specifies that no part of the funds may be used for marketing or promotional purposes, loan fees and costs, principal and interest on loans, attorney fees, accounting fees, or insurance costs.

Condominium Electric Vehicle Charging and Natural Gas Fuel Stations

Background

In 2018, the Legislature prohibited a condominium association from preventing a unit owner from installing an electric vehicle charging station within the boundaries of his or her limited common element parking area.[75] Such installation may not cause irreparable damage to the condominium property, and the association may require the unit owner to:

- Comply with bona fide safety requirements, consistent with applicable building code or recognized safety standards;
- Comply with reasonable architectural standards adopted by the association so long as such standards do not prohibit charging station installation or substantially increase installation costs;
- Engage the services of a duly licensed and registered electrical contractor or engineer familiar with the installation and core requirements of an electric vehicle charging station;
- Provide a certificate of insurance naming the association as an additional insured on the policy; and
- Reimburse the association for the actual cost of any increased insurance premium amount attributable to the electric vehicle charging station.[76]

The costs of installation, operation, maintenance, repair, and removal are the unit owner's responsibility and the association may use its assessment powers to enforce the payment of such costs. Additionally, the unit owner or his or her successor must separately meter and pay the associated electricity charges.[77]

A condominium association must grant an implied easement across common elements to a unit owner for electric vehicle charging station installation and any equipment necessary to furnish electrical power to the electric vehicle charging station.[78] A lien may not be filed against an association for any labor performed or materials furnished for charging station installation, but a lien may be filed against the unit owner installing the charging station.[79]

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[73] S. 718.202(3), F.S.
[74] *Id.*
[75] S. 718.113(8), F.S.
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.*; 718.121(2), F.S.

Unit owners are not statutorily-authorized to install a natural gas fuel station anywhere on condominium property or his or her limited common element parking area. Natural gas fuel is any liquefied petroleum gas product, compressed natural gas product, or combination thereof used in a motor vehicle.[80] The term includes all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas. However, the term does not include natural gas or liquefied petroleum placed in a separate tank of a motor vehicle for cooking, heating, water heating, or electric generation.[81]

Effect of Proposed Changes

The bill prohibits a condominium association from preventing a unit owner from installing:

- A natural gas fuel station within the boundaries of the unit owner's limited common element or exclusively designated parking area, subject to the same restrictions and requirements as an electric vehicle charging station.
- An electric vehicle charging station within the boundaries of the unit owner's exclusively designated parking area.

The bill also provides that the:

- Costs for natural gas fuel supply and storage must be paid by the unit owner installing the natural gas fuel station or his or her successor.
- The unit owner installing, maintaining, or removing the electric vehicle charging or natural gas fuel station must comply with all applicable federal, state, or local laws and regulations.
- Labor performed on or materials furnished for natural gas fuel station installation cannot be the basis for a lien against the association but a lien may be filed against the unit owner installing the natural gas fuel station.

Alternative Dispute Resolution: Condominiums and Cooperatives

Background

The Condominium and Cooperative Acts provide an alternative dispute resolution mechanism for certain disputes between unit owners and associations, requiring a party to petition for non-binding arbitration[82] with the Division of Condominiums, Timeshares, and Mobile Homes before filing a complaint in civil court for disputes involving:

- Condominium termination;
- Board member recall;
- The board requiring an owner to take action or refrain from any action involving the owner's unit.
- The board altering or adding to a common element; and
- The board's failure to:
    - Give proper notice of meetings or other actions;
    - Properly conduct elections; or
    - Allow inspection of the association's records.[83]

The Division lacks jurisdiction to arbitrate:

- Disagreements about a warranty's interpretation or enforcement;
- The charging of a fee or assessment;
- The eviction or other removal of a tenant from a unit;
- A board member's alleged breach of fiduciary duty; and
- Claims for damages to a unit based upon the association's alleged failure to maintain the common elements or condominium property.[84]

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[80] S. 206.9951(2), F.S.
[81] *Id.*
[82] Arbitration becomes binding on the parties if they agree in writing to be bound.
[83] S. 718.1255, F.S.
[84] *Id.*

An arbitration petition must include the specific nature of the dispute, a demand for relief, and proof that the petitioner provided the opposing party a notice of intent to petition for arbitration before filing the petition. If the dispute qualifies for arbitration, the arbitrator must conduct the arbitration within 30 days of petition receipt and render a decision within 30 days of the arbitration.[85]

If a party to arbitration requests mediation of the dispute, the arbitrator must contact all parties in the proceeding to determine if they agree to mediation. However, an arbitrator may refer a proceeding to mediation even if all parties do not agree to mediation. If a matter is referred to mediation, the parties must select a mutually agreeable mediator, and the costs are shared equally among the parties.[86]

Effect of Proposed Changes

The bill allows condominium and cooperative disputes currently resolvable through nonbinding arbitration to be resolved through pre-suit mediation in the same manner of an HOA dispute in lieu of arbitration with the Division, with the exception of election and recall disputes. The bill specifies that condominium and cooperative election and recall disputes may instead be filed in a court of competent jurisdiction in lieu of submitting the dispute to the Division for arbitration. However, arbitration with the Division remains an option for such disputes.

Alternative Dispute Resolution: HOAs

Background

Under the HOA Act, all recall and election disputes must be submitted to mandatory binding arbitration with the Division.[87] Additionally, certain disputes between parcel owners and HOAs must go to pre-suit mediation before a party can file a complaint in civil court, including disputes involving:

- The use of or changes to an owner's parcel or the common areas;
- Covenants;
- Board or board committee meetings;
- Owner meetings not involving elections;
- Access to official records; and
- Governing document amendments.[88]

HOA disputes involving the collection of assessments or other financial obligations and actions to enforce a prior mediation agreement are not subject to the mandatory pre-suit mediation requirement.[89]

Pre-suit mediation is initiated by service of a written petition for mediation on the opposing party. The petition must be in the statutorily-required format, identify the specific nature of the dispute and the basis for the alleged violations, and list five certified, neutral mediators from which the opposing party will select a mediator. If emergency relief is required, a temporary injunction may be sought in court.[90]

The opposing party has 20 days to respond to the petition for pre-suit mediation. If the opposing party fails to respond or refuses to mediate then the aggrieved party may proceed to civil court. However, if the parties agree to mediation, the mediator must hold the mediation within 90 days of the petition's service on the opposing party and the parties share the costs of mediation, except for the cost of attorney's fees. If pre-suit mediation is unsuccessful, the parties may proceed to civil court.[91]

Effect of Proposed Changes

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[85] *Id.*
[86] *Id.*
[87] Ss. 720.306(9)(c) and 720.311(1), F.S.
[88] S. 720.311, F.S; Peter M. Dunbar & Charles F. Dudley, *The Law of Florida Homeowners Associations*, 77-78 (9th ed. 2013).
[89] *Id.*
[90] *Id.*
[91] *Id.*

The bill authorizes HOA recall and election disputes to be filed with a court of competent jurisdiction in lieu of being submitted to the Division for binding arbitration. However, arbitration with the Division remains an option for such disputes.

Condominium Association Notices of Meeting

Background

A condominium association's bylaws specify the method of calling unit owner meetings, including annual meetings.[92] Notice of the association's annual meeting must:

- Be in writing;
- Include an agenda;
- Be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting; and
- Be posted in a conspicuous place on condominium property for at least 14 continuous days before the annual meeting or repeatedly broadcast with the agenda on a closed-circuit cable television system serving the association.[93]

There are no statutory requirements for notices of unit owner meetings that are not annual meetings.

Effect of Proposed Changes

The bill provides that notice of a meeting other than an annual meeting must:

- Be in writing;
- Include an agenda;
- Be mailed, hand delivered, or electronically transmitted to each unit owner; and
- Be posted in a conspicuous place on the condominium property within the timeframe specified in the bylaws.

If the bylaws do not specify a timeframe for written notice of a meeting other than an annual meeting, notice must be provided at least 14 continuous days before the meeting.

Condominium Association Notices of Election

Background

A condominium association must mail, deliver, or electronically transmit notice of an election to unit owners at least 60 days before the election.[94] The association must also mail, deliver, or electronically transmit a second notice of election to the unit owners, along with a ballot listing all the candidates.[95]

Current law does not specify a timeframe for the provision of the second notice. However, DBPR has adopted a rule providing that an association must mail or deliver the second notice not less than 14 days or more than 34 days before the election.[96]

Effect of Proposed Changes

The bill codifies DBPR's rule and specifies that the second notice of election must be mailed, delivered, or electronically transmitted to the unit owners not less than 14 days or more than 34 days before the election.

HOA Notices of Meeting

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[92] S. 718.112(2)(d)3., F.S.
[93] *Id.*
[94] S. 718.112(2)(d), F.S.
[95] *Id.*
[96] Rule 61B-23.0021(8), F.A.C.

Background

HOAs must notice all board meetings by posting notice in a conspicuous place on the HOA's property for at least 48 hours.[97] Notice must be posted 14 days before meetings where a nonemergency special assessment or an amendment to parcel use rules is considered. HOAs must also, before the meeting, notice all member meetings by mailing, hand delivering, or electronically transmitting notice and posting the notice in a conspicuous place. If an HOA opts to broadcast notice in lieu of posting notice, it must do so at least four times during every broadcast hour of each day.[98] Additionally, when notice of an HOA meeting is mailed or delivered to an owner's address it must be sent to the address identified as the parcel owner's mailing address on the property appraiser's website for the county in which the owner's parcel is located.[99]

However, condominium and cooperative associations may adopt rules for noticing all board meetings on a website if the time requirements for physically posting the board meetings are met.[100] Any rule adopted for website notice must require the association to send an electronic notice providing a hyperlink to the website where the notice is posted to all unit owners whose email addresses are part of the official records in the same manner as notice of member meeting.[101] No such authorization exists for HOAs in current law.

Effect of Proposed Changes

The bill authorizes an HOA to adopt a procedure for conspicuously posting board meeting notices and agendas on the HOA's website or an application that can be downloaded on a mobile device for at least the minimum time period for which the notice must be physically posted on association property. Any such procedure must require that the association send an electronic notice to members whose e-mail addresses are included in the HOA's official records in the same manner as is required for a notice of member meeting, which notice must include a hyperlink to the website or mobile application on which the notice is posted. The bill also changes where a notice of meeting must be mailed from the owner's mailing address on the property appraiser's website to the mailing address listed in the HOA's official records.

HOA Budgets

Background

An HOA must prepare an annual budget setting out the annual operating expenses, which budget must reflect the HOA's estimated revenues and expenses for that year and the estimated surplus or deficit as of the current year's end.[102] In addition to the annual operating expenses, the budget may include reserve accounts for capital expenditures and deferred maintenance for which the HOA is responsible. An HOA is deemed to have provided for reserve accounts if reserve accounts have been initially established by the developer or if a majority of the HOA's members affirmatively elect to provide for reserves by a membership vote at a duly called membership meeting or written consent.[103]

If the HOA's budget does not provide for reserve accounts and the association is responsible for the repair and maintenance of capital improvements that may result in a special assessment if reserves are not provided, each financial report for the preceding fiscal year must contain the following statement:

> The budget of the association does not provide for reserve accounts for capital expenditures and deferred maintenance that may result in special assessments. Owners may elect to provide for reserve accounts pursuant to section 720.303(6),

[97] S. 720.303(2), F.S.
[98] *Id.*
[99] S. 720.306(1)(g), F.S.
[100] Ss. 718.112(2)(c) and 719.106(1)(c), F.S.
[101] *Id.*
[102] S. 720.303(6), F.S.
[103] *Id.*

> Florida Statutes, upon obtaining the approval of a majority of the total voting interests of the association by vote of the members at a meeting or by written consent.[104]

If the HOA's budget does provide for funding accounts for deferred expenditure including, but not limited to, funds for capital expenditures and deferred maintenance, but such accounts are not created or established as reserve accounts, each financial report for the preceding fiscal year must contain the following statement:

> The budget of the association provides for limited voluntary deferred expenditure accounts, including capital expenditures and deferred maintenance, subject to limits on funding contained in our governing documents. Because the owners have not elected to provide for reserve accounts pursuant to section 720.303(6), Florida Statutes, these funds are not subject to the restrictions on use of such funds set forth in statute, nor are reserves calculated in accordance with that statute.[105]

Effect of Proposed Changes

The bill clarifies that an HOA without established reserve accounts that is not required to create such accounts by the governing documents and is responsible for the repair and maintenance of capital improvements that may result in a special assessment must include in each financial report for the preceding financial year a notice stating:

> The budget of the association does not provide for fully funded reserve accounts for capital expenditures and deferred maintenance that may result in special assessments regarding those items. Owners may elect to provide for fully funded reserve accounts under section 720.303(6), Florida Statutes, upon obtaining the approval of a majority of the total voting interests of the association by vote of the members at a meeting or by written consent.

Further, the bill specifies that an association is deemed to have provided for reserve accounts only upon the affirmative approval of a majority of the HOA's total voting interests. The bill deletes the provision indicating that an HOA is deemed to have provided for reserve accounts if such accounts are initially established by the developer.

Condominium Ombudsman

Background

Within the Division of Condominiums, Timeshares, and Mobile Homes is housed the Office of the Condominium Ombudsman (Ombudsman).[106] The Ombudsman is an attorney appointed by the Governor to serve as a neutral resource for unit owners and condominium associations who is authorized to prepare and issue reports and recommendations to the Governor, the Division, and the Legislature on any matter or subject within the Division's jurisdiction.[107] The Ombudsman also acts as a liaison between the Division, unit owners, and condominium associations and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.[108] The Ombudsman must keep his or her principal office in Leon County, Florida, on Division premises or, if suitable space cannot be provided on such premises, in a place convenient to

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[104] *Id.*
[105] *Id.*
[106] S. 718.5011, F.S.
[107] Ss. 718.5011 and 718.5012, F.S.
[108] *Id.*

the Division's offices.[109] However, the Ombudsman may establish branch offices elsewhere in the state with the Governor's approval.[110]

Effect of Proposed Changes

The bill deletes the requirement that the Ombudsman must keep his or her principal office in Leon County, Florida, requiring instead that such office be kept in a place convenient to the Division's offices. The Ombudsman may still establish branch offices elsewhere in the state with the Governor's approval.

HOA Amendments and Rental Restrictions

Background

An HOA's powers and duties include the powers and duties provided in current law and in the association's governing documents, which include the recorded covenants and restrictions, bylaws, and articles of incorporation.[111] Current law allows HOAs to amend their governing documents in the manner set forth in the governing documents, but if no such process is provided therein, an HOA may amend its governing documents by a two-thirds vote of association members.[112]

Amendments to governing documents generally apply to all parcel owners in the HOA. However, HOAs with 15 or fewer parcels can only enforce restrictions against a parcel owner that were in place at the time the owner acquired his or her parcel.[113]

An amendment to condominium association governing documents that restricts or regulates the rental of a unit only applies to unit owners who consent to the amendment or owners who acquire a unit after the amendment's effective date. No such provision exists for similar HOA amendments.[114]

Effect of Proposed Changes

The bill provides that any HOA governing document amendment enacted after July 1, 2021, that prohibits a parcel owner from renting his or her parcel, alters rental term duration, or specifies or limits the number of times a parcel owner may rent his or her parcel during a specified period applies only to a parcel owner who consents to the amendment and to parcel owners who acquire title to the parcel[115] after the amendment's effective date.

However, the bill authorizes an HOA to amend its governing documents to prohibit or regulate rental durations for terms of less than six months and to prohibit a parcel owner from renting his or her parcel more than three times in a calendar year; such amendments apply to all parcel owners.

For purposes of this provision, a change of ownership does not occur when a parcel owner conveys the parcel to an affiliated entity, when the beneficial ownership of the parcel does not change, or when an heir becomes the parcel owner. In order for this conveyance to be recognized, the entity must furnish the association with a certificate certifying that this conveyance applies, along with any documents supporting the conveyance.

The bill defines "affiliated entity" as an entity which controls, is controlled by, or is under common control with the parcel owner or that becomes a parent or successor entity by reason of transfer,

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[109] S. 718.5014, F.S.
[110] *Id.*
[111] S. 720.303, F.S.
[112] S. 720.306(1), F.S.
[113] S. 720.303(1), F.S.
[114] S. 718.110(13), F.S.
[115] Under the bill, a change of ownership does not occur when a parcel owner conveys the parcel to an affiliated entity or when beneficial ownership of the parcel does not change. An "affiliated entity" is one that controls, is controlled by, or is under common control with the parcel owner or that becomes a parent or successor entity by reason of transfer, merger, consolidation, public offering, reorganization, dissolution or sale of stock, or transfer of membership partnership interests.

merger, consolidation, public offering, reorganization, dissolution or sale of stock, or transfer of membership partnership interests.

Transition of HOA Control

Background

HOA members other than the developer may elect at least a majority of the HOA's board members at the earliest of:

- Three months after 90 percent of the parcels in all phases the HOA will ultimately operate have been conveyed to members;
- Such other percentage of the parcels being conveyed to members, or when such other date or event has occurred, as specified in the governing documents in order to comply with the requirements of any governmentally chartered entity with regard to parcel mortgage financing;
- The developer abandoning or deserting its responsibility to maintain and complete the HOA's amenities or infrastructure as disclosed in the governing documents;
- The developer filing a petition seeking Chapter 7 bankruptcy protection;
- The developer losing title to the property through a foreclosure action or the transfer of a deed in lieu of foreclosure unless specified conditions are met; or
- A receiver being appointed by a circuit court and not being discharged within 30 days after appointment, unless specified conditions are met.[116]

Members other than the developer may elect at least one HOA board member if 50 percent of the parcels in all phases of the community which will ultimately be operated by the association have been conveyed to the members.[117] The developer is entitled to elect at least one HOA board member as long as the developer holds for sale in the ordinary course of business at least five percent of the parcels in all phases.[118] After the developer relinquishes HOA control, the developer:

- May exercise the right to vote any developer-owned voting interests in the same manner as any other member, except for the purposes of reacquiring HOA control or selecting a majority of board members.[119]
- Must deliver specified documents to the HOA board within 90 days.[120]

Effect of Proposed Changes

The bill clarifies that a developer is not a member for HOA control transition purposes when control is transferred three months after 90 percent of the parcels in all phases the HOA will operate have been conveyed to members.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 627.714, F.S., relating to residential condominium unit owner coverage; loss assessment coverage required.
Section 2: Amends s. 718.103, F.S., relating to definitions.
Section 3: Amends s. 718.111, F.S., relating to the association.
Section 4: Amends s. 718.112, F.S., relating to bylaws.
Section 5: Amends s. 718.113, F.S., relating to maintenance; limitation upon improvement; display of flag; hurricane shutters and protection; display of religious decorations.
Section 6: Amends s. 718.117, F.S., relating to termination of condominium.
Section 7: Amends s. 718.121, F.S., relating to liens.
Section 8: Amends s. 718.1255, F.S., relating to alternative dispute resolution; voluntary mediation;

[116] S. 720.307(1), F.S.
[117] S. 720.307(2), F.S.
[118] S. 720.307(3), F.S.
[119] *Id.*
[120] S. 720.307(4), F.S.

mandatory nonbinding arbitration; legislative findings.

Section 9: Amends s. 718.1265, F.S., relating to association emergency powers.
Section 10: Amends s. 718.202, F.S., relating to sales or reservation deposits prior to closing.
Section 11: Amends s. 718.303, F.S., relating to obligations of owners and occupants; remedies.
Section 12: Amends s. 718.405, F.S., relating to multicondominiums; multicondominium associations.
Section 13: Amends s. 718.501, F.S., relating to authority, responsibility, and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.
Section 14: Amends s. 718.5014, F.S., relating to ombudsman location.
Section 15: Amends s. 719.103, F.S., relating to definitions.
Section 16: Amends s. 719.104, F.S., relating to cooperatives; access to units; records; financial reports; assessments; purchase of leases.
Section 17: Amends s. 719.106, F.S., relating to bylaws; cooperative ownership.
Section 18: Amends s. 719.128, F.S., relating to association emergency powers.
Section 19: Amends s. 720.301, F.S., relating to definitions.
Section 20: Amends s. 720.303, F.S., relating to board meetings.
Section 21: Amends s. 720.305, F.S., relating to obligations of members; remedies at law or in equity; levy of fines and suspension of user rights.
Section 22: Amends s. 720.306, F.S., relating to quorum; amendments.
Section 23: Amends s. 720.307, F.S., relating to transition of association control in a community.
Section 24: Amends s. 720.3075, F.S., relating to prohibited clauses in association documents.
Section 25: Amends s. 720.311, F.S., relating to dispute resolution.
Section 26: Amends s. 720.316, F.S., relating to association emergency powers.
Section 27: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The change in classification of cooperatives from personal to real property for the purpose of estate taxes or laws related to devise and descent may have an indeterminate impact on state revenue.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Prohibiting a condominium owner's insurance policy from providing rights of subrogation against the association may increase or decrease an insurance policy's cost to an unknown degree.

According to a statement offered by DBPR on a previous bill with a similar provision, "The proposal regarding pre-suit mediation as an option to arbitration will raise costs to unit owners involved in a dispute with their association."[121]

D. FISCAL COMMENTS:

[121] Florida Department of Business and Professional Regulation, Agency Analysis of 2020 House Bill 623, p. 6 (February 7, 2020).

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to require counties or municipalities to 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:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2021, the Civil Justice and Property Rights Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Specified that HOA members cannot access information obtained by an HOA in a gated community relating to guests visiting parcel owners or community residents.
- Clarified that developers are not HOA members for transition of HOA control purposes when control is transferred three months after 90 percent of the parcels in all phases the HOA will operate have been conveyed to members.

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

A bill to be entitled

An act relating to community associations; amending s. 627.714, F.S.; prohibiting insurance policies from providing specified rights of subrogation under certain circumstances; amending s. 718.103, F.S.; revising the definition of the terms "multicondominium," "operation," and "operation of the condominium"; amending s. 718.111, F.S.; requiring that certain records be maintained for a specified time; prohibiting an association from requiring certain actions relating to the inspection of records; limiting which records a renter of a unit may inspect and copy; revising requirements relating to the posting of digital copies of certain documents by certain condominium associations; amending s. 718.112, F.S.; authorizing a condominium association to extinguish discriminatory restrictions; revising the calculation used in determining a board member's term limit; providing requirements for certain notices; revising the fees that an association may charge for transfers; deleting a prohibition against employing or contracting with certain service providers; amending s. 718.113, F.S.; revising legislative findings; defining the terms "natural gas fuel" and "natural gas fuel vehicle"; revising requirements for electric

vehicle charging stations; providing requirements for natural gas fuel stations on property governed by condominium associations; amending s. 718.117, F.S.; conforming provisions to changes made by the act; amending s. 718.121, F.S.; providing that labor and materials associated with the installation of a natural gas fuel station may not serve as the basis for filing a lien against an association but may serve as the basis for filing a lien against a unit owner; requiring that notices of intent to record a claim of lien specify certain dates; amending s. 718.1255, F.S.; authorizing parties to initiate presuit mediation under certain circumstances; specifying the circumstances under which arbitration is binding on the parties; providing requirements for presuit mediation; amending s. 718.1265, F.S.; revising the emergency powers of condominium associations; prohibiting condominium associations from taking certain actions during a declared state of emergency; amending s. 718.202, F.S.; revising the allowable uses of certain escrow funds withdrawn by developers; defining the term "actual costs"; amending s. 718.303, F.S.; revising requirements for certain actions for failure to comply with specified provisions relating to condominium associations; revising requirements for

certain fines; amending s. 718.405, F.S.; providing clarifying language relating to certain multicondominium declarations; providing applicability; amending s. 718.501, F.S.; conforming provisions to changes made by the act; amending s. 718.5014, F.S.; revising a requirement regarding the location of the principal office of the Office of the Condominium Ombudsman; amending s. 719.103, F.S.; revising the definition of the term "unit" to specify that an interest in a cooperative unit is an interest in real property; amending s. 719.104, F.S.; prohibiting an association from requiring certain actions relating to the inspection of records; amending s. 719.106, F.S.; revising provisions relating to a quorum and voting rights for members remotely participating in meetings; revising the procedure to challenge a board member recall; authorizing cooperative associations to extinguish discriminatory restrictions; amending s. 719.128, F.S.; revising emergency powers for cooperative associations; prohibiting cooperative associations from taking certain actions during a declared state of emergency; amending s. 720.301, F.S.; revising the definition of the term "governing documents"; amending s. 720.303, F.S.; authorizing an association to adopt

procedures for electronic meeting notices; revising the documents that constitute the official records of an association; revising the types of records that are not accessible to members or parcel owners; revising the circumstances under which a specified statement must be included in an association's financial report; revising requirements for such statement; revising the circumstances under which an association is deemed to have provided for reserve accounts; revising the procedure to challenge a board member recall; amending s. 720.305, F.S.; providing requirements for certain fines levied by a board of administration; amending s. 720.306, F.S.; revising requirements for providing certain notices; providing limitations on associations when a parcel owner attempts to rent or lease his or her parcel; defining the term "affiliated entity"; revising the procedure for election disputes; amending s. 720.307, F.S.; revising the circumstances under which members other than the developer are entitled to elect members to the board of directors of the homeowners' association; amending s. 720.3075, F.S.; authorizing homeowners' associations to extinguish discriminatory restrictions; amending s. 720.311, F.S.; revising the dispute resolution requirements for election disputes and recall disputes; amending s.

720.316, F.S.; revising emergency powers of homeowners' associations; prohibiting homeowners' associations from taking certain actions during a declared state of emergency; providing an effective date.

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

Section 1. Subsection (4) of section 627.714, Florida Statutes, is amended to read:

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

(4) Every individual unit owner's residential property policy must contain a provision stating that the coverage afforded by such policy is excess coverage over the amount recoverable under any other policy covering the same property. If a condominium association's insurance policy does not provide rights for subrogation against the unit owners in the association, an insurance policy issued to an individual unit owner in the association may not provide rights of subrogation against the condominium association.

Section 2. Subsections (20) and (21) of section 718.103, Florida Statutes, are amended to read:

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

(20) "Multicondominium" means real property ~~a real estate~~

~~development~~ containing two or more condominiums, all of which are operated by the same association.

(21) "Operation" or "operation of the condominium" includes the administration and management of the condominium property and the association.

Section 3. Paragraphs (a), (b), (c), and (g) of subsection (12) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.—

(12) OFFICIAL RECORDS.—

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

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

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

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

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

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

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

the unit owners.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the e-mail addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The e-mail addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with sub-subparagraph (c)3.e. However, the association is not liable for an inadvertent disclosure of the e-mail address or facsimile number for receiving electronic transmission of notices.

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

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

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

11. Accounting records for the association and separate accounting records for each condominium that the association operates. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing

harm to the association or one or more of its members, is personally subject to a civil penalty under ~~pursuant to~~ s. 718.501(1)(d). The accounting records must include, but are not limited to:

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

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.

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

d. All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association for at least 1 year after receipt of the bid.

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

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

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

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

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

16.~~17.~~ Bids for materials, equipment, or services.

17. All other written records of the association not specified in subparagraphs 1.-16. which are related to the operation of the association.

(b) The official records specified in subparagraphs (a)1.-6. must be permanently maintained from the inception of the association. Bids for work to be performed or for materials, equipment, or services must be maintained for at least 1 year after receipt of the bid. All other official records must be maintained within the state for at least 7 years, unless otherwise provided by general law. The records of the association shall be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 10 working days after receipt of a written request by the board or its designee. However, such distance requirement does not apply to an association governing a timeshare condominium. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the condominium property or association property, or the association

may offer the option of making the records available to a unit owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative in ~~pursuant to the~~ compliance with ~~requirements of~~ this chapter unless the association has an affirmative duty not to disclose such information under ~~pursuant to~~ this chapter.

(c)1. The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member or authorized representative of such member. A renter of a unit has a right to inspect and copy only the declaration of condominium and the association's bylaws and rules. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying, but may not require a member to demonstrate any purpose or state any reason for the inspection. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled

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

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

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

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

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

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

c. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this sub-

subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

d. Medical records of unit owners.

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

owner and not requested by the association.

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

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

(g)1. By January 1, 2019, an association managing a condominium with 150 or more units which does not contain timeshare units shall post digital copies of the documents specified in subparagraph 2. on its website or make such documents available through an application that can be downloaded on a mobile device.

a. The association's website or application must be:

(I) An independent website, application, or web portal wholly owned and operated by the association; or

(II) A website, application, or web portal operated by a third-party provider with whom the association owns, leases, rents, or otherwise obtains the right to operate a web page, subpage, web portal, ~~or~~ collection of subpages or web portals, or an application that is dedicated to the association's activities and on which required notices, records, and documents may be posted or made available by the association.

b. 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 unit owners and employees of the association.

c. Upon a unit owner's written request, the association must provide the unit owner with a username and password and access to the protected sections of the association's website or application that contain any notices, records, or documents that must be electronically provided.

2. A current copy of the following documents must be posted in digital format on the association's website or application:

a. The recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

b. The recorded bylaws of the association and each amendment to the bylaws.

c. The articles of incorporation of the association, or other documents creating the association, and each amendment to the articles of incorporation or other documents ~~thereto~~. The copy posted pursuant to this sub-subparagraph must be a copy of the articles of incorporation filed with the Department of State.

d. The rules of the association.

e. A list of all executory contracts or documents to which the association is a party or under which the association or the

unit owners have an obligation or responsibility and, after bidding for the related materials, equipment, or services has closed, a list of bids received by the association within the past year. Summaries of bids for materials, equipment, or services which exceed $500 must be maintained on the website or application for 1 year. In lieu of summaries, complete copies of the bids may be posted.

f. The annual budget required by s. 718.112(2)(f) and any proposed budget to be considered at the annual meeting.

g. The financial report required by subsection (13) and any monthly income or expense statement to be considered at a meeting.

h. The certification of each director required by s. 718.112(2)(d)4.b.

i. All contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested.

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.436(2)(b)6. and 718.3027(3).

k. The notice of any unit owner meeting and the agenda for the meeting, as required by s. 718.112(2)(d)3., no later than 14 days before the meeting. The notice must be posted in plain view

on the front page of the website or application, or on a separate subpage of the website or application labeled "Notices" which is conspicuously visible and linked from the front page. The association must also post on its website or application any document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered.

1. Notice of any board meeting, the agenda, and any other document required for the meeting as required by s. 718.112(2)(c), which must be posted no later than the date required for notice under ~~pursuant to~~ s. 718.112(2)(c).

3. The association shall ensure that the information and records described in paragraph (c), which are not allowed to be accessible to unit owners, are not posted on the association's website or application. If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's website or application, the association shall ensure the information is redacted before posting the documents ~~online~~. Notwithstanding the foregoing, the association or its agent is not liable for disclosing information that is protected or restricted under ~~pursuant to~~ this paragraph unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

4. The failure of the association to post information required under subparagraph 2. is not in and of itself sufficient to invalidate any action or decision of the association's board or its committees.

Section 4. Paragraphs (d), (i), (j), (k), and (p) of subsection (2) of section 718.112, Florida Statutes, are amended, and paragraph (c) is added to subsection (1) of that section, to read:

718.112 Bylaws.—

(1) GENERALLY.—

(c) The association may extinguish a discriminatory restriction as provided in s. 712.065.

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

(d) *Unit owner meetings.*—

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

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term must be filled by electing a new board member, and the election must be

by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. Board members may serve terms longer than 1 year if permitted by the bylaws or articles of incorporation. A board member may not serve more than 8 consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. Only board service that occurs on or after July 1, 2018, may be used when calculating a board member's term limit. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the

newly constituted board even if the directors constitute less than a quorum or there is only one director. In a residential condominium association of more than 10 units or in a residential condominium association that does not include timeshare units or timeshare interests, co-owners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any monetary obligation due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election

to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. This subparagraph does not limit the term of a member of the board of a nonresidential or timeshare condominium.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice of an annual meeting must include an agenda; ~~, must~~ be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting; ~~,~~ and ~~must~~ be posted in a conspicuous place on the condominium property or association property at least 14 continuous days before the annual meeting. Written notice of a meeting other than an annual meeting must include an agenda; be mailed, hand delivered, or electronically transmitted to each unit owner; and be posted in a conspicuous place on the condominium property or association property within the timeframe specified in the bylaws. If the bylaws do not specify a timeframe for written notice of a meeting other than an annual meeting, notice must be provided at least 14 continuous days before the meeting. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property or association property where all notices of unit owner meetings must be posted. This requirement does not apply if there is no condominium property for posting notices. In lieu of, or in

addition to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association's official records. Unless a unit owner waives

in writing the right to receive notice of the annual meeting, such notice must be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

4. The members of the board of a residential condominium shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This subparagraph does not apply to an association governing a timeshare condominium.

a. At least 60 days before a scheduled election, the

association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates <u>not less than 14 days or more than 34 days before the date of the election</u>. Upon request of a candidate, an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for

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

b. Within 90 days after being elected or appointed to the board of an association of a residential condominium, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, within 90 days after being elected or appointed to the board,

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

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

5. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), must be made at a duly noticed meeting of unit owners and is subject to

all requirements of this chapter or the applicable condominium documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any law that provides for such action.

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

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

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

9. Unless otherwise provided in the bylaws, any vacancy

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

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

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election

procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(i) *Transfer fees.*—An association may not ~~no~~ charge a fee ~~shall be made by the association or any body thereof~~ in connection with the sale, mortgage, lease, sublease, or other transfer of a unit unless the association is required to approve such transfer and a fee for such approval is provided for in the declaration, articles, or bylaws. Any such fee may be preset, but may not ~~in no event may such fee~~ exceed $150 ~~$100~~ per applicant. For the purpose of calculating the fee, spouses or a parent or parents and any dependent children ~~other than husband/wife or parent/dependent child, which~~ are considered one applicant. However, if the lease or sublease is a renewal of a lease or sublease with the same lessee or sublessee, a charge may not ~~no charge shall~~ be made. Such fees must be adjusted every 5 years in an amount equal to the total of the annual increases occurring in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items during that 5-year period. The Department of Business and Professional Regulation shall periodically calculate the fees, rounded to the nearest dollar, and publish the amounts, as adjusted, on its website. The foregoing notwithstanding, ~~an association may,~~ if the authority to do so appears in the declaration, articles, or bylaws, an association may require that a prospective lessee

place a security deposit, in an amount not to exceed the equivalent of 1 month's rent, into an escrow account maintained by the association. The security deposit shall protect against damages to the common elements or association property. Payment of interest, claims against the deposit, refunds, and disputes under this paragraph shall be handled in the same fashion as provided in part II of chapter 83.

(j) *Recall of board members.*—Subject to s. 718.301, any member of the board of administration may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all the voting interests. A special meeting of the unit owners to recall a member or members of the board of administration may be called by 10 percent of the voting interests giving notice of the meeting as required for a meeting of unit owners, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose.

1. If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall will be effective as provided in this paragraph. The board shall duly notice and hold a board meeting within 5 full business days after the adjournment of the unit owner meeting to recall one or more board members. Such member or members shall be recalled effective immediately upon conclusion of the board meeting,

provided that the recall is facially valid. A recalled member must turn over to the board, within 10 full business days after the vote, any and all records and property of the association in their possession.

2. If the proposed recall is by an agreement in writing by a majority of all voting interests, the agreement in writing or a copy thereof shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure. The board of administration shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing. Such member or members shall be recalled effective immediately upon the conclusion of the board meeting, provided that the recall is facially valid. A recalled member must turn over to the board, within 10 full business days, any and all records and property of the association in their possession.

3. If the board fails to duly notice and hold a board meeting within 5 full business days after service of an agreement in writing or within 5 full business days after the adjournment of the unit owner recall meeting, the recall is ~~shall be~~ deemed effective and the board members so recalled shall turn over to the board within 10 full business days after the vote any and all records and property of the association.

4. If the board fails to duly notice and hold the required meeting or at the conclusion of the meeting determines that the

recall is not facially valid, the unit owner representative may file a petition or court action under ~~pursuant to~~ s. 718.1255 challenging the board's failure to act or challenging the board's determination on facial validity. The petition or action must be filed within 60 days after the expiration of the applicable 5-full-business-day period. The review of a petition or action under this subparagraph is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

5. If a vacancy occurs on the board as a result of a recall or removal and less than a majority of the board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any provision to the contrary contained in this subsection. If vacancies occur on the board as a result of a recall and a majority or more of the board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the division, which rules need not be consistent with this subsection. The rules must provide procedures governing the conduct of the recall election as well as the operation of the association during the period after a recall but before the recall election.

6. A board member who has been recalled may file a petition or court action under ~~pursuant to~~ s. 718.1255 challenging the validity of the recall. The petition or action

must be filed within 60 days after the recall. The association and the unit owner representative shall be named as the respondents. The petition or action may challenge the facial validity of the written agreement or ballots filed or the substantial compliance with the procedural requirements for the recall. If the arbitrator or court determines the recall was invalid, the petitioning board member shall immediately be reinstated and the recall is null and void. A board member who is successful in challenging a recall is entitled to recover reasonable attorney fees and costs from the respondents. The arbitrator or court may award reasonable attorney fees and costs to the respondents if they prevail, if the arbitrator or court makes a finding that the petitioner's claim is frivolous.

7. The division or a court of competent jurisdiction may not accept for filing a recall petition or court action, whether filed under ~~pursuant to~~ subparagraph 1., subparagraph 2., subparagraph 4., or subparagraph 6., when there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled or when 60 or fewer days have elapsed since the election of the board member sought to be recalled.

(k) *Alternative dispute resolution* ~~*Arbitration*~~.—There must ~~shall~~ be a provision for alternative dispute resolution ~~mandatory nonbinding arbitration~~ as provided for in s. 718.1255 for any residential condominium.

~~(p) *Service providers; conflicts of interest.* An~~

~~association, which is not a timeshare condominium association, may not employ or contract with any service provider that is owned or operated by a board member or with any person who has a financial relationship with a board member or officer, or a relative within the third degree of consanguinity by blood or marriage of a board member or officer. This paragraph does not apply to a service provider in which a board member or officer, or a relative within the third degree of consanguinity by blood or marriage of a board member or officer, owns less than 1 percent of the equity shares.~~

Section 5. Subsection (8) of section 718.113, Florida Statutes, is amended to read:

718.113 Maintenance; limitation upon improvement; display of flag; hurricane shutters and protection; display of religious decorations.—

(8) The Legislature finds that the use of electric and natural gas fuel vehicles conserves and protects the state's environmental resources, provides significant economic savings to drivers, and serves an important public interest. The participation of condominium associations is essential to the state's efforts to conserve and protect the state's environmental resources and provide economic savings to drivers. For purposes of this subsection, the term "natural gas fuel" has the same meaning as in s. 206.9951, and the term "natural gas fuel vehicle" means any motor vehicle, as defined in s. 320.01,

that is powered by natural gas fuel. Therefore, the installation of an electric vehicle charging station or a natural gas fuel station shall be governed as follows:

(a) A declaration of condominium or restrictive covenant may not prohibit or be enforced so as to prohibit any unit owner from installing an electric vehicle charging station or a natural gas fuel station within the boundaries of the unit owner's limited common element or exclusively designated parking area. The board of administration of a condominium association may not prohibit a unit owner from installing an electric vehicle charging station for an electric vehicle, as defined in s. 320.01, or a natural gas fuel station for a natural gas fuel vehicle within the boundaries of his or her limited common element or exclusively designated parking area. The installation of such charging or fuel stations are subject to the provisions of this subsection.

(b) The installation may not cause irreparable damage to the condominium property.

(c) The electricity for the electric vehicle charging station or natural gas fuel station must be separately metered or metered by an embedded meter and payable by the unit owner installing such charging or fuel station or by his or her successor.

(d) The cost for supply and storage of the natural gas fuel must be paid by the unit owner installing the natural gas

fuel station or by his or her successor.

(e) ~~(d)~~ The unit owner who is installing an electric vehicle charging station or a natural gas fuel station is responsible for the costs of installation, operation, maintenance, and repair, including, but not limited to, hazard and liability insurance. The association may enforce payment of such costs under ~~pursuant to~~ s. 718.116.

(f) ~~(e)~~ If the unit owner or his or her successor decides there is no longer a need for the electric ~~electronic~~ vehicle charging station or natural gas fuel station, such person is responsible for the cost of removal of such ~~the electronic vehicle~~ charging or fuel station. The association may enforce payment of such costs under ~~pursuant to~~ s. 718.116.

(g) The unit owner installing, maintaining, or removing the electric vehicle charging station or natural gas fuel station is responsible for complying with all federal, state, or local laws and regulations applicable to such installation, maintenance, or removal.

(h) ~~(f)~~ The association may require the unit owner to:

1. Comply with bona fide safety requirements, consistent with applicable building codes or recognized safety standards, for the protection of persons and property.

2. Comply with reasonable architectural standards adopted by the association that govern the dimensions, placement, or external appearance of the electric vehicle charging station or

natural gas fuel station, provided that such standards may not prohibit the installation of such charging or fuel station or substantially increase the cost thereof.

3. Engage the services of a licensed and registered firm ~~electrical contractor or engineer~~ familiar with the installation or removal and core requirements of an electric vehicle charging station or a natural gas fuel station.

4. Provide a certificate of insurance naming the association as an additional insured on the owner's insurance policy for any claim related to the installation, maintenance, or use of the electric vehicle charging station or natural gas fuel station within 14 days after receiving the association's approval to install such charging or fuel station or notice to provide such a certificate.

5. Reimburse the association for the actual cost of any increased insurance premium amount attributable to the electric vehicle charging station or natural gas fuel station within 14 days after receiving the association's insurance premium invoice.

(i) ~~(g)~~ The association provides an implied easement across the common elements of the condominium property to the unit owner for purposes of ~~the installation of the~~ electric vehicle charging station or natural gas fuel station installation, and the furnishing of electrical power or natural gas fuel supply, including any necessary equipment, to such charging or fuel

station, subject to the requirements of this subsection.

Section 6. Subsection (16) of section 718.117, Florida Statutes, is amended to read:

718.117 Termination of condominium.—

(16) RIGHT TO CONTEST.—A unit owner or lienor may contest a plan of termination by initiating a petition in accordance with ~~for mandatory nonbinding arbitration pursuant to~~ s. 718.1255 within 90 days after the date the plan is recorded. A unit owner or lienor may only contest the fairness and reasonableness of the apportionment of the proceeds from the sale among the unit owners, that the liens of the first mortgages of unit owners other than the bulk owner have not or will not be satisfied to the extent required by subsection (3), or that the required vote to approve the plan was not obtained. A unit owner or lienor who does not contest the plan within the 90-day period is barred from asserting or prosecuting a claim against the association, the termination trustee, any unit owner, or any successor in interest to the condominium property. In an action contesting a plan of termination, the person contesting the plan has the burden of pleading and proving that the apportionment of the proceeds from the sale among the unit owners was not fair and reasonable or that the required vote was not obtained. The apportionment of sale proceeds is presumed fair and reasonable if it was determined pursuant to the methods prescribed in subsection (12). If the petition is filed with the

division for arbitration, the arbitrator shall determine the rights and interests of the parties in the apportionment of the sale proceeds. If the arbitrator determines that the apportionment of sales proceeds is not fair and reasonable, the arbitrator may void the plan or may modify the plan to apportion the proceeds in a fair and reasonable manner pursuant to this section based upon the proceedings and order the modified plan of termination to be implemented. If the arbitrator determines that the plan was not properly approved, or that the procedures to adopt the plan were not properly followed, the arbitrator may void the plan or grant other relief it deems just and proper. The arbitrator shall automatically void the plan upon a finding that any of the disclosures required in subparagraph (3)(c)5. are omitted, misleading, incomplete, or inaccurate. Any challenge to a plan, other than a challenge that the required vote was not obtained, does not affect title to the condominium property or the vesting of the condominium property in the trustee, but shall only be a claim against the proceeds of the plan. In any such action, the prevailing party shall recover reasonable attorney fees and costs.

Section 7. Subsections (2) and (4) of section 718.121, Florida Statutes, are amended to read:

718.121 Liens.—

(2) Labor performed on or materials furnished to a unit may ~~shall~~ not be the basis for the filing of a lien under

~~pursuant to~~ part I of chapter 713, the Construction Lien Law, against the unit or condominium parcel of any unit owner not expressly consenting to or requesting the labor or materials. Labor performed on or materials furnished for the installation of a natural gas fuel station or an electric ~~electronic~~ vehicle charging station under ~~pursuant to~~ s. 718.113(8) may not be the basis for filing a lien under part I of chapter 713 against the association, but such a lien may be filed against the unit owner. Labor performed on or materials furnished to the common elements are not the basis for a lien on the common elements, but if authorized by the association, the labor or materials are deemed to be performed or furnished with the express consent of each unit owner and may be the basis for the filing of a lien against all condominium parcels in the proportions for which the owners are liable for common expenses.

(4) Except as otherwise provided in this chapter, no lien may be filed by the association against a condominium unit until 30 days after the date on which a notice of intent to file a lien has been delivered to the owner by registered or certified mail, return receipt requested, and by first-class United States mail to the owner at his or her last address as reflected in the records of the association, if the address is within the United States, and delivered to the owner at the address of the unit if the owner's address as reflected in the records of the association is not the unit address. If the address reflected in

the records is outside the United States, sending the notice to that address and to the unit address by first-class United States mail is sufficient. ~~Delivery of the~~ Notice is ~~shall be~~ deemed to have been delivered ~~given~~ upon mailing as required by this subsection, provided that it is~~. The notice must be~~ in substantially the following form:

NOTICE OF INTENT
TO RECORD A CLAIM OF LIEN

RE: Unit .... of ...(name of association)...

The following amounts are currently due on your account to ...(name of association)..., and must be paid within 30 days after your receipt of this letter. This letter shall serve as the association's notice of intent to record a Claim of Lien against your property no sooner than 30 days after your receipt of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)...	$.....
Late fee, if applicable	$.....
Interest through ...(dates)...*	$.....
Certified mail charges ...(dates)...	$.....

Other costs $.....

TOTAL OUTSTANDING $.....

*Interest accrues at the rate of .... percent per annum.

Section 8. Section 718.1255, Florida Statutes, is amended to read:

718.1255 Alternative dispute resolution; ~~voluntary~~ mediation; ~~mandatory~~ nonbinding arbitration; legislative findings.—

(1) DEFINITIONS.—As used in this section, the term "dispute" means any disagreement between two or more parties that involves:

(a) The authority of the board of directors, under this chapter or association document, to:

1. Require any owner to take any action, or not to take any action, involving that owner's unit or the appurtenances thereto.

2. Alter or add to a common area or element.

(b) The failure of a governing body, when required by this chapter or an association document, to:

1. Properly conduct elections.

2. Give adequate notice of meetings or other actions.

3. Properly conduct meetings.

4. Allow inspection of books and records.

(c) A plan of termination pursuant to s. 718.117.

"Dispute" does not include any disagreement that primarily involves: title to any unit or common element; the interpretation or enforcement of any warranty; the levy of a fee or assessment, or the collection of an assessment levied against a party; the eviction or other removal of a tenant from a unit; alleged breaches of fiduciary duty by one or more directors; or claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

(2) ~~VOLUNTARY~~ MEDIATION.~~—Voluntary~~ Mediation through Citizen Dispute Settlement Centers as provided for in s. 44.201 is encouraged.

(3) LEGISLATIVE FINDINGS.—

(a) The Legislature finds that unit owners are frequently at a disadvantage when litigating against an association. Specifically, a condominium association, with its statutory assessment authority, is often more able to bear the costs and expenses of litigation than the unit owner who must rely on his or her own financial resources to satisfy the costs of litigation against the association.

(b) The Legislature finds that alternative dispute resolution has been making progress in reducing court dockets and trials and in offering a more efficient, cost-effective option to court litigation. However, the Legislature also finds

that alternative dispute resolution should not be used as a mechanism to encourage the filing of frivolous or nuisance suits.

(c) There exists a need to develop a flexible means of alternative dispute resolution that directs disputes to the most efficient means of resolution.

(d) The high cost and significant delay of circuit court litigation faced by unit owners in the state can be alleviated by requiring nonbinding arbitration and mediation in appropriate cases, thereby reducing delay and attorney ~~attorney's~~ fees while preserving the right of either party to have its case heard by a jury, if applicable, in a court of law.

(4) ~~MANDATORY~~ NONBINDING ARBITRATION AND MEDIATION OF DISPUTES.—The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation may employ full-time attorneys to act as arbitrators to conduct the arbitration hearings provided by this chapter. The division may also certify attorneys who are not employed by the division to act as arbitrators to conduct the arbitration hearings provided by this chapter. A ~~No~~ person may not be employed by the department as a full-time arbitrator unless he or she is a member in good standing of The Florida Bar. A person may only be certified by the division to act as an arbitrator if he or she has been a member in good standing of The Florida Bar for at least 5 years and has mediated or arbitrated at least 10

disputes involving condominiums in this state during the 3 years immediately preceding the date of application, mediated or arbitrated at least 30 disputes in any subject area in this state during the 3 years immediately preceding the date of application, or attained board certification in real estate law or condominium and planned development law from The Florida Bar. Arbitrator certification is valid for 1 year. An arbitrator who does not maintain the minimum qualifications for initial certification may not have his or her certification renewed. The department may not enter into a legal services contract for an arbitration hearing under this chapter with an attorney who is not a certified arbitrator unless a certified arbitrator is not available within 50 miles of the dispute. The department shall adopt rules of procedure to govern such arbitration hearings including mediation incident thereto. The decision of an arbitrator is ~~shall be~~ final; however, a decision is ~~shall~~ not ~~be~~ deemed final agency action. Nothing in this provision shall be construed to foreclose parties from proceeding in a trial de novo unless the parties have agreed that the arbitration is binding. If judicial proceedings are initiated, the final decision of the arbitrator is ~~shall be~~ admissible in evidence in the trial de novo.

(a) Before ~~Prior to~~ the institution of court litigation, a party to a dispute, other than an election or recall dispute, shall either petition the division for nonbinding arbitration or

initiate presuit mediation as provided in subsection (5). Arbitration is binding on the parties if all parties in arbitration agree to be bound in a writing filed in arbitration. The petition must be accompanied by a filing fee in the amount of $50. Filing fees collected under this section must be used to defray the expenses of the alternative dispute resolution program.

(b) The petition must recite, and have attached thereto, supporting proof that the petitioner gave the respondents:

1. Advance written notice of the specific nature of the dispute;

2. A demand for relief, and a reasonable opportunity to comply or to provide the relief; and

3. Notice of the intention to file an arbitration petition or other legal action in the absence of a resolution of the dispute.

Failure to include the allegations or proof of compliance with these prerequisites requires dismissal of the petition without prejudice.

(c) Upon receipt, the petition shall be promptly reviewed by the division to determine the existence of a dispute and compliance with the requirements of paragraphs (a) and (b). If emergency relief is required and is not available through arbitration, a motion to stay the arbitration may be filed. The

motion must be accompanied by a verified petition alleging facts that, if proven, would support entry of a temporary injunction, and if an appropriate motion and supporting papers are filed, the division may abate the arbitration pending a court hearing and disposition of a motion for temporary injunction.

(d) Upon determination by the division that a dispute exists and that the petition substantially meets the requirements of paragraphs (a) and (b) and any other applicable rules, the division shall assign or enter into a contract with an arbitrator and serve a copy of the petition upon all respondents. The arbitrator shall conduct a hearing within 30 days after being assigned or entering into a contract unless the petition is withdrawn or a continuance is granted for good cause shown.

(e) Before or after the filing of the respondents' answer to the petition, any party may request that the arbitrator refer the case to mediation under this section and any rules adopted by the division. Upon receipt of a request for mediation, the division shall promptly contact the parties to determine if there is agreement that mediation would be appropriate. If all parties agree, the dispute must be referred to mediation. Notwithstanding a lack of an agreement by all parties, the arbitrator may refer a dispute to mediation at any time.

(f) Upon referral of a case to mediation, the parties must select a mutually acceptable mediator. To assist in the

selection, the arbitrator shall provide the parties with a list of both volunteer and paid mediators that have been certified by the division under s. 718.501. If the parties are unable to agree on a mediator within the time allowed by the arbitrator, the arbitrator shall appoint a mediator from the list of certified mediators. If a case is referred to mediation, the parties shall attend a mediation conference, as scheduled by the parties and the mediator. If any party fails to attend a duly noticed mediation conference, without the permission or approval of the arbitrator or mediator, the arbitrator must impose sanctions against the party, including the striking of any pleadings filed, the entry of an order of dismissal or default if appropriate, and the award of costs and attorney fees incurred by the other parties. Unless otherwise agreed to by the parties or as provided by order of the arbitrator, a party is deemed to have appeared at a mediation conference by the physical presence of the party or its representative having full authority to settle without further consultation, provided that an association may comply by having one or more representatives present with full authority to negotiate a settlement and recommend that the board of administration ratify and approve such a settlement within 5 days from the date of the mediation conference. The parties shall share equally the expense of mediation, unless they agree otherwise.

(g) The purpose of mediation as provided for by this

section is to present the parties with an opportunity to resolve the underlying dispute in good faith, and with a minimum expenditure of time and resources.

(h) Mediation proceedings must generally be conducted in accordance with the Florida Rules of Civil Procedure, and these proceedings are privileged and confidential to the same extent as court-ordered mediation. Persons who are not parties to the dispute are not allowed to attend the mediation conference without the consent of all parties, with the exception of counsel for the parties and corporate representatives designated to appear for a party. If the mediator declares an impasse after a mediation conference has been held, the arbitration proceeding terminates, unless all parties agree in writing to continue the arbitration proceeding, in which case the arbitrator's decision shall be binding or nonbinding, as agreed upon by the parties; in the arbitration proceeding, the arbitrator shall not consider any evidence relating to the unsuccessful mediation except in a proceeding to impose sanctions for failure to appear at the mediation conference. If the parties do not agree to continue arbitration, the arbitrator shall enter an order of dismissal, and either party may institute a suit in a court of competent jurisdiction. The parties may seek to recover any costs and attorney fees incurred in connection with arbitration and mediation proceedings under this section as part of the costs and fees that may be recovered by the prevailing party in any

subsequent litigation.

(i) Arbitration shall be conducted according to rules adopted by the division. The filing of a petition for arbitration shall toll the applicable statute of limitations.

(j) At the request of any party to the arbitration, the arbitrator shall issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and any party on whose behalf a subpoena is issued may apply to the court for orders compelling such attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by the Florida Rules of Civil Procedure. Discovery may, in the discretion of the arbitrator, be permitted in the manner provided by the Florida Rules of Civil Procedure. Rules adopted by the division may authorize any reasonable sanctions except contempt for a violation of the arbitration procedural rules of the division or for the failure of a party to comply with a reasonable nonfinal order issued by an arbitrator which is not under judicial review.

(k) The arbitration decision shall be rendered within 30 days after the hearing and presented to the parties in writing. An arbitration decision is final in those disputes in which the parties have agreed to be bound. An arbitration decision is also final if a complaint for a trial de novo is not filed in a court of competent jurisdiction in which the condominium is located within 30 days. The right to file for a trial de novo entitles

the parties to file a complaint in the appropriate trial court for a judicial resolution of the dispute. The prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney fees in an amount determined by the arbitrator. Such an award shall include the costs and reasonable attorney fees incurred in the arbitration proceeding as well as the costs and reasonable attorney fees incurred in preparing for and attending any scheduled mediation. An arbitrator's failure to render a written decision within 30 days after the hearing may result in the cancellation of his or her arbitration certification.

(l) The party who files a complaint for a trial de novo shall be assessed the other party's arbitration costs, court costs, and other reasonable costs, including attorney fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration hearing if the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial de novo shall be awarded reasonable court costs and attorney fees.

(m) Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the condominium is located. A petition may not be granted unless the time for appeal by the filing of a complaint for trial de novo has expired. If a complaint for a

trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition for enforcement is granted, the petitioner shall recover reasonable attorney fees and costs incurred in enforcing the arbitration award. A mediation settlement may also be enforced through the county or circuit court, as applicable, and any costs and fees incurred in the enforcement of a settlement agreement reached at mediation must be awarded to the prevailing party in any enforcement action.

(5) PRESUIT MEDIATION.—In lieu of the initiation of nonbinding arbitration as provided in subsections (1)-(4), a party may submit a dispute to presuit mediation in accordance with s. 720.311; however, election and recall disputes are not eligible for mediation and such disputes must be arbitrated by the division or filed in a court of competent jurisdiction.

(6) DISPUTES INVOLVING ELECTION IRREGULARITIES.—Every arbitration petition received by the division and required to be filed under this section challenging the legality of the election of any director of the board of administration must be handled on an expedited basis in the manner provided by the division's rules for recall arbitration disputes.

(7)~~(6)~~ APPLICABILITY.—This section does not apply to a nonresidential condominium unless otherwise specifically provided for in the declaration of the nonresidential condominium.

Section 9. Section 718.1265, Florida Statutes, is amended to read:

718.1265 Association emergency powers.—

(1) To the extent allowed by law, ~~and~~ unless specifically prohibited by the declaration of condominium, the articles, or the bylaws of an association, and consistent with ~~the provisions of~~ s. 617.0830, the board of administration, in response to damage or injury caused by or anticipated in connection with an emergency, as defined in s. 252.34(4), ~~event~~ for which a state of emergency is declared pursuant to s. 252.36 in the locale in which the condominium is located, may~~, but is not required to,~~ exercise the following powers:

(a) Conduct board meetings, committee meetings, elections, and membership meetings, in whole or in part, by telephone, real-time videoconferencing, or similar real-time electronic or video communication with notice given as is practicable. Such notice may be given in any practicable manner, including publication, radio, United States mail, the Internet, electronic transmission, public service announcements, and conspicuous posting on the condominium property or association property or any other means the board deems reasonable under the circumstances. Notice of ~~board~~ decisions also may be communicated as provided in this paragraph.

(b) Cancel and reschedule any association meeting.

(c) Name as assistant officers persons who are not

directors, which assistant officers shall have the same authority as the executive officers to whom they are assistants during the state of emergency to accommodate the incapacity or unavailability of any officer of the association.

(d) Relocate the association's principal office or designate alternative principal offices.

(e) Enter into agreements with local counties and municipalities to assist counties and municipalities with debris removal.

(f) Implement a disaster plan or an emergency plan before, during, or ~~immediately~~ following the event for which a state of emergency is declared which may include, but is not limited to, shutting down or off elevators; electricity; water, sewer, or security systems; or air conditioners.

(g) Based upon advice of emergency management officials or public health officials, or upon the advice of licensed professionals retained by or otherwise available to the board, determine any portion of the condominium property or association property unavailable for entry or occupancy by unit owners, family members, tenants, guests, agents, or invitees to protect the health, safety, or welfare of such persons.

(h) Require the evacuation of the condominium property in the event of a mandatory evacuation order in the locale in which the condominium is located. Should any unit owner or other occupant of a condominium fail or refuse to evacuate the

condominium property or association property where the board has required evacuation, the association shall be immune from liability or injury to persons or property arising from such failure or refusal.

(i) Based upon advice of emergency management officials or public health officials, or upon the advice of licensed professionals retained by or otherwise available to the board, determine whether the condominium property, association property, or any portion thereof can be safely inhabited, accessed, or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.

(j) Mitigate further damage, injury, or contagion, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus or contagion, including, but not limited to, mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the condominium property, even if the unit owner is obligated by the declaration or law to insure or replace those fixtures and to remove personal property from a unit.

(k) Contract, on behalf of any unit owner or owners, for items or services for which the owners are otherwise individually responsible, but which are necessary to prevent further injury, contagion, or damage to the condominium property

or association property. In such event, the unit owner or owners on whose behalf the board has contracted are responsible for reimbursing the association for the actual costs of the items or services, and the association may use its lien authority provided by s. 718.116 to enforce collection of the charges. Without limitation, such items or services may include the drying of units, the boarding of broken windows or doors, ~~and~~ the replacement of damaged air conditioners or air handlers to provide climate control in the units or other portions of the property, and the sanitizing of the condominium property or association property, as applicable.

(l) Regardless of any provision to the contrary and even if such authority does not specifically appear in the declaration of condominium, articles, or bylaws of the association, levy special assessments without a vote of the owners.

(m) Without unit owners' approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association when operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions as are contained in the declaration of condominium, articles, or bylaws of the association.

(2) The special powers authorized under subsection (1) shall be limited to that time reasonably necessary to protect

the health, safety, and welfare of the association and the unit owners and the unit owners' family members, tenants, guests, agents, or invitees and shall be reasonably necessary to mitigate further damage, injury, or contagion and make emergency repairs.

(3) Notwithstanding paragraphs (1)(f)-(i), during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36, an association may not prohibit unit owners, tenants, guests, agents, or invitees of a unit owner from accessing the unit and the common elements and limited common elements appurtenant thereto for the purposes of ingress to and egress from the unit and when access is necessary in connection with:

(a) The sale, lease, or other transfer of title of a unit; or

(b) The habitability of the unit or for the health and safety of such person unless a governmental order or determination, or a public health directive from the Centers for Disease Control and Prevention, has been issued prohibiting such access to the unit. Any such access is subject to reasonable restrictions adopted by the association.

Section 10. Subsection (3) of section 718.202, Florida Statutes, is amended to read:

718.202 Sales or reservation deposits prior to closing.—

(3) If the contract for sale of the condominium unit so

provides, the developer may withdraw escrow funds in excess of 10 percent of the purchase price from the special account required by subsection (2) when the construction of improvements has begun. He or she may use the funds for the actual costs incurred by the developer in the ~~actual~~ construction and development of the condominium property in which the unit to be sold is located. For purposes of this subsection, the term "actual costs" includes, but is not limited to, expenditures for demolition, site clearing, permit fees, impact fees, and utility reservation fees, as well as architectural, engineering, and surveying fees that directly relate to construction and development of the condominium property. However, no part of these funds may be used for salaries, commissions, or expenses of salespersons; ~~or~~ for advertising, marketing, or promotional purposes; or for loan fees and costs, principal and interest on loans, attorney fees, accounting fees, or insurance costs. A contract which permits use of the advance payments for these purposes shall include the following legend conspicuously printed or stamped in boldfaced type on the first page of the contract and immediately above the place for the signature of the buyer: ANY PAYMENT IN EXCESS OF 10 PERCENT OF THE PURCHASE PRICE MADE TO DEVELOPER PRIOR TO CLOSING PURSUANT TO THIS CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY THE DEVELOPER.

Section 11. Subsection (1) and paragraph (b) of subsection (3) of section 718.303, Florida Statutes, are amended to read:

718.303 Obligations of owners and occupants; remedies.—

(1) Each unit owner, ~~each~~ tenant and other invitee, and ~~each~~ association is governed by, and must comply with the provisions of, this chapter, the declaration, the documents creating the association, and the association bylaws which are ~~shall be deemed~~ expressly incorporated into any lease of a unit. Actions at law or in equity ~~for damages or for injunctive relief~~, or both, for failure to comply with these provisions may be brought by the association or by a unit owner against:

(a) The association.

(b) A unit owner.

(c) Directors designated by the developer, for actions taken by them before control of the association is assumed by unit owners other than the developer.

(d) Any director who willfully and knowingly fails to comply with these provisions.

(e) Any tenant leasing a unit, and any other invitee occupying a unit.

The prevailing party in any such action or in any action in which the purchaser claims a right of voidability based upon contractual provisions as required in s. 718.503(1)(a) is entitled to recover reasonable attorney ~~attorney's~~ fees. A unit owner prevailing in an action between the association and the unit owner under this subsection ~~section~~, in addition to

recovering his or her reasonable attorney ~~attorney's~~ fees, may recover additional amounts as determined by the court to be necessary to reimburse the unit owner for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. Actions arising under this subsection are not considered ~~may not be deemed to be~~ actions for specific performance.

(3) The association may levy reasonable fines for the failure of the owner of the unit or its tenant ~~occupant~~, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. A fine may not become a lien against a unit. A fine may be levied by the board on the basis of each day of a continuing violation, with a single notice and opportunity for hearing before a committee as provided in paragraph (b). However, the fine may not exceed $100 per violation, or $1,000 in the aggregate.

(b) A fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days' written notice to the unit owner and, if applicable, any tenant ~~occupant~~, licensee, or invitee of the unit owner sought to be fined or suspended, and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or

employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the committee does not approve the proposed fine or suspension by majority vote, the fine or suspension may not be imposed. If the proposed fine or suspension is approved by the committee, the fine payment is due 5 days after notice of the approved fine is provided to the unit owner and, if applicable, to any tenant, licensee, or invitee of the unit owner ~~the date of the committee meeting at which the fine is approved~~. The association must provide written notice of such fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant, licensee, or invitee of the unit owner.

Section 12. Subsection (5) is added to section 718.405, Florida Statutes, to read:

718.405 Multicondominiums; multicondominium associations.—

(5) This section does not prevent or restrict a multicondominium association from adopting a consolidated or combined declaration of condominium if such declaration complies with s. 718.104 and does not serve to merge the condominiums or change the legal descriptions of the condominium parcels as set forth in s. 718.109, unless accomplished in accordance with law. This subsection is intended to clarify existing law and applies to associations existing on July 1, 2021.

Section 13. Paragraph (l) of subsection (1) of section 718.501, Florida Statutes, is amended to read:

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

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

(l) The division shall develop a program to certify both volunteer and paid mediators to provide mediation of condominium disputes. The division shall provide, upon request, a list of such mediators to any association, unit owner, or other participant in alternative dispute resolution ~~arbitration~~ proceedings under s. 718.1255 requesting a copy of the list. The

division shall include on the list of volunteer mediators only the names of persons who have received at least 20 hours of training in mediation techniques or who have mediated at least 20 disputes. In order to become initially certified by the division, paid mediators must be certified by the Supreme Court to mediate court cases in county or circuit courts. However, the division may adopt, by rule, additional factors for the certification of paid mediators, which must be related to experience, education, or background. Any person initially certified as a paid mediator by the division must, in order to continue to be certified, comply with the factors or requirements adopted by rule.

Section 14. Section 718.5014, Florida Statutes, is amended to read:

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

Section 15. Subsection (25) of section 719.103, Florida Statutes, is amended to read:

719.103 Definitions.—As used in this chapter:

(25) "Unit" means a part of the cooperative property which is subject to exclusive use and possession. A unit may be improvements, land, or land and improvements together, as specified in the cooperative documents. An interest in a unit is an interest in real property.

Section 16. Paragraph (c) of subsection (2) of section 719.104, Florida Statutes, is amended to read:

719.104 Cooperatives; access to units; records; financial reports; assessments; purchase of leases.—

(2) OFFICIAL RECORDS.—

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the association member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying, but may not require a member to demonstrate any purpose or state any reason for the inspection. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A member ~~unit owner~~ who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply.

The minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty under ~~pursuant to~~ s. 719.501(1)(d). The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 719.504 and year-end financial information required by the department, on the cooperative property to ensure their availability to members ~~unit owners~~ and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the same. 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 providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records shall not be accessible to members ~~unit 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 any 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 unit.

3. 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 employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

4. Medical records of unit owners.

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

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

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

Section 17. Paragraphs (b), (f), and (l) of subsection (1) of section 719.106, Florida Statutes, are amended, and subsection (3) is added to that section, to read:

719.106 Bylaws; cooperative ownership.—

(1) MANDATORY PROVISIONS.—The bylaws or other cooperative documents shall provide for the following, and if they do not, they shall be deemed to include the following:

(b) *Quorum; voting requirements; proxies.*—

1. Unless otherwise provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members shall be a majority of voting interests, and decisions shall be made by owners of a majority of the voting interests. Unless otherwise provided in this chapter, or in the articles of incorporation, bylaws, or other cooperative documents, and except as provided in subparagraph (d)1., decisions shall be made by owners of a majority of the voting interests represented at a meeting at which a quorum is present.

2. Except as specifically otherwise provided herein, after

January 1, 1992, unit owners may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves in accordance with subparagraph (j)2., for votes taken to waive the financial reporting requirements of s. 719.104(4)(b), for votes taken to amend the articles of incorporation or bylaws pursuant to this section, and for any other matter for which this chapter requires or permits a vote of the unit owners. Except as provided in paragraph (d), after January 1, 1992, no proxy, limited or general, shall be used in the election of board members. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. Notwithstanding the provisions of this section, unit owners may vote in person at unit owner meetings. Nothing contained herein shall limit the use of general proxies or require the use of limited proxies or require the use of limited proxies for any agenda item or election at any meeting of a timeshare cooperative.

3. Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first

meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the unit owner executing it.

4. A member of the board of administration or a committee may submit in writing his or her agreement or disagreement with any action taken at a meeting that the member did not attend. This agreement or disagreement may not be used as a vote for or against the action taken and may not be used for the purposes of creating a quorum.

5. A board member or committee member participating in a meeting via telephone, real-time videoconferencing, or similar real-time electronic or video communication counts toward a quorum, and such member may vote as if physically present ~~When some or all of the board or committee members meet by telephone conference, those board or committee members attending by telephone conference may be counted toward obtaining a quorum and may vote by telephone~~. A ~~telephone~~ speaker must ~~shall~~ be used ~~utilized~~ so that the conversation of such ~~those board or committee~~ members ~~attending by telephone~~ may be heard by the board or committee members attending in person, as well as by any unit owners present at a meeting.

(f) *Recall of board members.*—Subject to s. 719.301, any member of the board of administration may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all the voting interests. A special meeting of the voting interests to recall any member

of the board of administration may be called by 10 percent of the unit owners giving notice of the meeting as required for a meeting of unit owners, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose.

1. If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall shall be effective as provided in this paragraph. The board shall duly notice and hold a board meeting within 5 full business days after the adjournment of the unit owner meeting to recall one or more board members. At the meeting, the board shall either certify the recall, in which case such member or members shall be recalled effective immediately and shall turn over to the board within 5 full business days any and all records and property of the association in their possession, or shall proceed as set forth in subparagraph 3.

2. If the proposed recall is by an agreement in writing by a majority of all voting interests, the agreement in writing or a copy thereof shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure. The board of administration shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing. At the meeting, the board shall either certify the

written agreement to recall members of the board, in which case such members shall be recalled effective immediately and shall turn over to the board, within 5 full business days, any and all records and property of the association in their possession, or proceed as described in subparagraph 3.

3. If the board determines not to certify the written agreement to recall members of the board, or does not certify the recall by a vote at a meeting, the board shall, within 5 full business days after the board meeting, file with the division a petition for binding arbitration under ~~pursuant to the procedures of~~ s. 719.1255 or file an action with a court of competent jurisdiction. For purposes of this paragraph, the unit owners who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration or in a court action. If the arbitrator or court certifies the recall as to any member of the board, the recall is ~~shall be~~ effective upon the mailing of the final order of arbitration to the association or the final order of the court. If the association fails to comply with the order of the court or the arbitrator, the division may take action under ~~pursuant to~~ s. 719.501. Any member so recalled shall deliver to the board any and all records and property of the association in the member's possession within 5 full business days after the effective date of the recall.

4. If the board fails to duly notice and hold a board

meeting within 5 full business days after service of an agreement in writing or within 5 full business days after the adjournment of the unit owner recall meeting, the recall is ~~shall be~~ deemed effective and the board members so recalled shall immediately turn over to the board any and all records and property of the association.

5. If the board fails to duly notice and hold the required meeting or fails to file the required petition or action, the unit owner representative may file a petition under ~~pursuant to~~ s. 719.1255 or file an action in a court of competent jurisdiction challenging the board's failure to act. The petition or action must be filed within 60 days after the expiration of the applicable 5-full-business-day period. The review of a petition or action under this subparagraph is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

6. If a vacancy occurs on the board as a result of a recall and less than a majority of the board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any provision to the contrary contained in this chapter. If vacancies occur on the board as a result of a recall and a majority or more of the board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the division, which rules need not be consistent with

this chapter. The rules must provide procedures governing the conduct of the recall election as well as the operation of the association during the period after a recall but before the recall election.

7. A board member who has been recalled may file a petition under ~~pursuant to~~ s. 719.1255 or file an action in a court of competent jurisdiction challenging the validity of the recall. The petition or action must be filed within 60 days after the recall is deemed certified. The association and the unit owner representative shall be named as the respondents.

8. The division or court may not accept for filing a recall petition or action, whether filed under ~~pursuant to~~ subparagraph 1., subparagraph 2., subparagraph 5., or subparagraph 7. and regardless of whether the recall was certified, when there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled or when 60 or fewer days have not elapsed since the election of the board member sought to be recalled.

(l) *Alternative dispute resolution* ~~*Arbitration*~~.—There shall be a provision for alternative dispute resolution ~~mandatory nonbinding arbitration~~ of internal disputes arising from the operation of the cooperative in accordance with s. 719.1255.

(3) GENERALLY.—The association may extinguish a discriminatory restriction as provided under s. 712.065.

Section 18. Section 719.128, Florida Statutes, is amended to read:

719.128 Association emergency powers.—

(1) To the extent allowed by law, unless specifically prohibited by the cooperative documents, and consistent with s. 617.0830, the board of administration, in response to damage or injury caused by or anticipated in connection with an emergency, as defined in s. 252.34(4), ~~event~~ for which a state of emergency is declared pursuant to s. 252.36 in the area encompassed by the cooperative, may exercise the following powers:

(a) Conduct board meetings, committee meetings, elections, or membership meetings, in whole or in part, by telephone, real-time videoconferencing, or similar real-time electronic or video communication after notice of the meetings and board decisions is provided in as practicable a manner as possible, including via publication, radio, United States mail, the Internet, electronic transmission, public service announcements, conspicuous posting on the cooperative property, or any other means the board deems appropriate under the circumstances. Notice of decisions may also be communicated as provided in this paragraph.

(b) Cancel and reschedule an association meeting.

(c) Designate assistant officers who are not directors. If the executive officer is incapacitated or unavailable, the assistant officer has the same authority during the state of

emergency as the executive officer he or she assists.

(d) Relocate the association's principal office or designate an alternative principal office.

(e) Enter into agreements with counties and municipalities to assist counties and municipalities with debris removal.

(f) Implement a disaster or an emergency plan before, during, or ~~immediately~~ following the event for which a state of emergency is declared, which may include turning on or shutting off elevators; electricity; water, sewer, or security systems; or air conditioners for association buildings.

(g) Based upon the advice of emergency management officials or public health officials, or upon the advice of licensed professionals retained by or otherwise available to the board of administration, determine any portion of the cooperative property unavailable for entry or occupancy by unit owners or their family members, tenants, guests, agents, or invitees to protect their health, safety, or welfare.

(h) Based upon the advice of emergency management officials or public health officials, or upon the advice of licensed professionals retained by or otherwise available to the board of administration, determine whether the cooperative property or any portion thereof can be safely inhabited or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the cooperative documents ~~declaration~~.

(i) Require the evacuation of the cooperative property in the event of a mandatory evacuation order in the area where the cooperative is located or prohibit or restrict access to the cooperative property in the event of a public health threat. If a unit owner or other occupant of a cooperative fails to evacuate the cooperative property for which the board has required evacuation, the association is immune from liability for injury to persons or property arising from such failure.

(j) Mitigate further damage, injury, or contagion, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus, including mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the cooperative property, regardless of whether the unit owner is obligated by the cooperative documents ~~declaration~~ or law to insure or replace those fixtures and to remove personal property from a unit or to sanitize the cooperative property.

(k) Contract, on behalf of a unit owner, for items or services for which the owner is otherwise individually responsible, but which are necessary to prevent further injury, contagion, or damage to the cooperative property. In such event, the unit owner on whose behalf the board has contracted is responsible for reimbursing the association for the actual costs of the items or services, and the association may use its lien authority provided by s. 719.108 to enforce collection of the

charges. Such items or services may include the drying of the unit, the boarding of broken windows or doors, ~~and~~ the replacement of a damaged air conditioner or air handler to provide climate control in the unit or other portions of the property, and the sanitizing of the cooperative property.

(l) Notwithstanding a provision to the contrary, and regardless of whether such authority does not specifically appear in the cooperative documents, levy special assessments without a vote of the owners.

(m) Without unit owners' approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association if operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions contained in the cooperative documents.

(2) The authority granted under subsection (1) is limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the unit owners and their family members, tenants, guests, agents, or invitees, and to mitigate further damage, injury, or contagion and make emergency repairs.

(3) Notwithstanding paragraphs (1)(f)-(i), during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36, an association may not prohibit unit owners, tenants, guests, agents, or invitees of a unit

owner from accessing the common elements and limited common elements appurtenant thereto for the purposes of ingress to and egress from the unit when access is necessary in connection with:

(a) The sale, lease, or other transfer of title of a unit; or

(b) The habitability of the unit or for the health and safety of such person unless a governmental order or determination, or a public health directive from the Centers for Disease Control and Prevention, has been issued prohibiting such access to the unit. Any such access is subject to reasonable restrictions adopted by the association.

Section 19. Subsection (8) of section 720.301, Florida Statutes, is amended to read:

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

(8) "Governing documents" means:

(a) The recorded declaration of covenants for a community and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto.~~;~~

(b) The articles of incorporation and bylaws of the homeowners' association and any duly adopted amendments thereto.~~; and~~

~~(c) Rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and duly adopted amendments thereto.~~

Section 20. Paragraph (l) of subsection (4) of section 720.303, Florida Statutes, is redesignated as paragraph (m) and amended, paragraph (c) of subsection (2), paragraph (c) of subsection (5), paragraphs (c) and (d) of subsection (6), and paragraphs (b), (d), (g), (k), and (l) of subsection (10) are amended, and a new paragraph (l) is added to subsection (4) of that section, to read:

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

(2) BOARD MEETINGS.—

(c) The bylaws shall provide the following for giving notice to parcel owners and members of all board meetings and, if they do not do so, shall be deemed to include the following:

1. Notices of all board meetings must be posted in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place in the community, notice of each board meeting must be mailed or delivered to each member at least 7 days before the meeting, except in an emergency. Notwithstanding this general notice requirement, for communities with more than 100 members, the association bylaws may provide for a reasonable alternative to posting or mailing of notice for each board meeting, including publication of notice, provision of a schedule of board meetings, or the

conspicuous posting and repeated broadcasting of the notice on a closed-circuit cable television system serving the homeowners' association. However, if broadcast notice is used in lieu of a notice posted physically in the community, the notice must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on the association's website or an application that can be downloaded on a mobile device for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the association property. Any rule adopted must, in addition to other matters, include a requirement that the association send an electronic notice to members whose e-mail addresses are included in the association's official records in the same manner as is required for a notice of a meeting of the members. Such notice must include a hyperlink to the website or such mobile application on which the meeting notice is posted. The association may provide notice by electronic transmission in a manner authorized by law for

meetings of the board of directors, committee meetings requiring notice under this section, and annual and special meetings of the members to any member who has provided a facsimile number or e-mail address to the association to be used for such purposes; however, a member must consent in writing to receiving notice by electronic transmission.

2. An assessment may not be levied at a board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessments. Written notice of any meeting at which special assessments will be considered or at which amendments to rules regarding parcel use will be considered must be mailed, delivered, or electronically transmitted to the members and parcel owners and posted conspicuously on the property or broadcast on closed-circuit cable television not less than 14 days before the meeting.

3. Directors may not vote by proxy or by secret ballot at board meetings, except that secret ballots may be used in the election of officers. This subsection also applies to the meetings of any committee or other similar body, when a final decision will be made regarding the expenditure of association funds, and to any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

(4) OFFICIAL RECORDS.—The association shall maintain each of the following items, when applicable, which constitute the official records of the association:

(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.

(m) ~~(l)~~ All other written records of the association not specifically included in this subsection ~~the foregoing~~ which are related to the operation of the association.

(5) INSPECTION AND COPYING OF RECORDS.—The official records 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. 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 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.

(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. Notwithstanding this 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.~~3.~~ 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.~~4.~~ Medical records of parcel owners or community residents.

6.~~5.~~ 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.~~6.~~ Any electronic security measure that is used by the association to safeguard data, including passwords.

8.~~7.~~ 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.

(6) BUDGETS.—

(c)1. If the budget of the association does not provide for reserve accounts under ~~pursuant to~~ paragraph (d), or the declaration of covenants, articles, or bylaws do not obligate the developer to create reserves, and the association is responsible for the repair and maintenance of capital improvements that may result in a special assessment if reserves are not provided or not fully funded, each financial report for the preceding fiscal year required by subsection (7) must contain the following statement in conspicuous type:

THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE FOR FULLY FUNDED RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS REGARDING

THOSE ITEMS. OWNERS MAY ELECT TO PROVIDE FOR FULLY FUNDED RESERVE ACCOUNTS UNDER ~~PURSUANT TO~~ SECTION 720.303(6), FLORIDA STATUTES, UPON OBTAINING THE APPROVAL OF A MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION BY VOTE OF THE MEMBERS AT A MEETING OR BY WRITTEN CONSENT.

2. If the budget of the association does provide for funding accounts for deferred expenditures, including, but not limited to, funds for capital expenditures and deferred maintenance, but such accounts are not created or established under ~~pursuant to~~ paragraph (d), each financial report for the preceding fiscal year required under subsection (7) must also contain the following statement in conspicuous type:
THE BUDGET OF THE ASSOCIATION PROVIDES FOR LIMITED VOLUNTARY DEFERRED EXPENDITURE ACCOUNTS, INCLUDING CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE, SUBJECT TO LIMITS ON FUNDING CONTAINED IN OUR GOVERNING DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED TO PROVIDE FOR RESERVE ACCOUNTS UNDER ~~PURSUANT TO~~ SECTION 720.303(6), FLORIDA STATUTES, THESE FUNDS ARE NOT SUBJECT TO THE RESTRICTIONS ON USE OF SUCH FUNDS SET FORTH IN THAT STATUTE, NOR ARE RESERVES CALCULATED IN ACCORDANCE WITH THAT STATUTE.

(d) An association is deemed to have provided for reserve accounts ~~if reserve accounts have been initially established by the developer or if the membership of the association affirmatively elects to provide for reserves. If reserve accounts are established by the developer, the budget must~~

~~designate the components for which the reserve accounts may be used. If reserve accounts are not initially provided by the developer, the membership of the association may elect to do so~~ 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 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).

(10) RECALL OF DIRECTORS.—

(b)1. Board directors may be recalled by an agreement in writing or by written ballot without a membership meeting. The agreement in writing or the written ballots, or a copy thereof, shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure.

2. The board shall duly notice and hold a meeting of the

board within 5 full business days after receipt of the agreement in writing or written ballots. At the meeting, the board shall either certify the written ballots or written agreement to recall a director or directors of the board, in which case such director or directors shall be recalled effective immediately and shall turn over to the board within 5 full business days any and all records and property of the association in their possession, or proceed as described in paragraph (d).

3. When it is determined by the department pursuant to binding arbitration proceedings or the court in an action filed in a court of competent jurisdiction that an initial recall effort was defective, written recall agreements or written ballots used in the first recall effort and not found to be defective may be reused in one subsequent recall effort. However, in no event is a written agreement or written ballot valid for more than 120 days after it has been signed by the member.

4. Any rescission or revocation of a member's written recall ballot or agreement must be in writing and, in order to be effective, must be delivered to the association before the association is served with the written recall agreements or ballots.

5. The agreement in writing or ballot shall list at least as many possible replacement directors as there are directors subject to the recall, when at least a majority of the board is

sought to be recalled; the person executing the recall instrument may vote for as many replacement candidates as there are directors subject to the recall.

(d) If the board determines not to certify the written agreement or written ballots to recall a director or directors of the board or does not certify the recall by a vote at a meeting, the board shall, within 5 full business days after the meeting, file an action with a court of competent jurisdiction or file with the department a petition for binding arbitration under ~~pursuant to~~ the applicable procedures in ss. 718.112(2)(j) and 718.1255 and the rules adopted thereunder. For the purposes of this section, the members who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration or in a court action. If the arbitrator or court certifies the recall as to any director or directors of the board, the recall will be effective upon the final order of the court or the mailing of the final order of arbitration to the association. The director or directors so recalled shall deliver to the board any and all records of the association in their possession within 5 full business days after the effective date of the recall.

(g) If the board fails to duly notice and hold the required meeting or fails to file the required petition or action, the parcel ~~unit~~ owner representative may file a petition or a court action under ~~pursuant to~~ s. 718.1255 challenging the

board's failure to act. The petition or action must be filed within 60 days after the expiration of the applicable 5-full-business-day period. The review of a petition or action under this paragraph is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

(k) A board member who has been recalled may file an action with a court of competent jurisdiction or a petition under ~~pursuant to~~ ss. 718.112(2)(j) and 718.1255 and the rules adopted challenging the validity of the recall. The petition or action must be filed within 60 days after the recall is deemed certified. The association and the parcel ~~unit~~ owner representative shall be named as respondents.

(l) The division or a court of competent jurisdiction may not accept for filing a recall petition or action, whether filed under ~~pursuant to~~ paragraph (b), paragraph (c), paragraph (g), or paragraph (k) and regardless of whether the recall was certified, when there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled or when 60 or fewer days have not elapsed since the election of the board member sought to be recalled.

Section 21. Subsection (2) of section 720.305, Florida Statutes, is amended to read:

720.305 Obligations of members; remedies at law or in equity; levy of fines and suspension of use rights.—

(2) An ~~The~~ association may levy reasonable fines. A fine may not exceed $100 per violation against any member or any member's tenant, guest, or invitee for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association unless otherwise provided in the governing documents. A fine may be levied by the board for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed $1,000 in the aggregate unless otherwise provided in the governing documents. A fine of less than $1,000 may not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to reasonable attorney fees and costs from the nonprevailing party as determined by the court.

(a) An association may suspend, for a reasonable period of time, the right of a member, or a member's tenant, guest, or invitee, to use common areas and facilities for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. This paragraph does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

(b) A fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days' notice to the parcel owner and, if applicable, any occupant, licensee, or invitee of the parcel owner, sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, the proposed fine or suspension may not be imposed. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the proposed fine or suspension levied by the board is approved by the committee, the fine payment is due 5 days after notice of the approved fine is provided to the parcel owner and, if applicable, to any occupant, licensee, or invitee of the parcel owner ~~the date of the committee meeting at which the fine is approved~~. The association must provide written notice of such fine or suspension by mail or hand delivery to the parcel owner and, if applicable, to any occupant ~~tenant~~, licensee, or invitee of the parcel owner.

Section 22. Paragraph (g) of subsection (1) and paragraph (c) of subsection (9) of section 720.306, Florida Statutes, are amended, and paragraph (h) is added to subsection (1) of that

section, to read:

720.306 Meetings of members; voting and election procedures; amendments.—

(1) QUORUM; AMENDMENTS.—

(g) A notice required under this section must be mailed or delivered to the address identified as the parcel owner's mailing address in the official records of the association as required under s. 720.303(4) ~~on the property appraiser's website for the county in which the parcel is located~~, or electronically transmitted in a manner authorized by the association if the parcel owner has consented, in writing, to receive notice by electronic transmission.

(h)1. Except as provided herein, an amendment to a governing document, rule, or regulation enacted after July 1, 2021, which prohibits a parcel owner from renting his or her parcel, alters the authorized duration of a rental term, or specifies or limits the number of times that a parcel owner may rent his or her parcel during a specified period, applies only to a parcel owner who consents, individually or through a representative, to the amendment, and to parcel owners who acquire title to a parcel after the effective date of the amendment.

2. Notwithstanding subparagraph 1., an association may amend its governing documents to prohibit or regulate rental durations that are for terms of less than 6 months and to

prohibit a parcel owner from renting his or parcel more than three times in a calendar year. Such amendments apply to all parcel owners.

3. This paragraph does not affect the enforcement restrictions for associations of 15 or fewer parcel owners as provided in s. 720.303(1).

4. For purposes of this paragraph, a change of ownership does not occur when a parcel owner conveys the parcel to an affiliated entity, when beneficial ownership of the parcel does not change, or when an heir becomes the parcel owner. For purposes of this paragraph, the term "affiliated entity" means an entity that controls, is controlled by, or is under common control with the parcel owner or that becomes a parent or successor entity by reason of transfer, merger, consolidation, public offering, reorganization, dissolution or sale of stock, or transfer of membership partnership interests. For a conveyance to be recognized as one made to an affiliated entity, the entity must furnish the association a document certifying that this paragraph applies, as well as providing any organizational documents for the parcel owner and the affiliated entity that support the representations in the certificate, as requested by the association.

(9) ELECTIONS AND BOARD VACANCIES.—

(c) Any election dispute between a member and an association must be submitted to ~~mandatory~~ binding arbitration

with the division or filed with a court of competent jurisdiction. Such proceedings that are submitted to binding arbitration with the division must be conducted in the manner provided by s. 718.1255 and the procedural rules adopted by the division. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by an affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to the requirements of the governing documents. Unless otherwise provided in the bylaws, a board member appointed or elected under this section is appointed for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by s. 720.303(10) and rules adopted by the division.

Section 23. Paragraph (a) of subsection (1) and subsection (2) of section 720.307, Florida Statutes, are amended to read:

720.307 Transition of association control in a community.—With respect to homeowners' associations:

(1) Members other than the developer are entitled to elect at least a majority of the members of the board of directors of the homeowners' association when the earlier of the following events occurs:

(a) Three months after 90 percent of the parcels in all

phases of the community that will ultimately be operated by the homeowners' association have been conveyed to members other than the developer;

For purposes of this section, the term "members other than the developer" shall not include builders, contractors, or others who purchase a parcel for the purpose of constructing improvements thereon for resale.

(2) Members other than the developer are entitled to elect at least one member of the board of directors of the homeowners' association if 50 percent of the parcels in all phases of the community which will ultimately be operated by the association have been conveyed to members other than the developer.

Section 24. Subsection (6) is added to section 720.3075, Florida Statutes, to read:

720.3075 Prohibited clauses in association documents.—

(6) An association may extinguish a discriminatory restriction as provided in s. 712.065.

Section 25. Subsection (1) of section 720.311, Florida Statutes, is amended to read:

720.311 Dispute resolution.—

(1) The Legislature finds that alternative dispute resolution has made progress in reducing court dockets and trials and in offering a more efficient, cost-effective option to litigation. The filing of any petition for arbitration or the

serving of a demand for presuit mediation as provided for in this section shall toll the applicable statute of limitations. Any recall dispute filed with the department under ~~pursuant to~~ s. 720.303(10) shall be conducted by the department in accordance with the provisions of ss. 718.112(2)(j) and 718.1255 and the rules adopted by the division. In addition, the department shall conduct ~~mandatory~~ binding arbitration of election disputes between a member and an association in accordance with ~~pursuant to~~ s. 718.1255 and rules adopted by the division. ~~Neither~~ Election disputes and ~~nor~~ recall disputes are not eligible for presuit mediation; these disputes must ~~shall~~ be arbitrated by the department or filed in a court of competent jurisdiction. At the conclusion of an arbitration ~~the~~ proceeding, the department shall charge the parties a fee in an amount adequate to cover all costs and expenses incurred by the department in conducting the proceeding. Initially, the petitioner shall remit a filing fee of at least $200 to the department. The fees paid to the department shall become a recoverable cost in the arbitration proceeding, and the prevailing party in an arbitration proceeding shall recover its reasonable costs and attorney ~~attorney's~~ fees in an amount found reasonable by the arbitrator. The department shall adopt rules to effectuate the purposes of this section.

Section 26. Section 720.316, Florida Statutes, is amended to read:

720.316 Association emergency powers.—

(1) To the extent allowed by law, unless specifically prohibited by the declaration or other recorded governing documents, and consistent with s. 617.0830, the board of directors, in response to damage or injury caused by or anticipated in connection with an emergency, as defined in s. 252.34(4), ~~event~~ for which a state of emergency is declared pursuant to s. 252.36 in the area encompassed by the association, may exercise the following powers:

(a) Conduct board meetings, committee meetings, elections, or membership meetings, in whole or in part, by telephone, real-time videoconferencing, or similar real-time electronic or video communication after notice of the meetings and board decisions is provided in as practicable a manner as possible, including via publication, radio, United States mail, the Internet, electronic transmission, public service announcements, conspicuous posting on the common area ~~association property~~, or any other means the board deems appropriate under the circumstances. Notice of decisions may also be communicated as provided in this paragraph.

(b) Cancel and reschedule an association meeting.

(c) Designate assistant officers who are not directors. If the executive officer is incapacitated or unavailable, the assistant officer has the same authority during the state of emergency as the executive officer he or she assists.

(d) Relocate the association's principal office or designate an alternative principal office.

(e) Enter into agreements with counties and municipalities to assist counties and municipalities with debris removal.

(f) Implement a disaster or an emergency plan before, during, or ~~immediately~~ following the event for which a state of emergency is declared, which may include, but is not limited to, turning on or shutting off elevators; electricity; water, sewer, or security systems; or air conditioners for association buildings.

(g) Based upon the advice of emergency management officials or public health officials, or upon the advice of licensed professionals retained by or otherwise available to the board, determine any portion of the common areas or facilities ~~association property~~ unavailable for entry or occupancy by owners or their family members, tenants, guests, agents, or invitees to protect their health, safety, or welfare.

(h) Based upon the advice of emergency management officials or public health officials or upon the advice of licensed professionals retained by or otherwise available to the board, determine whether the common areas or facilities ~~association property~~ can be safely inhabited, accessed, or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.

(i) Mitigate further damage, injury, or contagion,

including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus, including mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the common areas or facilities or sanitizing the common areas or facilities ~~association property~~.

(j) Notwithstanding a provision to the contrary, and regardless of whether such authority does not specifically appear in the declaration or other recorded governing documents, levy special assessments without a vote of the owners.

(k) Without owners' approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association if operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions contained in the declaration or other recorded governing documents.

(2) The authority granted under subsection (1) is limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the parcel owners and their family members, tenants, guests, agents, or invitees, and to mitigate further damage, injury, or contagion and make emergency repairs.

(3) Notwithstanding paragraphs (1)(f)-(i), during a state of emergency declared by executive order or proclamation of the

Governor pursuant to s. 252.36, an association may not prohibit parcel owners, tenants, guests, agents, or invitees of a parcel owner from accessing the common areas and facilities for the purposes of ingress to and egress from the parcel when access is necessary in connection with:

(a) The sale, lease, or other transfer of title of a parcel; or

(b) The habitability of the parcel or for the health and safety of such person unless a governmental order or determination, or a public health directive from the Centers for Disease Control and Prevention, has been issued prohibiting such access to the parcel. Any such access is subject to reasonable restrictions adopted by the association.

Section 27. This act shall take effect July 1, 2021.

REGULATORY REFORM SUBCOMMITTEE

HB 867 by Rep. Shoaf
Community Associations

AMENDMENT SUMMARY
March 24, 2021

Amendment 1 by Rep. Shoaf (line 2363):
The amendment:

- Provides that a change of ownership does occur with regard to a business entity, when every person that owns an interest in the real property at the time of the enactment of the amendment or rule conveys their interest in the real property to an unaffiliated entity.

Amendment No. 1

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

Committee/Subcommittee hearing bill: Regulatory Reform Subcommittee

Representative Shoaf offered the following:

Amendment

Remove lines 2363-2397 and insert:

(h)1. Except as otherwise provided in this paragraph, any governing document, or amendment to a governing document, that is enacted after July 1, 2021, and that prohibits or regulates rental agreements applies only to a parcel owner who acquires title to the parcel after the effective date of the governing document or amendment, or to a parcel owner who consents, individually or through a representative, to the governing document or amendment.

2. Notwithstanding subparagraph 1., an association may amend its governing documents to prohibit or regulate rental

agreements for a term of less than 6 months and may prohibit the rental of a parcel for more than three times in a calendar year, and such amendments shall apply to all parcel owners.

3. This paragraph does not affect the amendment restrictions for associations of 15 or fewer parcel owners under s. 720.303(1).

4. For purposes of this paragraph, a change of ownership does not occur when a parcel owner conveys the parcel to an affiliated entity, when beneficial ownership of the parcel does not change, or when an heir becomes the parcel owner. For purposes of this paragraph, the term "affiliated entity" means an entity that controls, is controlled by, or is under common control with the parcel owner or that becomes a parent or successor entity by reason of transfer, merger, consolidation, public offering, reorganization, dissolution or sale of stock, or transfer of membership partnership interests. For a conveyance to be recognized as one made to an affiliated entity, the entity must furnish to the association a document certifying that this paragraph applies and provide any organizational documents for the parcel owner and the affiliated entity which support the representations in the certificate, as requested by the association.

5. For purposes of this paragraph, a change of ownership does occur when, with respect to a parcel owner that is a business entity, every person that owned an interest in the real

property at the time of the enactment of the amendment or rule conveys their interest in the real property to an unaffiliated entity.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 979 Village of Wellington, Palm Beach County
SPONSOR(S): Willhite
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration & Veterans Affairs Subcommittee	16 Y, 1 N	Renner	Miller
2) Regulatory Reform Subcommittee		Thompson	Anstead
3) State Affairs Committee			

SUMMARY ANALYSIS

In Florida, the sale and use of fireworks are generally prohibited. However, many exceptions to the prohibition exist. The most commonly used exceptions allow approved fireworks to be sold by a licensed retailer to a buyer who:

- Has obtained a permit for a public display from a municipality or a board of county commissioners;
- Is using the fireworks to scare birds away from agricultural works or fish hatcheries; or
- Uses fireworks on New Year's Eve, New Year's Day, or Independence Day.

The bill provides an exemption from ss. 791.001 and 791.08, F.S., and prohibits the sale and use of fireworks located within the Equestrian Preserve of the Village of Wellington on all days of the year except for public displays supervised and conducted by a competent operator. The displays must be approved by the chiefs of the police and fire departments of Wellington and must not be hazardous to property or endanger any person.

Written applications for permits must be made at least 15 days in advance of the date of the display. After permit approval, the sales, possession, use, and distribution of fireworks for the display must be lawful for the permitted purpose only. Permits are non-transferrable.

The prohibitions in the bill do not prevent the importation, purchase, sale, or use of fireworks for agricultural purposes.

The Economic Impact Statement filed with the bill indicates the bill does not appear to have a fiscal impact on the state or local governments.

Pursuant 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

Fireworks

The Division of the State Fire Marshal within the Department of Financial Services regulates the sale and use of fireworks and sparklers in Florida.[1] While ch. 791, F.S., applies uniformly throughout the state, enforcement of these statutes resides with local law enforcement departments.[2]

Fireworks are defined as "any combustible or explosive composition or substance or combination of substances or any article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation."[3]

The retail sale and use of fireworks by the public is prohibited.[4] However, provisions of ch. 791, F.S., exempt certain wholesale sales and commercial uses of fireworks from this general ban. The law does allow sparklers and other novelty products,[5] like smoke devices and noisemakers, to be sold at retail to the public and to be used by the public.[6]

Fireworks may be used solely and exclusively for the following holidays:[7]

- New Year's Eve, December 31st;
- New Year's Day, January 1st; and
- Independence Day, July 4.

This statute is not intended to supersede any local government regulation relating to the use of fireworks.[8]

Counties and cities may adopt reasonable rules and regulations to grant permits for the supervised public display of fireworks within their boundaries.[9] Display operators must apply for a permit at least 15 days in advance of obtaining approval from municipal chiefs of police and fire departments.[10] Counties must require a bond of not less than $500 for any damages caused by a fireworks display.[11]

The statute authorizes the importation, purchase, sale, or use of fireworks solely and exclusively to frighten birds from agricultural works and fish hatcheries. Such use is governed by the Department of Agriculture and Consumer Services.[12]

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[1] S. 791.012, F.S.
[2] S. 791.001, F.S.
[3] S. 791.01(4)(a), F.S;
[4] S. 791.02(1), F.S.
[5] S. 791.01(4)(c), F.S.
[6] See s. 791.015, F.S.
[7] S. 791.08, F.S.
[8] S. 791.08(3), F.S.
[9] S. 791.02, F.S.
[10] *Id.*
[11] S. 791.03, F.S.
[12] S. 791.07, F.S.

Equestrian Preserve of the Village of Wellington[13]

The Village of Wellington has a dynamic equestrian community and features several venues for a variety of equestrian disciplines as well as family-owned farms. Wellington's Equestrian Preserve Area is an equestrian community located on 9,000 acres in the western and southern portions of Wellington. The area includes trails, businesses and parks that support horses, facilities, and land. During the equestrian show and polo season, there could be upwards of 20,000 horses in Wellington.[14]

Effect of the Bill

The bill provides an exemption from ss. 791.001 and 791.08, F.S., and prohibits the sale and use of fireworks located within the Equestrian Preserve of the Village of Wellington on all days of the year except for supervised public displays handled by a competent operator. The displays must be approved by the chiefs of the police and fire departments of Wellington and must not be hazardous to property or endanger any person.

Written applications for permits must be made at least 15 days in advance of the date of the display. After permit approval, the sales, possession, use, and distribution of fireworks for the display must be lawful for the permitted purpose only. Permits are non-transferrable.

The prohibitions in the bill do not prevent the importation, purchase, sale, or use of fireworks for agricultural purposes.

B. SECTION DIRECTORY:

Section 1. Creates an exception to general law, prohibiting the sale and use of fireworks within the Equestrian Preserve of the Village of Wellington under certain circumstances; providing applicability.

Section 2. Provides that the bill takes effect upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? January 15, 2021

WHERE? *The Palm Beach Post*, a daily newspaper published in West Palm Beach, Florida.

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 []

[13] The Village of Wellington, *Equestrian Community*, https://www.wellingtonfl.gov/FAQ.aspx?TID=23 (last visited Feb. 16, 2021).
[14] World Polo News, *Equestrian Committee Reviews Venue Data and Horse Counts* (Oct. 12, 2019), https://www.worldpolonews.com/2019/equestrian-committee-reviews-venue-data-and-horse-counts/ (last visited Feb. 25, 2021).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Pursuant 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

Not applicable.

A bill to be entitled

An act relating to the Village of Wellington, Palm Beach County; providing an exception to general law; prohibiting the sale and use of fireworks located within the Equestrian Preserve of the Village of Wellington except under specified circumstances; providing applicability; providing an effective date.

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

Section 1. Notwithstanding ss. 791.001 and 791.08, Florida Statutes, the sale and use of fireworks within the Equestrian Preserve of the Village of Wellington are prohibited on all days of the year except for the following:

(1) Supervised public displays within the jurisdictional boundaries of Wellington where such displays are handled by a competent operator to be approved by the chiefs of the police and fire departments of Wellington, and shall be of such a character, and so located, discharged, or fired as in the opinion of the chief of the fire department, after proper inspection, shall not be hazardous to property or endanger any person. Application for permits shall be made in writing at least 15 days in advance of the date of the display. After such privilege shall have been granted, sales, possession, use, and distribution of fireworks for such display shall be lawful for

that purpose only. No permit granted hereunder shall be transferable.

(2) Nothing herein is intended or shall prevent the importation, purchase, sale, or use of fireworks for agricultural purposes in s. 791.07, Florida Statutes.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1517 Department of Business and Professional Regulation
SPONSOR(S): Duggan
TIED BILLS: **IDEN./SIM. BILLS:** SB 1966

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

SUMMARY ANALYSIS

The Department of Business and Professional Regulation (DBPR) is responsible for licensing and regulating various businesses and professions throughout the state, including, but not limited to, tobacco and alcohol sales; drugs, devices, and cosmetics; construction contractors; pugilistic events; condominium associations; and public food and lodging establishments.

Related to tobacco taxation regulations, the bill updates business records and reporting requirements.

Related to construction contractors, the bill reopens a licensing provision that allows certain local contractors to be licensed statewide, and removes certain licensing fees.

Related to drugs, devices, and cosmetics, the bill:
- excepts certain cosmetics manufacturers from permit requirements,
- provides a temporary permit process to use during a change of ownership, and
- gives authority to DBPR to issue citations for certain violations.

Related to alcohol regulations, the bill:
- updates application and reporting requirements,
- requires that an alcoholic beverage license applicant provide proof of the applicant's right to occupy the entire premises which the applicant seeks a license, and
- changes auditing timeframes for special restaurant licensees.

Related to pugilistic events regulations, the bill:
- renames the Florida State Boxing Commission to the Florida Athletic Commission (FAC), and
- gives full authority to FAC to determine glove requirements, and if gloves are required at all, for matches.

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

Related to public lodging establishments and public food service establishments licensing procedures, the bill removes partial initial fee payments, and instead requires that all fees be paid at the time of application.

The bill has no fiscal impact on local governments and has an indeterminate fiscal impact on state government.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Department of Business and Professional Regulation

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

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

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

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

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

The Division of Hotels and Restaurants (H&R) licenses, inspects and regulates public lodging and food service establishments in Florida. The division also licenses and regulates elevators, escalators and other vertical conveyance devices.[6]

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[1] s. 20.165, F.S.

[2] Except the Board of Architecture and Interior Design, and the Florida Board of Professional Engineers. Florida Department of Business and Professional Regulation, *Division of Regulation*, http://www.myfloridalicense.com/dbpr/reg/index.html (last visited Mar. 19, 2021).

[3] Florida Department of Business and Professional Regulation, *Division of Regulation*, http://www.myfloridalicense.com/DBPR/division-of-regulation/ (last visited Mar. 19, 2021).

[4] Department of Business and Professional Regulation, *Division of Florida Condominiums, Timeshares, and Mobile Homes*, http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/, (last visited Mar. 19, 2021).

[5] *Id.*

[6] Florida Department of Business and Professional Regulation, Division of Hotels and Restaurants, http://www.myfloridalicense.com/DBPR/hotels-restaurants/ (last visited Mar. 19, 2021).

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

- receipt and processing of license applications;
- collection and auditing of taxes, surcharges, and fees paid by licensees; and
- enforcement of the laws and regulations governing the sale of alcoholic beverages and tobacco products.[7]

Tobacco

Background

ABT is responsible for the regulation of tobacco products under ch. 210, F.S., which sets out tax requirements specific to cigarettes and tobacco products, and ch. 569, F.S., which sets out requirements for tobacco sales. [8]

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

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

Cigars, nicotine products, and nicotine dispensing devices are not included in these definitions, and therefore they are not taxed as a cigarette or tobacco product in Florida.[9]

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

- retail tobacco products dealer,[10]
- cigarette manufacturer,[11]
- cigarette wholesale dealer,[12]
- cigarette distributing agent,[13]
- cigarette importer,[14]
- cigarette exporter,[15] or
- cigar wholesale dealer,[16] or
- tobacco wholesale dealer/distributor.[17]

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[7] Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/ (last visited Mar. 19, 2021).
[8] S. 561.02, F.S.
[9] Ss. 210.01(1), 210.25(12), F.S. "Nicotine dispensing device" means any product that employs an electronic, chemical, or mechanical means to produce vapor from a nicotine product. "Nicotine products" do not include tobacco products, certain smoking cessation products, and products with incidental nicotine. S. 877.112(1)(a),(b), F.S.
[10] S. 569.003, F.S.
[11] Ss. 210.01(21) and 210.15, F.S.
[12] Ss. 210.01(6) and 210.15(1), F.S.
[13] Ss. 210.01(14) and 210.15(1), F.S.
[14] Ss. 210.01(20) and 210.15(1), F.S.
[15] Ss. 210.01(17) and 210.15(1), F.S.
[16] S. 210.65(2), F.S.
[1717] Ss. 210.25(5) and 210.40, F.S.

ABT collects monthly business records related to cigarettes, which are used to accurately collect and distribute cigarette taxes. Such records must be submitted to ABT by any manufacturer, importer, distributing agent, wholesale dealer, retail dealer, common carrier, or any other person handling, transporting, or possessing cigarettes for sale or distribution in Florida. ABT prescribes the manner in which these records are submitted.[18]

ABT also collects monthly returns showing the taxable price of each tobacco product, not including cigarettes or cigars, that is manufactured or brought or caused to be brought into Florida for sale. Such returns must be submitted by every place of business that sells or manufactures such tobacco products in Florida. ABT prescribes the form and content for submitting such returns to ABT. Each return must be accompanied by a remittance for the full tax liability shown.[19]

Effect of the Bill

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

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

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

Alcoholic Beverages

Requirements for Licensees and License Applicants – Current Situation

ABT is responsible for enforcing the Beverage Law and supervising the conduct, management, and operation of the manufacturing, packaging, distribution, and sale of all alcoholic beverages in Florida.[20]

Any person, before engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages, must file a sworn application in the format prescribed by ABT. The applicant must be a legal or business entity, person, or persons and must include all persons, officers, shareholders, and directors of such legal or business entity that have a direct or indirect interest in the business seeking to be licensed under this part. The format and content of the application is determined by ABT.[21]

Before any application is approved, ABT may require such applicant to file a set of fingerprints with ABT on regular United States Department of Justice (USDOJ) forms, and for any person or persons interested directly or indirectly with the applicant in the business for which the license is being sought.[22]

All applications for alcoholic beverage licenses for consumption on the premises shall be accompanied by a certificate from H&R, the Department of Agriculture and Consumer Services, the Department of Health, the Agency for Health Care Administration, or the county health department stating that the place of business wherein the business is to be conducted meets all of the sanitary requirements of the state.[23]

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[18] S. 210.09(2), F.S. Some tax forms are electronically filed with ABT, and some require manual transmission. Department of Business and Professional Regulation, *Alcoholic Beverages and Tobacco- Forms & Publications, Licensing Related Forms, Tax-Related Forms*, http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/forms-and-publications/#1516309637983-6566a2a4-a2f1 (last visited Mar. 20, 2021).
[19] S. 210.55(1), F.S.
[20] S. 561.02, F.S.
[21] S. 561.17(1), F.S.
[22] *Id.*
[23] *Id.*

Generally, for premises and manufacturing licenses, ABT requires that applicants must submit sketches of the area and have some dominion and control over the area, but there is not a specific requirement that applicants have a right of occupancy for the entire premises for which a license is sought.[24]

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

Each manufacturer, distributor, broker, sales agent, importer, and exporter must keep a complete and accurate record and make reports showing the amount of:[25]

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

Each manufacturer, distributor, broker, sales agent, and importer must send this full and complete report to ABT by the 10th day of each month for the previous calendar month. The report must be made out in triplicate: two copies must be sent to ABT, and the third copy must be retained for the licensee's record. Reports must be made on forms prepared and furnished by ABT.[26]

Requirements for Licensees and License Applicants – Effect of the Bill

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

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

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

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

Cancellation of Quota Beverage Licenses – Current Situation

If there are more applicants for a quota license than the number of available quota licenses, ABT must provide a method of double random selection by public drawing to determine which applicants shall be considered for issuance of licenses. The availability of licenses is determined by:

- an increase in the population of a county,
- a county permitting the sale of intoxicating beverages when such sale had been prohibited, or
- the **revocation** of a quota beverage license.

Currently, the availability of licenses is not determined by the **cancellation** of quota beverage licenses.

Cancellation of Quota Beverage Licenses – Effect of the Bill

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[24] Ss. 561.01(11), 565.03(2)(c), F.S.; Email from Conner Mann, Office of Legislative Affairs, DBPR, RE: House Inquiry, (Dec. 19, 2019).
[25] S. 561.55(1), F.S.
[26] S. 561.55(2), F.S.

The bill provides **cancellation** of quota beverage licenses is a basis to determine availability of quota licenses.

Credit for the Sale of Liquor – Current Situation

Vendors have up to 10 days after the calendar week when a sale of liquor was made to make a timely payment to a distributor for such liquor. When a vendor does not make a timely payment, the distributor who made such sale must, within 3 days, notify ABT of such in writing.[27]

ABT must then give notice to such vendor that it has received a notice of payment delinquency from a distributor. The vendor has 5 days after receipt of such notice to show cause and demand a hearing. The demand must be delivered to ABT either in person or by due course of mail within those 5 days.[28]

If no such demand for hearing is made, ABT must declare in writing to such vendor and to all manufacturers and distributors in Florida that all further sales to such vendor are prohibited until ABT certifies in writing that such vendor has fully paid for all liquors previously purchased.[29]

Credit for the Sale of Liquor - Effect of the Bill

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

Permit Carriers – Current Situation

"Permit carrier" is defined as "a licensee authorized to make deliveries as provided in s. 561.57, F.S."[30]

In 2015, the Legislature passed a law amending s. 561.57, F.S., which allowed a licensed vendor to transport alcoholic beverages from a distributor's place of business to the vendor's licensed premises or off-premises storage permitted by ABT without a vehicle permit. It also removed the requirement for such vendors to possess an invoice or sales ticket during the transportation of alcoholic beverages.[31]

When this law was passed, the definition for "permit carrier," which was the name of the permit that was removed, was erroneously left in statute and is now obsolete.[32]

Permit Carriers – Effect of the Bill

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

Auditing for Special Licenses – Current Situation

Section 561.20(1), F.S., limits, by county, the number of alcoholic beverage licenses that may be issued for the sale of distilled spirits, to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as "quota" licenses. The quota license is the only alcoholic beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation, if certain conditions are met.

A "special license" is an exception to the quota licensing scheme, which allows certain entities to serve liquor without a quota license. One such special license is a "special restaurant license," which applies

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

to a food service establishment that has 2,500 square feet, is equipped to serve 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages. Such a food service establishment must be audited by ABT for compliance with the food and nonalcoholic beverage sales percentage requirements during the first 60-day operating period, and each 12-month operating period thereafter. Failure by a sales licensee to satisfy the requirements as to the percentages of food and nonalcoholic beverage sales results in revocation of the special license. A licensee whose license is revoked is ineligible to have an interest in a subsequent application for a license for 120 days after the revocation.[33]

Auditing for Special Licenses – Effect of the Bill

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

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

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

Adulterating Liquors with Grains of Paradise – Current Situation

Section 562.455, F.S., provides that a person who adulterates, for the purpose of sale, any liquor, used or intended for drink, with cocculus indicus, vitriol, grains of paradise, opium, alum, capsicum, copperas, laurel water, logwood, brazil wood, cochineal, sugar of lead, or any other substance which is poisonous or injurious to health, and whoever knowingly sells any liquor so adulterated, is guilty of a third degree felony. This law was enacted in 1868.

Grains of paradise is a spice related to ginger native to West Africa.[34] It is commonly used in alcoholic beverages, food, and medicine.[35] Grains of paradise has been found to be generally regarded as safe by the Food and Drug Administration (FDA).[36]

On January 28, 2020, the United States District Court for the Southern District of Florida held that s. 562.455, F.S., as it relates to prohibiting the use of grains of paradise in liquor, is preempted by federal law.[37] The court found that the Federal Food, Drug, and Cosmetic Act (FFDCA) and FDA regulations conflict with s. 562.455, F.S., because it frustrates the purposes and objectives of the FFDCA and its implementing FDA regulations. Under FFDCA, the FDA has broad regulatory authority to monitor and control the introduction of "food additives" in interstate commerce. The FFDCA's purpose is to advance food technology by allowing the use of safe food additives, and the Florida law prohibits the use of an additive that has been found to be generally regarded as safe by the FDA.[38]

Adulterating Liquors with Grains of Paradise – Effect of the Bill

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[33] S. 561.20(2)(a)4., F.S.
[34] Merriam-Webster Dictionary, *Grains of Paradise*, https://www.merriam-webster.com/dictionary/grains%20of%20paradise (last visited Mar. 19, 2021).
[35] WebMD, *Grains of Paradise*, https://www.webmd.com/vitamins/ai/ingredientmono-670/grains-of-paradise (last visited Mar. 19, 2021); SPICEography, *Grains of Paradise: An African Spice with a European History*, https://www.spiceography.com/grains-of-paradise/ (last visited Mar. 19, 2021).
[36] 21 C.F.R. § 182.10 (2020).
[37] *Marrache v. Bacardi U.S.A., Inc.*, No. 19-23856-Civ-Scola, 2020 WL 434928, at *3 (S.D. Florida Jan. 1, 2020).
[38] *Id.* at *2.

The bill removes "grains of paradise" from the list of prohibited ingredients in liquor, which will allow the use of grains of paradise by a person without concern that they may be charged with a third degree felony.

Construction Contractors

Background

The Construction Industry Licensing Board (CILB) under DBPR is responsible for licensing and regulating professionals in the construction industry described in part I of ch. 489, F.S..[39] The CILB approves or denies applications for licensure, reviews disciplinary cases, and conducts informal hearings relating to discipline.[40]

"Certified contractors" are contractors who are licensed by the CILB in a statutory license category and are allowed to practice in any jurisdiction in the state.[41] Applicants for a construction contractor license must meet the following criteria:[42]

- Be at least 18 years of age;
- Submit an application and fee;
- Successfully pass the certification examination;
- Meet eligibility requirements according to a combination of education and experience as approved by the CILB; and
- Provide evidence of:[43]
  - Workers' compensation insurance,
  - Public liability insurance,
  - Property damage insurance, and
  - Financial responsibility.

The CILB licenses the following statutory types of contractors:[44]

- Division I is comprised of the following types of contractors:
  - General,
  - Building, and
  - Residential.
- Division II is comprised of the following types of contractors:
  - Sheet metal,
  - Roofing,
  - Classes A, B, and C air conditioning,
  - Mechanical,
  - Commercial pool and spa,
  - Residential pool and spa,
  - Swimming pool and spa servicing,
  - Plumbing,
  - Underground utility and excavation,
  - Solar, and
  - Pollutant storage systems.

"Registered contractors" are individuals that have taken and passed a local competency examination and can practice the specific category of contracting for which they are approved, only in the local jurisdiction for which the license is issued.[45] Locally registered contractors that are required to hold a

[39] S. 489.107, F.S.
[40] *Id.*
[41] S. 489.105, F.S.
[42] Ss. 489.111(2)(c)1.-3., 489.113, F.S.
[43] S. 489.115(5)(a)-(b), F.S.
[44] S. 489.105(a)-(q), F.S.; R. 61G4-15.015-040, F.A.C.
[45] S. 489.103, F.S.

contracting license to practice their profession in accordance with state law must register with DBPR after obtaining a local license.[46] Local governments may approve or deny applications for licensure as a registered contractor, review disciplinary cases, and conduct informal hearings relating to discipline of registered contractors licensed in their jurisdiction.[47]

Grandfathering Provision

Section 489.118, F.S., created a pathway that allowed registered local construction contractors who met certain criteria to have their local registration converted into a certified statewide license by the CILB.[48] The provision required applicants to apply by November 1, 2015, and is thus is no longer available for use by local registered contractors. This provision is commonly referred to as the "grandfathering provision."

Any local registered construction contractor wishing to have a license converted into a certified statewide license had to submit a completed application with a fee to the CILB and show evidence of the following criteria:[49]

- Hold a valid registered local license in one of the statutory contractor categories.
- Passed a written examination that the board finds to be substantially similar to the examination required to be licensed as a certified contractor.
- Has at least 5 years of experience as a contractor in that contracting category, or as an inspector or building administrator with oversight over that category.
- Has not had their license revoked at any time, had their license suspended within the last 5 years, or been assessed a fine in excess of $500 within the last 5 years.
- Is in compliance with the insurance and financial responsibility requirements required of a statewide applicant.

Licensing Fees

The CILB must establish by rule reasonable fees to be paid for applications, certification and renewal, registration and renewal, and recordmaking and recordkeeping.[50]

In addition to such fees, all contractors must pay a fee of $4 to DBPR at the time of application or renewal to fund projects relating to the building construction industry or continuing education programs offered to persons engaged in the building construction industry in Florida.

The CILB must advise DBPR on the most needed areas of research or continuing education based on:

- Significant changes in the industry's practices,
- Changes in the state building code,
- The most common types of consumer complaints, or
- Problems costing state or local governmental entities substantial waste.

DBPR must ensure the distribution of related research reports and the availability of continuing education programs is made to all related segments of the construction industry. DBPR must report to CILB in October of each year, summarizing the allocation of the funds by institution and summarizing the new projects funded and the status of previously funded projects.[51]

Effect of the Bill

[46] Ss. 489.105, & 489.117(4), F.S.
[47] Ss. 489.117, & 489.131 F.S.
[48] S. 489.118, F.S.
[49] *Id.*
[50] S. 489.109(1), F.S.
[51] S. 489.109(3), F.S.

The bill reopens the grandfathering provision, allowing a registered local construction contractor to obtain a statewide certification through the same process that was previously used if the registered contractor meets such grandfathering requirements. Local contractors may make this conversion at any time and the provision does not expire.

The bill removes the $4 additional application and renewal fee to fund projects and continuing education programs related to areas of need in the construction industry.

The bill makes a conforming change.

Drugs, Devices, and Cosmetics

Background

The Division of Drugs, Devices, and Cosmetics (DDC) under DBPR protects the health, safety, and welfare of Floridians from adulterated, contaminated, and misbranded drugs, drug ingredients, and cosmetics by enforcing Part I of ch. 499, F.S., the Florida Drug and Cosmetic Act (FDCA).[52] The Act conforms to United Stated Food and Drug Administration (FDA) drug laws and regulations and authorizes DBPR to issue permits to Florida drug manufacturers and wholesale distributors and register drugs manufactured, packaged, repackaged, labeled, or relabeled in Florida.[53]

Florida has 18 distinct permits based on the type of entity and intended activity, and includes permits for entities within the state, out of state, or even outside of the United States.[54] DDC has broad authority to inspect and discipline permittees for violations of state or federal laws and regulations, which can include seizure and condemnation of adulterated or misbranded drugs or suspension or revocation of a permit.[55]

The types of permits issued by DDC are:[56]

- Prescription drug manufacturer,
- Prescription drug repackager,
- Nonresident prescription drug manufacturer,
- Nonresident prescription drug repackager,
- Prescription drug wholesale distributor,
- Out-of-state prescription drug wholesale distributor,
- Retail pharmacy drug wholesale distributor,
- Restricted prescription drug distributor,
- Complimentary drug distributor,
- Freight forwarder,
- Veterinary prescription drug retail establishment,
- Veterinary prescription drug wholesale distributor,
- Limited prescription drug veterinary wholesale distributor,
- Over-the-counter drug manufacturer,
- Device manufacturer,
- Cosmetic manufacturer,
- Third party logistics provider, and

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[52] Florida Department of Business and Professional Regulation, *Division of Drugs, Devices, and Cosmetics,* available at http://www.myfloridalicense.com/DBPR/drugs-devices-and-cosmetics/ (last visited Mar. 19, 2021).
[53] S. 499.01, F.S.
[54] A permit is required for a prescription drug manufacturer; a prescription drug repackager; a nonresident prescription drug manufacturer; a prescription drug wholesale distributor; an out-of-state prescription drug wholesale distributor; a retail pharmacy drug wholesale distributor; a restricted prescription drug distributor; a complimentary drug distributor; a freight forwarder; a veterinary prescription drug retail establishment; a veterinary prescription drug wholesale distributor; a limited prescription drug veterinary wholesale distributor; an over-the-counter drug manufacturer; a device manufacturer; a cosmetic manufacturer; a third party logistics provider; or a health care clinic establishment. S. 499.01(1), F.S.
[55] Ss. 499.051, 499.062, 499.065. 499.066, 499.0661, and 499.067, F.S.
[56] S. 499.01(1), F.S.

- Health care clinic establishment.

Cosmetic Manufacturer Permits

The FDCA defines "cosmetic" as an article, with the exception of soap, that is:[57]
- Intended to be rubbed, poured, sprinkled, or sprayed on; introduced into; or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; or
- Intended for use as a component of any such article.

A cosmetic manufacturer permit is required for any person that manufactures or repackages cosmetics in Florida. A person that only labels or changes the labeling of a cosmetic, but does not open the container sealed by the manufacturer of the product, is exempt from obtaining a permit.[58]

Each cosmetics manufacturer must maintain business records that include:[59]
- The name and address of the seller or transferor of the product,
- The address of the location the product was shipped from,
- The date of the sale or distribution of the product,
- The name and quantity of the product involved, and
- The name and address of the person who purchased the product.

Cosmetics manufacturers must establish, maintain, or have the capability to create a current inventory of the cosmetics at an establishment where manufacturing activities are undertaken, and be able to produce such inventory for inspection by DBPR within 2 business days.[60]

Change of Ownership and Location

A permit issued by the department is nontransferable. Each permit is valid only for the person or governmental unit to which it is issued and is not subject to sale, assignment, or other transfer, voluntarily or involuntarily. A permit is not valid for any establishment other than the establishment for which it was originally issued.[61] A permitee must notify DDC before making a change of address and pay the change of location fee.[62]

An application for a new permit is required when a majority of the ownership or controlling interest of a permitted establishment is transferred or assigned, or when a lessee agrees to undertake or provide services to the extent that legal liability for operation of the establishment will rest with the lessee. The application for the new permit must be made before the date of the sale, transfer, assignment, or lease.[63]

Enforcement Actions

Generally, if any person engaged in any activity covered by the FCDA has been found to have violated a provision, rule, or order under the FDCA, DDC may:[64]
- Obtain an injunction;
- Impose an administrative fine, not to exceed $5,000 per violation per day;
- Issue an emergency order immediately suspending or revoking a permit;

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[57] S. 499.003(12), F.S.
[58] S. 499.01(2)(p), F.S.
[59] S. 499.0121(6)(c), F.S.
[60] S. 499.0121(6)(d), F.S.
[61] S. 499.012(6), F.S.
[62] S. 499.012(6)(a), F.S.
[63] S. 499.012(6)(b), F.S.
[64] S. 499.066, F.S.

- Issue an emergency order to immediately remove from commerce and public access any drug, device, or cosmetic;
- Issue a cease and desist order;[65] and
- Deny, suspend, or revoke a permit, certification, or registration.[66]

DDC does not currently have explicit authority to issue citations.

Effect of the Bill

The bill provides that a person who manufactures cosmetics and has annual gross sales of $25,000 or less is not required to obtain a permit. Upon request, an exempt cosmetics manufacturer must provide to DDC written documentation to verify annual gross sales, including all sales of cosmetic products at any location, regardless of the types of products sold or the number of persons involved in the operation.

The bill provides that an exempt cosmetics manufacturer may only:
- Sell prepackaged cosmetics affixed with a label containing information required by the FDA.
- Manufacture and sell cosmetics that are soaps, not otherwise exempt from the definition of cosmetics, lotions, moisturizers, and creams,
- Sell cosmetics that are not adulterated or misbranded, and
- Sell cosmetic products that are stored on the premises of the cosmetic manufacturing operation.

The bill requires each unit of cosmetics manufactured from an exempt manufacturer to contain in contrasting color and not less than 10-point, the following statement: "Made by a manufacturer exempt from Florida's cosmetic manufacturing permit requirements."

The bill allows DDC to investigate any complaint which alleges that an exempt cosmetics manufacturer has violated the FDCA or a related rule. DDC's authorized officers or employees may enter and inspect the premises of an exempt cosmetic manufacturer to determine compliance with the FDCA and related rules. A refusal to permit entry to the premises or to conduct an inspection is grounds for disciplinary action.

The bill does not exempt any person from any state or federal tax law, rule, regulation, or certificate, or from any county or municipal law or ordinance that applies to cosmetic manufacturing.

The bill allows an establishment that requires a DDC permit that submits an application for a change of ownership or controlling interest or a change of location with the required fees under this subsection, to request a temporary permit granting the establishment authority to operate for no more than 90 calendar days before obtaining a permanent permit. The establishment must submit the request for a temporary permit on a department form and obtain authorization to operate with the temporary permit before operating under the change of ownership or operating at the new location. Upon authorization of a temporary permit, the existing permit at the location for which the temporary permit is submitted is immediately null and void. A temporary permit may not be extended and becomes null and void at 12:01 a.m. on the 91st day after DDC authorized such temporary permit. Upon expiration of the temporary permit, the establishment may not continue to operate under such permit.

The bill allows DDC to adopt rules to authorize the issuance of a remedial, nondisciplinary citation. Such a citation may be issued to the person alleged to have committed a violation of the FDCA based on an inspection complaint, and must contain the person's name, address, any applicable license number; a brief factual statement; the sections of the law allegedly violated; and the monetary assessment and or other remedial measures imposed. The bill provides that the person has 30 days after the citation is served to contest the citation by providing supplemental and clarifying information to

[65] S. 499.0661(1), F.S.
[66] S. 499.067, F.S.

DDC. The citation must clearly state that the person may choose, in lieu of accepting the citation, to have the department rescind the citation and conduct an investigation of only those alleged violations contained in the citation.

The bill provides that such a citation must be rescinded by DDC if the person remedies or corrects the violations or deficiencies contained in the citation within 30 days after the citation is served. If the person does not successfully contest the citation to the satisfaction of DDC, or complete the remedial action, the citation becomes a final order and does not constitute discipline. The bill provides that DDC is entitled to recover the costs of investigation, in addition to any penalty provided according to department rule, as part of the penalty levied pursuant to such citation. Such a citation must be issued within 6 months after the filing of the complaint that is the basis for the citation. Service of a citation may be made by personal service or certified mail, restricted delivery, to the person at the person's last known address of record with DDC, or to the person's Florida registered agent. The bill allows DDC to adopt rules to designate which violations qualify for a citation and the monetary assessments and or other remedial measures that must be taken for those violations. Violations designated as subject to issuance of a citation must be limited to violations for which there is no substantial threat to the public health, safety, or welfare. DDC has continuous authority to amend its rules adopted pursuant to this section.

Pugilistic Exhibitions

Background

Chapter 548, F.S., governs the Florida State Boxing Commission (FSBC). The function of the FSBC is to license and regulate pugilistic events and matches, including professional boxing, kickboxing, and mixed martial arts. The FSBC ensures that all matches are conducted in accordance with provisions of state laws and rules. The FSBC designates employees to attend the matches, appoints match officials, and ensures the matches are held in a safe and fair manner.[67] Members of the FSBC are appointed by the Governor, and there are five members.[68]

A match participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician,[69] matchmaker, or promoter must be licensed by FSBC before directly or indirectly acting in such capacity in connection with any match. In order to obtain a license, an applicant must:[70]

- Complete an application in a form prescribed by the FSBC,
- Be at least 18 years of age, and
- Pay an application fee.

The FSBC generally establishes by rule any necessary protective devices that participants must wear, and the appropriate weight of gloves to be used in each boxing match. However, by statute, all participants in boxing matches must wear gloves weighing not less than 8 ounces each, and participants in mixed martial arts matches must wear gloves weighing between 4 to 8 ounces each.[71]

The FSBC requires that any glove intended to be used by a boxing or kickboxing participant in a match to be whole, clean, in sanitary condition, and have the thumb attached.[72] When both participants in a match weigh 154 pounds or less, both participants must use 8 ounce gloves, and when one or more of the participants in a match weighs more than 154 pounds, both participants must use 10 ounce gloves.[73]

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[67] S. 548.003, F.S.
[68] S. 548.003(1), F.S.
[69] A physician must be licensed pursuant to chapter 458 or chapter 459, must maintain a license in good standing, and must demonstrate satisfactory medical training or experience in boxing. S. 548.017, F.S.
[70] S. 548.021, F.S.
[71] S. 548.043(3), F.S.
[72] R. 61K1-3.030(2)(d), F.A.C.
[73] R. 61K1-3.030(2)(a), (b), F.A.C.

For mixed martial arts participants, the FSBC requires gloves to be whole, clean, and in sanitary condition.[74] Gloves must weigh no less than 4 ounces and no more than 8 ounces, but both participants must wear the same weight gloves and use the same manufacturer of gloves as provided by the promoter, unless both participants agree to use different manufacturers of gloves.[75]

There is a debate as to whether bare knuckle boxing is safer or more dangerous than competitions with gloves. Data on the topic is limited. Gloves were initially introduced to boxing matches in the 18th century as a way to protect the participants' hands, not heads.[76] Experts opposed to bare knuckle matches argue that gloves help in blocks and other defensive moves, and therefore provide head protection, and that bare knuckle matches generally involve more body shots, which can result in serious internal injuries.[77] However, experts in favor of bare knuckle matches argue that the force behind a bare knuckle punch is generally less than a gloved punch, which can be safer for head strikes, and that a bare knuckle match generally involves less total strikes due to hand injuries resulting from no glove protection, which can lead to less injuries overall.[78]

In 2011, the Yavapai Nation in Arizona oversaw a bare knuckle boxing match on an Indian reservation, that is generally believed to be the first sanctioned bare knuckle boxing match in the United States since 1889.[79] In 2018, Wyoming became the first state to allow bare knuckle boxing matches, and held a championship event.[80] Florida has since hosted events where the participants wore gloves that exposed the knuckles.[81] Currently, Wyoming, Mississippi, Florida, Kansas, and several Tribal Nations allow sanctioned bare knuckle boxing events.[82]

Effect of the Bill

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

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

Condominiums

FCTMH, a division within DBPR, provides education, complaint resolution, mediation and arbitration, and developer disclosures for condominium associations.[83]

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[74] R. 61K1-3.031(2)(b), F.A.C.
[75] R. 61K1-3.031(2)(a), F.A.C.
[76] Bob Moen, *Bare-knuckle boxing from a bygone era looks for a comeback*, AP News, https://apnews.com/a0926f603f6b4d83a958cc1d0fa9296e (last visited Mar. 19, 2021); Nick Wong, *Why Bare-Knuckle Fighting May Be Safer Than Boxing*, Complex Media, Inc., https://www.complex.com/sports/2015/11/bare-knuckle-boxing (last visited Mar. 19, 2021).
[77] *Id.*
[78] *Id.*
[79] Michael Woods, *Reviving a bygone, bare-knuckle era*, ESPN (Aug. 5, 2011), https://www.espn.com/boxing/story/_/id/6835788/bringing-back-bygone-bare-knuckle-era-boxing (last visited Mar. 19, 2021).
[80] Josh Peter, Bare-knuckle boxing legally held in United States for first time, USA Today (Jun. 3, 2018), https://www.usatoday.com/story/sports/boxing/2018/06/02/bare-knuckle-boxing-official-return/666535002/ (last visited Mar. 19, 2021).
[81] Florida Department of Business and Professional Regulation, *Match Results*, http://www.myfloridalicense.com/dbpr/pro/sbc/documents/BKFC6MatchResults.pdf (last visited Mar. 19, 2021); Combat Sports Law, *Let's Talk Florida and Bare Knuckle Boxing*, https://combatsportslaw.com/2019/05/21/lets-talk-florida-and-bare-knuckle-boxing/ (last visited Mar. 19, 2021); Eric Kowal, BKFC blankets Tampa, Florida with public events ahead of KnuckleMania, https://www.bareknuckle.tv/post/bkfc-blankets-tampa-florida-with-public-events-ahead-of-knucklemania (last visited Mar. 20, 2021).
[82] Combat Sports Law, Documenting Bare Knuckle Boxing Legality, https://combatsportslaw.com/2019/06/23/documenting-bare-knuckle-boxing-legality/ (last visited Mar. 19, 2021).
[83] Department of Business and Professional Regulation, *Division of Florida Condominiums, Timeshares, and Mobile Homes*, http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/, (last visited Mar. 19, 2021).

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., (the Condominium Act) comprised of units which may be owned by one or more persons along with an undivided right of access to common elements.[84] A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.[85] All unit owners are members of the condominium association, an entity responsible for the operation and maintenance of the common elements owned by the unit owners. The condominium association is overseen by an elected board of directors, which enacts bylaws which govern the administration of the association.

Annual Budget

Every condominium association must have an annual financial budget that sets forth the proposed expenditure of funds for the maintenance, management, and operation of the condominium. The annual budget must include operating expenses for the coming year and reserve accounts for capital expenditures and deferred maintenance.[86]

In order to adopt a proposed annual budget, an association must hold a meeting to adopt the proposed budget. The association must provide notice of the meeting and a copy of the proposed budget to the members of the association at least 14 days before the meeting.[87] The proposed budget must be detailed, and, at a minimum, include the condominium's estimated expenses, the estimated expenses of each unit owner, and a statement that the proposed budget is a good faith estimate and represents an approximation of the future expenses.[88]

Board Directors

The condominium association is overseen by an elected board of directors. The board is responsible for managing the affairs of the association, has a fiduciary relationship with the unit owners, and has the responsibility to act with the highest degree of good faith and to place the interests of the unit owners above the personal interests of the directors.[89]

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

- A person may be elected to the board by the members of the association,[90] or
- A person is appointed to the board by the developer if the developer is still entitled to representation, or by the board of directors if a vacancy on the board occurs between meetings.[91]

A condominium association's bylaws will establish the eligibility requirements to serve on the association's board of directors.[92] However, current law also establishes minimum requirements in order to serve on an association's board of directors.[93] In order to serve as a board director a person may not:[94]

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

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[84] S. 718.103(11), F.S.
[85] S. 718.104(2), F.S.
[86] S. 718.112(2)(f), F.S.
[87] S. 718.112(2)(e), F.S.
[88] Ss. 718.112(2)(f), & 718.504(21), F.S.
[89] Ss. 718.103(4), 718.111, 718.112, F.S.
[90] S. 718.112(2)(d)4., F.S.
[91] Ss. 617.0809, & 718.112(2)(d)9., F.S.
[92] S. 718.112(2)(a), F.S.
[93] S. 718.112(2)(d), F.S.
[94] Ss. 718.112(2)(d), F.S.

- Have been convicted of a felony, under certain circumstances.[95]

The term "monetary obligation" is not defined in the Condominium Act, but, according to legal experts, a monetary obligation is considered to be any type of money owed to the association including fines, fees, and assessments.[96]

The Condominium Act also does not define the term "delinquent." According to DBPR, this can result in confusion for purposes of determining if a person is eligible to serve as a board director, because many associations have grace periods before late fees and interest applies to unpaid monetary obligations. However, it is unclear if these grace periods apply related to board service eligibility.[97]

Condominium Ombudsman

Within FCTMH is housed the Office of the Condominium Ombudsman (Ombudsman). The Ombudsman is an attorney appointed by the Governor and a neutral resource for unit owners and condominium associations. The Ombudsman is authorized to prepare and issue reports and recommendations to the Governor, FCTMH, and the Legislature on any matter or subject within the jurisdiction of FCTMH. In addition, the Ombudsman may make recommendations to FCTMH for changes in rules and procedures for the filing, investigation, and resolution of complaints.[98]

The Ombudsman also acts as a liaison between FCTMH, unit owners, and condominium associations, and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.[99]

The Ombudsman is required to keep his or her principal office in Leon County.[100]

Condominium Complaints Received by FCTMH

FCTMH is charged with ensuring that condominium associations comply with the requirements of the Condominium Act and handling complaints alleging violations of the Condominium Act. FCTMH has complete jurisdiction to investigate complaints and enforce compliance with the Condominium Act for associations that are controlled by a developer, a bulk buyer, or a bulk assignee.[101] Once a developer has turned control of the condominium to the association, FCTMH only has jurisdiction to investigate complaints related to financial issues, elections, and unit owner access to official records.[102]

Within 30 days of receiving a complaint, FCTMH must acknowledge the complaint in writing, and notify the complainant whether the complaint is in its jurisdiction and whether additional information is needed. If the complaint is within FCTMH's jurisdiction, FCTMH must investigate the complaint and take action within 90 days of receiving the complaint or receiving additional information requested by FCTMH.[103]

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[95] S. 718.111(1)(d), F.S.
[96] *See* Ch. 718, F.S.; David G. Muller, *Can delinquent owner run for a board*, Naples Daily News, Aug. 17, 2019, https://www.naplesnews.com/story/money/real-estate/2019/08/17/can-delinquent-owner-run-board/1985170001/ (last visited Mar. 19, 2021); Joe Adams, *Term Limits Continue to Cause Confusion*, Florida Condo & HOA Law Blog, Dec. 17, 2018, https://www.floridacondohoalawblog.com/2018/12/17/term-limits-continue-to-cause-confusion/ (last visited Mar. 19, 2021).
[97] *See* Ch. 718, F.S.; Email from Gabe Peters, , Director of Legislative Affairs, Department of Business & Professional Regulation, Condo Language Clarification (Jan. 10, 2020).
[98] Ss. 718.5011 & 718.5012, F.S.
[99] *Id.*
[100] S. 718.5014, F.S.
[101] A bulk assignee is a person who buys more than seven units in a single condominium and receives assignment of any of the developer's rights. A bulk buyer is a person who buys more than seven units in a single condominium but does not receive any of the developer's rights. S. 718.703, F.S.
[102] Ss. 718.117, & 718.501, F.S.
[103] S. 718.501(1)(m), F.S.

Current law creates rules and requirements for filing complaints with DBPR against licensed professionals regulated by DBPR. Complaints filed against licensed professionals must be in writing, signed by the complainant, and legally sufficient. A complaint is legally sufficient if it contains ultimate facts that show a violation of the licensed professional's practice act.[104] However, no such rules or requirements exists for filing complaints against condominiums with FCTMH.

FCTMH provides a complaint form for condominium complaints, including a checklist of documents to provide with the complaint, on its website. According to FCTMH, submitting a complaint on the FCTMH's complaint form "may expedite the processing of your complaint."[105]

According to DBPR, establishing rules and requirements for filing complaints against condominium associations would allow FCTMH to be more efficient in resolving complaints.[106]

Effect of the Bill

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

The bill provides that a person may not serve on a board if he or she is delinquent in the payment of an **assessment** due to the condominium association, instead of any **monetary obligation**. Current law defines "assessment" as an owner's share of funds that are required for the payment of common expenses.[107]

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

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

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

Hotels and Restaurants

Background

H&R licenses, inspects, and regulates public lodging establishments and public food service establishments in Florida.[108]

"Public lodging establishment" includes:[109]

- "Transient public lodging establishments," which means "any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests

[104] S. 455.225(1), F.S.
[105] Florida Department of Business & Professional Regulation, *How to File a Complaint*, http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/complaints/#1572463379489-2bc8adc0-ec6a (last visited Mar. 19, 2021); Florida Department of Business & Professional Regulation, *Instructions for Filing a Condominium/Cooperative Complaint*, http://www.myfloridalicense.com/dbpr/lsc/documents/cccomplaint.pdf (last visited Mar. 19, 2021).
[106] Email from Gabe Peters, Director of Legislative Affairs, Department of Business & Professional Regulation, Condo Clarification (Jan. 10, 2020).
[107] S. 718.103(1), F.S.
[108] S. 509.032, F.S.
[109] S. 509.013(4), F.S.

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;" and

- "Nontransient public lodging establishments," which means "any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month."

"Public food service establishments" means "any building, vehicle, place, or structure, or any room or division thereof, where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption," with certain exceptions.[110]

Each public lodging establishment and public food service establishment must obtain a license from H&R. Licenses are renewed annually, and H&R must adopt a rule establishing a staggered schedule for license renewals.[111]

H&R adopts, by rule, a schedule of fees to be paid by each public lodging establishment and public food service establishment for the issuance or renewal of a license. Such fees are based on the number of rental units in the public lodging establishment, and based on seating capacity and services offered for public food service establishments.[112] License fees generally range from $91 for a temporary food vendor to $370 for a hotel with 501 or more rental units.[113]

The fee schedules require such establishments applying for an initial license to pay the full license fee if the application is made during the annual renewal period or more than 6 months before the next such renewal period, and one-half of the fee if the application is made 6 months or less before the next renewal period.[114] For example: if an applicant is applying for a hotel license with between 26 and 50 rental units, the initial license fee is $215, but if such applicant is applying for the license less than 6 months before the beginning of the next renewal period, the initial license fee is $112.50. Such applicant will need to pay the full annual fee when the next renewal period begins.[115]

Effect of the Bill

For public lodging establishments and public food service establishments, the bill:

- removes the requirement for a staggered license renewal schedule, and instead allows H&R to adopt rules regarding license issuance and renewals,
- clarifies rulemaking authority, and
- removes the partial initial fee payment based on when an application is submitted, and instead requires that all fees be paid at the time of application.

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

B. SECTION DIRECTORY:

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[110] S. 509.013(5), F.S.
[111] S. 509.241(1), F.S.
[112] S. 509.251(1), (2), F.S.
[113] Department of Business and Professional Regulation, *Hotel and Restaurants – Hotel-Motel Guide*, http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/hotels-and-restaurants-hotel-motel-guide/ (last visited Mar. 19, 2021); Department of Business and Professional Regulation, *Hotel and Restaurants – Food Service Fees*, http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/hotels-and-restaurants-hotel-motel-guide/ (last visited Mar. 19, 2021).
[114] *Id.*
[115] Department of Business and Professional Regulation, *Hotel and Restaurants – Hotel-Motel Guide*, http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/hotels-and-restaurants-hotel-motel-guide/ (last visited Mar. 19, 2021).

Section 1	Amends s. 210.09, F.S., revising reporting requirements for cigarette sales.
Section 2	Amends s. 210.55, F.S., revising reporting requirements for tobacco products sales.
Section 3	Amends s. 210.60, F.S., revising reporting requirements for tobacco products sales
Section 4	Amends s. 489.109, F.S., removing a contractor fee.
Section 5	Amends s. 489.118, F.S., removing a deadline for a contractor licensing provision.
Section 6	Amends s. 499.01, F.S, providing a permit exception for certain small manufacturers.
Section 7	Amends s. 499.012, F.S., providing requirements for a temporary permit.
Section 8	Amends s. 499.066, F.S., giving authority to issue citations.
Section 9	Amends s. 509.241, F.S., revising fee schedules for public lodging establishments and public food service establishments.
Section 10	Amends s. 509.251, F.S., revising fee schedules for public lodging establishments and public food service establishments.
Section 11	Amends s. 548.003, F.S., renaming the Florida State Boxing Commission as the Florida Athletic Commission.
Section 12	Amends s. 548.043, F.S., providing glove requirements for pugilistic events.
Section 13	Amends s. 553.841, F.S., conforming a provision.
Section 14	Amends s. 561.01, F.S., deleting the definition for "permit carrier."
Section 15	Amends s. 561.17, F.S., revising filing requirements for fingerprints for alcohol license applicants, and requiring alcohol licensees to maintain current electronic mail addresses.
Section 16	Amends s. 561.19, F.S., revising when there is availability of quota licenses.
Section 17	Amends s. 561.20, F.S., revising audit requirements for special restaurant licenses.
Section 18	Amends s. 561.42, F.S., allowing certain notices to be given by electronic mail.
Section 19	Amends s. 561.55, F.S., revising requirements for reports related to alcohol licenses.
Section 20	Amends s. 562.455, F.S., revising qualities of adulterating liquors.
Section 21	Amends s. 718.112, F.S., providing eligibility requirements for members of a condominium board of directors.
Section 22	Amends s. 718.501, F.S., allowing FCTMH to adopt rules prescribing the form of condominium complaints.
Section 23	Amends s. 718.5014, F.S., revising primary office location requirements for the office of the condominium ombudsman.
Section 24	Amends s. 455.219, F.S., conforming a provision
Section 25	Amends s. 548.002, F.S., conforming a provision.
Section 26	Amends s. 548.05, F.S., conforming a provision.
Section 27	Amends s. 548.071, F.S., conforming a provision.
Section 28	Amends s. 548.077, F.S., conforming a provision.
Section 29	Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DBPR expects the following fiscal impact on revenues:[116]

Division of Alcoholic Beverages and Tobacco: Tax revenue may be maximized by the required electronic submission of tax reports.

Division of Hotels and Restaurants: Based on internal projections for FY 21-22, the bill would reduce the division's revenue by approximately 4.5%.

[116] Department of Business and Professional Regulation, Agency Analysis of 2021 SB 1966, p. 9 (Mar. 12, 2021).

Under the current license fee structure, about 58% of new applicants pay an initial license fee for some fraction of time and then pay the division again to renew their license within the same fiscal year. Under the initiative, the division will collect a slightly larger initial license fee and a lower amount of renewal fees during the first year of licensure for each new license. The initiative would eliminate half year prorating of license fees, replacing it with a full year which slightly increases division revenue but results in a true "annual license" from the start with no same fiscal year renewals. Overall, based on internal projections for FY 2021-22, the initiative would reduce the division's revenue by $1,678,093.43, or roughly 4.54%. The figures are derived from a projected 2.45% growth rate in division revenue and a projected 2.62% growth rate in Food & Lodging License fees.

	2021-22	2022-23	2023-24
Total Div. Revenue	$36,968,791.25	$37,873,673.73	$38,800,704.95
Bill Difference	$(1,678,093.43)	$(1,722,036.96)	$(1,767,131.22)
Revenue with bill implemented	$35,290,697.82	$36,151,636.77	$37,033,573.74
% Change	-4.54%	-4.55%	-4.55%

Division of Professions: The bill removes a $4.00 fee that is currently required for CILB applications and renewals which, based on historical data, may result in a revenue reduction of $129,622 in Fiscal Year 2021-22 and $232,297 in Fiscal Year 2022-23.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may make it easier for licensees to maintain their licenses due to clarified regulatory schemes and routine auditing. The bill may allow more statewide contractors and cosmetics manufacturers to practice in the state based on easing licensing requirements.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DBPR will need to create and update rules related to regulations on tobacco; alcohol; condominium associations; drugs, devices, and cosmetics; and pugilistic events. DBPR has adequate existing rulemaking authority or new rule making authority in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Department of Business and Professional Regulation; amending s. 210.09, F.S.; requiring that certain reports relating to the transportation or possession of cigarettes be filed with the Division of Alcoholic Beverages and Tobacco through the division's electronic data submission system; providing that specified records relating to cigarettes received, sold, or delivered within the state may be kept in an electronic or paper format; amending s. 210.55, F.S.; requiring that certain entities file reports, rather than returns, relating to tobacco products with the division; providing requirements for such reports; amending s. 210.60, F.S.; providing that specified records relating to tobacco products may be kept in an electronic or paper format; amending s. 489.109, F.S.; removing provisions relating to an additional fee for application and renewal, transfer of funds, recommendations by the Construction Industry Licensing Board for use of such funds, distribution of such funds by the department, and required reports of the department, respectively; amending s. 489.118, F.S.; removing an obsolete date; amending s. 499.01, F.S.; exempting certain persons from specified permit requirements under certain

circumstances; requiring an exempt cosmetics manufacturer to provide, upon request, to the department specified documentation verifying his or her annual gross sales; authorizing an exempt cosmetics manufacturer to only manufacture and sell specified products; requiring specified labeling for each unit of cosmetics manufactured by an exempt cosmetic manufacturer; authorizing the department to investigate complaints and to enter and inspect the premises of an exempt cosmetics manufacturer; providing disciplinary actions; providing construction; amending s. 499.012, F.S.; authorizing specified establishments to submit a request for a temporary permit; requiring such establishments to submit the request to the department on specified forms; providing that upon authorization by the department for a temporary permit for a certain location, the existing permit for such location is immediately null and void; prohibiting a temporary permit from being extended; providing for expiration of a temporary permit; prohibiting an establishment from operating under an expired temporary permit; amending s. 499.066, F.S.; authorizing the department to adopt rules to permit the issuance of remedial, nondisciplinary citations; providing requirements for

such citations; providing for contest of and the rescinding of a citation; authorizing the department to recover specified costs relating to a citation; providing a timeframe for when a citation may be issued; providing requirements for the service of a citation; authorizing the department to adopt and amend rules, designate violations and monetary assessments, and order remedial measures that must be taken for such violations; amending s. 509.241, F.S.; revising rulemaking requirements relating to public lodging and food service licenses; amending s. 509.251, F.S.; deleting provisions relating to fee schedule requirements; specifying that all fees are payable in full upon submission of an application for a public lodging establishment license or a public food service license; amending s. 548.003, F.S.; renaming the Florida State Boxing Commission as the Florida Athletic Commission; amending s. 548.043, F.S.; revising rulemaking requirements for the commission relating to gloves; amending s. 553.841, F.S.; conforming a provision to changes made by the act; amending s. 561.01, F.S.; deleting the definition of the term "permit carrier"; amending s. 561.17, F.S.; revising a requirement related to the filing of fingerprints with the division; requiring that

applications be accompanied by certain information relating to right of occupancy; providing requirements relating to contact information for licensees and permittees; amending s. 561.19, F.S.; revising provisions relating to the availability of beverage licenses to include by reason of the cancellation of a quota beverage license; amending s. 561.20, F.S.; conforming cross-references; revising requirements for issuing special licenses to certain food service establishments; amending s. 561.42, F.S.; requiring the division, and authorizing vendors, to use electronic mail to give certain notice; amending s. 561.55, F.S.; revising requirements for reports relating to alcoholic beverages; amending s. 562.455, F.S.; removing grains of paradise as a form of adulteration of liquor used or intended for drink; amending s. 718.112, F.S.; providing the circumstances under which a person is delinquent in the payment of an assessment in the context of eligibility for membership on certain condominium boards; requiring that an annual budget be proposed to unit owners and adopted by the board before a specified time; amending s. 718.501, F.S.; authorizing the Division of Florida Condominiums, Timeshares, and Mobile Homes to adopt rules regarding the submission of complaints against a

condominium association; amending s. 718.5014, F.S.; revising the location requirements for the principal office of the condominium ombudsman; amending ss. 455.219, 548.002, 548.05, 548.071, and 548.077, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

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

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

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

through the division's electronic data submission system.

(3) All manufacturers, importers, distributing agents, wholesale dealers, agents, or retail dealers shall maintain and keep for a period of 3 years at the place of business where any transaction takes place, such records of cigarettes received, sold, or delivered within the state as may be required by the division. Such records may be kept in an electronic or paper format. The division or its duly authorized representative is hereby authorized to examine the books, papers, invoices, and other records, the stock of cigarettes in and upon any premises where the same are placed, stored, and sold, and the equipment of any such manufacturers, importers, distributing agents, wholesale dealers, agents, or retail dealers, pertaining to the sale and delivery of cigarettes taxable under this part. To verify the accuracy of the tax imposed and assessed by this part, each person is hereby directed and required to give to the division or its duly authorized representatives the means, facilities, and opportunity for such examinations as are herein provided for and required.

Section 2. Section 210.55, Florida Statutes, is amended to read:

210.55 Distributors; monthly reports ~~returns~~.—

(1) On or before the 10th of each month, every taxpayer with a place of business in this state shall file a full and complete report ~~return~~ with the division showing the taxable

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

(2) As soon as practicable after any report ~~return~~ is filed, the division shall examine each report ~~return~~ and correct it, if necessary, according to its best judgment and information. If the division finds that any amount of tax is due from the taxpayer and unpaid, it shall notify the taxpayer of the deficiency, stating that it proposes to assess the amount due together with interest and penalties. If a deficiency disclosed by the division's examination cannot be allocated to one or more particular months, the division shall notify the taxpayer of the deficiency, stating its intention to assess the amount due for a given period without allocating it to any

particular months.

(3) If, within 60 days after the mailing of notice of the proposed assessment, the taxpayer files a protest to the proposed assessment and requests a hearing on it, the division shall give notice to the taxpayer of the time and place fixed for the hearing, shall hold a hearing on the protest, and shall issue a final assessment to the taxpayer for the amount found to be due as a result of the hearing. If a protest is not filed within 60 days, the division shall issue a final assessment to the taxpayer. In any action or proceeding in respect to the proposed assessment, the taxpayer shall have the burden of establishing the incorrectness or invalidity of any final assessment made by the division.

(4) If any taxpayer required to file any report ~~return~~ fails to do so within the time prescribed, the taxpayer shall, on the written demand of the division, file the report ~~return~~ within 20 days after mailing of the demand and at the same time pay the tax due on its basis. If the taxpayer fails within that time to file the report ~~return~~, the division shall prepare the report ~~return~~ from its own knowledge and from the information that it obtains and on that basis shall assess a tax, which shall be paid within 10 days after the division has mailed to the taxpayer a written notice of the amount and a demand for its payment. In any action or proceeding in respect to the assessment, the taxpayer shall have the burden of establishing

the incorrectness or invalidity of any report ~~return~~ or assessment made by the division because of the failure of the taxpayer to make a report ~~return~~.

(5) All taxes are due not later than the 10th day of the month following the calendar month in which they were incurred, and thereafter shall bear interest at the annual rate of 12 percent. If the amount of tax due for a given period is assessed without allocating it to any particular month, the interest shall begin with the date of the assessment.

(6) In issuing its final assessment, the division shall add to the amount of tax found due and unpaid a penalty of 10 percent, but if it finds that the taxpayer has made a false report ~~return~~ with intent to evade the tax, the penalty shall be 50 percent of the entire tax as shown by the corrected report ~~return~~. In assessing a tax on the basis of a report ~~return~~ made under subsection (4), the division shall add to the amount of tax found due and unpaid a penalty of 25 percent.

(7) For the purpose of compensating the distributor for the keeping of prescribed records and the proper accounting and remitting of taxes imposed under this part, the distributor shall be allowed 1 percent of the amount of the tax due and accounted for and remitted to the division in the form of a deduction in submitting his or her report and paying the amount due; and the division shall allow such deduction of 1 percent of the amount of the tax to the person paying the same for

remitting the tax in the manner herein provided, for paying the amount due to be paid by him or her, and as further compensation to the distributor for the keeping of prescribed records and for collection of taxes and remitting the same.

(a) The collection allowance may not be granted, nor may any deduction be permitted, if the tax is delinquent at the time of payment.

(b) The division may reduce the collection allowance by 10 percent or $50, whichever is less, if a taxpayer files an incomplete report ~~return~~.

1. An "incomplete report ~~return~~" means ~~is~~, for purposes of this section ~~part~~, a report ~~return~~ which is lacking such uniformity, completeness, and arrangement that the physical handling, verification, or review of the report ~~return~~ may not be readily accomplished.

2. The division shall adopt rules requiring such information as it may deem necessary to ensure that the tax levied hereunder is properly collected, reviewed, compiled, and enforced, including, but not limited to: the amount of taxable sales; the amount of tax collected or due; the amount claimed as the collection allowance; the amount of penalty and interest; the amount due with the report ~~return~~; and such other information as the division may specify.

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

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

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

Section 4. Subsection (3) of section 489.109, Florida Statutes, is amended to read:

489.109 Fees.—

~~(3) In addition to the fees provided in subsection (1) for application and renewal for certification and registration, all certificateholders and registrants must pay a fee of $4 to the department at the time of application or renewal. The funds must~~

~~be transferred at the end of each licensing period to the department to fund projects relating to the building construction industry or continuing education programs offered to persons engaged in the building construction industry in Florida, to be selected by the Florida Building Commission. The board shall, at the time the funds are transferred, advise the department on the most needed areas of research or continuing education based on significant changes in the industry's practices or on changes in the state building code or on the most common types of consumer complaints or on problems costing the state or local governmental entities substantial waste. The board's advice is not binding on the department. The department shall ensure the distribution of research reports and the availability of continuing education programs to all segments of the building construction industry to which they relate. The department shall report to the board in October of each year, summarizing the allocation of the funds by institution and summarizing the new projects funded and the status of previously funded projects.~~

Section 5. Section 489.118, Florida Statutes, is amended to read:

489.118 Certification of registered contractors; grandfathering provisions.—The board shall, upon receipt of a completed application and appropriate fee, issue a certificate in the appropriate category to any contractor registered under

this part who makes application to the board and can show that he or she meets each of the following requirements:

(1) Currently holds a valid registered local license in one of the contractor categories defined in s. 489.105(3)(a)-(p).

(2) Has, for that category, passed a written examination that the board finds to be substantially similar to the examination required to be licensed as a certified contractor under this part. For purposes of this subsection, a written, proctored examination such as that produced by the National Assessment Institute, Block and Associates, NAI/Block, Experior Assessments, Professional Testing, Inc., or Assessment Systems, Inc., shall be considered to be substantially similar to the examination required to be licensed as a certified contractor. The board may not impose or make any requirements regarding the nature or content of these cited examinations.

(3) Has at least 5 years of experience as a contractor in that contracting category, or as an inspector or building administrator with oversight over that category, at the time of application. For contractors, only time periods in which the contractor license is active and the contractor is not on probation shall count toward the 5 years required by this subsection.

(4) Has not had his or her contractor's license revoked at any time, had his or her contractor's license suspended within

the last 5 years, or been assessed a fine in excess of $500 within the last 5 years.

(5) Is in compliance with the insurance and financial responsibility requirements in s. 489.115(5).

~~Applicants wishing to obtain a certificate pursuant to this section must make application by November 1, 2015.~~

Section 6. Paragraph (p) of subsection (2) of section 499.01, Florida Statutes, is amended to read:

499.01 Permits.—

(2) The following permits are established:

(p) Cosmetic manufacturer permit.—A cosmetic manufacturer permit is required for any person that manufactures or repackages cosmetics in this state. A person that only labels or changes the labeling of a cosmetic but does not open the container sealed by the manufacturer of the product is exempt from obtaining a permit under this paragraph. A person who manufactures cosmetics and has annual gross sales of $25,000 or less is exempt from the permit requirements of this subsection. Upon request, an exempt cosmetics manufacturer must provide to the department written documentation to verify his or her annual gross sales, including all sales of cosmetic products at any location, regardless of the types of products sold or the number of persons involved in the operation.

1. An exempt cosmetics manufacturer may only:

a. Sell prepackaged cosmetics affixed with a label containing information required by the United States Food and Drug Administration.

b. Manufacture and sell cosmetics that are soaps, not otherwise exempt from the definition of cosmetics, lotions, moisturizers, and creams.

c. Sell cosmetics that are not adulterated or misbranded in accordance with 21 U.S.C. ss. 361 and 362.

d. Sell cosmetic products that are stored on the premises of the cosmetic manufacturing operation.

2. Each unit of cosmetics manufactured under this paragraph must contain in contrasting color and not less than 10-point, the following statement: "Made by a manufacturer exempt from Florida's cosmetic manufacturing permit requirements."

3. The department may investigate any complaint which alleges that an exempt cosmetics manufacturer has violated an applicable provision of this chapter or rule adopted under this chapter. The department's authorized officer or employee may enter and inspect the premises of an exempt cosmetic manufacturer to determine compliance with this chapter and department rules, as applicable. A refusal to permit entry to the premises or to conduct an inspection is grounds for disciplinary action pursuant to s. 499.005.

4. This paragraph does not exempt any person from any

state or federal tax law, rule, regulation, or certificate, or from any county or municipal law or ordinance that applies to cosmetic manufacturing.

Section 7. Paragraph (d) is added to subsection (6) of section 499.012, Florida Statutes, to read:

499.012 Permit application requirements.—

(6) A permit issued by the department is nontransferable. Each permit is valid only for the person or governmental unit to which it is issued and is not subject to sale, assignment, or other transfer, voluntarily or involuntarily; nor is a permit valid for any establishment other than the establishment for which it was originally issued.

(d) When an establishment that requires a permit pursuant to this part submits an application to the department for a change of ownership or controlling interest or a change of location with the required fees under this subsection, the establishment may also submit a request for a temporary permit granting the establishment authority to operate for no more than 90 calendar days. The establishment must submit the request for a temporary permit to the department on a form provided by the department and obtain authorization to operate with the temporary permit before operating under the change of ownership or operating at the new location. Upon authorization of a temporary permit, the existing permit at the location for which the temporary permit is submitted is immediately null and void.

A temporary permit may not be extended and shall expire and become null and void by operation of law without further action by the department at 12:01 a.m. on the 91st day after the department authorizes such permit. Upon expiration of the temporary permit, the establishment may not continue to operate under such permit.

The department may revoke the permit of any person that fails to comply with the requirements of this subsection.

Section 8. Subsection (8) is added to section 499.066, Florida Statutes, to read:

499.066 Penalties; remedies.—In addition to other penalties and other enforcement provisions:

(8)(a) The department shall adopt rules to authorize the issuance of a remedial, nondisciplinary citation. A citation shall be issued to the person alleged to have committed a violation and contain the person's name, address, and license number, if applicable; a brief factual statement; the sections of the law allegedly violated; and the monetary assessment and or other remedial measures imposed. The person shall have 30 days after the citation is served to contest the citation by providing supplemental and clarifying information to the department. The citation must clearly state that the person may choose, in lieu of accepting the citation, to have the department rescind the citation and conduct an investigation

pursuant to s. 499.051 of only those alleged violations contained in the citation. The citation shall be rescinded by the department if the person remedies or corrects the violations or deficiencies contained in the citation within 30 days after the citation is served. If the person does not successfully contest the citation to the satisfaction of the department, or complete remedial action pursuant to this paragraph, the citation becomes a final order and does not constitute discipline.

(b) The department is entitled to recover the costs of investigation, in addition to any penalty provided according to department rule, as part of the penalty levied pursuant to a citation.

(c) A citation must be issued within 6 months after the filing of the complaint that is the basis for the citation.

(d) Service of a citation may be made by personal service or certified mail, restricted delivery, to the person at the person's last known address of record with the department, or to the person's Florida registered agent.

(e) The department may adopt rules to designate those violations for which a person is subject to the issuance of a citation and the monetary assessments and or other remedial measures that must be taken for those violations. Violations designated as subject to issuance of a citation shall include violations for which there is no substantial threat to the

public health, safety, or welfare. The department has continuous authority to amend its rules adopted pursuant to this section.

Section 9. Subsection (1) of section 509.241, Florida Statutes, is amended to read:

509.241 Licenses required; exceptions.—

(1) LICENSES; ANNUAL RENEWALS.—Each public lodging establishment and public food service establishment shall obtain a license from the division. Such license may not be transferred from one place or individual to another. It shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for such an establishment to operate without a license. Local law enforcement shall provide immediate assistance in pursuing an illegally operating establishment. The division may refuse a license, or a renewal thereof, to any establishment that is not constructed and maintained in accordance with law and with the rules of the division. The division may refuse to issue a license, or a renewal thereof, to any establishment an operator of which, within the preceding 5 years, has been adjudicated guilty of, or has forfeited a bond when charged with, any crime reflecting on professional character, including soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, or illegally dealing in controlled substances as defined in chapter 893, whether in this state or in any other jurisdiction within the United States, or has had a license denied, revoked,

or suspended pursuant to s. 429.14. Licenses shall be renewed annually, and the division shall adopt rules ~~a rule~~ establishing procedures ~~a staggered schedule~~ for license issuance and renewals. If any license expires while administrative charges are pending against the license, the proceedings against the license shall continue to conclusion as if the license were still in effect.

Section 10. Subsections (1) and (2) of section 509.251, Florida Statutes, are amended to read:

509.251 License fees.—

(1) The division shall adopt, by rule, a schedule of fees to be paid by each public lodging establishment as a prerequisite to issuance or renewal of a license. Such fees shall be based on the number of rental units in the establishment. The aggregate fee per establishment charged any public lodging establishment may not exceed $1,000; however, the fees described in paragraphs (a) and (b) may not be included as part of the aggregate fee subject to this cap. Vacation rental units or timeshare projects within separate buildings or at separate locations but managed by one licensed agent may be combined in a single license application, and the division shall charge a license fee as if all units in the application are in a single licensed establishment. ~~The fee schedule shall require an establishment which applies for an initial license to pay the full license fee if application is made during the annual~~

~~renewal period or more than 6 months before the next such renewal period and one-half of the fee if application is made 6 months or less before such period.~~ The fee schedule shall include fees collected for the purpose of funding the Hospitality Education Program, pursuant to s. 509.302. All fees~~,~~ ~~which~~ are payable in full for each application at the time ~~regardless of when~~ the application is submitted.

(a) Upon making initial application or an application for change of ownership, the applicant shall pay to the division a fee as prescribed by rule, not to exceed $50, in addition to any other fees required by law, which shall cover all costs associated with initiating regulation of the establishment.

(b) A license renewal filed with the division after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed $50, in addition to the renewal fee and any other fees required by law.

(2) The division shall adopt, by rule, a schedule of fees to be paid by each public food service establishment as a prerequisite to issuance or renewal of a license. The fee schedule shall prescribe a basic fee and additional fees based on seating capacity and services offered. The aggregate fee per establishment charged any public food service establishment may not exceed $400; however, the fees described in paragraphs (a) and (b) may not be included as part of the aggregate fee subject to this cap. ~~The fee schedule shall require an establishment~~

~~which applies for an initial license to pay the full license fee if application is made during the annual renewal period or more than 6 months before the next such renewal period and one-half of the fee if application is made 6 months or less before such period.~~ The fee schedule shall include fees collected for the purpose of funding the Hospitality Education Program, pursuant to s. 509.302. All fees~~, which~~ are payable in full for each application at the time ~~regardless of when~~ the application is submitted.

(a) Upon making initial application or an application for change of ownership, the applicant shall pay to the division a fee as prescribed by rule, not to exceed $50, in addition to any other fees required by law, which shall cover all costs associated with initiating regulation of the establishment.

(b) A license renewal filed with the division after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed $50, in addition to the renewal fee and any other fees required by law.

Section 11. Section 548.003, Florida Statutes, is amended to read:

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

(1) The Florida Athletic ~~State Boxing~~ Commission is created and is assigned to the Department of Business and Professional Regulation for administrative and fiscal accountability purposes only. The ~~Florida State Boxing~~

commission shall consist of five members appointed by the Governor, subject to confirmation by the Senate. One member must be a physician licensed under ~~pursuant to~~ chapter 458 or chapter 459, who must maintain an unencumbered license in good standing, and who must, at the time of her or his appointment, have practiced medicine for at least 5 years. Upon the expiration of the term of a commissioner, the Governor shall appoint a successor to serve for a 4-year term. A commissioner whose term has expired shall continue to serve on the commission until such time as a replacement is appointed. If a vacancy on the commission occurs before ~~prior to~~ the expiration of the term, it shall be filled for the unexpired portion of the term in the same manner as the original appointment.

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

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

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

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

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

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

(f) Procedures for hearings and resolution of disputes.

(g) Qualifications for appointment of referees and judges.

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

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

(j) Establishment of criteria for approval, disapproval, suspension of approval, and revocation of approval of amateur sanctioning organizations for amateur boxing, kickboxing, and mixed martial arts held in this state, including, but not limited to, the health and safety standards the organizations use before, during, and after the matches to ensure the health, safety, and well-being of the amateurs participating in the matches, including the qualifications and numbers of health care

personnel required to be present, the qualifications required for referees, and other requirements relating to the health, safety, and well-being of the amateurs participating in the matches. The commission may adopt by rule, or incorporate by reference into rule, the health and safety standards of USA Boxing as the minimum health and safety standards for an amateur boxing sanctioning organization, the health and safety standards of the International Sport Kickboxing Association as the minimum health and safety standards for an amateur kickboxing sanctioning organization, and the minimum health and safety standards for an amateur mixed martial arts sanctioning organization. The commission shall review its rules for necessary revision at least every 2 years and may adopt by rule, or incorporate by reference into rule, the then-existing current health and safety standards of USA Boxing and the International Sport Kickboxing Association. The commission may adopt emergency rules to administer this paragraph.

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

(4) Three consecutive unexcused absences or absences constituting 50 percent or more of the commission's meetings

within any 12-month period shall cause the commission membership of the member in question to become void, and the position shall be considered vacant. The commission shall, by rule, define unexcused absences.

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

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

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

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

Section 12. Subsection (3) of section 548.043, Florida Statutes, is amended to read:

548.043 Weights and classes, limitations; gloves.—

(3) The commission shall establish by rule the need for gloves, if any, and the weight of any such gloves to be used in each pugilistic match ~~the appropriate weight of gloves to be used in each boxing match; however, all participants in boxing matches shall wear gloves weighing not less than 8 ounces each and participants in mixed martial arts matches shall wear gloves weighing 4 to 8 ounces each~~. Participants shall wear such protective devices as the commission deems necessary.

Section 13. Subsection (5) of section 553.841, Florida Statutes, is amended to read:

553.841 Building code compliance and mitigation program.—

~~(5) Each biennium, upon receipt of funds by the Department of Business and Professional Regulation from the Construction Industry Licensing Board and the Electrical Contractors' Licensing Board provided under ss. 489.109(3) and 489.509(3), the department shall determine the amount of funds available for the Florida Building Code Compliance and Mitigation Program.~~

Section 14. Subsection (20) of section 561.01, Florida Statutes, is amended to read:

561.01 Definitions.—As used in the Beverage Law:

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

Section 15. Subsections (1) and (2) of section 561.17, Florida Statutes, are amended, and subsection (5) is added to that section, to read:

561.17 License and registration applications; approved person.—

(1) Any person, before engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages, shall file, with the district licensing personnel of the district of the division in which the place of business for which a license is sought is located, a sworn application in the format prescribed by the division. The applicant must be a legal or business entity, person, or persons and must include all persons, officers, shareholders, and directors of such legal or business entity that have a direct or indirect interest in the business seeking to be licensed under this part. However, the applicant does not include any person that derives revenue from the license solely through a contractual relationship with the licensee, the substance of which contractual relationship is not related to the control of the sale of alcoholic beverages. Before any application is approved, the division may require the applicant to file a set of fingerprints electronically through an approved electronic fingerprinting vendor or on ~~regular United States Department of Justice~~ forms prescribed by the Florida Department of Law Enforcement for herself or himself and for any person or persons

interested directly or indirectly with the applicant in the business for which the license is being sought, when required by the division. If the applicant or any person who is interested with the applicant either directly or indirectly in the business or who has a security interest in the license being sought or has a right to a percentage payment from the proceeds of the business, either by lease or otherwise, is not qualified, the division shall deny the application. However, any company regularly traded on a national securities exchange and not over the counter; any insurer, as defined in the Florida Insurance Code; or any bank or savings and loan association chartered by this state, another state, or the United States which has an interest, directly or indirectly, in an alcoholic beverage license is not required to obtain the division's approval of its officers, directors, or stockholders or any change of such positions or interests. A shopping center with five or more stores, one or more of which has an alcoholic beverage license and is required under a lease common to all shopping center tenants to pay no more than 10 percent of the gross proceeds of the business holding the license to the shopping center, is not considered as having an interest, directly or indirectly, in the license. A performing arts center, as defined in s. 561.01, which has an interest, directly or indirectly, in an alcoholic beverage license is not required to obtain division approval of its volunteer officers or directors or of any change in such

positions or interests.

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

(5) Any person or entity licensed or permitted by the division must provide an electronic mail address to the division to function as the primary contact for all communication by the division to the licensee or permittees. Licensees and permittees are responsible for maintaining accurate contact information on file with the division.

Section 16. Paragraph (a) of subsection (2) of section 561.19, Florida Statutes, is amended to read:

561.19 License issuance upon approval of division.—

(2)(a) When beverage licenses become available by reason of an increase in the population of a county, by reason of a county permitting the sale of intoxicating beverages when such sale had been prohibited, or by reason of the cancellation or

revocation of a quota beverage license, the division, if there are more applicants than the number of available licenses, shall provide a method of double random selection by public drawing to determine which applicants shall be considered for issuance of licenses. The double random selection drawing method shall allow each applicant whose application is complete and does not disclose on its face any matter rendering the applicant ineligible an equal opportunity of obtaining an available license. After all applications are filed with the director, the director shall then determine by random selection drawing the order in which each applicant's name shall be matched with a number selected by random drawing, and that number shall determine the order in which the applicant will be considered for a license. This paragraph does not prohibit a person holding a perfected lien or security interest in a quota alcoholic beverage license, in accordance with s. 561.65, from enforcing the lien or security interest against the license within 180 days after a final order of revocation or suspension. A revoked quota alcoholic beverage license encumbered by a lien or security interest, perfected pursuant to s. 561.65, may not be issued under this subsection until the 180-day period has elapsed or until such enforcement proceeding is final.

Section 17. Paragraph (a) of subsection (2) of section 561.20, Florida Statutes, is amended to read:

561.20 Limitation upon number of licenses issued.—

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

1. Any bona fide hotel, motel, or motor court of not fewer than 80 guest rooms in any county having a population of less than 50,000 residents, and of not fewer than 100 guest rooms in any county having a population of 50,000 residents or greater; or any bona fide hotel or motel located in a historic structure, as defined in s. 561.01(20) ~~s. 561.01(21)~~, with fewer than 100 guest rooms which derives at least 51 percent of its gross revenue from the rental of hotel or motel rooms, which is licensed as a public lodging establishment by the Division of Hotels and Restaurants; provided, however, that a bona fide hotel or motel with no fewer than 10 and no more than 25 guest rooms which is a historic structure, as defined in s. 561.01(20) ~~s. 561.01(21)~~, in a municipality that on the effective date of this act has a population, according to the University of Florida's Bureau of Economic and Business Research Estimates of Population for 1998, of no fewer than 25,000 and no more than 35,000 residents and that is within a constitutionally chartered county may be issued a special license. This special license shall allow the sale and consumption of alcoholic beverages only on the licensed premises of the hotel or motel. In addition, the hotel or motel must derive at least 60 percent of its gross revenue from the rental of hotel or motel rooms and the sale of

food and nonalcoholic beverages; provided that this subparagraph shall supersede local laws requiring a greater number of hotel rooms;

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

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

4. A food service establishment that has 2,500 square feet of service area, is equipped to serve meals to 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages during the first 120-day ~~60-day~~ operating period and the first ~~each~~ 12-month operating period thereafter. Subsequent audit timeframes must be based upon the audit percentage

established by the most recent audit and conducted on a staggered scale as follows: level 1, 51 percent to 60 percent, every year; level 2, 61 percent to 75 percent, every 2 years; level 3, 76 percent to 90 percent, every 3 years; and level 4, 91 percent to 100 percent, every 4 years. A food service establishment granted a special license on or after January 1, 1958, pursuant to general or special law may not operate as a package store and may not sell intoxicating beverages under such license after the hours of serving or consumption of food have elapsed. Failure by a licensee to meet the required percentage of food and nonalcoholic beverage gross revenues during the covered operating period shall result in revocation of the license or denial of the pending license application. A licensee whose license is revoked or an applicant whose pending application is denied, or any person required to qualify on the special license application, is ineligible to have any interest in a subsequent application for such a license for a period of 120 days after the date of the final denial or revocation;

5. Any caterer, deriving at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages at each catered event, licensed by the Division of Hotels and Restaurants under chapter 509. This subparagraph does not apply to a culinary education program, as defined in s. 381.0072(2), which is licensed as a public food service establishment by the Division of Hotels and Restaurants and

provides catering services. Notwithstanding any law to the contrary, a licensee under this subparagraph shall sell or serve alcoholic beverages only for consumption on the premises of a catered event at which the licensee is also providing prepared food, and shall prominently display its license at any catered event at which the caterer is selling or serving alcoholic beverages. A licensee under this subparagraph shall purchase all alcoholic beverages it sells or serves at a catered event from a vendor licensed under s. 563.02(1), s. 564.02(1), or licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), as appropriate. A licensee under this subparagraph may not store any alcoholic beverages to be sold or served at a catered event. Any alcoholic beverages purchased by a licensee under this subparagraph for a catered event that are not used at that event must remain with the customer; provided that if the vendor accepts unopened alcoholic beverages, the licensee may return such alcoholic beverages to the vendor for a credit or reimbursement. Regardless of the county or counties in which the licensee operates, a licensee under this subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this subparagraph must maintain for a period of 3 years all records and receipts for each catered event, including all contracts, customers' names, event locations, event dates, food purchases and sales, alcoholic beverage purchases and sales, nonalcoholic beverage purchases

and sales, and any other records required by the department by rule to demonstrate compliance with the requirements of this subparagraph. Notwithstanding any law to the contrary, any vendor licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), may, without any additional licensure under this subparagraph, serve or sell alcoholic beverages for consumption on the premises of a catered event at which prepared food is provided by a caterer licensed under chapter 509. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph may ~~shall~~ not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this section shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. The Division of Alcoholic Beverages and Tobacco is hereby authorized to adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement. The first $300,000 in fees collected by the division each fiscal year pursuant to this subparagraph shall be deposited in the Department of Children and Families' Operations and Maintenance Trust Fund to be used only for alcohol and drug abuse education, treatment, and prevention programs. The remainder of the fees collected shall

be deposited into the Hotel and Restaurant Trust Fund created pursuant to s. 509.072; or

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

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

b. If the culinary education program provides catering services, this special license shall also allow the sale and consumption of alcoholic beverages on the premises of a catered event at which the licensee is also providing prepared food. A culinary education program that provides catering services is not required to derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. Notwithstanding any law to the contrary, a licensee that provides catering services under this sub-subparagraph shall prominently display its beverage license at any catered event at

which the caterer is selling or serving alcoholic beverages. Regardless of the county or counties in which the licensee operates, a licensee under this sub-subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this sub-subparagraph must maintain for a period of 3 years all records required by the department by rule to demonstrate compliance with the requirements of this sub-subparagraph.

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

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

e. A license issued pursuant to this subparagraph does not permit the licensee to sell alcoholic beverages by the package

for off-premises consumption.

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

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

Section 18. Subsection (4) of section 561.42, Florida Statutes, is amended to read:

561.42 Tied house evil; financial aid and assistance to vendor by manufacturer, distributor, importer, primary American source of supply, brand owner or registrant, or any broker, sales agent, or sales person thereof, prohibited; procedure for enforcement; exception.—

(4) Before the division shall so declare and prohibit such sales to such vendor, ~~it shall,~~ within 2 days after receipt of such notice~~,~~ the division shall give ~~written~~ notice to such vendor by electronic mail of the receipt by the division of such notification of delinquency and such vendor shall be directed to

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

Section 19. Subsection (2) of section 561.55, Florida Statutes, is amended to read:

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

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

Section 20. Section 562.455, Florida Statutes, is amended to read:

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

Section 21. Paragraphs (d) and (f) of subsection (2) of section 718.112, Florida Statutes, are amended to read:

718.112 Bylaws.—

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

(d) *Unit owner meetings.*—

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

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term must be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of

all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. Board members may serve terms longer than 1 year if permitted by the bylaws or articles of incorporation. A board member may not serve more than 8 consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a residential condominium association of more than 10 units or in a residential condominium association that does not include timeshare units or timeshare interests, co-owners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a

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

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice must include an agenda, must be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting, and must be posted in a conspicuous place on the condominium property at least 14 continuous days before the annual meeting. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property where all notices of unit owner meetings must be posted. This requirement does not apply if there is no condominium property for posting notices. In lieu of, or in addition to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the

board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association's official records. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice must be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide an affidavit or United States Postal Service certificate of

mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

4. The members of the board of a residential condominium shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This subparagraph does not apply to an association governing a timeshare condominium.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates. Upon request of a candidate, an information sheet, no larger than 8 1/2 inches by 11 inches, which must be

furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not authorize any other person to vote his or her ballot, and any ballots improperly cast are invalid. A unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting. Notwithstanding this sub-subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. Within 90 days after being elected or appointed to the

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

election or the duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.

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

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

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

of mass emails sent to members on behalf of the association in the course of giving electronic notices.

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

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

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

10. This chapter does not limit the use of general or limited proxies, require the use of general or limited proxies,

or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association or nonresidential condominium association.

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(f) *Annual budget.*—

1. The proposed annual budget of estimated revenues and expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, at a minimum, any applicable expenses listed in s. 718.504(21). The annual budget must be proposed to unit owners and adopted by the board of directors no later than 30 days before the beginning of the fiscal year. A multicondominium association shall adopt a separate budget of common expenses for each condominium the association operates and shall adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared

only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached to it must show the amount budgeted for this maintenance. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they need not be listed.

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

b. Before turnover of control of an association by a

developer to unit owners other than a developer pursuant to s. 718.301, the developer may vote the voting interests allocated to its units to waive the reserves or reduce the funding of reserves through the period expiring at the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first, after which time reserves may be waived or reduced only upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves and no such result is achieved or a quorum is not attained, the reserves included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a duly called meeting of the association. Before turnover of control of an association by a developer to unit owners other than the developer pursuant to s. 718.301, the developer-controlled

association may not vote to use reserves for purposes other than those for which they were intended without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the association.

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

Section 22. Paragraph (m) of subsection (1) of section 718.501, Florida Statutes, is amended to read:

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

(1) The division may enforce and ensure compliance with the provisions of this chapter and rules relating to the development, construction, sale, lease, ownership, operation,

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

(m) If a complaint is made, the division must conduct its inquiry with due regard for the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists

to believe that a violation of this chapter or a rule has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing pursuant to ss. 120.569 and 120.57. The division may adopt rules regarding the submission of a complaint against an association.

Section 23. Section 718.5014, Florida Statutes, is amended to read:

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

Section 24. Subsection (1) of section 455.219, Florida Statutes, is amended to read:

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

(1) Each board within the department shall determine by rule the amount of license fees for its profession, based upon

department-prepared long-range estimates of the revenue required to implement all provisions of law relating to the regulation of professions by the department and any board; however, when the department has determined, based on the long-range estimates of such revenue, that a profession's trust fund moneys are in excess of the amount required to cover the necessary functions of the board, or the department when there is no board, the department may adopt rules to implement a waiver of license renewal fees for that profession for a period not to exceed 2 years, as determined by the department. Each board, or the department when there is no board, shall ensure license fees are adequate to cover all anticipated costs and to maintain a reasonable cash balance, as determined by rule of the department, with advice of the applicable board. If sufficient action is not taken by a board within 1 year of notification by the department that license fees are projected to be inadequate, the department shall set license fees on behalf of the applicable board to cover anticipated costs and to maintain the required cash balance. The department shall include recommended fee cap increases in its annual report to the Legislature. Further, it is legislative intent that no regulated profession operate with a negative cash balance. The department may provide by rule for the advancement of sufficient funds to any profession or the Florida Athletic ~~State Boxing~~ Commission operating with a negative cash balance. Such advancement may be

for a period not to exceed 2 consecutive years and shall require interest to be paid by the regulated profession. Interest shall be calculated at the current rate earned on Professional Regulation Trust Fund investments. Interest earned shall be allocated to the various funds in accordance with the allocation of investment earnings during the period of the advance.

Section 25. Subsection (4) of section 548.002, Florida Statutes, is amended to read:

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

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

Section 26. Subsections (3) and (4) of section 548.05, Florida Statutes, are amended to read:

548.05 Control of contracts.—

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

(4) Each contract subject to this section shall contain

the following clause: "This agreement is subject to the provisions of chapter 548, Florida Statutes, and to the rules of the Florida Athletic ~~State Boxing~~ Commission and to any future amendments of either."

Section 27. Subsection (12) of section 548.071, Florida Statutes, is amended to read:

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

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

Section 28. Section 548.077, Florida Statutes, is amended to read:

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

Section 29. This act shall take effect July 1, 2021.

REGULATORY REFORM SUBCOMMITTEE

HB 1517 by Rep. Duggan
Department of Business and Professional Regulation

AMENDMENT SUMMARY
March 24, 2021

Amendment 1 by Rep. Duggan (line 357):
The amendment removes a $4 additional application and renewal fee for electrical contractors to fund projects and continuing education programs related to areas of need in the building construction industry.

Amendment No. 1

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

Committee/Subcommittee hearing bill: Regulatory Reform Subcommittee

Representative Duggan offered the following:

Amendment (with title amendment)

Between lines 357 and 358, insert:

Section 6. Subsection (3) of section 489.509, Florida Statutes, is amended to read:

489.509 Fees.—

~~(3) Four dollars of each fee under subsection (1) paid to the department at the time of application or renewal shall be transferred at the end of each licensing period to the department to fund projects relating to the building construction industry or continuing education programs offered to persons engaged in the building construction industry in Florida. The board shall, at the time the funds are transferred,~~

~~advise the department on the most needed areas of research or continuing education based on significant changes in the industry's practices or on the most common types of consumer complaints or on problems costing the state or local governmental entities substantial waste. The board's advice is not binding on the department. The department shall ensure the distribution of research reports and the availability of continuing education programs to all segments of the building construction industry to which they relate. The department shall report to the board in October of each year, summarizing the allocation of the funds by institution and summarizing the new projects funded and the status of previously funded projects.~~

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

Between lines 23 and 24, insert:

amending s. 489.509, F.S.; removing provisions relating to an additional fee for application and renewal, transfer of funds, recommendations by the Electrical Contractors' Licensing Board for use of such funds, distribution of such funds by the department, and required reports of the department;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1577 Building Construction Standards
SPONSOR(S): McClain
TIED BILLS: **IDEN./SIM. BILLS:** SB 488

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee		Brackett DB	Anstead JA
2) Commerce Committee			

SUMMARY ANALYSIS

The Florida Building Commission (Commission), located within the Department of Business and Professional Regulation, implements and adopts the Florida Building Code. The Building Code is the statewide building code for all construction in the state. Every local government must enforce the Building Code and issue building permits. The Commission adopts a new edition of the Building Code every three years.

Current law requires the Commission to develop and implement an approval of construction products for statewide use. The Commission has created a product evaluation and approval system for products and systems that makeup the building envelope and structural frame of a building.

To obtain state approval, a manufacturer must demonstrate a product complies with the applicable standards and provisions of the Building Code by submitting one of the following reports:

- A certification mark or listing of an approved certification agency;
- A test report from an approved testing laboratory;
- A product evaluation report signed and sealed by a Florida licensed engineer or architect; or
- A product evaluation report from one of the following **evaluation entities**:
  - The National Evaluation Service;
  - The International Association of Plumbing and Mechanical Officials Evaluation Service;
  - The International Code Council Evaluation Services;
  - Underwriters Laboratories, LLC;
  - The International Conference of Building Officials;
  - SBCCI Public Safety Testing and Evaluation Services, Inc.;
  - Intertek Testing Services NA, Inc.; or
  - The Miami-Dade County Building Code Compliance Office Product Control Division.

Currently, the Commission has authority to approve an entity as an approved testing laboratory or a certification agency if it meets the Commission's rules. However, the Commission does not have authority to approve an entity as an evaluation entity. In order to be approved as an evaluation entity, the entity must be added to the list of approved evaluation entities by the Legislature.

The bill adds NEMO ETC, LLC, to the list of approved **evaluation entities** that may issue product evaluation reports. According to its website, NEMO ETC, is a firm of engineers, and technications providing engineering, evaluation, testing and consulting services for the building products manufacturing sector.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.[1]

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.[2] The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.[3]

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act" (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction. [4]

The main purpose of the Building Code is to regulate new construction or proposed modifications to existing structures in order to give the occupants the highest level of safety and the least amount of defects.[5]

The Florida Building Commission

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.[6]

The Commission reviews several International Codes published by the International Code Council, 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.[7]

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[1] The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs,* p. 4, http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Feb. 15, 2021).
[2] *Id.*; DBPR, *Building Code Information System*, https://floridabuilding.org/c/default.aspx# (last visited on Feb. 15, 2021).
[3] Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspx (last visited Feb.. 26, 2021).
[4] *See* S. 553.72(1), F.S.
[5] Florida Building Commission, *Advanced Florida Building Code Principals*, http://www.floridabuilding.org/Upload/Courses_trp/421-2-MATERIAL-Adv%20FL%20Bldg%20Code%20-%20Course%20PDF%20version%207.0.pdf (last visited Feb. 26, 2021).
[6] Ss. 553.73, and 553.74, F.S.
[7] *Id.*

The Commission has 11 Technical Advisory Committees (TAC) ranging from the building structural TAC to the swimming pool TAC.[8] TACs are made up of commission members and other parties who advise the commission on declaratory statements, proposed amendments, and any other areas of interest of the commission.[9]

Product Evaluation and Approval

Current law requires the Commission to develop and implement an approval of construction products for statewide use. The Commission has created an evaluation and approval system for products and systems that makeup the building envelope and structural frame of a building.[10] The Commission approves the products in the following categories for statewide use:[11]

- Panel Walls;
- Exterior Doors;
- Roofing Products;
- Skylights;
- Windows;
- Shutters;
- Structural Components; and
- Impact Protective Systems.

To obtain state approval, a manufacturer must demonstrate a product complies with the applicable standards and provisions of the Building Code by submitting one of the following reports:

- A certification mark or listing of an approved certification agency;
- A test report from an approved testing laboratory;
- A product evaluation report developed, signed and sealed by a Florida licensed engineer or architect; or
- A product evaluation report from one of the following **evaluation entities**:
    - The National Evaluation Service;
    - The International Association of Plumbing and Mechanical Officials Evaluation Service;
    - The International Code Council Evaluation Services;
    - Underwriters Laboratories, LLC;
    - The International Conference of Building Officials;
    - SBCCI Public Safety Testing and Evaluation Services, Inc.;
    - Intertek Testing Services NA, Inc.; or
    - The Miami-Dade County Building Code Compliance Office Product Control Division.[12]

In addition, current law also requires a manufacturer to submit certification from an independent third party valuation entity that the submitted report is valid and indicates the product complies with the Building Code.[13]

Currently, the Commission has authority to approve an entity as an approved testing laboratory, validation entity, or a certification agency if it meets the Commission's rules.[14] However, the Commission does not have authority to approve an entity as an evaluation entity. In order to be

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[8] DBPR, *Florida Building Code Online*, https://www.floridabuilding.org/c/c_commission.aspx (last visited Mar. 17, 2021).
[9] S. 553.73(3), F.S.; Rule 61G20-2.001, F.A.C.
[10] S. 553.842(1), F.S.; R. 61G20-3.001, F.A.C.
[11] Rule 61G20-3.001, F.A.C.
[12] S. 553.842, F.S.; DBPR, Product Evaluation Entity List, https://www.floridabuilding.org/pr/pr_org_lst.aspx (last visited Mar. 17, 2021).
[13] S. 553.842, F.S.; Rule 61G20-3.006, F.A.C.
[14] S. 553.842, F.S.; Rule 61G20-3.008, F.A.C.

approved as an evaluation entity, the entity must be added to the list of approved evaluation entities in current law by the Legislature.

In order to obtain statewide approval for a construction product, a manufacturer must submit an application that includes one of the required reports and certification from an independent third party valuation entity.[15]

Applications that include a test report from an approved testing laboratory or a product evaluation report, which is signed and sealed by a licensed engineer or an architect, are reviewed and approved by the Commission.[16] The Commission meets every two months.[17] The Commission may approve the product for statewide use unless there is credible evidence questioning the authenticity of the submitted report or the third party certification.[18]

Applications filed with a product evaluation report from an evaluation entity or a certification mark or listing of an approved certification agency are reviewed and approved by DBPR.[19]

According to industry members, since the Commission meets every two months, manufacturers who submit a report from a testing laboratory or an engineer or architect, have to wait longer to have their applications reviewed and approved than a manufacturer who submits a report from a certification agency or an evaluation entity.[20]

NEMO ETC, LLC

According to its website, NEMO ETC, LLC, is a firm of engineers, technicians and research specialists providing engineering, evaluation, testing and consulting services to the building-envelope component and systems industry. According to the website, NEMO focuses on servicing building-envelope component and systems manufacturers, offers evaluation services to building product manufacturers for a variety of purposes and intended audiences, and has 100 years combined experience in testing and evaluation of roof and wall cladding systems.[21]

The Commission previously approved NEMO ETC, LLC, as an approved testing laboratory. According to its website, NEMO's President, Robert Nieminen, is a licensed engineer with 25 years of experience in the roofing and waterproofing industry, is an expert in wind-load design and analysis of roof and wall cladding systems, and has developed over 200 product evaluation reports. However, the company is not an evaluation entity.[22]

Effect of the Bill

The bill adds NEMO ETC, LLC, to the list of approved **evaluation entities** that may issue product evaluation reports determining whether or not a product complies with the Building Code.

B. SECTION DIRECTORY:

Section 1. Amends s. 553.842, F.S., amending the list of entities that may issue product evaluation reports.

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

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[15] Rule 61G20-3.007(1), F.A.C.
[16] *Id.*
[17] DBPR, *FBC Meetings*, https://floridabuilding.org/fbc/meetings/2_meetings.htm (last visited Mar. 20, 2021).
[18] Rule 61G20-3.007(1), F.A.C.
[19] *Id.*
[20] Email from Keyna Cory, Public Affairs Consultants, RE: HB 1577 by McClain (Mar. 20, 2021).
[21] NEMO, ETC, *Who We Are*, https://nemoetc.com/about-us/ (last visited Mar. 17, 2021).
[22] *Id.*; Florida Building Commission, *Product Approval*, https://floridabuilding.org/pr/pr_org_lst.aspx (last visited Mar. 17, 2021).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will increase the number of entities that may issue evaluations reports that a product complies with the Building Code.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to building construction standards; amending s. 553.842, F.S.; requiring the Florida Building Commission to approve a specified evaluation entity for product evaluation and approval; providing an effective date.

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

Section 1. Paragraph (a) of subsection (8) of section 553.842, Florida Statutes, is amended to read:

553.842 Product evaluation and approval.—

(8) The commission may adopt rules to approve the following types of entities that produce information on which product approvals are based. All of the following entities, including engineers and architects, must comply with a nationally recognized standard demonstrating independence or no conflict of interest:

(a) Evaluation entities approved under ~~pursuant to~~ this paragraph. The commission shall specifically approve the National Evaluation Service, the International Association of Plumbing and Mechanical Officials Evaluation Service, the International Code Council Evaluation Services, Underwriters Laboratories, LLC, Intertek Testing Services NA, Inc., ~~and~~ the Miami-Dade County Building Code Compliance Office Product

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

Control Division, and NEMO ETC, LLC. Architects and engineers licensed in this state are also approved to conduct product evaluations as provided in subsection (5).

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7003 PCB GOS 21-02 OGSR/State Boxing Commission
SPONSOR(S): Government Operations Subcommittee, Rizo
TIED BILLS: **IDEN./SIM. BILLS:** SB 7026

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	16 Y, 0 N	Roth	Smith
1) Regulatory Reform Subcommittee		Wright	Anstead
2) State Affairs Committee			

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The function of the Florida State Boxing Commission (Commission) is to license and regulate professional boxing, kickboxing, and mixed martial arts and to approve amateur boxing, kickboxing, and mixed martial arts sanctioning organizations. Licensed promoters of professional matches are required to submit certain reports to the Commission after a match and are subject to audits of their books and records by the Commission.

Current law provides a public record exemption for all proprietary confidential business information provided by a promoter to the Commission or obtained by the Commission during an audit of the promoter's books and records. This information is confidential and exempt from public record requirements and may only be disclosed to another governmental entity in the performance of its duties and responsibilities.

The bill saves from repeal the public record exemption, which will repeal on October 2, 2021, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)[1] sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[2]

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.[3]

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.[4] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created then a public necessity statement and a two-thirds vote for passage are not required.

The Florida State Boxing Commission

The function of the Florida State Boxing Commission (Commission) is to license and regulate professional boxing, kickboxing, and mixed martial arts and to approve amateur boxing, kickboxing, and mixed martial arts sanctioning organizations.[5] The Commission ensures that all matches are conducted in accordance with provisions of state laws and rules.[6] It also makes certain that health and safety requirements are met and that matches are competitive and physically safe for participants.[7]

The Commission is assigned to the Department of Business and Professional Regulation for administrative and fiscal accountability and consists of five members appointed by the Governor.[8] It collects revenue via license fees, event permit fees, fines, and taxation on gross receipts associated with live events.[9]

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[1] Section 119.15, F.S.
[2] Section 119.15(3), F.S.
[3] Section 119.15(6)(b), F.S.
[4] Section 24(c), Art. I, FLA. CONST.
[5] Florida State Boxing Commission Annual Report, Fiscal Year 2018-2019, p. 5, available at http://www.myfloridalicense.com/dbpr/os/documents/Boxing18_19.pdf (last visited December 11, 2020).
[6] *Id.*
[7] *Id.*
[8] Section 548.003(1), F.S.
[9] Florida State Boxing Commission, *supra*, p. 6 at FN 5.

Licensure of Promoters

Section 548.002(20), F.S., defines "promoter" as any person or entity, including an officer, director, trustee, partner, or owner of a corporate promoter or promoter partnership, who produces, arranges, or stages a match involving a professional. Section 548.012, F.S., prohibits a promotor from, directly or indirectly, promoting a match involving a professional, unless the promotor has been issued a license by the Commission.

Applicants for promoter licensure are required to submit a completed application[10] along with a non-refundable license fee not to exceed $500,[11] and must deposit with the Commission a surety bond, cash, or certified check in the amount of $15,000 prior to being issued a promoter license.[12]

Promoters are responsible for producing the events at which matches are held, and are responsible for ensuring the following requirements are met:

- Insurance is obtained for the event in the following amounts:
  - Minimum of $20,000 per participant for medical, surgical and hospital care for injuries sustained while engaged in a match.
  - Minimum of $20,000 per participant for life insurance covering death caused by injuries received while engaged in a match.[13]
- A permit is issued for the event from the Commission.[14]
- Location of the weigh-in is scheduled and the participants are notified of the location.[15]
- Payment is made to the referees, judges, and physicians assigned by the Commission for the event.[16]

Promoter Records Requirements

Section 548.06, F.S., requires that, within 72 hours after a match, the promoter of a match file a written report with the Commission. The report must include information about the number of tickets sold, the amount of gross receipts, and any other facts that the Commission requires.

The written report must be accompanied by a tax payment in the amount of five percent of the total gross receipts, exclusive of any federal taxes; however, the tax payment derived from the gross price charged for the sale or lease of broadcasting, television, and motion picture rights cannot exceed $40,000 for any single event. For the purposes of ch. 548, F.S., "gross receipts" is defined as:[17]

- The gross price charged for the sale or lease of broadcasting, television, and pay-per-view rights of any match occurring within the state of Florida.
- The face value of all tickets sold and complimentary tickets issued, provided, or given above five percent of the seats in the house and not authorized by the Commission.
- The face value of any seat or seating issued, provided, or given in exchange for advertising, sponsorships, or anything of value to the promoter of an event.

Promoters are permitted to issue, provide, or give complimentary tickets for up to five percent of the seats in the house without including the tickets in the gross receipts and without paying corresponding taxes on them. The promoter may request the Commission's authorization to issue, provide, or give more than five percent of the seats in the house as complimentary tickets if the tickets are provided to specific entities or individuals.[18]

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[10] Section 548.021(1), F.S.
[11] Section 548.025(1), F.S.
[12] Rule 61K1-3.002(1)(e)1., F.A.C. and s. 548.014(1)(a), F.S.
[13] Section 548.049, F.S.
[14] Section 548.032, F.S.
[15] Rule 61K1-3.002(2)(l), F.A.C.
[16] Rule 61K1-3.002(2)(n)&(o), F.A.C.
[17] Section 548.06(1), F.S.
[18] Section 548.06(2)&(3), F.S.

Public Record Exemption under Review

In 2016, the Legislature expanded a public record exemption for certain proprietary confidential business information required to be filed with the Commission after a match or obtained during an audit of the promoter's books and records. Specifically, the exemption was expanded to cover all proprietary confidential business information provided by a promoter to the Commission or obtained by the Commission during an audit of the promoter's books and records.[19] "Proprietary confidential business information" means information that:

- Is owned or controlled by the promoter;
- The promoter intends to be and treats as private;
- If disclosed, would cause harm to the promoter or its business operations;
- Has not been disclosed, except for any disclosure pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information not be released to the public; and
- Concerns any of the following:
    - The number of ticket sales for a match;
    - The amount of gross receipts after a match;
    - A trade secret;
    - Business plans;
    - Internal auditing controls and reports of internal auditors; or
    - Reports of external auditors.[20]

The information is confidential and exempt[21] from public record requirements and may only be disclosed to another governmental entity in the performance of its duties and responsibilities.

The 2014 public necessity statement[22] for the exemption provides that:

> The Legislature finds that the disclosure of proprietary confidential business information could injure a promoter in the marketplace by giving the promoter's competitors insights into the promoter's financial status and business plan, thereby putting the promoter at a competitive disadvantage. The Legislature also finds that the harm to a promoter in disclosing proprietary confidential business information significantly outweighs any public benefit derived from the disclosure of such information. Therefore, extending the public records exemption to proprietary confidential business information provided by a promoter to the commission, no matter if the information is provided in a report or otherwise, ensures that the public records exemption is maintained and not undermined.[23]

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2021, unless reenacted by the Legislature.[24]

During the 2020 interim, House and Senate staff conducted interviews and sent the Commission a questionnaire as part of its review under the Open Government Sunset Review Act.[25] According to the

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[19] Section 548.062(2), F.S.

[20] Section 548.062(1), F.S.

[21] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. (*See* Attorney General Opinion 85-62, Aug. 1, 1985).

[22] Article I, s. 24(c), FLA. CONST., requires each public record exemption "state with specificity the public necessity justifying the exemption."

[23] Section 2, ch. 2016-21, L.O.F.

[24] Section 548.062(3), F.S.

responses, there are currently 49 promoters in Florida: 26 for boxing, 3 for kickboxing, and 20 for mixed martial arts.[26] The questionnaire response noted that it is common for reporters and competitors to request the confidential and exempt information, and the Commission has stated that the exemption protects the financial investments of private individuals in Florida, while providing governmental entities full access to the protected information.[27] The Commission recommends that the exemption be reenacted without changes.[28]

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemption, thereby maintaining the public record exemption for all proprietary confidential business information provided by a promoter to the Commission or obtained by the Commission during an audit of the promoter's books and records.

B. SECTION DIRECTORY:

Section 1: Amends s. 548.062, F.S., to save from repeal the public record exemption for all proprietary confidential business information provided by a promoter to the Commission or obtained by the Commission during an audit of the promoter's books and records.

Section 2: Provides an effective date of October 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have an impact on the private sector.

D. FISCAL COMMENTS:

None.

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[25] Open Government Sunset Review Questionnaire, Florida Boxing Commission Response, September 22, 2020, on file with the House Government Operations Subcommittee.
[26] Email from Colton Madill, Office of Legislative Affairs, Department of Business and Professional Regulation, RE: Boxing Commission Open Government Sunset Review (June 12, 2020).
[27] Open Government Sunset Review Questionnaire, *supra*, at FN 25.
[28] *Id.*

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the 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:

The bill does not provide a grant of rulemaking authority, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 548.062, F.S., which provides an exemption from public records requirements for certain proprietary confidential business information provided to or obtained by the Florida State Boxing Commission; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 548.062, Florida Statutes, is amended to read:

548.062 Public records exemption.—

(1) As used in this section, the term "proprietary confidential business information" means information that:

(a) Is owned or controlled by the promoter;

(b) The promoter intends to be and treats as private;

(c) If disclosed, would cause harm to the promoter or its business operations;

(d) Has not been disclosed, except for any disclosure pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information not be released to the public; and

(e) Concerns any of the following:

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

1. The number of ticket sales for a match;

2. The amount of gross receipts after a match;

3. A trade secret, as defined in s. 688.002;

4. Business plans;

5. Internal auditing controls and reports of internal auditors; or

6. Reports of external auditors.

(2) Proprietary confidential business information provided by a promoter to the commission or obtained by the commission through an audit of the promoter's books and records pursuant to s. 548.06 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Information made confidential and exempt by this subsection may be disclosed to another governmental entity in the performance of its duties and responsibilities.

~~(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7007 PCB GOS 21-03 OGSR/Department of Agriculture and Consumer Services
SPONSOR(S): Government Operations Subcommittee, Chambliss
TIED BILLS: **IDEN./SIM. BILLS:** SB 7036

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	17 Y, 0 N	Toliver	Smith
1) Regulatory Reform Subcommittee		Thompson	Anstead
2) State Affairs Committee			

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Department of Agriculture and Consumer Services (DACS) receives examination and investigation data from agencies in other states and federal agencies. The data from these partner agencies helps DACS carry out its mission to provide, among other duties, oversight of charitable organizations. Many charitable organizations operate both inside and outside of Florida.

In 2016, the Legislature created a public record exemption for criminal or civil intelligence or investigative information or any other information held by DACS as part of a joint or multi-agency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency when the information shared is confidential or exempt under the laws or regulations of that state or federal agency.

However, the public records exemption does not apply to information held by DACS as part of an independent examination or investigation conducted by DACS.

The bill saves from repeal the public record exemptions, which will repeal on October 2, 2021, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)[1] sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[2]

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.[3]

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.[4] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created then a public necessity statement and a two-thirds vote for passage are not required.

The Department of Agriculture and Consumer Services (DACS)

The mission of DACS is to safeguard the public and support Florida's agricultural economy by:

- Ensuring the safety and wholesomeness of food and other consumer products through inspection and testing programs;
- Protecting consumers from unfair and deceptive business practices and providing consumer information;
- Assisting Florida's farmers and agricultural industries with the production and promotion of agricultural products; and
- Conserving and protecting the state's agricultural and natural resources by reducing wildfires, promoting environmentally safe agricultural practices, and managing public lands.

DACS investigates and regulates several professions in the State of Florida. DAC's oversight and regulation of charitable organizations was significantly expanded in 2014.[5]

DACS has memoranda of understanding (MOU) with entities from other states and with federal agencies. Pursuant to these MOU, DACS receives confidential examination and investigatory data. DACS has an agreement with the Federal Trade Commission (FTC), for instance. The FTC operates a Consumer Sentinel database that is protected from public record disclosure and can only be provided

[1] Section 119.15, F.S.
[2] Section 119.15(3), F.S.
[3] Section 119.15(6)(b), F.S.
[4] Section 24(c), Art. I, FLA. CONST.
[5] Chapter 2014-122, L.O. F.

to DACS if the department agrees not to disseminate the information. This database contains information on subjects related to:

- Identity Theft.
- Do-Not-Call Registry violations.
- Computers, the Internet, and Online Auctions.
- Telemarketing Scams.
- Advance-fee Loans and Credit Scams.
- Immigration Services.
- Sweepstakes, Lotteries, and Prizes.
- Business Opportunities and Work-at-Home Schemes.
- Health and Weight Loss Products.
- Debt Collection, Credit Reports, and Financial Matters.[6]

Similarly, the Internal Revenue Service (IRS) shares certain information, on a case by case basis, with DACS. The IRS has access to tax filing information that is valuable to DACS when investigating whether an organization - especially a charitable organization - is observing Florida's laws.

Public Record Exemptions under Review

In 2016, the Legislature created a public records exemption for criminal or civil intelligence or investigative information or any other information held by DACS as part of a joint or multi-agency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency when the information that is shared is confidential or exempt[7] under the laws or regulations of that state or federal agency. DACS may obtain, use, and release the information in accordance with the conditions imposed by the joint or multi-agency agreement.

The public records exemption does not apply to information held by DACS as part of an independent examination or investigation conducted by DACS.

DACS may release the confidential and exempt information in the furtherance of its official duties and responsibilities, or to another governmental agency in the furtherance of its official duties and responsibilities.

The 2016 public necessity statement[8] for the exemptions states the following:

> Without the exemption, the department will be unable to obtain information that could assist it in pursuing violations of law under its jurisdiction. With this exemption, the department should increase efficiency of investigations by saving time on developing investigative leads, witness data, and victim data. Furthermore, the exemption is necessary to enable the department to participate in joint or multiagency investigations and examinations. Without the exemption, the department would continue to be excluded from information due to the inability to maintain investigative confidentiality. Without the sharing and coordination of information, governmental agencies may be required to conduct duplicative

[6] Federal Trade Commission, Consumer Sentinel Network, available at https://www.ftc.gov/enforcement/consumer-sentinel-network (last visited Feb. 19, 2021).

[7] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. *See* Attorney General Opinion 85-62 (Aug. 1, 1985).

[8] Article I, s. 24(c), FLA. CONST., requires each public record exemption "state with specificity the public necessity justifying the exemption."

independent investigations or examinations in order to meet their regulatory responsibilities. With this exemption, the department will strengthen relationships with other state and federal agencies, allowing them to become more efficient by sharing critical investigative data.[9]

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2021, unless reenacted by the Legislature.[10]

During the 2020 interim, subcommittee staff meet with staff from DACS. DACS staff stated they had not had any issues interpreting or applying the exemption and that they were unaware of the existence of any litigation concerning the exemption. Further, DACS staff stated that they had not received any complaints concerning the exemption. DACS staff emphasized the importance of retaining the exemption as it provides the department with invaluable investigatory tools that aids in carrying out their duties, tools they otherwise would be unable to access. As such, DACS staff recommended that the exemption be reenacted as is.

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemption for criminal or civil intelligence or investigative information or any other information held by DACS as part of a joint or multiagency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency.

B. SECTION DIRECTORY:

Section 1 amends s. 570.077, F.S., relating to the confidentiality of intelligence or investigative information.

Section 2 provides an effective date of October 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

[9] Chapter 2016-161, L.O.F.
[10] Section 624.4212(6), F.S.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 570.077, F.S., which provides an exemption from public records requirements for information held by the Department of Agriculture and Consumer Services as part of an examination or investigation with another state or federal regulatory, administrative, or criminal justice agency; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (4) of section 570.077, Florida Statutes, is amended to read:

570.077 Confidentiality of intelligence or investigative information.—

~~(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 491 Florida Real Estate Appraisal Board
SPONSOR(S): Regulatory Reform Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** SB 346

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Reform Subcommittee		Thompson	Anstead

SUMMARY ANALYSIS

The Florida Real Estate Appraisal Board (Board) within the Department of Business and Professional Regulation (DBPR) regulates real estate appraisers under of ch. 475, part II, F.S. The Board, through its rules, is authorized to:

- Regulate the issuance of licenses, certifications, registrations, and permits;
- Discipline appraisers;
- Establish qualifications for licenses, certifications, registrations, and permits;
- Regulate approved courses;
- Establish standards for real estate appraisals; and
- Establish standards for and regulate supervisory appraisers.

The Board consists of nine members, each appointed by the Governor and subject to confirmation by the Senate. The Governor may remove any Board member for cause. The membership includes:

- Four members who are real estate appraisers who have been engaged in the general practice of appraising real property in this state for at least 5 years immediately preceding appointment;
- Two members who represent the appraisal management industry;
- One member who represents organizations that use appraisals for the purpose of eminent domain proceedings, financial transactions, or mortgage insurance; and
- Two members who represent the general public and are not connected in any way with the practice of real estate appraisal.

PCS for HB 491 revises the membership of the Board as follows:

- Decreases the number of Board members who represent the appraisal management industry from two members to one.
- Increases the number of Board members who represent the general public from two members to three.

The PCS may have an insignificant fiscal impact on state government.

The effective date of the PCS is November 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Real Estate Appraisal Board (Board)[1] within the Department of Business and Professional Regulation (DBPR) regulates real estate appraisers under of ch. 475, part II, F.S. The Board, through its rules, is authorized to:

- Regulate the issuance of licenses, certifications, registrations, and permits;
- Discipline appraisers;
- Establish qualifications for licenses, certifications, registrations, and permits;
- Regulate approved courses;
- Establish standards for real estate appraisals; and
- Establish standards for and regulate supervisory appraisers.[2]

According to the most recent data, there are 6,655 active certified real estate appraisers,[3] and 219 active real estate appraisal management companies, in the state.[4]

The Board consists of nine members, each appointed by the Governor and subject to confirmation by the Senate. The Governor may remove any Board member for cause. The membership includes:

- Four members who are real estate appraisers who have been engaged in the general practice of appraising real property in this state for at least 5 years immediately preceding appointment;
- Two members who represent the appraisal management industry;
- One member who represents organizations that use appraisals for the purpose of eminent domain proceedings, financial transactions, or mortgage insurance; and
- Two members who represent the general public and are not connected in any way with the practice of real estate appraisal.[5]

Members of the Board are appointed for four-year terms, and may not be appointed for more than two consecutive terms. The headquarters of the Board is in Orlando, Florida. The Board must meet at least once each calendar quarter to conduct its business. Members must elect a chairperson at the first meeting each year.[6] Each member of the Board is entitled to per diem and travel expenses as set by legislative appropriation for each day that the member engages in the business of the Board.[7]

There is currently one vacancy on the Board.[8] There are two members with current appointments expiring October 31, 2021 and six continue to hold office through the expiration of their term, including both public members and both appraisal management industry representatives.[9]

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[1] The Florida Real Estate Commission regulates real estate agents, associates, and schools, has 293,012 active licensees, and consists of seven members.

[2] S. 475.613(2), F.S.

[3] Department of Business and Professional Regulation, *Annual Report, Divisions of Professions, Certified Public Accounting, Real Estate, and Regulation, Fiscal Year 2018-2019*, http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY1819.pdf , at page 19 (last visited Mar. 17, 2021).

[4] Email from Colton Madill, Deputy Legislative Affairs Director, Department of Business and Professional Regulation, RE: Real Estate Appraisal Management Companies, (Mar. 22, 2021).

[5] S. 475.613(1), F.S.

[6] *Id.*

[7] *Id.*

[8] Department of Business and Professional Regulation, *REAL ESTATE APPRAISAL – BOARD INFORMATION* http://www.myfloridalicense.com/DBPR/real-estate-appraisal-board/board-information/#1509044906969-7080e654-a662 (last visited March 8, 2021).

In 2010, the membership of the Board was increased from seven members to nine members with the addition of two members representing the appraisal management industry, based on the state's adoption of the policy to include the licensing and regulation of appraisal management companies with real estate appraisers. Appraisal management companies are business entities that administer networks of independent appraisers to fulfill real estate appraisal assignments on behalf of lenders and were not regulated in Florida before 2010.[10]

Proposed Changes

PCS for HB 491 revises the membership of the Board as follows:

- Decreases the number of Board members who represent the appraisal management industry from two members to one.
- Increases the number of Board members who represent the general public from two members to three.

B. SECTION DIRECTORY:

Section 1: Amends s. 475.613, F.S., relating to the Florida Real Estate Appraisal Board.

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.

[9] *Id.*
[10] Chapter 2010-84, Laws of Fla.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

A bill to be entitled

An act relating to the Florida Real Estate Appraisal Board; amending s. 475.613, F.S.; revising the composition of the board; providing an effective date.

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

Section 1. Subsection (1) of section 475.613, Florida Statutes, is amended to read:

475.613 Florida Real Estate Appraisal Board.—

(1) There is created the Florida Real Estate Appraisal Board, which shall consist of nine members appointed by the Governor, subject to confirmation by the Senate. Four members of the board must be real estate appraisers who have been engaged in the general practice of appraising real property in this state for at least 5 years immediately preceding appointment. In appointing real estate appraisers to the board, while not excluding other appraisers, the Governor shall give preference to real estate appraisers who are not primarily engaged in real estate brokerage or mortgage lending activities. One member ~~Two members~~ of the board must represent the appraisal management industry. One member of the board must represent organizations that use appraisals for the purpose of eminent domain proceedings, financial transactions, or mortgage insurance. Three ~~Two~~ members of the board must be a representative ~~shall be~~

~~representatives~~ of the general public and may ~~shall~~ not be connected in any way with the practice of real estate appraisal. The appraiser members shall be as representative of the entire industry as possible, and membership in a nationally recognized or state-recognized appraisal organization may ~~shall~~ not be a prerequisite to membership on the board. To the extent possible, no more than two members of the board shall be primarily affiliated with any one particular national or state appraisal association. Two of the members must be licensed or certified residential real estate appraisers and two of the members must be certified general real estate appraisers at the time of their appointment.

(a) Members of the board shall be appointed for 4-year terms. Any vacancy occurring in the membership of the board shall be filled by appointment by the Governor for the unexpired term. Upon expiration of her or his term, a member of the board shall continue to hold office until the appointment and qualification of the member's successor. A member may not be appointed for more than two consecutive terms. The Governor may remove any member for cause.

(b) The headquarters for the board shall be in Orlando.

(c) The board shall meet at least once each calendar quarter to conduct its business.

(d) The members of the board shall elect a chairperson at the first meeting each year.

(e) Each member of the board is entitled to per diem and travel expenses as set by legislative appropriation for each day that the member engages in the business of the board.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 987 Age Restrictions on Tobacco and Nicotine Products
SPONSOR(S): Regulatory Reform Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Reform Subcommittee		Brackett DB	Anstead LA

SUMMARY ANALYSIS

The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) is responsible for the regulation of tobacco products. "Tobacco products" are loose tobacco leaves, products made from tobacco leaves, and cigarette wrappers, which can be used for smoking, sniffing, or chewing. Retailers that sell or deal, at retail, in tobacco products are required to have a permit issued by the Division and are required to comply with certain provisions related to the sale of such products. The Division enforces the tobacco regulations, and may issue fines to permit holders or suspend or revoke such permits for violations.

Nicotine products and nicotine dispensing devices are not included in the definition of tobacco products. Retailers that sell only nicotine products and nicotine dispensing devices are not required to obtain a tobacco retailer permit or a permit from any other state agency. As such, these retailers are not subject to state regulatory oversight.

Current state law prohibits anyone under the age of 18 from purchasing or knowingly possessing tobacco products, nicotine products, and nicotine dispensing devices, unless the person falls under an exemption such as being in the military or handling tobacco products as a part of a person's lawful employment. However, federal law was amended in 2019 to raise the minimum age to 21.

The bill:

- Increases the minimum age to lawfully purchase and knowingly possess tobacco products, nicotine products, and nicotine dispensing devices in Florida from 18 to 21 years of age.
- Prohibits the sale, delivery, bartering, furnishing, shipping, or giving tobacco products, nicotine products, or electronic nicotine dispensing devices to persons under the age of 21 years.
- Creates regulations for the sale and delivery of nicotine products and nicotine dispensing devices through the mail and over the Internet, which are similar to the regulations for tobacco products.
- Preempts the establishment of the minimum age to possess or purchase nicotine dispensing devices, nicotine products, and tobacco products and the marketing of such products to the state.
- Modifies current exceptions to the minimum age requirements to purchase or knowingly possess tobacco products and applies the same exceptions to nicotine products and nicotine dispensing devices.

The bill creates a retail nicotine products permit, which must be obtained from the Division to sell nicotine products. This establishes state regulatory oversight for retailers of nicotine products and nicotine dispensing devices. The regulations for the sale of nicotine products and nicotine dispensing devices mirror the regulations for the sale of tobacco products; however, the bill does not impose a tax or licensing fee similar to tobacco products.

The bill authorizes a holder of a tobacco retail permit to sell nicotine products in addition to tobacco products.

The bill has a significant, indeterminate, negative fiscal impact on DBPR.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Federal Regulation of Tobacco Products

The Family Smoking Prevention and Tobacco Control Act of 2009 (Tobacco Control Act) gives the 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.

Federal law requires that a retailer may sell cigarettes and smokeless tobacco only in "direct, face-to-face exchanges between the retailer and the customer." This language explicitly prohibits vending machines and self-service displays.[2] This language is referred to in the industry as the "behind the counter" language; however, this does not specifically require that a retailer place cigarettes or smokeless tobacco behind the counter. A locked display case would likely meet the self-service display prohibition. Facilities that prohibit minors under the age of 21 are exempt from this federal requirement. Retailers are also required to check a purchaser's ID unless the purchaser is over the age of 30.[3]

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.[4]

Tobacco 21

In 2013, the FDA contracted with the Institute of Medicine (IOM) to conduct a study to better understand the potential health benefits of raising the minimum age to purchase tobacco. In 2015, the IOM published their report and it was submitted to Congress, which concluded that raising the minimum age to purchase tobacco to 21:[5]

- Would most likely lead to substantial reduction in smoking related mortality, and
- Could result in significant health benefits for those born between 2000 and 2018, including:
    - approximately 249,000 fewer premature deaths,
    - 45,000 fewer deaths from lung cancer; and
    - 4.2 million fewer years of life lost.

The report also concluded that the age group most affected by increasing the minimum age to purchase tobacco products to 21 would be those who are age 15 to 17 years old. Because 21 year olds

[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] 21 C.F.R. § 1140.14.
[3] *Id.*
[4] 21 U.S.C. § 387p.
[5] Institute of Medicine, *Public Health Implications Raising the Minimum Age of Legal Access to Tobacco Products Report Brief*, (Jul. 23, 2015) https://www.ncbi.nlm.nih.gov/books/NBK310401/ (last visited on Mar. 15, 2021).

are less likely than 18 year olds to be in the same social circles of 15-17 year olds, increasing the minimum age would likely result in 15 to 17 year olds having less access to tobacco products and delaying the age that a person is first exposed to tobacco.[6]

According to the report, delaying the date a person uses a tobacco product is critical because the adolescent brain is uniquely vulnerable to nicotine and adolescents are particularly susceptible to peer pressure. Delaying the age a person is first exposed to tobacco will likely decrease the prevalence of tobacco users.[7]

The FDA also reports that between 2011 and 2014, the number of high school students who had used an e-cigarette in the last 30 days increased nearly 800 percent, with 13.4 percent of high school students reporting usage in 2014.[8] In 2018, over 4.9 million middle and high school students were current users of e-cigarettes.[9] As of 2018, more than one in four high school seniors and one in ten middle school students used e-cigarettes.[10] In 2020, among middle and high school students, 3.6 million were current users of e-cigarettes.[11]

In order to decrease youth usage of ENDS, the FDA has begun a Youth Tobacco Prevention Plan. The plan has three main components: preventing youth access to tobacco products, ending marketing aimed at youth, educating youth about the dangers of using tobacco and educating retailers about their role in preventing underage usage of tobacco.[12]

Federal Minimum Age to Purchase Tobacco Products

On December 20, 2019, the Tobacco Control Act was amended to raise the federal minimum age of the sale of tobacco products, including ENDS, from 18 to 21 years.[13] The law was also changed to require retailers to check a purchaser's ID unless the purchaser is 30 years or older, instead of if the purchaser is over 26. The law became effective on January 15, 2020, with the FDA announcing that retailers may no longer sell tobacco products to anyone under the age of 21.[14] Prior to the enactment of this amendment the FDA used minors to ensure that retailers were complying with the law. However, the FDA has begun using persons under the age of 21 for compliance checks.[15]

The federal government does not require states to enforce the federal minimum age, but states that do not demonstrate that their retailers are complying with the federal minimum age are subject to a possible reduction in funding for Substance Abuse Prevention and Treatment Block Grants.[16] Substance Abuse Prevention and Treatment Block Grants are administered by the U.S. Department of

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[6] *Id.*
[7] *Id.*
[8] FDA, 81 C.F.R. 28973, https://www.federalregister.gov/d/2016-10685/p-635 (last visited Mar. 16, 2021).
[9] FDA, *Statement from FDA Commissioner Scott Gottlieb, M.D., on new data demonstrating rising youth use of tobacco products and the agency's ongoing actions to confront the epidemic of youth e-cigarette use,* https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-new-data-demonstrating-rising-youth-use-tobacco (last visited Mar. 16, 2021).
[10] *Id.*
[11] FDA, *Vaporizers, E-Cigarettes, and other Electronic Nicotine Delivery Systems (ENDS),* https://www.fda.gov/tobacco-products/products-ingredients-components/vaporizers-e-cigarettes-and-other-electronic-nicotine-delivery-systems-ends (last visited Mar. 16, 2021).
[12] Food and Drug Administration, *FDA's Youth Tobacco Prevention Plan,* https://www.fda.gov/TobaccoProducts/PublicHealthEducation/ProtectingKidsfromTobacco/ucm608433.htm (last visited Mar. 16, 2021).
[13] *Newly Signed Legislation Raises Federal Minimum Age of Sale of Tobacco Products to 21*, United States Food and Drug Administration, (Jan. 15, 2020) https://www.fda.gov/tobacco-products/ctp-newsroom/newly-signed-legislation-raises-federal-minimum-age-sale-tobacco-products-21 (last visited Mar. 16, 2021).
[14] *Id.* H.R. 1865 Further Consolidated Appropriations Act, 2020, 116th Congress (2019-2020).
[15] FDA, *Tobacco 21*, (Fe. 12, 2020) https://www.fda.gov/tobacco-products/retail-sales-tobacco-products/tobacco-21 (last visited Mar. 16, 2021).
[16] H.R. 1865 Further Consolidated Appropriations Act, 2020, 116th Congress (2019-2020).; 42. U.S.C. § 300x-26.

Health and Human Services (USDHHS), and are federal funds provided to the states to prevent substance abuse.[17]

Failure to demonstrate a state's retailers are complying with the federal minimum age could lead to a reduction of a block grant by up to 10% for the fiscal year. The federal government will not reduce a block grant for failing to enforce the federal minimum wage for three years in order to give the states a chance to make any necessary changes.[18]

According to the USDHHS, in the fiscal year 2020, Florida received a Substance Abuse and Prevention and Treatment Block Grant of $111,385,315.[19]

The federal government considers a state to be failing the requirement that its retailers are complying with the federal minimum age if its retail violation rate is more than 20 percent. A violation is defined as the fraction (or percentage) of tobacco-selling outlets in a state that are accessible to and sell tobacco to persons under the age of 21.[20]

States are required to conduct annual surveys to determine their compliance rate. In conducting their surveys, states must:[21]

- Develop a sampling frame that includes both over-the-counter and vending machine locations accessible to youth and young adults under the age of 21
- Ensure that the sampling frame includes, at a minimum, 80% of the tobacco outlets in the state (CSAP requires states that use a list frame to conduct and report the results of a coverage study designed to assess the completeness of the sampling frame.)
- Design a sampling methodology and implementation plan that are based on sound survey sampling methodology
- Sample a large enough number of outlets to meet USDHHS's precision requirement (one-sided 95% confidence interval)
- Obtain a completion rate of 90% or better
- Record the actual steps of the survey process in the field and keep records of all sources of sample attrition in the field
- Weight the results of the Synar survey to account for unequal probabilities of selection, differences in percentages of eligible outlets between strata or clusters, and other deviations from the intended design

The latest date for each state's retail violation rate is 2018. In 2018, Florida's retail violation rate was 9.2%. However, that was before the federal government raised the minimum age to purchase tobacco products to 21.[22]

Additionally, according to news reports, the recent increase in the federal minimum age is causing confusion among retailers in states where the minimum age is still 18 years of age. Retailers are not

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[17] USDHHS, Substance Abuse Prevention and Treatment Block Grant, https://www.samhsa.gov/grants/block-grants/sabg (last visited Mar. 16, 2021).

[18] H.R. 1865 Further Consolidated Appropriations Act, 2020, 116th Congress (2019-2020).; 42. U.S.C. § 300x-26; Substance Abuse and Mental Health Services Administration, *Revision to Guidance*, (June 12, 2020) https://www.samhsa.gov/sites/default/files/synar-guidance-tobacco-21.pdf (last visited Mar. 18, 2021).

[19] USDHHS, *Florida Summaries FY 2020*, https://www.samhsa.gov/grants-awards-by-state/FL/2020 (last visited Mar. 18, 2021).

[20] Substance Abuse and Mental Health Services Administration, *Revision to Guidance*, (June 12, 2020) https://www.samhsa.gov/sites/default/files/synar-guidance-tobacco-21.pdf (last visited Mar. 18, 2021).

[21] Substance Abuse and Mental Health Services Administration, *Programmatic Requirements for the Synar Program*, https://www.samhsa.gov/synar/requirements (last visited Mar. 18, 2021).

[22] Substance Abuse and Mental Health Services Administration, *State Target and Reported Retailer Violation Rates*, https://www.samhsa.gov/sites/default/files/synar_program_rvr_table_1997-2018_dec_11_2018.pdf (last visited Mar. 18, 2021).

sure which law they are required to follow, which may lead to one retailer enforcing the state minimum age and another retailer enforcing the federal minimum age.[23]

Jurisdictions that Raised the Minimum Age from 18 to 21

Thirty states, and the U.S. Territory of Guam, have passed legislation raising the minimum age for a person to lawfully possess or purchase tobacco products and nicotine products to 21 years of age:[24]

• Arkansas	• New Mexico
• California	• New Jersey
• Colorado	• New York
• Connecticut	• Ohio
• Delaware	• Oklahoma
• Hawaii	• Oregon
• Illinois	• Pennsylvania
• Indiana	• South Dakota
• Iowa	• Tennessee
• Kentucky	• Texas
• Maine	• Utah
• Maryland	• Vermont
• Massachusetts	• Virginia
• Minnesota	• Washington
• Mississippi	• Wyoming

At least 530 localities, including New York City, Chicago, San Francisco, San Antonio, Boston, Cincinnati, Cleveland, Columbus, and Kansas City (in Kansas and Missouri), plus Washington, D.C., have also raised the minimum age to 21.[25]

In January of 2019, Alachua County became the first local government in Florida to raise the minimum legal age to purchase tobacco to 21 years of age. The Alachua County ordinance applies to tobacco products, nicotine products, and nicotine dispensing devices. Municipalities in the county are authorized to opt out of the ordinance if they choose. In addition, retailers are required to purchase and maintain a special license to sell tobacco, nicotine products, and nicotine dispensing devices. Businesses located within 1,000 feet of a public school are prohibited from licensure; however, businesses previously licensed to sell tobacco products by the state prior to the adoption of the

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[23] Adam Kurtz, *New Tobacco 21 law causes confusion about enforcement, start date*, Grand Forks Herald (Jan. 10, 2020) https://www.grandforksherald.com/business/retail/4853919-New-Tobacco-21-law-causes-confusion-about-enforcement-start-date (last visited Mar. 18, 2021); Naomi Kowles, *Some local confusion after federal passage of new minimum age for tobacco purchases*, WSAW-TV (Jan. 16, 2020) https://www.wsaw.com/content/news/Some-local-confusion-after-federal-passage-of-new-minimum-age-for-tobacco-purchases-567056371.html (last visited Mar. 18, 2021).

[24] *See* Campaign for Tobacco-Free Kids, States and Localities that have Raised the Minimum Legal Sale Age for Tobacco Products to 21, available at https://www.tobaccofreekids.org/what-we-do/us/sale-age-21 (last visited Mar. 16, 2021).

[25] *Id.*

ordinance are not required to give up their license. Penalties for violations include license suspensions ranging from seven days up to losing the license permanently for four violations in a 24-month period.[26]

In September of 2019, Fort Lauderdale became the second local government in Florida to raise the minimum age to purchase tobacco to 21. The Fort Lauderdale ordinance applies to tobacco products, nicotine products, and nicotine dispensing devices. Penalties for violations include warnings and civil citations ranging from $500 to $1,000.[27]

Private Sector

Recently, members of the nicotine product manufacturing industry indicated support for increasing the minimum age to purchase tobacco products, including nicotine products, and nicotine dispensing devices, from 18 to 21. Juul Labs, the largest e-cigarette company, stated that they support raising the minimum age to purchase tobacco products, nicotine products, and nicotine dispensing devices from 18 to 21. One of Juul Labs' ads states:[28]

> "It's time to raise the legal age to purchase tobacco products, including vapor, from 18 to 21. Because when youth never start smoking and vaping, they never have to stop."

E-Cigarette, or Vaping, Product Use-Associated Lung Injury (EVALI)

As of February 18, 2020, there have been 2,807 cases of EVALI and 68 deaths in the United States. 119 of the cases and two of the deaths have been in Florida. According to the Centers for Disease Control (CDC), tetrahydrocannabinol (THC) and Vitamin E acetate are strongly linked to the outbreak of EVALI. The CDC and FDA recommend that people not use THC-containing vaping products, particularly products from informal sources like friends, family, or in-person or online dealers.[29]

Symptoms of the lung injury include:[30]

- Cough, shortness of breath, or chest pain;
- Nausea, vomiting, or diarrhea; and
- Fatigue, fever, or abdominal pain.

The CDC has the following data on the age and sex of 2,668 of the cases:[31]

- 66% of the patients are male;
- The median age of patients is 24 years old and ranges from 13-85 years. However, 76% of the patients are under 35 years old;
- By age group category:
  - 15% of patients are under 18 years old;
  - 37% of patients are 18 to 24 years old;
  - 24% of patients are 25 to 34 years old; and
  - 24% of patients are 35 years or older.

Effect of Smoking and Vaping on COVID-19

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[26] Alachua County Ord. No. 2019-04.
[27] City of Fort Lauderdale Ord. No C-19-21.
[28] Juul Labs, *Our Support For T21 Laws,* https://newsroom.juul.com/t21/ (last visited Mar. 16, 2021).
[29] CDC, *Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping, Products,* https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html#latest-outbreak-information (last visited Mar. 16, 2021).Florida Department of Health, *Lung Injury Associated with E-Cigarette Use, or Vaping- Florida*, Florida Department of Health http://www.flhealthcharts.com/ChartsReports/rdPage.aspx?rdReport=ChartsProfiles.LungInjuryE-CigaretteUse (last visited Mar. 16, 2021).
[30] CDC, *For the Public,* https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease/need-to-know/index.html (last visited Mar. 18, 2021).
[31] CDC *supra,* note 29.

According to the CDC, being a current or former smoker increases a person's risk to develop a severe illness from COVID-19. According to the Massachusetts General Hospital, a person who smokes and tests positive for COVID-19, is twice as likely to develop a severe case of COVID-19 than a person with no smoking history, and is more likely to be admitted to an Intensive Care Unit, placed on a ventilator, or die from the illness.[32]

According to a study led by researchers at the Stanford University School of Medicine, teens and young adults who vaped were five to seven times more likely to be infected with COVID-19 than those who did not use e-cigarettes.[33] Also, according to Massachusetts General Hospital, people who smoke or vape have a higher risk of developing chronic obstructive pulmonary disease (COPD), which is a long-term lung disease that affects airflow through the lungs, which according to the CDC, puts users at a higher risk of developing a severe case of COVID-19.[34]

Regulation of Tobacco Products in Florida

The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) is the state agency responsible for the regulation and enforcement of the tobacco products under ch. 569, F.S. "Tobacco products" include loose tobacco leaves, and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.[35]

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.

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. There is no minimum age requirement to obtain a permit to distribute tobacco products.[36]

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 18 years or older.[37]

Tobacco Products Retailers

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[32] CDC, People with Certain Medical Conditions, (Mar. 15, 2021) https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html#smoking (last visited Mar. 18, 2021); Massachusetts General Hospital, Smoking, Vaping and COVID-19: About the Connection and How to Quit, https://www.massgeneral.org/assets/MGH/pdf/children/adolescent-medicine-smoking-and-covid19.pdf (last visited Mar. 18, 2021).

[33] Erin Digitale, *Vaping linked to COVID-19 risk in teens and young adults*, Stanford Medicine, News Center (Aug. 11, 2020) https://med.stanford.edu/news/all-news/2020/08/vaping-linked-to-covid-19-risk-in-teens-and-young-adults.html (last visited Mar. 18, 2021).

[34] CDC *supra* note 32.

[35] S. 569.002(6), F.S.

[36] S. 210.40, F.S.

[37] S. 210.15, F.S.

A person must obtain a retail tobacco products dealer permit from the Division for each place of business or the premises where tobacco products are sold to be eligible to sell retail tobacco products, or operate a tobacco products vending machine in Florida. The fee for such permit is $50.[38] The Division may only issue permits to persons who are 18 years or older or corporations with officers who are 18 years or older.[39]

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.[40]

The place or premises covered by a permit is subject to inspection and search without a search warrant by the Division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with requirements for tobacco sales and dealing.[41]

DBPR is required to submit an annual report to the Governor and Legislature regarding the enforcement of tobacco products, including:[42]

- The number and results of compliance visits by the Division;
- The number of violations for failure of a retailer to hold a valid license;
- The number of violations for selling tobacco products to anyone under the age of 18 and the results of administrative hearings on such violations; and
- The number of people under the age of 18 cited, including sanctions imposed as a result of such citation, for misrepresenting their age, purchasing tobacco products underage, and misrepresenting military service for the purpose of obtaining tobacco products underage.

Florida also has an excise tax and surcharge on cigarettes and other tobacco products, not including cigars. The tax and surcharge for cigarettes is $0.1695 to $0.42375 per pack and a surcharge of $0.50 to $1.25 per pack depending on the number of cigarettes in the pack. The excise tax for tobacco products is 25% of the wholesale price and the surcharge is 60% of the wholesale price. There is no excise tax or surcharge for nicotine products or nicotine dispensing devices.[43]

Requirements for Tobacco Products Retailers

Retail tobacco products dealers (retailers) must post a clear and conspicuous sign that the sale of tobacco products is prohibited to persons under the age of 18 and that proof of age is required for purchase. The Division is required to make the signs available to retailers. Retailers must also have instructional material in the form of a calendar or similar format to assist in determining the age of the person attempting to purchase a tobacco product.[44]

The sale or delivery of tobacco products is prohibited, except when those products are under the direct control or line of sight of the retailer or the retailer's agent or employee in order to prevent persons under 18 years of age from purchasing or receiving tobacco products.

If a tobacco product is sold from a vending machine, the vending machine must have:

- An operational lockout device which is under the control of the retailer or the retailer's agent or employee who directly regulates the sale of items through the machine by triggering the lockout device to allow the dispensing of one tobacco product;

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[38] S. 569.003, F.S.
[39] S. 569.003, F.S.
[40] S. 569.005, F.S.
[41] S. 569.004, F.S.
[42] S. 569.19, F.S.
[43] Ss. 210.011, 210.02, 210.276, and 210.30, F.S.; DBPR, Alcholic Beverages & Tobacco – Tax & Reporting Information For Licensees, http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/tax-and-reporting-information-for-licensees/#1510753842753-25986d10-086f (last visited Mar. 16, 2021).
[44] S. 569.14, F.S.

- A mechanism on the lockout device to prevent the machine from functioning if the power source for the lockout device fails or if the lockout device is disabled;
- A mechanism to ensure that only one tobacco product is dispensed at a time.[45]

These requirements for the sale of tobacco products do not apply to an establishment that prohibits persons under 18 years of age on premises and do not apply to the sale or delivery of cigars and pipe tobacco.[46]

If the Division determines a tobacco product retailer or a tobacco product retailer's employee violated the regulations for tobacco product retailers, the Division can suspend or revoke the retailer's permit or assess a fine up to $1,000 for each violation.[47]

If the Division discovers a tobacco product retailer's employee illegally sold tobacco products to a person under 18 years of age, the Division may mitigate penalties, if:
- The retailer is qualified as a responsible retailer by establishing and implementing specified practices designed to ensure that the retailer's employees comply with ch. 569, F.S., such as employee training.
- The retailer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation.
- The sale was made through a vending machine equipped with an operational lock-out device.[48]

Mail Order, Internet, and Other Remote Sales of Tobacco Products in Florida

Section 210.095, F.S., provides requirements for the delivery of mail order, Internet, and other remote sales of tobacco products and cigarettes, referred to as "delivery sales." Each person who mails, ships, or otherwise delivers tobacco products or cigarettes in connection with an order for a delivery sale to a consumer is required to:
- Include, as part of the shipping documents, in a clear and conspicuous manner, the following statement: "Tobacco Products: Florida law prohibits shipping to individuals under 18 years of age and requires the payment of all applicable taxes."
- Use a method of mailing, shipping, or delivery which obligates the delivery service to:
    - Require the signature of an adult who resides at the delivery address and obtain proof of the legal minimum purchase age of the individual accepting delivery, if the individual appears to be under 27 years of age.
    - Require proof that the individual accepting delivery is either the addressee or the adult designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.
- Provide to the delivery service, if such service is used, evidence of full compliance with requirements for the collection and remittance of all taxes imposed on tobacco products or cigarettes by this state with respect to the delivery sale.

Before the first delivery to a consumer, the person mailing, shipping, or delivering the tobacco products or cigarettes must also:[49]
- Obtain a certification from the person accepting delivery that includes reliable confirmation that the person accepting delivery is an adult, and a written statement under penalty of perjury providing the person's date of birth, address, and confirmation that the person wants to accept the delivery;

[45] S. 569.007(1), F.S.
[46] S. 569.007(2) and (3), F.S.
[47] S. 569.006, F.S.
[48] See s. 569.008(3), F.S.
[49] *Id.*

- Make a good faith effort to verify the information in the certification by checking the information against a commercially available database or obtaining a photocopy of the person's ID;
- Provides the person accepting the delivery a notice stating tobacco products are illegal for underage youths and tobacco products are taxable;
- Impose a two-carton minimum on each order of cigarettes;
- Submit to the credit card company necessary information so that the words "tobacco product" appear on the person's credit card statement when a purchase is made using a credit card;
- Make a phone call to the individual who made the order to confirm the order before shipping the order; and
- Receive payment by a credit card or debit card in the name of the person accepting delivery or a personal or company check in the name of the person, if the order is made in accordance with an advertisement on the Internet.

A person who accepts a purchase order for a delivery sale and delivers the tobacco products or cigarettes without using a delivery service must comply with all of the delivery service requirements.[50]

Section 210.095(8), F.S., currently provides that the penalty for the following violations of the delivery sale requirements is a misdemeanor of the third degree:[51]

- A delivery of tobacco products, on behalf of a delivery service, to an individual who is under 18 years of age.
- A person under the age of 18 who knowingly violates any of the provisions of the mail order or internet sales requirements.

These provisions do not apply to nicotine products and nicotine dispensing devices. However, it is illegal for a person to deliver nicotine products or nicotine dispensing devices to persons under 18 years of age.[52]

Tobacco Products and Minors

The sale, delivery, bartering, furnishing or giving of tobacco products or giving sample to products to persons under the age of 18 is prohibited.[53] A violation of this prohibition is a second degree misdemeanor.[54] A second or subsequent violation within one year of the first violation is a first degree misdemeanor.[55]

It is a complete defense to a person charged with such a violation if the buyer or recipient falsely evidenced that he or she was 18 years of age or older, a prudent person would believe the buyer or recipient to be 18 years of age or older, and the buyer or recipient presented false identification upon which the person relied upon in good faith.[56]

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[50] S. 210.095, F.S.

[51] Section 775.082, F.S., does not provide a third degree misdemeanor. Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S., does not provide a third degree misdemeanor. Section 775.083, F.S., provides that a misdemeanor of the second degree is punishable by a fine not to exceed $500.

[52] S. 877.112(2), F.S.

[53] Ss. 569.0075 and 569.101, F.S.

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

[55] S. 775.082, F.S., provides that the penalty for a misdemeanor of the first degree is punishable by a term of imprisonment not exceeding one year. Section 775.083, F.S. provides that the penalty for a misdemeanor of the first degree is punishable by a fine not to exceed $1,000.

[56] S. 569.101(3), F.S.

Persons under the age of 18 years are prohibited from knowingly possessing, directly or indirectly, any tobacco products, or misrepresenting their age or military service for obtaining such products. Persons who violate this noncriminal violation are punishable as follows:[57]

- A first violation of this prohibition is a non-criminal violation with a penalty of 16 hours of community service or a $25 fine, and attendance at a school-approved anti-tobacco program, if locally available.
- A second violation within 12 weeks of the first violation is punishable with a $25 fine.
- A court may suspend or withhold issuance of a driver license for persons under 18 years of age who fail to complete the noncriminal penalties for knowingly possessing or misrepresenting their age in order to purchase tobacco products.
    - A court may suspend or withhold issuance of a drivers' license for 30 days for a first violation, and for 45 days for a second violation within 12 weeks of the first violation.

However, this does not include any person under the age of 18 who:[58]

- Has had his or her disability of nonage removed under ch. 743, F.S.;
- Is in the military reserve or on active duty in the Armed Forces of the United States;
- Is otherwise emancipated by a court of competent jurisdiction and released from parental care and responsibility; or
- Is acting in his or her scope of lawful employment with an entity licensed under the provisions of ch. 210, F.S., relating to taxation of cigarettes and other tobacco products, or ch. 569, F.S., relating to tobacco products.

The Division and any law enforcement officer may enforce these provisions. A local government may also designate certain employees or agents as tobacco product enforcement officers. A tobacco enforcement officer or a correctional probation officer may issue a citation to a person under the age of 18, whom the officer has reasonable cause to believe an underage person is knowingly possessing tobacco products or is lying about their age or military service in order to obtain such products.[59]

Eighty percent of all civil penalties received from violating prohibitions related to the possession or sale of tobacco products by a county court must be remitted to the Department of Revenue for transfer to the Department of Education for teacher training and for research and evaluation to reduce and prevent the use of tobacco products by children.[60] The remaining 20 percent of civil penalties received by a county court must remain with the clerk of the county court to cover administrative costs.[61]

Nicotine Products Regulation in Florida

Section 877.112, F.S., provides for the regulation of nicotine products and nicotine dispensing devices, such as electronic cigarettes (e-cigarettes). This statute extends the current prohibitions related to tobacco products to the sale, gifting, possession, or use of nicotine products and nicotine dispensing devices to and by persons under 18 years of age.

A "nicotine product" is any product that contains nicotine, including liquid nicotine intended for human consumption, whether inhaled, chewed, absorbed, dissolved or ingested by any means.[62] The definition does not include a tobacco product under Florida law, a drug or device under federal law, or a product that contains incidental nicotine.[63]

A "nicotine dispensing device" is any product that employs an electronic, chemical, or mechanical means to produce vapor from a nicotine product, including, but not limited to, an electronic cigarette,

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[57] S. 569.11, F.S.
[58] S. 569.002(7), F.S.
[59] S. 569.12, F.S.
[60] S. 569.11(6), F.S.
[61] *Id.*
[62] S. 877.112(1)(b), F.S.
[63] *Id.*

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.[64]

The sale or giving of nicotine products or nicotine dispensing devices to any person under 18 years of age is prohibited and punishable as a second degree misdemeanor.[65] It is a complete defense to a violation if an underage person falsely misrepresented his or her age, the underage person had the appearance to a prudent person to be 18 years of age or older, and the person carefully checked, and relied on, the driver license or identification card of the recipient.[66]

Persons under the age of 18 years are prohibited from knowingly possessing, directly or indirectly, any nicotine products or nicotine dispensing devices, or misrepresenting their age or military service for obtaining such products. Persons who violate this noncriminal violation are punishable as follows:[67]

- A first violation of this prohibition is a non-criminal violation with a penalty of 16 hours of community service or a $25 fine, and attendance at a school-approved anti-tobacco and nicotine program, if locally available.
- A second violation within 12 weeks of the first violation is punishable with a $25 fine.
- A court may suspend or withhold issuance of a driver license for persons under 18 years of age who fail to satisfies the penalties for knowingly possessing or misrepresenting their age in order to purchase tobacco products.
    - A court may suspend or withhold issuance of a drivers' license for 30 days for a first violation, and for 45 days for a second violation within 12 weeks of the first violation.

Eighty percent of civil penalties related to the unlawful possession or sale of nicotine products are remitted to the Department of Revenue for transfer to the Department of Education for teacher training and for research and evaluation to reduce and prevent the use of tobacco products, nicotine products, or nicotine dispensing devices by children.[68] The remaining 20 percent of civil penalties received by a county court are retained by the clerk of the county court to cover administrative costs.[69]

Retail dealers of nicotine products and nicotine dispensing devices are required to post signs indicating that the sale of nicotine products and nicotine dispensing devices to persons under 18 years of age is prohibited and that proof of age is required for purchase. Retailers must also have instructional material in the form of a calendar or similar format to assist in determining the age of the person attempting to purchase a nicotine product or nicotine dispensing device.[70]

Retail Sale of Nicotine Products and Nicotine Dispensing Devices

The sale or delivery of nicotine products and nicotine dispensing devices are prohibited, except when those products are under the direct control or line of sight of the retailer or the retailer's agent or employee in order to prevent persons under 18 years of age from purchasing or receiving such products.[71]

Nicotine products or nicotine dispensing devices may not be sold or displayed by means of self-service merchandising.[72] Self-service merchandising means the open display of nicotine products or nicotine

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[64] S. 877.112(1)(a), F.S.
[65] Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S. provides that a misdemeanor of the second degree is punishable by a fine not to exceed $500.
[66] S. 877.112(5), F.S.
[67] Ss. 877.112(6), and (7), F.S.
[68] S. 877.112(9), F.S.
[69] *Id.*
[70] S. 877.112(10), F.S
[71] Ss. 877.112(11) and (12), F.S.
[72] *Id.*

dispensing devices for direct customer access and handling before the purchase of such product without the assistance of the retailer or the retailer's employee.

If a nicotine product or nicotine dispensing device is sold from a vending machine, the vending machine must have:[73]

- An operational lockout device which is under the control of the retailer or the retailer'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 or nicotine dispensing device;
- A mechanism on the lockout device to prevent the machine from functioning if the power source for the lockout device fails or if the lockout device is disabled;
- A mechanism to ensure that only one nicotine product or nicotine dispensing device is dispensed at a time.

However, this does not apply to establishments that prohibit persons under the age of 18 on the premises.[74]

Laws related to nicotine products and nicotine dispensing devices are different from tobacco laws in the following ways:

- Nicotine retailers are not required to obtain a retail tobacco products dealer permit from the Division.
- Nicotine retailers are not subject to inspection without a search warrant.
- The Division does not have authority to discipline a nicotine retailer for violating any of the regulations relating to the retail sale of nicotine products and nicotine dispensing devices.
- The requirements for internet and remote sales of tobacco products do not apply to nicotine products or nicotine dispensing devices.
- There are no exemptions for the prohibition of the purchase and possession of nicotine products and nicotine dispensing devices by persons under 18 years old, such as military service or possession of such products as part of a person's lawful scope employment.

Florida Clean Indoor Air ACT (FCIAA)

The FCIAA, implements Article X, Section 20 of the Florida Constitution, which prohibits a person from smoking tobacco or using a nicotine dispensing device, vaping, in an enclosed indoor workplace, with certain exceptions.

The FCIAA also prohibits any person under the age of 18 from smoking tobacco or vaping within 1,000 feet of a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. A violation of this prohibition is punishable by a maximum noncriminal civil penalty not to exceed $25, or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco "alternative to suspension" program.[75]

Senate Bill 810, Use of Tobacco Products and Nicotine Products – 2020 Legislative Session

In 2020, Governor DeSantis vetoed Senate Bill 810 of the 2020 Legislative Session, the bill included the following:

- Increased the minimum age from 18 years of age to 21 years of age to lawfully purchase and possess tobacco products, nicotine products, and nicotine dispensing devices.
- Prohibited smoking and vaping by any person under 21 years of age on or near school property.
- Increased the age from 18 years of age to 21 years of age to obtain a cigarette permit required to be a cigarette wholesaler, cigarette distributor, or a cigarette manufacturer.

[73] *Id.*
[74] *Id.*; S. 877.112(1), F.S.
[75] S. 386.212, F.S.

- Authorized DBPR to regulate nicotine products and nicotine dispensing devices in the same manner as they do for tobacco products.
- Required retailers of nicotine products and nicotine dispensing devices to obtain a permit from DBPR.

Senate Bill 810 also included a provision, **which is not in this bill**, that prohibited the sale of flavored liquid nicotine products (other than tobacco or menthol flavors), unless such products had a marketing order from the FDA to permit the product to be sold.[76]

Governor DeSantis stated his reasons for vetoing Senate Bill 810 were:[77]

> "While originally conceived as a bill to raise the legal age to buy tobacco to 21, (which is superfluous given this is already mandated by federal law) CS/CS/CS/SB 810 effectively bans tobacco free vaping flavors used by hundreds of thousands of Floridians as a reduced-risk alternative to cigarettes, which are more dangerous.
>
> This legislation would almost assuredly lead more people to resume smoking cigarettes, and it would drive others to the hazardous black market. The latter consequence is especially significant because the much-publicized cases of lung injury associated with vaping in recent years have been traced to illegal, or black market, vape cartridges containing THC, not to the types of legal vaping products that this bill (CS/CS/CS/SB 810) would abolish.
>
> Reducing the use of all nicotine-related products, including vaping, among our youth is an important goal, but this will not be achieved by eliminating legal products for adults and by devastating the small businesses who provide these adults with reduced risk alternatives to cigarettes."

Local Government Authority

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.[78] Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors.[79]

Likewise, municipalities[80] have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[81]

Preemption

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[76] The Tobacco Control Act requires any manufacturer wishing to market a new tobacco product, including ENDS, that was not commercially marketed on or before February 1, 2007, to obtain a marketing order from the FDA or an exemption from the marketing order requirement from the FDA. The Tobacco Control Act contains a grandfather exemption from the marketing order requirement for certain tobacco products. Manufacturers of tobacco products on the market on or before February 15, 2007, are not required to have a marketing order for such products. Manufacturers of tobacco products that were on the market on or before August 8, 2016, must have applied for a marketing order for such products by September 2020. 21 U.S.C. § 387j.

[77] Veto letter of Ron DeSantis, Governor (Sept. 8, 2020) https://www.flgov.com/wp-content/uploads/2020/09/Transmittal-Letter-09.08.2020.pdf (last visited Mar. 17, 2021).

[78] Art. VIII, s. 1(f), Fla. Const.

[79] Art. VIII, s. 1(g), Fla. Const.

[80] A municipality is a local government entity created to perform functions and provide services for the particular benefit of the population within the municipality, in addition to those provided by the county. The term "municipality" may be used interchangeably with the terms "town," "city," and "village."

[81] Art. VIII, s. 2(b), Fla. Const. *See also* s. 166.021(1), F.S.

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature "has preempted a particular subject area" or (2) the local enactment conflicts with a state statute. Where state preemption applies, it precludes a local government from exercising authority in that particular area.[82]

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[83] Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.[84] In cases where the Legislature expressly or specifically preempts an area, the intent of the Legislature is readily ascertained.[85] In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.[86]

Effect of Proposed Changes

Tobacco 21

The bill increases the minimum age to lawfully purchase and knowingly possess tobacco products in Florida from 18 years old to 21 years old, unless a person falls under a current law exemption to the minimum age requirement.

Specifically the bill:

- Prohibits the sale, delivery, bartering, furnishing, shipping, or giving tobacco products to persons under the age of 21.
- Provides that anyone under the age of 21 commits a noncriminal penalty for knowingly possessing tobacco products.
- Provides that anyone under the age of 21 who is cited for knowingly possessing tobacco products must attend a school approved anti-tobacco program.
- Provides that anyone over the age of 21 who delivers tobacco products to a person under age of 21 or a person under the age of 21 who knowingly violates any of the requirements for remote sales of tobacco products and cigarettes commits a second degree misdemeanor instead of a third degree misdemeanor, which is not provided for in current law.
- Removes the following exemptions to the minimum age requirements that allow certain persons under the minimum age to possess or purchase tobacco products:
    - A person who has had his or her disability of nonage removed under ch. 743, F.S; and
    - A person who is emancipated by a court of competent jurisdiction and released from parental care and responsibility.
- Provides that retailers must require proof of age from a purchaser of tobacco products unless the purchaser appears to be 30 years of age or older, and similarly requires a delivery person to require proof of age in similar circumstances.

Nicotine Products Regulation in Florida

The bill increases the minimum age to lawfully purchase and knowingly possess nicotine products and nicotine dispensing devices in Florida from 18 years old to 21 years old, unless a person falls under an

[82] Wolf, The Effectiveness of Home Rule: A Preemption and Conflict Analysis, 83 Fla. B.J. 92 (June 2009), available at https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/ (last visited Mar. 22, 2021).
[83] 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).
[84] Mulligan, 934 So. 2d at 1243.
[85] *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).
[86] See, e.g., *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

exemption to the minimum age requirement including being in the military or acting in the scope of lawful employment.

The bill also establishes state regulatory oversight for retailers of nicotine products and nicotine dispensing devices. The regulations for the sale of nicotine products and nicotine dispensing devices mirror the regulations for the sale of tobacco products. However, the bill **does not impose** a tax or permit fee similar to tobacco products.

The bill includes regulations for the sale and delivery of nicotine products and nicotine dispensing devices through the mail and over the Internet, which are similar to the regulations for tobacco products, to ensure sales and deliveries are not to persons under age.

The bill creates a retail nicotine products dealer permit, which must be obtained from DBPR to be able to sell nicotine products and nicotine dispensing devices, at retail, in this state. This permit however does not allow for the sale of tobacco products. However, the bill does allow a tobacco products dealer permit holder to sell nicotine products and nicotine dispensing devices, in addition to tobacco products.

The bill requires a person to obtain a retail nicotine products dealer permit for each place of business or the premises where nicotine products or nicotine dispensing devices are to be sold face-to-face or through a vending machine. The bill also requires a person who owns, leases, furnishes, or operates vending machines that dispense nicotine products or nicotine dispensing devices to obtain a permit. **There is no fee for the permit.**

The Division may only issue permits to persons who are 18 years of age or older or corporations with officers who are 18 years of age or older.[87] The bill allows the place or premises covered by a permit to be subject to inspection and search without a search warrant by the Division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with requirements for nicotine sales and dealing.

Anyone who deals nicotine products or nicotine dispensing devices at retail or allows a vending machine on the premises without a permit is subject to a $500 fine.

The bill repeals s. 877.112, F.S., which currently regulates nicotine products in this state.

Requirements for Retail Nicotine Products Dealers

The bill requires nicotine product retailers to post a clear and conspicuous sign that the sale of nicotine products is prohibited to persons under the age of 21 and that proof of age is required for purchase. The Division is required to make the signs available to nicotine product retailers. Nicotine product retailers must also have instructional material in the form of a calendar or similar format to assist in determining the age of the person attempting to purchase a nicotine product.

Any person who fails to post a clear and conspicuous sign commits a second degree misdemeanor.

The bill prohibits the sale or delivery of nicotine products except when those products are under the direct control or line of sight of the nicotine product retailer or the nicotine product retailer's agent or employee. The bill permits nicotine products to be sold from a vending machine if the vending machine has:

- An operational lockout device which is under the control of the nicotine product retailer or the nicotine product retailer's agent or employee who directly controls the sale of items through the machine by triggering the lockout device to allow the dispensing of one nicotine product;

[87] S. 569.003, F.S.

- A mechanism on the lockout device to prevent the machine from functioning if the power source for the lockout device fails or if the lockout device is disabled; and
- A mechanism to ensure that only one nicotine product is dispensed at a time.

The bill also prohibits nicotine products from being sold or displayed by means of self-service merchandising. Self-service merchandising means the open display of nicotine products or nicotine dispensing devices for direct customer access and handling before the purchase of such product without the assistance of the retailer or the retailer's employee.[88]

The bill exempts establishments that prohibit people under the age of 21 on premises from such sales requirements.

The bill requires retailers to require proof of age from a purchaser of a nicotine product or a nicotine dispensing device unless the purchaser appears to be 30 years of age or older.

Mitigating Penalties for Underage Sales

If the Division determines a nicotine product retailer or a nicotine product retailer's employee violated the regulations for nicotine product and nicotine dispensing device retailers, the Division can suspend or revoke the retailer's permit or assess a fine up to $1,000 for each violation.

If the Division discovers a nicotine product retailer's employee illegally sold tobacco products to a person under 21, the bill allows the Division to mitigate penalties if:

- The nicotine product retailer is qualified as a responsible retailer by establishing and implementing specified practices designed to ensure that the nicotine product retailer's employees comply with Florida laws regulating the sale of nicotine products and nicotine dispensing devices, such as employee training;
- The nicotine product retailer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation; and
- If the sale was made through a vending machine, the machine was equipped with an operational lock-out device.

Nicotine Products and Persons under 21 Years of Age

The bill prohibits the sale, delivery, bartering, furnishing or giving of nicotine products or giving sample to products to anyone under the age of 21. A violation of this prohibition is a second degree misdemeanor. A second or subsequent violation within one year of the first violation is a first degree misdemeanor.

A person charged with such a violation to have a complete defense if:

- The buyer falsely represented that he or she was 21 years of age or older;
- The appearance of the buyer would indicate, to a prudent person, that the buyer was 18 years of age or older; and
- The buyer presented false identification upon which the person relied upon in good faith.

The bill prohibits persons under the age of 21 from knowingly possessing, directly or indirectly, any nicotine products, or misrepresenting their age or military service for the purpose of obtaining such products. Any person who violates such prohibition commits a non-criminal violation, punishable as follows:

[88] S. 877.112(1), F.S.

- A first violation carries a penalty of 16 hours of community service or a $25 fine, and attendance at a school-approved anti-tobacco and anti-nicotine program, if locally available.
- A second violation within 12 weeks of the first violation is punishable with a $25 fine.
- A court may suspend or withhold issuance of a driver's license for anyone who has failed to complete the community service, pay the fine, or attend the school-approved anti-tobacco and anti-nicotine program.
    - A court may suspend or withhold issuance of a drivers' license for 30 days for a first violation, and for 45 days for a second violation within 12 weeks of the first violation.

However, this does not include any person under the age of 21 who:

- Is in the military reserve or on active duty in the Armed Forces of the United States; or
- Is acting in his or her scope of lawful employment.

The bill requires 80 percent of all civil penalties received from violating prohibitions related to the possession or sale of nicotine products by a county court to be remitted to the Department of Revenue for transfer to the Department of Education for teacher training and for research and evaluation to reduce and prevent the use of nicotine products and or nicotine products by children. The remaining 20 percent of civil penalties received by a county court is required to remain with the clerk of the county court to cover administrative costs.

The bill authorizes the Division and any law enforcement officer to enforce these provisions. A local government may also designate certain employees or agents as tobacco and nicotine product enforcement officers. A tobacco and nicotine product enforcement officer or a correctional probation officer may issue a citation to a person under the age of 21, whom the officer has reasonable cause to believe is knowingly possessing tobacco products, nicotine products, or nicotine dispensing devices, or is lying about their age or military service in order to obtain such products.[89]

Mail Order, Internet, and Other Remote Sales of Nicotine Products in Florida

The bill creates requirements for the delivery of mail order, Internet, and other remote sales of nicotine products and nicotine dispensing devices to consumers, referred to as "delivery sales." Each person who mails, ships, or otherwise delivers nicotine products or nicotine dispensing devices in connection with an order for a delivery sale to a consumer must:

- Include, as part of the shipping documents, in a clear and conspicuous manner, the following statement: "Nicotine Products: Florida law prohibits shipping to individuals under 21 years of age."
- Use a method of mailing, shipping, or delivery which obligates the delivery service to:
    - Require the signature of a person 21 years of age or older who resides at the delivery address and obtain proof of the legal minimum purchase age of the individual accepting delivery, if the individual appears to be under 30 years of age.
    - Require proof that the individual accepting delivery is either the addressee or the adult designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.

Before the first delivery to a consumer, the bill requires the person mailing, shipping, or delivering the nicotine products to:

- Obtain a certification from the person accepting delivery that includes reliable confirmation that the person accepting the delivery is 21 years of age or older, and a written statement under

[89] S. 569.12, F.S.

penalty of perjury providing the person's date of birth, address, and confirmation that the person wants to accept the delivery;
- Make a good faith effort to verify the information in the certification by checking the information against a commercially available database or obtaining a photocopy of the person's ID;
- Provide the person accepting the delivery a notice stating nicotine products are illegal for underage persons and sales of such products are restricted to individuals who provide verifiable proof of legal age to purchase;
- Receive payment by a credit card or debit card in the name of the person accepting the delivery or a personal or company check of the person accepting the delivery, if the order is made in accordance with an advertisement on the Internet;
- Submit to the credit card company necessary information so that the words "nicotine product" appear on the person's credit card statement when a purchase is made using a credit card; and
- Make a phone call to the person accepting the delivery to confirm the order before shipping the order.

The bill requires a person who accepts a purchase order for a delivery sale and delivers the nicotine products or nicotine dispensing devices without using a delivery service to comply with all of the delivery service requirements.

The bill imposes a penalty for any person, who is 21 years or older, who knowingly violates the delivery sale's requirements as a misdemeanor of the second degree.

The bill requires the Division to submit an annual report, by December 31st, to the Governor and Legislature on the progress of implementing and enforcing the above requirements, including:

- The number and results of compliance visits by the Division;
- The number of violations for failure of a retailer to hold a valid permit;
- The number of violations for selling nicotine products and nicotine dispensing devices 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 nicotine products or nicotine dispensing devices underage, and misrepresenting military service for the purpose of obtaining such products underage.

The bill changes the title of ch. 569, F.S., from "Tobacco Products" to "Tobacco and Nicotine Products." The bill directs the Division of Law Revision to create parts I and II of ch. 569, F.S., entitled "Tobacco Products" and "Nicotine Products," respectively.

Preemption

The bill preempts to the state the establishment of the minimum age for the sale and delivery of tobacco products, nicotine products, and nicotine dispensing devices, and the regulation of the marketing of such products. However, the preemption does not prohibit a local government's ability to require licensure for the retail sale of tobacco products, nicotine products, and nicotine dispensing devices.

B. SECTION DIRECTORY:

Section 1. Amending s. 210.095, F.S., increasing the age of a person who may receive tobacco products that have been shipped and violations thereof.

Section 2. Amending s. 386.212, F.S., increasing the age of person who may smoke or vape within a certain distance of a school.

Section 3. Renames ch. 569, F.S., as "Tobacco and Nicotine Products."

Section 4. Directs the Division of Law Revision to create part I of ch. 569, F.S., entitled "Tobacco Products" and to create part II of ch. 569, F.S., entitled "Nicotine Products."

Section 5. Amending s. 569.002, F.S., relating to definitions.

Section 6. Amending s. 569.003, F.S., relating to tobacco products dealer permits.

Section 7. Amending s. 569.004, F.S., relating to consent to inspection and search without warrant.

Section 8. Amending s. 569.006, F.S., relating to retail tobacco products dealers; administrative penalties.

Section 9. Amending s. 569.007, F.S., relating to the sale or delivery of tobacco products.

Section 10. Amending s. 569.0075, F.S., relating to the prohibition of giving samples of tobacco products.

Section 11. Amending s. 569.008, F.S., relating to responsible retail tobacco products dealers.

Section 12. Amending s. 569.009, F.S., relating to rulemaking authority.

Section 13. Amending s. 569.101, F.S., increasing the age of a person who may purchase tobacco products.

Section 14. Amending s. 569.11, F.S., increasing the age of a person who may possess tobacco products.

Section 15. Amending s. 569.12, F.S., relating to jurisdiction; tobacco product enforcement officers or agents; enforcement.

Section 16. Amending s. 569.14, F.S., relating to posting of a sign stating that the sale of tobacco products to persons under 18 years of age is unlawful; enforcement; penalty.

Section 17. Amending s. 569.19, F.S., relating to annual report.

Section 18. Creating s. 569.24, F.S., preempting the establishment of the minimum age for the sale and delivery of tobacco and nicotine products and the marketing of such products to the state.

Section 19. Creating s. 569.31, F.S., relating to definitions.

Section 20. Creating s. 569.32, F.S., requiring retailers of nicotine products to obtain a retail nicotine products dealer permits.

Section 21. Creating s. 569.33, F.S., requiring retail nicotine products dealer permit holders to consent to certain inspections.

Section 22. Creating s. 569.34, F.S., creating penalties for operating without a retail nicotine products dealer permit.

Section 23. Creating s. 569.35, F.S., creating administrative penalties for retail nicotine products dealers.

Section 24. Creating s. 569.37, F.S., creating regulations for the retail sale of nicotine products.

Section 25. Creating s. 569.38, F.S., creating prohibitions for giving samples of nicotine products.

Section 26. Creating s. 569.381, F.S., creating responsible retail nicotine products dealer qualifications.

Section 27. Creating s. 569.39, F.S., granting rulemaking authority to DBPR.

Section 28. Creating s. 569.41, F.S., providing penalties for the sale of nicotine products to underage persons.

Section 29. Creating s. 569.42, F.S., providing penalties for underage persons possessing nicotine products.

Section 30. Creating s. 569.43, F.S., requiring nicotine product retailers to post certain signs.

Section 31. Creating s. 569.44, F.S., requiring DBPR to perform an annual report.

Section 32. Creating s. 569.45, F.S., creating regulations for the delivery of nicotine products and penalties for violations of such regulations.

Section 33. Repeals s. 877.112, F.S.

Section 34. Provides an effective date of October 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

On April 12, 2019, the Revenue Estimating Impact Conference reviewed HB 7119 of the 2019 Florida Legislative Session. HB 7119 also increased the minimum age to purchase tobacco and nicotine products to 21 years of age. The Revenue Estimating Impact Conference estimated it will result in a reduction in Tobacco Tax and Surcharge collections. The following chart shows the impact over the 2019-20 through 2023-24 fiscal years (in millions):[90]

Fiscal Year	General Revenue	Trust Fund	Total
2019-20	$ (0.4)	$ (1.1)	$ (1.6)
2020-21	$ (0.6)	$ (1.7)	$ (2.3)
2021-22	$ (0.9)	$ (2.2)	$ (3.1)
2022-23	$ (1.1)	$ (2.8)	$ (3.9)
2023-24	$ (1.1)	$ (2.8)	$ (3.9)

The Department of Revenue (DOR) may see an increase in revenue as the bill allows 80 percent of civil penalties received by a county court relating to enforcement of underage possession and purchasing of nicotine products to be remitted to DOR. The impact is indeterminate.

[90] Office of Economic & Demographic Research, April 12, 2019 Revenue Estimating Conference (http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2019/_pdf/Impact0412.pdf). (last visited Mar. 19, 2021). Note: There is a possible negative impact on sales tax collected on nicotine dispensing devices. The EDR analysis only focuses on the impact on Tobacco Tax and Surcharge.

There may be an indeterminate positive fiscal impact on the state due to a possible reduction in treatment of smoking and vaping related diseases and illnesses if these persons received services from a state program (e.g., Medicaid).

2. Expenditures:

The bill has a significant, indeterminate, negative fiscal impact on DBPR. The bill creates new duties of the Division relating to the regulation and enforcement of nicotine products and sales which will increase current workload on Division employees. The impact is indeterminate because the number of current retailers who sell nicotine products is unknown as they are not currently regulated by any state agency.

The bill requires the Division to create a new application for a retail nicotine products dealer permit, and issue such permits, the cost of which may be able to be absorbed within current resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The clerk of the county court may see an increase in revenue as the bill allows twenty percent of civil penalties received by a county court relating to enforcement of underage possession and purchasing of nicotine products to remain with the clerk. The impact is indeterminate.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to 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 provides sufficient rule-making authority for DBPR to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to tobacco and nicotine products; amending s. 210.095, F.S.; deleting the definition of the term "adult"; revising age limitations relating to mail order, Internet, and remote sales of tobacco products; amending s. 386.212, F.S.; providing that it is unlawful for persons under 21 years of age to smoke tobacco or vape in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school during specified hours; renaming ch. 569, F.S.; providing directives to the Division of Law Revision; amending s. 569.002, F.S.; defining the terms "nicotine product" and "nicotine dispensing device"; conforming provisions to changes made by the act; amending ss. 569.003, 569.004, and 569.006, F.S.; conforming provisions to changes made by the act; amending s. 569.007, F.S.; revising age limitations relating to the sale and delivery of tobacco products; revising applicability; requiring that the age of persons purchasing tobacco products be verified under certain circumstances; amending s. 569.0075, F.S.; revising age limitations relating to gifting sample tobacco products; amending s. 569.008, F.S.; revising legislative intent; revising qualification

requirements for responsible retail tobacco products dealers; conforming provisions to changes made by the act; amending s. 569.009, F.S.; conforming a provision to changes made by the act; amending s. 569.101, F.S.; revising age limitations relating to selling, delivering, bartering, furnishing, or giving tobacco products to certain persons; amending s. 569.11, F.S.; revising age limitations relating to possessing and obtaining tobacco products; amending s. 569.12, F.S.; expanding the authority of tobacco product enforcement officers to include nicotine products; amending s. 569.14, F.S.; revising requirements for signage relating to tobacco products, nicotine products, and nicotine dispensing devices; conforming provisions to changes made by the act; amending s. 569.19, F.S.; conforming provisions to changes made by the act; creating s. 569.24, F.S.; providing definitions; preempting the establishment of the minimum age for the sale or delivery of tobacco products and nicotine products and marketing of such products to the state; providing exceptions; creating s. 569.31, F.S.; defining terms; creating s. 569.32, F.S.; requiring retail nicotine product dealers to acquire a permit; providing requirements and authorizations for such permit; creating s. 569.33, F.S.; specifying that an

applicant for a retail nicotine products dealer permit consents to certain inspections and searches upon accepting such permit; creating s. 569.34, F.S.; prohibiting certain persons, firms, associations, or corporations from operating without a permit; providing civil penalties; creating s. 569.35, F.S.; providing administrative penalties for retail nicotine product dealers under certain circumstances; requiring the Division of Alcoholic Beverages and Tobacco to deposit funds collected from administrative fines into the General Revenue Fund; creating s. 569.37, F.S.; providing restrictions on selling, delivering, bartering, furnishing, giving, or possession of nicotine products; requiring that the age of persons purchasing nicotine products be verified under certain circumstances creating s. 569.38, F.S.; prohibiting certain persons from gifting sample nicotine products to persons under a specified age; creating s. 569.381, F.S.; providing legislative intent; providing requirements for a dealer to qualify as a responsible retail nicotine products dealer; authorizing the division to mitigate certain penalties; requiring the division to develop and make available a nicotine products training program; requiring dealers to exercise diligence in the management and supervision

of their premises and the supervision and training of certain persons; creating s. 569.39, F.S.; requiring the division to adopt rules; creating ss. 569.41 and 569.42, F.S.; providing civil and criminal penalties relating to selling, delivering, bartering, furnishing, or giving nicotine products to certain persons and possessing and acquiring nicotine products, respectively; creating s. 569.43, F.S.; providing signage requirements relating to the sale of nicotine products or nicotine dispensing devices; providing criminal penalties; creating s. 569.44, F.S.; requiring the division to provide an annual report containing specified information to the Governor and the Legislature; creating s. 569.45, F.S.; defining terms; providing requirements for mail order, Internet, and remote sales of nicotine products; providing applicability; providing criminal penalties; repealing s. 877.112, F.S., relating to nicotine products and nicotine dispensing devices; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1), paragraphs (a)

and (c) of subsection (2), paragraph (a) of subsection (3), paragraph (a) of subsection (4), paragraphs (a) and (b) of subsection (5), and paragraphs (a), (b), (e), and (g) of subsection (8) of section 210.095, Florida Statutes, are amended to read:

210.095 Mail order, Internet, and remote sales of tobacco products; age verification.—

(1) For purposes of this section, the term:

~~(a) "Adult" means an individual who is at least of the legal minimum purchase age for tobacco products.~~

(2)

(a) A sale of tobacco products constituting a delivery sale pursuant to paragraph (1)(b) ~~(1)(c)~~ is a delivery sale regardless of whether the person accepting the order for the delivery sale is located inside or outside this state.

(c) A person may not make a delivery sale of tobacco products to any individual who is not 21 years of age or older ~~an adult~~.

(3) A person may not mail, ship, or otherwise deliver tobacco products in connection with an order for a delivery sale unless, before the first delivery to the consumer, the person accepting the order for the delivery sale:

(a) Obtains from the individual submitting the order a certification that includes:

1. Reliable confirmation that the individual is 21 years

of age or older ~~an adult~~; and

2. A statement signed by the individual in writing and under penalty of perjury which:

a. Certifies the address and date of birth of the individual; and

b. Confirms that the individual wants to receive delivery sales from a tobacco company and understands that, under the laws of this state, the following actions are illegal:

(I) Signing another individual's name to the certification;

(II) Selling tobacco products to individuals under the legal minimum purchase age; and

(III) Purchasing tobacco products, if the person making the purchase is under the legal minimum purchase age.

In addition to the requirements of this subsection, a person accepting an order for a delivery sale may request that a consumer provide an electronic mail address.

(4) The notice described in paragraph (3)(c) must include prominent and clearly legible statements that sales of tobacco products are:

(a) Illegal if made to individuals who are not 21 years of age or older ~~adults~~.

The notice must include an explanation of how each tax has been,

or is to be, paid with respect to the delivery sale.

(5) Each person who mails, ships, or otherwise delivers tobacco products in connection with an order for a delivery sale must:

(a) Include as part of the shipping documents, in a clear and conspicuous manner, the following statement: "Tobacco Products: Florida law prohibits shipping to individuals under 21 ~~18~~ years of age and requires the payment of all applicable taxes."

(b) Use a method of mailing, shipping, or delivery which obligates the delivery service to require:

1. The individual submitting the order for the delivery sale or another individual who is 21 years of age or older ~~adult~~ who resides at the individual's address to sign his or her name to accept delivery of the shipping container. Proof of the legal minimum purchase age of the individual accepting delivery is required only if the individual appears to be under 30 ~~27~~ years of age.

2. Proof that the individual is either the addressee or the individual who is 21 years of age or older ~~adult~~ designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.

If the person accepting a purchase order for a delivery sale

delivers the tobacco products without using a delivery service, the person must comply with all of the requirements of this section which apply to a delivery service. Any failure to comply with a requirement of this section constitutes a violation thereof.

(8)(a) Except as otherwise provided in this section, a violation of this section by a person other than an individual who is not 21 years of age or older ~~an adult~~ is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and:

1. For a first violation of this section, the person shall be fined $1,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater.

2. For a second or subsequent violation of this section, the person shall be fined $5,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater.

(b) A person who is 21 years of age or older ~~an adult~~ and knowingly submits a false certification under subsection (3) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. For each offense, the person shall be fined $10,000 or five times the retail value of the tobacco products involved in the violation, whichever is greater.

(e) A person who, in connection with a delivery sale,

delivers tobacco products on behalf of a delivery service to an individual who is not 21 years of age or older ~~an adult~~ commits a misdemeanor of the second ~~third~~ degree, punishable as provided in s. 775.082 or s. 775.083.

(g) An individual who is not 21 years of age or older ~~an adult~~ and who knowingly violates any provision of this section commits a misdemeanor of the second ~~third~~ degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. Subsection (1) of section 386.212, Florida Statutes, is amended to read:

386.212 Smoking and vaping prohibited near school property; penalty.—

(1) It is unlawful for any person under 21 ~~18~~ years of age to smoke tobacco or vape in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. This section does not apply to any person occupying a moving vehicle or within a private residence.

Section 3. Chapter 569, Florida Statutes, entitled "Tobacco Products," is renamed "Tobacco and Nicotine Products."

Section 4. The Division of Law Revision is directed to:

(1) Create part I of chapter 569, Florida Statutes, consisting of ss. 569.002-569.24, Florida Statutes, to be entitled "Tobacco Products."

(2) Create part II of chapter 569, Florida Statutes,

consisting of ss. 569.31-569.45, Florida Statutes, to be entitled "Nicotine Products."

Section 5. Section 569.002, Florida Statutes, is amended to read:

569.002 Definitions.—As used in this part ~~chapter~~, the term:

(1) "Dealer" is synonymous with the term "retail tobacco products dealer."

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

(3) "Nicotine product" has the same meaning as provided in s. 569.31(4).

(4) "Nicotine dispensing device" has the same meaning as provided in s. 569.31(3).

(5) "Permit" is synonymous with the term "retail tobacco products dealer permit."

(6)~~(4)~~ "Retail tobacco products dealer" means the holder of a retail tobacco products dealer permit.

(7)~~(5)~~ "Retail tobacco products dealer permit" means a permit issued by the division pursuant to s. 569.003.

(8)~~(6)~~ "Tobacco products" includes loose tobacco leaves, and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.

(9)~~(7)~~ "Any person under the age of 21 ~~18~~" does not include any person under the age of 21 ~~18~~ who:

~~(a) Has had his or her disability of nonage removed under chapter 743;~~

(a)~~(b)~~ Is in the military reserve or on active duty in the Armed Forces of the United States; or

~~(c) Is otherwise emancipated by a court of competent jurisdiction and released from parental care and responsibility; or~~

(b)~~(d)~~ Is acting in his or her scope of lawful employment with an entity licensed under the provisions of chapter 210 or this part ~~chapter~~.

Section 6. Paragraph (c) of subsection (1) of section 569.003, Florida Statutes, is amended to read:

569.003 Retail tobacco products dealer permits; application; qualifications; fees; renewal; duplicates.—

(1)

(c) Permits shall be issued annually, upon payment of the annual permit fee prescribed by the division. The division shall fix the fee in an amount sufficient to meet the costs incurred by it in carrying out its permitting, enforcement, and administrative responsibilities under this part ~~chapter~~, but the fee may not exceed $50. The proceeds of the fee shall be deposited into the Alcoholic Beverage and Tobacco Trust Fund.

Section 7. Section 569.004, Florida Statutes, is amended

to read:

569.004 Consent to inspection and search without warrant.—An applicant for a permit, by accepting the permit when issued, agrees that the place or premises covered by the permit is subject to inspection and search without a search warrant by the division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with this chapter, including part II of this chapter if the applicant deals, at retail, in nicotine products within the state or allows a nicotine products vending machine to be located on its premises within the state.

Section 8. Section 569.006, Florida Statutes, is amended to read:

569.006 Retail tobacco products dealers; administrative penalties.—The division may suspend or revoke the permit of the dealer upon sufficient cause appearing of the violation of any of the provisions of this chapter, including part II of this chapter if the dealer deals, at retail, in nicotine products within the state or allows a nicotine products vending machine to be located on its premises within the state, by a dealer or by a dealer's agent or employee. The division may also assess and accept administrative fines of up to $1,000 against a dealer for each violation. The division shall deposit all fines collected into the General Revenue Fund as collected. An order imposing an administrative fine becomes effective 15 days after

the date of the order. The division may suspend the imposition of a penalty against a dealer, conditioned upon the dealer's compliance with terms the division considers appropriate.

Section 9. Subsections (1), (2), and (4) of section 569.007, Florida Statutes, are amended to read:

569.007 Sale or delivery of tobacco products; restrictions.—

(1) In order to prevent persons under 21 ~~18~~ years of age from purchasing or receiving tobacco products, the sale or delivery of tobacco products is prohibited, except:

(a) When under the direct control or line of sight of the dealer or the dealer's agent or employee; or

(b) Sales from a vending machine are prohibited under the provisions of paragraph (1)(a) and are only permissible from a machine that is equipped with an operational lockout device which is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine by triggering the lockout device to allow the dispensing of one tobacco product. The lockout device must include a mechanism to prevent the machine from functioning if the power source for the lockout device fails or if the lockout device is disabled, and a mechanism to ensure that only one tobacco product is dispensed at a time.

(2) The provisions of subsection (1) shall not apply to an establishment that prohibits persons under 21 ~~18~~ years of age on

the licensed premises.

(4) A dealer or a dealer's agent or employee must ~~may~~ require proof of age of a purchaser of a tobacco product before selling the product to that person, unless the purchaser appears to be 30 years of age or older.

Section 10. Section 569.0075, Florida Statutes, is amended to read:

569.0075 Gift of sample tobacco products prohibited.—The gift of sample tobacco products to any person under the age of 21 ~~18~~ by an entity licensed or permitted under the provisions of chapter 210 or this part ~~chapter~~, or by an employee of such entity, is prohibited and is punishable as provided in s. 569.101.

Section 11. Subsection (1), paragraphs (b) and (c) of subsection (2), and subsection (3) of section 569.008, Florida Statutes, are amended to read:

569.008 Responsible retail tobacco products dealers; qualifications; mitigation of disciplinary penalties; diligent management and supervision; presumption.—

(1) The Legislature intends to prevent the sale of tobacco products to persons under 21 ~~18~~ years of age and to encourage retail tobacco products dealers to comply with responsible practices in accordance with this section.

(2) To qualify as a responsible retail tobacco products dealer, the dealer must establish and implement procedures

designed to ensure that the dealer's employees comply with the provisions of this part ~~chapter~~. The dealer must provide a training program for the dealer's employees which addresses the use and sale of tobacco products and which includes at least the following topics:

(b) Methods of recognizing and handling customers under 21 ~~18~~ years of age.

(c) Procedures for proper examination of identification cards in order to verify that customers are not under 21 ~~18~~ years of age.

(3) In determining penalties under s. 569.006, the division may mitigate penalties imposed against a dealer because of an employee's illegal sale of a tobacco product to a person under 21 ~~18~~ years of age if the following conditions are met:

(a) The dealer is qualified as a responsible dealer under this section.

(b) The dealer provided the training program required under subsection (2) to that employee before the illegal sale occurred.

(c) The dealer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation.

(d) If the sale was made through a vending machine, the machine was equipped with an operational lock-out device.

Section 12. Section 569.009, Florida Statutes, is amended

to read:

569.009 Rulemaking authority.—The division shall adopt any rules necessary to administer and enforce the provisions of this part ~~chapter~~.

Section 13. Section 569.101, Florida Statutes, is amended to read:

569.101 Selling, delivering, bartering, furnishing, or giving tobacco products to persons under 21 ~~18~~ years of age; criminal penalties; defense.—

(1) It is unlawful to sell, deliver, barter, furnish, or give, directly or indirectly, to any person who is under 21 ~~18~~ years of age, any tobacco product.

(2) Any person who violates subsection (1) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. However, any person who violates subsection (1) for a second or subsequent time within 1 year of the first violation, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person charged with a violation of subsection (1) has a complete defense if, at the time the tobacco product was sold, delivered, bartered, furnished, or given:

(a) The buyer or recipient falsely evidenced that she or he was 21 ~~18~~ years of age or older;

(b) The appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be 21

~~18~~ years of age or older; and

(c) Such person carefully checked a driver license or an identification card issued by this state or another state of the United States, a passport, or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 21 ~~18~~ years of age or older.

Section 14. Section 569.11, Florida Statutes, is amended to read:

569.11 Possession, misrepresenting age or military service to purchase, and purchase of tobacco products by persons under 21 ~~18~~ years of age prohibited; penalties; jurisdiction; disposition of fines.—

(1) It is unlawful for any person under 21 ~~18~~ years of age to knowingly possess any tobacco product. Any person under 21 ~~18~~ years of age who violates this subsection commits a noncriminal violation as provided in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a $25 fine. In addition, the person must attend a school-approved anti-tobacco program, if locally available; or

(b) For a second or subsequent violation within 12 weeks after the first violation, a $25 fine.

Any second or subsequent violation not within the 12-week period after the first violation is punishable as provided for a first violation.

(2) It is unlawful for any person under 21 ~~18~~ years of age to misrepresent his or her age or military service for the purpose of inducing a dealer or an agent or employee of the dealer to sell, give, barter, furnish, or deliver any tobacco product, or to purchase, or attempt to purchase, any tobacco product from a person or a vending machine. Any person under 21 ~~18~~ years of age who violates this subsection commits a noncriminal violation as provided in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a $25 fine and, in addition, the person must attend a school-approved anti-tobacco program, if available; or

(b) For a second or subsequent violation within 12 weeks after the first violation, a $25 fine.

Any second or subsequent violation not within the 12-week period after the first violation is punishable as provided for a first violation.

(3) Any person under 21 ~~18~~ years of age cited for committing a noncriminal violation under this section must sign and accept a civil citation indicating a promise to appear

before the county court or comply with the requirement for paying the fine and must attend a school-approved anti-tobacco program, if locally available. If a fine is assessed for a violation of this section, the fine must be paid within 30 days after the date of the citation or, if a court appearance is mandatory, within 30 days after the date of the hearing.

(4) A person charged with a noncriminal violation under this section must appear before the county court or comply with the requirement for paying the fine. The court, after a hearing, shall make a determination as to whether the noncriminal violation was committed. If the court finds the violation was committed, it shall impose an appropriate penalty as specified in subsection (1) or subsection (2). A person who participates in community service shall be considered an employee of the state for the purpose of chapter 440, for the duration of such service.

(5)(a) If a person under 21 ~~18~~ years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to complete community service, pay the fine as required by paragraph (1)(a) or paragraph (2)(a), or attend a school-approved anti-tobacco program, if locally available, the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 30 consecutive days.

(b) If a person under 21 ~~18~~ years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to pay the applicable fine as required by paragraph (1)(b) or paragraph (2)(b), the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 45 consecutive days.

(6) Eighty percent of all civil penalties received by a county court pursuant to this section shall be remitted by the clerk of the court to the Department of Revenue for transfer to the Department of Education to provide for teacher training and for research and evaluation to reduce and prevent the use of tobacco products by children. The remaining 20 percent of civil penalties received by a county court pursuant to this section shall remain with the clerk of the county court to cover administrative costs.

Section 15. Section 569.12, Florida Statutes, is amended to read:

569.12 Jurisdiction; tobacco product and nicotine product enforcement officers or agents; enforcement.—

(1) In addition to the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation, any law enforcement officer certified under s. 943.10(1), (6), or (8) shall enforce the provisions of this chapter.

(2)(a) A county or municipality may designate certain of its employees or agents as tobacco product and nicotine product enforcement officers. The training and qualifications of the employees or agents for such designation shall be determined by the county or the municipality. Nothing in this section shall be construed to permit the carrying of firearms or other weapons by a tobacco product and nicotine product enforcement agent, nor does designation as a tobacco product and nicotine product enforcement officer provide the employee or agent with the power of arrest or subject the employee or agent to the provisions of ss. 943.085-943.255. Nothing in this section amends, alters, or contravenes the provisions of any state-administered retirement system or any state-supported retirement system established by general law.

(b) A tobacco and nicotine product enforcement officer is authorized to issue a citation to a person under the age of 21 ~~18~~ when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of s. 386.212, ~~or~~ s. 569.11, or s. 569.42.

(3) A correctional probation officer as defined in s. 943.10(3) is authorized to issue a citation to a person under the age of 21 ~~18~~ when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of s. 569.11 or s.

569.42.

(4) A citation issued to any person violating the provisions of s. 569.11 or s. 569.42 shall be in a form prescribed by the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation and shall contain:

(a) The date and time of issuance.

(b) The name and address of the person to whom the citation is issued.

(c) The date and time the civil infraction was committed.

(d) The facts constituting reasonable cause.

(e) The number of the Florida statute violated.

(f) The name and authority of the citing officer.

(g) The procedure for the person to follow in order to contest the citation, perform the required community service, attend the required anti-tobacco or anti-tobacco and anti-nicotine program, or to pay the civil penalty.

Section 16. Section 569.14, Florida Statutes, is amended to read:

569.14 Posting of a sign stating that the sale of tobacco products or nicotine products to persons under 21 ~~18~~ years of age is unlawful; enforcement; penalty.—

(1) A dealer that sells tobacco products shall post a clear and conspicuous sign in each place of business where such products are sold which substantially states the following:

THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

(2) A dealer that sells tobacco products and nicotine products or nicotine dispensing devices~~, as defined in s. 877.112,~~ may use a sign that substantially states the following:

THE SALE OF TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 21 ~~18~~ IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

A dealer that uses a sign as described in this subsection meets the signage requirements of subsection (1) and s. 569.43(1) ~~s. 877.112~~.

(3) The division shall make available to dealers of tobacco products signs that meet the requirements of subsection (1) or subsection (2).

(4) Any dealer that sells tobacco products shall provide at the checkout counter in a location clearly visible to the dealer or the dealer's agent or employee instructional material in a calendar format or similar format to assist in determining whether a person is of legal age to purchase tobacco products.

This point of sale material must contain substantially the following language:

IF YOU WERE NOT BORN BEFORE THIS DATE
(insert date and applicable year)
YOU CANNOT BUY TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE DISPENSING DEVICES.

Upon approval by the division, in lieu of a calendar a dealer may use card readers, scanners, or other electronic or automated systems that can verify whether a person is of legal age to purchase tobacco products. Failure to comply with the provisions contained in this subsection shall result in imposition of administrative penalties as provided in s. 569.006.

(5) The division, through its agents and inspectors, shall enforce this section.

(6) Any person who fails to comply with subsection (1) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 17. Section 569.19, Florida Statutes, is amended to read:

569.19 Annual report.—The division shall report annually with written findings to the Legislature and the Governor by December 31, on the progress of implementing the enforcement provisions of this part ~~chapter~~. This must include, but is not

limited to:

(1) The number and results of compliance visits.

(2) The number of violations for failure of a retailer to hold a valid license.

(3) The number of violations for selling tobacco products to persons under age 21 ~~18~~, and the results of administrative hearings on the above and related issues.

(4) The number of persons under age 21 ~~18~~ cited for violations of s. 569.11 and sanctions imposed as a result of citation.

Section 18. Section 569.24, Florida Statutes, is created to read:

569.24 Preemption of the establishment of the minimum age for tobacco products, nicotine products, or nicotine dispensing devices, and the regulation of marketing of such products.—

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

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

(b) "Minimum age" means the lawful age to purchase or knowingly possess tobacco products or nicotine products.

(c) "Retail licensure" means any certification, registration, or license that is required for a person, firm, association, or corporation to deal, at retail, any tobacco products or nicotine products.

(2) PREEMPTION.—The establishment of the minimum age for

the sale and delivery of tobacco products and nicotine products and the regulation of the marketing of such products, is preempted to the state. Nothing in this section shall be construed to affect a local government's ability to require retail licensure for the sale of tobacco products and nicotine products.

Section 19. Section 569.31, Florida Statutes, is created to read:

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

(1) "Dealer" is synonymous with the term "retail nicotine products dealer."

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

(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.

(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. 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.

(5) "Permit" is synonymous with the term "retail nicotine products dealer permit."

(6) "Retail nicotine products dealer" means the holder of a retail nicotine products dealer permit.

(7) "Retail nicotine products dealer permit" means a permit issued by the division under s. 569.32.

(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.

(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 20. Section 569.32, Florida Statutes, is created to read:

569.32 Retail nicotine products dealer permits; application; qualifications; renewal; duplicates.—

(1)(a) Each person, firm, association, or corporation that seeks to deal, at retail, in nicotine products within the state, or to allow a nicotine products vending machine to be located on its premises in the state, must obtain a retail nicotine products dealer permit for each place of business or premises at which nicotine products are sold. Each dealer owning, leasing, furnishing, or operating vending machines through which nicotine products are sold must obtain a permit for each machine and shall post the permit in a conspicuous place on or near the machine; however, if the dealer has more than one vending machine at a single location or if nicotine products are sold both over the counter and through a vending machine at a single location, the dealer need obtain only one permit for that location.

(b) Application for a permit must be made on a form furnished by the division and must set forth the name under which the applicant transacts or intends to transact business, the address of the location of the applicant's place of business within the state, and any other information the division requires. If the applicant has or intends to have more than one

place of business dealing in nicotine products within the state, a separate application must be made for each place of business. If the applicant is a firm or an association, the application must set forth the names and addresses of the persons constituting the firm or association; if the applicant is a corporation, the application must set forth the names and addresses of the principal officers of the corporation. The application must also set forth any other information prescribed by the division for the purpose of identifying the applicant firm, association, or corporation. The application must be signed and verified by oath or affirmation by the owner, if a sole proprietor, or, if the owner is a firm, association, or partnership, by the members or partners thereof, or, if the owner is a corporation, by an executive officer of the corporation or by a person authorized by the corporation to sign the application, together with the written evidence of this authority.

(2)(a) Permits may be issued only to persons who are 18 years of age or older or to corporations the officers of which are 18 years of age or older.

(b) The division may refuse to issue a permit to any person, firm, association, or corporation the permit of which has been revoked, to any corporation an officer of which has had his or her permit revoked, or to any person who is or has been an officer of a corporation the permit of which has been

revoked. Any permit issued to a firm, association, or corporation prohibited from obtaining a permit under this chapter shall be revoked by the division.

(3) Upon approval of an application for a permit, the division shall issue to the applicant a permit for the place of business or premises specified in the application. A permit is not assignable and is valid only for the person in whose name the permit is issued and for the place designated in the permit. The permit shall be conspicuously displayed at all times at the place for which issued.

Section 21. Section 569.33 Florida Statutes, is created to read:

569.33 Consent to inspection and search without warrant.—An applicant for a retail nicotine products dealer permit, by accepting the permit when issued, agrees that the place or premises covered by the permit is subject to inspection and search without a search warrant by the division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with this part.

Section 22. Section 569.34, Florida Statutes, is created to read:

569.34 Operating without a retail nicotine products dealer permit; penalty.—

(1) It is unlawful for a person, firm, association, or corporation to deal, at retail, in nicotine products, in any

manner, or to allow a nicotine products vending machine to be located on its premises, without having a retail nicotine product dealer permit as required by s. 569.32. A person who violates this section commits a noncriminal violation, punishable by a fine of not more than $500.

(2) A retail tobacco products dealer, as defined in s. 569.002(4), is not required to have a separate or additional retail nicotine products dealer permit to deal, at retail, in nicotine products within the state, or allow a nicotine products vending machine to be located on its premises in the state. Any retail tobacco products dealer that deals, at retail, in nicotine products or allows a tobacco products vending machine to be located on its premises in the state, is subject to, and must be in compliance with, this part.

(3) Any person who violates this section shall be cited for such infraction and shall be cited to appear before the county court. The citation may indicate the time, date, and location of the scheduled hearing and must indicate that the penalty for a noncriminal violation is a fine of not more than $500.

(a) A person cited for an infraction under this section may:

1. Post a $500 bond; or

2. Sign and accept the citation indicating a promise to appear.

(b) A person cited for violating this section may:

1. Pay the fine, either by mail or in person, within 10 days after receiving the citation; or

2. If the person has posted bond, forfeit the bond by not appearing at the scheduled hearing.

(c) If the person pays the fine or forfeits bond, the person is deemed to have admitted violating this section and to have waived the right to a hearing on the issue of commission of the violation. Such admission may not be used as evidence in any other proceeding.

(d) The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven beyond a reasonable doubt, the court may impose a civil penalty in an amount that may not exceed $500.

(e) If a person is found by the court to have committed the infraction, that person may appeal that finding to the circuit court.

Section 23. Section 569.35, Florida Statutes, is created to read:

569.35 Retail nicotine product dealers; administrative penalties.—The division may suspend or revoke the permit of a dealer, including the retail tobacco products dealer permit of a retail tobacco products dealer as defined in s. 569.002(4), upon sufficient cause appearing of the violation of any of the

provisions of this part, by a dealer, or by a dealer's agent or employee. The division may also assess and accept an administrative fine of up to $1,000 against a dealer for each violation. The division shall deposit all fines collected into the General Revenue Fund as collected. An order imposing an administrative fine becomes effective 15 days after the date of the order. The division may suspend the imposition of a penalty against a dealer, conditioned upon the dealer's compliance with terms the division considers appropriate.

Section 24. Section 569.37, Florida Statutes, is created to read:

569.37 Sale or delivery of nicotine products; restrictions.—

(1) In order to prevent persons under 21 years of age from purchasing or receiving nicotine products, the sale or delivery of nicotine products is prohibited, except:

(a) When under the direct control or line of sight of the dealer or the dealer's agent or employee; or

(b) Sales from a vending machine are prohibited under paragraph (a) and are only permissible from a machine that is equipped with an operational lockout device which is under the control of the dealer or the dealer's agent or employee who directly regulates the sale of items through the machine by triggering the lockout device to allow the dispensing of one tobacco product. The lockout device must include a mechanism to

prevent the machine from functioning if the power source for the lockout device fails or if the lockout device is disabled, and a mechanism to ensure that only one tobacco product is dispensed at a time.

(2)(a) A dealer that sells nicotine products may not sell, permit to be sold, offer for sale, or display for sale such products or devices by means of self-service merchandising.

(b) A dealer that sells nicotine products may not place such products or devices in an open display unit unless the unit is located in an area that is inaccessible to customers.

(3) The provisions of subsections (1) and (2) shall not apply to an establishment that prohibits persons under 21 years of age on the licensed premises.

(4) 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.

Section 25. Section 569.38, Florida Statutes, is created to read:

569.38 Gift of sample nicotine products and nicotine dispensing devices.—The gift of sample nicotine products to any person under the age of 21 by an entity permitted under this part, or by an employee of such entity, is prohibited and is punishable as provided in s. 569.41.

Section 26. Section 569.381, Florida Statutes, is created

to read:

569.381 Responsible retail nicotine products dealers; qualifications; mitigation of disciplinary penalties; diligent management and supervision; presumption.—

(1) It is the intent of the Legislature to prevent the sale of nicotine products to persons under 21 years of age and to encourage retail nicotine products dealers to comply with responsible practices in accordance with this section.

(2) To qualify as a responsible retail nicotine products dealer, the dealer must establish and implement procedures designed to ensure that the dealer's employees comply with this part. The dealer must provide a training program for the dealer's employees which addresses the use and sale of nicotine products and which includes at least the following topics:

(a) Laws covering the sale of nicotine products.

(b) Methods of recognizing and handling customers under 21 years of age.

(c) Procedures for proper examination of identification cards in order to verify that customers are not under 21 years of age.

(d) The use of the age audit identification function on electronic point-of-sale equipment, where available.

(3) In determining penalties under s. 569.35, the division may mitigate penalties imposed against a dealer because of an employee's illegal sale of a nicotine product to a person under

21 years of age if the following conditions are met:

(a) The dealer is qualified as a responsible dealer under this section.

(b) The dealer provided the training program required under subsection (2) to that employee before the illegal sale occurred.

(c) The dealer had no knowledge of that employee's violation at the time of the violation and did not direct, approve, or participate in the violation.

(d) If the sale was made through a vending machine, the machine was equipped with an operational lock-out device.

(4) The division shall develop and make available a model nicotine products training program designed to ensure adherence to this part by dealers and their employees which, if followed, will qualify dealers as responsible dealers.

(5) Dealers shall exercise diligence in the management and supervision of their premises and in the supervision and training of their employees, agents, or servants. In proceedings to impose penalties under s. 569.35, proof that employees, agents, or servants of the dealer, while in the scope of their employment, committed at least three violations of s. 569.41 during a 180-day period shall be prima facie evidence of a lack of due diligence by the dealer in the management and supervision of his or her premises and in the supervision and training of employees, agents, officers, or servants.

(6) The division may consider qualification as a responsible retail nicotine products dealer under this section as evidence that the dealer properly exercised the diligence required under this section.

Section 27. Section 569.39, Florida Statutes, is created to read:

569.39 Rulemaking authority.—The division shall adopt rules to administer and enforce this part.

Section 28. Section 569.41, Florida Statutes, is created to read:

569.41 Selling, delivering, bartering, furnishing, or giving nicotine products to persons under 21 years of age; criminal penalties; defense.—

(1) 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.

(2) Any person who violates subsection (1) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. However, any person who violates subsection (1) for a second or subsequent time within 1 year after the first violation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person charged with a violation of subsection (1) has a complete defense if, at the time the nicotine product was sold, delivered, bartered, furnished, or given:

(a) The buyer or recipient falsely evidenced that she or he was 21 years of age or older;

(b) The appearance of the buyer or recipient was such that a prudent person would believe the buyer or recipient to be 21 years of age or older; and

(c) Such person carefully checked a driver license or an identification card issued by the state or another state of the United States, a passport, or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 21 years of age or older.

Section 29. Section 569.42, Florida Statutes, is created to read:

569.42 Possession, misrepresenting age or military service to purchase, and purchase of nicotine products by persons under 21 years of age prohibited; penalties; jurisdiction; disposition of fines.—

(1) It is unlawful for any person under 21 years of age to knowingly possess any nicotine product. Any person under 21 years of age who violates this subsection commits a noncriminal violation as provided in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a $25 fine. In addition, the person must attend a school-approved anti-tobacco and anti-

nicotine program, if locally available; or

(b) For a second or subsequent violation within 12 weeks after the first violation, a $25 fine.

Any second or subsequent violation not within the 12-week period after the first violation is punishable as provided for a first violation.

(2) It is unlawful for any person under 21 years of age to misrepresent his or her age or military service for the purpose of inducing a dealer or an agent or employee of the dealer to sell, give, barter, furnish, or deliver any nicotine product, or to purchase, or attempt to purchase, any nicotine product from a person or a vending machine. Any person under 21 years of age who violates this subsection commits a noncriminal violation as defined in s. 775.08(3), punishable by:

(a) For a first violation, 16 hours of community service or, instead of community service, a $25 fine and, in addition, the person must attend a school-approved anti-tobacco and anti-nicotine program, if available; or

(b) For a second or subsequent violation within 12 weeks after the first violation, a $25 fine.

Any second or subsequent violation not within the 12-week period after the first violation is punishable as provided for a first violation.

(3) Any person under 21 years of age cited for committing a noncriminal violation under this section must sign and accept a civil citation indicating a promise to appear before the county court or comply with the requirement for paying the fine and must attend a school-approved anti-tobacco and anti-nicotine program, if locally available. If a fine is assessed for a violation of this section, the fine must be paid within 30 days after the date of the citation or, if a court appearance is mandatory, within 30 days after the date of the hearing.

(4) A person charged with a noncriminal violation under this section must appear before the county court or comply with the requirement for paying the fine. The court, after a hearing, shall make a determination as to whether the noncriminal violation was committed. If the court finds the violation was committed, it shall impose an appropriate penalty as specified in subsection (1) or subsection (2). A person who participates in community service shall be considered an employee of the state for the purpose of chapter 440, for the duration of such service.

(5)(a) If a person under 21 years of age is found by the court to have committed a noncriminal violation under this section and the person has failed to complete community service, pay the fine as required by paragraph (1)(a) or paragraph (2)(a), or attend a school-approved anti-tobacco and anti-nicotine program, if locally available, the court may direct the

Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 30 consecutive days.

(b) If a person under 21 years of age is found by the court to have committed a noncriminal violation under this section and that person has failed to pay the applicable fine as required by paragraph (1)(b) or paragraph (2)(b), the court may direct the Department of Highway Safety and Motor Vehicles to withhold issuance of or suspend the driver license or driving privilege of that person for a period of 45 consecutive days.

(6) Eighty percent of all civil penalties received by a county court under this section shall be remitted by the clerk of the court to the Department of Revenue for transfer to the Department of Education to provide for teacher training and for research and evaluation to reduce and prevent the use of nicotine products by children. The remaining 20 percent of civil penalties received by a county court under this section shall remain with the clerk of the county court to cover administrative costs.

Section 30. Section 569.43, Florida Statutes, is created to read:

569.43 Posting of a sign stating that the sale of nicotine products or nicotine dispensing devices to persons under 21 years of age is unlawful; enforcement; penalty.—

(1) A dealer that sells nicotine products shall post a

clear and conspicuous sign in each place of business at which such products are sold which substantially states the following:

THE SALE OF NICOTINE PRODUCTS OR NICOTINE DISPENSING DEVICES TO PERSONS UNDER THE AGE OF 21 IS AGAINST FLORIDA LAW. PROOF OF AGE IS REQUIRED FOR PURCHASE.

(2) The division shall make available to dealers of nicotine products signs that meet the requirements of subsection (1).

(3) Any dealer that sells nicotine products shall provide at the checkout counter in a location clearly visible to the dealer or the dealer's agent or employee instructional material in a calendar format or similar format to assist in determining whether a person is of legal age to purchase nicotine products. This point of sale material must contain substantially the following language:

IF YOU WERE NOT BORN BEFORE THIS DATE
(insert date and applicable year)
YOU CANNOT BUY TOBACCO PRODUCTS, NICOTINE PRODUCTS, OR NICOTINE DISPENSING DEVICES.

Upon approval by the division, in lieu of a calendar a dealer may use card readers, scanners, or other electronic or automated

systems that can verify whether a person is of legal age to purchase nicotine products. Failure to comply with the provisions contained in this subsection shall result in imposition of administrative penalties as provided in s. 569.35.

(4) The division, through its agents and inspectors, shall enforce this section.

(5) Any person who fails to comply with subsection (1) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 31. Section 569.44, Florida Statutes, is created to read:

569.44 Annual report.—The division shall report annually with written findings to the Legislature and the Governor by December 31, on the progress of implementing the enforcement provisions of this part. This must include, but is not limited to:

(1) The number and results of compliance visits.

(2) The number of violations for failure of a retailer to hold a valid permit.

(3) The number of violations for selling nicotine products to persons under age 21, and the results of administrative hearings on the above and related issues.

(4) The number of persons under age 21 cited for violations of s. 569.42 and sanctions imposed as a result of citation.

Section 32. Section 569.45, Florida Statutes, is created to read:

569.45 Mail order, Internet, and remote sales of nicotine products; age verification.—

(1) For purposes of this section, the term:

(a) "Consumer" means a person in the state who comes into possession of any nicotine product who, at the time of possession, is not intending to sell or distribute the nicotine product, or is not a retailer.

(b) "Delivery sale" means any sale of nicotine products to a consumer in the state for which:

1. The consumer submits the order for the sale by telephonic or other voice transmission, mail, delivery service, or the Internet or other online service; or

2. The nicotine products are delivered by use of mail or a delivery service.

(c) "Delivery service" means any person engaged in the commercial delivery of letters, packages, or other containers.

(d) "Legal minimum purchase age" means the minimum age at which an individual may legally purchase nicotine products in the state.

(e) "Retailer" means any person who is required to obtain a retail nicotine products dealer permit or a retail tobacco products dealer permit, as defined in s. 569.002.

(f) "Shipping container" means a container in which

nicotine products are shipped in connection with a delivery sale.

(g) "Shipping document" means a bill of lading, airbill, United States Postal Service form, or any other document used to verify the undertaking by a delivery service to deliver letters, packages, or other containers.

(2)(a) A sale of nicotine products constituting a delivery sale under paragraph (1)(c) is a delivery sale regardless of whether the person accepting the order for the delivery sale is located inside or outside the state.

(b) A retailer must obtain a retail nicotine products dealer permit or a retail tobacco products dealer permit, as defined in s. 569.002, from the division under the requirements of this chapter before accepting an order for a delivery sale.

(c) A person may not make a delivery sale of nicotine products to any individual who is not 21 years of age or older.

(d) Each person accepting an order for a delivery sale must comply with each of the following:

1. The age verification requirements set forth in subsection (3).

2. The disclosure requirements set forth in subsection (4).

3. The shipping requirements set forth in subsection (5).

(3) A person may not mail, ship, or otherwise deliver nicotine products in connection with an order for a delivery

sale unless, before the first delivery to the consumer, the person accepting the order for the delivery sale:

(a) Obtains from the person submitting the order a certification that includes:

1. Reliable confirmation that the person is 21 years of age or older; and

2. A statement signed by the person in writing and under penalty of perjury which:

a. Certifies the address and date of birth of the person; and

b. Confirms that the person wants to receive delivery sales from a nicotine products company and understands that, under the laws of the state, the following actions are illegal:

(I) Signing another person's name to the certification;

(II) Selling nicotine products to individuals who are not 21 years of age or older; and

(III) Purchasing nicotine products, if the person making the purchase is not 21 years of age or older.

(b) Makes a good faith effort to verify the information contained in the certification provided by the individual under paragraph (a) against a commercially available database that may be reasonably relied upon for accurate age information or obtains a photocopy or other image of a valid government-issued identification card stating the date of birth or age of the individual.

(c) Provides to the individual, via electronic mail or other means, a notice meeting the requirements of subsection (4).

(d) If an order for nicotine products is made pursuant to an advertisement on the Internet, receives payment for the delivery sale from the consumer by a credit or debit card issued in the name of the consumer, or by personal or company check of the consumer.

(e) The person accepting the order for delivery sale shall submit, to each credit card acquiring company with which the person has credit card sales, identification information in an appropriate form and format so that the words "nicotine product" may be printed in the purchaser's credit card statement when a purchase of a nicotine product is made by credit card payment.

(f) Makes a telephone call after 5 p.m. to the purchaser confirming the order before shipping the nicotine products. The telephone call may be a person-to-person call or a recorded message. The person accepting the order for delivery sale is not required to speak directly with a person and may leave a message on an answering machine or through voice mail.

In addition to the requirements of this subsection, a person accepting an order for a delivery sale may request that a consumer provide an electronic mail address.

(4) The notice described in paragraph (3)(c) must include

prominent and clearly legible statements that sales of nicotine products are:

(a) Illegal if made to individuals who are not 21 years of age or older.

(b) Restricted to those individuals who provide verifiable proof of age in accordance with subsection (3).

(5) Each person who mails, ships, or otherwise delivers nicotine products in connection with an order for a delivery sale must:

(a) Include as part of the shipping documents, in a clear and conspicuous manner, the following statement: "Nicotine Products: Florida law prohibits shipping to individuals under 21 years of age."

(b) Use a method of mailing, shipping, or delivery which obligates the delivery service to require:

1. The individual submitting the order for the delivery sale or another person 21 years of age or older who resides at the individual's address to sign his or her name to accept delivery of the shipping container. Proof of the legal minimum purchase age of the individual accepting delivery is required only if the individual appears to be under 30 years of age.

2. Proof that the individual is either the addressee or the individual who is 21 years of age or older designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who

signs to accept delivery of the shipping container.

If the person accepting a purchase order for a delivery sale delivers the nicotine products without using a delivery service, the person must comply with all of the requirements of this section which apply to a delivery service. Any failure to comply with a requirement of this section constitutes a violation thereof.

(6) This section does not apply to delivery sales of nicotine products to a retail nicotine products dealer or a retail tobacco products dealer, as defined in s. 569.002.

(7) An individual 21 years of age or older who knowingly violates any provision of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(8) The Attorney General, the Attorney General's designee, or a state attorney may bring an action in the appropriate court in the state to prevent or restrain violations of this section by any person.

Section 33. Section 877.112, Florida Statutes, is repealed.

Section 34. This act shall take effect October 1, 2021.

REGULATORY REFORM SUBCOMMITTEE

PCS for HB 987
Tobacco and Nicotine Products

AMENDMENT SUMMARY
March 24, 2021

Amendment 1 by Rep. Giallombardo (line 611):
The amendment:

- Clarifies the provision in the bill that provides that the establishment of the minimum age to purchase or possess tobacco products and nicotine products and the regulation of the marketing, sale, and delivery of such products is preempted to the state.
- Removes the provision indicating that the preemption may not be construed to affect a local government's ability to require retail licensure for the sale of tobacco products or nicotine products.

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 Subcommittee

Representative Giallombardo offered the following:

Amendment (with title amendment)

Remove lines 611-631 and insert:

Section 18. Section 569.24, Florida Statutes, is created to read:

569.24 Preemption.—

(1) DEFINITION.—As used in this section, the term "Minimum age" means the lawful age to purchase or knowingly possess tobacco products or nicotine products as set by the state at 21 years of age.

(2) PREEMPTION.—The establishment of the minimum age for purchasing or possessing tobacco products or nicotine products and the regulation of the marketing, sale, or delivery of

tobacco products or nicotine products, is preempted to the state.

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

Remove lines 42-46 and insert:

creating s. 569.24, F.S.; providing a definition; preempting the establishment of the minimum age for purchasing or possessing tobacco products or nicotine products and the regulation of the marketing, sale, or delivery of such products to the state; creating s. 569.31, F.S.;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1431 Specialty Contracting Services
SPONSOR(S): Regulatory Reform Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Regulatory Reform Subcommittee		Brackett DB	Anstead

SUMMARY ANALYSIS

Construction Contractors, including pool/spa contractors, are certified by or registered with the Construction Industry Licensing Board (CILB) housed within the Department of Business and Professional Regulation. Certified contractors can practice statewide and are licensed and regulated by the CILB. Registered contractors are licensed and regulated by a local jurisdiction and may practice within that locality. Registered contractors are required to register their license with the CILB.

Specialty contractors are contractors whose scope of work is limited to a particular phase of construction that is a subset of a certified contractor's scope of work, such as drywall or demolition. Specialty contractor licenses are created by the CILB through rulemaking. Specialty contractors certified by the CILB are permitted to practice in any jurisdiction in the state. The CILB has created eight types of pool/spa specialty contractors.

In order to perform contracting in the state, a person must be certified or registered (licensed) as a contractor, be an employee of a licensed contractor, or fall under an exemption provided in current law.

The bill creates a new exemption to licensure requirements by allowing unlicensed persons to perform the work of specialty contractors for the construction, remodeling, repair, or improvement of commercial or residential swimming pools, interactive water features, hot tubs, and spas without obtaining a specialty contractor license or local license.

The bill only allows the unlicensed person to perform the work if:

- the unlicensed person is under the supervision of a licensed commercial or residential pool/spa contractor or swimming pool/spa servicing contractor;
- the work is within the scope of the supervising contractor's license;
- the supervising contractor is responsible for the work; and
- the work does not require licensure as a roofing, sheet metal, air-conditioning, mechanical, plumbing, solar, underground utility and excavation contractor, or electrical contractor.

The bill does not require a direct contract between the commercial or residential pool/spa contractor or swimming pool/spa servicing contractor and the unlicensed person performing the specialty contracting services, or require the unlicensed person to be an employee of the supervising pool/spa contractor.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Contractors

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

Construction contractors are either certified or registered by the CILB. 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.[1]

"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.[2]

"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. Registered contractors must register their license with the CILB after obtaining a local license.[3]

In order to perform construction contracting in the state, a person must be certified or registered as a contractor, be an employee[4] of a certified or registered contractor, or fall under an exemption provided in current law.[5]

Swimming Pool/Spa Contractors

"Commercial pool/spa contractors" are individuals who are certified or registered to construct, repair, and service any public or private swimming pool, hot tub, or spa including:[6]

- Installing, repairing, or replacing existing equipment;
- Cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes;
- Installing new pool/spa equipment, interior finishes, package pool heaters, and perimeter piping and filter piping;
- Constructing equipment rooms or housing for pool/spa equipment; and
- The scope of work of a swimming pool/spa servicing contractor.

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[1] S. 489.107, F.S.
[2] S. 489.105, F.S.
[3] Ss. 489.105, and 489.117, F.S.
[4] "Employee" means a person who receives compensation from and is under the supervision and control of an employer who regularly deducts the F.I.C.A. and withholding tax and provides workers' compensation, all as prescribed by law. S. 489.103(2)(b), F.S.
[5] Ss. 489.103(2), and 489.113, F.S.
[6] S. 489.105(3)(j), F.S.

"Residential pool/spa contractors" are individuals who are certified or registered to construct repair, and service any residential swimming pool, hot tub, or spa. The scope of work is identical to the scope of work for commercial pool/spa contractors; however, residential pool/spa contractors may only work on residential swimming pools, hot tubs, and spas.[7]

"Swimming pool/spa servicing contractors" are individuals who are certified or registered to repair and service any public or private swimming pool, hot tub, or spa including:[8]

- Repairing or replacing existing equipment;
- Cleaning or equipment sanitizing that requires at least a partial disassembling, excluding filter changes;
- Installing new pool/spa equipment and interior refinishing;
- Reinstalling or adding pool heaters;
- Repairing or replacing perimeter piping and filter piping;
- Repairing equipment rooms or housing for pool/spa equipment; and
- Substantially or completing draining a swimming pool, or hot tub or spa, for the purpose of repair or renovation.

The scope of work for all three types of swimming pool/spa contractors does not include direct connections to a sanitary sewer system or to potable water lines.[9]

Water treatment or cleaning a pool or spa does not require a license unless the structural integrity of the pool or spa is affected, or equipment attached to the pool or spa must be substantially or completely disassembled or replaced in order to treat the water or clean the pool. Installing an aboveground pool also does not require a license.[10]

A contractor, including pool/spa contractors, must subcontract all electrical, mechanical, plumbing, roofing, sheet metal, and air-conditioning work, to a contractor certified or registered in the respective category, unless the pool/spa contractor also holds a state certificate or registration in the respective category.[11]

In order to obtain certification as one of the swimming pool/spa contractors, a person must:[12]

- Apply to DBPR in writing;
- Be 18 years of age;
- Be of good moral character;
- Pass the examination for the certification sought; and
- Have one of the following:
    - A bachelor degree from a four year college in the appropriate field of engineering, architecture, or building construction, and one year of proven experience;
    - Four years of experience as a foreman or a skilled worker with at least one year as a foreman;
    - A combination of college and experience as a foreman or skilled worker that equals four years with at least one of the years as a foreman; or
    - One year of experience and 60 hours of instruction courses approved by the CILB; however, this only applies to swimming pool/spa servicing contractors.

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[7] S. 489.105(3)(k), F.S.
[8] S. 489.105(3)(l), F.S.
[9] S. 489.105, F.S.
[10] Ss. 489.103(6), and 489.105, F.S.; DBPR, *Trust but Verify*, http://www.myfloridalicense.com/dbpr/reg/documents/trustbutverify_000.pdf?x40199 (last visited Mar. 19, 2021).
[11] S. 489.113(3), F.S.
[12] Ss. 489.111, & 489.113, F.S.

Swimming Pool/Spa Specialty Contractors

"Certified specialty contractors" are contractors whose scope of work is limited to a particular phase of construction that is a subset of a certified contractor's scope of work, such as a drywall specialty license or a demolition specialty license. Certified specialty contractor licenses are created by the CILB through rulemaking. Certified specialty contractors are permitted to practice in any jurisdiction in the state.[13]

The CILB has created eight types of pool/spa specialty contractor certifications. Pool/spa specialty contractors, except residential swimming pool/spa servicing specialty contractors, must work under contract with and under the supervision of a licensed swimming pool/spa contractor. However, they are not required to be employees of a licensed pool/spa contractor.[14]

The CILB has created the following eight types of pool/spa specialty contractors:[15]

- Swimming Pool Layout Specialty Contractor-
  - The scope of work is limited to the layout, shaping, steel installation, and rough piping of pools, spas, and hot tub shells.
- Swimming Pool Structural Specialty Contractor-
  - The scope of work is limited to the shaping and shooting of gunite, shotcrete, concrete, or similar product mix used in the construction of swimming pools and spas, and the installation of fiberglass shells and vinyl liners.
- Swimming Pool Excavation Specialty Contractors –
  - The scope of work is limited to the excavation and earthmoving for the installation of pools, spas, and hot tub shells;
- Swimming Pool Trim Specialty Contractor –
  - The scope of work is limited to the installation of tile and coping for pools, spas, hot tub shells, and decorative or interactive water displays;
- Swimming Pool Decking Specialty Contractor-
  - The scope of work is limited to the construction and installation of concrete flatwork, pavers and bricks, retaining walls, and footings associated with the construction of pools, spas, and hot tub shells.
- Swimming Pool Piping Specialty Contractor-
  - The scope of work is limited to the installation of piping or the installation of circulating, filtering, disinfecting, controlling, or monitoring equipment and devices used in the construction of pools, spas, hot tubs, and decorative or interactive water displays or areas.
- Swimming Pool Finishes Specialty Contractor-
  - The scope of work is limited to the coating or plastering of the interior surfaces of pools, spas, or hot tub shells.
- Residential swimming pool/spa servicing specialty contractor-
  - The scope of work is identical to the scope of work for swimming pool/spa servicing contractors; however, they may only work on residential swimming pools, hot tubs, and spas.

In order to obtain one of the certified specialty pool/spa contractor a person must:[16]

- Submit a written application to the CILB;
- Be at least 18 years of age;

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[13] S. 489.105(3)(q), F.S.
[14] Rule 61G4-15.032, F.A.C.; Rule 61G4-15.040, F.A.C.
[15] *Id.*
[16] Rule 61G4-15.032, F.A.C.; Email from Colton Madill, Deputy Legislative Affairs Director, DBPR, RE: Pool Contractor Information, (Jan. 31, 2020).

- Be of good moral character;
- Pass a written examination for the specialty pool/spa contractor category sought; and
- Demonstrate four years of experience in the specialty pool/spa contractor category sought, or one year of experience and 60 hours of instruction courses approved by the CILB; however, the one year of experience only applies to residential swimming pool/spa servicing contractors.

Exemptions from Licensure

An unlicensed person may perform work that falls under the scope of contracting if they fall under an exemption provided in current law. Currently, there are 23 exemptions provided in current law, including:[17]

- a person performing contracting if it is casual, minor, or inconsequential in nature, and the aggregate contract price for all labor and materials is less than $2,500, subject to certain requirements. This is referred to as the handyman exemption;

- an owner building or improving one or two-family residences, farm outbuildings, or improving commercial buildings at a cost that does not exceed $75,000, subject to certain requirements;

- an employee of an apartment community or apartment management company who makes minor repairs to existing electric water heaters, electric heating, ventilating, and air-conditioning systems subject to certain requirements;

- a person who sells or installs any finished products, materials, or articles of merchandise that are not fabricated into and do not become a permanent part of a structure such as awnings; and

- An employee of the United States, the state, or any municipality, county, irrigation district, reclamation district, or political subdivision, except school boards, state university boards of trustees, and community college boards of trustee, subject to certain requirements.

Another exemption allows an unlicensed person to perform contracting if the person is under the supervision of licensed general, building, or residential contractor, and the work does not require licensure as a roofing, sheet metal, air-conditioning, mechanical, pool/spa, plumbing, solar, or underground utility and excavation contractor.

The work must be within the scope of the supervising contractor's license, and the supervising contractor must also be responsible for the work. The unlicensed person must have a direct contract with the contractor. However, this is an exemption from state licensure requirements and it does not affect the ability of local governments to impose licensing requirements on unlicensed persons.[18]

Effect of the Bill

The bill creates an additional exemption to contractor licensure. The bill provides that unlicensed persons may perform the work of specialty contractors for the construction, remodeling, repair, or improvement of commercial or residential swimming pools, interactive water features,[19] hot tubs, and spas without obtaining a specialty contractor license or local license.

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[17] S. 489.103, F.S.

[18] S. 489.113(2), F.S.; *Florida Home Builders Association v. St. Johns County*, 914 So. 2d 1035 (Fla. 5th DCA 2005).

[19] The Florida Building Code defines "interactive water features" as structure designed to allow for recreational activities with recirculated, filtered, and treated water; but having minimal standing water. Water from the interactive fountain type features is collected by gravity below grade in a collector tank or sump. The water is filtered, disinfected and then pumped to the feature spray discharge heads. The collector tank and water filtration features required make this structure a type of public swimming pool. Section 454 of the Seventh edition of the Florida Building Code (Building).

The bill only allows the unlicensed person to perform the work if:

- the unlicensed person is under the supervision of a licensed commercial or residential pool/spa contractor or swimming pool/spa servicing contractor;
- the work is within the scope of the supervising contractor's license;
- the supervising contractor is responsible for the work; and
- the work does not require licensure as a roofing, sheet metal, air-conditioning, mechanical, plumbing, solar, underground utility and excavation contractor, or electrical contractor.

The bill does not require a direct contract between the commercial or residential pool/spa contractor or swimming pool/spa servicing contractor and the unlicensed person performing the specialty contracting services, or require the unlicensed person to be an employee of the supervising pool/spa contractor.

B. SECTION DIRECTORY:

Section 1. Amends s. 489.117, F.S., creating an exemption to licensure requirements.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact on the private sector by allowing persons, who are under the supervision of licensed pool/spa contractors, to perform work on pools, spas, hot tubs, and interactive water features without having to obtain a license. This may also result in certain projects being completed in less time and at a lower cost to consumers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to 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:

No.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to swimming pool specialty contracting services; amending s. 489.117, F.S.; authorizing certain persons under the supervision of specified licensed contractors to perform certain specialty contracting services for commercial or residential swimming pools, hot tubs or spas, or interactive water features; providing that such supervision does not require a direct contract between those persons; providing applicability; providing an effective date.

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

Section 1. Paragraph (e) is added to subsection (4) of section 489.117, Florida Statutes, to read:

489.117 Registration; specialty contractors.—

(4)

(e) A person who is not certified or registered may perform the work of a specialty contractor whose scope of practice is limited to the type of work specified under s. 489.105(3)(j)-(l) for the construction, remodeling, repair, or improvement of commercial and residential swimming pools, including interactive water features as defined in the Florida Building Code, hot tubs, and spas without obtaining a local license or certification as a specialty contractor, provided the

person is supervised by a contractor certified or registered under s. 489.105(3)(j)-(l), the work is within the scope of the supervising contractor's license, the supervising contractor is responsible for the work, and the work does not require certification or registration under s. 489.105(3)(d)-(i), (m)-(o), or s. 489.505. Such supervision does not require a direct contract between the contractor certified or registered under s. 489.105(3)(j)-(l) and the person performing the work, or for the person performing the work to be an employee of the contractor certified or registered under s. 489.105(3)(j)-(l). This subsection does not limit the exemptions provided in s. 489.103.

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