Tab 1	**SB 574** by **Burgess**; (Compare to CS/H 00709) In-store Servicing of Alcoholic Beverages				
159520	D	S	RI, Burgess	Delete everything after	02/02 08:33 AM

Tab 2	**CS/SB 812** by **CA, Ingoglia**; (Identical to CS/H 00665) Expedited Approval of Residential Building Permits				
817446	A	S	RI, Ingoglia	Delete L.58 - 67:	02/02 01:20 PM
568802	A	S	RI, Ingoglia	Delete L.73 - 97:	02/02 01:20 PM
430726	AA	S	RI, Ingoglia	Delete L.5:	02/05 10:09 AM
872890	A	S	RI, Ingoglia	Delete L.145:	02/02 01:19 PM

Tab 3	**SB 704** by **Perry**; (Identical to H 00785) Limited Barbering

Tab 4	**SB 1006** by **Perry**; (Identical to H 01007) Nicotine Products				
643544	D	S	RI, Perry	Delete everything after	02/02 11:31 AM

Tab 5	**SB 1134** by **Trumbull (CO-INTRODUCERS) Bradley**; (Compare to CS/H 00583) Individual Wine Containers				
649428	D	S	RI, Trumbull	Delete everything after	01/31 02:48 PM

Tab 6	**SB 1706** by **Yarborough**; (Identical to H 01249) Condominiums Within a Portion of a Building or Within a Multiple Parcel Building				
697456	D	S	RI, Yarborough	Delete everything after	02/02 12:09 PM

Tab 7	**SB 1544** by **Hooper**; (Similar to H 01335) Department of Business and Professional Regulation				
159048	A	S	RI, Hooper	Delete L.731 - 1037.	02/02 09:11 AM

Tab 8	**SB 426** by **Garcia (CO-INTRODUCERS) Jones**; Community Associations				
549732	A	S	RI, Garcia	Delete L.72 - 335:	02/02 12:12 PM
704850	SA	S	RI, Garcia	Delete L.72 - 350:	02/05 11:12 AM

Tab 9	**SB 1040** by **Bradley**; (Identical to H 00849) Veterinary Practices					
141662	A	S	L	RI, Bradley	Delete L.27 - 62:	02/05 10:09 AM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

REGULATED INDUSTRIES
Senator Gruters, Chair
Senator Hooper, Vice Chair

MEETING DATE: Monday, February 5, 2024
TIME: 2:30—6:00 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Gruters, Chair; Senator Hooper, Vice Chair; Senators Bradley, Brodeur, Hutson, Jones, and Osgood

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 574** Burgess (Compare CS/H 709)	In-store Servicing of Alcoholic Beverages; Revising applicability of provisions regulating in-store servicing of wine to include products with a specified percentage of alcohol; authorizing the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to adopt rules, etc. RI 02/05/2024 CM RC	
2	**CS/SB 812** Community Affairs / Ingoglia (Identical CS/H 665, Compare S 684)	Expedited Approval of Residential Building Permits; Requiring certain governing bodies, by a date certain, to create a program to expedite the process for issuing residential building permits before a final plat is recorded; requiring a governing body to issue a specified number or percentage of building permits requested in an application when certain conditions are met; prohibiting a governing body from making substantive changes to a preliminary plat without written consent, etc. CA 01/22/2024 Fav/CS RI 02/05/2024 RC	
3	**SB 704** Perry (Identical H 785)	Limited Barbering; Defining the term “limited barbering”; authorizing persons without a license to practice barbering to perform limited barbering in licensed barbershops if certain requirements are met; authorizing the board to discipline persons authorized to perform limited barbering, etc. RI 02/05/2024 CM FP	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 1006** Perry (Identical H 1007)	Nicotine Products; Requiring nicotine products manufacturers to execute and deliver a form, under penalty of perjury, to the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation for each product sold within this state which meets certain criteria; providing penalties for certain violations by manufacturers; prohibiting the sale, shipment, or distributing of certain nicotine products into this state; providing for the seizure and destruction of unlawful nicotine products in accordance with the Florida Contraband Forfeiture Act, etc. RI 02/05/2024 AEG FP	
5	**SB 1134** Trumbull (Compare CS/H 583)	Individual Wine Containers; Revising the limitation on the size of individual wine containers to glass containers only, etc. RI 02/05/2024 CM RC	
6	**SB 1706** Yarborough (Identical H 1249)	Condominiums Within a Portion of a Building or Within a Multiple Parcel Building; Revising the definition of “condominium property”; providing that a condominium may be created within a portion of a building or within a multiple parcel building; providing for the common elements of such condominium; requiring certain persons to provide specified disclosures to purchasers under certain circumstances, etc. RI 02/05/2024 RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**SB 1544** Hooper (Similar H 1335)	Department of Business and Professional Regulation; Requiring persons or entities licensed or permitted by the department's Division of Alcoholic Beverages and Tobacco, or applying for such license or permit, to create and maintain an account with the division's online system and provide an e-mail address to the division; specifying application requirements; prohibiting the division from processing applications not submitted through the online system; creating the employee leasing companies licensing program under the department; replacing the Florida Mobile Home Relocation Corporation with the Division of Florida Condominiums, Timeshares, and Mobile Homes as the manager and administrator of the Florida Mobile Home Relocation Trust Fund, etc. RI 02/05/2024 AEG FP	
8	**SB 426** Garcia	Community Associations; Creating the Condominium Fraud Investigation Pilot Program within the Department of Legal Affairs in the Office of the Attorney General; authorizing the department to contract with a private entity to achieve the program's purpose; requiring that the pilot program be funded from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund; creating the Office of the Homeowners' Association Ombudsman within the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation, etc. RI 02/05/2024 AEG FP	
9	**SB 1040** Bradley (Similar S 1162, Identical H 849, Compare H 261, CS/H 303, S 334, S 1100)	Veterinary Practices; Designating the "Providing Equity in Telehealth Services Act"; authorizing licensed veterinarians to practice veterinary telehealth in accordance with specified criteria; specifying the powers of the Board of Veterinary Medicine related to the practice of telehealth; authorizing certain persons to administer rabies vaccinations to certain animals under indirect supervision of a veterinarian; providing that a supervising veterinarian assumes responsibility for specified people who provide vaccinations, etc. RI 02/05/2024 AG RC	
	Other Related Meeting Documents		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL:	SB 574
INTRODUCER:	Senator Burgess
SUBJECT:	In-store Servicing of Alcoholic Beverages
DATE:	February 2, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Pre-meeting**
2.			CM	
3.			RC	

I. Summary:

SB 574 allows alcoholic beverage distributors to perform in-store servicing of distilled spirits containing less than six percent alcohol by volume. Under current law, vendors licensed to sell beer and vendors licensed to sell wine may also sell, for either on or off premises consumption, products that are derived, distilled, mixed, or fermented and which contain less than six percent alcohol by volume.

In-store servicing placing the wine on the vendor's shelves and maintaining the appearance and display of the wine on the vendor's shelves in the vendor's licensed premises; placing the wine that is not shelved or displayed in a storage area designated by the vendor, which is located in the vendor's licensed premises; rotation of vinous beverages; and price stamping of vinous beverages in vendor's licensed premises.

Distributers are permitted to perform in-store servicing of wine and beer or malt beverage products under current law.

The bill authorizes the Division of Alcoholic Beverages and Tobacco within the Department of Business and Professional Regulation to adopt rule to implement the provision of the bill.

The bill takes effect July 1, 2024.

II. Present Situation:

Division of Alcoholic Beverages and Tobacco

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation administers and enforces[1] the Beverage Law,[2] which regulates the manufacture, distribution, and sale of wine, beer, and liquor.[3] The division is also responsible for the administration and enforcement of tobacco products under ch. 569, F.S.

"Alcoholic beverages" are defined in s. 561.01, F.S., as "distilled spirits and all beverages containing one-half of one percent or more alcohol by volume."

"Malt beverages" are brewed alcoholic beverages containing malt.[4]

The term "beer" means a brewed beverage that meets the federal definition of beer in 27 C.F.R. s. 25.11 and contains less than 6 percent alcohol by volume. The terms "beer" and "malt beverage" have the same meaning under the Beverage Law. The terms "beer" and "malt beverage" do not include alcoholic beverages that require a certificate of label approval by the Federal Government as wine or as distilled spirits.

The terms "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" mean that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.[5]

The term "wine" means:[6]

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

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

- "Manufacturers" are those "licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute."[7]

[1] Section 561.02, F.S.
[2] Section 561.01(6), F.S., provides that the "Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.
[3] *See* s. 561.14, F.S.
[4] Section 563.01, F.S.
[5] Section 565.01, F.S.
[6] Section 564.01(1), F.S.
[7] Section 561.14(1), F.S.

- "Distributors" are those "licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages."[8]
- "Importers" are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state, provided that ss. 564.045 and 565.095, F.S., relating to primary American source of supply licensure, are in no way violated by such imports.[9]
- "Vendors" are those "licensed to sell alcoholic beverages at retail only" and who may not "purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law."[10]

Three-Tier System

In the United States, the regulation of alcohol since the repeal of Prohibition has traditionally been based upon a "three-tier system." The system requires separation of the manufacture, distribution, and retail sale of alcoholic beverages by vendors. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.[11] A manufacturer, distributor, or exporter may not be licensed as a vendor to sell directly to consumers.[12]

Generally, in Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.[13] Licensed manufacturers, distributors, and registered exporters are prohibited from also being licensed as vendors.[14] Manufacturers are also generally prohibited from having an interest in a vendor and from distributing directly to a vendor.[15]

Exceptions to the three-tier regulatory system permit in-state wineries,[16] breweries,[17] and craft distilleries to sell directly to consumers.[18] Restaurants licensed as vendors (brew pubs) may manufacture a limited quantity of malt beverages and sell directly to consumers for consumption on the licensed premises of the restaurant.[19]

A winery, even if licensed as a distributor,[20] may be licensed as a vendor for a licensed premises situated on property contiguous to the manufacturing premises of the winery. A winery may not be issued more than three vendor licenses.[21]

[8] Section 561.14(2), F.S.
[9] Section 561.01(5), F.S.
[10] Section 561.14(3), F.S.
[11] Section 561.14, F.S.
[12] Section 561.22(1), F.S.
[13] Section 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.
[14] Section 561.22, F.S.
[15] Sections 563.022(14) and 561.14(1), F.S.
[16] *See* s. 561.221(1), F.S.
[17] *See* s. 561.221(2), F.S.
[18] *See* ss. 565.02(12) and 565.03, F.S.
[19] *See* s. 561.221(3), F.S.
[20] Section 561.14(1), F.S., permits manufacturers to distribute at wholesale to licensed distributors and to no one else within the state, unless authorized by statute.
[21] See s. 561. 221(1), F.S.

Tied House Evil Prohibitions

States have enacted statutes designed to prevent or limit the control of retail alcoholic beverage vendors by manufacturers, wholesalers, and importers, or to prohibit "tied-house arrangements." Such legislation is referred to as "tied house" or "tied house evil" statutes.[22]

Section 561.42, F.S., Florida's "tied house evil" statute, regulates the permitted and prohibited relationships and interactions of manufacturers and distributors with vendors in order to prevent a manufacturer or distributor from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and to prevent a manufacturer or distributor from giving a vendor gifts, loans, property, or rebates.[23] The prohibitions also apply to an importer, primary American source of supply,[24] brand owner or registrant, broker, and sales agent (or sales person thereof).

The tied house evil statute also prohibits any distributor or vendor from receiving any financial incentives from any manufacturer. It further prohibits manufacturers or distributors from assisting retail vendors by gifts or loans of money or property or by the giving of rebates. These prohibitions do not, however, apply to any bottles, barrels, or other containers necessary for the legitimate transportation of such beverages, to advertising materials, or to the extension of credit for liquors sold, if made strictly in compliance with the provisions of s. 561.42, F.S.[25]

Section 561.42, F.S., also prohibits licensed manufacturers and distributors from:

- Making further sales to vendors that the division has certified as not having fully paid for all liquors previously purchased;[26]
- Directly or indirectly giving, lending, renting, selling, or in any other manner furnishing to a vendor any outside sign, printed, painted, electric, or otherwise;[27]
- Providing neon or electric signs, window painting and decalcomanias, posters, placards, and other advertising material herein authorized to be used or displayed by the vendor in the interior of the licensed premises;[28] and
- Providing expendable retail advertising specialties, unless sold to the vendor at not less than the actual cost to the industry member who initially purchased them.[29]

In-Store Servicing - Wine and Malt Beverages

Section 561.424(2), F.S., provides that the "tied house" prohibitions in s. 561.42, F.S., do prohibit a distributor of wine from providing in-store servicing of wine sold by such distributor to a vendor.

[22] 45 AM. JUR. 2d *Intoxicating Liquors*, s. 94 (2017).
[23] Section 561.42(1), F.S.
[24] *See* s. 564.045, F.S.
[25] Section 564.42(1). Section 561.42(2), F.S., permits distributors to extend credit for the sale of liquors to any vendor up to, but not including, the 10th day after the calendar week within which such sale was made.
[26] Section 561.42(4), F.S.
[27] Section 561.42(10), F.S.
[28] Section 561.42(12), F.S.
[29] Section 561.42(14)(a), F.S.

The term "in-store servicing" is defined at as:[30]

> …placing the wine on the vendor's shelves and maintaining the appearance and display of said wine on the vendor's shelves in the vendor's licensed premises; placing the wine not so shelved or displayed in a storage area designated by the vendor, which is located in the vendor's licensed premises; rotation of vinous beverages; and price stamping of vinous beverages in vendor's licensed premises.

Section 561.424, F.S., does not apply to distilled spirits.

Section 561.423, F.S., also allows a distributor of beer or malt beverages to provide in-store servicing of beer or malt beverages. Under s. 561.423, F.S., the term "In-store servicing" means:

> …quality control procedures which include, but are not limited to: rotation of malt beverages on the vendor's shelves, rotation and placing of malt beverages in vendor's coolers, proper stacking and maintenance of appearance and display of malt beverages on vendor's shelves, price-stamping of malt beverages in vendor's licensed premises, and moving or resetting any product or display in order to display a distributor's own product when authorized by the vendor.

III. Effect of Proposed Changes:

The bill amends s. 561.424(2), F.S., to allow distributors to perform in-store servicing of distilled spirits containing less than six percent alcohol by volume as described in s. 564.06(5)(b), F.S.[31]

The bill authorizes the division to adopt rules to implement the provision of the bill.

The bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[30] Section 561.424(2), F.S.

[31] Section 564.06(5)(b), F.S., provides that products that are derived, distilled, mixed, or fermented and which contain less than six percent alcohol by volume may be purchased and sold by vendors licensed to sell malt beverages, as provided in s. 563.02, F.S., and vendors licensed to sell wine, as provided in s. 564.02, F.S., for either on or off premises consumption.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 561.424 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Regulated Industries (Burgess) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (2) of section 561.424, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

561.424 Vinous beverages; in-store servicing authorized.—

(2) Nothing in s. 561.42 or any other provision of the alcoholic beverage law prohibits ~~shall prohibit~~ a distributor of

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wine from providing in-store servicing of wine sold by the ~~such~~ distributor to a vendor.

(3) As used in this section, the term "in-store servicing" ~~as used herein~~ means:

(a) Placing ~~the~~ wine on the vendor's shelves and maintaining the appearance and display of the ~~said~~ wine on the vendor's shelves in the vendor's licensed premises.~~;~~

(b) Placing the wine that is not ~~so~~ shelved or displayed in a storage area designated by the vendor, which is located in the vendor's licensed premises.~~;~~

(c) Rotating ~~rotation of~~ vinous beverages.~~; and~~

(d) Price stamping ~~of~~ vinous beverages in the vendor's licensed premises. ~~This section shall not apply to distilled spirits.~~

Section 2. Section 561.425, Florida Statutes, is created to read:

561.425 Distilled spirits; in-store servicing authorized.—

(1) Nothing in s. 561.42 or any other provision of the alcoholic beverage law prohibits a distributor of distilled spirits from providing in-store servicing of distilled spirits sold by the distributor to a vendor.

(2) As used in this section, the term "in-store servicing" means:

(a) Placing distilled spirits, including distilled spirits located in a storage area designated by the vendor, on the vendor's shelves and maintaining the appearance and display of the distilled spirits on the vendor's shelves in the vendor's licensed premises.

(b) Placing the distilled spirits in displays.

159520

(c) Placing the distilled spirits that are not shelved or displayed in a storage area designated by the vendor, which is located in the vendor's licensed premises.

(d) Rotating distilled spirits.

(e) Price stamping distilled spirits in the vendor's licensed premises.

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

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to in-store servicing of alcoholic beverages; amending s. 561.424, F.S.; conforming provisions to changes made by the act; creating s. 561.425, F.S.; authorizing the in-store servicing of distilled spirits sold by a distributor to a vendor; defining the term "in-store servicing"; providing an effective date

By Senator Burgess

23-01250-24 2024574__

A bill to be entitled

An act relating to in-store servicing of alcoholic beverages; amending s. 561.424, F.S.; revising applicability of provisions regulating in-store servicing of wine to include products with a specified percentage of alcohol; authorizing the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to adopt rules; making technical changes; providing an effective date.

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

Section 1. Subsections (2) of section 561.424, Florida Statutes, is amended, and subsections (3) and (4) are added to that section, to read:

561.424 Vinous and other beverages; in-store servicing authorized.—

(2) Nothing in s. 561.42 or any other provision of the alcoholic beverage law prohibits ~~shall prohibit~~ a distributor of wine from providing in-store servicing of wine sold by the ~~such~~ distributor to a vendor. As used in this section, the term "in-store servicing" ~~as used herein~~ means~~:~~ placing ~~the~~ wine on the vendor's shelves and maintaining the appearance and display of the ~~said~~ wine on the vendor's shelves in the vendor's licensed premises; placing the wine that is not ~~so~~ shelved or displayed in a storage area designated by the vendor, which is located in the vendor's licensed premises; rotation of vinous beverages; and price stamping of vinous beverages in the vendor's licensed premises. ~~This section shall not apply to distilled spirits.~~

23-01250-24 2024574__

(3) This section does not apply to distilled spirits, but specifically applies to products containing less than 6 percent alcohol by volume as described in s. 564.06(5)(b).

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

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

The Florida Senate

Committee Agenda Request

To: Senator Joe Gruters, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: December 5, 2023

I respectfully request that **Senate Bill # 574**, relating to In-store Servicing of Alcoholic Beverages, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Danny Burgess
Florida Senate, District 23

File signed original with committee office

S-020 (03/2004)

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Education Pre-K -12, *Vice Chair*
Appropriations
Appropriations Committee on Criminal and Civil Justice
Appropriations Committee on Health and Human Services
Banking and Insurance
Health Policy
Rules

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR DANNY BURGESS
23rd District

February 2, 2024

The Honorable Joe Gruters
Chair
Committee on Regulated Industries

Dear Senator Gruters,

I respectfully request that Senator Jason Brodeur, present my Senate Bill 574 at the February 5th meeting of the Committee on Regulated Industries.

Thank you for your consideration.

Sincerely,

cc: Booter Imhof, Staff Director
Susan Datres, Administrative Assistant

REPLY TO:
❒ 38507 Fifth Avenue, Zephyrhills, FL 33542 (813) 779-7059
❒ 412 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: *www.flsenate.gov*

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL:	CS/SB 812
INTRODUCER:	Community Affairs Committee and Senator Ingoglia
SUBJECT:	Expedited Approval of Residential Building Permits
DATE:	February 2, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hunter	Ryon	CA	**Fav/CS**
2.	Kraemer	Imhof	RI	**Pre-meeting**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 812 requires counties that have 75,000 residents or more and municipalities that have 30,000 residents or more to create a process to expedite the issuance of building permits based on a preliminary plat and to issue the number or percentage of building permits requested by an applicant, under certain circumstances, by October 1, 2024. A local government must update its expedited building permit program with certain increased percentages by December 31, 2027.

The bill allows an applicant to contract to sell, but not transfer ownership of, a residential structure or building located in the preliminary plat before the final plat is approved by the local government. The bill also requires all local governments to create a master building permit process.

The bill allows an applicant to use a private provider to review a preliminary plat and to obtain a building permit for each residential building or structure.

The bill provides that vested rights may be formed in a preliminary plat, under certain circumstances.

To date, no analysis by the Department of Business and Professional Regulation or the Department of Commerce of the impact of the bill on their respective operations, revenue, and expenditures has been provided. *See* Section V, Fiscal Impact Statement.

The bill takes effect upon becoming law.

II. Present 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's commission recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the 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 eighth edition, which is referred to as the 2023 Florida Building Code.[3]

Chapter 553, part IV, F.S., is known as the "Florida Building Codes Act" (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.[4]

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 consisting of design professionals, contractors, and government experts in various disciplines covered by the Building Code. The Commission reviews several International Codes published by the International Code Council,[5] 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.[6]

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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 Jan. 18, 2024).
[2] *Id.*
[3] *See* the Department of Business and Professional Regulation's Building Code Information System website at https://floridabuilding.org/c/default.aspx (last visited Jan. 26, 2024).
[4] Section 553.72(1), F.S.
[5] The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." International Code Council, *About the ICC*, https://www.iccsafe.org/about/who-we-are/ (last visited Jan. 18, 2024).
[6] Section 553.73(7)(a), F.S.

Platting

In Florida law, "plat" means a map or delineated representation of the subdivision of lands, being a complete exact representation of the subdivision and other information in compliance with the requirement of all applicable state requirements and of any local ordinances.[7] Generally, platting is required whenever a developer wishes to subdivide a large piece of property into smaller parcels and tracts. These smaller areas become the residential lots, streets and parks of a new residential sub-division.[8]

State law establishes consistent minimum requirements for the establishment of plats, and local governing bodies have the power to regulate and control the platting of lands.[9] Prior to approval by the appropriate governing body, the plat must be reviewed for conformity with state and local law and sealed by a professional surveyor and mapper who is either employed by or under contract to the local governing body.[10]

Before a plat is offered for recording with the clerk of the circuit court, it must be approved by the appropriate governing body, and evidence of such approval must be placed on the plat. If not approved, the governing body must return the plat to the professional surveyor and mapper or the legal entity offering the plat for recordation.[11]

Jurisdiction over plat approval is as follows:[12]

- When the plat to be submitted for approval is located wholly within the boundaries of a municipality, the governing body of the municipality has exclusive jurisdiction to approve the plat.
- When a plat lies wholly within the unincorporated areas of a county, the governing body of the county has exclusive jurisdiction to approve the plat.
- When a plat lies within the boundaries of more than one governing body, two plats must be prepared and each governing body has exclusive jurisdiction to approve the plat within its boundaries, unless the governing bodies having said jurisdiction agree that one plat is mutually acceptable.

Every plat of a subdivision offered for recording must have certain information, including providing:[13]

- The name of the plat in bold legible letters, and the name of the subdivision, professional surveyor and mapper or legal entity, and street and mailing address on each sheet.
- The section, township, and range immediately under the name of the plat on each sheet included, along with the name of the city, town, village, county, and state in which the land being platted is situated.

[7] Section 177.031(14), F.S.
[8] Harry W. Carls, Florida Condo & HOA Law Blog, May 17, 2018, *Why is a Plat so Important?*, https://www.floridacondohoalawblog.com/2018/05/17/why-is-a-plat-so-important/ (last visited Jan. 18, 2024).
[9] Section 177.011, F.S.
[10] Section 177.081(1), F.S.
[11] Section 177.071(1) F.S.
[12] Section 177.071(1), F.S.
[13] Section 177.091, F.S.

- The dedications and approvals by the surveyor and mapper and local governing body, and the circuit court clerk's certificate and the professional surveyor and mapper's seal and statement.
- All section lines and quarter section lines occurring within the subdivision. If the description is by metes and bounds, all information called for, such as the point of commencement, course bearings and distances, and the point of beginning. If the platted lands are in a land grant or are not included in the subdivision of government surveys, then the boundaries are to be defined by metes and bounds and courses.
- Location, width, and names of all streets, waterways, or other rights-of-way.
- Location and width of proposed easements and existing easements identified in the title opinion or property information report must be shown on the plat or in the notes or legend, and their intended use.
- All lots numbered either by progressive numbers or, if in blocks, progressively numbered in each block, and the blocks progressively numbered or lettered, except that blocks in numbered additions bearing the same name may be numbered consecutively throughout the several additions.
- Sufficient survey data to positively describe the bounds of every lot, block, street easement, and all other areas shown on the plat.
- Designated park and recreation parcels.
- All interior excepted parcels clearly indicated and labeled "Not a part of this plat."
- The purpose of all areas dedicated clearly indicated or stated on the plat.
- That all platted utility easements must provide that such easements are also easements for the construction, installation, maintenance, and operation of cable television services; provided, however, no such construction, installation, maintenance, and operation of cable television services interferes with the facilities and services of an electric, telephone, gas, or other public utility.

Preliminary Plat Approval

Many local governments around the state have a process to approve a preliminary plat before approving a final plat. Generally, a preliminary plat is a technical, graphic representation of a proposed development, including plans for streets, utilities, drainage, easements, and lot lines, for a proposed subdivision. If a preliminary plat is required, it is generally a prerequisite for a final plat approval and the submission of any property improvement plans or permit applications.[14]

Generally, a preliminary plat approval is approval of the development plan, and a final plat approval is approval of a finalized development plan; engineering plans, if required; and documents confirming the parties with a property interest; which is then recorded with the clerk of the circuit court.[15]

[14] For examples, *see* City of Zephyrhills Code of Ordinances s. 11.03.02.01; Palm Beach County Code of Ordinances Art. 11., Ch. A.; Seminole County, SEMINOLE COUNTY PLANNING & DEVELOPMENT DIVISION, Subdivision Application, https://www.seminolecountyfl.gov/core/fileparse.php/3307/urlt/SUBDIVISION-05-2023.ADA.pdf (last visited Jan. 18, 2024).
[15] Advance Surveying & Engineering, *An In-Depth Look At Preliminary and Final Plats*, https://www.advsur.com/2019/07/an-in-depth-look-at-preliminary-and-final-plats/ (last visited Jan. 18, 2024).

Based on a preliminary plat approval, some local governments allow a developer to commence construction before the plat is finalized. For example, the City of Jacksonville, Village of Royal Palm Beach, and the City of Tallahassee allow for a preliminary plat approval process.[16]
In Jacksonville, the Planning and Development Department (Department) of the City of Jacksonville, upon request of an applicant, may allow up to 50 percent of the lots within a proposed subdivision to be developed, but not occupied, based on a preliminary plat approval so long as the developer or owner meets the following conditions for construction:[17]

- Prior to Civil Plans submittal to the Department, the developer must submit the development proposal to Jacksonville Electric Authority (JEA) for review.
- Once JEA has granted preliminary approval, the Department will review the preliminary site plan, the preliminary and final engineering plans for the required improvements, and the sheet identifying the lots being requested for home construction prior to platting as approved by JEA. The Department reserves the right to deny authorization for development on a specific lot or lots to protect City interests.
- The developer or owner must provide a guarantee for required improvements and warranty of title.
- A Certificate of Occupancy may not be issued until the final plat is approved by JEA and the Department and recorded in the current public records of Duval County, Florida.
- Approval of the preliminary plat and required supplemental material are valid for 12 months from the date of approval. If the final plat is not submitted to and approved during the 12-month period, the conditional approvals are null and void.[18]

Vested Rights in Property Based on a Plat

In general, vested rights[19] form when a property owner or developer acquires real property rights that cannot be taken by governmental regulation.[20] Property owners or developers who do not have vested rights will be subject to subsequently enacted land regulations, while subsequently enacted land regulations do not apply to the property owners or developers who are determined to have vested rights.[21]

[16] City of Jacksonville Code of Ordinances s. 654-109, Village of Royal Palm Beach Code of Ordinances s. 22-22, City of Tallahassee Code of Ordinances s. 9-92.
[17] City of Jacksonville Code of Ordinances s. 654-139(d).
[18] City of Jacksonville Code of Ordinances s. 654-109(b).
[19] Florida courts have used the concepts of vested rights and equitable estoppel interchangeably in deciding fault in property rights cases. Equitable estoppel, in this instance, means focusing on whether it would be inequitable or fair to allow a local government to deny prior conduct or position on building or development decisions. Robert M. Rhodes and Cathy M. Sellers, *Equitable Estoppel and Vested Rights in Land Use*, The Florida Bar, II Florida Environmental and Land Use Law 8, (1994).
[20] *Id*.; Heeter, *Zoning Estoppel: Application of the Principles of Equitable Estoppel and Vested Rights to Zoning Disputes*, Urb.L.Ann. 63, 64-65 (1971).
[21] *Monroe County v. Ambrose*, 866 So.2d 707, 712 (Fla. 3d DCA 2003); Kristin Melton, de la Parte & Gilbert P.A., *When are Rights Vested in a Platted Development?*, 2016, https://www.dgfirm.com/email/2016summer/article2.html#:~:text=Florida%20common%20law%20provides%20that,it%20would%20make%20it%20highly (last visited Jan. 18, 2024).

Florida common law provides that vested rights in a property may be established if a property owner or developer has:[22]

- In good faith reliance,
- Upon some act or omission of government,
- Made such a substantial change in position or has incurred such extensive obligations and expenses,
- That it would make it highly inequitable to interfere with the acquired right.

Recordation of a final plat with the clerk of the circuit court alone is not sufficient to establish vested rights[23] in the land development regulations in existence at that time.[24] Instead, the property owner or developer must take meaningful steps towards development of the property, such as applying for development permits or expending certain monies,[25] to constitute a substantial change in position or be considered extensive obligations and expenses towards development of the property in reliance on some action by the local government.[26]

Additionally, a property owner or developer may obtain vested rights in both a local government-approved preliminary plat and a final plat, as long as expenditures or a substantial change have been made by the property owner or developer based on such preliminary plat or plat.[27]

Private Providers

In 2002, s. 553.791, F.S., was enacted to allow property owners and contractors to hire licensed building code officials, engineers, and architects, referred to as private providers, to review building plans, perform building inspections, and prepare certificates of completion.

Private providers are able to approve building plans and perform building code inspections as long as the plans approval and building inspections are within the scope of the provider's license.[28]

When a property owner or a contractor elects to use a private provider, he or she must notify the building official, on a form adopted by the Florida Building Commission, at the time of the permit application or no less than two business days before the first or next scheduled inspection.[29] A private provider who approves building plans must sign a sworn affidavit that the plans comply with the Building Code and the private provider is authorized to review the plans.[30]

A local building official may visit a building site as often as necessary to ensure the private provider is performing the required inspections. Construction work on a building may continue

[22] *Monroe County*, 866 So.2d at 710.
[23] *Id*.
[24] Melton, *supra*, at 42.
[25] *Town of Largo v. Imperial Homes Corp.*, 309 So.2d 571, 573 (Fla. 2d DCA 1975).
[26] *Id*.; Melton, *supra*, at 42.
[27] *The Florida Companies v. Orange County*, 411 So.2d 1008, 1011 (Fla. 5th DCA 1982)
[28] Section 553.791(1)(n) and (3), F.S.
[29] Section 553.791(4)-(5), F.S.
[30] Section 553.791(6), F.S

as long as the private provider passes each inspection and the private provider gives proper notice of each inspection to the building official.[31]

III. Effect of Proposed Changes:

The bill requires the governing body of certain municipalities and counties to create:

- A two-step application process for the adoption of a preliminary plat and for a final plat in order to expedite the issuance of building permits related to such plats. The application must allow an applicant to identify the percentage of planned homes, that the governing body must issue for the residential subdivision or planned community indicated in the preliminary plat. The governing body must maximize its administrative processes to expedite the review and approval of applications, plats, and plans.
- A master building permit process consistent with existing master building permit application requirements for applicants seeking multiple building permits for residential subdivisions or planned communities.
    - The bill provides that a master building permit issued pursuant to this requirement is valid for three consecutive years after its issuance or until the adoption of a new Building Code, whichever is earlier. After a new Building Code is adopted, the applicant may apply for a new master building permit, which, upon approval, is valid for three consecutive years.

The bill requires the governing body to issue the number or percentage of building permits requested by an applicant, provided the residential buildings or structures are unoccupied and all of the following conditions are met:

- The governing body has approved a preliminary plat for each residential subdivision or planned community.
- The applicant provides proof to the governing body that the applicant has provided a copy of the approved preliminary plat, along with the approved plans, to the relevant electric, gas, water, and wastewater utilities.
- The applicant holds a valid performance bond for up to 130 percent of the necessary utilities, roads, and stormwater improvements that have not been completed upon submission of the application. For purposes of master planned communities,[32] a valid performance bond is required on a phase-by-phase basis.

By October 1, 2024, the bill requires a governing body of a county that has 75,000 residents or more and a governing body of a municipality that has 30,000 residents or more to create a program to expedite the process for issuing building permits for residential subdivisions or planned communities before a final plat is recorded with the clerk of the circuit court.

Such expedited process must include an application for an applicant to identify the percentage of planned homes, or the number of building permits, that the governing body must issue for the residential subdivision or planned community, not to exceed 50 percent of the residential

[31] Section 553.791(9) and (18), F.S.

[32] "Planned unit development" or "master planned community" means an area of land that is planned and developed as a single entity or in approved stages with uses and structures substantially related to the character of the entire development, or a self-contained development in which the subdivision and zoning controls are applied to the project as a whole rather than to individual lots. S. 163.3202(5)(b), F.S.

subdivision or planned community. However, such a local government may issue building permits that exceed 50 percent of the residential subdivision or planned community.

By December 31, 2027, the bill requires such governing bodies to update its expedited process to contain an application that allows an applicant to request an increased percentage of up to 75 percent of building permits for planned homes that the local governing body must issue for the residential subdivision or planned community. However, such a local government may issue building permits that exceed 75 percent of the residential subdivision or planned community.

If a governing body had a program in place before July 1, 2023, to expedite the building permit process, the bill requires such governing body to only update their program to approve an applicant's written application to issue up to 50 percent of the building permits for the residential subdivision or planned community. However, such a local government may issue building permits that exceed 50 percent of the residential subdivision or planned community.

The bill exempts Monroe County from the provisions which require the governing body to create a program to issue a certain percentage of permits pursuant to a preliminary plat.

The bill allows an applicant to use a private provider to review a preliminary plat and to obtain a building permit for each residential building or structure.

The bill allows a governing body to work with appropriate local government agencies to issue an address and a temporary parcel identification number for lot lines and lot sizes based on the metes and bounds of the plat contained in an application.

The bill allows an applicant to contract to sell, but not transfer ownership of, a residential structure or building located in the residential subdivision or planned community until the final plat is approved by the governing body and recorded in the public records by the clerk of the circuit court.

The bill prohibits an applicant from obtaining a final certificate of occupancy for each residential structure or building for which a building permit is issued until the final plat is approved by the governing body and recorded in the public records by the clerk of the circuit court.
The bill requires an applicant to indemnify and hold harmless the governing body and its agents and employees from damages accruing and directly related to the issuance of a building permit for a residential building or structure located in the residential subdivision or planned community before the approval and recording of the final plat by the governing body. This includes damage resulting from fire, flood, construction defects, and bodily injury. However, such indemnification does not extend to governmental action that infringe on the applicant’s vested rights.

An applicant has a vested right in a preliminary plat that has been approved with conditions by a governing entity, if all of the following conditions are met:

- The applicant relies in good faith on the approved preliminary plat, and
- The applicant incurs obligations and expenses, commences construction of the residential subdivision or planned community, and is continuing in good faith with the development of the property.

Upon the establishment of an applicant's vested rights a governing body may not make substantive changes to the preliminary plat without the applicant's written consent.

The bill provides the following definitions:

- "Applicant" means a homebuilder or developer that files an application with the local governing body to identify the percentage of planned homes, or the number of building permits, that the local governing body must issue for the residential subdivision or planned community.
- "Final plat" means the final tracing, map, or site plan presented by the subdivider to a governing body for final approval, and, upon approval by the appropriate governing body, is submitted to the clerk of the circuit court for recording.
- "Preliminary plat" means a map or delineated representation of the subdivision of lands that is a complete and exact representation of the residential subdivision or planned community and contains required land boundary information.
- "Local building official" has the same meaning as in s. 553.791(1), F.S.
- "Plans" means any building plans, construction plans, engineering plans, or site plans, or their functional equivalent, submitted by an applicant for a building permit.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The streamlined platting processes in the bill may expedite some single family residential development across the state.

C. Government Sector Impact:

This bill could impact local governments to the extent they may have to hire more employees to meet the prescribed timeframes.

To date, no analysis by the Department of Business and Professional Regulation or the Department of Commerce of the impact of the bill on their respective operations, revenue, and expenditures has been provided.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 177.073 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on January 22, 2024:
The committee substitute makes the following changes:

- Revises the vested rights provisions by removing certain requirements by a local governing body. Also the CS clarifies that an applicant must commence construction and continue to develop the property in good faith in order to obtain vested rights.
- Requires the governing body to obtain written consent of the applicant before it may make substantive changes to the preliminary plat upon establishment of an applicant's vested rights.
  Requires the applicant to indemnify and hold harmless local governing body from certain liability related to the improvement of property. However, such indemnification does not extend to governmental action that infringe on vested rights.
- Changes dates relating to when a governing body must allow an applicant to obtain certain percentages of permits.
- Exempts Monroe County from the provisions which require the governing body to issue a certain percentage of permits pursuant to a preliminary plat.

- Provides that a master building permit is valid for 3 consecutive years after its issuance or until the adoption of a new Florida Building Code, whichever is earlier, instead of later.
- Requires an applicant for permits pursuant to a preliminary plat to provide a copy of the approved plat to gas utilities.
- Removes provisions requiring reporting to the Department of Business and Professional Regulation and the Department of Commerce.
- Clarifies language and corrects grammatical errors.

B. Amendments:

None.

817446

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Regulated Industries (Ingoglia) recommended the following:

Senate Amendment (with title amendment)

Delete lines 58 - 67

and insert:

municipality that has 30,000 residents or more shall each create a program to expedite the process for issuing building permits for residential subdivisions or planned communities in accordance with the Florida Building Code and this section before a final plat is recorded with the clerk of the circuit court. The expedited process must include an application for an

817446

applicant to identify the percentage of planned homes, not to exceed 50 percent of the residential subdivision or planned community, or the number of building permits that the governing body must issue for the residential subdivision or planned community. The application or the local government's final approval may not alter or restrict the applicant from receiving the number of building permits requested, so long as the request does not exceed 50 percent of the planned homes of the residential subdivision or planned community or the number of building permits. This

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

And the title is amended as follows:

Delete lines 5 - 9

and insert:

date certain, to each create a program to expedite the process for issuing residential building permits before a final plat is recorded; requiring the expedited process to include a certain application; prohibiting the application or local government final approval from altering or restricting the number of building permits requested under certain circumstances; requiring certain governing bodies to update their

568802

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Regulated Industries (Ingoglia) recommended the following:

Senate Amendment

Delete lines 73 - 97
and insert:
3. Apply to a municipality with 25 acres or less of land zoned for residential development or agricultural purposes.
(b) A governing body that had a program in place before July 1, 2023, to expedite the building permit process, need only update their program to approve an applicant's written application to issue up to 50 percent of the building permits

568802

for the residential subdivision or planned community in order to comply with this section. This paragraph does not restrict a governing body from issuing more than 50 percent of the building permits for the residential subdivision or planned community.

(c) By December 31, 2027, the governing body of a county that has 75,000 residents or more and the governing body of a municipality that has 30,000 residents or more shall update their programs to expedite the process for issuing building permits for residential subdivisions or planned communities in accordance with the Florida Building Code and this section before a final plat is recorded with the clerk of the circuit court. The expedited process must include an application for an applicant to identify the percentage of planned homes, not to exceed 75 percent of the residential subdivision or planned community, or the number of building permits that the governing body must issue for the residential subdivision or planned community. This paragraph does not:

1. Restrict the governing body from issuing more than 75 percent of the building permits for the residential subdivision or planned community.

2. Apply to a county subject to s. 380.0552.

3. Apply to a municipality with 25 acres or less of land zoned for residential development or agricultural purposes.

430726

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Regulated Industries (Ingoglia) recommended the following:

Senate Amendment to Amendment (568802)

Delete line 5
and insert:
3. Apply to a municipality with 25 acres or less of contiguous land

872890

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Regulated Industries (Ingoglia) recommended the following:

Senate Amendment

Delete line 145
and insert:
(b) An applicant may not obtain a temporary or final certificate of

By the Committee on Community Affairs; and Senator Ingoglia

578-02371-24 2024812c1

A bill to be entitled

An act relating to expedited approval of residential building permits; creating s. 177.073, F.S.; providing definitions; requiring certain governing bodies, by a date certain, to create a program to expedite the process for issuing residential building permits before a final plat is recorded; requiring the expedited process to include a certain application; requiring certain governing bodies to update its program in a specified manner; providing applicability; requiring a governing body to create certain processes for purposes of the program; authorizing applicants to use a private provider to expedite the process for certain building permits; authorizing a governing body to issue addresses and temporary parcel identification numbers for specified purposes; requiring a governing body to issue a specified number or percentage of building permits requested in an application when certain conditions are met; setting forth certain conditions for applicants who apply to the program; providing that an applicant has a vested right in an approved preliminary plat when certain conditions are met; prohibiting a governing body from making substantive changes to a preliminary plat without written consent; requiring an applicant to indemnify and hold harmless certain entities and persons; providing an exception; providing an effective date.

578-02371-24 2024812c1

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

Section 1. Section 177.073, Florida Statutes, is created to read:

177.073 Expedited approval of residential building permits before a final plat is recorded.—

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

(a) "Applicant" means a homebuilder or developer who files an application with the local governing body to identify the percentage of planned homes, or the number of building permits, that the local governing body must issue for a residential subdivision or planned community.

(b) "Final plat" means the final tracing, map, or site plan presented by the subdivider to a governing body for final approval, and, upon approval by the appropriate governing body, is submitted to the clerk of the circuit court for recording.

(c) "Local building official" has the same meaning as in s. 553.791(1).

(d) "Plans" means any building plans, construction plans, engineering plans, or site plans, or their functional equivalent, submitted by an applicant for a building permit.

(e) "Preliminary plat" means a map or delineated representation of the subdivision of lands that is a complete and exact representation of the residential subdivision or planned community and contains any additional information needed to be in compliance with the requirements of this chapter.

(2)(a) By October 1, 2024, the governing body of a county that has 75,000 residents or more and the governing body of a municipality that has 30,000 residents or more shall create a

program to expedite the process for issuing building permits for residential subdivisions or planned communities in accordance with the Florida Building Code and this section before a final plat is recorded with the clerk of the circuit court. The expedited process must include an application for an applicant to identify the percentage of planned homes, not to exceed 50 percent of the residential subdivision or planned community, or the number of building permits that the governing body must issue for the residential subdivision or planned community. This paragraph does not:

1. Restrict the governing body from issuing more than 50 percent of the building permits for the residential subdivision or planned community.

2. Apply to a county subject to s. 380.0552.

(b) A governing body that had a program in place before July 1, 2023, to expedite the building permit process, need only update their program to approve an applicant's written application to issue up to 50 percent of the building permits for the residential subdivision or planned community in order to comply with this section. This paragraph does not restrict a governing body from issuing more than 50 percent of the building permits for the residential subdivision or planned community.

(c) By December 31, 2027, the governing body of a county that has 75,000 residents or more and the governing body of a municipality that has 30,000 residents or more shall update its program to expedite the process for issuing building permits for residential subdivisions or planned communities in accordance with the Florida Building Code and this section before a final plat is recorded with the clerk of the circuit court. The

expedited process must include an application for an applicant to identify the percentage of planned homes, not to exceed 75 percent of the residential subdivision or planned community, or the number of building permits that the governing body must issue for the residential subdivision or planned community. This paragraph does not:

1. Restrict the governing body from issuing more than 75 percent of the building permits for the residential subdivision or planned community.

2. Apply to a county subject to s. 380.0552.

(3) A governing body shall create:

(a) A two-step application process for the adoption of a preliminary plat, inclusive of any plans, in order to expedite the issuance of building permits under this section. The application must allow an applicant to identify the percentage of planned homes or the number of building permits that the governing body must issue for the residential subdivision or planned community.

(b) A master building permit process consistent with s. 553.794 for applicants seeking multiple building permits for residential subdivisions or planned communities. For purposes of this paragraph, a master building permit is valid for 3 consecutive years after its issuance or until the adoption of a new Florida Building Code, whichever is earlier. After a new Florida Building Code is adopted, the applicant may apply for a new master building permit, which, upon approval, is valid for 3 consecutive years.

(4) An applicant may use a private provider consistent with s. 553.791 to expedite the application process as described in

this section.

(5) A governing body may work with appropriate local government agencies to issue an address and a temporary parcel identification number for lot lines and lot sizes based on the metes and bounds of the plat contained in the application.

(6) The governing body must issue the number or percentage of building permits requested by an applicant in accordance with the Florida Building Code and this section, provided the residential buildings or structures are unoccupied and all of the following conditions are met:

(a) The governing body has approved a preliminary plat for each residential subdivision or planned community.

(b) The applicant provides proof to the governing body that the applicant has provided a copy of the approved preliminary plat, along with the approved plans, to the relevant electric, gas, water, and wastewater utilities.

(c) The applicant holds a valid performance bond for up to 130 percent of the necessary improvements, as defined in s. 177.031(9), that have not been completed upon submission of the application under this section. For purposes of a master planned community as defined in s. 163.3202(5)(b), a valid performance bond is required on a phase-by-phase basis.

(7)(a) An applicant may contract to sell, but may not transfer ownership of, a residential structure or building located in the residential subdivision or planned community until the final plat is approved by the governing body and recorded in the public records by the clerk of the circuit court.

(b) An applicant may not obtain a final certificate of

occupancy for each residential structure or building for which a building permit is issued until the final plat is approved by the governing body and recorded in the public records by the clerk of the circuit court.

(8) For purposes of this section, an applicant has a vested right in a preliminary plat that has been approved by a governing body if all of the following conditions are met:

(a) The applicant relies in good faith on the approved preliminary plat or any amendments thereto.

(b) The applicant incurs obligations and expenses, commences construction of the residential subdivision or planned community, and is continuing in good faith with the development of the property.

(9) Upon the establishment of an applicant's vested rights in accordance with subsection (8), a governing body may not make substantive changes to the preliminary plat without the applicant's written consent.

(10) An applicant must indemnify and hold harmless the local government, its governing body, its employees, and its agents from liability or damages resulting from the issuance of a building permit or the construction, reconstruction, or improvement or repair of a residential building or structure, including any associated utilities, located in the residential subdivision or planned community. Additionally, an applicant must indemnify and hold harmless the local government, its governing body, its employees, and its agents from liability or disputes resulting from the issuance of a certificate of occupancy for a residential building or structure that is constructed, reconstructed, improved, or repaired before the

approval and recordation of the final plat of the qualified project. This indemnification includes, but is not limited to, any liability and damage resulting from wind, fire, flood, construction defects, bodily injury, and any actions, issues, or disputes arising out of a contract or other agreement between the developer and a utility operating in the residential subdivision or planned community. However, this indemnification does not extend to governmental actions that infringe on the applicant's vested rights.

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

THE FLORIDA SENATE

Tallahassee, Florida. 32399-1100

COMMITTEES:
Finance and Tax, *Chair*
Appropriations
Banking and Insurance
Criminal Justice
Ethics and Elections

SELECT COMMITTEE:
Select Committee on Resiliency

JOINT COMMITTEE:
Joint Administrative Procedures Committee, *Alternating Chair*

Senator Blaise Ingoglia
11th District

January 23, 2024

The Honorable Joe Gruters, Chair
Regulated Industries
413 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Re: SB 812 Expedited Approval of Residential Building Permits

Chair Gruters,

SB 812 has been referred to the Regulated Industries as its second committee of reference. I respectfully request that it be placed on the agenda at your earliest convenience.

If I may answer questions or be of assistance, please do not hesitate to contact me. Thank you for your leadership and consideration.

Regards,

Blaise Ingoglia
State Senator, District 11

Cc: Booter Imhof, Staff Director, Susan Datres, Committee Administration Assistant

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL:	SB 704
INTRODUCER:	Senator Perry
SUBJECT:	Limited Barbering
DATE:	February 2, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Pre-meeting**
2.			CM	
3.			FP	

I. Summary:

SB 704 allows persons without a license to practice limited barbering. Barbers and barbershops are regulated by ch. 476, F.S., and licensed by the Barbers' Board (board) under the Department of Business and Professional Regulation. A barber's license is required to perform barbering services.

The bill allows a person without a license to practice barbering to perform services designated by the board as limited barbering, if the person:

- Performs limited barbering under the supervision of a licensed barber in a licensed barbershop;
- Has not been disciplined relating to the practice of barbering in the previous 3 years; and
- Has successfully completed any education course requirements the board requires on sanitation safety, including education on human immunodeficiency virus and acquired immune deficiency syndrome (HIV and AIDS), if such education is a condition of granting a license to practice barbering.

The bill allows a registered person to perform limited barbering in a licensed barbershop.

The bill allows the board to revoke or suspend any registration to practice limited barbering, and requires the board to keep a record of any disciplinary proceedings against persons registered to practice limited barbering.

The bill will have an indeterminate negative fiscal impact on state government, and no fiscal impact on local governments.

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

II. Present Situation:

Barbering

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

'Barbering' means any of the following practices when done for remuneration and for the public, but not when done for the treatment of disease or physical or mental ailments: shaving, cutting, trimming, coloring, shampooing, arranging, dressing, curling, or waving the hair or beard or applying oils, creams, lotions, or other preparations to the face, scalp, or neck, either by hand or by mechanical appliances."[1]

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

- Be at least 16 years old,
- Complete the required training,
- Pass the written examination, and
- Pay a $205.50 application fee,[4] plus a $5 unlicensed activity fee.[5]

Generally, barbers must complete 900 hours of education in the profession; however, barber applicants are eligible to take the examination after 600 hours of education. If the examination is not successful, the full 900 hours must be completed.[6] There is also an option to be a barber with a restricted license, which requires 600 hours of training and restricts such barbers from applying chemical solutions or preparations to hair.[7] A restricted barber may perform the following services:[8]

- Hair cutting and styling, including the application of hair tonics and hair spray, but not including the application of any other chemical preparations or solutions to the hair,
- Full facial shaves,
- Mustache and beard trimming, and
- Shampooing hair, including the application of shampoos and hair conditioners and blow drying the hair.

There are currently 14,726 barbers and 8,133 restricted barbers. In Fiscal Year 22-23, the DBPR received 137 complaints against barbers and took 28 disciplinary actions. For restricted barbers, DBPR received 96 complaints and took 20 disciplinary actions.[9]

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[1] Section 476.034(2), F.S.
[2] Section 476.144(1), F.S.
[3] Section 476.114, F.S.
[4] Fla. Admin. Code R. 61-35.006.
[5] Section 455.2281, F.S.
[6] Section 476.114(2)(c), F.S.
[7] Section 476.144(6), F.S.; and Fla. Admin. Code R. 61G3-16.006.
[8] Fla. Admin. Code R. 61G3-16.006(4).
[9] Email from Derek Miller, Director of Legislative Affairs, Department of Business and Professional Regulation, RE: SB 704, Feb. 1, 2024 (on file with the Regulated Industries Committee).

Barbershops

In Florida, barbershops must be registered.[10] Barbershops are inspected periodically by the DBPR, in accordance with sanitary standards set forth by the board.[11]

Generally, all barbering services must be performed in registered barbershops by licensed barbers, except services provided:[12]

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

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

There are currently 4,560 licensed barbershops. In Fiscal Year 2022-2023, DBPR received 123 complaints against barbershops and took 109 disciplinary actions.[13]

Unlicensed Practice

Chapter 476, F.S., provides actions that are prohibited under the practice act, which includes a prohibition against a person holding himself or herself out as a barber unless duly licensed.[14] If a person violates this provision, he or she is subject to one or more of the following penalties:[15]

- Revocation or suspension of any license or registration issued pursuant to this chapter.
- Issuance of a reprimand or censure.
- Imposition of an administrative fine not to exceed $500 for each count or separate offense.
- Placement on probation for a period of time and subject to such reasonable conditions as the board may specify.
- Refusal to certify to the department an applicant for licensure.

In addition, s. 476.194, F.S., provides that the following actions are misdemeanors of the second degree:[16]

- Engaging in the practice of barbering without an active license as a barber.

[10] Section 476.184(1), F.S.
[11] Section 476.184(2), F.S.
[12] Section 476.188, F.S.
[13] DBPR, *supra* note 9.
[14] Section 476.204)1), F.S.
[15] Section 476.204(2), F.S.
[16] 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.

- Hiring or employing any person to engage in the practice of barbering unless such person holds a valid license as a barber.
- Owning, operating, maintaining, opening, establishing, conducting, or having charge of, either alone or with another person or persons, a barbershop:
  - Which is not licensed; or
  - In which a person not licensed as a barber is permitted to perform services.
- Using or attempting to use a license to practice barbering when the license is suspended or revoked.

Instruction on HIV and AIDS

Barber applicants and licensees are required to complete a 2-hour board-approved continuing educational course on human immunodeficiency virus and acquired immune deficiency syndrome (HIV and AIDS) as part of initial licensure and license renewal. The course must consist of education on modes of transmission, infection control procedures, clinical management, and prevention of HIV and AIDS.[17]

The board has authority to adopt rules to enforce this requirement.

III. Effect of Proposed Changes:

The bill defines "limited barbering" as the following practices when done for remuneration for the public, but not when done for the treatment of disease or physical or mental ailments:
- Hair cutting and styling, including the application of hair tonics and hair spray, but not including the application of any other chemical preparations or solutions to the hair;
- Mustache and beard trimming; and
- Shampooing hair, including the application of shampoos and hair conditioners and blow drying the hair.

The scope of a limited barber will be the same as a restricted barber, except a restricted barber may perform full facial shaves.

The bill allows a person without a license to practice barbering to perform limited barbering, if:
- The person registers his or her name with the board.
- The person performs limited barbering in a licensed barbershop with a licensed barber present.
- The person has completed a continuing educational course approved by the board on HIV and AIDS, as required by s. 455.2228, F.S.
- The person complies with all safety and sanitation requirements for barbershop personnel while practicing limited barbering at a barbershop.

When the board receives a registration request, the board:
- May not charge a fee for such registration.
- May deny such registration if the person has been disciplined relating to the practice of barbering in the previous 3 years in any jurisdiction or as provided under s. 455.213(3), F.S.

[17] Section 455.2228, F.S.

- Must list the person on department's website as a limited barber if he or she is granted a registration.

The bill provides that an unlicensed person registered to perform "limited barbering" is not committing unlicensed barbering when providing services.

The bill allows the board to revoke or suspend any registration to practice limited barbering, and requires the board to keep record of any disciplinary proceedings against persons registered to practice limited barbering.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The DBPR and the board state that they may experience a reduction in applications and the corresponding fees (including the $5 unlicensed activity enforcement fee) for restricted barbers and possibly barber licenses as well. The bill does not authorize a fee for a limited barber registrations. In addition, the DBPR and the board state that they may

see an increase in applications for restricted barber registration and an increase in complaints, but the fiscal impact is indeterminate.[18]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 476.144, 476.184, 476.188, 476.194, 476.204, and 476.214.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

[18] See Department of Business and Professional Regulation, *2024 Agency Legislative Bill Analysis for SB 704* (Dec. 18, 2023) (on file with the Senate Regulated Industries Committee).

By Senator Perry

9-00543-24 2024704__

A bill to be entitled

An act relating to limited barbering; amending s. 476.144, F.S.; defining the term "limited barbering"; authorizing persons without a license to practice barbering to perform limited barbering in licensed barbershops if certain requirements are met; providing requirements for the Barbers' Board; amending ss. 476.184, 476.188, 476.194, and 476.204, F.S.; conforming provisions to changes made by the act; amending s. 476.214, F.S.; authorizing the board to discipline persons authorized to perform limited barbering; providing an effective date.

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

Section 1. Subsection (8) is added to section 476.144, Florida Statutes, to read:

476.144 Licensure.—

(8)(a) As used in this chapter, the term "limited barbering" means the following practices when done for remuneration for the public, but not when done for the treatment of disease or physical or mental ailments:

1. Hair cutting and styling, including the application of hair tonics and hair spray, but not including the application of any other chemical preparations or solutions to the hair.

2. Mustache and beard trimming.

3. Shampooing hair, including the application of hair shampoos and hair conditioners, and blow drying hair.

(b) Notwithstanding any other provision of this chapter or

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board rule, a person without a license to practice barbering who has not completed the examination or training required under s. 476.114 may perform limited barbering if the person:

1. Registers his or her name with the board.

2. Performs limited barbering in a licensed barbershop with a licensed barber present.

3. Has completed the continuing educational course approved by the board on human immunodeficiency virus and acquired immune deficiency syndrome required under s. 455.2228.

4. Complies with all safety and sanitation requirements for barbershop personnel while performing limited barbering in a licensed barbershop.

(c) Upon receipt of the registration request, the board:

1. May not charge a fee for such registration.

2. May deny such registration if the person has been disciplined relating to the practice of barbering in the previous 3 years in any jurisdiction or as provided under s. 455.213(3).

3. Must list the person on the department's website as a limited barber upon granting a registration.

Section 2. Subsection (10) of section 476.184, Florida Statutes, is amended to read:

476.184 Barbershop licensure; requirements; fee; inspection; license display.—

(10) Each barbershop shall display, in a conspicuous place, the barbershop license and each individual licensee's certificate or each individual's proof of limited barbering registration.

Section 3. Subsection (1) of section 476.188, Florida

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

Statutes, is amended to read:

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

(1) Barber services shall be performed only by licensed barbers in registered barbershops, except as otherwise provided in this section. However, a person registered to perform limited barbering under s. 476.144(8) may perform limited barbering in a licensed barbershop.

Section 4. Paragraphs (a), (b), and (d) of subsection (1) of section 476.194, Florida Statutes, are amended to read:

476.194 Prohibited acts.—

(1) It is unlawful for any person to:

(a) Engage in the practice of barbering without an active license as a barber issued pursuant to ~~the provisions of~~ this act by the department, unless the person is registered to perform limited barbering under s. 476.144(8).

(b) Hire or employ any person to engage in the practice of barbering unless such person holds a valid license as a barber or is registered to perform limited barbering under s. 476.144(8).

(d) Own, operate, maintain, open, establish, conduct, or have charge of, either alone or with another person or persons, a barbershop:

1. Which is not licensed under ~~the provisions of~~ this chapter; or

2. In which a person not licensed as a barber is permitted to perform services, unless the person is registered to perform limited barbering under s. 476.144(8).

Section 5. Paragraph (a) of subsection (1) of section

476.204, Florida Statutes, is amended to read:

476.204 Penalties.—

(1) It is unlawful for any person to:

(a) Hold himself or herself out as a barber unless duly licensed as provided in this chapter or registered to perform limited barbering under s. 476.144(8).

Section 6. Subsections (1) and (2) of section 476.214, Florida Statutes, are amended to read:

476.214 Grounds for suspending, revoking, or refusing to grant license or certificate.—

(1) The board shall have the power to revoke or suspend any license, registration card, or certificate of registration, including a registration to perform limited barbering, issued pursuant to this act, or to reprimand, censure, deny subsequent licensure of, or otherwise discipline any holder of a license, registration card, or certificate of registration, including a registration to perform limited barbering, issued pursuant to this act, for any of the following causes:

(a) Gross malpractice or gross incompetency in the practice of barbering;

(b) Practice by a person knowingly having an infectious or contagious disease; or

(c) Commission of any of the offenses described in s. 476.194.

(2) The board shall keep a record of its disciplinary proceedings against holders of licenses or certificates of registration, including a registration to perform limited barbering, issued pursuant to this act.

Section 7. This act shall take effect July 1, 2024.

The Florida Senate

Committee Agenda Request

To: Senator Joe Gruters, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: December 27, 2023

I respectfully request that **Senate Bill #704**, relating to Limited Barbering, be placed on the:

☒ Committee agenda at your earliest possible convenience.

☐ Next committee agenda.

W. Keith Perry

Senator Keith Perry
Florida Senate, District 9

File signed original with committee office

From: Miller, Derek <Derek.Miller@myfloridalicense.com>
Sent: Thursday, February 1, 2024 4:09 PM
To: Oxamendi, Miguel <OXAMENDI.MIGUEL@flsenate.gov>
Cc: Imhof, Booter <Imhof.Booter@flsenate.gov>; Kingry, Chris <Chris.Kingry@myfloridalicense.com>
Subject: RE: SB 704

Hi Miguel,

Below are the number of complaints and disciplinary actions.

- There are currently **14,726** barbers and **8,133** restricted barbers.
- In Fiscal Year 22-23, for barbers, DBPR received 137 complaints against barbers and took 28 disciplinary actions. For restricted barbers, DBPR received 96 complaints and took 20 disciplinary actions.
- There are currently **4,560** licensed barbershops.
- In Fiscal Year 2022-2023, DBPR received 123 complaints against barbershops and took 109 disciplinary actions.

Best,

Derek Miller
Director of Legislative Affairs
Florida Department of Business and Professional Regulation
Office: (850) 717-1580
Cell: (850) 491-5705

2024 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Business & Professional Regulation

BILL INFORMATION	
BILL NUMBER:	SB 704
BILL TITLE:	Limited Barbering
BILL SPONSOR:	Sen. Perry
EFFECTIVE DATE:	07/01/2024

COMMITTEES OF REFERENCE
1) Regulated Industries
2) Commerce and Tourism
3) Fiscal Policy
4) Click or tap here to enter text.
5) Click or tap here to enter text.

CURRENT COMMITTEE
Regulated Industries

SIMILAR BILLS	
BILL NUMBER:	HB 785
SPONSOR:	Rep. Valdes

PREVIOUS LEGISLATION	
BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.
YEAR:	Click or tap here to enter text.
LAST ACTION:	Click or tap here to enter text.

IDENTICAL BILLS	
BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	December 18th, 2023
LEAD AGENCY ANALYST:	Jeff Kelly, Director, Division of Professions
ADDITIONAL ANALYST(S):	Tracy Dixon, Service Operations Robin Jordan, Division of Technology Robert Ehrhardt, OGC Rules G.W. Harrell, Division of Regulation

LEGAL ANALYST:	Brande Miller, Deputy General Counsel - Professions
FISCAL ANALYST:	Garrett Blanton, Office of Planning and Budget

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill authorizes persons without a license to practice barbering to perform limited barbering in licensed barbershops if certain requirements are met and authorizes the Barbers' Board to discipline persons authorized to perform limited barbering.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Subsection 476.114, FS, provides applicants with prerequisites to be licensed a barber, requiring 900 hours of training from a school of barbering licensed pursuant to chapter 1005, a barbering program within the public school system, or a government-operated barbering program in the state.

Section 476.144(6), F.S., states that person may apply for a restricted license to practice barbering. The Barbers' Board ("board") shall adopt rules specifying procedures for an applicant to obtain a restricted license if the applicant has successfully completed a restricted barber course, as established by rule of the board, at a school of barbering licensed pursuant to chapter 1005, a barbering program within the public school system, or a government-operated barbering program in this state.

Per Rule 61G3-16.006, F.A.C., the board established that persons who are eligible and passed the examination for a restricted barbering license are permitted to perform the following services:

- Hair cutting and styling, including the application of hair tonics and hair spray, but not including the application of any other chemical preparations or solutions to the hair
- Full facial shaves
- Mustache and beard trimming
- Shampooing hair, including the application of shampoos and hair conditioners and blow drying the hair

Section 476.184, F.S., provides the requirements for barbershop licensure, fees, inspection, and license display.

Section 476.188, F.S., requires that barber services shall be performed only by licensed barbers in registered barbershops, except as otherwise provided in subsection (2) by board rule for a location other than a registered barbershop, including, but not limited to, a nursing home, hospital, or residence, when a client for reasons of ill health is unable to go to a registered barbershop; and subsection (3) any person who holds a valid barber's license in any state or who is authorized to practice barbering in any country, territory, or jurisdiction of the United States may perform barber services in a location other than a registered barbershop when such services are performed in connection with the motion picture, fashion photography, theatrical, or television industry; a manufacturer trade show demonstration; or an educational seminar.

Section 476.194, F.S., provides that it is a misdemeanor of the second degree to engage in the unlawful acts listed under paragraphs (1)(a)-(e); specifically, the practice of barbering without an active license as a barber issued by the department and to hire or employ any person to engage in the practice of barbering unless such person holds a valid license as a barber.

Section 476.204, F.S., provides the unlawful acts under paragraphs (1)(a)-(i) for holding himself or herself out as a barber unless duly licensed as provided in chapter 476, operating any barbershop unless it has been duly licensed as provided in chapter 476, and permitting an employed person to practice barbering unless duly licensed, or otherwise authorized. Additionally, any person who violates any provision of the section may be subject to the following penalties listed under paragraphs (2)(a)-(e) as determined by the board.

Section 476.214, F.S., provides the board's power to revoke or suspend any license, registration card, or certificate of registration issued pursuant to the practice act, or to reprimand, censure, deny subsequent licensure of, or otherwise discipline any license, registration card, or certificate of registration issued pursuant to the practice act, for any of the causes listed in paragraphs (a)-(c); and requires the board to keep a record of its disciplinary proceedings against holders of licenses or certificates of registration issued pursuant to this act.

2. EFFECT OF THE BILL:

Section 1.

The bill amends subsection 476.114(8), F.S., to add the term "limited barbering" means the following practices when done for remuneration for the public, but not when done for the treatment of disease or physical or mental ailments:

1. Hair cutting and styling, including the application of hair tonics and hair spray, but not including the application of any other chemical preparations or solutions to the hair.
2. Mustache and beard trimming
3. Shampooing hair, including the application of hair shampoos and hair conditioners, and blow-drying hair.

The bill also provides that, notwithstanding any other provision of this chapter or board rule, a person without a license to practice barbering who has not completed the examination or training required under s. 476.114 may perform limited barbering if all of the requirements are met:

1. The person registers his or her name with the board;
2. The person performs limited barbering in a licensed barbershop with a licensed barber present;
3. Has completed the continuing educational course approved by the board on human immunodeficiency virus and acquired immune deficiency syndrome required under s. 455.2228; AND
4. complies with all safety and sanitation requirements for barbershop personnel while performing limited barbering in a licensed barbershop.

Upon receipt of the registration request, the board: may not charge a fee for such registration; may deny such registration if the person has been disciplined relating to the practice of barbering in the previous 3 years in any jurisdiction or as provided under s. 455.213(3); and must list the person on the department's website as a limited barber upon granting a registration.

Section 2.

The bill amends subsection 476.184(10), F.S., to provide for individual's proof of limited barbering registration on display at a licensed barbershop.

Section 3.

The bill amends subsection 476.188(1), F.S., to provide an exception from the requirement that barber services shall be performed only by licensed barbers in registered barbershops by specifying that a person registered to perform limited barbering under subsection 476.144(8), F.S., may perform limited barbering in a licensed barbershop.

Section 4.

The bill amends paragraphs (a), (b), and (d) of subsection 476.194(1), F.S., to provide an exception to the prohibited acts of (a) engaging in the practice of barbering without an active license as a barber issued pursuant to this act by the department; (b) hiring or employ any person to engage in the practice of barbering; (d) owning, operating, maintaining, opening, establishing, conducting, or having charge of, either alone or with another person or persons, a barbershop: 1. Which is not licensed under the chapter 476, F.S.; or 2. In this case, a person not licensed as a barber is permitted to perform services unless the person is registered to perform limited barbering under subsection 476.144(8), F.S.

Section 5.

The bill amends paragraph (a) of subsection 476.204(1), F.S., to provide an exception to the unlawful act of holding himself or herself out as a barber unless duly licensed by adding or registered to perform limited barbering under s. 476.144(8).

Section 6.

The bill amends subsections 476.214(1) and (2), F.S., to specify the board's power to revoke or suspend any license, registration card, or certificate of registration, by adding including a registration to perform limited barbering, issued pursuant to the practice act, or to reprimand, censure, deny subsequent licensure of, or otherwise discipline any person authorized to practice restricted barbering or any holder of a license, registration card, or certificate of

registration, adding including a registration to perform limited barbering issued pursuant to the practice act, for any of the causes listed in (a)-(c); and requires the board to keep a record of its disciplinary proceedings against holders of licenses or certificates of registration, including a registration to perform limited barbering issued pursuant to this act.

Section 7.

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

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y☐ N☒

If yes, explain:	The board would be required to develop and adopt a new form to be used to for individuals to register.
Is the change consistent with the agency's core mission?	Y☒ N☐
Rule(s) impacted (provide references to F.A.C., etc.):	Rule 61-35.006, F.A.C.

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y☐ N☒

If yes, provide a description:	N/A
Date Due:	N/A
Bill Section Number(s):	N/A

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y☐ N☒

Board:	Click or tap here to enter text.
Board Purpose:	Click or tap here to enter text.
Who Appoints:	Click or tap here to enter text.
Changes:	Click or tap here to enter text.
Bill Section Number(s):	Click or tap here to enter text.

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y☐ N☒

Revenues:	N/A
Expenditures:	N/A
Does the legislation increase local taxes or fees? If yes, explain.	N
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	Click or tap here to enter text.

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y☒ N☐

Revenues:	The department and board may experience a reduction in applications and the corresponding fees (including the $5 unlicensed activity enforcement fee) for restricted barbers and possibly barber licenses as well. The bill does not authorize fees to be charged for limited barber registrations.
Expenditures:	The department and board may experience an increase in applications and complaints, but the fiscal impact is indeterminate.
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	Click or tap here to enter text.

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y☒ N☐

Revenues:	Barber schools may experience a decrease in enrollment for both barbering and restricted barbering programs, but the extent of such fiscal impact is indeterminate.
Expenditures:	Individuals seeking to perform barbering services specified in the bill under the supervision of a licensed barber will be positively impacted by the cost of a tuition of a restricted barbering program that is currently required. Since the cost of such programs varies among barbering schools, the impact is indeterminate.
Other:	N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y☒ N☐

If yes, explain impact.	While not payable to the department, the bill will likely result in a reduction of fees payable to barber schools.

Bill Section Number:	Click or tap here to enter text.

TECHNOLOGY IMPACT

1. **DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?** Y☐ N☒

If yes, describe the anticipated impact to the agency including any fiscal impact.	N/A

FEDERAL IMPACT

1. **DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?** Y☐ N☒

If yes, describe the anticipated impact including any fiscal impact.	Click or tap here to enter text.

ADDITIONAL COMMENTS

Division of Professions:

There is already a restricted barber license type, which is less than a full barber's license, that is granted after the successful completion of a school or program that administers a restricted barber's course of 600 hours and successful passage of a state-administered examination. It is unclear how limited barbering under this bill will be implemented as the current language appears to conflict with and/or overlap with the current restricted barber's license.

It is unclear what effect this bill will have on removing barbering schools in Florida as it relates to the educational requirements that are normally required for such a profession.

The limited barbering language appears to be more restrictive than the current restricted barbering language provided in the rule in that it does not allow for full facial shaves.

It is unclear what the required training, monitoring and documentation of such training, and regulation of the individuals that would practice limited barbering, if any, would be. Also, would such individuals be required to renew their registrations, and if so, would the establishment of a renewal fee be authorized?

It is unclear what the intended ratio is for the number of limited barbering individuals that should be allowed under one licensed barber. Also, it is unclear what the intended accountability would be for the person practicing limited barbering as well as for the licensed barber over the person practicing limited barbering if violations occur. The bill currently does not provide the board with any specific rulemaking authority. If it is intended that the board shall engage in rulemaking, then it is recommended that language be included to provide direction and specific rulemaking authority.

Division of Service Operations: The impact on the division is indeterminate at this time.

Division of Regulation: The Division of Regulation conducts biennial inspections of licensed barbershops and licensure of barbers is one of the checklist items. In fiscal year 2021-22, the Division has 99 legally sufficient cases of unlicensed barbering. It is anticipated that this number will go down if this bill becomes law. However, the increase in licensees with the addition of limited barbers should offset the number of investigations.

Office of Planning and Budget: The fiscal impact of the bill is indeterminate. The Division of Professions licenses barbers and restricted barbers already and collects fees for those licenses. There is a possibility for a decrease in revenues from the current barber licenses that would correspond with the number of licensees who would take advantage of the new Limited Barbering provisions within the bill.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	Click or tap here to enter text.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL:	SB 1006
INTRODUCER:	Senator Perry
SUBJECT:	Nicotine Products
DATE:	February 2, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Pre-meeting**
2.			AEG	
3.			FP	

I. Summary:

SB 1006 provides for the regulation of the wholesale and the retail sale of nicotine products such as electronic cigarettes. The bill:

- Requires manufacturers of nicotine products to register with the Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation any of its products that are sold in Florida and which have received an order from the U.S. Food and Drug Administration (FDA) authorizing the marketing of such products or has applied for such a marketing order.
- Requires manufacturers to certify under penalty of perjury the nicotine products with the division and provide evidence of such approval from the FDA or that they have sought approval from the FDA.
- Requires the division to create a directory containing the registered nicotine products.
- Requires wholesale dealers of a nicotine product to have a permit issued by the division.
- Requires manufacturers of nicotine products to maintain certain records for a period of three years, including identifying information on to whom the products were sold.
- Prohibits wholesale dealers and retail dealers of nicotine products from selling nicotine products that are not on the division's directory of nicotine products.
- Prohibits the shipment into Florida of nicotine products that the FDA has ordered removed from the market, that have not been submitted for approval by the FDA, or that have not been registered with the division.
- Creates the following criminal violations and penalties:
  - First degree misdemeanor for nicotine products manufacturers who knowingly ships or receives a nicotine product that the FDA has ordered removed from the market, that have not been submitted for approval by the FDA, or that have not been registered with the division;
  - Second degree misdemeanor for any person who knowingly ships or receives unregistered nicotine products;

  - Second degree misdemeanor for any person who knowingly ships or receives nicotine products from a manufacturer that does not have a permit issued by the division; and
  - Third degree felony for falsely misrepresenting any of the information required to register a nicotine product with the division.
- Provides administrative fines for violations and for the suspension and revocation of permits.
- Provides that all nicotine products sold, delivered, possessed, or distributed in contrary to the provisions in the bill are contraband and are subject to seizure and confiscation under the Florida Contraband Forfeiture Act.

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

II. Present Situation:

Florida Regulation of Tobacco Products and Nicotine Dispensing Devises

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (DBPR) is the state agency responsible for the regulation and enforcement of tobacco products under part I of ch. 569, F.S., and nicotine products under part II of ch. 569, F.S.

Tobacco Products Definitions

Section 210.01(1), F.S., defines the term "cigarette" to mean:

> 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.

Section 569.002(6), F.S., defines the term "tobacco products" to 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, in the context of the taxation of cigarettes under part I of ch. 210, F.S.

Section 210.25(12), F.S., provides a separate definition for the term "tobacco products" in the context of the taxation of tobacco products other than cigarettes or cigars. It provides for the licensing of tobacco product manufacturers, importers, exporters, distributing agents, or wholesale dealers under part II of ch. 210, F.S. In this context, the term "tobacco products" means:

> 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; but "tobacco products" does not include cigarettes, as defined by s. 210.01(1), or cigars.

The definition of "tobacco products" in s. 569.002(6), F.S., is limited to the regulation of tobacco products by the division under ch. 569, F.S., and does not affect the taxation of such products under ch. 210, F.S.

Nicotine Products

Section 569.31(3), F.S., defines the term "nicotine dispensing device" to mean:

> 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.

Section 569.31(4), F.S., defines the term "nicotine product" to mean:

> any product that contains nicotine, including liquid nicotine, which is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means. <u>The term also includes any nicotine dispensing device.</u> 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.
>
> (Emphasis added.)

Nicotine products, including nicotine dispensing devises such as electronic cigarettes (also commonly known as "vapes"), may contain nicotine, which comes from tobacco, but they do not contain tobacco. It is a non-tobacco "e-liquid" that is heated and aerosolized for inhalation by the user of the device.[1]

Heated Tobacco Products

Heated tobacco products heat a compressed stick or pod of tobacco and produce an inhalable vapor or aerosol. These products do not produce smoke because the tobacco is not burned or ignited.[2] It is not clear that heated tobacco products are subject to taxation under ch. 210, F.S., as cigarettes or other tobacco products because the definitions for the terms cigarettes and tobacco products under ch. 210, F.S., do not appear to describe heated tobacco products, e.g., heated tobacco products are not smoked or chewed.

[1] American Cancer Society, What Do We Know About E-cigarettes? at: https://www.cancer.org/cancer/risk-prevention/tobacco/e-cigarettes-vaping/what-do-we-know-about-e-cigarettes.html (last visited Jan. 17, 2024).
[2] Campaign for Tobacco Free Kids, *Heated Tobacco Products, Definition and Global Market*, available at: https://assets.tobaccofreekids.org/global/pdfs/en/HTP_definition_en.pdf (last visited Jan. 20, 2024).

Retail Tobacco Products Dealer Permits

A person must obtain a retail tobacco products dealer permit from the division for each place of business where tobacco products are sold, including sales made through a vending machine.[3] The fee for an annual permit is established by the division in rule at an amount to cover the regulatory costs of the program, not to exceed $50. The fees are deposited into the Alcoholic Beverage and Tobacco Trust Fund within the DBPR.[4]

Retail Nicotine Products Dealer Permit

A retail nicotine products dealer permit from the division is required for each place of business where nicotine products are sold, including sales made through a vending machine.[5] There is no fee for the permit. A person must be 21 years of age to qualify for a retail nicotine products dealer permit.[6]

Taxation of Tobacco Products Other than Cigarettes or Cigars

Part II of ch. 210, F.S., imposes a tax and a surcharge tax on tobacco products other than cigarettes or cigars. Cigarettes are taxed under part I of ch. 210, F.S. Cigars are not subject to a tax.

DBPR Annual Report

The DBPR is required to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House regarding the enforcement of tobacco products, including:[7]

- The number and results of compliance visits by the division;
- The number of violations for failure of a retailer to hold a valid license;
- The number of violations for selling tobacco products to anyone under the age of 21 and the results of administrative hearings on such violations; and
- The number of people under the age of 21 cited, including sanctions imposed as a result of citation.

The DBPR is required to submit a comparable annual report to the Legislature regarding compliance with the age restriction on the sale of nicotine dispensing devices.[8]

Federal Regulation of Tobacco Products

The Family Smoking Prevention and Tobacco Control Act of 2009 (Tobacco Control Act) gives the 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.[9]

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[3] Section 569.003, F.S.
[4] Section 569.003(1)(c), F.S.
[5] Section 569.32, F.S.
[6] Section 569.32(2)(a), F.S.
[7] Section 569.19, F.S.
[8] Section 569.44, F.S.
[9] 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.

On August 8, 2016, the FDA extended the definition of the term "tobacco product" regulated under the Tobacco Control Act to include "electronic nicotine delivery systems" (ENDS). ENDS include nicotine delivery devices such as e-cigarettes, e-cigars, e-hookah, vape pens, personal vaporizers, and electronic pipes. The definition of tobacco products also includes components and parts such as e-liquids, tanks, cartridges, pods, wicks, and atomizers. On April 14, 2022, the FDA's authority was further expanded to include tobacco products containing nicotine from any source, including synthetic nicotine.[10]

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.[11]

Registration by Manufacturers

Under federal law, tobacco product manufacturers[12] are required initially and annually thereafter to register with the FDA the name,[13] places of business, and all such establishments of that manufacturer in any state.[14] These manufacturers are required to register any additional places which they own or operate and start to manufacture, prepare, compound, or process a tobacco product or tobacco products.[15]

FDA Premarket Review Application Process for Tobacco Products[16]

Before a new tobacco product[17] can be distributed into interstate commerce, the manufacturer is required to submit a marketing application to the FDA and receive authorization.[18] These applications are reviewed by the FDA to determine whether the product meets the proper requirements to receive marketing authorization. Marketing authorization can be achieved through a Premarket Tobacco Product Application (PMTA), Substantial Equivalence (SE)

[10] "Non-Tobacco Nicotine" (NTN) is the term used to describe nicotine that did not come from a tobacco plant. NTN includes 'synthetic' nicotine." U.S. Food and Drug Administration. *Regulation and Enforcement of Non-Tobacco Nicotine (NTN) Products*, U.S. Food and Drug Administration, www.fda.gov/tobacco-products/products-ingredients-components/regulation-and-enforcement-non-tobacco-nicotine-ntn-products (last visited Jan. 29, 2024).
[11] 21 U.S.C. § 387p.
[12] The term "manufacture, preparation, compounding, or processing" includes "the repackaging or otherwise changing the container, wrapper, or labeling of any tobacco product package in furtherance of the distribution of the tobacco product from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer or user." 21 USCA § 387e(a)(1).
[13] The term "name" includes the name of each partner in the case of a partnership and, in the case of a corporation, the name of each corporate officer and director, and the State of incorporation." 21 USCA § 387e(a)(2).
[14] 21 USCA § 387e(b)(c).
[15] 21 USCA § 387e(d).
[16] *See generally*, 21 U.S.C. § 387j.
[17] "A 'new tobacco product' is defined as any product not commercially marketed in the United States as of February 15, 2007, or the modification of a tobacco product where the modified product was commercially marketed in the U.S. after February 15, 2007." 21 U.S.C. § 387j(1).
[18] U.S. Food and Drug Administration, *Market and Distribute a Tobacco Product*, www.fda.gov/tobacco-products/products-guidance-regulations/market-and-distribute-tobacco-product (last visited Jan. 29, 2024).

Report, or Exemption from Substantial Equivalence Request (EX REQ).[19] The FDA may issue a marketing granted order, temporarily suspend a marketing order, withdraw a marketing granted order, or issue a marketing denial order.[20]

Preexisting tobacco products, i.e, tobacco products that were commercially marketed in the U.S. as of Feb. 15, 2007, or the modification of a tobacco product where the modified product was commercially marketed in the U.S. before Feb. 15, 2007, were required to submit marketing applications to the FDA by May 14, 2022,[21] and receive a marketing order to permit the continued sale of the tobacco product. A tobacco manufacturer may challenge the FDA's marketing denial.[22] Manufactures must hold onto records that show their tobacco products are legally on the market.

An applicant may submit a PMTA to demonstrate that a new tobacco product meets the requirements to receive a marketing granted order.[23] The PMTA must contain information[24] for the FDA to ascertain whether there are any applicable grounds for a marketing denial order. To receive a marketing granted order:

> A PMTA must demonstrate the new tobacco product would be appropriate for the protection of the public health and takes into account the increased or decreased likelihood that existing users of tobacco products will stop using such products, as well as the increased or decreased likelihood that those who do not use tobacco products will start using such products.[25]

A SE Report can be submitted by the tobacco manufacturer to seek an FDA substantially equivalent order. The applicant must provide information on the new tobacco product's characteristics and compare its characteristics to another tobacco product.[26] The SE Report must contain information to allow the FDA to determine whether the new tobacco product is substantially equivalent to a tobacco product that was commercially marketed in the United States as of February 15, 2007.[27]

The FDA may exempt, from the requirements relating to the demonstration that a tobacco product is substantially equivalent, tobacco products that are modified by adding or deleting a tobacco additive, or increasing or decreasing the quantity of an existing tobacco additive if

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[19] U.S. Food and Drug Administration, *Tobacco Products Marketing Orders*, https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/tobacco-products-marketing-orders Last visited Jan. 29, 2024).
[20] 21 U.S.C. § 387j.
[21] U.S. Food and Drug Administration, *Reminder: Electronic Submission of Premarket Applications for Non-Tobacco Nicotine Products due May 14*, https://www.fda.gov/tobacco-products/ctp-newsroom/reminder-electronic-submission-premarket-applications-non-tobacco-nicotine-products-due-may-14 (last visited Jan. 29, 2024).
[22] *See* Melissa Kress, *Bat to Challenge FDA's Marketing Denial Order for Flavored Vuse Products*, Convenience Store News, Oct. 13, 2023, https://csnews.com/bat-challenge-fdas-marketing-denial-order-flavored-vuse-products (last visited Jan. 29, 2024).
[23] 21 CFR 1114.5.
[24] The PMTA must include information, such as, full reports of investigations of health risks, effect on the population as a whole, product formulation, statement of compliance and certification, and manufacturing. *See* 21 CFR § 1114.7(a).
[25] *Supra* note 16.
[26] *See* 21 CFR 1107.16 and 21 CFR 1107.18.
[27] 21 CFR 1107.18.

certain conditions are met. A tobacco product may only receive an exemption from the requirement of showing a substantial equivalence (Ex Req) if it is for a minor modification to a tobacco product that can legally be sold as a legally marketed tobacco product.[28]

The FDA made determinations on more than 99 percent of the nearly 26 million products for which PMTSs have been submitted.[29] As of March 15, 2023, the FDA has authorized the marketing of 45 products, including 23 tobacco-flavored e-cigarette products and devices.[30]

However, the FDA tobacco premarket application process has been challenged. In 2022, the Eleventh Circuit Court of Appeals set aside FDA marketing order denials as arbitrary and capricious because the FDA failed to consider relevant factors in evaluating the applications submitted by the six tobacco companies.[31] In 2024, the Fifth Circuit Court of Appeals stated, in reference to the tobacco premarketing application process, that over several years, the FDA had "sent manufacturers of flavored e-cigarette products on a wild goose chase."[32]

III. Effect of Proposed Changes:

Definitions

Section 1 of the bill revises the meaning of the term "nicotine product" in s. 569.31, F.S., to provide that "each individual stock keeping unit is considered a separate nicotine product."

The bill defines the following terms:

- "FDA" to mean the United States Food and Drug Administration.
- "Nicotine products manufacturer" to mean any person who manufactures nicotine products.
- "Wholesale nicotine products dealer" to mean the holder of a wholesale nicotine products dealer permit who purchases nicotine dispensing devices or nicotine products from any nicotine products manufacturer.
- "Wholesale nicotine products dealer permit" means a permit issued by the division under s. 569.316, F.S, as created by the bill.

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[28] 21 CFR 1107.1.

[29] U.S. Food and Drug Administration, *FDA Makes Determinations on More than 99% of the 26 Million Tobacco*, www.fda.gov/tobacco-products/ctp-newsroom/fda-makes-determinations-more-99-26-million-tobacco-products-which-applications-were-submitted (last visited Jan. 29, 2024); and U.S. Food and Drug Administration, *Premarket Tobacco Product Marketing Granted Orders*," updated as of Jan. 9, 2024, www.fda.gov/tobacco-products/premarket-tobacco-product-applications/premarket-tobacco-product-marketing-granted-orders (last visited Jan. 29, 2024).

[30] *Id.*

[31] *See*, *Bidi Vapor LLC v. U.S. Food & Drug Admin*., 47 F.4th 1191, 1205 (11th Cir. 2022), in which the FDA issued marketing denial orders that specifically stated that it did not consider the marketing or sales-access-restriction plans in the PMTSs submitted by six tobacco companies which included their proposed marketing and sales-access restrictions in their applications.

[32] *Wages & White Lion Investments, L.L.C. v. Food & Drug Admin*., 90 F.4th 357 (5th Cir. 2024) (the court held that the FDA's denial of marketing orders was arbitrary and capricious because FDA failed to give manufacturers fair notice of the rules, did not explain or admit a change in position regarding application requirements, and disregarded the tobacco manufacturers' good faith reliance on previous FDA guidance).

Nicotine Product Directory

Section 2 of the bill creates s. 569.311, F.S., to provide a certification requirement for manufacturers of nicotine products.

Section 561.311(1), F.S., requires every nicotine products manufacturer who sells nicotine products in Florida to execute and deliver a form, which s. 569.311(4), F.S., refers to as a "certification," prescribed by the division, under penalty of perjury for each nicotine product sold that meets either of the following criteria:

- The nicotine product manufacturer has applied for a marketing order for the nicotine product derived from a tobacco source or nontobacco source by submitting a premarket tobacco product application to the FDA on or before May 14, 2022; and
  - The premarket tobacco product application for the nicotine product remains under review by the FDA, and neither a marketing authorization nor a marketing denial order has been issued; or
  - The FDA issued a marketing denial order for the nicotine product, but the FDA or a federal court issued a stay or an injunction during the pendency of the manufacturer's appeal of the marketing denial order or either the order has been appealed to the FDA or a challenge to the order has been filed with a federal court and the appeal or challenge is still pending; or
- The nicotine products manufacturer has received a marketing authorization or other authorization, such as the SE or EX REQ, for the nicotine product from the FDA.

Section 569.311(2), F.S., requires each nicotine products manufacturer to set forth:

- The name under which the nicotine products manufacturer transacts or intends to transact business;
- The address of the location of the nicotine products manufacturer's principal place of business,
- The nicotine products manufacturer's e-mail address; and
- Any other information the division requires

The bill provides that the division may allow a nicotine products manufacturer to group its nicotine products on its certification.

Section 569.311(3), F.S., requires each nicotine products manufacturer to provide to the division a copy of the cover page of the premarket tobacco application with evidence of the receipt of the application by the FDA, or a copy of the cover page of the marketing authorization or other authorization issued by the FDA, whichever is applicable.

Section 569.311(4), F.S., requires a nicotine products manufacturer to notify the division within 30 days of any material change to the certification, including, but not limited to, issuance by the FDA of any of the following:

- A market authorization as a preexisting or new tobacco product;
- A marketing order requiring a nicotine products manufacturer to remove a product from the market either temporarily or permanently;

- Any notice of action taken by the FDA affecting the ability of the nicotine product to be introduced or delivered in this state for commercial distribution;
- Any change in policy which results in a nicotine product no longer being exempt from federal enforcement oversight; or
- Any other change deemed material by the division pursuant to a rule of the division.

The bill provides that a nicotine products manufacturer who falsely represents any of the information in the form prescribed by the division or the applicable copy page in the certification process commits a felony of the third degree for each false representation.

Directory

Section 569.311(5), F.S., requires the division to develop and maintain a directory listing all the nicotine products certified with the division which comply with the requirements discussed above. On January 1, 2025, the division must make the directory available on the DBPR website or the website of the division, and update the directory as necessary.

Process for Removal from the Directory

Section 569.311(6), F.S., requires the division to provide nicotine products manufacturer a notice and an opportunity to cure deficiencies before removing the manufacturer or its nicotine product from the directory. The division may not remove the nicotine products manufacturer or its nicotine product from the directory until at least 15 days after the nicotine products manufacturer has been given notice of an intended action.

Notice is sufficient and deemed immediately received by a nicotine products manufacturer if the notice is sent either electronically or by facsimile to an e-mail address or facsimile number provided by the nicotine products manufacturer in its most recent certification filed.

Section 569.311(6)(b), F.S., provides that the nicotine products manufacturer has 15 days from the date of service of the notice of the division's intended action to establish that the nicotine products manufacturer or its nicotine product should be included in the directory.

Section 569.311(6)(c), F.S., provides that a determination by the division not to include a nicotine product on the directory is subject to review under ch. 120, F.S., the Florida Administrative Procedure Act. If a nicotine products manufacturer seeks review of the decision to remove it from the directory, the division must keep the nicotine product on the directory until conclusion of the hearing.

Section 569.311(6)(d), F.S., provides that retailers and wholesalers have 21 days from when the product is removed from the directory to remove the product from their inventory and return the nicotine product to the nicotine products manufacturer. Each nicotine products manufacturer shall provide to the division information regarding the return of such product and how the returned product was disposed of within 21 days after receipt.

Section 569.311(6)(d), F.S., also provides that a nicotine product identified in the notice of removal is considered contraband 21 days after its removal from the directory, and is subject to s. 569.345, F.S., relating to the seizure and destruction of contraband nicotine products.

Nicotine Products Not Listed on the Directory

Section 569.311(7), F.S., provides that, beginning March 1, 2025, or on the date that the division first makes the directory available for public inspection on its or the DBPR's website, whichever is later, a nicotine products manufacturer who offers for sale a nicotine product not listed on the directory is subject to a fine of $1,000 per day for each nicotine product offered for sale in violation of this section until the offending product is removed from the market or until the offending product is properly listed on the directory.

False Representation

Section 569.311(8), F.S., provides that a nicotine products manufacturer who falsely represents any of the information required to be provided to the division commits a felony of the third degree[33] for each false representation.

Unannounced Inspections

Section 569.311(9), F.S., provides that each retail nicotine products dealer and wholesale nicotine products dealer is subject to unannounced inspections or audit checks by the division for purposes of enforcing compliance with the certification process and the directory. The division is required under the bill to conduct unannounced follow-up compliance checks of all noncompliant retail nicotine products dealers or wholesale nicotine products dealers within 30 days after a violation. The bill requires the division to publish the results of all inspections at least annually and make the results available to the public on request.

Renew Certification

Section 569.311(10), F.S., authorizes the division to adopt by rule a procedure to allow nicotine products manufacturers to renew certifications without having to resubmit all the information for the certification process.

Maintenance and inspection of nicotine product records

Section 3 of the bill creates s. 569.312, F.S., to require nicotine product manufacturers to maintain specified records.

Section 569.312(1), F.S., requires nicotine products manufacturers to keep for a period of three years, at the address listed on the certification:

- A complete and accurate record of the sales of each nicotine product sold or the amount of nicotine products delivered to a wholesaler in Florida; and
- To whom each nicotine product was sold on a wholesale basis, including the business name, license number, shipping and business addresses, e-mail address, and telephone number for

[33] Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed $5,000.

the person or entity to which each product was sold. Such records may be kept in an electronic or paper format.

Section 569.312(2), F.S., provides that retail nicotine products dealers, wholesale nicotine products dealers, wholesale dealers of cigarettes, and distributing agents of cigarettes must keep a record of the amount of each nicotine product received, delivered, or sold in Florida and to whom each nicotine product was sold or delivered or from whom they received each nicotine product, including the business name, license number, shipping and business addresses, e-mail address, and telephone number for the person or entity to which each product was sold or delivered or from which each product was received. The records may be kept in electronic or paper format.

Section 569.312(3), F.S., provides that retail nicotine products dealers, wholesale nicotine products dealers, wholesale dealers of cigarettes, and distributing agents of cigarettes, who sell directly to consumers, are not required to keep and maintain these identifying records of the consumers who purchase or receive nicotine products.

Section 569.312(4), F.S., requires nicotine product manufacturers, including nicotine products manufacturers selling nicotine products directly to consumers, retail nicotine products dealers; wholesale nicotine products dealers, wholesale dealers of cigarettes, and distributing agents of cigarettes to provide these records upon a request by the division.

Section 569.312(5), F.S., provides that the division is allowed to examine such records, issue subpoenas to persons or entities, administer oaths, and take depositions of witnesses within or outside of Florida.

Section 569.312(6), F.S., provides that the division may assess an administrative fine of up to $1,000 for each violation regarding maintenance and inspection of records. The division must deposit all fines collected into the General Revenue Fund. Under the bill, an order imposing an administrative fine becomes effective 15 days after the date of the order.

Under the bill, it is not clear if the record keeping requirement in s. 569.312(2) and (4), F.S, applies to distributors of tobacco products other than cigarettes, because the record maintenance requirements in s. 569.312, F.S., reference wholesale dealers of cigarettes under part I of ch. 210, F.S., but not distributors of other tobacco products under part II of ch. 210, F.S.

Shipment of unregistered nicotine products into Florida

Section 4 of the bill creates s. 569.313, F.S., to prohibit the unregistered shipment of nicotine products into Florida.

Section 569.313(1), F.S., prohibits nicotine products manufacturers from distributing nicotine products in Florida for which the manufacturer has:

- Been ordered by the FDA to remove the product from the market either temporarily or permanently;
- Not submitted a premarket tobacco product application; or
- Not submitted the certification required for the nicotine product.

Section 569.313(2), F.S., provides that any person who knowingly ships and receives an unregistered nicotine product in violation of s. 569.313, F.S., commits a first degree misdemeanor.[34]

Section 569.313(3), F.S., authorizes the division to impose an administrative fine of up to $5,000 for each violation. The division must deposit all fines collected into the General Revenue Fund. Under the bill, an order imposing an administrative fine becomes effective 15 days after the date of the order.

Wholesale nicotine products dealers

Section 5 of the bill creates a wholesale nicotine products dealer permit which is issued by the division.

Section 561.316(1)(a), F.S., requires each person, firm, association, or corporation that seeks to deal, at wholesale, in nicotine products within this state, or to sell nicotine products or nicotine dispensing devices to any retail nicotine products dealer, must obtain a wholesale nicotine products dealer permit for each place of business or premises at which nicotine products are sold.

Section 561.316(1)(b), F.S., specifies the identifying information that must be provided to the division on the application form, adopted by the rule of the division, for the permit. A permit is required for each place of business. The application must be signed and verified by the owner, if a sole proprietor; or, if the owner is a firm, association, or partnership, by the members or partners; 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. Written evidence of the authority to sign the application must be provided.

Section 561.316(2), F.S., sets forth the qualification for a wholesale nicotine products dealer permit. The permit may only be issued to a person who is 21 years of age or older or to a corporation whose officers are 21 years of age or older. In addition, a permit may not be issued to any to any person, firm, association, or corporation whose permit has been revoked; to any corporation an officer of which has had such permit revoked; or to any person who is or has been an officer of a corporation whose permit has been revoked.

Section 561.316(3), F.S., provides that, once issued, a wholesale nicotine products dealer permit is only valid for the person and place of business for which it was issued.

Section 561.316(4), F.S., exempts wholesale dealers of cigarettes and distributing agents of cigarettes from the requirement to have a wholesale nicotine products dealer permit for each place of business, but such persons must comply with the requirements in ch. 569, F.S. However, distributors of tobacco products other than cigarettes are not specifically exempted from the permit requirements, thus are required to have a wholesale nicotine products dealer permit for each place of business. However, it is not clear that such persons are subject to the records

[34] Section 775.082, F.S., provides that a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S. provides that a misdemeanor of the first degree is punishable by a fine not to exceed $1,000.

maintenance requirements in s. 569.312, F.S., which references the requirements as applicable to wholesale dealers and distributing agent of cigarettes, but does not reference the permittees under part II of ch. 210, F.S.

Wholesale Nicotine Products Dealer Permitholders

Section 6 of the bill creates s. 569.317, F.S., to provide that a wholesale nicotine products dealer permitholder may only purchase and sell nicotine products contained on the division's nicotine products directory. It authorizes the division to suspend or revoke the permit of a wholesale nicotine products dealer if the dealer fails to comply. The division may also impose an administrative fine up to $5,000 for each violation. The division must deposit all fines collected into the General Revenue Fund. Under the bill, an order imposing an administrative fine becomes effective 15 days after the date of the order.

Retail Nicotine Products Dealer Permit

Section 7 of the bill amends s. 569.32, F.S., to provide that permits must be issued annually. The holder of a permit may renew each year. A dealer that does not timely renew must pay a $5 late fee for each month or portion of a month occurring after expiration and before renewal of the permit. The bill forbids the division from granting an exemption from the permit fees for any applicant.

The bill also requires the division to "establish by rule a renewal procedure that, to the greatest extent feasible, combines the application and the permitting procedure for permits with the application and licensing system for alcoholic beverages." The meaning and intent of this directive to the division is unclear.

Section 8 of the bill provides that the place or premises covered by a permit for a wholesale nicotine product dealer is subject to inspection and search without a search warrant by the division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with requirements. Currently, this inspection and search provision only applies to retail nicotine products dealer permitholders.

Section 9 creates s. 569.34(4), F.S., to provide that on or after March 1, 2025, it is unlawful for a person, a firm, an association, or a corporation to deal, at retail, in nicotine products that are not listed on the division's nicotine products directory. Any person who knowingly ships or receives such nicotine products in violation of this prohibition commits a misdemeanor of the second degree.[35]

Section 569.34(5), F.S., provides that on or after January 1, 2025, it is unlawful for a retail nicotine products dealer to purchase nicotine products from a source that is not a wholesale nicotine products dealer permitholder, a wholesale dealer of cigarettes, a distributing agent of cigarettes, or a tobacco products distributor of tobacco products other than cigarettes. The bill

[35] 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.

exempts from this prohibition nicotine products manufacturers who have a permit as a retail nicotine products dealer and sell their own products directly to consumers.
Under the bill, a person who knowingly ships or receives nicotine products in violation of s. 569.34(5), F.S., prohibition commits a misdemeanor of the second degree.

Section 569.34(6), F.S., authorizes the division to suspend or revoke a retail nicotine products permit for a violation of part II of ch. 569, F.S., and to assess an administrative fine of up to $1,000 for each violation.

Seizure and Destruction of Contraband Nicotine Products

Section 10 of the bill creates s, 569.345, F.S., to provide that all nicotine products sold, delivered, possessed, or distributed contrary to the provisions of ch. 569, F.S., are contraband and are subject to seizure and confiscation under the Florida Contraband Forfeiture Act.[36] The bill requires the court having jurisdiction to order the destruction and forfeiture of contraband nicotine products.

Section 569.345(2), F.S., requires that the division keep a full and complete record of:
- The exact kinds, quantities, and forms of such nicotine products or nicotine dispensing devices;
- The persons from whom they were received and to whom they were delivered;
- By whose authority they were received, delivered, and destroyed; and
- The dates of the receipt, disposal, or destruction.

Under the bill, this record must be open to inspection by all persons charged with the enforcement of tobacco and nicotine product laws.

Section 569.345(3), F.S., provides that the cost of seizure, confiscation, and destruction of contraband nicotine products must be borne by the person from whom the contraband nicotine products are seized.

Effective Date

The bill takes effect October 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[36] Sections 932.701-932.7062, F.S., comprise the Florida Contraband Forfeiture Act, which provides for the seizure and civil forfeiture of property related to criminal and non-criminal violations of law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Section 19(a), Article VII of the State Constitution limits the authority of the legislature to enact legislation that imposes a new state tax or fee by requiring such legislation to be approved by a two-thirds vote in each chamber of the legislature. Section 19(e), Article VII of the Florida Constitution provides that a state tax or fee imposed, authorized, or raised must be contained in a separate bill that contains no other subject. SB 1006 provides for the regulation of nicotine products, including permit requirements for whole sale dealers of such products, and also amends s. 569.32, F.S., to provide a new $5 late fee for the retail nicotine products dealer permit. By imposing a late renewal fee on retail nicotine products dealer permitholders and addressing other subjects, the bill may violate the single-subject requirement of s. 19(a), Article VII of the State Constitution.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Manufacturers, distributers, and retail dealers of nicotine products will incur costs related to complying with the registration and permitting requirements in the bill. Additionally, retail dealers of nicotine products would have to pay a $5 dollar late renewal fee for nicotine products retail dealer permit.

C. Government Sector Impact:

The Division of Alcoholic Beverages and Tobacco (division) will incur costs in implementing, administering, and enforcing the requirements in the bill, including the creation of the nicotine products directory. The division has not provided a fiscal analysis for this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill revises the meaning of the term “nicotine product” in s. 569.31, F.S., to provide that “each individual stock keeping unit is considered a separate nicotine product.” The meaning of

this provision is unclear in regards to what types of product or "stock keeping unit" this provision is meant to encompass.

Section 569.311(6)(c), F.S., provides that, if a nicotine products manufacturer seeks review of the decision under ch. 120, F.S., to remove it from the directory, the division must keep the nicotine product on the directory until conclusion of the hearing. The conclusion of a hearing under ch. 120, F.S., does not constitute final agency action under ch. 120 F.S.[37] The bill sponsor may wish to consider amending the bill to provide for removal of a nicotine product from the directory upon the issuance by the division of a final order determining that the nicotine product be removed from the directory.

Section 569.311(10), F.S., authorizes the division to adopt by rule a procedure to allow nicotine products manufacturers to renew certifications without having to resubmit all the information for the certification process. However, the bill does not provide a requirement that the certification of a nicotine product must be renewed after a prescribed period. There are parts of the bill that have unclear language or misuse legal terms. The bill also uses the term "certification" and "registration" interchangeably.

Under the bill, it is not clear if the record keeping requirement in s. 569.312(2) and (4), F.S, applies to distributors of tobacco products other than cigarettes, because the record maintenance requirements in those provisions reference wholesale dealers of cigarettes under part I of ch. 210, F.S., but not distributors of other tobacco products under part II of ch. 210, F.S.

Section 561.316(4), F.S., exempts wholesale dealers of cigarettes and distributing agents of cigarettes from the requirement to have a wholesale nicotine products dealer permit for each place of business, but such persons must comply with the requirements in ch. 569, F.S. However, distributors of tobacco products other than cigarettes are not specifically exempted from the permit requirements, thus are required to have a wholesale nicotine products dealer permit for each place of business. However, it is not clear that such persons are subject to the records maintenance requirements in s. 569.312, F.S., which references the requirements as applicable to wholesale dealers and distributing agents of cigarettes, but does not reference the permittees under part II of ch. 210, F.S.

The bill amends s. 569.32, F.S., relating to the retail nicotine products dealer permit, to require the division to "establish by rule a renewal procedure that, to the greatest extent feasible, combines the application and the permitting procedure for permits with the application and licensing system for alcoholic beverages." The meaning and intent of this directive to the division is unclear.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 569.002, 569.31, 569.32, 569.33, and 569.34.

[37] *See* s. 120.569, F.S.

This bill creates the following sections of the Florida Statutes: 569.311, 569.312, 569.313, 569.316, 569.317, and569.345.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Regulated Industries (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 569.31, Florida Statutes, is reordered and amended to read:

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

(2)~~(1)~~ "Dealer" is synonymous with the term "retail nicotine products dealer."

(3)~~(2)~~ "Division" means the Division of Alcoholic Beverages

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and Tobacco of the Department of Business and Professional Regulation.

(4) "FDA" means the United States Food and Drug Administration.

(5) ~~(3)~~ "Nicotine dispensing device" means any product that employs an electronic, chemical, or mechanical means to produce vapor or aerosol from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product. For purposes of this definition, each individual stock keeping unit is considered a separate nicotine dispensing device.

(6) ~~(4)~~ "Nicotine product" means any product that contains nicotine, including liquid nicotine, which is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means. The term also includes any nicotine dispensing device. The term does not include a:

(a) Tobacco product, as defined in s. 569.002;

(b) Product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act; or

(c) Product that contains incidental nicotine.

(7) "Nicotine product manufacturer" means any person that manufactures nicotine products.

(8) ~~(5)~~ "Permit" is synonymous with the term "retail

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nicotine products dealer permit."

(9)~~(6)~~ "Retail nicotine products dealer" means the holder of a retail nicotine products dealer permit.

(10)~~(7)~~ "Retail nicotine products dealer permit" means a permit issued by the division under s. 569.32.

(11)~~(8)~~ "Self-service merchandising" means the open display of nicotine products, whether packaged or otherwise, for direct retail customer access and handling before purchase without the intervention or assistance of the dealer or the dealer's owner, employee, or agent. An open display of such products and devices includes the use of an open display unit.

(12) "Sell" or "sale" means in addition to its common usage meaning, any sale, transfer, exchange, theft, barter, gift, or offer for sale and distribution, in any manner or by any means whatsoever.

(13) "Timely filed premarket tobacco product application" means an application pursuant to 21 U.S.C. s. 387j for a nicotine dispensing device containing nicotine derived from tobacco marketed in the United States as of August 8, 2016, that was submitted to the FDA on or before September 9, 2020, and accepted for filing.

(14) "Wholesale nicotine products dealer" means the holder of a wholesale nicotine products dealer permit who purchases nicotine dispensing devices or nicotine products from any nicotine product manufacturer.

(15) "Wholesale nicotine products dealer permit" means a permit issued by the division under s. 569.316.

(1)~~(9)~~ "Any person under the age of 21" does not include any person under the age of 21 who:

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(a) Is in the military reserve or on active duty in the Armed Forces of the United States; or

(b) Is acting in his or her scope of lawful employment.

Section 2. Section 569.311, Florida Statutes, is created to read:

569.311 Nicotine dispensing device directory.—

(1) By December 1, 2024, and annually thereafter, every nicotine product manufacturer that sells nicotine dispensing devices to any person for eventual retail sale in this state shall execute and deliver a form, prescribed by the division, under penalty of perjury for each such nicotine dispensing device sold that meets either of the following criteria:

(a) The manufacturer of a nicotine dispensing device has submitted a timely filed premarket tobacco product application for the nicotine dispensing device pursuant to 21 U.S.C. s. 387j to the FDA, and the application either remains under review by the FDA, or has received a marketing denial order that has been and remains stayed by the FDA or court order, rescinded by the FDA, or vacated by a court; or

(b) The nicotine product manufacturer has received a marketing granted order under 21 U.S.C. s. 387j for the nicotine dispensing device from the FDA.

(2) The form prescribed by the division pursuant to subsection (1) must require each nicotine product manufacturer to set forth the name under which the nicotine product manufacturer transacts or intends to transact business, the address of the location of the nicotine product manufacturer’s principal place of business, the nicotine product manufacturer’s e-mail address, and the brand name of the nicotine dispensing

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device, the device's category (e.g., e-liquid, power unit, device, e-liquid cartridge, e-liquid pod, disposable), the device's name, and any flavor utilized with the device that is sold in this state. The division may allow a nicotine product manufacturer to group its nicotine dispensing devices on its certification.

(3) In addition to completing the form prescribed by the division pursuant to subsection (1), each nicotine product manufacturer shall provide a copy of the cover page of the granted marketing order issued by the FDA pursuant to 21 U.S.C. s. 387j for each device; a copy of the acceptance letter issued by the FDA pursuant to 21 U.S.C. s. 387j for a timely filed premarket tobacco product application for each device; or a document issued by the FDA or by a court confirming that the premarket tobacco product application has been received and denied, but the order is not yet in effect for each device.

(4) Any nicotine product manufacturer submitting a certification pursuant to subsection (1) shall notify the division within 30 days after any material change to the certification, including, but not limited to, issuance by the FDA of any of the following:

(a) A denial of a market authorization pursuant to 21 U.S.C. s. 387j;

(b) An order requiring a nicotine product manufacturer to remove a nicotine dispensing device or nicotine product from the market either temporarily or permanently;

(c) Any notice of action taken by the FDA affecting the ability of the nicotine dispensing device to be introduced or delivered in this state for commercial distribution;

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(d) Any change in policy which results in a nicotine dispensing device becoming an FDA enforcement priority; or

(e) Any other change deemed material by the division pursuant to a rule of the division.

(5) The division shall develop and maintain a directory listing all nicotine product manufacturers that sell nicotine dispensing devices in this state and the nicotine dispensing devices certified by those manufacturers with the division which comply with this section. The division shall make the directory available January 1, 2025, on its or the Department of Business and Professional Regulation's website. The division shall update the directory as necessary. The division shall establish a process to provide retailers, distributors, and wholesalers notice of the initial publication of the directory and changes made to the directory in the prior month.

(6) The division shall establish by rule a process to provide a nicotine product manufacturer notice and an opportunity to cure deficiencies before removing the manufacturer or any of its nicotine dispensing devices from the directory.

(a) The division may not remove the nicotine product manufacturer or any of its nicotine dispensing devices from the directory until at least 30 days after the nicotine product manufacturer has been given notice of an intended action. Notice is sufficient and deemed immediately received by a nicotine product manufacturer if the notice is sent either electronically or by facsimile to an e-mail address or facsimile number provided by the nicotine product manufacturer in its most recent certification filed under subsection (1).

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(b) The nicotine product manufacturer has 15 days from the date of service of the notice of the division's intended action to establish that the nicotine product manufacturer or any of its nicotine dispensing devices should be included on the directory.

(c) A determination by the division not to include or to remove from the directory a nicotine product manufacturer or nicotine dispensing device is subject to review under chapter 120. If a nicotine product manufacturer seeks review of removal from the directory, the division must keep the nicotine dispensing device on the directory until conclusion of the hearing.

(d) If a nicotine dispensing device is removed from the directory, each retailer and each wholesaler holding nicotine dispensing devices for eventual sale to a consumer in this state has 30 days from the day such product is removed from the directory to sell the product or remove the product from its inventory. After 30 days following removal from the directory, the product identified in the notice of removal is contraband and subject to s. 569.345.

(7)(a) Except as provided in subsections (b) and (c), beginning March 1, 2025, or on the date that the division first makes the directory available for public inspection on its or the Department of Business and Professional Regulation's website, whichever is later, a nicotine product manufacturer that offers for sale in this state a nicotine dispensing device not listed on the directory is subject to a fine of $1,000 per day for each individual nicotine dispensing device offered for sale in violation of this section until the offending product is

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removed from the market or until the offending product is properly listed on the directory.

(b) Each retailer shall have 60 days from the date that the division first makes the directory available for inspection on its public website to sell products that were in its inventory and not included on the directory or remove those products from inventory.

(c) Each distributor or wholesaler shall have 60 days from the date that the division first makes the directory available for inspection on its public website to remove from inventory those products intended for eventual retail sale to a consumer in this state.

(8) A nicotine product manufacturer that falsely represents any of the information required by subsection (1) or subsection (2) commits a felony of the third degree for each false representation, punishable as provided in s. 775.082 or s. 775.083.

(9) Each retail nicotine products dealer and wholesale nicotine products dealer is subject to unannounced inspections or audit checks by the division for purposes of enforcing this section. The division shall conduct unannounced follow-up compliance checks of all noncompliant retail nicotine products dealers or wholesale nicotine products dealers within 30 days after any violation of this section. The division shall publish the results of all inspections or audits at least annually and shall make the results available to the public on request.

(10) The division may establish by rule a procedure to allow nicotine product manufacturers to renew certifications without having to resubmit all the information required by this

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section.

(11) The failure of a nicotine product manufacturer to provide information or documents required by this section may result in a nicotine dispensing device not being included on the directory or the removal of a nicotine dispensing device from the directory. The division may assess an administrative fine of up to $1,000 for each nicotine dispensing device offered for sale in this state if a nicotine product manufacturer fails to provide notice to the division of a material change to its certification within 30 days after that material change. The division shall deposit all fines collected into the General Revenue Fund. An order imposing an administrative fine becomes effective 15 days after the date of the order.

Section 3. Section 569.312, Florida Statutes, is created to read:

569.312 Maintenance and inspection of nicotine dispensing device records.—

(1) Each nicotine product manufacturer that sells nicotine dispensing devices in this state shall maintain and keep for a period of 3 years, at the address listed on the certification required pursuant to s. 569.311, a complete and accurate record of the number of nicotine dispensing devices sold or delivered to a wholesaler in this state and to whom each nicotine dispensing device was sold on a wholesale basis, including the business name, license number, shipping and business addresses, e-mail address, and telephone number for the person or entity to which each product was sold. Such records may be kept in an electronic or paper format.

(2) Each retail nicotine products dealer; wholesale

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nicotine product dealer; wholesale dealer, as defined in s. 210.01(6); and distributing agent, as defined in s. 210.01(14), shall maintain and keep for a period of 3 years at its principal place of business a complete and accurate record of the quantity of each nicotine dispensing device received, delivered, or sold in this state and to whom each nicotine dispensing device was sold or delivered or from whom the business received each nicotine dispensing device, including the business name, license number, shipping and business addresses, e-mail address, and telephone number for the person or entity to which each product was sold or delivered or from which each product was received. Such records may be kept in an electronic or paper format.

(3) Nicotine product manufacturers that sell nicotine dispensing devices in this state; retail nicotine products dealers; wholesale nicotine products dealers; wholesale dealers, as defined in s. 210.01(6); and distributing agents, as defined in s. 210.01(14), who sell or deliver nicotine dispensing devices directly to consumers are not required to keep and maintain the name, address, e-mail address, and telephone number of consumers who purchase or receive nicotine dispensing devices.

(4) Within 7 calendar days after receiving a request by the division, a nicotine product manufacturer that sells nicotine dispensing devices in this state, including a manufacturer selling nicotine dispensing devices directly to consumers; a retail nicotine products dealer; a wholesale nicotine products dealer; a wholesale dealer, as defined in s. 210.01(6); and a distributing agent, as defined in s. 210.01(14), shall provide to the division or its duly authorized representative copies of

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records related to the nicotine dispensing devices received, delivered, or sold in this state and to whom those nicotine dispensing devices were sold or delivered or from whom they were received.

(5) The division, or a designated employee thereof, may examine the records required to be maintained by each nicotine product manufacturer, retail nicotine products dealer, wholesale nicotine products dealer, wholesale dealer, as defined in s. 210.01(6), and distributing agent, as defined in s. 210.01(14); issue subpoenas to such persons or entities; administer oaths; and take depositions of witnesses within or outside of this state. The civil law of this state regarding enforcing obedience to a subpoena lawfully issued by a judge or other person duly authorized to issue subpoenas under the laws of this state in civil cases applies to a subpoena issued by the division, or any designated employee thereof. The subpoena may be enforced by writ of attachment issued by the division, or any designated employee, for such witness to compel him or her to appear before the division, or any designated employee, and give his or her testimony and to bring and produce such records as may be required for examination. The division, or any designated employee, may bring an action against a witness who refuses to appear or give testimony by citation before the circuit court, which shall punish such witness for contempt as in cases of refusal to obey the orders and process of the circuit court. The division may in such cases pay such attendance and mileage fees as are permitted to be paid to witnesses in civil cases appearing before the circuit court.

(6) The division may assess an administrative fine of up to

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$1,000 for each violation of this section. The division shall deposit all fines collected into the General Revenue Fund. An order imposing an administrative fine becomes effective 15 days after the date of the order.

Section 4. Section 569.313, Florida Statutes, is created to read:

569.313 Shipment of unregistered nicotine dispensing devices sold for retail sale in this state.—

(1) A nicotine product manufacturer may not sell, ship, or otherwise distribute a nicotine dispensing device in this state for eventual retail sale to a consumer in this state for which:

(a) The FDA has entered an order requiring the nicotine product manufacturer to remove the product from the market either temporarily or permanently, which order has not been stayed by the FDA or a court of competent jurisdiction;

(b) The nicotine product manufacturer has not submitted a timely filed premarket tobacco product application for a nicotine dispensing device that remains pending with the FDA; or

(c) The nicotine product manufacturer has not submitted the certification required under this chapter for any of the nicotine dispensing devices intended for eventual retail sale to a consumer in this state.

(2) Any person who knowingly ships or receives nicotine dispensing devices in violation of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) The division may also assess an administrative fine of up to $5,000 for each violation. The division shall deposit all fines collected into the General Revenue Fund. An order imposing

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an administrative fine becomes effective 15 days after the date of the order.

Section 5. Section 569.316, Florida Statutes, is created to read:

569.316 Wholesale nicotine products dealer permits; application; qualifications; renewal; duplicates.—

(1)(a) Each person, firm, association, or corporation that seeks to deal, at wholesale, in nicotine products that will be sold at retail within this state, or to sell nicotine products or nicotine dispensing devices to any retail nicotine products dealer who intends to sell those nicotine products in this state, must obtain a wholesale nicotine products dealer permit for each place of business or premises at which nicotine products are sold.

(b) Application for a wholesale nicotine products dealer permit must be made on a form furnished by the division and must set forth the name under which the applicant transacts or intends to transact business, the address of the location of the applicant’s place of business, the applicant’s e-mail address, and any other information the division requires. If the applicant has or intends to have more than one place of business dealing in nicotine products or nicotine dispensing devices, a separate application must be made for each place of business. If the applicant is a firm or an association, the application must set forth the names, e-mail addresses, and addresses of the persons constituting the firm or association. If the applicant is a corporation, the application must set forth the names, e-mail addresses, and addresses of the principal officers of the corporation. The application must also set forth any other

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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; if the owner is a firm, association, or partnership, by the members or partners thereof; or, if the owner is a corporation, by an executive officer of the corporation or by a person authorized by the corporation to sign the application, together with the written evidence of this authority.

(2)(a) Wholesale nicotine products dealer permits may be issued only to persons who are 21 years of age or older or to corporations the officers of which are 21 years of age or older.

(b) The division may refuse to issue a wholesale nicotine products dealer permit to any person, firm, association, or corporation whose permit has been revoked by any jurisdiction; to any corporation an officer of which has had such permit revoked by any jurisdiction; or to any person who is or has been an officer of a corporation whose permit has been revoked by any jurisdiction. The division must revoke any wholesale nicotine products dealer permit issued to a firm, an association, or a corporation prohibited from obtaining such permit under this chapter.

(3) Upon approval of an application for a wholesale nicotine products dealer permit, the division shall issue to the applicant a wholesale nicotine products dealer permit for the place of business or premises specified in the application. A wholesale nicotine products dealer permit is not assignable and is valid only for the person in whose name the wholesale nicotine products dealer permit is issued and for the place

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designated in the wholesale nicotine products dealer permit. The wholesale nicotine products dealer permit must be conspicuously displayed at all times at the place for which it is issued.

(4) A wholesale dealer, as defined in s. 210.01(6), or a distributing agent, as defined in s. 210.01(14), is not required to have a separate or additional wholesale nicotine products dealer permit to deal, at wholesale, in nicotine dispensing devices within this state. A wholesale dealer, as defined in s. 210.01(6), a distributing agent, as defined in s. 210.01(14), or a tobacco products distributor, as defined in s. 210.25(5), which deals, at wholesale, in nicotine dispensing devices is subject to, and must be in compliance with, this chapter.

Section 6. Section 569.317, Florida Statutes, is created to read:

569.317 Wholesale nicotine products dealer permitholder; administrative penalties.—A wholesale nicotine products dealer permitholder may only purchase and sell for retail sale in this state nicotine dispensing devices contained on the directory created by the division pursuant to s. 569.311. The division may suspend or revoke the wholesale nicotine products dealer permit of a wholesale nicotine products dealer permitholder upon sufficient cause appearing of a violation of this part by a wholesale nicotine products dealer permitholder or its agent or employee. The division may also assess an administrative fine of up to $5,000 for each violation. The division shall deposit all fines collected into the General Revenue Fund. An order imposing an administrative fine becomes effective 15 days after the date of the order. The division may suspend the imposition of a penalty against a wholesale nicotine products dealer

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permitholder, conditioned upon compliance with terms the division considers appropriate.

Section 7. Section 569.32, Florida Statutes, is amended to read:

569.32 Retail nicotine products dealer permits; application; qualifications; renewal; duplicates.—

(1)(a) Each person, firm, association, or corporation that seeks to deal, at retail, in nicotine products or nicotine dispensing devices within this ~~the~~ state, or to allow a nicotine products vending machine to be located on its premises in this ~~the~~ state, must obtain a retail nicotine products dealer permit for each place of business or premises at which nicotine products or nicotine dispensing devices 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 or nicotine dispensing devices are sold both over the counter and through a vending machine at a single location, the dealer need obtain only one permit for that location.

(b) Application for a permit must be made on a form furnished by the division and must set forth the name under which the applicant transacts or intends to transact business, the address of the location of the applicant’s place of business within this ~~the~~ state, and any other information the division requires. If the applicant has or intends to have more than one place of business dealing in nicotine products or nicotine dispensing devices within this ~~the~~ state, a separate application

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must be made for each place of business. If the applicant is a firm or an association, the application must set forth the names and addresses of the persons constituting the firm or association; if the applicant is a corporation, the application must set forth the names and addresses of the principal officers of the corporation. The application must also set forth any other information prescribed by the division for the purpose of identifying the applicant firm, association, or corporation. The application must be signed and verified by oath or affirmation by the owner, if a sole proprietor; or, if the owner is a firm, association, or partnership, by the members or partners thereof; or, if the owner is a corporation, by an executive officer of the corporation or by a person authorized by the corporation to sign the application, together with the written evidence of this authority.

(c) Permits must be issued annually.

(d) The holder of a permit may renew the permit each year. A dealer that does not timely renew its permit must pay a late fee of $5 for each month or portion of a month occurring after expiration, and before renewal, of the dealer’s permit. The division shall establish by rule a renewal procedure that, to the greatest extent feasible, combines the application and permitting procedure for permits with the application and licensing system for alcoholic beverages.

(e) The division may not grant an exemption from the permit fees prescribed in this subsection for any applicant.

(2)(a) Permits may be issued only to persons who are 21 years of age or older or to corporations the officers of which are 21 years of age or older.

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(b) The division may refuse to issue a permit to any person, firm, association, or corporation the permit of which has been revoked by any jurisdiction; to any corporation an officer of which has had his or her permit revoked by any jurisdiction; or to any person who is or has been an officer of a corporation the permit of which has been revoked by any jurisdiction. Any permit issued to a firm, an association, or a corporation prohibited from obtaining a permit under this chapter must ~~shall~~ be revoked by the division.

(3) Upon approval of an application for a permit, the division shall issue to the applicant a permit for the place of business or premises specified in the application. A permit is not assignable and is valid only for the person in whose name the permit is issued and for the place designated in the permit. The permit must ~~shall~~ be conspicuously displayed at all times at the place for which issued.

Section 8. Section 569.33, Florida Statutes, is amended to read:

569.33 Consent to inspection and search without warrant.—An applicant for a retail nicotine products dealer permit or a wholesale nicotine products dealer permit, by accepting the permit when issued, agrees that the place or premises covered by the permit is subject to inspection and search without a search warrant by the division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with this part.

Section 9. Section 569.34, Florida Statutes, is amended to read:

569.34 Operating without a retail nicotine products dealer

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permit; penalty.—

(1) It is unlawful for a person, a firm, an association, or a corporation to deal, at retail, in nicotine products, in any manner, or to allow a nicotine products vending machine to be located on its premises, without having a retail nicotine product dealer permit as required by s. 569.32. A person who violates this subsection ~~section~~ commits a noncriminal violation, punishable by a fine of not more than $500.

(2) A retail tobacco products dealer, as defined in s. 569.002(4), is not required to have a separate or additional retail nicotine products dealer permit to deal, at retail, in nicotine products within this ~~the~~ state, or allow a nicotine products vending machine to be located on its premises in this ~~the~~ state. Any retail tobacco products dealer that deals, at retail, in nicotine products or allows a nicotine products vending machine to be located on its premises in this ~~the~~ state, is subject to, and must be in compliance with, this part.

(3) Any person who violates subsection (1) must ~~this section shall~~ be cited for such infraction and must ~~shall~~ be cited to appear before the county court. The citation may indicate the time, date, and location of the scheduled hearing and must indicate that the penalty for a noncriminal violation is a fine of not more than $500.

(a) A person cited for a violation of subsection (1) ~~for an infraction under this section~~ may:

1. Post a $500 bond; or

2. Sign and accept the citation indicating a promise to appear.

(b) A person cited for violating this section may:

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1. Pay the fine, either by mail or in person, within 10 days after receiving the citation; or

2. If the person has posted bond, forfeit the bond by not appearing at the scheduled hearing.

(c) If the person pays the fine or forfeits bond, the person is deemed to have admitted violating this section and to have waived the right to a hearing on the issue of commission of the violation. Such admission may not be used as evidence in any other proceeding.

(d) The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven beyond a reasonable doubt, the court may impose a civil penalty in an amount that may not exceed $500.

(e) If a person is found by the court to have committed the infraction, that person may appeal that finding to the circuit court.

(4) On or after March 1, 2025, it is unlawful for a person, a firm, an association, or a corporation in this state to deal, at retail, in nicotine dispensing devices that are not listed on the directory created pursuant to s. 569.311. Any person who knowingly ships or receives nicotine dispensing devices in violation of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) On or after January 1, 2025, it is unlawful for a retail nicotine products dealer in this state, other than a nicotine product manufacturer that also is permitted as a retail nicotine products dealer in this state and is selling its own products directly to consumers, to buy nicotine dispensing

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devices from a wholesaler, manufacturer, or other source that is not a wholesale nicotine products dealer permitholder, a wholesale dealer, as defined in s. 210.01(6), a distributing agent, as defined in s. 210.01(14), or a tobacco products distributor, as defined in s. 210.25(5). Any person who knowingly ships or receives nicotine dispensing devices in violation of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) The division may suspend or revoke the permit of a retail nicotine products dealer permitholder upon sufficient cause appearing of a violation of this part by a retail nicotine products dealer permitholder, or its agent or employee. The division may also assess an administrative fine of up to $1,000 for each violation. The division shall deposit all fines collected into the General Revenue Fund. An order imposing an administrative fine becomes effective 15 days after the date of the order.

Section 10. Section 569.345, Florida Statutes, is created to read:

569.345 Seizure and destruction of contraband nicotine dispensing devices.—All nicotine dispensing devices sold, delivered, possessed, or distributed contrary to any provision of this chapter are declared to be contraband, are subject to seizure and confiscation under the Florida Contraband Forfeiture Act by any person whose duty it is to enforce the provisions of this chapter, and must be disposed of as follows:

(1) A court having jurisdiction shall order such nicotine dispensing devices forfeited and destroyed. A record of the place where such nicotine dispensing devices were seized, the

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kinds and quantities of nicotine dispensing devices destroyed, and the time, place, and manner of destruction must be kept, and a return under oath reporting the destruction must be made to the court by the officer who destroys them.

(2) The division shall keep a full and complete record of all nicotine dispensing devices showing:

(a) The exact kinds, quantities, and forms of such nicotine dispensing devices;

(b) The persons from whom they were received and to whom they were delivered;

(c) By whose authority they were received, delivered, and destroyed; and

(d) The dates of the receipt, disposal, or destruction, which record must be open to inspection by all persons charged with the enforcement of tobacco and nicotine product laws.

(3) The cost of seizure, confiscation, and destruction of contraband nicotine dispensing devices is borne by the person from whom such products are seized.

Section 11. Section 569.346, Florida Statutes, is created to read:

569.346 Agent for service of process.—

(1) Any nonresident manufacturer of nicotine dispensing devices that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to being included on the directory created in this chapter, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the

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enforcement of this chapter, may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the manufacturer. The manufacturer shall provide the name, address, telephone number, and proof of the appointment and availability of such agent to the division.

(2) The manufacturer shall provide notice to the division 30 calendar days before termination of the authority of an agent and shall further provide proof to the satisfaction of the division of the appointment of a new agent no less than 5 calendar days before the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the manufacturer shall notify the division of the termination within 5 calendar days and shall include proof to the satisfaction of the division of the appointment of a new agent.

(3) Any manufacturer whose nicotine dispensing devices are sold in this state who has not appointed and engaged the services of an agent as required by this section shall be deemed to have appointed the Secretary of State as its agent for service of process. The appointment of the Secretary of State as agent shall not satisfy the condition precedent required in subsection (1) of this subsection to be included or retained on the directory.

Section 12. Subsections (3) and (4) of section 569.002, Florida Statutes, are amended to read:

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

(3) "Nicotine product" has the same meaning as provided in s. 569.31 ~~s. 569.31(4)~~.

(4) "Nicotine dispensing device" has the same meaning as

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provided in s. 569.31 ~~s. 569.31(3)~~.

Section 13. This act shall take effect October 1, 2024.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to nicotine products and dispensing devices; reordering and amending s. 569.31, F.S.; revising and defining terms for purposes of part II of ch. 569, F.S.; creating s. 569.311, F.S.; requiring nicotine product manufacturers who sell nicotine dispensing products in this state to execute and deliver a form, under penalty of perjury, to the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation for each dispensing device sold within this state which meets certain criteria; specifying requirements for the form prescribed by the division; requiring nicotine product manufacturers to submit certain additional materials when submitting the form to the division; requiring a manufacturer to notify the division of certain events; requiring the division to develop and maintain a directory listing certified nicotine product manufacturers and certified nicotine dispensing devices by a specified date; specifying requirements for the directory; requiring the division to establish rules to provide notice to a nicotine

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product manufacturer before removal of the manufacturer or any of its nicotine dispensing devices from the directory; providing for administrative review of action by the division regarding the directory; providing penalties for certain violations by manufacturers; subjecting retail and wholesale nicotine products dealers to inspections or audits to ensure compliance; requiring the division to publish findings of such inspections and audits and make them available to the public; authorizing the division to adopt certain procedures by rule; authorizing the division to take certain actions against nicotine product manufacturers who fail to provide certain documents or information; requiring all fines to be deposited into the General Revenue Fund; creating s. 569.312, F.S.; requiring specified manufacturers and dealers of nicotine dispensing devices to maintain certain records for a specified timeframe; requiring such manufacturers and dealers to timely comply with division requests to produce records; authorizing the division to examine such records for specified purposes; providing for enforcement; authorizing the division to assess administrative fines for noncompliance and requiring all fines to be deposited into the General Revenue Fund; creating s. 569.313, F.S.; prohibiting the sale, shipment, or distributing of certain nicotine dispensing devices from being sold for retail sale in this state; providing a criminal penalty; authorizing the division to assess fines and

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requiring all fines to be deposited into the General Revenue Fund; creating s. 569.316, F.S.; requiring persons or entities that seek to deal or sell certain nicotine products to retail dealers to obtain a wholesale nicotine products dealer permit; specifying requirements and limitations regarding the issuance of such permits; specifying conditions under which the division may refuse to issue a permit; providing requirements and limitations for permitholders; providing that a wholesale dealer or a distributing agent do not need separate or additional wholesale nicotine products permit in this state; creating s. 569.317, F.S.; requiring wholesale nicotine products dealer permitholders to purchase and sell for retail sale only nicotine dispensing devices listed in the division's directory; authorizing the division to suspend or revoke a permit if a violation is deemed to have occurred; authorizing the division to assess administrative penalties for violations and requiring all fines to be deposited into the General Revenue Fund; amending s. 569.32, F.S.; requiring that retail nicotine products dealer permits be issued annually; providing procedures for the renewal of permits; requiring the division to levy a delinquent fee under certain circumstances; requiring the division to adopt by rule a certain procedure for the submittal of applications; prohibiting the division from granting exemptions from permit fees; making technical changes; amending s. 569.33, F.S.; providing that holders of a

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wholesale nicotine products dealer permit must consent to certain inspections and searches without a warrant; amending s. 569.34, F.S.; providing criminal penalties for the unlawful sale or dealing of unlisted nicotine dispensing devices; providing criminal penalties for the unauthorized purchase of certain nicotine dispensing devices; authorizing the division to suspend or revoke a permit of a permitholder upon sufficient cause of a violation of part II of ch. 569, F.S.; authorizing the division to assess an administrative penalty for violations and requiring all fines to be deposited into the General Revenue Fund; making technical changes; creating s. 569.345, F.S.; providing for the seizure and destruction of unlawful nicotine dispensing devices in accordance with the Florida Contraband Forfeiture Act; requiring a court with jurisdiction to take certain action; requiring the division to maintain certain records; requiring that costs be borne by the person who held the seized products; creating s. 569.346, F.S.; requiring certain manufacturers of nicotine dispensing devices to appoint an agent for certain purposes; requiring such manufacturers to provide certain notice; appointing the Secretary of State as the agent to manufacturers who have not appointed an agent; amending s. 569.002, F.S.; conforming cross-references to changes made by the act; providing an effective date.

By Senator Perry

9-00873A-24 20241006__

A bill to be entitled

An act relating to nicotine products; reordering and amending s. 569.31, F.S.; revising and defining terms for purposes of part II of ch. 569, F.S.; creating s. 569.311, F.S.; requiring nicotine products manufacturers to execute and deliver a form, under penalty of perjury, to the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation for each product sold within this state which meets certain criteria; specifying requirements for the form prescribed by the division; requiring manufacturers to submit certain additional materials when submitting the form to the division; requiring a manufacturer to notify the division of certain events; requiring the division to develop and maintain a directory listing certified nicotine products manufacturers and certified nicotine products by a specified date; specifying requirements for the directory; providing procedures and notice to manufacturers for removal of the manufacturer or any of its products from the directory; providing for administrative review of action by the division regarding the directory; requiring manufacturers to take certain actions upon a product's removal from the directory; providing penalties for certain violations by manufacturers; subjecting retail and wholesale nicotine products dealers to inspections or audits to ensure compliance; requiring the division to publish findings of such inspections and audits and make them

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available to the public; authorizing the division to adopt certain procedures by rule; creating s. 569.312, F.S.; requiring specified manufacturers and dealers of nicotine products to maintain certain records for a specified timeframe; requiring such manufacturers and dealers to timely comply with division requests to produce records; authorizing the division to examine such records for specified purposes; providing for enforcement; authorizing the division to assess administrative fines for noncompliance and to deposit them into the General Revenue Fund; creating s. 569.313, F.S.; prohibiting the sale, shipment, or distributing of certain nicotine products into this state; providing a criminal penalty; authorizing the division to assess fines and deposit them into the General Revenue Fund; creating s. 569.316, F.S.; requiring persons or entities that seek to deal or sell certain nicotine products or dispensing devices to retail dealers to obtain a wholesale nicotine products dealer permit; specifying requirements and limitations regarding the issuance of such permits; specifying conditions under which the division may refuse to issue a permit; providing requirements and limitations for permitholders; providing construction; creating s. 569.317, F.S.; requiring wholesale nicotine products dealer permitholders to sell only nicotine products listed in the division's directory; authorizing the division to revoke or suspend a permit if a violation is deemed to have occurred; authorizing

the division to assess administrative penalties for violations and to deposit them into the General Revenue Fund; amending s. 569.32, F.S.; requiring that retail nicotine products dealer permits be issued annually; providing procedures for the renewal of permits; requiring the division to levy a delinquent fee under certain circumstances; requiring the division to adopt by rule a certain procedure for the submittal of applications; prohibiting the division from granting exemptions from permit fees; making technical changes; amending s. 569.33, F.S.; providing that holders of a wholesale nicotine products dealer permit must consent to certain inspections and searches without a warrant; amending s. 569.34, F.S.; providing criminal penalties for the unlawful sale or dealing of unlisted nicotine products; providing criminal penalties for the unauthorized purchase of certain nicotine products; authorizing the division to suspend or revoke a permit of a permitholder upon sufficient cause of a violation of part II of ch. 569, F.S.; authorizing the division to assess an administrative penalty for violations and deposit them into the General Revenue Fund; making technical changes; creating s. 569.345, F.S.; providing for the seizure and destruction of unlawful nicotine products in accordance with the Florida Contraband Forfeiture Act; requiring a court with jurisdiction to take certain action; requiring the division to maintain certain records; requiring that costs be borne by the

person who held the seized products; amending s. 569.002, F.S.; conforming cross-references to changes made by the act; providing an effective date.

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

Section 1. Section 569.31, Florida Statutes, is reordered and amended to read:

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

(2)~~(1)~~ "Dealer" is synonymous with the term "retail nicotine products dealer."

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

(4) "FDA" means the United States Food and Drug Administration.

(5)~~(3)~~ "Nicotine dispensing device" means any product that employs an electronic, chemical, or mechanical means to produce vapor or aerosol from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.

(6)~~(4)~~ "Nicotine product" means any product that contains nicotine, including liquid nicotine, which is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or

ingested by any means. The term also includes any nicotine dispensing device. For purposes of this definition, each individual stock keeping unit is considered a separate nicotine product. The term does not include a:

(a) Tobacco product, as defined in s. 569.002;

(b) Product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act; or

(c) Product that contains incidental nicotine.

(7) "Nicotine products manufacturer" means any person that manufactures nicotine products.

(8) ~~(5)~~ "Permit" is synonymous with the term "retail nicotine products dealer permit."

(9) ~~(6)~~ "Retail nicotine products dealer" means the holder of a retail nicotine products dealer permit.

(10) ~~(7)~~ "Retail nicotine products dealer permit" means a permit issued by the division under s. 569.32.

(11) ~~(8)~~ "Self-service merchandising" means the open display of nicotine products, whether packaged or otherwise, for direct retail customer access and handling before purchase without the intervention or assistance of the dealer or the dealer's owner, employee, or agent. An open display of such products and devices includes the use of an open display unit.

(12) "Wholesale nicotine products dealer" means the holder of a wholesale nicotine products dealer permit who purchases nicotine dispensing devices or nicotine products from any nicotine products manufacturer.

(13) "Wholesale nicotine products dealer permit" means a permit issued by the division under s. 569.316.

(1) ~~(9)~~ "Any person under the age of 21" does not include any person under the age of 21 who:

(a) Is in the military reserve or on active duty in the Armed Forces of the United States; or

(b) Is acting in his or her scope of lawful employment.

Section 2. Section 569.311, Florida Statutes, is created to read:

569.311 Nicotine product directory.—

(1) Every nicotine products manufacturer that sells nicotine products in this state shall execute and deliver a form, prescribed by the division, under penalty of perjury for each nicotine product sold that meets either of the following criteria:

(a) A nicotine product which contains nicotine derived from a tobacco source and was on the market in the United States as of August 8, 2016, and the manufacturer has applied for a marketing order pursuant to 21 U.S.C. s. 387j for the nicotine product by submitting a premarket tobacco product application on or before September 9, 2020, to the FDA, or the nicotine product contains nicotine derived from a non-tobacco source and was on the market in the United States as of April 14, 2022, and the manufacturer has applied for a marketing order pursuant to 21 U.S.C. s. 387j for the nicotine product containing nicotine derived from a non-tobacco source by submitting a premarket tobacco product application on or before May 14, 2022, and:

1. The premarket tobacco product application for the nicotine product remains under review by the FDA, and neither a marketing authorization nor a marketing denial order has been issued; or

2. The FDA issued a marketing denial order for the nicotine product, but the FDA or a federal court issued a stay or an injunction during the pendency of the manufacturer's appeal of the marketing denial order or either the order has been appealed to the FDA or a challenge to the order has been filed with a federal court and the appeal or challenge is still pending.

(b) The nicotine products manufacturer has received a marketing authorization or other authorization under 21 U.S.C. s. 387j for the nicotine product from the FDA.

(2) The form prescribed by the division pursuant to subsection (1) must require each nicotine products manufacturer to set forth the name under which the nicotine products manufacturer transacts or intends to transact business, the address of the location of the nicotine products manufacturer's principal place of business, the nicotine products manufacturer's e-mail address, and any other information the division requires. The division may allow a nicotine products manufacturer to group its nicotine products on its certification.

(3) In addition to completing the form prescribed by the division pursuant to subsection (1), each nicotine products manufacturer shall provide a copy of the cover page of the premarket tobacco application with evidence of the receipt of the application by the FDA, or a copy of the cover page of the marketing authorization or other authorization issued pursuant to 21 U.S.C. s. 387j, whichever is applicable.

(4) Any nicotine products manufacturer submitting a certification pursuant to subsection (1) shall notify the division within 30 days after any material change to the

certification, including, but not limited to, issuance by the FDA of any of the following:

(a) A market authorization or authorization pursuant to 21 U.S.C. s. 387j;

(b) An order requiring a nicotine products manufacturer to remove a product from the market either temporarily or permanently;

(c) Any notice of action taken by the FDA affecting the ability of the nicotine product to be introduced or delivered in this state for commercial distribution;

(d) Any change in policy which results in a nicotine product no longer being exempt from federal enforcement oversight; or

(e) Any other change deemed material by the division pursuant to a rule of the division.

(5) The division shall develop and maintain a directory listing all nicotine products manufacturers and the nicotine products certified with the division which comply with this section. The division shall make the directory available January 1, 2025, on its or the Department of Business and Professional Regulation's website. The division shall update the directory as necessary.

(6) The division shall provide a nicotine products manufacturer notice and an opportunity to cure deficiencies before removing the manufacturer or its nicotine product from the directory.

(a) The division may not remove the nicotine products manufacturer or its nicotine product from the directory until at least 15 days after the nicotine products manufacturer has been

given notice of an intended action. Notice is sufficient and deemed immediately received by a nicotine products manufacturer if the notice is sent either electronically or by facsimile to an e-mail address or facsimile number provided by the nicotine products manufacturer in its most recent certification filed under subsection (1).

(b) The nicotine products manufacturer has 15 days from the date of service of the notice of the division's intended action to establish that the nicotine products manufacturer or its nicotine product should be included in the directory.

(c) A determination by the division not to include or to remove from the directory a nicotine products manufacturer or nicotine product is subject to review under chapter 120. If a nicotine products manufacturer seeks review of removal from the directory, the division must keep the nicotine product on the directory until conclusion of the hearing.

(d) If a nicotine product is removed from the directory, each retailer and wholesaler has 21 days from the day such product is removed from the directory to remove the product from its inventory and return the product to the manufacturer. Each nicotine products manufacturer shall provide to the division information regarding the return of such product and how the returned product was disposed of within 21 days after receipt. After 21 days following removal from the directory, the product identified in the notice of removal is contraband and subject to s. 569.345.

(7) Beginning March 1, 2025, or on the date that the division first makes the directory available for public inspection on its or the Department of Business and Professional

Regulation's website, whichever is later, a nicotine products manufacturer that offers for sale a nicotine product not listed on the directory is subject to a fine of $1,000 per day for each nicotine product offered for sale in violation of this section until the offending product is removed from the market or until the offending product is properly listed on the directory.

(8) A nicotine products manufacturer that falsely represents any of the information required by subsection (1) or subsection (2) commits a felony of the third degree for each false representation, punishable as provided in s. 775.082 or s. 775.083.

(9) Each retail nicotine products dealer and wholesale nicotine products dealer is subject to unannounced inspections or audit checks by the division for purposes of enforcing this section. The division shall conduct unannounced follow-up compliance checks of all noncompliant retail nicotine products dealers or wholesale nicotine products dealers within 30 days after any violation of this section. The division shall publish the results of all inspections or audits at least annually and shall make the results available to the public on request.

(10) The division may establish by rule a procedure to allow nicotine products manufacturers to renew certifications without having to resubmit all the information required by this section.

Section 3. Section 569.312, Florida Statutes, is created to read:

569.312 Maintenance and inspection of nicotine product records.—

(1) Each nicotine products manufacturer shall maintain and

keep for a period of 3 years, at the address listed on the certification required pursuant to s. 569.311, a complete and accurate record of the amount of each nicotine product sold or delivered to a wholesaler in this state and to whom each nicotine product was sold on a wholesale basis, including the business name, license number, shipping and business addresses, e-mail address, and telephone number for the person or entity to which each product was sold. Such records may be kept in an electronic or paper format.

(2) Each retail nicotine products dealer; wholesale nicotine products dealer; wholesale dealer, as defined in s. 210.01(6); and distributing agent, as defined in s. 210.01(14), shall maintain and keep for a period of 3 years at its principal place of business a complete and accurate record of the amount of each nicotine product received, delivered, or sold in this state and to whom each nicotine product was sold or delivered or from whom they received each nicotine product, including the business name, license number, shipping and business addresses, e-mail address, and telephone number for the person or entity to which each product was sold or delivered or from which each product was received. Such records may be kept in an electronic or paper format.

(3) Nicotine products manufacturers; retail nicotine products dealers; wholesale nicotine products dealers; wholesale dealers, as defined in s. 210.01(6); and distributing agents, as defined in s. 210.01(14), who sell or deliver nicotine products directly to consumers are not required to keep and maintain the name, address, e-mail address, and telephone number of consumers who purchase or receive nicotine products.

(4) Upon request by the division, a nicotine products manufacturer, including a nicotine products manufacturer selling nicotine products directly to consumers; a retail nicotine products dealer; a wholesale nicotine products dealer; a wholesale dealer, as defined in s. 210.01(6); and a distributing agent, as defined in s. 210.01(14), shall timely provide to the division or its duly authorized representative copies of records related to the nicotine products received, delivered, or sold in this state and to whom those nicotine products were sold or delivered or from whom they were received.

(5) The division, or a designated employee thereof, may examine the records required to be maintained by each nicotine products manufacturer, retail nicotine products dealer, wholesale nicotine products dealer, wholesale dealer, as defined in s. 210.01(6), and distributing agent, as defined in s. 210.01(14); issue subpoenas to such persons or entities; administer oaths; and take depositions of witnesses within or outside of this state. The civil law of this state regarding enforcing obedience to a subpoena lawfully issued by a judge or other person duly authorized to issue subpoenas under the laws of this state in civil cases applies to a subpoena issued by the division, or any designated employee thereof. The subpoena may be enforced by writ of attachment issued by the division, or any designated employee, for such witness to compel him or her to attend before the division, or any designated employee, and give his or her testimony and to bring and produce such records as may be required for examination. The division, or any designated employee, may bring an action against a witness who refuses to appear or give testimony by citation before the circuit court

which shall punish such witness for contempt as in cases of refusal to obey the orders and process of the circuit court. The division may in such cases pay such attendance and mileage fees as are permitted to be paid to witnesses in civil cases appearing before the circuit court.

(6) The division may assess an administrative fine of up to $1,000 for each violation of this section. The division shall deposit all fines collected into the General Revenue Fund. An order imposing an administrative fine becomes effective 15 days after the date of the order.

Section 4. Section 569.313, Florida Statutes, is created to read:

569.313 Shipment of unregistered nicotine products into this state.—

(1) A nicotine products manufacturer may not sell, ship, or otherwise distribute a nicotine product in this state for which:

(a) The FDA has entered an order requiring the nicotine products manufacturer to remove the product from the market either temporarily or permanently, which order has not been stayed by the FDA or a court of competent jurisdiction;

(b) The nicotine products manufacturer has not submitted a premarket tobacco product application; or

(c) The nicotine products manufacturer has not submitted the certification required under this chapter for the nicotine product.

(2) Any person who knowingly ships or receives nicotine products in violation of this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) The division may also assess an administrative fine of up to $5,000 for each violation. The division shall deposit all fines collected into the General Revenue Fund. An order imposing an administrative fine becomes effective 15 days after the date of the order.

Section 5. Section 569.316, Florida Statutes, is created to read:

569.316 Wholesale nicotine products dealer permits; application; qualifications; renewal; duplicates.—

(1)(a) Each person, firm, association, or corporation that seeks to deal, at wholesale, in nicotine products within this state, or to sell nicotine products or nicotine dispensing devices to any retail nicotine products dealer, must obtain a wholesale nicotine products dealer permit for each place of business or premises at which nicotine products are sold.

(b) Application for a wholesale nicotine products dealer permit must be made on a form furnished by the division and must set forth the name under which the applicant transacts or intends to transact business, the address of the location of the applicant's place of business, the applicant's e-mail address, and any other information the division requires. If the applicant has or intends to have more than one place of business dealing in nicotine products, a separate application must be made for each place of business. If the applicant is a firm or an association, the application must set forth the names, e-mail addresses, and addresses of the persons constituting the firm or association. If the applicant is a corporation, the application must set forth the names, e-mail addresses, and addresses of the principal officers of the corporation. The application must also

set forth any other information prescribed by the division for the purpose of identifying the applicant firm, association, or corporation. The application must be signed and verified by oath or affirmation by the owner, if a sole proprietor; or, if the owner is a firm, association, or partnership, by the members or partners thereof; or, if the owner is a corporation, by an executive officer of the corporation or by a person authorized by the corporation to sign the application, together with the written evidence of this authority.

(2)(a) Wholesale nicotine products dealer permits may be issued only to persons who are 21 years of age or older or to corporations the officers of which are 21 years of age or older.

(b) The division may refuse to issue a wholesale nicotine products dealer permit to any person, firm, association, or corporation whose permit has been revoked; to any corporation an officer of which has had such permit revoked; or to any person who is or has been an officer of a corporation whose permit has been revoked. The division must revoke any wholesale nicotine products dealer permit issued to a firm, an association, or a corporation prohibited from obtaining such permit under this chapter.

(3) Upon approval of an application for a wholesale nicotine products dealer permit, the division shall issue to the applicant a wholesale nicotine products dealer permit for the place of business or premises specified in the application. A wholesale nicotine products dealer permit is not assignable and is valid only for the person in whose name the wholesale nicotine products dealer permit is issued and for the place designated in the wholesale nicotine products dealer permit. The

wholesale nicotine products dealer permit must be conspicuously displayed at all times at the place for which it is issued.

(4) A wholesale dealer, as defined in s. 210.01(6), or a distributing agent, as defined in s. 210.01(14), is not required to have a separate or additional wholesale nicotine products dealer permit to deal, at wholesale, in nicotine products within this state. A wholesale dealer, as defined in s. 210.01(6), a distributing agent, as defined in s. 210.01(14), or a tobacco products distributor, as defined in s. 210.25(5), which deals, at wholesale, in nicotine products is subject to, and must be in compliance with, this chapter.

Section 6. Section 569.317, Florida Statutes, is created to read:

569.317 Wholesale nicotine products dealer permitholder; administrative penalties.—A wholesale nicotine products dealer permitholder may only purchase and sell nicotine products contained on the directory created by the division pursuant to s. 569.311. The division may suspend or revoke the wholesale nicotine products dealer permit of a wholesale nicotine products dealer permitholder upon sufficient cause appearing of a violation of this part by a wholesale nicotine products dealer permitholder or its agent or employee. The division may also assess an administrative fine of up to $5,000 for each violation. The division shall deposit all fines collected into the General Revenue Fund. An order imposing an administrative fine becomes effective 15 days after the date of the order. The division may suspend the imposition of a penalty against a wholesale nicotine products dealer permitholder, conditioned upon compliance with terms the division considers appropriate.

Section 7. Section 569.32, Florida Statutes, is amended to read:

569.32 Retail nicotine products dealer permits; application; qualifications; renewal; duplicates.—

(1)(a) Each person, firm, association, or corporation that seeks to deal, at retail, in nicotine products within this ~~the~~ state, or to allow a nicotine products vending machine to be located on its premises in this ~~the~~ state, must obtain a retail nicotine products dealer permit for each place of business or premises at which nicotine products are sold. Each dealer owning, leasing, furnishing, or operating vending machines through which nicotine products are sold must obtain a permit for each machine and shall post the permit in a conspicuous place on or near the machine; however, if the dealer has more than one vending machine at a single location or if nicotine products are sold both over the counter and through a vending machine at a single location, the dealer need obtain only one permit for that location.

(b) Application for a permit must be made on a form furnished by the division and must set forth the name under which the applicant transacts or intends to transact business, the address of the location of the applicant's place of business within this ~~the~~ state, and any other information the division requires. If the applicant has or intends to have more than one place of business dealing in nicotine products within this ~~the~~ state, a separate application must be made for each place of business. If the applicant is a firm or an association, the application must set forth the names and addresses of the persons constituting the firm or association; if the applicant

is a corporation, the application must set forth the names and addresses of the principal officers of the corporation. The application must also set forth any other information prescribed by the division for the purpose of identifying the applicant firm, association, or corporation. The application must be signed and verified by oath or affirmation by the owner, if a sole proprietor; or, if the owner is a firm, association, or partnership, by the members or partners thereof; or, if the owner is a corporation, by an executive officer of the corporation or by a person authorized by the corporation to sign the application, together with the written evidence of this authority.

(c) Permits must be issued annually.

(d) The holder of a permit may renew the permit each year. A dealer that does not timely renew its permit must pay a late fee of $5 for each month or portion of a month occurring after expiration, and before renewal, of the dealer's permit. The division shall establish by rule a renewal procedure that, to the greatest extent feasible, combines the application and permitting procedure for permits with the application and licensing system for alcoholic beverages.

(e) The division may not grant an exemption from the permit fees prescribed in this subsection for any applicant.

(2)(a) Permits may be issued only to persons who are 21 years of age or older or to corporations the officers of which are 21 years of age or older.

(b) The division may refuse to issue a permit to any person, firm, association, or corporation the permit of which has been revoked; to any corporation an officer of which has had

his or her permit revoked; or to any person who is or has been an officer of a corporation the permit of which has been revoked. Any permit issued to a firm, an association, or a corporation prohibited from obtaining a permit under this chapter must ~~shall~~ be revoked by the division.

(3) Upon approval of an application for a permit, the division shall issue to the applicant a permit for the place of business or premises specified in the application. A permit is not assignable and is valid only for the person in whose name the permit is issued and for the place designated in the permit. The permit must ~~shall~~ be conspicuously displayed at all times at the place for which issued.

Section 8. Section 569.33, Florida Statutes, is amended to read:

569.33 Consent to inspection and search without warrant.—An applicant for a retail nicotine products dealer permit or a wholesale nicotine products dealer permit, by accepting the permit when issued, agrees that the place or premises covered by the permit is subject to inspection and search without a search warrant by the division or its authorized assistants, and by sheriffs, deputy sheriffs, or police officers, to determine compliance with this part.

Section 9. Section 569.34, Florida Statutes, is amended to read:

569.34 Operating without a retail nicotine products dealer permit; penalty.—

(1) It is unlawful for a person, a firm, an association, or a corporation to deal, at retail, in nicotine products, in any manner, or to allow a nicotine products vending machine to be

located on its premises, without having a retail nicotine product dealer permit as required by s. 569.32. A person who violates this subsection ~~section~~ commits a noncriminal violation, punishable by a fine of not more than $500.

(2) A retail tobacco products dealer, as defined in s. 569.002(4), is not required to have a separate or additional retail nicotine products dealer permit to deal, at retail, in nicotine products within this ~~the~~ state, or allow a nicotine products vending machine to be located on its premises in this ~~the~~ state. Any retail tobacco products dealer that deals, at retail, in nicotine products or allows a nicotine products vending machine to be located on its premises in this ~~the~~ state, is subject to, and must be in compliance with, this part.

(3) Any person who violates subsection (1) must ~~this section shall~~ be cited for such infraction and must ~~shall~~ be cited to appear before the county court. The citation may indicate the time, date, and location of the scheduled hearing and must indicate that the penalty for a noncriminal violation is a fine of not more than $500.

(a) A person cited for a violation of subsection (1) ~~for an infraction under this section~~ may:

1. Post a $500 bond; or

2. Sign and accept the citation indicating a promise to appear.

(b) A person cited for violating this section may:

1. Pay the fine, either by mail or in person, within 10 days after receiving the citation; or

2. If the person has posted bond, forfeit the bond by not appearing at the scheduled hearing.

(c) If the person pays the fine or forfeits bond, the person is deemed to have admitted violating this section and to have waived the right to a hearing on the issue of commission of the violation. Such admission may not be used as evidence in any other proceeding.

(d) The court, after a hearing, shall make a determination as to whether an infraction has been committed. If the commission of an infraction has been proven beyond a reasonable doubt, the court may impose a civil penalty in an amount that may not exceed $500.

(e) If a person is found by the court to have committed the infraction, that person may appeal that finding to the circuit court.

(4) On or after March 1, 2025, it is unlawful for a person, a firm, an association, or a corporation to deal, at retail, in nicotine products that are not listed on the directory created pursuant to s. 569.311. Any person who knowingly ships or receives nicotine products in violation of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) On or after January 1, 2025, it is unlawful for a retail nicotine products dealer, other than a nicotine products manufacturer that also is permitted as a retail nicotine products dealer and is selling its own products directly to consumers, to buy nicotine products from a wholesaler, manufacturer, or other source that is not a wholesale nicotine products dealer permitholder, a wholesale dealer, as defined in s. 210.01(6), a distributing agent, as defined in s. 210.01(14), or a tobacco products distributor, as defined in s. 210.25(5).

Any person who knowingly ships or receives nicotine products in violation of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) The division may suspend or revoke the permit of a retail nicotine products dealer permitholder, upon sufficient cause appearing of a violation of this part by a retail nicotine products dealer permitholder, or its agent or employee. The division may also assess an administrative fine of up to $1,000 for each violation. The division shall deposit all fines collected into the General Revenue Fund. An order imposing an administrative fine becomes effective 15 days after the date of the order.

Section 10. Section 569.345, Florida Statutes, is created to read:

569.345 Seizure and destruction of contraband nicotine products.—All nicotine products sold, delivered, possessed, or distributed contrary to any provisions of this chapter are declared to be contraband, are subject to seizure and confiscation under the Florida Contraband Forfeiture Act by any person whose duty it is to enforce the provisions of this chapter, and must be disposed of as follows:

(1) A court having jurisdiction shall order such nicotine products forfeited and destroyed. A record of the place where such nicotine products and any accompanying nicotine dispensing devices were seized, the kinds and quantities of nicotine products and accompanying nicotine dispensing devices destroyed, and the time, place, and manner of destruction must be kept, and a return under oath reporting the destruction must be made to the court by the officer who destroys them.

(2) The division shall keep a full and complete record of all nicotine products and nicotine dispensing devices showing:

(a) The exact kinds, quantities, and forms of such nicotine products or nicotine dispensing devices;

(b) The persons from whom they were received and to whom they were delivered;

(c) By whose authority they were received, delivered, and destroyed; and

(d) The dates of the receipt, disposal, or destruction, which record must be open to inspection by all persons charged with the enforcement of tobacco and nicotine product laws.

(3) The cost of seizure, confiscation, and destruction of contraband nicotine products is borne by the person from whom such products are seized.

Section 11. Subsections (3) and (4) of section 569.002, Florida Statutes, are amended to read:

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

(3) "Nicotine product" has the same meaning as provided in s. 569.31 ~~s. 569.31(4)~~.

(4) "Nicotine dispensing device" has the same meaning as provided in s. 569.31 ~~s. 569.31(3)~~.

Section 12. This act shall take effect October 1, 2024.

The Florida Senate

Committee Agenda Request

To: Senator Joe Gruters, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: January 8, 2024

I respectfully request that **Senate Bill #1006**, relating to Act Concerning Nicotine Products, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

W. Keith Perry

Senator Keith Perry
Florida Senate, District 9

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL:	SB 1134
INTRODUCER:	Senator Trumbull
SUBJECT:	Individual Wine Containers
DATE:	February 2, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Pre-meeting**
2.			CM	
3.			RC	

I. Summary:

SB 1134 restricts the limitation on the size of wine containers to containers made of glass. Under the bill, wine containers made from materials other than glass would not be subject to size limitations. Under current law, a wine container may not hold more than one gallon, unless the container is reusable and holds 5.16 gallons.

The bill takes effect July 1, 2024.

II. Present Situation:

Division of Alcoholic Beverages and Tobacco

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation administers and enforces[1] the Beverage Law,[2] which regulates the manufacture, distribution, and sale of wine, beer, and liquor.[3] The division is also responsible for the administration and enforcement of tobacco products under ch. 569, F.S.

Wine

The term "wine" means:[4]

> all beverages made from fresh fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States, and includes all sparkling wines, champagnes, combination of the aforesaid beverages, sake,

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

> vermouths, and like products. Sugar, flavors, and coloring materials may be added to wine to make it conform to the consumer's taste, except that the ultimate flavor or the color of the product may not be altered to imitate a beverage other than wine or to change the character of the wine.

"Fortified wine" means all wines containing more than 17.259 percent of alcohol by volume.[5]

Wine Container Size Limits

Section 564.05, F.S., prohibits the sale of wine in an individual container that holds more than one gallon (3.785 liters) of wine. However, wine may be sold in a reusable container of 5.16 gallons (19.5 liters). Distributors and manufacturers may sell wine to other distributors and manufacturers in containers of any size. Any person who violates the prohibition in s. 564.05, F.S., commits a second degree misdemeanor.[6]

Federal law specifies fill standards for wine containers.[7] The wine container must be filled to contain the quantity of wine authorized in the federal fill standards so as not to mislead the consumer.[8] The authorized standards of fill range from 50 milliliters to three liters. However, if the fill of the wine container is four liters or larger, the container must be labeled in even liters, e.g., four liters, five liters, etc.[9] There are also several exceptions to the standard fill requirements, including exceptions for certain imported wines in original containers, wines bottled before specified dates, and wine packed in containers of 18 liters or more.[10]

III. Effect of Proposed Changes:

The bill revises s. 564.05, F.S., to restrict the limitation on the size of wine containers to containers made of glass. Under the bill, wine containers made from materials other than glass would not be subject to size limitations.

The bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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[5] Section 564.01(2), F.S.
[6] Section 775.082(4), F.S., provides the penalty for a misdemeanor of the second degree is a term of imprisonment not exceeding 60 days. Section 775.083(1)(e), F.S., provides the penalty for a misdemeanor of the second degree is a fine not to exceed $500.
[7] 27 C.F.R. s. 4.70 *et seq.*
[8] 27 C.F.R. s. 4.71.
[9] 27 C.F.R. s. 4.72.
[10] 27 C.F.R. s. 4.70. The standard wine barrel is 225 liters or 59 gallons. See Wine Industry Advisor, Living Large: Supersizing Barrels for a Subtler Impact, at: https://wineindustryadvisor.com/2020/08/11/living-large-supersizing-barrels-for-a-subtler-impact (last visited Mar. 23, 2023).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 564.05 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Regulated Industries (Trumbull) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 564.05, Florida Statutes, is amended to read:

564.05 Limitation of size of individual wine containers; penalty.—It is unlawful for a person to sell within this state wine in an individual container holding more than 1 gallon of such wine, unless such wine is in a reusable container holding

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5.16 gallons, or unless it is in a glass container holding 4.5 liters, 9 liters, 12 liters, or 15 liters of such wine. However, qualified distributors and manufacturers may sell wine to other qualified distributors or manufacturers in any size container. Except as provided in s. 564.09, wine sold or offered for sale by a licensed vendor to be consumed off the premises shall be in the unopened original container. A person convicted of a violation of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

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

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to individual wine containers; amending s. 564.05, F.S.; revising an exception to the maximum allowable capacity for an individual container of wine sold in this state; providing an effective date.

By Senator Trumbull

2-01061A-24 20241134__

A bill to be entitled

An act relating to individual wine containers; amending s. 564.05, F.S.; revising the limitation on the size of individual wine containers to glass containers only; providing applicability; providing an effective date.

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

Section 1. Section 564.05, Florida Statutes, is amended to read:

564.05 Limitation on ~~of~~ size of individual glass wine containers; penalty.—

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

(2) This section does not apply to containers made from other materials that are not glass.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Commerce and Tourism, *Chair*
Appropriations Committee on Transportation, Tourism, and Economic Development, *Vice Chair*
Appropriations Committee on Agriculture, Environment, and General Government
Banking and Insurance
Fiscal Policy
Judiciary
Transportation

SELECT COMMITTEE:
Select Committee on Resiliency

SENATOR JAY TRUMBULL
2nd District

January 9, 2024

Re: SB 1134

Dear Chair Gruters,

I am respectfully requesting that Senate Bill 1134, related to Wine Containers, be placed on the agenda for your next meeting of the Regulated Industries Committee.

I appreciate your consideration of this bill. If there are any questions or concerns, please do not hesitate to call my office at (850) 487-5002.

Thank you,

Senator Jay Trumbull
District 2

REPLY TO:
❒ 840 West 11th Street, Panama City, Florida 32401 (850) 747-5454
❒ 320 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5002

Senate's Website: *www.flsenate.gov*

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Commerce and Tourism, *Chair*
Appropriations Committee on Transportation, Tourism, and Economic Development, *Vice Chair*
Appropriations Committee on Agriculture, Environment, and General Government
Banking and Insurance
Fiscal Policy
Judiciary
Transportation

SELECT COMMITTEE:
Select Committee on Resiliency

SENATOR JAY TRUMBULL
2nd District

February 5, 2024

Dear Chair Gruters,

I am respectfully requesting Senator Bradley be allowed to present my bill, SB 1134 Wine Containers, in today's Regulated Industries Committee meeting. I regret that I will be unable to attend.

If there are any questions or concerns, please do not hesitate to call my office at (850) 487-5002.

Thank you,

Senator Jay Trumbull

REPLY TO:
❒ 840 West 11th Street, Panama City, Florida 32401 (850) 747-5454
❒ 320 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5002

Senate's Website: *www.flsenate.gov*

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL:	SB 1706
INTRODUCER:	Senator Yarborough
SUBJECT:	Condominiums Within a Portion of a Building or Within a Multiple Parcel Building
DATE:	February 2, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Pre-meeting**
2.			RC	

I. Summary:

SB 1706 creates s. 718.407, F.S., to provide conditions, including disclosure requirements in sales contracts, for the creation of condominiums within a portion of a building or within a multiple parcel building. Under the bill, when a condominium is created within a portion of a building or within a multiple parcel building, the document that creates the condominium must include the information specified by the bill, including:

- The portions of the building which are included in the condominium and the portions of the building that are excluded;
- The party responsible for maintaining and operating those portions of the building which are shared facilities, including, but not limited to, the roof, the exterior of the building, windows, balconies, elevators, the building lobby, corridors, recreational amenities, and utilities;
- How the expenses for the maintenance and operation of the shared facilities will be apportioned;
- The party responsible for collecting shared expenses from all owners; and
- The rights and remedies that are available to enforce payment from the other owners.

The bill provides that the association of a condominium subject to s. 718.407, F.S., has the right to inspect and copy the books and records upon which the costs for maintaining and operating the shared facilities are based and to receive an annual budget with respect to such costs.

The bill provides a disclosure clause that must be included, in conspicuous type, in every contract for the sale of any condominium created under s. 418.407, F.S. The disclosure clause informs the prospective purchaser of a condominium unit of specified information, including that the condominium is created within a portion of a building, and that portions of the building that are not included in the condominium are governed by a separate recorded instrument that contains important provisions and rights.

The seller of a unit in a condominium created under s. 718.407, F.S., must also include an additional disclosure summary, in conspicuous type, in every contract for the sale of the unit, which must be signed by the purchaser. The disclosure summary informs the prospective purchaser of a condominium unit of specified information, including that the condominium is created within a portion of a building or within a multiple parcel building, and that the association and unit owners may have limited or no control over the maintenance, operation, and costs of the portions of the building that are not submitted to the condominium form of ownership, and that a copy of instrument creating the condominium is attached.

The bill revises the definition for the term "condominium property" in s. 718.103(14), F.S., to mean "the lands and leaseholds, and all improvements thereon, and all easements and rights appurtenant thereto, whether or not contiguous, and personal property, if any, which are intended for use in connection with the condominium and which are subject to condominium ownership."

The bill also provides that the revised definition for the term "condominium property" in the bill, and ss. 718.407(1), (2), and (7), F.S., relating to the creation of a condominium within a portion of a building or within a multiple parcel building, are intended to clarify existing law and to apply retroactively. The bill also provides the provisions in the bill do not revive or reinstate any right or interest that has been fully and finally adjudicated as invalid before July 1, 2024.

The bill takes effect July 1, 2024.

II. Present Situation:

Division of Florida Condominiums, Timeshares, and Mobile Homes

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR) administers the provisions of chs. 718, F.S., for condominium associations.

Section 718.501, F.S., provides the investigative and enforcement authority of the division. The division may enforce and ensure compliance with ch. 718, F.S., and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units and complaints related to the procedural completion of milestone inspections under s. 553.899, F.S. The division may investigate complaints and enforce compliance with ch. 718, F.S., for associations that are still under developer control, including investigating complaints against developers involving improper turnover or failure to transfer control to the association.[1] After control of the condominium is transferred from the developer to the unit owners, the division only has jurisdiction to investigate complaints related to financial issues, elections, and maintenance of and unit owner access to association records.[2]

[1] *Id.*
[2] Section 718.501(1), F.S.

Condominiums

A condominium is a "form of ownership of real property created under ch. 718, F.S,"[3] the "Condominium Act." Condominium unit owners are in a unique legal position because they are exclusive owners of property within a community, joint owners of community common elements, and members of the condominium association.[4] For unit owners, membership in the association is an unalienable right and required condition of unit ownership.[5] Condominiums are created by recording a declaration in the public records of the county where the land is located, executed and acknowledged with the requirements for a deed.[6]

The term "condominium" is defined in the Condominium Act to mean:[7]

> …that form of ownership of real property created pursuant to this chapter, which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.

The term "condominium property" is defined in the Condominium Act to mean:[8]

> …the lands, leaseholds, and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

The "common elements" of a condominium include:[9]

- The condominium property which is not included within the units.
- Easements through units for conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services to units and the common elements.
- An easement of support in every portion of a unit which contributes to the support of a building.
- The property and installations required for the furnishing of utilities and other services to more than one unit or to the common elements.

Other parts of the condominium may be declared common elements in the declaration of condominium.[10]

A condominium association is administered by a board of directors referred to as a "board of administration."[11] The board of administration is comprised of individual unit owners elected by the members of a community to manage community affairs and represent the interests of the

[3] Section 718.103(11), F.S.
[4] *See* s. 718.103, F.S., for the terms used in the Condominium Act.
[5] *Id.*
[6] Section 718.104(2), F.S.
[7] Section 718.103(12), F.S.
[8] Section 718.103(14), F.S.
[9] Section 718.108(1), F.S.
[10] Section 718.108(2), F.S. Section 718.103(16), F.S., defines the terms "declaration" or "declaration of condominium" to mean the instrument or instruments by which a condominium is created, as they are from time to time amended.
[11] Section 718.103(4), F.S.

association. Association board members must enforce a community's governing documents and are responsible for maintaining a condominium's common elements which are owned in undivided shares by unit owners.[12]

There are several types of condominiums:

- Phase condominiums in which the developer may develop the condominium in phases with all phases completed within a seven-year period.[13]
- Mixed-use condominiums in which the condominium contains both commercial and residential units.[14]
- Multi-condominiums in which the real property contains two or more condominiums, all of which are operated by the same association.[15]
- Condominiums created with a condominium parcels, i.e., a condominium is created with a condominium unit with an undivided share in the appurtenant common elements.[16]

Recent Case Law - Mixed-Use Condominiums

In a recent decision by the Florida Third District Court of Appeals (3rd DCA), the court held in that the declaration of condominium had impermissibly divested a unit of its undivided share of the common elements by designating certain portions of the condominium property as "shared facilities."[17]

In *IconBrickell*, the condominium is a mixed-use condominium consisting of residential condominium units and a luxury hotel. The declaration of condominium designated a wide variety of specific portions of the common elements as "shared facilities" under the exclusive ownership and control of the hotel unit owner. The "shared facilities" include the balconies, lobby, elevators, and the infrastructure for utilities, such as wires and pipes. The term "shared facilities" is not defined in ch. 718, F.S.

Even though the residential unit owners did not have a common ownership interest in the "shared facilities," the declaration burdened the residential unit owners, and not the owner of the hotel, with expenses incurred by the owner of the hotel for the maintenance, repair, replacement, improvement, management, and operation of the shared facilities.

The court held that the "recharacterization, and the resultant expropriation of undivided common ownership, indubitably contravenes the edict of the [Condominium] Act."[18]

[12] Section 718.103(2), F.S.
[13] Section 718.403, F.S.
[14] *See* ss. 718.103(24) and 718.404, F.S.
[15] *See* ss. 718.103(21) and 718.405, F.S.
[16] Section 718.103(13), F.S., defines a "condominium parcel" to mean a unit, together with the undivided share in the common elements appurtenant to the unit.
[17] *IconBrickell Condominium No. three Association, Inc. v. New Media Consulting*, L.L.C., 310 So.3rd 477 (Fla. 3rd DCA 2020).
[18] *IconBrickell* at 481.

III. Effect of Proposed Changes:

Section 1 of the bill revises the definition for the term "condominium property" in s. 718.103(14), F.S., to mean:

> the lands and leaseholds, and all improvements thereon, and all easements and rights appurtenant thereto, whether or not contiguous, and personal property, if any, which are intended for use in connection with the condominium and which are subject to condominium ownership.

Section 2 of the bill revises s. 718.2023), F.S., relating to the use of escrow funds by a developer for costs incurred in the construction and development of the condominium property, to include the use of escrow funds for costs incurred in the construction and development of easements and the rights appurtenant to the condominium property.

Section 3 of the bill creates s. 718.407. F.S., to provide conditions, including disclosure requirements in sales contracts, for the creation of condominiums within a portion of a building or within a multiple parcel building.

Section 718.407(1), F.S., provides that a condominium may be created within a portion of a building or within a multiple parcel building, as defined in s. 193.0237(1), F.S.[19]

The bill provides that a condominium may be created within a portion of a building or within a multiple parcel building notwithstanding the definition for "condominium" in s. 718.103(12), F.S., or the provision of s. 718.108(1), F.S., relating to common elements.

Section 718.407(2), F.S., provides that the common elements of a condominium created within a portion of a building or a multiple parcel building are only the portions of the building submitted to the condominium form of ownership, excluding the units of such condominium.

Section 718.407(3), F.S., provides that the declaration of condominium that creates a condominium within a portion of a building or within a multiple parcel building, the recorded instrument that creates the multiple parcel building, or any other recorded instrument applicable (creating document) under s. 718.407, F.S., must specify all of the following:

- The portions of the building which are included in the condominium and the portions of the building that are excluded.
- The party responsible for maintaining and operating those portions of the building which are shared facilities, including, but not limited to, the roof, the exterior of the building, windows, balconies, elevators, the building lobby, corridors, recreational amenities, and utilities.
- How the expenses for the maintenance and operation of the shared facilities will be apportioned among the portions of the building, including the specific initial apportionment of expenses.

[19] Section 193.0237(1), F.S., defines a "multiple parcel building" to mean "a building, other than a building consisting entirely of a single condominium, timeshare, or cooperative, which contains separate parcels that are vertically located, in whole or in part, on or over the same land."

  - An owner of a portion of the building, or the condominium association, as applicable, submitted to condominium form of ownership, must approve any increase in the expenses apportioned to such portion of the building.
  - The apportionment of expenses for the maintenance and operation of the shared facilities is presumed appropriate if any of the specified criteria are met.
  - An alternative method of apportionment of expenses may be provided if the method is stated in the creating document.
- The party responsible for collecting shared expenses from all owners.
- The rights and remedies that are available to enforce payment from the other owners.

The specified criteria for the apportionment of expenses for the maintenance and operation of the shared facilities include:
- The area or volume of each portion of the building in relation to the total area or volume to the entire building without the shared facilities.
- The market values of each portion compared to the market value of the entire building.
- The extent the unit owners are allowed to use the shared facilities.

It is unclear how these criteria are to be applied to be determine if the expenses are appropriate.

Section 718.407(4), F.S., provides that the association of a condominium subject to s. 718.407, F.S., has the right to inspect and copy the books and records upon which the costs for maintaining and operating the shared facilities are based and to receive an annual budget with respect to such costs.

Section 718.407(5), F.S., provides a disclosure clause that must be included, in conspicuous type,[20] in every contract for the sale of any condominium created under s. 418.407, F.S. The disclosure clause informs the prospective purchaser of a condominium unit that:
- The condominium is created within a portion of a building.
- The common elements of the condominium consist only of the portions of the building submitted to the condominium form of ownership, excluding the units.
- The condominium may have minimal or no common elements.
- Portions of the building that are not included in the condominium are governed by a separate recorded instrument that contains important provisions and rights.
- A contract that does not conform to the requirements of s. 718.407, F.S., is voidable at the option of the purchaser before closing.

Section 718.407(6), F.S., provides a disclosure summary that the seller must be included, in conspicuous type,[21] in every contract for the sale of any condominium created under s. 418.407, F.S., and which must be signed by the purchaser. The disclosure summary informs the prospective purchaser of a condominium unit that:
- The condominium is created within a portion of a building or within a multiple parcel building.

[20] Section 718.103(15), F.S., defines the term "conspicuous type" to mean "bold type in capital letters no smaller than the largest type, exclusive of headings, on the page on which it appears and, in all cases, at least 10-point type. Where conspicuous type is required, it must be separated on all sides from other type and print."
[21] *Id.*

- Portions of the building that are not included in the condominium are (or will be) governed by a separate recorded instrument that contains important provisions and rights.
- The association and unit owners may have limited or no control over the maintenance, operation, and costs of the portions of the building that are not submitted to the condominium form of ownership and that a copy of such instrument is attached.
- The allocation between the owners of the costs to maintain and operate the building are set forth in the attached declaration of condominium or other recorded instrument.
- The owner of another portion of the building controls the maintenance and operation of the portions of the building that are not submitted to the condominium form of ownership and determines the budget for such operation and maintenance.

Section 718.407(7), F.S., provides that the creation of a multiple parcel building is not a subdivision of the land upon which such building is situated, provided the land itself is not subdivided.

Section 4 of the bill revises s. 718.503(3), F.S., relating to disclosures the seller of a condominium unit must give in sales contracts before the sale of a unit, to provide that, if a unit is located within a condominium that is created within a portion of a building or within a multiple parcel building, the developer or nondeveloper unit owner must provide the disclosures required by ss. 718.407(5) and (6), F.S.

Section 5 of the bill creates an undesignated section of Florida law to provide that the amendments made to s. 718.103, F.S., which revise the definition for the term "condominium property," and the creation of ss. 718.407(1), (2), and (7), F.S., by the bill are intended to clarify existing law and to apply retroactively. The bill also provides the provisions in the bill do not revive or reinstate any right or interest that has been fully and finally adjudicated as invalid before July 1, 2024.

Section 6 of the bill provides that the bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill creates an undesignated section of Florida law to provide that the amendments made to s. 718.103, F.S., which revise the definition for the term "condominium property," and the creation of ss. 718.407(1), (2), and (7), F.S., by the bill are intended to clarify existing law and to apply retroactively.

The governing documents of a condominium association are a contract. To the extent this bill affects previously recorded condominium declarations, the bill may unconstitutionally impair a contract, under s. 10, Art. I, Fla. Const., which provides in relevant part, "No… law impairing the obligation of contracts shall be passed." This provision empowers the courts to strike laws that retroactively burden or alter contractual relations. Article I, s. 10 of the United States Constitution provides in relevant part that "No state shall . . . pass any . . . law impairing the obligation of contracts."

In *Pomponio v. Claridge of Pompano Condominium, Inc.*,[22] the Florida Supreme Court stated that some degree of flexibility has developed over the last century in interpreting the contract clause in order to ameliorate the harshness of the original rigid application used by the United States Supreme Court. The court set forth several factors in balancing whether a state law operates as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear. The court stated that if there is minimal alteration of contractual obligations the inquiry can end at its first stage. Severe impairment can push the inquiry to a careful examination of the nature and purpose of the state legislation. The factors to be considered are:

- Was the law enacted to deal with a broad, generalized economic or social problem;
- Does the law operate in an area that was already subject to state regulation at the time the contract was entered into; and
- Is the law's effect on the contractual relationships temporary or is it severe, permanent, immediate, and retroactive.[23]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

[22] *Pomponio v. Claridge of Pompano Condominium, Inc*., 378 So. 2d 774, 776 (Fla. 1979).
[23] *Id.* at 779.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 718.103, 718.202, and 718.503.

This bill creates section 718.407 of the Florida Statutes.

This bill creates an undesignated section of Florida law.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Regulated Industries (Yarborough) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (14) of section 718.103, Florida Statutes, is amended to read:

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

(14) "Condominium property" means the lands, leaseholds, improvements, any ~~and~~ personal property, and all easements and rights appurtenant thereto, regardless of whether contiguous,

which ~~that~~ are subjected to condominium ownership~~, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium~~.

Section 2. Subsections (1) and (3) of section 718.202, Florida Statutes, are amended to read:

718.202 Sales or reservation deposits prior to closing.—

(1) If a developer contracts to sell a condominium parcel and the construction, furnishing, and landscaping of the property submitted or proposed to be submitted to condominium ownership has not been substantially completed in accordance with the plans and specifications and representations made by the developer in the disclosures required by this chapter, the developer shall pay into an escrow account all payments up to 10 percent of the sale price received by the developer from the buyer towards the sale price. The escrow agent shall give to the purchaser a receipt for the deposit, upon request. In lieu of the foregoing concerning residential condominiums, the division director has the discretion to accept other assurances, including, but not limited to, a surety bond or an irrevocable letter of credit in an amount equal to the escrow requirements of this section. With respect to nonresidential condominiums, the developer shall have the option of delivering to the escrow agent a surety bond or an irrevocable letter of credit in an amount equivalent to the aggregate of some or all of all payments up to 10 percent of the sale price received by the developer from all buyers towards the sale price, in all cases the aggregate of initial 10 percent deposits monies being released secured by a surety bond or irrevocable letter of

credit in an equivalent amount. Default determinations and refund of deposits shall be governed by the escrow release provision of this subsection. Funds shall be released from escrow as follows:

(a) If a buyer properly terminates the contract pursuant to its terms or pursuant to this chapter, the funds shall be paid to the buyer together with any interest earned.

(b) If the buyer defaults in the performance of his or her obligations under the contract of purchase and sale, the funds shall be paid to the developer together with any interest earned.

(c) If the contract does not provide for the payment of any interest earned on the escrowed funds, interest shall be paid to the developer at the closing of the transaction.

(d) If the funds of a buyer have not been previously disbursed in accordance with the provisions of this subsection, they may be disbursed to the developer by the escrow agent at the closing of the transaction, unless prior to the disbursement the escrow agent receives from the buyer written notice of a dispute between the buyer and developer.

(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 construction and development of the condominium property in which the unit to be sold is located or the easements and rights appurtenant thereto. For purposes of this subsection, the term “actual costs” includes, but is not

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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 or the easements and rights appurtenant thereto. However, no part of these funds may be used for salaries, commissions, or expenses of salespersons; 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 that ~~which~~ permits use of the advance payments for these purposes must ~~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 3. Section 718.407, Florida Statutes, is created to read:

718.407 Condominiums created within a portion of a building or within a multiple parcel building.—

(1) Notwithstanding s. 718.103(12) or s. 718.108(1), a condominium may be created within a portion of a building or within a multiple parcel building, as defined in s. 193.0237(1), as provided in this section.

(2) Notwithstanding s. 718.103(12) or s. 718.108(1), the common elements of a condominium created within a portion of a building or a multiple parcel building are only those portions of the building submitted to the condominium form of ownership,

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excluding the units of such condominium.

(3) The declaration of condominium that creates a condominium within a portion of a building or within a multiple parcel building, the recorded instrument that creates the multiple parcel building, or any other recorded instrument applicable under this section must specify all of the following:

(a) The portions of the building which are included in the condominium and the portions of the building which are excluded.

(b) The party responsible for maintaining and operating those portions of the building which are shared facilities, and which may include, among other things, the roof, the exterior of the building, windows, balconies, elevators, the building lobby, corridors, recreational amenities, and utilities.

(c)1. The manner in which the expenses for the maintenance and operation of the shared facilities will be apportioned. An owner of a portion of a building which is not submitted to condominium form of ownership, or the condominium association, as applicable to the portion of the building submitted to condominium form of ownership, must approve any increase in the apportionment of expenses to such portion of the building. The apportionment of the expenses for the maintenance and operation of the shared facilities may be based on any of the following criteria or any combination thereof:

a. The area or volume of each portion of the building in relation to the total area or volume of the entire building, exclusive of the shared facilities.

b. The initial estimated market value of each portion of the building in comparison to the total initial estimated market value of the entire building.


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c. The extent to which the owners are permitted to use various shared facilities.

2. This paragraph does not preclude an alternative apportionment of expenses provided that the apportionment is stated in the declaration of condominium that creates a condominium within a portion of a building or within a multiple parcel building, the recorded instrument that creates the multiple parcel building, or any other recorded instrument applicable under this section.

(d) The party responsible for collecting the shared expenses.

(e) The rights and remedies that are available to enforce payment of the shared expenses.

(4) The association of a condominium subject to this section has the right to inspect and copy the books and records upon which the costs for maintaining and operating the shared facilities are based and to receive an annual budget with respect to such costs.

(5) Each contract for the sale of a unit in a condominium subject to this section must contain in conspicuous type a clause that substantially states:

THE CONDOMINIUM IN WHICH YOUR UNIT IS LOCATED IS CREATED WITHIN A PORTION OF A BUILDING. THE COMMON ELEMENTS OF THE CONDOMINIUM CONSIST ONLY OF THE PORTIONS OF THE BUILDING SUBMITTED TO THE CONDOMINIUM FORM OF OWNERSHIP, EXCLUDING THE UNITS. THE CONDOMINIUM MAY HAVE MINIMAL COMMON ELEMENTS. PORTIONS OF THE BUILDING THAT ARE NOT INCLUDED IN THE


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CONDOMINIUM ARE GOVERNED BY A SEPARATE RECORDED INSTRUMENT THAT CONTAINS IMPORTANT PROVISIONS AND RIGHTS.

A contract that does not conform to the requirements of this subsection is voidable at the option of the purchaser prior to closing.

(6) The seller of a unit in a condominium subject to this section must provide a separate disclosure summary that must be signed by the purchaser. The disclosure summary must contain the following statements in conspicuous type:

DISCLOSURE SUMMARY

THE CONDOMINIUM IN WHICH YOUR UNIT IS LOCATED IS CREATED WITHIN A PORTION OF A BUILDING OR WITHIN A MULTIPLE PARCEL BUILDING. PORTIONS OF THE BUILDING THAT ARE NOT INCLUDED IN THE CONDOMINIUM ARE (OR WILL BE) GOVERNED BY A SEPARATE RECORDED INSTRUMENT THAT CONTAINS IMPORTANT PROVISIONS AND RIGHTS. THE ASSOCIATION AND UNIT OWNERS MAY HAVE LIMITED OR NO CONTROL OVER THE MAINTENANCE, OPERATION, AND COSTS OF THE PORTIONS OF THE BUILDING THAT ARE NOT SUBMITTED TO THE CONDOMINIUM FORM OF OWNERSHIP, BUT ARE RESPONSIBLE FOR PAYMENT OF THEIR SHARE OF EXPENSES. SUCH INSTRUMENT IS OR WILL BE RECORDED IN THE PUBLIC RECORDS. THE ALLOCATION BETWEEN THE OWNERS OF THE COSTS TO MAINTAIN AND OPERATE THE BUILDING ARE SET FORTH IN THE DECLARATION OF CONDOMINIUM OR OTHER RECORDED INSTRUMENT. THE OWNER OF ANOTHER PORTION OF

THE BUILDING CONTROLS THE MAINTENANCE AND OPERATION OF THE PORTIONS OF THE BUILDING THAT ARE NOT SUBMITTED TO THE CONDOMINIUM FORM OF OWNERSHIP AND DETERMINES THE BUDGET FOR SUCH OPERATION AND MAINTENANCE.

(7) The creation of a multiple parcel building is not a subdivision of the land upon which such building is situated provided the land itself is not subdivided.

Section 4. Paragraph (a) of subsection (2) and subsection (3) of section 718.503, Florida Statutes, are amended to read:

718.503 Developer disclosure prior to sale; nondeveloper unit owner disclosure prior to sale; voidability.—

(2) NONDEVELOPER DISCLOSURE.—

(a) Each unit owner who is not a developer as defined by this chapter must comply with this subsection before the sale of his or her unit. Each prospective purchaser who has entered into a contract for the purchase of a condominium unit is entitled, at the seller's expense, to a current copy of all of the following:

1. The declaration of condominium.

2. Articles of incorporation of the association.

3. Bylaws and rules of the association.

4. An annual financial statement and an annual budget of the condominium association ~~Financial information required by s. 718.111~~.

5. A copy of the inspector-prepared summary of the milestone inspection report as described in s. 553.899, if applicable.

6. The association's most recent structural integrity


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reserve study or a statement that the association has not completed a structural integrity reserve study.

7. A copy of the inspection report described in s. 718.301(4)(p) and (q) for a turnover inspection performed on or after July 1, 2023.

8. The document entitled "Frequently Asked Questions and Answers" required by s. 718.504.

(3) OTHER DISCLOSURES ~~DISCLOSURE~~.—

(a) If residential condominium parcels are offered for sale or lease prior to completion of construction of the units and of improvements to the common elements, or prior to completion of remodeling of previously occupied buildings, the developer must ~~shall~~ make available to each prospective purchaser or lessee, for his or her inspection at a place convenient to the site, a copy of the complete plans and specifications for the construction or remodeling of the unit offered to him or her and of the improvements to the common elements appurtenant to the unit.

(b) Sales brochures, if any, must ~~shall~~ be provided to each purchaser, and the following caveat in conspicuous type must ~~shall~~ be placed on the inside front cover or on the first page containing text material of the sales brochure, or otherwise conspicuously displayed: "ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, MAKE REFERENCE TO THIS BROCHURE AND TO THE DOCUMENTS REQUIRED BY SECTION 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE." If timeshare estates have been or may be created with respect to any unit in the condominium, the sales brochure must ~~shall~~ contain the


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following statement in conspicuous type: "UNITS IN THIS CONDOMINIUM ARE SUBJECT TO TIMESHARE ESTATES."

(c) If a unit is located within a condominium that is created within a portion of a building or within a multiple parcel building, the developer or nondeveloper unit owner must provide the disclosures required by s. 718.407(5) and (6).

Section 5. Section 718.504, Florida Statutes, is amended to read:

718.504 Prospectus or offering circular.—Every developer of a residential condominium which contains more than 20 residential units, or which is part of a group of residential condominiums which will be served by property to be used in common by unit owners of more than 20 residential units, shall prepare a prospectus or offering circular and file it with the Division of Florida Condominiums, Timeshares, and Mobile Homes prior to entering into an enforceable contract of purchase and sale of any unit or lease of a unit for more than 5 years and shall furnish a copy of the prospectus or offering circular to each buyer. In addition to the prospectus or offering circular, each buyer shall be furnished a separate page entitled "Frequently Asked Questions and Answers," which shall be in accordance with a format approved by the division and a copy of the financial information required by s. 718.111. This page shall, in readable language, inform prospective purchasers regarding their voting rights and unit use restrictions, including restrictions on the leasing of a unit; shall indicate whether and in what amount the unit owners or the association is obligated to pay rent or land use fees for recreational or other commonly used facilities; shall contain a statement identifying

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that amount of assessment which, pursuant to the budget, would be levied upon each unit type, exclusive of any special assessments, and which shall further identify the basis upon which assessments are levied, whether monthly, quarterly, or otherwise; shall state and identify any court cases in which the association is currently a party of record in which the association may face liability in excess of $100,000; shall state whether the condominium is created within a portion of a building or a multiple parcel building; and which shall further state whether membership in a recreational facilities association is mandatory, and if so, shall identify the fees currently charged per unit type. The division shall by rule require such other disclosure as in its judgment will assist prospective purchasers. The prospectus or offering circular may include more than one condominium, although not all such units are being offered for sale as of the date of the prospectus or offering circular. The prospectus or offering circular must contain the following information:

(1) The front cover or the first page must contain only:

(a) The name of the condominium.

(b) The following statements in conspicuous type:

1. THIS PROSPECTUS (OFFERING CIRCULAR) CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A CONDOMINIUM UNIT.

2. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES, ALL EXHIBITS HERETO, THE CONTRACT DOCUMENTS, AND SALES MATERIALS.

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3. ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. REFER TO THIS PROSPECTUS (OFFERING CIRCULAR) AND ITS EXHIBITS FOR CORRECT REPRESENTATIONS.

(2) Summary: The next page must contain all statements required to be in conspicuous type in the prospectus or offering circular.

(3) A separate index of the contents and exhibits of the prospectus.

(4) Beginning on the first page of the text (not including the summary and index), a description of the condominium, including, but not limited to, the following information:

(a) Its name and location.

(b) A description of the condominium property, including, without limitation:

1. The number of buildings, the number of units in each building, the number of bathrooms and bedrooms in each unit, and the total number of units, if the condominium is not a phase condominium, or the maximum number of buildings that may be contained within the condominium, the minimum and maximum numbers of units in each building, the minimum and maximum numbers of bathrooms and bedrooms that may be contained in each unit, and the maximum number of units that may be contained within the condominium, if the condominium is a phase condominium.

2. The page in the condominium documents where a copy of the plot plan and survey of the condominium is located.

3. The estimated latest date of completion of constructing, finishing, and equipping. In lieu of a date, the description shall include a statement that the estimated date of completion of the condominium is in the purchase agreement and a reference to the article or paragraph containing that information.

(c) The maximum number of units that will use facilities in common with the condominium. If the maximum number of units will vary, a description of the basis for variation and the minimum amount of dollars per unit to be spent for additional recreational facilities or enlargement of such facilities. If the addition or enlargement of facilities will result in a material increase of a unit owner’s maintenance expense or rental expense, if any, the maximum increase and limitations thereon shall be stated.

(5)(a) A statement in conspicuous type describing whether the condominium is created and being sold as fee simple interests or as leasehold interests. If the condominium is created or being sold on a leasehold, the location of the lease in the disclosure materials shall be stated.

(b) If timeshare estates are or may be created with respect to any unit in the condominium, a statement in conspicuous type stating that timeshare estates are created and being sold in units in the condominium.

(6) A description of the recreational and other commonly used facilities that will be used only by unit owners of the condominium, including, but not limited to, the following:

(a) Each room and its intended purposes, location, approximate floor area, and capacity in numbers of people.

(b) Each swimming pool, as to its general location,

approximate size and depths, approximate deck size and capacity, and whether heated.

(c) Additional facilities, as to the number of each facility, its approximate location, approximate size, and approximate capacity.

(d) A general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility or, in the alternative, a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility.

(e) The estimated date when each room or other facility will be available for use by the unit owners.

(f)1. An identification of each room or other facility to be used by unit owners that will not be owned by the unit owners or the association;

2. A reference to the location in the disclosure materials of the lease or other agreements providing for the use of those facilities; and

3. A description of the terms of the lease or other agreements, including the length of the term; the rent payable, directly or indirectly, by each unit owner, and the total rent payable to the lessor, stated in monthly and annual amounts for the entire term of the lease; and a description of any option to purchase the property leased under any such lease, including the time the option may be exercised, the purchase price or how it is to be determined, the manner of payment, and whether the option may be exercised for a unit owner’s share or only as to the entire leased property.

(g) A statement as to whether the developer may provide additional facilities not described above; their general locations and types; improvements or changes that may be made; the approximate dollar amount to be expended; and the maximum additional common expense or cost to the individual unit owners that may be charged during the first annual period of operation of the modified or added facilities.

Descriptions as to locations, areas, capacities, numbers, volumes, or sizes may be stated as approximations or minimums.

(7) A description of the recreational and other facilities that will be used in common with other condominiums, community associations, or planned developments which require the payment of the maintenance and expenses of such facilities, directly or indirectly, by the unit owners. The description shall include, but not be limited to, the following:

(a) Each building and facility committed to be built and a summary description of the structural integrity of each building for which reserves are required pursuant to s. 718.112(2)(g).

(b) Facilities not committed to be built except under certain conditions, and a statement of those conditions or contingencies.

(c) As to each facility committed to be built, or which will be committed to be built upon the happening of one of the conditions in paragraph (b), a statement of whether it will be owned by the unit owners having the use thereof or by an association or other entity which will be controlled by them, or others, and the location in the exhibits of the lease or other document providing for use of those facilities.

(d) The year in which each facility will be available for use by the unit owners or, in the alternative, the maximum number of unit owners in the project at the time each of all of the facilities is committed to be completed.

(e) A general description of the items of personal property, and the approximate number of each item of personal property, that the developer is committing to furnish for each room or other facility or, in the alternative, a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility.

(f) If there are leases, a description thereof, including the length of the term, the rent payable, and a description of any option to purchase.

Descriptions shall include location, areas, capacities, numbers, volumes, or sizes and may be stated as approximations or minimums.

(8) Recreation lease or associated club membership:

(a) If any recreational facilities or other facilities offered by the developer and available to, or to be used by, unit owners are to be leased or have club membership associated, the following statement in conspicuous type shall be included: "THERE IS A RECREATIONAL FACILITIES LEASE ASSOCIATED WITH THIS CONDOMINIUM; or, THERE IS A CLUB MEMBERSHIP ASSOCIATED WITH THIS CONDOMINIUM." There shall be a reference to the location in the disclosure materials where the recreation lease or club membership is described in detail.

(b) If it is mandatory that unit owners pay a fee, rent, dues, or other charges under a recreational facilities lease or

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club membership for the use of facilities, there shall be in conspicuous type the applicable statement:

1. MEMBERSHIP IN THE RECREATIONAL FACILITIES CLUB IS MANDATORY FOR UNIT OWNERS; or

2. UNIT OWNERS ARE REQUIRED, AS A CONDITION OF OWNERSHIP, TO BE LESSEES UNDER THE RECREATIONAL FACILITIES LEASE; or

3. UNIT OWNERS ARE REQUIRED TO PAY THEIR SHARE OF THE COSTS AND EXPENSES OF MAINTENANCE, MANAGEMENT, UPKEEP, REPLACEMENT, RENT, AND FEES UNDER THE RECREATIONAL FACILITIES LEASE (OR THE OTHER INSTRUMENTS PROVIDING THE FACILITIES); or

4. A similar statement of the nature of the organization or the manner in which the use rights are created, and that unit owners are required to pay.

Immediately following the applicable statement, the location in the disclosure materials where the development is described in detail shall be stated.

(c) If the developer, or any other person other than the unit owners and other persons having use rights in the facilities, reserves, or is entitled to receive, any rent, fee, or other payment for the use of the facilities, then there shall be the following statement in conspicuous type: "THE UNIT OWNERS OR THE ASSOCIATION(S) MUST PAY RENT OR LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES." Immediately following this statement, the location in the disclosure materials where the rent or land use fees are described in detail shall be stated.

(d) If, in any recreation format, whether leasehold, club, or other, any person other than the association has the right to


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a lien on the units to secure the payment of assessments, rent, or other exactions, there shall appear a statement in conspicuous type in substantially the following form:

1. THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF RENT AND OTHER EXACTIONS UNDER THE RECREATION LEASE. THE UNIT OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN; or

2. THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF ASSESSMENTS OR OTHER EXACTIONS COMING DUE FOR THE USE, MAINTENANCE, UPKEEP, OR REPAIR OF THE RECREATIONAL OR COMMONLY USED FACILITIES. THE UNIT OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN.

Immediately following the applicable statement, the location in the disclosure materials where the lien or lien right is described in detail shall be stated.

(9) If the developer or any other person has the right to increase or add to the recreational facilities at any time after the establishment of the condominium whose unit owners have use rights therein, without the consent of the unit owners or associations being required, there shall appear a statement in conspicuous type in substantially the following form: "RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED WITHOUT CONSENT OF UNIT OWNERS OR THE ASSOCIATION(S)." Immediately following this statement, the location in the disclosure materials where such reserved rights are described shall be

stated.

(10) A statement of whether the developer's plan includes a program of leasing units rather than selling them, or leasing units and selling them subject to such leases. If so, there shall be a description of the plan, including the number and identification of the units and the provisions and term of the proposed leases, and a statement in boldfaced type that: "THE UNITS MAY BE TRANSFERRED SUBJECT TO A LEASE."

(11) The arrangements for management of the association and maintenance and operation of the condominium property and of other property that will serve the unit owners of the condominium property, and a description of the management contract and all other contracts for these purposes having a term in excess of 1 year, including the following:

(a) The names of contracting parties.

(b) The term of the contract.

(c) The nature of the services included.

(d) The compensation, stated on a monthly and annual basis, and provisions for increases in the compensation.

(e) A reference to the volumes and pages of the condominium documents and of the exhibits containing copies of such contracts.

Copies of all described contracts shall be attached as exhibits. If there is a contract for the management of the condominium property, then a statement in conspicuous type in substantially the following form shall appear, identifying the proposed or existing contract manager: "THERE IS (IS TO BE) A CONTRACT FOR THE MANAGEMENT OF THE CONDOMINIUM PROPERTY WITH (NAME OF THE

CONTRACT MANAGER)." Immediately following this statement, the location in the disclosure materials of the contract for management of the condominium property shall be stated.

(12) If the developer or any other person or persons other than the unit owners has the right to retain control of the board of administration of the association for a period of time which can exceed 1 year after the closing of the sale of a majority of the units in that condominium to persons other than successors or alternate developers, then a statement in conspicuous type in substantially the following form shall be included: "THE DEVELOPER (OR OTHER PERSON) HAS THE RIGHT TO RETAIN CONTROL OF THE ASSOCIATION AFTER A MAJORITY OF THE UNITS HAVE BEEN SOLD." Immediately following this statement, the location in the disclosure materials where this right to control is described in detail shall be stated.

(13) If there are any restrictions upon the sale, transfer, conveyance, or leasing of a unit, then a statement in conspicuous type in substantially the following form shall be included: "THE SALE, LEASE, OR TRANSFER OF UNITS IS RESTRICTED OR CONTROLLED." Immediately following this statement, the location in the disclosure materials where the restriction, limitation, or control on the sale, lease, or transfer of units is described in detail shall be stated.

(14) If the condominium is part of a phase project, the following information shall be stated:

(a) A statement in conspicuous type in substantially the following form: "THIS IS A PHASE CONDOMINIUM. ADDITIONAL LAND AND UNITS MAY BE ADDED TO THIS CONDOMINIUM." Immediately following this statement, the location in the disclosure

materials where the phasing is described shall be stated.

(b) A summary of the provisions of the declaration which provide for the phasing.

(c) A statement as to whether or not residential buildings and units which are added to the condominium may be substantially different from the residential buildings and units originally in the condominium. If the added residential buildings and units may be substantially different, there shall be a general description of the extent to which such added residential buildings and units may differ, and a statement in conspicuous type in substantially the following form shall be included: "BUILDINGS AND UNITS WHICH ARE ADDED TO THE CONDOMINIUM MAY BE SUBSTANTIALLY DIFFERENT FROM THE OTHER BUILDINGS AND UNITS IN THE CONDOMINIUM." Immediately following this statement, the location in the disclosure materials where the extent to which added residential buildings and units may substantially differ is described shall be stated.

(d) A statement of the maximum number of buildings containing units, the maximum and minimum numbers of units in each building, the maximum number of units, and the minimum and maximum square footage of the units that may be contained within each parcel of land which may be added to the condominium.

(15) If a condominium created on or after July 1, 2000, is or may become part of a multicondominium, the following information must be provided:

(a) A statement in conspicuous type in substantially the following form: "THIS CONDOMINIUM IS (MAY BE) PART OF A MULTICONDOMINIUM DEVELOPMENT IN WHICH OTHER CONDOMINIUMS WILL (MAY) BE OPERATED BY THE SAME ASSOCIATION." Immediately

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following this statement, the location in the prospectus or offering circular and its exhibits where the multicondominium aspects of the offering are described must be stated.

(b) A summary of the provisions in the declaration, articles of incorporation, and bylaws which establish and provide for the operation of the multicondominium, including a statement as to whether unit owners in the condominium will have the right to use recreational or other facilities located or planned to be located in other condominiums operated by the same association, and the manner of sharing the common expenses related to such facilities.

(c) A statement of the minimum and maximum number of condominiums, and the minimum and maximum number of units in each of those condominiums, which will or may be operated by the association, and the latest date by which the exact number will be finally determined.

(d) A statement as to whether any of the condominiums in the multicondominium may include units intended to be used for nonresidential purposes and the purpose or purposes permitted for such use.

(e) A general description of the location and approximate acreage of any land on which any additional condominiums to be operated by the association may be located.

(16) If the condominium is created by conversion of existing improvements, the following information shall be stated:

(a) The information required by s. 718.616.

(b) A caveat that there are no express warranties unless they are stated in writing by the developer.


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(17) A summary of the restrictions, if any, to be imposed on units concerning the use of any of the condominium property, including statements as to whether there are restrictions upon children and pets, and reference to the volumes and pages of the condominium documents where such restrictions are found, or if such restrictions are contained elsewhere, then a copy of the documents containing the restrictions shall be attached as an exhibit.

(18) If there is any land that is offered by the developer for use by the unit owners and that is neither owned by them nor leased to them, the association, or any entity controlled by unit owners and other persons having the use rights to such land, a statement shall be made as to how such land will serve the condominium. If any part of such land will serve the condominium, the statement shall describe the land and the nature and term of service, and the declaration or other instrument creating such servitude shall be included as an exhibit.

(19) The manner in which utility and other services, including, but not limited to, sewage and waste disposal, water supply, and storm drainage, will be provided and the person or entity furnishing them.

(20) An explanation of the manner in which the apportionment of common expenses and ownership of the common elements has been determined.

(21) An estimated operating budget for the condominium and the association, and a schedule of the unit owner’s expenses shall be attached as an exhibit and shall contain the following information:

(a) The estimated monthly and annual expenses of the condominium and the association that are collected from unit owners by assessments.

(b) The estimated monthly and annual expenses of each unit owner for a unit, other than common expenses paid by all unit owners, payable by the unit owner to persons or entities other than the association, as well as to the association, including fees assessed pursuant to s. 718.113(1) for maintenance of limited common elements where such costs are shared only by those entitled to use the limited common element, and the total estimated monthly and annual expense. There may be excluded from this estimate expenses which are not provided for or contemplated by the condominium documents, including, but not limited to, the costs of private telephone; maintenance of the interior of condominium units, which is not the obligation of the association; maid or janitorial services privately contracted for by the unit owners; utility bills billed directly to each unit owner for utility services to his or her unit; insurance premiums other than those incurred for policies obtained by the condominium; and similar personal expenses of the unit owner. A unit owner’s estimated payments for assessments shall also be stated in the estimated amounts for the times when they will be due.

(c) The estimated items of expenses of the condominium and the association, except as excluded under paragraph (b), including, but not limited to, the following items, which shall be stated as an association expense collectible by assessments or as unit owners’ expenses payable to persons other than the association:

1. Expenses for the association and condominium:

a. Administration of the association.

b. Management fees.

c. Maintenance.

d. Rent for recreational and other commonly used facilities.

e. Taxes upon association property.

f. Taxes upon leased areas.

g. Insurance.

h. Security provisions.

i. Other expenses.

j. Operating capital.

k. Reserves for all applicable items referenced in s. 718.112(2)(g).

l. Fees payable to the division.

2. Expenses for a unit owner:

a. Rent for the unit, if subject to a lease.

b. Rent payable by the unit owner directly to the lessor or agent under any recreational lease or lease for the use of commonly used facilities, which use and payment is a mandatory condition of ownership and is not included in the common expense or assessments for common maintenance paid by the unit owners to the association.

(d) The following statement in conspicuous type:

THE BUDGET CONTAINED IN THIS OFFERING CIRCULAR HAS BEEN PREPARED IN ACCORDANCE WITH THE CONDOMINIUM ACT AND IS A GOOD FAITH ESTIMATE ONLY AND REPRESENTS AN APPROXIMATION OF FUTURE EXPENSES BASED ON FACTS AND


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CIRCUMSTANCES EXISTING AT THE TIME OF ITS PREPARATION. ACTUAL COSTS OF SUCH ITEMS MAY EXCEED THE ESTIMATED COSTS. SUCH CHANGES IN COST DO NOT CONSTITUTE MATERIAL ADVERSE CHANGES IN THE OFFERING.

(e) Each budget for an association prepared by a developer consistent with this subsection shall be prepared in good faith and shall reflect accurate estimated amounts for the required items in paragraph (c) at the time of the filing of the offering circular with the division, and subsequent increased amounts of any item included in the association's estimated budget that are beyond the control of the developer shall not be considered an amendment that would give rise to rescission rights set forth in s. 718.503(1)(a) or (b), nor shall such increases modify, void, or otherwise affect any guarantee of the developer contained in the offering circular or any purchase contract. It is the intent of this paragraph to clarify existing law.

(f) The estimated amounts shall be stated for a period of at least 12 months and may distinguish between the period prior to the time unit owners other than the developer elect a majority of the board of administration and the period after that date.

(22) A schedule of estimated closing expenses to be paid by a buyer or lessee of a unit and a statement of whether title opinion or title insurance policy is available to the buyer and, if so, at whose expense.

(23) The identity of the developer and the chief operating officer or principal directing the creation and sale of the condominium and a statement of its and his or her experience in


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this field.

(24) Copies of the following, to the extent they are applicable, shall be included as exhibits:

(a) The declaration of condominium, or the proposed declaration if the declaration has not been recorded.

(b) The articles of incorporation creating the association.

(c) The bylaws of the association.

(d) The ground lease or other underlying lease of the condominium.

(e) The management agreement and all maintenance and other contracts for management of the association and operation of the condominium and facilities used by the unit owners having a service term in excess of 1 year.

(f) The estimated operating budget for the condominium, the required schedule of unit owners' expenses, and the association's most recent structural integrity reserve study or a statement that the association has not completed a structural integrity reserve study.

(g) A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.

(h) The lease of recreational and other facilities that will be used only by unit owners of the subject condominium.

(i) The lease of facilities used by owners and others.

(j) The form of unit lease, if the offer is of a leasehold.

(k) A declaration of servitude of properties serving the condominium but not owned by unit owners or leased to them or the association.

(l) The statement of condition of the existing building or

buildings, if the offering is of units in an operation being converted to condominium ownership.

(m) The statement of inspection for termite damage and treatment of the existing improvements, if the condominium is a conversion.

(n) The form of agreement for sale or lease of units.

(o) A copy of the agreement for escrow of payments made to the developer prior to closing.

(p) A copy of the documents containing any restrictions on use of the property required by subsection (17).

(q) A copy of the inspector-prepared summary of the milestone inspection report as described in ss. 553.899 and 718.301(4)(p), as applicable.

(25) Any prospectus or offering circular complying, prior to the effective date of this act, with the provisions of former ss. 711.69 and 711.802 may continue to be used without amendment or may be amended to comply with this chapter.

(26) A brief narrative description of the location and effect of all existing and intended easements located or to be located on the condominium property other than those described in the declaration.

(27) If the developer is required by state or local authorities to obtain acceptance or approval of any dock or marina facilities intended to serve the condominium, a copy of any such acceptance or approval acquired by the time of filing with the division under s. 718.502(1) or a statement that such acceptance or approval has not been acquired or received.

(28) Evidence demonstrating that the developer has an ownership, leasehold, or contractual interest in the land upon


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which the condominium is to be developed.

Section 6. The amendments made to ss. 718.103(14) and 718.202(3), Florida Statutes, and the provisions of s. 718.407(1), (2), and (7), Florida Statutes, are intended to clarify existing law and shall apply retroactively; however, such amendments do not revive or reinstate any right or interest that has been fully and finally adjudicated as invalid before July 1, 2024.

Section 7. This act shall take effect July 1, 2024.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to condominiums within a portion of a building or within a multiple parcel building; amending s. 718.103, F.S.; revising the definition of the term "condominium property"; amending s. 718.202, F.S.; authorizing the Director of the Division of Florida Condominiums, Timeshares, and Mobile Homes to accept certain assurances in lieu of a specified percentage of the sale price; authorizing a developer to deliver a surety bond or an irrevocable letter of credit in an amount equivalent to a certain percentage of the sale price; conforming provisions to changes made by the act; making technical changes; creating s. 718.407, F.S.; providing that a condominium may be created within a portion of a building or within a


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multiple parcel building; providing for the common elements of such condominium; providing requirements for the declaration of condominium and other recorded instruments; authorizing an association to inspect and copy certain books and records and to receive an annual budget; requiring that a specified statement be included in a contract for the sale of a unit of the condominium; requiring a seller of a unit of the condominium to provide a specified disclosure summary to a purchaser; providing that a multiple parcel building is not a subdivision of land if the land is not subdivided; amending ss. 718.503 and 718.504, F.S.; requiring certain persons to provide specified disclosures to purchasers under certain circumstances; making technical changes; providing for retroactive applicability; providing an effective date.

By Senator Yarborough

4-01027B-24 20241706__

A bill to be entitled

An act relating to condominiums within a portion of a building or within a multiple parcel building; amending s. 718.103, F.S.; revising the definition of "condominium property"; amending s. 718.202, F.S.; conforming provisions to changes made by the act; creating s. 718.407, F.S.; providing that a condominium may be created within a portion of a building or within a multiple parcel building; providing for the common elements of such condominium; providing requirements for the declaration of condominium and other recorded instruments; authorizing an association to inspect and copy certain books and records and to receive an annual budget; requiring a specified statement be included in a contract for sale of a unit of the condominium; requiring a seller of a unit of the condominium to provide a specified disclosure summary to a purchaser; providing that a multiple parcel building is not a subdivision of land if the land is not subdivided; amending s. 718.503, F.S.; requiring certain persons to provide specified disclosures to purchasers under certain circumstances; providing construction; providing an effective date.

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

Section 1. Subsection (14) of section 718.103, Florida Statutes, is amended to read:

4-01027B-24 20241706__

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

(14) "Condominium property" means the lands and~~,~~ leaseholds, and all improvements thereon, and ~~personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and~~ all easements and rights appurtenant thereto, whether or not contiguous, and personal property, if any, which are intended for use in connection with the condominium and which are subject to condominium ownership.

Section 2. 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 construction and development of the condominium property in which the unit to be sold is located or the easements and rights appurtenant thereto. 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 or the easements and rights appurtenant thereto. However, no part of these funds may be used for salaries, commissions, or expenses of salespersons; 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 3. Section 718.407, Florida Statutes, is created to read:

718.407 Condominiums created within a portion of a building or within a multiple parcel building.—

(1) Notwithstanding s. 718.103(12) or s. 718.108(1), a condominium may be created within a portion of a building or within a multiple parcel building, as defined in s. 193.0237(1), as provided in this section.

(2) The common elements of a condominium created within a portion of a building or a multiple parcel building are only the portions of the building submitted to the condominium form of ownership, excluding the units of such condominium.

(3) The declaration of condominium that creates a condominium within a portion of a building or within a multiple parcel building, the recorded instrument that creates the multiple parcel building, or any other recorded instrument applicable under this section must specify all of the following:

(a) The portions of the building which are included in the condominium and the portions of the building that are excluded.

(b) The party responsible for maintaining and operating

those portions of the building which are shared facilities, including, but not limited to, the roof, the exterior of the building, windows, balconies, elevators, the building lobby, corridors, recreational amenities, and utilities.

(c)1. How the expenses for the maintenance and operation of the shared facilities will be apportioned among the portions of the building, including the specific initial apportionment of expenses. An owner of a portion of the building, or the condominium association, as applicable to the portion of the building submitted to condominium form of ownership, must approve any increase in the expenses apportioned to such portion of the building. The apportionment of the expenses for the maintenance and operation of the shared facilities is presumed appropriate if such apportionment is based on any of the following criteria or any combination thereof:

a. The area or volume of each portion of the building in relation to the total area or volume of the entire building, exclusive of the shared facilities.

b. The market value of each portion of the building in comparison to the total market value of the entire building.

c. The extent to which the unit owners are permitted to use various components of the shared facilities.

2. This paragraph does not preclude the use of an alternative method of apportionment of expenses provided the method is stated in the declaration of condominium that creates a condominium within a portion of a building or within a multiple parcel building, the recorded instrument that creates the multiple parcel building, or any other recorded instrument applicable under this section.

(d) The party responsible for collecting shared expenses from all owners.

(e) The rights and remedies that are available to enforce payment from the other owners.

(4) The association of a condominium subject to this section has the right to inspect and copy the books and records upon which the costs for maintaining and operating the shared facilities are based and to receive an annual budget with respect to such costs.

(5) Each contract for the sale of a unit in a condominium subject to this section must contain in conspicuous type a clause that substantially states:

THE CONDOMINIUM IN WHICH YOUR UNIT IS LOCATED IS CREATED WITHIN A PORTION OF A BUILDING. THE COMMON ELEMENTS OF THE CONDOMINIUM CONSIST ONLY OF THE PORTIONS OF THE BUILDING SUBMITTED TO THE CONDOMINIUM FORM OF OWNERSHIP, EXCLUDING THE UNITS. THE CONDOMINIUM MAY HAVE MINIMAL OR NO COMMON ELEMENTS. PORTIONS OF THE BUILDING THAT ARE NOT INCLUDED IN THE CONDOMINIUM ARE GOVERNED BY A SEPARATE RECORDED INSTRUMENT THAT CONTAINS IMPORTANT PROVISIONS AND RIGHTS.

A CONTRACT THAT DOES NOT CONFORM TO THE REQUIREMENTS OF SECTION 718.407, FLORIDA STATUTES, IS VOIDABLE AT THE OPTION OF THE PURCHASER BEFORE CLOSING.

(6) The seller of a unit in a condominium subject to this

section must provide a separate disclosure summary that must be signed by the purchaser. The disclosure summary must contain the following statements in conspicuous type:

DISCLOSURE SUMMARY

THE CONDOMINIUM IN WHICH YOUR UNIT IS LOCATED IS CREATED WITHIN A PORTION OF A BUILDING OR WITHIN A MULTIPLE PARCEL BUILDING. PORTIONS OF THE BUILDING THAT ARE NOT INCLUDED IN THE CONDOMINIUM ARE (OR WILL BE) GOVERNED BY A SEPARATE RECORDED INSTRUMENT THAT CONTAINS IMPORTANT PROVISIONS AND RIGHTS. THE ASSOCIATION AND UNIT OWNERS MAY HAVE LIMITED OR NO CONTROL OVER THE MAINTENANCE, OPERATION, AND COSTS OF THE PORTIONS OF THE BUILDING THAT ARE NOT SUBMITTED TO THE CONDOMINIUM FORM OF OWNERSHIP. A COPY OF SUCH INSTRUMENT IS ATTACHED HERETO. THE ALLOCATION BETWEEN THE OWNERS OF THE COSTS TO MAINTAIN AND OPERATE THE BUILDING ARE SET FORTH IN THE DECLARATION OF CONDOMINIUM OR OTHER RECORDED INSTRUMENT, WHICH IS ATTACHED HERETO. THE OWNER OF ANOTHER PORTION OF THE BUILDING CONTROLS THE MAINTENANCE AND OPERATION OF THE PORTIONS OF THE BUILDING THAT ARE NOT SUBMITTED TO THE CONDOMINIUM FORM OF OWNERSHIP AND DETERMINES THE BUDGET FOR SUCH OPERATION AND MAINTENANCE.

(7) The creation of a multiple parcel building is not a subdivision of the land upon which such building is situated provided the land itself is not subdivided.

Section 4. Paragraph (c) is added to subsection (3) of

section 718.503, Florida Statutes, to read:

718.503 Developer disclosure prior to sale; nondeveloper unit owner disclosure prior to sale; voidability.—

(3) OTHER DISCLOSURES ~~DISCLOSURE~~.—

(c) If a unit is located within a condominium that is created within a portion of a building or within a multiple parcel building, the developer or nondeveloper unit owner must provide the disclosures required by s. 718.407(5) and (6).

Section 5. The amendments made to s. 718.103, Florida Statutes, and the creation of s. 718.407(1), (2), and (7), Florida Statutes, by this act are intended to clarify existing law and shall apply retroactively; however, such amendments do not revive or reinstate any right or interest that has been fully and finally adjudicated as invalid before July 1, 2024.

Section 6. This act shall take effect July 1, 2024.

The Florida Senate

Committee Agenda Request

To: Senator Joe Gruters, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: January 11, 2024

I respectfully request that **Senate Bill #1706**, relating to Condominiums Within a Portion of a Building or Within a Multiple Parcel Building, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Clay Yarborough

Senator Clay Yarborough
Florida Senate, District 4

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL:	SB 1544
INTRODUCER:	Senator Hooper
SUBJECT:	Department of Business and Professional Regulation
DATE:	February 2, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Pre-meeting**
2.			AEG	
3.			FP	

I. Summary:

SB 1544 revises the licensing process and other requirements for several licensees and permittees regulated by the Department of Business and Professional Regulation (DBPR). The bill requires persons and entities to create and maintain an online system account for the purpose of processing license, permit, or registration applications, as applicable, and to function as the primary means of contact between the regulating agency and the licensee, permittee, or registrant. Under the bill, the regulating agency may not process an application for the following licenses, permits, or registrations unless it is submitted through the online system:

- Licenses and permits for persons and entities licensed or permitted by the DBPR's Division of Alcoholic Beverages and Tobacco (DABT) under ch. 210, F.S., relating to the taxation of tobacco products;
- Alcoholic beverage licenses issued by the DABT; and
- Retail tobacco products dealer and a retail nicotine products dealer permits issued by the DABT.

The following persons must create and maintain an online account with the agency as a primary means of contact:

- Certified elevator inspectors, certified elevator technicians, or elevator companies registered with the Division of Hotels and Restaurants; and
- Certified public accountants licensed by the Board of Accountancy;

Regarding the Florida Homeowners' Construction Recovery Fund (recovery fund), the bill doubles the maximum amounts payable to claimants for claims that may be made against contractors from the recovery fund.

Under the bill, beginning January 1, 2025, for Division I and Division II contracts entered into on, or after, July 1, 2024, payment from the recovery fund is subject to a $100,000 maximum

payment for each Division I claim ($50,000 maximum currently), and a $30,000 maximum payment for each Division II claim ($15,000 maximum currently)

The bill also increases the lifetime aggregate limits for claims made against a single licensee. Beginning January 1, 2025, for Division I and Division II contracts entered into on or after July 1, 2024, payment from the recovery fund is subject only to a total lifetime aggregate cap of $2 million for each Division I claim ($500,000 maximum currently), and a $600,000 maximum payment for each Division II claim ($150,000 maximum currently).

The bill also:

- Regarding pilots of navigable waters, repeals the requirement for:
  - Pilots and pilots in port to establish a competency-based mentor program for minority persons as defined in s. 288.703, F.S.;
  - The DBPR to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives containing information on the mentor programs; and
  - The DBPR to give consideration to minority and female state applicants when qualifying deputy pilots for certification.
- Eliminates the Board of Employee Leasing Companies and provides for its functions and duties to be performed by an employee leasing companies licensing program created by the bill to be administered by the DBPR.
- Revises the criteria for determining financial responsibility when licensing asbestos abatement consultants and contractors.
- Deletes the provision that, if an applicant for a real estate broker or sale associate license issued by the Florida Real Estate Commission fails to pass the required examination within two years of completing the education course, the applicant's successful course completion is invalid for licensure.
- Regarding barber and cosmetologists, repeals duplicative provisions allowing licensure by endorsement of persons licensed in another state for at least one year.
- Regarding construction contracting, authorizes local jurisdiction enforcement bodies to recommend to the Construction Industry Licensing Board (CILB) a recommended penalty of restitution, in addition to the recommended penalties that a local jurisdiction enforcement body is authorized to recommend to the CILB in current law.
- Provides additional types of work experience to qualify for certification as a designated representative of an entity licensed under the Drug and Cosmetic Act in part I of ch. 499, F.S.
- Eliminates the Florida Mobile Home Relocation Corporation and provides for its functions and duties to be administered by the DBPR's Division of Condominiums, Timeshares, and Mobile Homes.

The bill takes effect July 1, 2024.

II. Present Situation:

Department of Business and Professional Regulation

Licensure, Generally

The Department of Business and Professional Regulation (DBPR) has 11 divisions that are tasked with the licensure and general regulation of several professions and businesses in Florida.[1] Fifteen boards and programs exist within the Division of Professions,[2] two boards exist within the Division of Real Estate,[3] and one board exists in the Division of Certified Public Accounting.[4]

Sections 455.203 and 455.213, F.S., establish the DBPR's general licensing authority, including its authority to charge license fees and license renewal fees. Each board within the DBPR must determine by rule the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.[5] When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a "permit, registration, certificate, or license" to the licensee.[6]

In Fiscal Year 2022-2023, there were 950,380 active licensees regulated by the DBPR or a board within the department, including 39,336 active licensees in the Division of Certified Public Accounting, 486,336 active licensees in the Division of Professions, and 67, 827 active licensees under the Board of Professional Engineers.[7]

Other Relevant Topics

For ease of reference to each of the topics addressed in the bill, the Present Situation for each topic will be described in Section III of this analysis, followed immediately by an associated section detailing the Effect of Proposed Changes.

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[1] *See* s. 20.165, F.S, creating the divisions of Administration; Alcoholic Beverages and Tobacco; Certified Public Accounting; Drugs, Devices, and Cosmetics; Florida Condominiums, Timeshares, and Mobile Homes; Hotels and Restaurants; Pari-mutuel Wagering; Professions; Real Estate; Regulation; Service Operations; and Technology.

[2] Section 20.165(4)(a), F.S., establishes the following boards and programs which are noted with the implementing statutes: Board of Architecture and Interior Design, part I of ch. 481, F.S.; Florida Board of Auctioneers, part VI of ch. 468, F.S.; Barbers' Board, ch. 476, F.S.; Florida Building Code Administrators and Inspectors Board, part XII of ch. 468, F.S.; Construction Industry Licensing Board, part I of ch. 489, F.S.; Board of Cosmetology, ch. 477, F.S.; Electrical Contractors' Licensing Board, part II of ch. 489, F.S.; Board of Employee Leasing Companies, part XI of ch. 468, F.S.; Board of Landscape Architecture, part II of ch. 481, F.S.; Board of Pilot Commissioners, ch. 310, F.S.; Board of Professional Engineers, ch. 471, F.S.; Board of Professional Geologists, ch. 492, F.S.; Board of Veterinary Medicine, ch. 474, F.S.; Home Inspection Services Licensing Program, part XV of ch. 468, F.S.; and Mold-related Services Licensing Program, part XVI of ch. 468, F.S.

[3] *See* s. 20.165(4)(b), F.S. Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S., and Florida Real Estate Commission, created under part I of ch. 475, F.S.

[4] *See* s. 20.165(4)(c), F.S., which establishes the Board of Accountancy, created under ch. 473, F.S.

[5] Section 455.219(1), F.S.

[6] Section 455.01(4) and (5), F.S.

[7] *See* Department of Business and Professional Regulation, Division of Professions, Division of Certified Public Accounting, Division of Real Estate, and Division of Regulation, *Annual Report, Fiscal Year 2022-2023*, p. 18, available at http://www.myfloridalicense.com/DBPR/os/documents/Division%20Annual%20Report%20FY%2022-23.pdf (last visited Jan. 15, 2024).

III. Effect of Proposed Changes:

Taxation of Tobacco products

Present Situation

Part II of ch. 210, F.S., imposes a tax and a surcharge tax on tobacco products other than cigarettes or cigars. Cigarettes are taxed under part I of ch. 210, F.S. Cigars are not subject to a tax.

Section 210.15, F.S., requires every person, firm, or corporation desiring to engage in business as a manufacturer, importer, exporter, distributing agent or wholesale dealer of cigarettes within this state to file with the Division of Alcoholic Beverages and Tobacco (DABT) an application for a cigarette permit for each place of business located within this state or, in the absence of such place of business in this state, for wherever its principal place of business is located. Every application for a cigarette permit must be made on forms furnished by the DABT and set forth the name under which the applicant transacts or intends to transact business, the location of the applicant's place of business within the state, if any, and such other information as the DABT may require.

Distributors of tobacco products other than cigarettes must be licensed by the DABT.[8] Section 210.40, F.S., provides a $25 application fee for a license as a distributor of tobacco products other than cigarettes. The license application must be accompanied by a corporate surety bond issued by a surety company authorized to do business in this state, conditioned for the payment when due of all taxes, penalties, and accrued interest that may be due to the state. The required bond must be in the sum of $1,000 and in a form prescribed by the DABT.[9] If the DABT determines that the bond given by a licensee is inadequate in amount to fully protect the state, the DABT must require an additional bond in an amount deemed sufficient. A separate application for a license must be made for each place of business at which a distributor proposes to engage in business as a distributor of tobacco products other than cigarettes, but an applicant may provide one bond in an amount determined by the DABT for all applications made by the distributor.

Effect of Proposed Changes

Section 1 of the bill revises s. 210.15(1), F.S., relating to the taxation of cigarettes under part I of ch. 210, F.S., and **Section 2** of the bill creates s. 210.32, F.S., relating to the taxation of tobacco products other than cigarettes, to require every person or entity licensed or permitted under ch. 210, F.S., to require all persons or entities licensed or permitted by the DABT, or applying for a license or permit, to create and maintain an account with the DABT's online system.

An email address must be supplied by the licensee, permittee, or applicant, and will function as the primary means of contact between the DABT and the licensee, permittee, or applicant. The

[8] Section 210.35, F.S.

[9] Wholesale dealers, agents, or distributing agents of cigarettes must file with the division a surety bond, certificate of deposit, or irrevocable letter of credit acceptable to the division in an amount equal to 110 percent of the estimated tax liability for 30 days, but not less than $2,000. Section 210.08, F.S.

licensee, permittee, and applicant is responsible for maintaining accurate contact information on file with the DABT.

The bill requires all persons or entities seeking a license or permit from the division to use the DABT's online system. Under the bill, the DABT may not process an application or a permit unless it is submitted through the online system.

Section 3 of the bill revises s. 210.40, F.S., to increase the required corporate surety bond from $1,000 to $25,000. The bill revises the term "surety bond" to "corporate surety bond." The bill requires the DABT to review the amount of a corporate surety bond on a semiannual basis to ensure that the bond is adequate to protect the state.

Under the bill, the DABT may increase the corporate surety bond amount before renewing a distributor's license or after completing its semiannual review of the bond amount. The bill allows the DABT to increase the corporate surety bond amount to the sum of the distributor's highest month of final audited tax liabilities, penalties, and accrued interest which are due to the state. A corporate surety bond, with the sum determined by the DABT in accordance with the paragraph, is required for the renewal of a distributor's license.

The bill authorizes the DABT to prescribe by rule increases in the bond amount.

The DABT may decrease a corporate security bond upon a distributor's showing of good cause and then set conditions and standards of review for decreasing a bond amount. A decrease is only authorized when criminal or administrative charges are fully resolved, the corporate entity displays responsible financial behavior, and for a showing of good cause. The bill prohibits decreasing the amount of a corporate security bond when the licensee is in default on tax liabilities, penalties, or interest due the state or is the subject of a criminal or administrative investigation or prosecution.

The bill requires the DABT to notify a distributor in writing of any change in the distributor's corporate surety bond requirements by the date the distributor's audited tax assessments become final.

The bill states that these provisions governing corporate surety bonds are not subject to s. 120.60, F.S., of the Administrative Procedure Act, which sets forth the administrative process for agency review of license application, including deadlines for the approval and denial of license applications.

Pilots of Navigable Waters

Present Situation

Chapter 310, F.S., relates to the regulation of the pilots of vessels utilizing the navigable waters of Florida. The term "pilot" means "a licensed state pilot or a certificated deputy pilot." The term "piloting" means the acts of pilots in conducting vessels through the navigable waters of Florida.

The qualifications for a pilot's license include being at least 21 years of age, being of good physical and mental health, having at least two years of service as a certified deputy pilot, and

satisfactorily completing the examination required under s. 310.081, F.S.[10] The qualifications for a deputy pilot certificate include being at least 21 years of age, having specified maritime experience, and satisfactorily completing the examination required under s. 310.081, F.S.[11]

Section 310.0015(3)(d)2., F.S., requires the pilot or pilots in a port to establish a competency-based mentor program by which minority persons as defined in s. 288.703, F.S., may acquire the skills for the professional preparation and education competency requirements of a licensed state pilot or certificated deputy pilot. The DBPR must provide the Governor, the President of the Senate, and the Speaker of the House of Representatives with a report each year on the number of minority persons who have participated in each mentor program, who are licensed state pilots or certificated deputy pilots, and who have applied for state pilot licensure or deputy pilot certification.

Effect of Proposed Changes

Section 4 of the bill revises section 310.0015, F.S., to repeal the requirement that pilot or pilots in port must establish a competency-based mentor program for minority persons as defined in s. 288.703, F.S., and that the DBPR submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives containing information on the mentor programs.

Section 5 of the bill revises s. 310.081(2), F.S., to repeal the requirement that the DBPR give consideration to minority and female state applicants when qualifying as deputy pilots, in the interest of ensuring diversification within the state piloting profession.

Certified Elevator Inspectors

Present Situation

Chapter 399, F.S., provides for the regulation of elevators in Florida, including the requirements of certified elevator inspectors,[12] certified elevator technicians,[13] or elevator companies[14] to register with the DBPR's Division of Hotels and Restaurants.

Effect of Proposed Changes

Section 6 of the bill creates s. 399.18, F.S., to require any certified elevator inspector, certified elevator technician, or registered elevator company, and any person applying for such certification or registration, to create and maintain an online account; and provide an e-mail address to function as the primary means of contact for all communication from the division. The bill requires that each person or entity maintain accurate contact information on file with the Division of Hotels and Restaurants. The bill authorizes the Division of Hotels and Restaurants to adopt rules to implement the provisions of the bill.

[10] Section 310.073, F.S.
[11] Section 310.071, F.S.
[12] Section 399.17, F.S., relating to the registration requirement for certified elevator inspectors.
[13] Section 399.01(14), F.S.
[14] Section 399.03, F.S.

Employee Leasing Companies

Present Situation

Part XI of ch. 468, F.S., provide for the regulation of employee leasing companies. Section 468.521, F.S., creates the Board of Employee Leasing Companies within the DBPR, to regulate the profession of employee leasing, including licensure and discipline, and to adopt rules to implement the provisions of part XI of ch. 468, F.S. The Board of Employee Leasing Companies consists of seven members who are appointed by the Governor and confirmed by the Senate.[15]

The controlling person of an employee leasing company must be licensed by the DBPR. Generally, the term "employee leasing" means an arrangement whereby a leasing company assigns its employees to a client and allocates the direction of and control over the leased employees between the leasing company and the client.[16] An employee leasing company may be a sole proprietorship, partnership, corporation, or other form of business entity engaged in employee leasing.[17]

Effect of Proposed Changes

Section 7 of the bill creates s. 468.519, F.S., to establish the employee leasing companies licensing program to be administered by the DBPR.

Section 8 of the bill repeals s. 468.521, F.S., which establishes the Board of Employee Leasing Companies.

Section 26 of the bill revises s. 20.165, F.S., which sets forth the boards and programs within the DBPR, to replace the Board of Employee Leasing Companies with the employee leasing companies licensing program.

Asbestos Consultants and Contractors

Present Situation

Chapter 469, F.S., governs the licensing and regulation of asbestos abatement consultants and contractors. The Asbestos Licensing Unit is a program located in the Division of Professions, which processes license applications and responds to consumer complaints and inquiries by monitoring activities and compliance within the asbestos abatement industry.

A person must be a licensed asbestos contractor in order to conduct asbestos abatement work,[18] unless exempted.[19] A person must be a licensed asbestos consultant to conduct an asbestos survey, develop an operation and maintenance plan, monitor and evaluate asbestos abatement, or

[15] Section 468.521, F.S.
[16] Section 468.520(4), F.S.
[17] Section 468.520(5), F.S.
[18] Section 469.003(3), F.S.
[19] Section 469.002, F.S., provides that in limited circumstances, certain governmental employees with required training may engage in asbestos abatement work solely for maintenance purposes.

prepare asbestos abatement specifications.[20] Prerequisite qualifications for licensure as an asbestos consultant require that the applicant be actively licensed as an architect, professional engineer, or professional geologist; is a diplomat of the American Board of Industrial Hygiene; or has been designated as a Certified Safety Professional by the Board of Certified Safety Professionals.[21]

In addition, for applicants who wish to engage in consulting or contracting as a partnership, corporation, business trust, or other legal entity, or in any name other than the applicant's legal name, the applicant's legal entity must apply for licensure through a qualifying agent or the individual applicant must apply for licensure under the fictitious name as a business organization.

Applicants for licensure as an asbestos abatement professional or as an asbestos abatement business organization must provide evidence of financial stability.[22] Section 469.006(2)(c)2., F.S., requires the DBPR to adopt rules to determine the financial stability of applicants for a license as an asbestos abatement business organization, which must include, but is not limited to, credit history and the limits of bondability and credit.

Effect of Proposed Changes

Section 9 of the bill revises s. 469.006(2)(c)2., F.S., to delete the requirement that criteria for bondability and credit be included in the DBPR's rule for determining financial responsibility.

Certified Public Accountants

Present Situation

The Board of Accountancy within the DBPR is charged with regulating the practice of public accountancy in Florida.[23] A person wishing to practice accounting[24] must be licensed as a Florida certified public accountant (CPA) and apply to the DBPR to take a licensure examination.[25] To sit for the license examination, a person must be of good moral character, pass the licensure exam, and have at least 120 semester hours or 180 quarter hours of education, with a focus on accounting and business.[26] To be licensed as a CPA, a person must have specified qualifications, including at least 150 hours of education. CPA firms must also be licensed.[27]

Effect of Proposed Changes

Sections 10 and 11 of the bill revise ss. 473.306(2) and 473.308, F.S., to require persons applying to take the CPA licensure examination, applying for a CPA license, and applying for a CPA firm license to create and maintain an online account with the DBPR and provide an e-mail

[20] Section 469.003, F.S.
[21] Section 469.004(1), F.S.
[22] Section 469.006(2)(c)2., F.S.
[23] Section 473.303, F.S., creating the Board of Accountancy.
[24] *See* s. 473.302(8), F.S., defining the terms "practice of," "practicing public accountancy," or "public accounting."
[25] Section 473.306, F.S.
[26] Sections 473.308(2)-(5), F.S.
[27] *Id.*

address to function as the primary means of contact for all communication to the applicant from the DBPR. Each applicant is responsible for maintaining accurate contact information on file with the DBPR and must submit any change in their e-mail address or home address within 30 days after the change. All changes must be submitted through the DBPR's online system.

Real Estate Brokers, Sales Associates, Schools, and Appraisers

Present Situation

Part I of ch. 475, F.S., provides for the regulation of real estate brokers, sales associates, and real estate schools by the Florida Real Estate Commission (FREC).[28]

A license issued by the FREC is required to practice as a real estate broker or a sales associate.[29] Section 475.181, F.S., requires that the FREC certify for licensure any applicant who meets the requirements for licensure.

The FREC may not certify an applicant who has violated any of the provisions of s. 475.42, F.S., which sets forth prohibited acts, or is subject to discipline under s. 475.25, F.S., which sets forth grounds for discipline. All applications expire after two years if the applicant fails to pass the appropriate examination. Additionally, applicants must satisfy education course approved by the FREC and successfully complete a license examination within two years of completing the required education.[30] If the applicant does not pass the licensing examination within two years after the successful course completion date, the applicant's successful course completion is invalid for licensure.[31]

Effect of Proposed Changes

Section 12 of the bill amends s. 475.181(2), F.S., to delete the provision that, if an applicant for a real estate broker or sale associate license fails to pass the required examination within two years of completing the required education course, the applicant's successful course completion is invalid for licensure.

Barbering

Present Situation

The Barbers' Board is responsible for licensing and regulating barbers.[32]

The term "barbering" in ch. 476, F.S., the Barbers' Act, includes any of the following practices when done for payment by the public: shaving, cutting, trimming, coloring, shampooing,

[28] Section 475.02, F.S., creating the Florida Real Estate Commission, which has seven members who are appointed by the Governor and confirmed by the Senate.
[29] Section 475.181, F.S.
[30] *See* s. 475.161, F.S., relating to licensing of real estate brokers and sales associates, s. 475.17, F.S., relating to qualifications for practice, s. 475.175, F.S., relating to examinations, s. 475.180, F.S., relating to the licensing of persons who are not a resident of Florida and are licensed in another jurisdiction (nonresident licensees), and s. 475.181, F.S., relating to licensure.
[31] Section 475.181(2), F.S.
[32] Section 476.054, F.S., creating the Barber's Board.

arranging, dressing, curling, or waving the hair or beard or applying oils, creams, lotions, or other preparations to the face, scalp, or neck, either by hand or by mechanical appliances.[33]

An applicant for licensure as a barber must pass an examination. To be eligible to take the examination, the applicant must be at least 16 years old, pay the application fee, and either:

- Have held an active valid license in another state for at least one year;
- Complete a minimum of 900 hours of training; or
- Passes the licensure examination after completing a minimum of 600 hours actual hours of school education.[34]

Additionally, ch. 2020-160, Laws of Fla., amended s. 476.144(5), F.S., relating to the licensing of barbers, to provide licensure by endorsement of persons who hold a current active license to practice barbering in another state for at least one year.

A person may also apply for and receive a "restricted license" to practice barbering, which authorizes the licensee to practice only in areas in which he or she has demonstrated competency pursuant to rules of the Barbers' Board.[35]

The Barber's Board may also license by endorsement barbering practitioners who desire to be licensed in this state who hold a current active license in another country and who have met qualifications that are substantially similar to, equivalent to, or greater than the qualifications required of applicants from this state.[36]

Effect of Proposed Changes

Section 13 of the bill revises s. 476.114, F.S., to delete the licensure by endorsement provision, which is duplicative of the licensure by endorsement provision in s. 476.411, F.S.

Cosmetology

Present Situation

Chapter 477, F.S., governs the licensure and regulation of cosmetologists, nail specialists, facial specialists, full specialists, body wrappers and related salons in the state by the Board of Cosmetology, within the DBPR.

Persons may not engage in the practice of cosmetology without a license issued by the Board of Cosmetology.[37] Individuals are also prohibited from providing manicures, pedicures, nail painting services, or facials in Florida without a registration with the Board of Cosmetology.[38]

[33] *See* s. 476.034(2), F.S. The term does not include those services when done for the treatment of disease or physical or mental ailments.
[34] *See* s. 476.114(2), F.S.
[35] *See* s. 476.144(6), F.S.
[36] Section 476.144(5), F.S.
[37] Section 477.014, F.S.
[38] *See* ss. 477.013(6) and 477.0201, F.S.

To qualify for a cosmetologist license, the applicant must be at least 16 years of age or have received a high school diploma, pay nonrefundable application and examination fees, and successfully complete a license examination.

In addition, s. 477.019(2), F.S., provides that an applicant for a cosmetologist license must either:

- Be authorized to practice cosmetology in another state or country for at least one year, and not qualify for licensure by endorsement as provided for in s. 477.019(5), F.S.; or
- Have received a minimum of 1,200 hours of training as established by the Board of Cosmetology.

However, s. 477.019(5), F.S., does not provide for licensure by endorsement.
Section 477.019(6), F.S., allows the Board of Cosmetology to certify as qualified for licensure by endorsement as a cosmetologist in this state an applicant who holds a current active license to practice cosmetology in another state.

Effect of Proposed Changes

Section 14 of the bill revises s. 477.019(2), F.S., to delete the licensure by endorsement provision, which is duplicative of the licensure by endorsement provision in s. 477.019(6), F.S.

Construction Contracting

Present Situation

Contractor Discipline (Penalties, Fines, and Other Penalties)

Section 489.131(7), F.S., relating to compliance with regulatory policies by licensed contractors, authorizes a local jurisdiction enforcement body to enforce its local ordinances and the provisions of part I of ch. 489, F.S., relating to construction contracting, against locally licensed or registered contractors. Fines and other penalties are authorized to ensure compliance with state laws and local jurisdiction ordinances.

The local jurisdiction enforcement body may conduct disciplinary proceedings and may require restitution, impose a suspension or revocation of a local license, or a fine not to exceed $5,000, or a combination thereof, against the locally licensed or registered contractor, and may assess reasonable investigative and legal costs for the prosecution of the violation.

In addition to any action the local jurisdiction enforcement body may take against the individual's local license, and any fine the local jurisdiction may impose, the local jurisdiction enforcement body must issue a recommended penalty for board action. This recommended penalty may include a recommendation for no further action, or a recommendation for suspension, revocation, or restriction of the registration, or a fine to be levied by the board, or a combination thereof.

The local jurisdiction enforcement body must inform the disciplined contractor and the complainant of the local license penalty imposed, the board penalty recommended, the rights to appeal, and the consequences should an appeal not be taken. The local jurisdiction enforcement

body must, upon having reached adjudication or having accepted a plea of nolo contendere, immediately inform the board of its action and the recommended board penalty.

The DBPR, the disciplined contractor, or the complainant may challenge the local jurisdiction enforcement body's recommended penalty for board action to the Construction Industry Licensing Board (CILB). A challenge must be filed within 60 days after the issuance of the recommended penalty to the CILB, and if challenged, there is a presumptive finding of probable cause which allows the case to proceed without the need for a probable cause hearing.

Failure of the DBPR, the disciplined contractor, or the complainant to challenge the local jurisdiction's recommended penalty within the required time period constitutes a waiver of the right to a hearing before the CILB. A waiver of the right to a hearing before the CILB is deemed an admission of the violation, and the penalty recommended to the CILB becomes a final order without further board action, in accordance with procedures developed by CILB rule. The disciplined contractor may appeal this action to the district court.

The DBPR may investigate any complaint made to it, but may not initiate or pursue any complaint against a registered contractor who is not also a certified contractor where a local jurisdiction enforcement body has jurisdiction over the complaint, unless summary procedures are initiated by the secretary pursuant to s. 455.225(8), F.S., or unless the local jurisdiction enforcement body has failed to investigate and prosecute a complaint, or make a finding of no violation, within six months of receiving the complaint. The DBPR must refer the complaint to the local jurisdiction enforcement body for investigation, and if appropriate, prosecution. However, the DBPR may investigate such complaints to the extent necessary to determine whether summary procedures should be initiated.

Upon a recommendation by the DBPR, the CILB may make conditional, suspend, or rescind its determination of the adequacy of the local government enforcement body's disciplinary procedures granted under s. 489.117(2), F.S. However, local jurisdictions may not exercise disciplinary authority over certified contractors.

Florida Homeowners' Construction Recovery Fund

The Florida Homeowners' Construction Recovery Fund (recovery fund) was created by the Legislature in 1993 after Hurricane Andrew.[39] The recovery fund is the last resort to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed general, building, and residential contractors. Covered losses include financial mismanagement or misconduct, project abandonment, or fraudulent statement of a contractor or related party.[40] A homeowner must have engaged a contractor for construction or improvement of the homeowner's Florida residence, and the damage must have been caused by a Division I licensee or a Division II licensee.[41]

[39] *See* ch. 93-166, s. 21, Laws of Fla. and *see* Department of Business and Professional Regulation, *2024 Agency Legislative Bill Analysis for SB 414* at 2 (Nov. 20, 2023) (on file with the Senate Committee on Regulated Industries).
[40] *See* ss. 489.140-489.144, F.S.
[41] Section 489.1402, F.S., defines the term "residence" to mean "a single-family residence, an individual residential condominium or cooperative unit, or a residential building containing not more than two residential units in which the owner

A claim must involve an act by a contractor under specific statutory provisions relating to mismanagement, abandonment of a project, and actions that give rise to disciplinary actions by the CILB against contractors, as follows:

- Section 489.129(1)(g), F.S., allows disciplinary proceedings for committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer. Financial mismanagement or misconduct occurs when the contractor fails to remove a valid lien after payment; the contractor has abandoned the job and has been paid for more than is completed; and the customer is made to pay more than the contract price.
- Section 489.129(1)(j), F.S., allows disciplinary proceedings for abandoning a construction project, under certain conditions.
- Section 489.129(1)(k), F.S, allows disciplinary proceedings for signing a false statement with respect to a project or contract indicating that the work is bonded, subcontractors have been paid, or workers' compensation and public liability insurance are provided.
- Section 713.35, F.S., provides for criminal penalties for any person who knowingly and intentionally makes an affidavit, a waiver or release of lien, or other document, whether or not under oath, with false information about the payment status of subcontractors, sub-subcontractors, or suppliers.

If a final judgment, CILB-issued restitution order, or arbitration award is not expressly based on s. 489.129(1)(g), (j), or (k), F.S., the claimant must present to the CILB sufficient evidence to show that the contractor engaged in activity described in those subsections.[42]

The recovery fund is financed by a 1.5 percent surcharge on all building permit fees associated with the enforcement of the Code.[43] The local government that collects the permit fees retains 10 percent of the surcharge, and the net surcharge proceeds are then allocated equally to the recovery fund and the operations of the Building Code Administrators and Inspectors Board.[44]

Duty of Contractor to Give Notice of Rights under Recovery Fund

Section 489.1425, F.S., creates a duty for a contractor to provide notice to a customer of rights under the recovery fund. Any agreement or contract for repair, restoration, improvement, or construction to residential real property must contain a written statement explaining the consumer's rights under the recovery fund, except where the value of all labor and materials does not exceed $2,500, and must be substantially in the form required by statute.

Requirements to Make a Claim

The claimant must have obtained a final judgment, arbitration award, or CILB-issued restitution order against the contractor for damages that are a direct result of a compensable violation. The

contracting for the improvement is residing or will reside 6 months or more each calendar year upon completion of the improvement."

[42] Fla. Admin. Code R. 61G4-21.003.

[43] Section 468.631(1), F.S.

[44] The DBPR has the authority to transfer excess cash to the recovery fund if it determines it is not needed to support the operation of the Building Code Administrators and Inspectors Board; the amount transferred cannot exceed the amount appropriated in the General Appropriations Act or approved by the Legislative Budget Commission for payment of claims from the fund. *Id.*

statute of limitations to make a claim is one year after the conclusion of an action or award in arbitration that is based on the misconduct.[45]Certain persons are not eligible to make a claim against the recovery fund.[46]

Limits

Section 489.143, F.S., relating to payment from the recovery fund, provides that an eligible claimant from the recovery fund will be an amount equal to the judgment, award, or restitution order or $25,000, whichever is less, or an amount equal to the unsatisfied portion of such person's judgment, award, or restitution order, but only to the extent and amount of actual damages suffered by the claimant, and subject to the maximum per-claim amount and a total lifetime per-licensee maximum.[47]

The maximum amounts payable for recovery fund claims and the total lifetime aggregate limits are set forth in s. 489.143, F.S,[48] as follows:

- Beginning January 1, 2005, for each Division I contract entered into after July 1, 2004, recovery fund claims are limited to a $50,000 maximum payment for each Division I claim, with a total lifetime aggregate limit of $500,000 for each Division I licensee.
- Beginning January 1, 2017, for each Division II contract entered into on or after July 1, 2016, (the date that claims against Division II licensees were first authorized to be filed), recovery fund claims are limited to a $15,000 maximum payment for each Division II claim, with a total lifetime aggregate limit of $150,000 for each Division II licensee.

Claims are paid in the order that they are filed, up to the lifetime aggregate limits for each transaction and licensee, and to the limits of amounts appropriated to pay claims against the recovery fund.[49] Payments may not exceed the total claim limits or lifetime aggregate limits.[50]

Appropriations; Excess Funds; License Suspension

Section 489.143(8), F.S., provides that if the annual appropriation is exhausted with claims pending, the pending claims must be carried over to the next fiscal year. Monies in excess of pending claims must be paid in accordance with s. 468.631, F.S., relating to the Building Code Administrators and Inspectors Fund.

Section 489.143(9), F.S., provides that, upon payment of any amount from the recovery fund in settlement of a claim in satisfaction of a judgment, award, or restitution order against a licensee,

[45] Section 489.141(1)(f), F.S.
[46] Section 489.141(2), F.S., provides certain persons are precluded from making a claim for recovery under the fund, if: (a) The claimant is the spouse of the judgment debtor or licensee or a personal representative of such spouse; (b) The claimant is a licensee who acted as the contractor in the transaction that is the subject of the claim; (c) The claim is based upon a construction contract in which the licensee was acting with respect to the property owned or controlled by the licensee; (d) The claim is based upon a construction contract in which the contractor did not hold a valid and current license at the time of the construction contract; or (e) The claimant was associated in a business relationship with the licensee other than the contract at issue.
[47] Section 489.143(2), F.S.
[48] For fund claims for contracts entered into before July 1, 2004, see s. 489.143(6), F.S.
[49] Section 489.143(7), F.S.
[50] *Id*.

the license of such licensee is automatically suspended, without further administrative action, upon the date of payment from the recovery fund. The license may not be reinstated until the licensee has repaid in full the amount paid from the recovery fund, plus interest.

Effect of Proposed Changes

Section 15 revises s. 489.131, F.S., relating to compliance with regulatory policies by licensed contractors, to authorize a local jurisdiction enforcement body to recommend to the CILB a recommended penalty of restitution, in addition to the recommended penalties that a local jurisdiction enforcement body is authorized to recommend to the CILB in current law. The bill also requires that a recommended penalty specify the violations of ch. 489, F.S., relating to contracting, upon which the recommendation is based.

Section 16 revises s. 489.143, F.S., to double the maximum amounts payable to claimants for claims that may be made against contractors from the Florida Homeowners' Construction Recovery Fund (recovery fund).

Under the bill, beginning January 1, 2025, for Division I and Division II contracts entered into on or after July 1, 2024, payment from the recovery fund is subject to a $100,000 maximum payment for each Division I claim ($50,000 maximum currently), and a $30,000 maximum payment for each Division II claim ($15,000 maximum currently).

The bill also increases the lifetime aggregate limits for claims made against a single licensee. Beginning January 1, 2025, for Division I and Division II contracts entered into on or after July 1, 2024, payment from the recovery fund is subject only to a total lifetime aggregate cap of $2 million for each Division I claim ($500,000 maximum currently), and a $600,000 maximum payment for each Division II claim ($150,000 maximum currently).

Florida Drug and Cosmetic Act

Present Situation

The Division of Drugs, Devices and Cosmetics safeguards the health, safety, and welfare of the citizens of the state of Florida from injury due to the use of adulterated, contaminated, misbranded drugs, drug ingredients and cosmetics by administering the provisions of the Florida Drug and Cosmetic Act in part I of ch. 499, F.S. A permit is required before a person or establishment may engage in specified activities, including operating as a prescription drug manufacturer, device manufacturer, or cosmetic manufacturer.[51]

In pertinent part, each establishment that is issued an initial or renewal permit as a prescription drug wholesale distributor or an out-of-state prescription drug wholesale distributor must designate in writing to the DBPR at least one natural person to serve as the designated representative of the wholesale distributor. Such person must have an active certification as a designated representative from the DBPR.

[51] See s. 499.01, F.S.

To be certified as a designated representative, a natural person must:

- Submit an application on a form furnished by the DBPR and pay the appropriate fees.
- Be at least 18 years of age.
- Have at least two years of verifiable full-time:
  - Work experience in a pharmacy licensed in this state or another state, where the person's responsibilities included, but were not limited to, recordkeeping for prescription drugs;
  - Managerial experience with a prescription drug wholesale distributor licensed in this state or in another state; or
  - Managerial experience with the United States Armed Forces, where the person's responsibilities included, but were not limited to, recordkeeping, warehousing, distributing, or other logistics services pertaining to prescription drugs.

In addition, the person must receive a passing score of at least 75 percent on an examination given by the DBPR regarding federal laws governing distribution of prescription drugs and part I of ch. 499, F.S., and the rules adopted by the DBPR governing the wholesale distribution of prescription drugs.

Effect of Proposed Changes

Section 17 of the bill revises s. 499.012 (15), F.S., relating to the requirements to be a certified designated representative, to provide the following additional types of work experience to qualify for certification:

- Managerial experience with a state or federal organization responsible for regulating or permitting establishments involved in the distribution of prescription drugs, whether in an administrative or a sworn law enforcement capacity; or
- Work experience as a drug inspector or investigator with a state or federal organization, whether in an administrative or a sworn law enforcement capacity, where the person's responsibilities related primarily to compliance with state or federal requirements pertaining to the distribution of prescription drugs.

Alcoholic Beverage Licenses

Present Situation

The DABT within the DBPR administers and enforces the Beverage Law,[52] which regulates the manufacture, distribution, and sale of wine, beer, and liquor.

[52] Section 561.01(6), F.S., provides that the "Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

Section 561.14, F.S., requires a license issued by the DABT to be a manufacturer,[53] distributor,[54] or vendor[55] of alcoholic beverages. A license is also required to be a broker or sales agent,[56] importer,[57] bottle club,[58] or exporter.[59]

Section 562.12(1), F.S., prohibits the sale of alcoholic beverages without a license issued by the division. An alcoholic beverage licensee may only sell alcoholic beverages in the manner permitted by her or his license. In addition, a licensee or other person who keeps or possesses alcoholic beverages not permitted to be sold by her or his license, or not permitted to be sold without a license, with intent to sell or dispose of same unlawfully, or who keeps and maintains a place where alcoholic beverages are sold unlawfully, is guilty of a misdemeanor of the second degree.[60]

Section 562.12(2),F.S., provides that it is unlawful for any person to operate as an exporter[61] of alcoholic beverages within the state without registering as an exporter pursuant to s. 561.17, F.S. A person who violates this prohibition is guilty of a misdemeanor of the second degree.[62]

Section 561.01(4)(a), F.S., defines the term "alcoholic beverages" to mean distilled spirits and all beverages containing one-half of one percent or more alcohol by volume.

Section 561.17, F.S., provides the process for applying with the DABT for a license or registration under the Beverage Law.

Effect of Proposed Changes

Section 18 of the bill revises s. 561.17(5), F.S., to require persons or entities licensed or permitted by the DABT to provide an electronic mail address to the DABT to function as the primary contact for all communication by the division to the licensee or permittee. Under the bill, the DABT may not process an application for alcoholic beverage license unless the application is submitted through the DABT's online system.

[53] Section 561.14(1), F.S., relating to the license classification for "manufacturers."
[54] Section 561.14(2), F.S., relating to the license classification for "distributors."
[55] Section 561.14(3), F.S., relating to the license classification for "vendors."
[56] Section 561.14(4), F.S., relating to the license classification for "brokers or sales agents."
[57] Section 561.14(5), F.S., relating to the license classification for "importers."
[58] Section 561.01(15), F.S., defining the term "bottle club," and s. 561.14(6), F.S., relating to the license classification for "bottle clubs."
[59] Section 561.14(7), F.S., relating to the license classification for "exporters."
[60] 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.
[61] Section 561.01(16), F.S., defines an "exporter" as "any person that sells alcoholic beverages to persons for use outside the state and includes a ship's chandler and a duty-free shop."
[62] Section 561.17(4), F.S., requires persons to register with the division before engaging in the business of exporting alcoholic beverages.

Regulation of Tobacco Products and Nicotine Dispensing Devices

Present Situation

The DABT within the DBPR is the state agency responsible for the regulation and enforcement of tobacco products under part I of ch. 569, F.S., and nicotine products under part II of ch. 569, F.S.

A person must obtain a retail tobacco products dealer permit from the division for each place of business where tobacco products are sold, including sales made through a vending machine.[63] The fee for an annual permit is established by the division in rule at an amount to cover the regulatory costs of the program, not to exceed $50. The fees are deposited into the Alcoholic Beverage and Tobacco Trust Fund within the DBPR.[64]

A retail nicotine products dealer permit from the division is required for each place of business where nicotine products are sold, including sales made through a vending machine.[65] There is no fee for the permit. A person must be 21 years of age to qualify for a retail nicotine products dealer permit.[66]

Effect of Proposed Changes

Sections 19 and 20 of the bill create ss. 569.00256 and 569.3156, F.S., relating to application for a retail tobacco products dealer permit and a retail nicotine products dealer permit, respectively, to require applicants for these permits to create and maintain an online account with the DBPR and provide an e-mail address to function as the primary means of contact for all communication to the applicant from the DABT.

Each applicant is responsible for maintaining accurate contact information. Applicants must use forms prepared by the DABT and filed through the DABT's online system before engaging in any business for which a license or permit is required. Under the bill, the DABT may not process an application for alcoholic beverage license unless the application is submitted through the DABT's online system.

Florida Mobile Home Relocation Corporation

Present Situation

Chapter 723, F.S., the "Florida Mobile Home Act" (act) addresses the unique relationship between a mobile home owner and a mobile home park owner.[67] The provisions in ch. 723, F.S., apply to residential tenancies where a mobile home is placed upon a lot that is rented or leased from a mobile home park that has 10 or more lots offered for rent or lease.[68]

[63] Section 569.003, F.S.
[64] Section 569.003(1)(c), F.S.
[65] Section 569.32, F.S.
[66] Section 569.32(2)(a), F.S.
[67] Section 723.004, F.S.
[68] Section 723.002(1), F.S.

Chapter 723.003, F.S., provides the following relevant definitions:

- "Mobile home park" or "park" means a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential.[69]
- "Mobile home owner," "mobile homeowner," "home owner," or "homeowner" means a person who owns a mobile home and rents or leases a lot within a mobile home park for residential use.[70]

Mobile home parks are regulated by the Division of Condominiums, Timeshares, and Mobile Homes (DCTMH) within the DBPR. The division may adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., relating to the requirements in the Administrative Procedures Act for the adoption of rules by agencies, to implement and enforce the provisions of ch. 723, F.S, including rules to authorize amendments to an approved prospectus or offering circular and to establish a category of minor violations of ch. 723, F.S., or rules promulgated pursuant hereto.[71] The DCTMH may also adopt rules for mediation procedures.[72]

A mobile home park owner must pay to the division, on or before October 1 of each year, an annual fee of $4 for each mobile home lot within a mobile home park which he or she owns.[73] If the fee is not paid by December 31, a penalty of 10 percent of the amount due must be assessed. Additionally, if the fee is not paid, the park owner does not have standing to maintain or defend any action in court until the amount due, plus any penalty, is paid.[74]

Additionally, there is a $1 surcharge on each annual fee. The collected surcharge must be deposited in the Florida Mobile Home Relocation Trust Fund by the division to fund the Florida Mobile Home Relocation Corporation.[75]

In 2001, the Legislature created the Florida Mobile Home Relocation Corporation (corporation) in s. 723.0611, F.S., to provide for the collection and payment of relocation expenses for mobile home owners displaced by a change in land use for a mobile home park. [76] Specifically, s. 723.0612, F.S., provides for relocation expenses to be paid from the corporation to the mobile home owner.

The amount of the payment is the actual moving expenses of relocating the mobile home to a new location within a 50-mile radius of the vacated park, or $3,000 for a single-section mobile home or $6,000 for a multi-section mobile home, whichever is less. Moving expenses include the cost of taking down, moving, and setting up the mobile home in a new location.[77]

[69] Section 723.003(12), F.S.
[70] Section 723.003(11), F.S.
[71] *See* ss. 723.006(7), (8), (9), and (10), F.S.
[72] Section 723.038, F.S.
[73] Section 723.007(1), F.S.
[74] *Id.*
[75] Section 723.007(2), F.S.
[76] Chapter 2001-227, L.O.F.
[77] Section 723.0612(1), F.S.

In lieu of collecting moving expenses from the corporation, a mobile home owner may elect to abandon the home and collect payment from the corporation in the amount of $1,375 for a single section mobile home and $2,750 for a multi-section mobile home.[78] Upon election of abandonment, the mobile home owner must deliver to the park owner an endorsed title with a valid release of all liens on the title to the mobile home.[79]

The mobile home park owner is required to pay the corporation an amount equal to the amount the mobile home owner is entitled to receive from the corporation.[80]

The mobile home park owner is not required to make the payments, nor is the mobile home owner entitled to compensation, if: [81]

- The mobile home owner is moved to another space in the park or to another mobile home park at the park owner's expense;
- The mobile home owner notified the mobile home park owner, before the notice of a change in land use, that he or she was vacating the premises;
- A mobile home owner abandons the home in the park; or
- The mobile home owner had an eviction action for nonpayment of lot rental amount filed against him or her prior to the mailing date of the change in the use of land.

Payments received by the corporation are deposited in the Florida Mobile Home Relocation Trust Fund.[82]

Effect of Proposed Changes

Section 22 of the bill repeals s. 723.0611, F.S., which creates the corporation.

Sections 21, 23, 24, and 25 revise ss. 723.061, 723.06115, 723.06116, and 723.0612, F.S., respectively, to provide for the Division of Condominiums, Timeshares, and Mobile Homes to administer the duties and functions of the corporation.

Section 45 through 50 reenact ss. 48.184(1), 723.031, 723.004(5), 723.004(5), 723.032(1), 723.085(2), 723.085(2), 723.08015(1), F.S., respectively, to incorporate the revisions in the bill into those provisions.

Conforming Changes

Sections 27 through 44 amend ss. 210.16(2), 212.08(7), 440.02(19, 448.26, 468.520(2), 468.522, 468.524(2) and (4), 468.5245, 468.525(2) and (3), 468.526(3) and (5), 468.527(1), 468.5275(2), 468.529(2), (4), and (5), 468.530(3) and (4), 468.31(1), 468.532(1), (2), and (4), 476.144(6), and 627.192(2), F.S., respectively, to conform cross-references.

[78] Section 723.0612(7), F.S.
[79] *Id.*
[80] Section 723.0612(7), F.S.
[81] Sections 723.0612(2) and (7), F.S.
[82] *Id.*

Effective Date

The bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill authorizes the Division of Alcoholic Beverages and Tobacco (DABT) to increase the corporate surety bond amount before renewing a license for a distributor or tobacco products other than cigarettes or after completing its semiannual review of the bond amount.

Regarding asbestos removal contractors, the removal of the bond/credit requirement will reduce the cost to license applicants, which the DBPR estimates to be $100 per applicant.[83]

Regarding the Florida Homeowners' Construction Recovery Fund (recovery fund), the bill doubles the maximum amounts payable to claimants for claims that may be made against contractors from the recovery fund.

[83] See Department of Business and Professional Regulation, *2024 Agency Legislative Bill Analysis for SB 1544* (Jan. 12, 2024) (on file with the Senate Regulated Industries Committee).

C. Government Sector Impact:

The DBPR states that additional resources will be needed for the Division of Condominiums, Timeshares, and Mobile Homes to administer the Florida Mobile Home Relocation Program. The DBPR states it will need an additional four full time employees with a $175,000 salary rate, and $315,992 of budget authority ($296,122 recurring and $19,750 nonrecurring).[84]

Regarding the recovery fund, the DBPR states that there is an indeterminate fiscal impact due to the increase of the aggregate cap lifetime per licensee and per-claim cap for each contract. It anticipates an increase in the number of claimants who receive compensation from the recovery fund.[85]

Eliminating the Board of Employee Leasing Companies will result in a reduction of expenditures pertaining to board travel, costs, etc. However, according to the DBPR, the reduction in expenditures will be offset by the need for a consultant to review employee leasing licensure applications.[86]

The bill requires several types of licensees and permittees to use the online licensing system of the DBPR, or the regulating agency or board. The DBPR states that it can implement this system using existing resources.[87]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.165, 48.184, 210.15, 210.16, 210.40, 212.08, 310.0015, 310.081, 320.08015, 440.02, 448.26, 468.520, 468.522, 468.524, 468.5245, 468.525, 468.526, 468.527, 468.5275, 468.529, 468.530, 468.531, 468.532, 469.006, 473.306, 473.308, 475.181, 476.114, 476.144, 477.019, 489.131, 489.143, 499.012, 561.17, 627.192, 723.004, 723.031, 723.032, 723.061, 723.06115, 723.06116, 723.0612, and 723.085.

This bill creates the following sections of the Florida Statutes: 210.32, 399.18, 468.519, 569.00256, and 569.3156.

This bill repeals the following sections of the Florida Statutes: 468.521 and 723.0611.

[84] *Id.*
[85] *Id.*
[86] *Id.*
[87] *Id.*

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

159048

LEGISLATIVE ACTION

Senate . House

. . . . . .

The Committee on Regulated Industries (Hooper) recommended the following:

Senate Amendment (with title amendment)

Delete lines 731 - 1037.
Delete lines 1540 - 1610.

================ T I T L E A M E N D M E N T ================
And the title is amended as follows:
Delete lines 101 - 125
and insert:
through the online system; amending ss. 20.165,

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210.16, 212.08,

Delete lines 130 - 142

and insert:

made by the act; providing an effective date.

By Senator Hooper

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A bill to be entitled

An act relating to the Department of Business and Professional Regulation; amending s. 210.15 and creating s. 210.32, F.S.; requiring persons or entities licensed or permitted by the department's Division of Alcoholic Beverages and Tobacco, or applying for such license or permit, to create and maintain an account with the division's online system and provide an e-mail address to the division; specifying application requirements; prohibiting the division from processing applications not submitted through the online system; amending s. 210.40, F.S.; revising the amount of an initial corporate surety bond required as a condition of licensure as a tobacco product distributor; requiring the division to review corporate surety bond amounts on a specified basis; authorizing the division to increase a bond amount, subject to specified conditions; authorizing the division to adjust bond amounts by rule; authorizing the division to reduce a bond amount upon a showing of good cause; defining terms; requiring the division to notify distributors in writing if their corporate surety bond requirements change; providing applicability; prohibiting the division from reducing a bond amount under specified circumstances; authorizing the division to adopt rules; amending s. 310.0015, F.S.; deleting a provision requiring a competency-based mentor program at ports; deleting a requirement that the department submit an annual

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report on the mentor program; amending s. 310.081, F.S.; deleting a requirement that the department consider certain characteristics for applicants for certification as a deputy pilot; making technical changes; creating s. 399.18, F.S.; requiring certain persons or entities certified or registered under the Elevator Safety Act, or applying for such certifications or registrations, to create and maintain an online account with the department's Division of Hotels and Restaurants and provide an e-mail address to the division; requiring such persons and entities to maintain the accuracy of their contact information; requiring the division to adopt rules; creating s. 468.519, F.S.; creating the employee leasing companies licensing program under the department; providing legislative intent; repealing s. 468.521, F.S., relating to the department's Board of Employee Leasing Companies; amending s. 469.006, F.S.; revising requirements for department rules governing evidence of financial responsibility of applicants seeking licensure as a business organization under ch. 469, F.S.; amending s. 473.306, F.S.; requiring applicants for the accountancy licensure examination to create and maintain an online account with the department and provide an e-mail address; requiring applicants to maintain the accuracy of their contact information; requiring that address changes be submitted through the department's online system within a specified timeframe; conforming cross-

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

references; amending s. 473.308, F.S.; requiring a person seeking licensure as a Florida certified public accountant, or a firm seeking to engage in public accountancy, to create and maintain an online account with the department and provide an e-mail address; requiring certified public accountants and accounting firms to maintain the accuracy of their contact information; requiring that address changes be submitted through the department's online system within a specified timeframe; amending s. 475.181, F.S.; revising conditions regarding issuance of a licensure under part I of ch. 475, F.S.; amending s. 476.114, F.S.; revising eligibility requirements for licensure as a barber; making technical changes; amending s. 477.019, F.S.; revising eligibility requirements for licensure by examination to practice cosmetology; amending s. 489.131, F.S.; revising the types of penalties that may be recommended by a local jurisdiction enforcement body against a contractor; specifying requirements for any such recommended penalties; amending s. 489.143, F.S.; revising payment limitations for payments made from the department's Florida Homeowners' Construction Recovery Fund; amending s. 499.012, F.S.; revising requirements for certification as a designated representative of a prescription drug wholesale distributor; amending s. 561.17, F.S.; requiring persons or entities licensed or permitted by the Division of Alcoholic Beverages and Tobacco, or applying for such license or permit,

to create and maintain an account with the division's online system; specifying application requirements; prohibiting the division from processing applications not submitted through the online system; creating ss. 569.00256 and 569.3156, F.S.; requiring certain persons or entities licensed or permitted by the division, or applying for such a license or permit, to create and maintain an account with the division's online system; requiring licensees, permittees, and applicants to provide the division with an e-mail address and maintain accurate contact information; specifying application requirements; prohibiting the division from processing applications not submitted through the online system; amending s. 723.061, F.S.; conforming provisions to changes made by the act; replacing the Florida Mobile Home Relocation Corporation with the Division of Florida Condominiums, Timeshares, and Mobile Homes with regard to a specified notice; repealing s. 723.0611, F.S., relating to the Florida Mobile Home Relocation Corporation; amending s. 723.06115, F.S.; replacing the Florida Mobile Home Relocation Corporation with the Division of Florida Condominiums, Timeshares, and Mobile Homes as the manager and administrator of the Florida Mobile Home Relocation Trust Fund; revising the uses of the trust fund; making conforming changes; amending s. 723.06116, F.S.; replacing the Florida Mobile Home Relocation Corporation with the Division of Florida Condominiums, Timeshares, and Mobile Homes

with regard to payments made from mobile home park owners to the Mobile Home Relocation Trust Fund; amending s. 723.0612, F.S.; replacing the Florida Mobile Home Relocation Corporation with the Division of Florida Condominiums, Timeshares, and Mobile Homes with regard to relocation expenses to be paid to mobile home owners from the Mobile Home Relocation Trust Fund; making technical changes; conforming a cross-reference; amending ss. 20.165, 210.16, 212.08, 440.02, 448.26, 468.520, 468.522, 468.524, 468.5245, 468.525, 468.526, 468.527, 468.5275, 468.529, 468.530, 468.531, 468.532, 476.144, and 627.192, F.S.; conforming cross-references and provisions to changes made by the act; reenacting ss. 48.184(1), 723.004(5), 723.031(9), 723.032(1), and 723.085(2), F.S., relating to service of process for the removal of unknown parties in possession of mobile homes, legislative intent, mobile home lot rental agreements, prohibited or unenforceable provisions in mobile home lot rental agreements, and the rights of lienholders on mobile homes in rental mobile home parks, respectively, to incorporate the amendment made in s. 723.061, F.S., in references thereto; reenacting s. 320.08015(1), F.S., relating to license tax surcharges, to incorporate the amendment made in s. 723.06115, F.S., in a reference thereto; providing an effective date.

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

Section 1. Present paragraphs (a) through (h) of subsection (1) of section 210.15, Florida Statutes, are redesignated as paragraphs (b) through (i), respectively, and a new paragraph (a) is added to that subsection, to read:

210.15 Permits.—

(1)

(a) A person or an entity licensed or permitted by the division, or applying for a license or a permit, must create and maintain an account with the division's online system and provide an e-mail address to the division to function as the primary means of contact for all communication by the division to the licensee, permittee, or applicant. Licensees, permittees, and applicants are responsible for maintaining accurate contact information on file with the division. A person or an entity seeking a license or permit under this part must apply using forms furnished by the division which are filed through the division's online system before commencing operations. The division may not process an application for a license or permit issued by the division under this part unless the application is submitted through the division's online system.

Section 2. Section 210.32, Florida Statutes, is created to read:

210.32 Account; online system.—A person or an entity licensed or permitted by the division, or applying for a license or a permit, must create and maintain an account with the division's online system and provide an e-mail address to the division to function as the primary means of contact for all communication by the division to the licensee, permittee, or applicant. Licensees, permittees, and applicants are responsible

for maintaining accurate contact information on file with the division. A person or an entity seeking a license or a permit under this part must apply using forms furnished by the division which are filed through the division's online system before commencing operations. The division may not process an application for a license or permit issued by the division under this part unless the application is submitted through the division's online system.

Section 3. Section 210.40, Florida Statutes, is amended to read:

210.40 License fees; surety bond; application for each place of business.—

(1) Each application for a distributor's license must ~~shall~~ be accompanied by a fee of $25. The application must ~~shall~~ also be accompanied by a corporate surety bond issued by a surety company authorized to do business in this state, conditioned for the payment when due of all taxes, penalties, and accrued interest which may be due the state. The initial corporate surety bond shall be in the sum of $25,000 ~~$1,000~~ and in a form prescribed by the division.

(a) The division shall review the amount of a corporate surety bond on a semiannual basis to ensure that the bond amount is adequate to protect the state.

(b) The division may increase the corporate surety bond amount before renewing a distributor's license or after completing its semiannual review of the bond amount.

(c) The corporate surety bond amount may be increased to the sum of the distributor's highest month of final audited tax liabilities, penalties, and accrued interest which are due to

the state.

(2) A corporate surety bond, with the sum determined by the division in accordance with paragraph (1)(c), is required for renewal of a distributor's license.

(3) The division may prescribe by rule increases in the corporate surety bond amounts required as a condition of licensure.

(4)(a) The division may reduce the amount of a corporate surety bond upon a distributor's showing of good cause. For purposes of this subsection, the term:

1. "Fully resolved" means that criminal or administrative charges or investigations have been definitively closed or dismissed, have resulted in an acquittal, or have otherwise ended in such a manner that no further legal or administrative actions relating to charges or investigations are pending against a licensee under applicable laws, rules, or regulations.

2. "Good cause" means a consistent pattern of responsible financial behavior by the distributor over a period of at least the preceding 4 years, and having the sum of the distributor's final audited tax liabilities, penalties, and interest be less than the amount of the distributor's corporate surety bond for every month for a period of at least the preceding 4 years.

3. "Responsible financial behavior" includes the timely and complete reporting and payment of all tax liabilities, penalties, and accrued interest due to the state for a period of at least the preceding 4 years.

(b) The division may not reduce a corporate surety bond amount when a licensee:

1. Is in default of any tax liabilities, penalties, or

interest due to the state;

2. Is the subject of a pending criminal prosecution in any jurisdiction until such prosecution has been fully resolved;

3. Has pending administrative charges brought by an authorized regulatory body or agency which have not been fully resolved in accordance with applicable rules and procedures; or

4. Is under investigation by any administrative body or agency for potential criminal violations until any such investigation is completed and the findings of the investigation have been fully resolved in accordance with applicable law.

(5) The division shall notify a distributor in writing of any change in the distributor's corporate surety bond requirements by the date on which the distributor's audited tax assessments become final.

(6) The provisions of this section governing corporate surety bonds are not subject to s. 120.60 ~~Whenever it is the opinion of the division that the bond given by a licensee is inadequate in amount to fully protect the state, the division shall require an additional bond in such amount as is deemed sufficient~~.

(7) A separate application for a license must ~~shall~~ be made for each place of business at which a distributor proposes to engage in business as a distributor under this part, but an applicant may provide one corporate surety bond in an amount determined by the division for all applications made by the distributor consistent with the requirements of this section.

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

Section 4. Paragraph (d) of subsection (3) of section

310.0015, Florida Statutes, is amended to read:

310.0015 Piloting regulation; general provisions.—

(3) The rate-setting process, the issuance of licenses only in numbers deemed necessary or prudent by the board, and other aspects of the economic regulation of piloting established in this chapter are intended to protect the public from the adverse effects of unrestricted competition which would result from an unlimited number of licensed pilots being allowed to market their services on the basis of lower prices rather than safety concerns. This system of regulation benefits and protects the public interest by maximizing safety, avoiding uneconomic duplication of capital expenses and facilities, and enhancing state regulatory oversight. The system seeks to provide pilots with reasonable revenues, taking into consideration the normal uncertainties of vessel traffic and port usage, sufficient to maintain reliable, stable piloting operations. Pilots have certain restrictions and obligations under this system, including, but not limited to, the following:

(d)~~1.~~ The pilot or pilots in a port shall train and compensate all member deputy pilots in that port. Failure to train or compensate such deputy pilots constitutes ~~shall constitute~~ a ground for disciplinary action under s. 310.101. Nothing in this subsection may ~~shall~~ be deemed to create an agency or employment relationship between a pilot or deputy pilot and the pilot or pilots in a port.

~~2. The pilot or pilots in a port shall establish a competency-based mentor program by which minority persons as defined in s. 288.703 may acquire the skills for the professional preparation and education competency requirements~~

~~of a licensed state pilot or certificated deputy pilot. The department shall provide the Governor, the President of the Senate, and the Speaker of the House of Representatives with a report each year on the number of minority persons as defined in s. 288.703 who have participated in each mentor program, who are licensed state pilots or certificated deputy pilots, and who have applied for state pilot licensure or deputy pilot certification.~~

Section 5. Subsection (2) of section 310.081, Florida Statutes, is amended to read:

310.081 Department to examine and license state pilots and certificate deputy pilots; vacancies.—

(2) The department shall similarly examine persons who file applications for certificate as deputy pilot, and, if upon examination to determine proficiency the department finds them qualified, the department must ~~shall~~ certify as qualified all applicants who pass the examination, provided that not more than five persons who passed the examination are certified for each declared opening. If more than five applicants per opening pass the examination, the persons having the highest scores must ~~shall~~ be certified as qualified up to the number of openings times five. ~~The department shall give consideration to the minority and female status of applicants when qualifying deputy pilots, in the interest of ensuring diversification within the state piloting profession.~~ The department shall appoint and certificate such number of deputy pilots from those applicants deemed qualified as in the discretion of the board are required in the respective ports of the state. A deputy pilot shall be authorized by the department to pilot vessels within the limits

and specifications established by the licensed state pilots at the port where the deputy is appointed to serve.

Section 6. Section 399.18, Florida Statutes, is created to read:

399.18 Online services account.—

(1) A certified elevator inspector, certified elevator technician, or registered elevator company; a person or entity seeking to become certified or registered as such; a person who has been issued an elevator certificate of competency; a person who is seeking such certificate; a person or entity who has been issued an elevator certificate of operation; and a person or entity who is seeking such a certificate must create and maintain an online account with the division and provide an e-mail address to the division to function as the primary means of contact for all communication from the division. Each person or entity is responsible for maintaining accurate contact information on file with the division.

(2) The division shall adopt rules to implement this section.

Section 7. Section 468.519, Florida Statutes, is created, and incorporated into part XI of chapter 468, Florida Statutes, to read:

468.519 Employee leasing companies licensing program; purpose.—

(1) There is created within the department the employee leasing companies licensing program.

(2) The Legislature finds it necessary in the interest of the public safety and welfare to ensure that consumers of employee leasing companies can rely on the competence and

integrity of such companies through the licensing requirements of this part.

Section 8. Section 468.521, Florida Statutes, is repealed.

Section 9. Paragraph (c) of subsection (2) of section 469.006, Florida Statutes, is amended to read:

469.006 Licensure of business organizations; qualifying agents.—

(2)

(c) As a prerequisite to the issuance of a license under this section, the applicant shall submit the following:

1. An affidavit on a form provided by the department attesting that the applicant has obtained workers' compensation insurance as required by chapter 440, public liability insurance, and property damage insurance, in amounts determined by department rule. The department shall establish by rule a procedure to verify the accuracy of such affidavits based upon a random sample method.

2. Evidence of financial responsibility. The department shall adopt rules to determine financial responsibility which must ~~shall~~ specify grounds on which the department may deny licensure. Such criteria must ~~shall~~ include, but is not ~~be~~ limited to, credit history ~~and limits of bondability and credit~~.

Section 10. Section 473.306, Florida Statutes, is amended to read:

473.306 Examinations.—

(1) A person desiring to be licensed as a Florida certified public accountant shall apply to the department to take the licensure examination.

(2) A person applying to the department to take the

licensure examination must create and maintain an online account with the department and provide an e-mail address to function as the primary means of contact for all communication to the applicant from the department. Each applicant is responsible for maintaining accurate contact information on file with the department and must submit any change in the applicant's e-mail address or home address within 30 days after the change. All changes must be submitted through the department's online system.

(3) An applicant is entitled to take the licensure examination to practice in this state as a certified public accountant if:

(a) The applicant has completed 120 semester hours or 180 quarter hours from an accredited college or university with a concentration in accounting and business courses as specified by the board by rule; and

(b) The applicant shows that she or he has good moral character. For purposes of this paragraph, the term "good moral character" has the same meaning as provided in s. 473.308(7)(a) ~~s. 473.308(6)(a)~~. The board may refuse to allow an applicant to take the licensure examination for failure to satisfy this requirement if:

1. The board finds a reasonable relationship between the lack of good moral character of the applicant and the professional responsibilities of a certified public accountant; and

2. The finding by the board of lack of good moral character is supported by competent substantial evidence.

If an applicant is found pursuant to this paragraph to be unqualified to take the licensure examination because of a lack of good moral character, the board shall furnish to the applicant a statement containing the findings of the board, a complete record of the evidence upon which the determination was based, and a notice of the rights of the applicant to a rehearing and appeal.

(4)~~(3)~~ The board shall have the authority to establish the standards for determining and shall determine:

(a) What constitutes a passing grade for each subject or part of the licensure examination;

(b) Which educational institutions, in addition to the universities in the State University System of Florida, shall be deemed to be accredited colleges or universities;

(c) What courses and number of hours constitute a major in accounting; and

(d) What courses and number of hours constitute additional accounting courses acceptable under s. 473.308(4) ~~s. 473.308(3)~~.

(5)~~(4)~~ The board may adopt an alternative licensure examination for persons who have been licensed to practice public accountancy or its equivalent in a foreign country so long as the International Qualifications Appraisal Board of the National Association of State Boards of Accountancy has ratified an agreement with that country for reciprocal licensure.

(6)~~(5)~~ For the purposes of maintaining the proper educational qualifications for licensure under this chapter, the board may appoint an Educational Advisory Committee, which shall be composed of one member of the board, two persons in public practice who are licensed under this chapter, and four

academicians on faculties of universities in this state.

Section 11. Present subsections (3) through (9) of section 473.308, Florida Statutes, are redesignated as subsections (4) through (10), respectively, a new subsection (3) is added to that section, and subsection (2), paragraph (b) of present subsection (4), and present subsection (8) of that section are amended, to read:

473.308 Licensure.—

(2) The board shall certify for licensure any applicant who successfully passes the licensure examination and satisfies the requirements of subsections (4), (5), and (6) ~~(3), (4), and (5)~~, and shall certify for licensure any firm that satisfies the requirements of ss. 473.309 and 473.3101. The board may refuse to certify any applicant or firm that has violated any of the provisions of s. 473.322.

(3) A person desiring to be licensed as a Florida certified public accountant or a firm desiring to engage in the practice of public accounting must create and maintain an online account with the department and provide an e-mail address to function as the primary means of contact for all communication from the department. Certified public accountants and firms are responsible for maintaining accurate contact information on file with the department and must submit any change in an e-mail address or street address within 30 days after the change. All changes must be submitted through the department's online system.

(5)~~(4)~~

(b) However, an applicant who completed the requirements of subsection (4) ~~(3)~~ on or before December 31, 2008, and who

passes the licensure examination on or before June 30, 2010, is exempt from the requirements of this subsection.

(9) ~~(8)~~ If the applicant has at least 5 years of experience in the practice of public accountancy in the United States or in the practice of public accountancy or its equivalent in a foreign country that the International Qualifications Appraisal Board of the National Association of State Boards of Accountancy has determined has licensure standards that are substantially equivalent to those in the United States, or has at least 5 years of work experience that meets the requirements of subsection (5) ~~(4)~~, the board must ~~shall~~ waive the requirements of subsection (4) ~~(3)~~ which are in excess of a baccalaureate degree. All experience that is used as a basis for waiving the requirements of subsection (4) ~~(3)~~ must be while licensed as a certified public accountant by another state or territory of the United States or while licensed in the practice of public accountancy or its equivalent in a foreign country that the International Qualifications Appraisal Board of the National Association of State Boards of Accountancy has determined has licensure standards that are substantially equivalent to those in the United States. The board shall have the authority to establish the standards for experience that meet this requirement.

Section 12. Subsection (2) of section 475.181, Florida Statutes, is amended to read:

475.181 Licensure.—

(2) The commission shall certify for licensure any applicant who satisfies the requirements of ss. 475.17, 475.175, and 475.180. The commission may refuse to certify any applicant

who has violated any of the provisions of s. 475.42 or who is subject to discipline under s. 475.25. The application shall expire 2 years after the date received if the applicant does not pass the appropriate examination. ~~Additionally, if an applicant does not pass the licensing examination within 2 years after the successful course completion date, the applicant's successful course completion is invalid for licensure.~~

Section 13. Subsections (2) and (3) of section 476.114, Florida Statutes, are amended to read:

476.114 Examination; prerequisites.—

(2) An applicant is ~~shall be~~ eligible for licensure by examination to practice barbering if the applicant:

(a) Is at least 16 years of age;

(b) Pays the required application fee; and

(c) ~~1. Holds an active valid license to practice barbering in another state, has held the license for at least 1 year, and does not qualify for licensure by endorsement as provided for in s. 476.144(5); or~~

~~2.~~ Has received a minimum of 900 hours of training in sanitation, safety, and laws and rules, as established by the board, which must ~~shall~~ include, but is ~~shall~~ not ~~be~~ limited to, the equivalent of completion of services directly related to the practice of barbering at one of the following:

1. ~~a.~~ A school of barbering licensed pursuant to chapter 1005;

2. ~~b.~~ A barbering program within the public school system; or

3. ~~c.~~ A government-operated barbering program in this state.

The board shall establish by rule procedures whereby the school or program may certify that a person is qualified to take the required examination after the completion of a minimum of 600 actual school hours. If the person passes the examination, she or he has ~~shall have~~ satisfied this requirement; but if the person fails the examination, she or he may ~~shall~~ not be qualified to take the examination again until the completion of the full requirements provided by this section.

(3) An applicant who meets the requirements set forth in paragraph (2)(c) ~~subparagraphs (2)(c)1. and 2.~~ who fails to pass the examination may take subsequent examinations as many times as necessary to pass, except that the board may specify by rule reasonable timeframes for rescheduling the examination and additional training requirements for applicants who, after the third attempt, fail to pass the examination. Prior to reexamination, the applicant must file the appropriate form and pay the reexamination fee as required by rule.

Section 14. Subsection (2) of section 477.019, Florida Statutes, is amended to read:

477.019 Cosmetologists; qualifications; licensure; supervised practice; license renewal; endorsement; continuing education.—

(2) An applicant is ~~shall be~~ eligible for licensure by examination to practice cosmetology if the applicant:

(a) Is at least 16 years of age or has received a high school diploma;

(b) Pays the required application fee, which is not refundable, and the required examination fee, which is refundable if the applicant is determined to not be eligible for

licensure for any reason other than failure to successfully complete the licensure examination; and

(c)~~1. Is authorized to practice cosmetology in another state or country, has been so authorized for at least 1 year, and does not qualify for licensure by endorsement as provided for in subsection (5); or~~

~~2.~~ Has received a minimum of 1,200 hours of training as established by the board, which must ~~shall~~ include, but is ~~shall~~ not ~~be~~ limited to, the equivalent of completion of services directly related to the practice of cosmetology at one of the following:

1.~~a.~~ A school of cosmetology licensed pursuant to chapter 1005.

2.~~b.~~ A cosmetology program within the public school system.

3.~~c.~~ The Cosmetology Division of the Florida School for the Deaf and the Blind, provided the division meets the standards of this chapter.

4.~~d.~~ A government-operated cosmetology program in this state.

The board shall establish by rule procedures whereby the school or program may certify that a person is qualified to take the required examination after the completion of a minimum of 1,000 actual school hours. If the person then passes the examination, he or she has ~~shall have~~ satisfied this requirement; but if the person fails the examination, he or she may ~~shall~~ not be qualified to take the examination again until the completion of the full requirements provided by this section.

Section 15. Paragraph (c) of subsection (7) of section

489.131, Florida Statutes, is amended to read:

489.131 Applicability.—

(7)

(c) In addition to any action the local jurisdiction enforcement body may take against the individual's local license, and any fine the local jurisdiction may impose, the local jurisdiction enforcement body shall issue a recommended penalty for board action. This recommended penalty may include a recommendation for no further action, or a recommendation for suspension, restitution, revocation, or restriction of the registration, or a fine to be levied by the board, or a combination thereof. The recommended penalty must specify the violations of this chapter upon which the recommendation is based. The local jurisdiction enforcement body shall inform the disciplined contractor and the complainant of the local license penalty imposed, the board penalty recommended, his or her rights to appeal, and the consequences should he or she decide not to appeal. The local jurisdiction enforcement body shall, upon having reached adjudication or having accepted a plea of nolo contendere, immediately inform the board of its action and the recommended board penalty.

Section 16. Subsections (3) and (6) of section 489.143, Florida Statutes, are amended to read:

489.143 Payment from the fund.—

(3) Beginning January 1, 2005, for each Division I contract entered into after July 1, 2004, payment from the recovery fund is subject to a $50,000 maximum payment for each Division I claim. Beginning January 1, 2017, for each Division II contract entered into on or after July 1, 2016, payment from the recovery

fund is subject to a $15,000 maximum payment for each Division II claim. Beginning January 1, 2025, for Division I and Division II contracts entered into on or after July 1, 2024, payment from the recovery fund is subject to a $100,000 maximum payment for each Division I claim and a $30,000 maximum payment for each Division II claim.

(6) For contracts entered into before July 1, 2004, payments for claims against any one licensee may not exceed, in the aggregate, $100,000 annually, up to a total aggregate of $250,000. For any claim approved by the board which is in excess of the annual cap, the amount in excess of $100,000 up to the total aggregate cap of $250,000 is eligible for payment in the next and succeeding fiscal years, but only after all claims for the then-current calendar year have been paid. Payments may not exceed the aggregate annual or per claimant limits under law. Beginning January 1, 2005, for each Division I contract entered into after July 1, 2004, payment from the recovery fund is subject only to a total aggregate cap of $500,000 for each Division I licensee. Beginning January 1, 2017, for each Division II contract entered into on or after July 1, 2016, payment from the recovery fund is subject only to a total aggregate cap of $150,000 for each Division II licensee. Beginning January 1, 2025, for Division I and Division II contracts entered into on or after July 1, 2024, payment from the recovery fund is subject only to a total aggregate cap of $2 million for each Division I licensee and $600,000 for each Division II licensee.

Section 17. Paragraph (b) of subsection (15) of section 499.012, Florida Statutes, is amended to read:

499.012 Permit application requirements.—

(15)

(b) To be certified as a designated representative, a natural person must:

1. Submit an application on a form furnished by the department and pay the appropriate fees.

2. Be at least 18 years of age.

3. Have at least 2 years of verifiable full-time:

a. Work experience in a pharmacy licensed in this state or another state, where the person's responsibilities included, but were not limited to, recordkeeping for prescription drugs;

b. Managerial experience with a prescription drug wholesale distributor licensed in this state or in another state; ~~or~~

c. Managerial experience with the United States Armed Forces, where the person's responsibilities included, but were not limited to, recordkeeping, warehousing, distributing, or other logistics services pertaining to prescription drugs;

d. Managerial experience with a state or federal organization responsible for regulating or permitting establishments involved in the distribution of prescription drugs, whether in an administrative or a sworn law enforcement capacity; or

e. Work experience as a drug inspector or investigator with a state or federal organization, whether in an administrative or a sworn law enforcement capacity, where the person's responsibilities related primarily to compliance with state or federal requirements pertaining to the distribution of prescription drugs.

4. Receive a passing score of at least 75 percent on an

examination given by the department regarding federal laws governing distribution of prescription drugs and this part and the rules adopted by the department governing the wholesale distribution of prescription drugs. This requirement shall be effective 1 year after the results of the initial examination are mailed to the persons that took the examination. The department shall offer such examinations at least four times each calendar year.

5. Provide the department with a personal information statement and fingerprints pursuant to subsection (9).

Section 18. Subsection (5) of section 561.17, Florida Statutes, is amended to read:

561.17 License and registration applications; approved person.—

(5) Any person or entity licensed or permitted by the division, or applying for a license or permit, must create and maintain an account with the division's online system and provide an e-mail ~~electronic mail~~ address to the division to function as the primary means of contact for all communication by the division to the licensee, ~~or~~ permittee, or applicant. Licensees, ~~and~~ permittees, and applicants are responsible for maintaining accurate contact information on file with the division. A person or an entity seeking a license or permit from the division must apply using forms prepared by the division and filed through the division's online system before engaging in any business for which a license or permit is required. The division may not process an application for an alcoholic beverage license unless the application is submitted through the division's online system.

Section 19. Section 569.00256, Florida Statutes, is created to read:

569.00256 Account; online system.—A person or an entity licensed or permitted by the division under this part, or applying for a license or a permit, must create and maintain an account with the division's online system and provide an e-mail address to the division to function as the primary means of contact for all communication by the division to the licensee, permittee, or applicant. Licensees, permittees, and applicants are responsible for maintaining accurate contact information with the division. A person or an entity seeking a license or permit from the division must apply using forms prepared by the division and filed through the division's online system before engaging in any business for which a license or permit is required. The division may not process an application to deal, at retail, in tobacco products unless the application is submitted through the division's online system.

Section 20. Section 569.3156, Florida Statutes, is created to read:

569.3156 Account; online system.—A person or an entity licensed or permitted by the division under this part, or applying for a license or a permit, must create and maintain an account with the division's online system and provide an e-mail address to the division to function as the primary means of contact for all communication by the division to the licensee, permittee, or applicant. Licensees, permittees, and applicants are responsible for maintaining accurate contact information with the division. A person or an entity seeking a license or permit from the division must apply using forms prepared by the

division and filed through the division's online system before engaging in any business for which a license or permit is required. The division may not process an application to deal, at retail, in nicotine products unless the application is submitted through the division's online system.

Section 21. Paragraph (d) of subsection (1) of section 723.061, Florida Statutes, is amended to read:

723.061 Eviction; grounds, proceedings.—

(1) A mobile home park owner may evict a mobile home owner, a mobile home tenant, a mobile home occupant, or a mobile home only on one or more of the following grounds:

(d) Change in use of the land comprising the mobile home park, or the portion thereof from which mobile homes are to be evicted, from mobile home lot rentals to some other use, if:

1. The park owner gives written notice to the homeowners' association formed and operating under ss. 723.075-723.079 of its right to purchase the mobile home park, if the land comprising the mobile home park is changing use from mobile home lot rentals to a different use, at the price and under the terms and conditions set forth in the written notice.

a. The notice shall be delivered to the officers of the homeowners' association by United States mail. Within 45 days after the date of mailing of the notice, the homeowners' association may execute and deliver a contract to the park owner to purchase the mobile home park at the price and under the terms and conditions set forth in the notice. If the contract between the park owner and the homeowners' association is not executed and delivered to the park owner within the 45-day period, the park owner is under no further obligation to the

homeowners' association except as provided in sub-subparagraph b.

b. If the park owner elects to offer or sell the mobile home park at a price lower than the price specified in her or his initial notice to the officers of the homeowners' association, the homeowners' association has an additional 10 days to meet the revised price, terms, and conditions of the park owner by executing and delivering a revised contract to the park owner.

c. The park owner is not obligated under this subparagraph or s. 723.071 to give any other notice to, or to further negotiate with, the homeowners' association for the sale of the mobile home park to the homeowners' association after 6 months after the date of the mailing of the initial notice under sub-subparagraph a.

2. The park owner gives the affected mobile home owners and tenants at least 6 months' notice of the eviction due to the projected change in use and of their need to secure other accommodations. Within 20 days after giving an eviction notice to a mobile home owner, the park owner must provide the division with a copy of the notice. ~~The division must provide the executive director of the Florida Mobile Home Relocation Corporation with a copy of the notice.~~

a. The notice of eviction due to a change in use of the land must include in a font no smaller than the body of the notice the following statement:

YOU MAY BE ENTITLED TO COMPENSATION FROM THE FLORIDA MOBILE HOME RELOCATION TRUST FUND, ADMINISTERED BY THE

DIVISION OF CONDOMINIUMS, TIMESHARES, AND MOBILE HOMES ~~FLORIDA MOBILE HOME RELOCATION CORPORATION (FMHRC)~~. DIVISION ~~FMHRC~~ CONTACT INFORMATION IS AVAILABLE FROM THE FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION.

b. The park owner may not give a notice of increase in lot rental amount within 90 days before giving notice of a change in use.

Section 22. Section 723.0611, Florida Statutes, is repealed.

Section 23. Section 723.06115, Florida Statutes, is amended to read:

723.06115 Florida Mobile Home Relocation Trust Fund.—

(1) The Florida Mobile Home Relocation Trust Fund is established within the Department of Business and Professional Regulation. The trust fund is to be used to fund the administration and operations of the Division of Florida Condominiums, Timeshares, and Mobile Homes ~~Florida Mobile Home Relocation Corporation~~. All interest earned from the investment or deposit of moneys in the trust fund shall be deposited in the trust fund. The trust fund shall be funded from moneys collected by the division ~~corporation~~ from mobile home park owners under s. 723.06116, the surcharge collected by the department under s. 723.007(2), the surcharge collected by the Department of Highway Safety and Motor Vehicles, and from other appropriated funds.

(2) Moneys in the Florida Mobile Home Relocation Trust Fund may be expended only:

(a) To pay the administration costs of the division ~~Florida~~

~~Mobile Home Relocation Corporation~~; and

(b) To carry out the purposes and objectives of the division ~~corporation~~ by making payments to mobile home owners under the relocation program.

(3) The department shall distribute moneys in the Florida Mobile Home Relocation Trust Fund to the division ~~Florida Mobile Home Relocation Corporation~~ in accordance with the following:

(a) Before the beginning of each fiscal year, the division ~~corporation~~ shall submit its annual operating budget, as approved by the division ~~corporation board~~, for the fiscal year and set forth that amount to the department in writing. One-fourth of the operating budget shall be transferred to the division ~~corporation~~ each quarter. The department shall make the first one-fourth quarter transfer on the first business day of the fiscal year and make the remaining one-fourth quarter transfers before the second business day of the second, third, and fourth quarters. The division ~~corporation board~~ may approve changes to the operational budget for a fiscal year by providing written notification of such changes to the department. The written notification must indicate the changes to the operational budget and the conditions that were unforeseen at the time the division ~~corporation~~ developed the operational budget and why the changes are essential in order to continue operation of the division ~~corporation~~.

(b) The division ~~corporation~~ shall periodically submit requests to the department for the transfer of funds to the division ~~corporation~~ needed to make payments to mobile home owners under the relocation program. Requests must include documentation indicating the amount of funds needed, the name

and location of the mobile home park, the number of approved applications for moving expenses or abandonment allowance, and summary information specifying the number and type, single-section or multisection, of homes moved or abandoned. The department shall process requests that include such documentation, subject to the availability of sufficient funds within the trust fund, within 5 business days after receipt of the request. Transfer requests may be submitted electronically.

(c) Funds transferred from the trust fund to the division ~~corporation~~ shall be transferred electronically and shall be transferred to and maintained in a qualified public depository as defined in s. 280.02 which is specified by the division ~~corporation~~.

(4) Other than the requirements specified under this section, neither the division ~~corporation~~ nor the department is required to take any other action as a prerequisite to accomplishing the provisions of this section.

(5) This section does not preclude department inspection of division ~~corporation~~ records 5 business days after receipt of written notice.

Section 24. Section 723.06116, Florida Statutes, is amended to read:

723.06116 Payments to the Division of Florida Condominiums, Timeshares, and Mobile Homes ~~Mobile Home Relocation Corporation~~.—

(1) If a mobile home owner is required to move due to a change in use of the land comprising a mobile home park as set forth in s. 723.061(1)(d), the mobile home park owner shall, upon such change in use, pay to the Division of Florida

Condominiums, Timeshares, and Mobile Homes ~~Mobile Home Relocation Corporation~~ for deposit in the Florida Mobile Home Relocation Trust Fund $2,750 for each single-section mobile home and $3,750 for each multisection mobile home for which a mobile home owner has made application for payment of moving expenses. The mobile home park owner shall make the payments required by this section and by s. 723.0612(7) to the division ~~corporation~~ within 30 days after receipt from the division ~~corporation~~ of the invoice for payment. Failure to make such payment within the required time period shall result in a late fee being imposed.

(a) If payment is not submitted within 30 days after receipt of the invoice, a 10-percent late fee shall be assessed.

(b) If payment is not submitted within 60 days after receipt of the invoice, a 15-percent late fee shall be assessed.

(c) If payment is not submitted within 90 days after receipt of the invoice, a 20-percent late fee shall be assessed.

(d) Any payment received 120 days or more after receipt of the invoice shall include a 25-percent late fee.

(2) A mobile home park owner is not required to make the payment prescribed in subsection (1), nor is the mobile home owner entitled to compensation under s. 723.0612(1), when:

(a) The mobile home park owner moves a mobile home owner to another space in the mobile home park or to another mobile home park at the park owner's expense;

(b) A mobile home owner is vacating the premises and has informed the mobile home park owner or manager before the change in use notice has been given; or

(c) A mobile home owner abandons the mobile home as set forth in s. 723.0612(7).

(d) The mobile home owner has a pending eviction action for nonpayment of lot rental amount pursuant to s. 723.061(1)(a) which was filed against him or her prior to the mailing date of the notice of change in use of the mobile home park given pursuant to s. 723.061(1)(d).

(3) This section and s. 723.0612(7) are enforceable by the division ~~corporation~~ by action in a court of appropriate jurisdiction.

(4) In any action brought by the division ~~corporation~~ to collect payments assessed under this chapter, the division ~~corporation~~ may file and maintain such action in Leon County. If the division ~~corporation~~ is a party in any other action, venue for such action shall be in Leon County.

Section 25. Subsections (1) through (5), (7) through (9), (11), and (12) of section 723.0612, Florida Statutes, are amended, and subsection (2) of that section is reenacted, to read:

723.0612 Change in use; relocation expenses; payments by park owner.—

(1) If a mobile home owner is required to move due to a change in use of the land comprising the mobile home park as set forth in s. 723.061(1)(d) and complies with the requirements of this section, the mobile home owner is entitled to payment from the Division of Florida Condominiums, Timeshares, and Mobile Homes ~~Mobile Home Relocation Corporation~~ of:

(a) The amount of actual moving expenses of relocating the mobile home to a new location within a 50-mile radius of the vacated park, or

(b) The amount of $3,000 for a single-section mobile home

or $6,000 for a multisection mobile home, whichever is less. Moving expenses include the cost of taking down, moving, and setting up the mobile home in a new location.

(2) A mobile home owner is not ~~shall not be~~ entitled to compensation under subsection (1) when:

(a) The park owner moves a mobile home owner to another space in the mobile home park or to another mobile home park at the park owner's expense;

(b) A mobile home owner is vacating the premises and has informed the park owner or manager before notice of the change in use has been given;

(c) A mobile home owner abandons the mobile home as set forth in subsection (7); or

(d) The mobile home owner has a pending eviction action for nonpayment of lot rental amount pursuant to s. 723.061(1)(a) which was filed against him or her prior to the mailing date of the notice of change in use of the mobile home park given pursuant to s. 723.061(1)(d).

(3) Except as provided in subsection (7), in order to obtain payment from the division ~~Florida Mobile Home Relocation Corporation~~, the mobile home owner shall submit to the division ~~corporation~~, with a copy to the park owner, an application for payment which includes:

(a) A copy of the notice of eviction due to change in use; and

(b) A contract with a moving or towing contractor for the moving expenses for the mobile home.

(4) The division ~~Florida Mobile Home Relocation Corporation~~ must approve payment within 45 days after receipt of the

information set forth in subsection (3), or payment is deemed approved. A copy of the approval must be forwarded to the park owner with an invoice for payment. Upon approval, the division ~~corporation~~ shall issue a voucher in the amount of the contract price for relocating the mobile home. The moving contractor may redeem the voucher from the division ~~corporation~~ following completion of the relocation and upon approval of the relocation by the mobile home owner.

(5) Actions of the division ~~Florida Mobile Home Relocation Corporation~~ under this section are not subject to the provisions of chapter 120 but are reviewable only by writ of certiorari in the circuit court in the county in which the claimant resides in the manner and within the time provided by the Florida Rules of Appellate Procedure.

(7) In lieu of collecting payment from the division ~~Florida Mobile Home Relocation Corporation~~ as set forth in subsection (1), a mobile home owner may abandon the mobile home in the mobile home park and collect $1,375 for a single section and $2,750 for a multisection from the division ~~corporation~~ as long as the mobile home owner delivers to the park owner the current title to the mobile home duly endorsed by the owner of record and valid releases of all liens shown on the title. If a mobile home owner chooses this option, the park owner shall make payment to the division ~~corporation~~ in an amount equal to the amount the mobile home owner is entitled to under this subsection. The mobile home owner's application for funds under this subsection shall require the submission of a document signed by the park owner stating that the home has been abandoned under this subsection and that the park owner agrees

to make payment to the division ~~corporation~~ in the amount provided to the home owner under this subsection. However, in the event that the required documents are not submitted with the application, the division ~~corporation~~ may consider the facts and circumstances surrounding the abandonment of the home to determine whether the mobile home owner is entitled to payment pursuant to this subsection. The mobile home owner is not entitled to any compensation under this subsection if there is a pending eviction action for nonpayment of lot rental amount pursuant to s. 723.061(1)(a) which was filed against him or her prior to the mailing date of the notice of change in the use of the mobile home park given pursuant to s. 723.061(1)(d).

(8) The division ~~Florida Mobile Home Relocation Corporation~~ may ~~shall~~ not be liable to any person for recovery if funds are insufficient to pay the amounts claimed. In any such event, the division ~~corporation~~ shall keep a record of the time and date of its approval of payment to a claimant. If sufficient funds become available, the division ~~corporation~~ must ~~shall~~ pay the claimant whose unpaid claim is the earliest by time and date of approval.

(9) Any person whose application for funding pursuant to subsection (1) or subsection (7) is approved for payment by the division ~~corporation~~ is ~~shall be~~ barred from asserting any claim or cause of action under this chapter directly relating to or arising out of the change in use of the mobile home park against the division ~~corporation~~, the park owner, or the park owner's successors in interest. An ~~No~~ application for funding pursuant to subsection (1) or subsection (7) may not ~~shall~~ be approved by the division ~~corporation~~ if the applicant has filed a claim or

cause of action, is actively pursuing a claim or cause of action, has settled a claim or cause of action, or has a judgment against the division ~~corporation~~, the park owner, or the park owner's successors in interest under this chapter directly relating to or arising out of the change in use of the mobile home park, unless such claim or cause of action is dismissed with prejudice.

(11) In an action to enforce the provisions of this section and ss. ~~723.0611,~~ 723.06115~~,~~ and 723.06116, the prevailing party is entitled to reasonable attorney's fees and costs.

(12) An application to the division ~~corporation~~ for compensation under subsection (1) or subsection (7) must be received within 1 year after the expiration of the eviction period as established in the notice required under s. 723.061(1)(d). If the applicant files a claim or cause of action that disqualifies the applicant under subsection (9) and the claim is subsequently dismissed, the application must be received within 6 months following filing of the dismissal with prejudice as required under subsection (9). However, such an applicant must apply within 2 years after the expiration of the eviction period as established in the notice required under s. 723.061(1)(d).

Section 26. Paragraph (a) of subsection (4) of section 20.165, Florida Statutes, is amended to read:

20.165 Department of Business and Professional Regulation.—There is created a Department of Business and Professional Regulation.

(4)(a) The following boards and programs are established within the Division of Professions:

1. Board of Architecture and Interior Design, created under part I of chapter 481.

2. Florida Board of Auctioneers, created under part VI of chapter 468.

3. Barbers' Board, created under chapter 476.

4. Florida Building Code Administrators and Inspectors Board, created under part XII of chapter 468.

5. Construction Industry Licensing Board, created under part I of chapter 489.

6. Board of Cosmetology, created under chapter 477.

7. Electrical Contractors' Licensing Board, created under part II of chapter 489.

8. Employee leasing companies licensing program ~~Board of Employee Leasing Companies~~, created under part XI of chapter 468.

9. Board of Landscape Architecture, created under part II of chapter 481.

10. Board of Pilot Commissioners, created under chapter 310.

11. Board of Professional Engineers, created under chapter 471.

12. Board of Professional Geologists, created under chapter 492.

13. Board of Veterinary Medicine, created under chapter 474.

14. Home inspection services licensing program, created under part XV of chapter 468.

15. Mold-related services licensing program, created under part XVI of chapter 468.

Section 27. Subsection (2) of section 210.16, Florida Statutes, is amended to read:

210.16 Revocation or suspension of permit.—

(2) The division shall revoke the permit or permits of any person who would be ineligible to obtain a new license or renew a license by reason of any of the conditions for permitting provided in s. 210.15(1)(d)1.-6. ~~s. 210.15(1)(c)1.-6.~~

Section 28. Paragraph (uuu) of subsection (7) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any entity by this chapter do not inure to any transaction that is otherwise taxable under this chapter when payment is made by a representative or employee of the entity by any means, including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an

exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

(uuu) *Small private investigative agencies.*—

1. As used in this paragraph, the term:

a. "Private investigation services" has the same meaning as "private investigation," as defined in s. 493.6101(17).

b. "Small private investigative agency" means a private investigator licensed under s. 493.6201 which:

(I) Employs three or fewer full-time or part-time employees, including those performing services pursuant to an employee leasing arrangement as defined in s. 468.520(3) ~~s. 468.520(4)~~, in total; and

(II) During the previous calendar year, performed private investigation services otherwise taxable under this chapter in which the charges for the services performed were less than $150,000 for all its businesses related through common ownership.

2. The sale of private investigation services by a small private investigative agency to a client is exempt from the tax imposed by this chapter.

3. The exemption provided by this paragraph may not apply in the first calendar year a small private investigative agency conducts sales of private investigation services taxable under this chapter.

Section 29. Paragraph (a) of subsection (19) of section 440.02, Florida Statutes, is amended to read:

440.02 Definitions.—When used in this chapter, unless the

context clearly requires otherwise, the following terms shall have the following meanings:

(19)(a) "Employer" means the state and all political subdivisions thereof, all public and quasi-public corporations therein, every person carrying on any employment, and the legal representative of a deceased person or the receiver or trustees of any person. The term also includes employee leasing companies, as defined in s. 468.520(4) ~~s. 468.520(5)~~, and employment agencies that provide their own employees to other persons. If the employer is a corporation, parties in actual control of the corporation, including, but not limited to, the president, officers who exercise broad corporate powers, directors, and all shareholders who directly or indirectly own a controlling interest in the corporation, are considered the employer for the purposes of ss. 440.105, 440.106, and 440.107.

Section 30. Section 448.26, Florida Statutes, is amended to read:

448.26 Application.—Nothing in this part shall exempt any client of any labor pool or temporary help arrangement entity as defined in s. 468.520(3)(a) ~~s. 468.520(4)(a)~~ or any assigned employee from any other license requirements of state, local, or federal law. Any employee assigned to a client who is licensed, registered, or certified pursuant to law shall be deemed an employee of the client for such licensure purposes but shall remain an employee of the labor pool or temporary help arrangement entity for purposes of chapters 440 and 443.

Section 31. Subsection (2) of section 468.520, Florida Statutes, is amended to read:

468.520 Definitions.—As used in this part:

~~(2) "Board" means the Board of Employee Leasing Companies.~~

Section 32. Section 468.522, Florida Statutes, is amended to read:

468.522 Rules ~~of the board~~.—The department may ~~board has authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to implement ~~the provisions of~~ this part. Every licensee shall be governed and controlled by this part and the rules adopted by the department ~~board~~.

Section 33. Subsections (2) and (4) of section 468.524, Florida Statutes, are amended to read:

468.524 Application for license.—

(2) The department ~~board~~ may require information and certifications necessary to determine that the applicant is of good moral character and meets other licensure requirements of this part.

(4) An applicant or licensee is ineligible to reapply for a license for a period of 1 year following final agency action on the denial or revocation of a license applied for or issued under this part. This time restriction does not apply to administrative denials or revocations entered because:

(a) The applicant or licensee has made an inadvertent error or omission on the application;

(b) The experience documented to the department ~~board~~ was insufficient at the time of the previous application;

(c) The department is unable to complete the criminal background investigation because of insufficient information from the Florida Department of Law Enforcement, the Federal Bureau of Investigation, or any other applicable law enforcement agency;

(d) The applicant or licensee has failed to submit required fees; or

(e) An applicant or licensed employee leasing company has been deemed ineligible for a license because of the lack of good moral character of an individual or individuals when such individual or individuals are no longer employed in a capacity that would require their licensing under this part.

Section 34. Section 468.5245, Florida Statutes, is amended to read:

468.5245 Change of ownership.—

(1) A license or registration issued to any entity under this part may not be transferred or assigned. The department ~~board~~ shall adopt rules to provide for a licensee's or registrant's change of name or location.

(2) A person or entity that seeks to purchase or acquire control of an employee leasing company or group licensed or registered under this part must first apply to the department ~~board~~ for a certificate of approval for the proposed change of ownership. However, prior approval is not required if, at the time the purchase or acquisition occurs, a controlling person of the employee leasing company or group maintains a controlling person license under this part. Notification must be provided to the department ~~board~~ within 30 days after the purchase or acquisition of such company in the manner prescribed by the department ~~board~~.

(3) Any application that is submitted to the department ~~board~~ under this section is ~~shall be~~ deemed approved if the department ~~board~~ has not approved the application or rejected the application, and provided the applicant with the basis for a

rejection, within 90 days after the receipt of the completed application.

(4) The department ~~board~~ shall establish filing fees for a change-of-ownership application in accordance with s. 468.524(1).

Section 35. Subsections (2) and (3) of section 468.525, Florida Statutes, are amended to read:

468.525 License requirements.—

(2)(a) As used in this part, "good moral character" means a personal history of honesty, trustworthiness, fairness, a good reputation for fair dealings, and respect for the rights of others and for the laws of this state and nation. A thorough background investigation of the individual's good moral character shall be instituted by the department. Such investigation shall require:

1. The submission of fingerprints, for processing through appropriate law enforcement agencies, by the applicant and the examination of police records by the department ~~board~~.

2. Such other investigation of the individual as the department ~~board~~ may deem necessary.

(b) The department ~~board~~ may deny an application for licensure or renewal citing lack of good moral character. Conviction of a crime within the last 7 years does ~~shall~~ not automatically bar any applicant or licensee from obtaining a license or continuing as a licensee. The department ~~board~~ shall consider the type of crime committed, the crime's relevancy to the employee leasing industry, the length of time since the conviction and any other factors deemed relevant by the department ~~board~~.

(3) Each employee leasing company licensed by the department shall have a registered agent for service of process in this state and at least one licensed controlling person. In addition, each licensed employee leasing company shall comply with the following requirements:

(a) The employment relationship with workers provided by the employee leasing company to a client company shall be established by written agreement between the leasing company and the client, and written notice of that relationship shall be given by the employee leasing company to each worker who is assigned to perform services at the client company's worksite.

(b) An applicant for an initial employee leasing company license shall have a tangible accounting net worth of not less than $50,000.

(c) An applicant for initial or renewal license of an employee leasing company license or employee leasing company group shall have an accounting net worth or shall have guaranties, letters of credit, or other security acceptable to the department ~~board~~ in sufficient amounts to offset any deficiency. A guaranty will not be acceptable to satisfy this requirement unless the applicant submits sufficient evidence to satisfy the department ~~board~~ that the guarantor has adequate resources to satisfy the obligation of the guaranty.

(d) Each employee leasing company shall maintain an accounting net worth and positive working capital, as determined in accordance with generally accepted accounting principles, or shall have guaranties, letters of credit, or other security acceptable to the department ~~board~~ in sufficient amounts to offset any deficiency. A guaranty will not be acceptable to

satisfy this requirement unless the licensee submits sufficient evidence, as defined by rule, that the guarantor has adequate resources to satisfy the obligation of the guaranty. In determining the amount of working capital, a licensee shall include adequate reserves for all taxes and insurance, including plans of self-insurance or partial self-insurance for claims incurred but not paid and for claims incurred but not reported. Compliance with the requirements of this paragraph is subject to verification by department ~~or board~~ audit.

(e) Each employee leasing company or employee leasing company group shall submit annual financial statements audited by an independent certified public accountant, with the application and within 120 days after the end of each fiscal year, in a manner and time prescribed by the department ~~board~~, provided however, that any employee leasing company or employee leasing company group with gross Florida payroll of less than $2.5 million during any fiscal year may submit financial statements reviewed by an independent certified public accountant for that year.

(f) The licensee shall notify the department ~~or board~~ in writing within 30 days after any change in the application or status of the license.

(g) Each employee leasing company or employee leasing company group shall maintain accounting and employment records relating to all employee leasing activities for a minimum of 3 calendar years.

Section 36. Subsections (3) and (5) of section 468.526, Florida Statutes, are amended to read:

468.526 License required; fees.—

(3) Each employee leasing company and employee leasing company group licensee shall pay to the department upon the initial issuance of a license and upon each renewal thereafter a license fee not to exceed $2,500 to be established by the department ~~board~~. In addition to the license fee, the department ~~board~~ shall establish an annual assessment for each employee leasing company and each employee leasing company group sufficient to cover all costs for regulation of the profession pursuant to this chapter, chapter 455, and any other applicable provisions of law. The annual assessment shall:

(a) Be due and payable upon initial licensure and subsequent renewals thereof and 1 year before the expiration of any licensure period; and

(b) Be based on a fixed percentage, variable classes, or a combination of both, as determined by the department ~~board~~, of gross Florida payroll for employees leased to clients by the applicant or licensee during the period beginning five quarters before and ending one quarter before each assessment. It is the intent of the Legislature that the greater weight of total fees for licensure and assessments should be on larger companies and groups.

(5) Each controlling person licensee shall pay to the department upon the initial issuance of a license and upon each renewal thereafter a license fee to be established by the department ~~board~~ in an amount not to exceed $2,000.

Section 37. Subsection (1) of section 468.527, Florida Statutes, is amended to read:

468.527 Licensure and license renewal.—

(1) The department shall license any applicant who the

department ~~board~~ certifies is qualified to practice employee leasing as an employee leasing company, employee leasing company group, or controlling person.

Section 38. Subsection (2) of section 468.5275, Florida Statutes, is amended to read:

468.5275 Registration and exemption of de minimis operations.—

(2) A registration is valid for 1 year. Each registrant shall pay to the department upon initial registration, and upon each renewal thereafter, a registration fee to be established by the department ~~board~~ in an amount not to exceed:

(a) Two hundred and fifty dollars for an employee leasing company.

(b) Five hundred dollars for an employee leasing company group.

Section 39. Subsections (2), (4), and (5) of section 468.529, Florida Statutes, are amended to read:

468.529 Licensee's insurance; employment tax; benefit plans.—

(2) An initial or renewal license may not be issued to any employee leasing company unless the employee leasing company first files with the department ~~board~~ evidence of workers' compensation coverage for all leased employees in this state. Each employee leasing company shall maintain and make available to its workers' compensation carrier the following information:

(a) The correct name and federal identification number of each client company.

(b) A listing of all covered employees provided to each client company, by classification code.

(c) The total eligible wages by classification code and the premiums due to the carrier for the employees provided to each client company.

(4) An initial or renewal license may not be issued to any employee leasing company unless the employee leasing company first provides evidence to the department ~~board~~, as required by department ~~board~~ rule, that the employee leasing company has paid all of the employee leasing company's obligations for payroll, payroll-related taxes, workers' compensation insurance, and employee benefits. All disputed amounts must be disclosed in the application.

(5) The provisions of this section are subject to verification by department ~~or board~~ audit.

Section 40. Subsections (3) and (4) of section 468.530, Florida Statutes, are amended to read:

468.530 License, contents; posting.—

(3) No license shall be valid for any person or entity who engages in the business under any name other than that specified in the license. A license issued under this part is ~~shall~~ not ~~be~~ assignable, and no licensee may conduct a business under a fictitious name without prior written authorization of the department ~~board~~ to do so. The department ~~board~~ may not authorize the use of a name which is so similar to that of a public officer or agency, or of that used by another licensee, that the public may be confused or misled thereby. No licensee shall be permitted to conduct business under more than one name unless it has obtained a separate license. A licensee desiring to change its licensed name at any time except upon license renewal shall notify the department ~~board~~ and pay a fee not to

exceed $50 for each authorized change of name.

(4) Each employee leasing company or employee leasing company group licensed under this part shall be properly identified in all advertisements, which must include the license number, licensed business name, and other appropriate information in accordance with department rules ~~established by the board~~.

Section 41. Subsection (1) of section 468.531, Florida Statutes, is amended to read:

468.531 Prohibitions; penalties.—

(1) No person or entity shall:

(a) Practice or offer to practice as an employee leasing company, an employee leasing company group, or a controlling person unless such person or entity is licensed pursuant to this part;

(b) Practice or offer to practice as an employee leasing company or employee leasing company group unless all controlling persons thereof are licensed pursuant to this part;

(c) Use the name or title "licensed employee leasing company," "employee leasing company," "employee leasing company group," "professional employer," "professional employer organization," "controlling person," or words that would tend to lead one to believe that such person or entity is registered pursuant to this part, when such person or entity has not registered pursuant to this part;

(d) Present as his or her own or his or her entity's own the license of another;

(e) Knowingly give false or forged evidence to the department ~~board or a member thereof~~; or

(f) Use or attempt to use a license that has been suspended or revoked.

Section 42. Subsections (1), (2), and (4) of section 468.532, Florida Statutes, are amended to read:

468.532 Discipline.—

(1) The following constitute grounds for which disciplinary action against a licensee may be taken by the department ~~board~~:

(a) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, bribery, fraud, or willful misrepresentation in obtaining, attempting to obtain, or renewing a license.

(b) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the operation of an employee leasing business or the ability to engage in business as an employee leasing company.

(c) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, fraud, deceit, or misconduct in the classification of employees pursuant to chapter 440.

(d) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, fraud, deceit, or misconduct in the establishment or maintenance of self-insurance, be it health insurance or workers' compensation insurance.

(e) Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, fraud, deceit, or misconduct in the operation of an employee leasing company.

(f) Conducting business without an active license.

(g) Failing to maintain workers' compensation insurance as required in s. 468.529.

(h) Transferring or attempting to transfer a license issued pursuant to this part.

(i) Violating any provision of this part or any lawful order or rule issued under the provisions of this part or chapter 455.

(j) Failing to notify the department ~~board~~, in writing, of any change of the primary business address or the addresses of any of the licensee's offices in the state.

(k) Having been confined in any county jail, postadjudication, or being confined in any state or federal prison or mental institution, or when through mental disease or deterioration, the licensee can no longer safely be entrusted to deal with the public or in a confidential capacity.

(l) Having been found guilty for a second time of any misconduct that warrants suspension or being found guilty of a course of conduct or practices which shows that the licensee is so incompetent, negligent, dishonest, or untruthful that the money, property, transactions, and rights of investors, or those with whom the licensee may sustain a confidential relationship, may not safely be entrusted to the licensee.

(m) Failing to inform the department ~~board~~ in writing within 30 days after being convicted or found guilty of, or entering a plea of nolo contendere to, any felony, regardless of adjudication.

(n) Failing to conform to any lawful order of the department ~~board~~.

(o) Being determined liable for civil fraud by a court in any jurisdiction.

(p) Having adverse material final action taken by any state or federal regulatory agency for violations within the scope of control of the licensee.

(q) Failing to inform the department ~~board~~ in writing within 30 days after any adverse material final action by a state or federal regulatory agency.

(r) Failing to meet or maintain the requirements for licensure as an employee leasing company or controlling person.

(s) Engaging as a controlling person any person who is not licensed as a controlling person by the department ~~board~~.

(t) Attempting to obtain, obtaining, or renewing a license to practice employee leasing by bribery, misrepresentation, or fraud.

(2) When the department ~~board~~ finds any violation of subsection (1), it may do one or more of the following:

(a) Deny an application for licensure.

(b) Permanently revoke, suspend, restrict, or not renew a license.

(c) Impose an administrative fine not to exceed $5,000 for every count or separate offense.

(d) Issue a reprimand.

(e) Place the licensee on probation for a period of time and subject to such conditions as the department ~~board~~ may specify.

(f) Assess costs associated with investigation and prosecution.

(4) The department ~~board~~ shall specify the penalties for

any violation of this part.

Section 43. Paragraph (a) of subsection (6) of section 476.144, Florida Statutes, is amended to read:

476.144 Licensure.—

(6) A person may apply for a restricted license to practice barbering. The board shall adopt rules specifying procedures for an applicant to obtain a restricted license if the applicant:

(a)1. Has successfully completed a restricted barber course, as established by rule of the board, at a school of barbering licensed pursuant to chapter 1005, a barbering program within the public school system, or a government-operated barbering program in this state; or

2.a. Holds or has within the previous 5 years held an active valid license to practice barbering in another state or country or has held a Florida barbering license which has been declared null and void for failure to renew the license, and the applicant fulfilled the requirements of s. 476.114(2)(c) ~~s. 476.114(2)(c)2.~~ for initial licensure; and

b. Has not been disciplined relating to the practice of barbering in the previous 5 years; and

The restricted license shall limit the licensee's practice to those specific areas in which the applicant has demonstrated competence pursuant to rules adopted by the board.

Section 44. Paragraph (a) of subsection (2) of section 627.192, Florida Statutes, is amended to read:

627.192 Workers' compensation insurance; employee leasing arrangements.—

(2) For purposes of the Florida Insurance Code:

(a) "Employee leasing" shall have the same meaning as set forth in s. 468.520(3) ~~s. 468.520(4)~~.

Section 45. For the purpose of incorporating the amendment made by this act to section 723.061, Florida Statutes, in a reference thereto, subsection (1) of section 48.184, Florida Statutes, is reenacted to read:

48.184 Service of process for removal of unknown parties in possession.—

(1) This section applies only to actions governed by s. 82.03, s. 83.21, s. 83.59, or s. 723.061 and only to the extent that such actions seek relief for the removal of an unknown party or parties in possession of real property. The provisions of this section are cumulative to other provisions of law or rules of court about service of process, and all other such provisions are cumulative to this section.

Section 46. For the purpose of incorporating the amendment made by this act to section 723.061, Florida Statutes, in a reference thereto, subsection (5) of section 723.004, Florida Statutes, is reenacted to read:

723.004 Legislative intent; preemption of subject matter.—

(5) Nothing in this chapter shall be construed to prevent the enforcement of a right or duty under this section, s. 723.022, s. 723.023, s. 723.031, s. 723.032, s. 723.033, s. 723.035, s. 723.037, s. 723.038, s. 723.061, s. 723.0615, s. 723.062, s. 723.063, or s. 723.081 by civil action after the party has exhausted its administrative remedies, if any.

Section 47. For the purpose of incorporating the amendment made by this act to section 723.061, Florida Statutes, in a reference thereto, subsection (9) of section 723.031, Florida

Statutes, is reenacted to read:

723.031 Mobile home lot rental agreements.—

(9) No rental agreement shall provide for the eviction of a mobile home owner on a ground other than one contained in s. 723.061.

Section 48. For the purpose of incorporating the amendment made by this act to section 723.061, Florida Statutes, in a reference thereto, subsection (1) of section 723.032, Florida Statutes, is reenacted to read:

723.032 Prohibited or unenforceable provisions in mobile home lot rental agreements.—

(1) A mobile home lot rental agreement may provide a specific duration with regard to the amount of rental payments and other conditions of the tenancy, but the rental agreement shall neither provide for, nor be construed to provide for, the termination of any tenancy except as provided in s. 723.061.

Section 49. For the purpose of incorporating the amendment made by this act to section 723.061, Florida Statutes, in a reference thereto, subsection (2) of section 723.085, Florida Statutes, is reenacted to read:

723.085 Rights of lienholder on mobile homes in rental mobile home parks.—

(2) Upon the foreclosure of the lien for unpaid purchase price and sale of the mobile home, the owner of the mobile home must qualify for tenancy in the mobile home park in accordance with the rules and regulations of the mobile home park. The park owner shall comply with the provisions of s. 723.061 in determining whether the homeowner may qualify as a tenant.

Section 50. For the purpose of incorporating the amendment

made by this act to section 723.06115, Florida Statutes, in a reference thereto, subsection (1) of section 320.08015, Florida Statutes, is reenacted to read:

320.08015 License tax surcharge.—

(1) Except as provided in subsection (2), there is levied on each license tax imposed under s. 320.08(11) a surcharge in the amount of $1, which shall be collected in the same manner as the license tax and shall be deposited in the Florida Mobile Home Relocation Trust Fund, as created in s. 723.06115. This surcharge may not be imposed during the next registration and renewal period if the balance in the Florida Mobile Home Relocation Trust Fund exceeds $10 million on June 30. The surcharge shall be reinstated in the next registration and renewal period if the balance in the Florida Mobile Home Relocation Trust Fund is below $6 million on June 30.

Section 51. This act shall take effect July 1, 2024.

The Florida Senate

Committee Agenda Request

To: Senator Joe Gruters, Chair
Committee on Regulated Industries

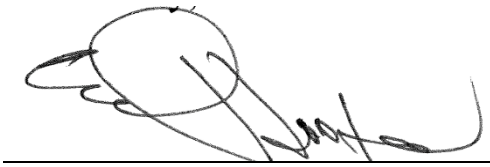
Subject: Committee Agenda Request

Date: January 22, 2024

I respectfully request that **Senate Bill #1544**, relating to Department of Business and Professional Regulation, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.



Senator Ed Hooper
Florida Senate, District 21

File signed original with committee office

S-020 (03/2004)

2024 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Business & Professional Regulation

BILL INFORMATION	
BILL NUMBER:	SB 414
BILL TITLE:	Florida Homeowners' Construction Recovery Fund
BILL SPONSOR:	Sen. Garcia
EFFECTIVE DATE:	07/01/2024

COMMITTEES OF REFERENCE
1) Regulated Industries
2) Appropriations Committee on Agriculture, Environment, and General Government
3) Fiscal Policy
4) Click or tap here to enter text.
5) Click or tap here to enter text.

CURRENT COMMITTEE
Regulated Industries

SIMILAR BILLS	
BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.

PREVIOUS LEGISLATION	
BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.
YEAR:	Click or tap here to enter text.
LAST ACTION:	Click or tap here to enter text.

IDENTICAL BILLS	
BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	November 20th, 2023
LEAD AGENCY ANALYST:	Jeff Kelly, Director, Division of Professions
ADDITIONAL ANALYST(S):	Tracy Dixon, Service Operations Robin Jordan, Division of Technology
LEGAL ANALYST:	Brande Miller, Deputy General Counsel - Professions
FISCAL ANALYST:	Garrett Blanton, Office of Planning and Budget

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill provides for a scheduled increase in the maximum payment amounts that may be made from the Florida Homeowners' Construction Recovery Fund for individual and aggregate claims.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

The Florida Homeowners' Construction Recovery Fund ("Recovery Fund") was created in 1993 in the wake of Hurricane Andrew as a fund of last resort to compensate consumers who contracted for construction, repair or improvement of their Florida residence and who suffered monetary damages due to the financial misconduct, abandonment or fraudulent statement of the licensed contractor.

In accordance with s. 468.631(1), F.S., the proceeds from a 1.5% surcharge on all permits issued for the enforcement of the Florida Building Code is allocated equally between the fund the Recovery Fund and the functions of the Building Code Administrators and Inspectors Board ("Board"). The department may transfer excess cash to the Recovery Fund that it determines is not required to fund the Board, but not in an amount that would exceed the amount appropriated in the General Appropriations Act and any amount approved by the Legislative Budget Commission.

Section 489.143, F.S., provides that, beginning January 1, 2005, for each Division I contract entered into after July 1, 2004, payment from the Recovery Fund is subject to a $50,000 maximum payment for each Division I claim, and an aggregate cap of $500,000 for each Division I licensee.

Beginning January 1, 2017, for each Division II contract entered into on or after July 1, 2016, payment from the Recovery Fund is subject to a $15,000 maximum payment for each Division II claim, and an aggregate cap of $150,000 for each Division II licensee.

For Division I contracts entered prior to July 1, 2004, Recovery Fund claims are limited to $25,000.00 per claimant with a total lifetime aggregate limit of $250,000.00 per licensee. The Recovery Fund does not require a minimum contract amount for eligible claims.

Section 489.143(8), F.S., provides that if the annual appropriation is exhausted with claims pending, such claims shall be carried over to the next fiscal year. Any money more than pending claims remaining in the Recovery Fund at Approximately $4.5 million is appropriated annually to pay Recovery Fund claims.

Section 489.143(9), F.S., provides that, upon payment of any amount from the recovery fund in settlement of a claim in satisfaction of a judgment, award, or restitution order against a licensee, the license of such licensee shall automatically be suspended, without further administrative action, upon the date of payment from the fund. The license of such licensee may not be reinstated until he or she has repaid in full, plus interest, the amount paid from the fund.

As of July 31, 2023, the overall Recovery Fund balance was $23,235,064.00. For fiscal years 20/21, 21/22, and 22/23, the average amount of revenue going into the Recovery Fund from the surcharge per fiscal year was $6,188,495.00, and the average amount of claims awarded was $2,882,184 per fiscal year. However, between FY 20/21 and FY 22/23, the number of claims presented and awarded each year more than doubled. In FY 22/23, 232 claims were awarded for a total amount of $4,449,552.00.

2. EFFECT OF THE BILL:

Section 1

The bill amends s. 489.143, F.S. by removing "Beginning January 1, 2005" and increasing the maximum per Division I claim as follows:

- $75,000 for the 2024-2025 fiscal year
- $125,000 for the 2025-2026 fiscal year
- $175,000 for the 2026-2027 fiscal year

- $250,000 for the 2027-2028 fiscal year

The bill amends s. 489.143, F.S., by removing "Beginning January 1, 2017" to increase the maximum per Division II claim as follows:

- $25,000 for the 2024-2025 fiscal year
- $35,000 for the 2025-2026 fiscal year
- $45,000 for the 2026-2027 fiscal year
- $65,000 for the 2027-2028 fiscal year

The bill amends s. 489.143, F.S., to increase the aggregate caps for each Division I licensee for Division I contracts entered into after July 1st, 2004, as follows:

- $700,000 for the 2024-2025 fiscal year
- $800,000 for the 2025-2026 fiscal year
- $900,000 for the 2026-2027 fiscal year
- $1,000,000 for the 2027-2028 fiscal year

The bill amends s. 489.143, F.S., to increase the aggregate caps for each Division II licensee for Division II contracts entered into after July 1st, 2004, as follows:

- $250,000 for the 2024-2025 fiscal year
- $350,000 for the 2025-2026 fiscal year
- $450,000 for the 2026-2027 fiscal year
- $550,000 for the 2027-2028 fiscal year

Section 2

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

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y☐ N☒

If yes, explain:	Click or tap here to enter text.
Is the change consistent with the agency's core mission?	Y☐ N☐
Rule(s) impacted (provide references to F.A.C., etc.):	Click or tap here to enter text.

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y☐ N☒

If yes, provide a description:	Click or tap here to enter text.
Date Due:	Click or tap here to enter text.
Bill Section Number(s):	Click or tap here to enter text.

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y☐ N☒

Board:	
Board Purpose:	
Who Appoints:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y☐ N☒

Revenues:	
Expenditures:	
Does the legislation increase local taxes or fees? If yes, explain.	
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y☒ N☐

Revenues:	N/A
Expenditures:	As a result of increasing the aggregate cap per licensee, as well as the per-claim cap for each contract, the number of Recovery Fund claims awarded, as well as the amounts of claims awarded, will increase. However, the impact is indeterminate.
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y☒ N☐

Revenues:	As a result of increasing the aggregate cap per licensee and the per-claim cap for each contract, the number of claimants who receive compensation from the

	Recovery Fund and the amount of compensation will increase. However, the impact is indeterminate.
Expenditures:	Licensees must repay the fund for any amount of recovery paid to a consumer or have their license suspended until the payment is made.
Other:	

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y☒ N☐

If yes, explain impact.	Licensees must repay the fund for any amount of recovery paid to a consumer or have their license suspended until the payment is made.
Bill Section Number:	Click or tap here to enter text.

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y☐ N☒

If yes, describe the anticipated impact to the agency including any fiscal impact.	

FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y☐ N☒

If yes, describe the anticipated impact including any fiscal impact.	

ADDITIONAL COMMENTS

It is unclear if the increase in the per-claim and aggregate caps for each designated fiscal year is based on when the contract is signed when a claim is filed, when a claim is awarded, or when the claim is about to be paid. Additionally, since the bill removes a previous beginning date and does not include a new beginning date for when the prescribed increases become effective, it is unclear whether the new caps apply to all claims already filed, regardless of the age of the claim, as well as all future claims that are filed, regardless of the contract date on which they are based.

It is recommended that the bill specify that the increases only apply to contracts entered after a specific date (such as July 1, 2024) and beginning January 1, 2025) to be consistent with previous increases in the caps. Otherwise, the bill could be interpreted as retroactively increasing the per-claim and aggregate caps for all Division I claim based on contracts after July 1, 2004, and all Division II claims based on contracts entered after July 1, 2016, including those claims that have been closed due to aggregate caps, pending claims, and claims already been paid.

It is also unclear what the per-claim and aggregate caps will be after fiscal year 2027/2028.

The increased claim cap amounts proposed in the bill will impact on expenditures as it would cause an increase to the overall amount disbursed by the Division to approved claimants. The extent of the increase will depend on the number of claims awarded and the cost of those claims, which can vary from year to year and has more than doubled over the last 2 fiscal years.

The proposed claim caps outlined within this bill could increase the overall number of claims by significant amounts from year to year and would have the potential to outpace annual revenues into the Recovery Fund. This would eat into the fund's balance or require General Revenue to supplement if revenues were not adjusted to increase along with the cap increases.

Revenues have averaged $6,118,496 over the past 3 years but have been at least $6,500,000 for the last two years, and the cost of claims in the last fiscal year was $4,462,465. If we take the Fund's starting balance of $23,235,064 and project for the proposed increases through the 2027/28 Fiscal Year, the estimates are as follows:

Fiscal Year	Estimated Fund Balance (July 1)	Estimated Revenues	% of Cap Increase from Prior Year for Div 1	% of Cap Increase from Prior Year for Div 2	Estimated Expenditures after Proposed Cap Increases	**Estimated End Fund Balance (June 30)**
23/24	$23,235,064	$6,014,764	-	-	$4,981,181	**$24,268,647**
24/25	$25,235,064	$6,158,696	50%	66.67%	$7,617,696	**$22,809,647**
25/26	$24,610,064	$6,238,878	66.67%	40%	$11,424,110	**$17,624,415**
26/27	$20,185,064	$6,339,727	40%	28.57%	$15,177,893	**$8,786,249**
27/28	$12,014,350	$6,167,422	42.86%	44.44%	$21,567,992	**($6,614,320)**

These are estimated claim increases based on a corresponding increase in the cap amounts, and preliminary estimates show a possible fund deficit by the 2027/28 Fiscal Year. This estimate assumes revenues and claims remain about the same from year to year. But it is also worth noting that as the aggregate caps also increase from year to year as outlined in the Bill, the Division has expressed the possibility for cases to remain open year to year as they would not be able to close them for hitting an aggregate cap due to that cap being increased the following year.

With all of this considered, preliminary estimates show that claims would start to outpace revenues in FY 24-25, which would eventually result in a negative cash balance in the Construction Recovery Fund.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	No additional comments.

2024 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Business & Professional Regulation

BILL INFORMATION	
BILL NUMBER:	HB 1335
BILL TITLE:	Department of Business and Professional Regulation
BILL SPONSOR:	Rep. Maggard
EFFECTIVE DATE:	07/01/2024

1) Regulatory Reform & Economic Development Subcommittee
2) State Administration & Technology Appropriation Subcommittee
3) Commerce Committee
4) Click or tap here to enter text.
5) Click or tap here to enter text.

CURRENT COMMITTEE
Regulatory Reform & Economic Development Subcommittee

SIMILAR BILLS	
BILL NUMBER:	SB 1544
SPONSOR:	Sen. Hooper

PREVIOUS LEGISLATION	
BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.
YEAR:	Click or tap here to enter text.
LAST ACTION:	Click or tap here to enter text.

IDENTICAL BILLS	
BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	January 8th, 2024
LEAD AGENCY ANALYST:	Jeff Kelly, Director, Division of Professions
ADDITIONAL ANALYST(S):	G.W. Harrell, Division of Regulation Roger Scarborough, Director CPA Division Thomas Campbell, Deputy Director, Division of Real Estate Michelle Keith, Division of Hotels and Restaurants Marc Drexler, Counsel, Division of Hotels & Restaurants Patrick Cunningham, Director, Division of Alcoholic Beverages, and Tobacco Janetta Sampson, Division of Alcoholic Beverages, and Tobacco

	Robin Jordan, Division of Technology Robert Ehrhardt, OGC Rules Chevonne Christian, Director, CTMH
LEGAL ANALYST:	Brande Miller, Office of the General Counsel
FISCAL ANALYST:	Lynn Smith, Budget

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill: Requires certain persons and entities to create and maintain online system account; removes provisions requiring competency-based mentor programs at ports and the department's submission of annual report; removes a requirement that the department consider certain characteristics for applicants for certification as deputy pilot; creates an employee leasing companies licensing program; removes provision relating to the Board of Employee Leasing Companies; revises requirements for DBPR rules; revises eligibility requirements for licensure as barber and licensure by examination to practice cosmetology; revises types of penalties that may be recommended by local jurisdiction enforcement body against contractor; revises payment limitations for payments made from the Florida Homeowners' Construction Recovery Fund; revises requirements for certification as designated representative of prescription drug wholesale distributor; removes provisions relating to Florida Mobile Home Relocation Corporation; replaces Florida Mobile Home Relocation Corporation with Division of Florida Condominiums, Timeshares, and Mobile Homes as manager and administrator of Florida Mobile Home Relocation Trust Fund.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Division of Professions

Asbestos Consultants/Contractors

Section 469.006(2)(c)2., F.S., requires the department to adopt rules to determine financial stability, and such criteria shall include, but not be limited to, both credit history and limits of bondability and credit.

Employee Leasing Companies

Section 468.521, F.S., creates the Board of Employee Leasing Companies, to regulate the profession of employee leasing, including licensure and discipline, and to adopt rules to implement the provisions of Chapter 468, Part XI, F.S.

Barbers

In 2020, s. 476.144, F.S. was amended to allow for licensure by endorsement from all states, regardless of whether the other state's licensure requirements were the same, or similar, to this state.

Cosmetology

In 2020, s. 477.019, F.S. was amended to allow for licensure by endorsement from all states, regardless of whether the other state's licensure requirements were the same, or similar, to this state.

Construction Industry Licensing Board

Section 489.131(7)(c), F.S., authorizes local jurisdiction enforcement bodies to issue recommended penalties against contractors' registrations for consideration by the Construction Industry Licensing Board. Such recommendations may include suspension, revocation, restriction of the registration, imposition of a fine, or a combination thereof. Restitution is not included as one of the recommended penalties.

Florida Homeowner's Construction Recovery Fund

The Florida Homeowners' Construction Recovery Fund ("Recovery Fund") was created in 1993 in the wake of Hurricane Andrew as a fund of last resort to compensate consumers who contracted for construction, repair or

improvement of their Florida residence and who suffered monetary damages due to the financial misconduct, abandonment or fraudulent statement of the licensed contractor.

In accordance with s. 468.631(1), F.S., the proceeds from a 1.5% surcharge on all permits issued for the enforcement of the Florida Building Code is allocated equally between the fund the Recovery Fund and the functions of the Building Code Administrators and Inspectors Board ("Board"). The department may transfer excess cash to the Recovery Fund that it determines is not required to fund the Board, but not in an amount that would exceed the amount appropriated in the General Appropriations Act and any amount approved by the Legislative Budget Commission.

Section 489.143, F.S., provides that, beginning January 1, 2005, for each Division I contract entered into after July 1, 2004, payment from the Recovery Fund is subject to a $50,000 maximum payment for each Division I claim, and an aggregate cap of $500,000 for each Division I licensee.

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For Division I contracts entered prior to July 1, 2004, Recovery Fund claims are limited to $25,000.00 per claimant with a total lifetime aggregate limit of $250,000.00 per licensee. The Recovery Fund does not require a minimum contract amount for eligible claims.

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As of July 31, 2023, the overall Recovery Fund balance was $23,235,064.00. For fiscal years 20/21, 21/22, and 22/23, the average amount of revenue going into the Recovery Fund from the surcharge per fiscal year was $6,188,495.00, and the average amount of claims awarded was $2,882,184 per fiscal year. However, between FY 20/21 and FY 22/23, the number of claims presented and awarded each year more than doubled.

In FY 22/23, 232 claims were awarded for a total amount of $4,449,552.00. Of the 232 claims, 125 were against Division I contractors, and 107 were against Division II contractors.

Division of Real Estate:

Florida Real Estate Commission

Section 475.181, F.S., requires that the commission certify for licensure any applicant who meets the requirements for licensure. The commission is not to certify any applicant who has violated any of the provisions of section 475.42, F.S., or is subject to discipline under section 475.25, F.S. All applications expire after two years if the applicant fails to pass the appropriate examination. Additionally, required prelicensure education becomes invalid if an applicant fails to pass the appropriate examination within two years of completing the required prelicensure education.

Division of Hotels and Restaurants:

The Division of Hotels and Restaurants (division) licenses and regulates elevators, which also include dumbwaiters, escalators, moving sidewalks, and platform lifts or stairway chairlifts per section 399.01(6), F.S. The division also licenses and regulates elevator companies, technicians, and inspectors; performs compliance monitoring inspections to ensure code and safety requirements are met; and issues permits for elevator construction and alterations. The division has no-cost contracts with five local jurisdictions to provide services for annual safety inspections, issuance of certificates of operation, and other regulatory functions. The division accepts fees, applications, and renewals by postal mail or through the Department's online services portal. Application forms have fields for e-mail addresses but

are not required. Official division notices and inspection reports are either personally delivered or sent by certified mail. Licensees and applicants are not required to create and maintain an online account.

Division of Alcoholic Beverages and Tobacco

Tax on Cigarettes- Permits

Section 210.15, F.S. provides every person, firm, or corporation desiring to engage in business as a manufacturer, importer, exporter, distributing agent or wholesale dealer of cigarettes within this state shall file with the division an application for a cigarette permit for each place of business located within this state or, in the absence of such place of business in this state, for wherever its principal place of business is located. Every application for a cigarette permit shall be made on forms furnished by the division and shall set forth the name under which the applicant transacts or intends to transact business, the location of the applicant's place of business within the state, if any, and such other information as the division may require.

Tax on Tobacco Products Other- Permits

Section 210.40, F.S., states that a fee of $25 shall accompany each application for a distributor's license. The application shall also be accompanied by a corporate surety bond issued by a surety company authorized to do business in this state, conditioned for the payment when due of all taxes, penalties, and accrued interest that may be due the state. The bond shall be in the sum of $1,000 and in a form prescribed by the division. Whenever it is the opinion of the division that the bond given by a licensee is inadequate in amount to fully protect the state, the division shall require an additional bond in such amount as is deemed sufficient. A separate application for a license shall be made for each place of business at which a distributor proposes to engage in business as a distributor under this part, but an applicant may provide one bond in an amount determined by the division for all applications made by the distributor.

License and registration applications; approved person

Section 561.17(5), F.S. provides 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 permittee. Licensees and permittees are responsible for maintaining accurate contact information on file with the division.

License issuance upon approval of division

Section 561.19(2)(a), F.S. provides thatwhen 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, F.S., 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, F.S., may not be issued under this subsection until the 180-day period has elapsed or until such enforcement proceeding is final.

Division of CTMH

The Florida Mobile Home Relocation Corporation (FMHRC) was created pursuant to s. 723.0611, F.S. The corporation is administered by a board of directors made up of 6 members who are each appointed by the Secretary of DBPR from a list of nominees:

- The Federation of Manufactured Home Owners of Florida submits nominees for 3 board members. This organization is comprised of *residents* who reside in mobile home parks (MHP).
- The Florida Manufactured Housing Association submits nominees for 3 board members. This organization is comprised of MHP *owners* and *operators*.

All members of the board of directors, including the chair, are appointed to serve 3-year staggered terms. The board has historically had an executive director who managed the administrative and financial transactions of the FMHRC

as well as performed other necessary functions. However, as of the end of June 2023, the FMHRC is being managed by a management company in Tallahassee. Specifically, the board of directors must:

- Adopt a plan of operation and articles, bylaws, and operating rules pursuant to administer the operation of the FMHRC.
- Establish procedures under which applicants for payments from the corporation may have grievances reviewed by an impartial body and reported to the board of directors.

Additionally, the corporation may sue or be sued as well as borrow from private finance sources in order to meet the demands of the relocation program established in s. 723.0612 F. S.

Section 723.06115, F.S., sets out the parameters for the Florida Mobile Home Relocation Trust Fund. The FMHRC Trust Fund is established within DBPR. The trust fund is to be used to fund the administration and operations of the FMHRC as well as to carry out the purposes and objectives of the corporation by making payments to mobile home residents under the relocation program. The trust fund is funded from money collected by the corporation from MHP owners under s. 723.06116 F. S., the surcharge collected by the department under s. 723.007(2) F.S., the surcharge collected by the Department of Highway Safety and Motor Vehicles, and from other appropriated funds.

Moreover, s. 723.06116, F.S., details the payments made to the FMHRC. If a MHP owner has decided to change the use of the land upon which the MHP sits, the residents may apply to the trust fund to receive up to $3,750 for moving expenses. A MHP owner is not required to make the above payment nor is the mobile home resident entitled to compensation when:

- The MHP owner moves a mobile home resident to another space in the MHP or to another MHP at the park owner's expense.
- A mobile home resident is vacating the premises and has informed the MHP owner or manager before the change in use notice has been given; or
- A mobile home resident abandons the mobile home.
- A mobile home resident has a pending eviction action for nonpayment of lot rental amount which was filed against him or her prior to the mailing date of the notice of change in use of the MHP.

2. EFFECT OF THE BILL:

Division of Alcoholic Beverages and Tobacco

Section 1

Tax on Cigarettes

Section 210.15, F.S. – Permits

The bill requires all persons or entities licensed or permitted by the division, or those applying for a license or permit to create and maintain an account with the division's online system. An email address must be supplied which will function as the primary means of contact between the division and the licensee, permittee, or applicant. The licensee, permittee, and applicant are responsible for maintaining accurate contact information on file with the division. The bill requires all persons or entities seeking a license or permit from the division to do so through the division's online system. The division may not process an application or a permit unless it is submitted through the online system.

Section 2

Tax on Tobacco Products other than Cigarettes or Cigars

Section 210.32, F.S. – Account; online system

The bill is created to require all persons or entities licensed or permitted by the division, or those applying for a license or permit, to create and maintain an account with the division's online system. An email address must be supplied which will function as the primary means of contact between the division and the licensee, permittee, or applicant. The licensee, permittee, and applicant are responsible for maintaining accurate contact information on file with the division. The bill requires all persons or entities seeking a license or permit from the division to do so through the division's online system. The division may not process an application or a permit unless it is submitted through the online system.

Section 3

Section 210.40, F.S. – License Fees; surety bond; application for each place of business

The bill amends to increase the required initial corporate surety bond from $1,000 to $25,000. The bill requires the division to review the amount of a corporate surety bond on a semiannual basis to ensure that the bond is adequate to protect the state. The bill allows the division to increase the corporate surety bond amount before renewing a

distributor's license or after completing its semiannual review of the bond amount. The bill allows the division to increase the corporate surety bond amount to the sum of the distributor's highest month of final audited tax liabilities, penalties, and accrued interest which are due to the state. A corporate surety bond, with the sum determined by the division in accordance with the paragraph, is required for the renewal of a distributor's license. The division is granted rule-making authority to prescribe bond amount increases. The bill allows the division to decrease a corporate security bond upon a distributor's showing of good cause and then sets conditions and standards of review for decreasing a bond amount. A decrease is authorized when criminal or administrative charges are fully resolved when the corporate entity displays responsible financial behavior and for a showing of good cause. The bill prohibits the decrease of a corporate security bond when the licensee is in default on tax liabilities or is the subject of a criminal or administrative investigation or prosecution. The bill requires the division to notify a distributor in writing of any change in the distributor's corporate surety bond requirements by the date on which the distributor's audited tax assessments become final. The bill states that these provisions governing corporate surety bonds are not subject to section 120.60, F.S. of the Administrative Procedures Act. The bill specifies that the provisions of section 210.40(7), F.S. apply to corporate surety bonds. The bill grants the division rulemaking authority to administer this section.

Division of Professions

Section 4
The bill amends section 310.0015, F.S., to eliminate the requirement that pilot(s) in a port shall establish a competency-based mentor program for minority persons as defined in s. 288.703, F.S., and the department must submit an annual report containing information on the mentor programs.

Section 5

The department amends section 310.081, F.S., to eliminate the requirement that it consider the minority and female status of applications when qualifying deputy pilots.

Sections 7-8
The bill amends sections of Chapter 468, Part XI to eliminate the Board of Employee Leasing Companies and creates the Employee Leasing Companies Licensing Program that is administered by the department.

Section 9
The bill amends section 469.006, F.S., pertaining to asbestos consultants and contractors, by removing the limits of bondability and credit as mandatory criteria for determining financial responsibility.

CPA Division:

Section 10
The bill amends section 473.306(2), F.S. by adding a requirement that applicants to take the CPA exam must create and maintain an online account with the department and provide and maintain a current email address as the primary means of contact.

Section 11
The bill amends section 473.308(3), F.S. by adding a requirement that individuals or firms applying for licensure to practice public accounting must create and maintain an online account with the department and provide and maintain an email address as the primary means of contact by the department.

Division of Real Estate

Section 12

The bill amends s.475.181(2) F.S to remove the provision invalidating required prelicensure education if an applicant fails to pass the required examination within two years of completing it.

Division of Professions-continued

Section 13
The bill amends s. 476.114, F.S., to remove language pertaining to eligibility for licensure by examination to practice barbering that became obsolete as a result of legislative changes in 2020.

Section 14

The bill amends s. 477.019, F.S., to remove language pertaining to eligibility for licensure by examination to practice cosmetology that became obsolete as a result of legislative changes in 2020.

Section 15
The bill amends s. 489.131, F.S. to allow local jurisdiction enforcement bodies to include restitution as a recommended penalty for action by the Construction Industry Licensing Board against a contractor's registration. The recommended penalty must specify violations of Chapter 489, F.S., upon which the recommendation is based.

Section 16
The bill amends s. 489.143, F.S. to specify that beginning January 1, 2025, for Division I and Division Ii contracts entered into on or after July 1, 2024, payment from the Recovery Fund is subject to the following maximum payments and aggregate caps:

- Division I Claims
  - $100,000 per claim
  - $2,000,000 aggregate cap for each Division I licensee
- Division II Claims
  - $30,000 per claim
  - $600,000 aggregate cap for each Division I licensee

Division of Drugs, Devices and Cosmetics

Section 17

The bill amends s. 499.012 (15), F.S., related to the requirements to be a certified designated representative. The amendment establishes additional work experience that qualifies an individual to obtain the designation.

Division of Alcoholic Beverages and Tobacco- continued

Section 18

The bill amends s. 561.17(5), F.S. requiring all persons or entities licensed or permitted by the division, or those applying for a license or permit to create and maintain an account with the division's online system. An email address must be supplied which will function as the primary means of contact between the division and the licensee, permittee, or applicant. The licensee, permittee, and applicant are responsible for maintaining accurate contact information on file with the division. The bill requires any persons or entities seeking a license or permit from the division to apply using forms prepared by the division and submitted through the division's online system before engaging in any business for which a license or permit is required. The division may not process an application or a permit unless it is submitted through the online system.

561.19(f), F.S. License issuance upon approval of the division.

The bill amends requiring all persons or entities seeking inclusion in the drawing to apply using forms furnished by the division, which are filed through the division's online system. The division may not process an application for inclusion in the drawing under this part unless the application is submitted through the division's online system. A person or an entity seeking inclusion in the drawing must create and maintain an account with the division's online system and provide an e-mail address to the division to function as the primary means of contact for communication by the division to the applicant. An applicant is responsible for maintaining accurate contact information on file with the division.

Section 19

The bill creates 569.00256, F.S., Account; online system; Tobacco products - requiring all persons or entities licensed or permitted by the division, or those applying for a license or permit to create and maintain an account with the division's online system. An email address must be supplied which will function as the primary means of contact between the division and the licensee, permittee, or applicant. The licensee, permittee, and applicant are responsible for maintaining accurate contact information on file with the division. The bill requires any persons or entities seeking a license or permit from the division to apply using forms prepared by the division and submitted through the division's online system before engaging in any business for which a license or permit is required. The division may not process any applications to deal in tobacco products at retail unless submitted through the online system.

Section 20

The bill creates 569.3156, F.S., Account; online system; Nicotine products - requiring all persons or entities licensed or permitted by the division, or those applying for a license or permit to create and maintain an account with the division's online system. An email address must be supplied which will function as the primary means of contact between the division and the licensee, permittee, or applicant. The licensee, permittee and applicant are responsible

for maintaining accurate contact information on file with the division. The bill requires any persons or entities seeking a license or permit from the division must apply using forms prepared by the division and submitted through the division's online system before engaging in any business for which a license or permit is required. The division may not process any applications to deal at retail, in nicotine products unless submitted through the online system.

Sections 26, 31-42, and 44

The bill makes conforming changes to s. 20.165, ch. 468, Part XI, and s. 627.192, F.S., pertaining to employee leasing companies.

Section 43 (Barbers)

The bill makes conforming changes to s. 476.144, F.S. pertaining to barbers.

Division of Real Estate

Section 12

The bill removes the provision invalidating prelicensure education courses if an applicant fails to pass the required examination within two years of completing required prelicensure education courses.

Division of Hotels and Restaurants

Section 6

The bill creates s. 399.18, F.S. requiring any certified elevator inspector, certified elevator technician, or registered elevator company; a person or entity seeking to become certified or registered as such; a person who has been issued an elevator certificate of competency; a person who is seeking such certificate; a person or entity who has been issued an elevator certificate of operation; and a person or entity who is seeking such a certificate to: create and maintain an online account; provide an e-mail address to function as the primary means of contact for all communication from the division. The bill further requires that each person or entity maintain accurate contact information on file with the division and provides rulemaking authority to implement the section.

Division of CTMH

The bill deletes s. 723.0611, F.S., in its entirety and amends ss. 723.06115, 723.06116, 723.0612, F.S., to indicate that the FMHRC's statutory duties and functions will be absorbed by the division. Since the division does not currently maintain this function or capacity, it will require additional staff to carry out the day-to-day functions and overall mission of the FMHRC.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y☒ N☐

If yes, explain:	**Division of Professions -** Application forms and corresponding rules will need to be amended for employee leasing companies (to remove references to the board) and to remove the limits of bondability and credit requirement for asbestos applicants. **Division of Hotels and Restaurants:** Section 6 of the bill allows the division to adopt rules as necessary to implement the section.
Is the change consistent with the agency's core mission?	Y☒ N☐
Rule(s) impacted (provide references to F.A.C., etc.):	**Division of Professions:** Rule 61E1-4.001, F.A.C. (Asbestos) Chapter 61G7, F.A.C. (Employee Leasing) **Division of Hotels and Restaurants:** Rule 61C-5.006 and 5.007, F.A.C.

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y☐ N☒

If yes, provide a description:	Click or tap here to enter text.
Date Due:	Click or tap here to enter text.
Bill Section Number(s):	Click or tap here to enter text.

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y☒ N☐

Board:	Professions – The bill removes/repeals all statutory provisions pertaining to the Board of Employee Leasing Companies to create a department program.
Board Purpose:	This bill regulates the profession of employee leasing, including licensure and discipline, and adopts rules to implement the provisions of Chapter 468, Part XI, F.S.
Who Appoints:	Governor
Changes:	Professions – The bill removes/repeals all statutory provisions pertaining to the Board of Employee Leasing Companies to create a department program.
Bill Section Number(s):	Sections 7, 8, 26, 31-42, and 44

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y☐ N☒

Revenues:	
Expenditures:	

Does the legislation increase local taxes or fees? If yes, explain.	Click or tap here to enter text.
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	Click or tap here to enter text.

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y☒ N☐

Revenues:	
Expenditures:	**Professions** Employee Leasing: Eliminating the Board of Employee Leasing Companies will result in a reduction of expenditures pertaining to board travel, costs, etc. However, the reduction in expenditures will be offset by the need for a consultant to review employee leasing licensure applications. Recovery Fund By increasing the aggregate cap per licensee and the per-claim cap for each contract, and the number and amounts of Recovery Fund claims awarded will increase. However, the impact is indeterminate. **Division of Florida Condominiums, Timeshares and Mobile Homes:** Additional resources will be needed in the Florida Condominiums, Timeshares, and Mobile Homes Trust Fund for the Division to administer the Florida Mobile Home Relocation Program - 4 FTE positions, $175,000 salary rate, and $315,992 of budget authority ($296,122 recurring and $19,750 nonrecurring).
Does the legislation contain a State Government appropriation?	Click or tap here to enter text.
If yes, was this appropriated last year?	Click or tap here to enter text.

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y☒ N☐

Revenues:	**Professions** Recovery Fund: By increasing the aggregate cap per licensee and the per-claim cap for each contract, the number of claimants who receive compensation from the Recovery Fund and the amount of compensation will increase. However, the impact is indeterminate.
Expenditures:	**Professions** Asbestos Removal of Bond/Credit Requirement: The removal of the bond/credit requirement will reduce the cost to applicants for complying with this requirement (estimated to be $100 per applicant).

Other:	Click or tap here to enter text.

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y☒ N☐

If yes, explain impact.	**Professions** Licensees must repay the fund for any amount of recovery paid to a consumer or have their license suspended until the payment is made.
Bill Section Number:	Click or tap here to enter text.

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y☒ N☐

If yes, describe the anticipated impact to the agency including any fiscal impact.	This bill requires applicants and licensees to create and maintain an online account with the department. It also makes changes to requirements for licensure for certain professions. Modifications will need to be made to the department's licensing system Versa: Regulation (VR) and online portal Versa: Online (VO) to meet the requirements of this bill. The following modifications are required: 1) Changes to increase corporate surety bonds – VR - 24 hours and VO – 24 hours 2) Create letters in VR – 24 hours 3) Deputy Pilot – make slight changes in VR (8 hours) and VO (8 hours) 4) Elevators – no changes 5) Employee Leasing – VR – 12 hours, VO – 12 hours 6) CPA – 0 hours 7) Barbers Exam – VR – 12 hours, VO – 12 hours 8) Cosmetology Exam – VR – 12 hours, VO – 12 hours 9) DDC Designated Representative Prescription Drug Wholesale Distributor – VR – 12 hours, VO – 24 hours These changes can be made using existing resources.

FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y☐ N☒

If yes, describe the anticipated impact including any fiscal impact.	Click or tap here to enter text.

ADDITIONAL COMMENTS

Professions:

Florida Homeowner's Construction Recovery Fund. Since recovery fund claims are required to be based on contracts for eligible work, and must be based on either a final order, judgment, or decree, any fiscal impact from the increase in the caps will likely not occur until at least a year until July 2025 at the earliest.

CPA Division: In an effort to increase compliance with the CPE requirements, beginning in 2024, the Florida Board of Accountancy requires CPAs to report their CPE and upload proof of completion prior to renewal of their license. The process requires a licensee to maintain a DBPR online account for reporting. After the rule change, the Division identified a small number of licensees who did not have online accounts. This statute revision requires a licensee to maintain an online account. Additionally, the CPA Division anticipates the creation and implementation of additional forms/services provided via online services that will reduce the need for licensee contact with the DBPR call center.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	Click or tap here to enter text.

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL:	SB 426
INTRODUCER:	Senators Garcia and Jones
SUBJECT:	Community Associations
DATE:	January 2 , 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Pre-meeting**
2.			AEG	
3.			FP	

I. Summary:

SB 426 establishes a Condominium Fraud Investigation Pilot Program (pilot program) within the Department of Legal Affairs, Office of the Attorney General, for the purpose of investigating condominium-related fraud and corruption in Florida.

The bill authorizes the Department of Legal Affairs to contract with a private entity that employs retired law enforcement officers who have subject matter expertise in financial fraud or, alternatively, to hire a suitable number of financial investigators, investigators with previous law enforcement experience, and clerical employees to staff the pilot program.

The bill provides that a person may submit a complaint to the Office of the Condominium Ombudsman within the Department of Business and Professional Regulation, who must review all submitted complaints and determine which complaints to forward to the Department of Legal Affairs, which may issue subpoenas and conduct audits for investigations, and may administer oaths, subpoena witnesses, and compel the production of books, papers, or other records relevant to such investigations. If the Department of Legal Affairs finds sufficient evidence for criminal prosecution, it must refer the case to the appropriate state attorney for prosecution.

The bill provides that the Department of Legal Affairs must fund the pilot program from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund as specifically appropriated annually in the General Appropriations Act. The authority for the pilot program is repealed October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also:

- Exempts the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund, from the eight percent service charge required by s. 215.20(1), F.S.

- Requires the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) to monitor associations' compliance with the requirement in this paragraph that associations must maintain insurance or fidelity bonding of all persons who control or disburse funds of the association, and to issue fines and establish penalties for failure to maintain the required insurance policy or fidelity bond.
- Requires the division to establish, by July 1, 2026, a searchable cloud-based database that contains specified information and documentation regarding each condominium association operating within Florida, which must allow a user to search the name by which a condominium property is identified to find the association that governs such property.
- Requires the division to forward complaints that allege fraud or corruption to the Office of the Condominium Ombudsman (condominium ombudsman) for review pursuant to pilot program requirements in the bill.
- Expands the duties and powers of the condominium ombudsman by authorizing the condominium ombudsman to void an election if he or she determines violations have occurred, to appoint petition the court to appoint a receiver if the appointment of a receiver is in the best interests of the association or owners, and to issue subpoenas and conduct audits for investigations for the purposes of the pilot program.

The bill also establishes the Office of the Homeowners' Association Ombudsman (HOA ombudsman) within the Department of Business and Professional Regulation. The office of the HOA ombudsman must be funded by the General Appropriations Act. The HOA ombudsman must be appointed by the Governor, be an attorney admitted to practice before the Florida Supreme Court, and serve at the pleasure of the Governor.

The bill sets forth the powers of the HOA ombudsman, including acting as a liaison between the DBPR, parcel owners, boards of directors, board members, community association managers, and other affected parties, making recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by parcel owners, associations, or managers, and appointing an election monitor under certain conditions.

The bill takes effect July 1, 2024.

II. Present Situation:

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR) administers the provisions of chs. 718, F.S., for condominium associations.

Section 718.501, F.S., provides the investigative and enforcement authority of the division. The division may enforce and ensure compliance with ch. 718, F.S., and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units and complaints related to the procedural completion of milestone inspections under s. 553.899, F.S. The division may investigate complaints and enforce compliance with ch. 718, F.S., for associations that are still under developer control, including investigating complaints against developers involving improper turnover or failure to transfer control to the

association.[1] After control of the condominium is transferred from the developer to the unit owners, the division only has jurisdiction to investigate complaints related to financial issues, elections, and maintenance of and unit owner access to association records.[2]

Fees and Trust Fund

The Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund (trust fund) is used for administration and operation of ch. 718, F.S., relating to condominium associations, ch. 719, F.S., relating to cooperative associations, s. 721, F.S., relating to vacation and timeshare plans, and ch. 723, F.S., relating to mobile homes, by the division. All moneys collected by the division from fees, fines, penalties, or from costs awarded to the division by a court or administrative final order must be deposited in the trust fund.[3]

The operation of the trust fund is subject to s. 215.20, F.S., which provides an eight percent service charge from all income of a revenue nature deposited in all trust funds except those which are exempted in s. 215.22, F.S.

Each condominium association which operates more than two units is required to pay to the division an annual fee in the amount of $4 for each residential unit in condominiums operated by the association. If the fee is not paid by March 1, the association is assessed a penalty of 10 percent of the amount due, and the association will not have standing to maintain or defend any action in the courts of this state until the amount due, plus any penalty, is paid. These fees must be deposited in the trust fund.

Condominiums

A condominium is a "form of ownership of real property created under ch. 718, F.S,"[4] the "Condominium Act." Condominium unit owners are in a unique legal position because they are exclusive owners of property within a community, joint owners of community common elements, and members of the condominium association.[5] For unit owners, membership in the association is an unalienable right and required condition of unit ownership.[6] Condominiums are created by recording a declaration in the public records of the county where the land is located, executed and acknowledged with the requirements for a deed.[7]

The term "condominium" is defined in the Condominium Act to mean:[8]

> …that form of ownership of real property created pursuant to this chapter, which is comprised entirely of units that may be owned by one or more

[1] *Id.*
[2] Section 718.501(1), F.S.
[3] Section 718.509, F.S.
[4] Section 718.103(11), F.S.
[5] *See* s. 718.103, F.S., for the terms used in the Condominium Act.
[6] *Id.*
[7] Section 718.104(2), F.S.
[8] Section 718.103(12), F.S.

> persons, and in which there is, appurtenant to each unit, an undivided share in common elements.

Condominium Ombudsman

The Office of the Ombudsman (condominium ombudsman) within the division is an attorney appointed by the Governor to be a neutral resource for unit owners and condominium associations. The ombudsman is authorized to prepare and issue reports and recommendations to the Governor, the division, and the Legislature on any matter or subject within the jurisdiction of the division. In addition, the condominium ombudsman may make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints.[9]

The condominium ombudsman also acts as a liaison among the division, unit owners, and condominium associations and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.[10]

Homeowners' Associations

Chapter 720, F.S., provides statutory recognition to corporations that operate residential communities in Florida as well as procedures for operating homeowners' associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.[11]

A "homeowners' association" is defined as a:[12]

> Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which 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.

Unless specifically stated to the contrary in the articles of incorporation, homeowners' associations are also governed by ch. 607, F.S., relating to for-profit corporations, or by ch. 617, F.S., relating to not-for-profit corporations.[13]

Homeowners' associations are administered by a board of directors that is elected by the members of the association.[14] The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include a recorded declaration of covenants, bylaws, articles of incorporation, and duly-

[9] Sections 718.5011 and 718.5012, F.S.
[10] *Id.*
[11] *See* s. 720.302(1), F.S.
[12] Section 720.301(9), F.S.
[13] Section 720.302(5), F.S.
[14] *See* ss. 720.303 and 720.307, F.S.

adopted amendments to these documents.[15] The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.[16]

Unlike condominium associations, homeowners' associations are not regulated by a state agency. Section 720.302(2), F.S., expresses the legislative intent regarding the regulation of homeowners' associations:

> The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with s. 720.311, [F.S.,] the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.407[, F.S.], are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

The division has limited regulatory authority over homeowners' associations. The division's authority is limited to the arbitration of recall election disputes.[17]

Department of Legal Affairs

The Department of Legal Affairs (DLA) within the Office of the Attorney General provides a wide variety of legal services. The DLA defends the state in civil litigation cases, represents the people of Florida in criminal appeals in state and federal courts, operates consumer protection programs and victim service programs, prosecutes some criminal offenses, and investigates Medicaid fraud.[18]

III. Effect of Proposed Changes:

Condominium Fraud Investigation Pilot Program

Section 1 of the bill creates s. 16.0151, F.S., to establish the Condominium Fraud Investigation Pilot Program (pilot program) within the DLA.

[15] *See* ss. 720.301 and 720.303, F.S.
[16] Section 720.303(1), F.S.
[17] Section 720.306(9)(c), F.S.
[18] Office of Program Policy Analysis and Government Accountability, *Office of the Attorney General (Department of Legal Affairs)*, at: https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=1026 (last visited January 31, 2024).

Section 16.0151(2), F.S., provides that the purpose of the pilot program is to investigate condominium-related fraud and corruption in Florida.

The bill authorizes the DLA to contract with a private entity that employs retired law enforcement officers who have subject matter expertise in financial fraud. If the DLA does not contract with a private entity, the DLA must hire a suitable number of financial investigators, investigators with previous law enforcement experience, and clerical employees to staff the pilot program.

Section 16.0151(2), F.S., provides that a person may submit a complaint to the condominium ombudsman, who must review all submitted complaints and determine which complaints to forward to the DLA for additional analysis and investigation under the pilot program. If a complaint submitted to the condominium ombudsman does not contain allegations of fraud or corruption, the condominium ombudsman must forward the complaint to the division, which must investigate claims made pursuant to its duties and powers set forth in s. 718.501, F.S.

Section 16.0151(3), F.S., provides that the DLA has the power to issue subpoenas and conduct audits for investigations, and may administer oaths, subpoena witnesses, and compel the production of books, papers, or other records relevant to such investigations. If, after reviewing a complaint filed under the pilot program, the DLA finds sufficient evidence for criminal prosecution, it must refer the case to the appropriate state attorney for prosecution.

Section 16.0151(4), F.S., provides the DLA shall fund the pilot program from the trust fund as specifically appropriated annually in the General Appropriations Act.

Section 16.0151(5), F.S., provides that this section is repealed October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Trust Funds

Section 2 of the bill revises s. 215.22, F.S., to exempt the trust fund, from the appropriation required by s. 215.20(1), F.S., which provides an eight percent service charge from all income of a revenue nature deposited in all trust funds except those which are exempted in s. 215.22, F.S.

Insurance of Fidelity Bonds

Section 3 of the bill revises s. 718.111(11)(h), F.S., to require the division to monitor associations' compliance with the requirement in this paragraph that associations must maintain insurance or fidelity bonding of all persons who control or disburse funds of the association. The bill authorizes the division to issue fines and establish penalties for failure to maintain the required insurance policy or fidelity bond.

Database for Condominium Association Information

Section 4 of the bill creates s. 718.13, F.S., to require the division to establish, by July 1, 2026, a searchable cloud-based database that contains information regarding each condominium

association operating within Florida. The database must allow a user to search the name by which a condominium property is identified to find the association that governs such property.

Section 718.13(1), F.S., requires that the database include all of the following information for each association:

- The names, e-mail addresses, and other contact information of officers and directors of the association.
- An indication that the association is self-managed, or, if not self-managed, the contact information for any person licensed under part VIII of ch. 468, F.S., relating to the regulation of community association mangers and management firms, and responsible for management of the association.
- A copy of the association's governing documents, including, but not limited to, declarations, bylaws, and rules and any amendments thereto.
- A copy of the association's adopted annual budget, in a file format that is compatible with the database, which includes the amount and purpose of any monthly assessments and current or pending special assessments levied by the association.
- A copy of any studies regarding funds in reserve accounts held by the association or any reports regarding the physical inspection of properties maintained by the association, including any structural integrity reserve studies conducted under s. 718.112(2)(g), F.S., of such properties.

Section 718.13(2), F.S., requires associations to notify the division of any changes to the information related to the association which is included in the database within 30 days after such changes occur.

Section 718.13(3), F.S., provides that the expenses associated with the creation and administration of the database must be funded in part by proceeds from the annual fee paid by associations pursuant to s. 718.501(2)(a), F.S.

The bill does not require condominium associations to submit or report any of the listed information to the division.

Condominium Ombudsman – Powers and Duties

Section 5 of the bill revises s. 718.501, F.S., to require the division to forward complaints that allege fraud or corruption to the condominium ombudsman pursuant to s. 16.0151, F.S.

Section 6 of the bill revises s. 718.5012, F.S., to expand the duties and powers of the condominium ombudsman by authorizing the condominium ombudsman to:

- Void an election if the condominium ombudsman determines that a violation of this chapter has occurred relating to condominium elections.
- Petition the court to appoint a receiver if the appointment of a receiver is in the best interests of the association or owners.
- Issue subpoenas and conduct audits for investigations for the purposes of the Condominium Fraud Investigation Pilot Program established under s. 16.0151, F.S.

Trust Fund

Section 7 of the bill revises s. 718.509, F.S., relating to the trust fund to delete the provision that subjects the operation of the trust fund to the eight percent service charge in s. 215.20, F.S.

Homeowners' Association Condominium

Section 8 of the bill creates s. 720.319, F.S., to establish the Office of the Homeowners' Association Ombudsman (HOA ombudsman) within the DBPR.

Section 720.319(1), F.S., provides that:

- The functions of the office of the HOA ombudsman shall be funded by the General Appropriations Act.
- The HOA ombudsman must be appointed by the Governor, be an attorney admitted to practice before the Florida Supreme Court, and serve at the pleasure of the Governor.
- The HOA ombudsman and an officer, or a full-time employee of the HOA ombudsman's office, are prohibited from activities or any other business or profession that directly or indirectly relates to or conflicts with his or her work in the HOA ombudsman's office.
- The HOA ombudsman must maintain his or her principal office at a location convenient to the DBPR, which will enable the ombudsman to expeditiously carry out the duties and functions of his or her office, including branch offices upon the concurrence of the Governor.

Section 720.319(2), F.S., sets forth the powers and duties of the HOA ombudsman, to include, but not be limited to:

- Having access to and use of all files and records of the division.
- Employing professional and clerical staff as necessary for the efficient operation of the office.
- Preparing and issuing reports and recommendations to the Governor, the DBPR, the President of the Senate, and the Speaker of the House of Representatives on any matter or subject within the jurisdiction of ch. 720, F.S.
- Acting as a liaison between the DBPR, parcel owners, boards of directors, board members, community association managers, and other affected parties.
- Developing policies and procedures to assist parcel owners, boards of directors, board members, community association managers, and other affected parties in understanding their rights and responsibilities as set forth in this chapter and in the governing documents of their respective associations.
- Coordinating and assisting in the preparation and adoption of educational and reference materials and shall endeavor to coordinate with private or volunteer providers of such services so that the availability of such resources is made known to the largest possible audience.
- Monitoring and reviewing procedures and disputes concerning association elections or meetings, including, but not limited to, recommending that the division pursue enforcement action in any manner if there is reasonable cause to believe that election misconduct has occurred, as well as reviewing secret ballots cast at a vote of the association.
- Making recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by parcel owners, associations, or managers.

- Providing resources to assist members of boards of directors and officers of associations to carry out their powers and duties consistent with this chapter and the governing documents of their respective associations.
- Encouraging and facilitating voluntary meetings between parcel owners, boards of directors, board members, community association managers, and other affected parties when the meetings may assist in resolving a dispute within a homeowners' association before a person submits a dispute for a formal or administrative remedy.
- Acting as a neutral resource for the rights and responsibilities of parcel owners, associations, and board members.
- Assisting with the resolution of disputes between parcel owners and the association, or between parcel owners, if applicable.
- Appointing an election monitor.

Section 720.319(3), F.S., authorizes and provides conditions for the HOA ombudsman to monitor elections in homeowners' associations. Under the bill, 15 percent of the total voting interests in a homeowners' association, or six parcel owners, whichever is greater, of a homeowners' association may petition the HOA ombudsman to appoint an election monitor to attend the annual meeting of the parcel owners and conduct the election of directors.

The HOA ombudsman must appoint a division employee, a person who specializes in homeowners' association election monitoring, or a Florida-licensed attorney as the election monitor. Under the bill, the association must pay all costs associated with the election monitoring process.

The bill authorizes the division to adopt rules establishing procedures for the appointment of election monitors and the scope and extent of the monitor's role in the election process.

Effective Date

The bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill revises s. 718.501(1), F.S., but does not include paragraphs (a) through (s) of that subsection. Section 6, Article III of the State Constitution requires laws to be revised or amended by setting out in full the revised or amended act, section, subsection or paragraph of a subsection.

VII. Related Issues:

The bill creates s. 718.13, F.S., to require the division to establish a cloud-based, searchable database that contains specified information and documentation. However, it is not clear how the division is to acquire the information and documentation because the bill does not require condominium associations to submit or report any of the listed information or documentation to the division.

The bill creates s. 16.0151, F.S., to provide for the investigation by the condominium ombudsman of complaints alleging fraud or corruption. The bill also revises s. 718.501, F.S., to require the division to forward complaints that allege fraud or corruption to the condominium ombudsman pursuant to s. 16.0151, F.S. The term "corruption" is not defined in the bill or the Florida Statutes. It is not clear, under the bill, if the types of "corruption" that trigger a referral to the condominium ombudsman and an investigation, are limited to violations that are criminal in nature or if the term "corruption" also encompasses non-criminal violations under ch. 718, F.S., and violations that are contractual in nature, such as violations of the association's governing documents. The bill introducer may wish to consider amending the bill to clarify the types of conduct that may constitute "corruption."

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 215.22, 718.111, 718.501, 718.5012, and 718.509.

This bill creates the following sections of the Florida Statutes: 6.0151, 718.13, and 720.319.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Regulated Industries (Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete lines 72 - 335

and insert:

16.0151 Condominium and Homeowners' Association Economic Crime, Fraud, and Corruption Investigation Pilot Program.—

(1) The Condominium and Homeowners' Association Economic Crime, Fraud, and Corruption Investigation Pilot Program is created within the Department of Legal Affairs, Office of the Attorney General. The purpose of the pilot program is to

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investigate condominium and homeowners' association-related economic crime, fraud, and corruption in this state. The department may contract with a private entity that employs retired law enforcement officers who have subject matter expertise in financial fraud to achieve the purpose of the pilot program. If the department does not contract with a private entity, the department must hire a suitable number of financial investigators, investigators with previous law enforcement experience, and clerical employees to staff the pilot program.

(2) A person may submit a condominium or homeowners' association-related complaint to the Office of the Condominium Ombudsman or the Office of the Homeowners' Association Ombudsman, respectively. The ombudsman shall review all complaints submitted to the office and determine which complaints to forward to the department for additional analysis and investigation under the pilot program. If a complaint submitted to the pilot program does not contain allegations of economic crimes, fraud, or corruption, the task force must forward the complaint to the Division of Florida Condominiums, Timeshares, and Mobile Homes and the Office of the Homeowners' Association Ombudsman, which shall investigate claims made pursuant to ss. 718.501 and 720.319, respectively.

(3) The department has the power to issue subpoenas and conduct audits for investigations in furtherance of the pilot program, and may administer oaths, subpoena witnesses, and compel production of books, papers, or other records relevant to such investigations. If, after reviewing a complaint filed under the pilot program, the department finds sufficient evidence for criminal prosecution, it must refer the case to the appropriate

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state attorney for prosecution.

(4) The department shall fund the pilot program from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund as specifically appropriated annually in the General Appropriations Act.

(5) The pilot program's primary office shall be located in Miami-Dade County.

(6) This section is repealed October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Paragraph (w) is added to subsection (1) of section 215.22, Florida Statutes, to read:

215.22 Certain income and certain trust funds exempt.—

(1) The following income of a revenue nature or the following trust funds shall be exempt from the appropriation required by s. 215.20(1):

(w) The Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.

Section 3. Paragraph (h) of subsection (11) of section 718.111, Florida Statutes, is amended to read:

718.111 The association.—

(11) INSURANCE.—In order to protect the safety, health, and welfare of the people of the State of Florida and to ensure consistency in the provision of insurance coverage to condominiums and their unit owners, this subsection applies to every residential condominium in the state, regardless of the date of its declaration of condominium. It is the intent of the Legislature to encourage lower or stable insurance premiums for associations described in this subsection.

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(h) The association shall maintain insurance or fidelity bonding of all persons who control or disburse funds of the association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the association or its management agent at any one time. The division shall monitor compliance with this paragraph and may issue fines and penalties established by the division for failure of an association to maintain the required insurance policy or fidelity bond. As used in this paragraph, the term "persons who control or disburse funds of the association" includes, but is not limited to, those individuals authorized to sign checks on behalf of the association, and the president, secretary, and treasurer of the association. The association shall bear the cost of any such bonding.

Section 4. Section 718.13, Florida Statutes, is created to read:

718.13 Database for condominium association information.—

(1) By July 1, 2026, the division shall establish a searchable cloud-based database that contains information regarding each condominium association operating within this state. The database must allow a user to search the name by which a condominium property is identified to find the association that governs such property. At a minimum, the database must include all of the following information for each association:

(a) The names, e-mail addresses, and other contact information of officers and directors of the association.

(b) An indication that the association is self-managed, or, if not self-managed, the contact information for any person

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licensed under part VIII of chapter 468 and responsible for management of the association.

(c) A copy of the association's governing documents, including, but not limited to, declarations, bylaws, and rules and any amendments thereto.

(d) A copy of the association's adopted annual budget, in a file format that is compatible with the database, which includes the amount and purpose of any monthly assessments and current or pending special assessments levied by the association.

(e) A copy of any studies regarding funds in reserve accounts held by the association or any reports regarding the physical inspection of properties maintained by the association, including any structural integrity reserve studies conducted under s. 718.112(2)(g) of such properties.

(2) An association must notify the division of any changes to the information related to the association which is included in the database within 30 days after such changes occur.

(3) Expenses associated with the creation and administration of the database must be funded in part by proceeds from the annual fee paid by associations pursuant to s. 718.501(2)(a).

Section 5. 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 this chapter and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units and complaints related to the

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procedural completion of milestone inspections under s. 553.899. 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 s. 718.111(12), and the procedural completion of structural integrity reserve studies under s. 718.112(2)(g). If the division receives a complaint about an association which alleges economic crimes, fraud, or corruption, the division must forward the complaint to the Office of the Condominium Ombudsman or the Office of the Homeowners' Association Ombudsman pursuant to s. 16.0151.

(a)1. The division may make necessary public or private investigations within or outside this state to determine whether any person has violated this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms.

2. The division may submit any official written report, worksheet, or other related paper, or a duly certified copy thereof, compiled, prepared, drafted, or otherwise made by and duly authenticated by a financial examiner or analyst to be admitted as competent evidence in any hearing in which the financial examiner or analyst is available for cross-examination

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and attests under oath that such documents were prepared as a result of an examination or inspection conducted pursuant to this chapter.

(b) The division may require or permit any person to file a statement in writing, under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter to be investigated.

(c) For the purpose of any investigation under this chapter, the division director or any officer or employee designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon the failure by a person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all affected persons, the division may apply to the circuit court for an order compelling compliance.

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, as

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follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the developer, bulk assignee, bulk buyer, association, developer-designated officer, or developer-designated member of the board of administration, developer-designated assignees or agents, bulk assignee-designated assignees or agents, bulk buyer-designated assignees or agents, community association manager, or community association management firm to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division carry out the purposes of this chapter. If the division finds that a developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, is violating or is about to violate any provision of this chapter, any rule adopted or order issued by the division, or any written agreement entered into with the division, and presents an immediate danger to the public requiring an immediate final order, it may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective for 90 days. If the division begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57.

3. If a developer, bulk assignee, or bulk buyer fails to

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pay any restitution determined by the division to be owed, plus any accrued interest at the highest rate permitted by law, within 30 days after expiration of any appellate time period of a final order requiring payment of restitution or the conclusion of any appeal thereof, whichever is later, the division must bring an action in circuit or county court on behalf of any association, class of unit owners, lessees, or purchasers for restitution, declaratory relief, injunctive relief, or any other available remedy. The division may also temporarily revoke its acceptance of the filing for the developer to which the restitution relates until payment of restitution is made.

4. The division may petition the court for appointment of a receiver or conservator. If appointed, the receiver or conservator may take action to implement the court order to ensure the performance of the order and to remedy any breach thereof. In addition to all other means provided by law for the enforcement of an injunction or temporary restraining order, the circuit court may impound or sequester the property of a party defendant, including books, papers, documents, and related records, and allow the examination and use of the property by the division and a court-appointed receiver or conservator.

5. The division may apply to the circuit court for an order of restitution whereby the defendant in an action brought under subparagraph 4. is ordered to make restitution of those sums shown by the division to have been obtained by the defendant in violation of this chapter. At the option of the court, such restitution is payable to the conservator or receiver appointed under subparagraph 4. or directly to the persons whose funds or assets were obtained in violation of this chapter.

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6. The division may impose a civil penalty against a developer, bulk assignee, or bulk buyer, or association, or its assignee or agent, for any violation of this chapter or related rule. The division may impose a civil penalty individually against an officer or board member who willfully and knowingly violates this chapter, an adopted rule, or a final order of the division; may order the removal of such individual as an officer or from the board of administration or as an officer of the association; and may prohibit such individual from serving as an officer or on the board of a community association for a period of time. The term "willfully and knowingly" means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The division, before initiating formal agency action under chapter 120, must afford the officer or board member an opportunity to voluntarily comply, and an officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but the penalty for any offense may not exceed $5,000. The division shall adopt, by rule, penalty guidelines applicable to possible violations or to categories of violations of this chapter or rules adopted by the division. The guidelines must specify a meaningful range of civil penalties for each such violation of the statute and rules and must be based upon the harm caused by the violation, upon the repetition of the violation, and upon

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such other factors deemed relevant by the division. For example, the division may consider whether the violations were committed by a developer, bulk assignee, or bulk buyer, or owner-controlled association, the size of the association, and other factors. The guidelines must designate the possible mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules. It is the legislative intent that minor violations be distinguished from those which endanger the health, safety, or welfare of the condominium residents or other persons and that such guidelines provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct. This subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. If a developer, bulk assignee, or bulk buyer fails to pay the civil penalty and the amount deemed to be owed to the association, the division shall issue an order directing that such developer, bulk assignee, or bulk buyer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order is not effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the

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division has its executive offices or in the county where the violation occurred.

7. If a unit owner presents the division with proof that the unit owner has requested access to official records in writing by certified mail, and that after 10 days the unit owner again made the same request for access to official records in writing by certified mail, and that more than 10 days has elapsed since the second request and the association has still failed or refused to provide access to official records as required by this chapter, the division shall issue a subpoena requiring production of the requested records where the records are kept pursuant to s. 718.112.

8. In addition to subparagraph 6., the division may seek the imposition of a civil penalty through the circuit court for any violation for which the division may issue a notice to show cause under paragraph (r). The civil penalty shall be at least $500 but no more than $5,000 for each violation. The court may also award to the prevailing party court costs and reasonable attorney fees and, if the division prevails, may also award reasonable costs of investigation.

(e) The division may prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of residential condominiums in assessing the rights, privileges, and duties pertaining thereto.

(f) The division may adopt rules to administer and enforce this chapter.

(g) The division shall establish procedures for providing notice to an association and the developer, bulk assignee, or bulk buyer during the period in which the developer, bulk

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assignee, or bulk buyer controls the association if the division is considering the issuance of a declaratory statement with respect to the declaration of condominium or any related document governing such condominium community.

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

(i) The division shall annually provide each association with a summary of declaratory statements and formal legal opinions relating to the operations of condominiums which were rendered by the division during the previous year.

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

(k) The division shall maintain a toll-free telephone number accessible to condominium unit owners.

(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 proceedings under s. 718.1255 requesting a copy of the list. The division shall

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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.

(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

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of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing under ss. 120.569 and 120.57. The division may adopt rules regarding the submission of a complaint against an association.

(n) Condominium association directors, officers, and employees; condominium developers; bulk assignees, bulk buyers, and community association managers; and community association management firms have an ongoing duty to reasonably cooperate with the division in any investigation under this section. The division shall refer to local law enforcement authorities any person whom the division believes has altered, destroyed, concealed, or removed any record, document, or thing required to be kept or maintained by this chapter with the purpose to impair its verity or availability in the department’s investigation.

(o) The division may:

1. Contract with agencies in this state or other jurisdictions to perform investigative functions; or

2. Accept grants-in-aid from any source.

(p) The division shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, public offering statements, advertising standards, and rules and common administrative practices.

(q) The division shall consider notice to a developer, bulk assignee, or bulk buyer to be complete when it is delivered to the address of the developer, bulk assignee, or bulk buyer currently on file with the division.

(r) In addition to its enforcement authority, the division may issue a notice to show cause, which must provide for a

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hearing, upon written request, in accordance with chapter 120.

(s) The division shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees an annual report that includes, but need not be limited to, the number of training programs provided for condominium association board members and unit owners, the number of complaints received by type, the number and percent of complaints acknowledged in writing within 30 days and the number and percent of investigations acted upon within 90 days in accordance with paragraph (m), and the number of investigations exceeding the 90-day requirement. The annual report must also include an evaluation of the division's core business processes and make recommendations for improvements, including statutory changes. The report shall be submitted by September 30 following the end of the fiscal year.

Section 6. Subsection (10) of section 718.5012, Florida Statutes, is amended, and subsections (11), (12), and (13) are added to that section, to read:

718.5012 Ombudsman; powers and duties.—The ombudsman shall have the powers that are necessary to carry out the duties of his or her office, including the following specific powers:

(10) To appoint an election monitor to attend the annual meeting of the unit owners and conduct the election of directors if 15 percent of the total voting interests in a condominium association, or six owners, whichever is greater, make such a petition to the ombudsman ~~Fifteen percent of the total voting interests in a condominium association, or six unit owners, whichever is greater, may petition the ombudsman to appoint an~~

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~~election monitor to attend the annual meeting of the unit owners and conduct the election of directors~~. The ombudsman shall appoint a division employee, a person or persons specializing in condominium election monitoring, or an attorney licensed to practice in this state as the election monitor. All costs associated with the election monitoring process shall be paid by the association. The division shall adopt a rule establishing procedures for the appointment of election monitors and the scope and extent of the monitor's role in the election process.

(11) To void an election if the ombudsman determines that a violation of this chapter has occurred relating to condominium elections.

(12) To petition the court to appoint a receiver if the appointment of a receiver is in the best interests of the association or owners.

(13) To issue subpoenas and conduct audits for investigations for the purposes of the Condominium and Homeowners' Association Economic Crime, Fraud, and Corruption Investigation Pilot Program established under s. 16.0151.

Section 7. Subsection (2) of section 718.509, Florida Statutes, is amended to read:

718.509 Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.—

(2) All moneys collected by the division from fees, fines, or penalties or from costs awarded to the division by a court or administrative final order must ~~shall~~ be paid into the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. The Legislature shall appropriate funds from this trust fund sufficient to administer ~~carry out the provisions of~~ this

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chapter and the ~~provisions of~~ law with respect to each category of business covered by the trust fund. The division shall maintain separate revenue accounts in the trust fund for each of the businesses regulated by the division. The division shall provide for the proportionate allocation among the accounts of expenses incurred by the division in the performance of its duties with respect to each of these businesses. As part of its normal budgetary process, the division shall prepare an annual report of revenue and allocated expenses related to the operation of each of these businesses, which may be used to determine fees charged by the division. ~~This subsection shall operate pursuant to the provisions of s. 215.20.~~

Section 8. Section 720.319, Florida Statutes, is created to read:

720.319 Office of the Homeowners' Association Ombudsman.—

(1) ADMINISTRATION; APPOINTMENT; LOCATION.—

(a) There is created the Office of the Homeowners' Association Ombudsman to be located, for administrative purposes, within the Department of Business and Professional Regulation. The functions of the office shall be funded by the General Appropriations Act.

(b) The Governor shall appoint the ombudsman. The ombudsman must be an attorney admitted to practice before the Florida Supreme Court and shall serve at the pleasure of the Governor. The ombudsman, an officer, or a full-time employee of the office may not actively engage in any other business or profession that directly or indirectly relates to or conflicts with his or her work in the office; serve as the representative or an executive, officer, or employee of any political party, executive

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committee, or other governing body of a political party; receive remuneration for activities on behalf of any candidate for public office; or engage in soliciting votes or other activities on behalf of a candidate for public office. The ombudsman, an officer, or a full-time employee of the office may not become a candidate for election to public office unless he or she first resigns from his or her office or employment.

(c) The ombudsman shall maintain his or her principal office at a location convenient to the department, 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 this state upon the concurrence of the Governor.

(2) POWERS AND DUTIES.—The ombudsman has the powers necessary to carry out the duties of his or her office, including, but not limited to:

(a) Having access to and use of all files and records of the division.

(b) Employing professional and clerical staff as necessary for the efficient operation of the office.

(c) Preparing and issuing reports and recommendations to the Governor, the department, the President of the Senate, and the Speaker of the House of Representatives on any matter or subject within the jurisdiction of this chapter.

(d) Acting as a liaison between the department, parcel owners, boards of directors, board members, community association managers, and other affected parties. The ombudsman shall develop policies and procedures to assist parcel owners, boards of directors, board members, community association

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managers, and other affected parties in understanding their rights and responsibilities as set forth in this chapter and in the governing documents of their respective associations. The ombudsman shall coordinate and assist in the preparation and adoption of educational and reference materials and shall endeavor to coordinate with private or volunteer providers of such services so that the availability of such resources is made known to the largest possible audience.

(e) Monitoring and reviewing procedures and disputes concerning association elections or meetings, including, but not limited to, recommending that the division pursue enforcement action in any manner if there is reasonable cause to believe that election misconduct has occurred, as well as reviewing secret ballots cast at a vote of the association.

(f) Making recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by parcel owners, associations, or managers.

(g) Providing resources to assist members of boards of directors and officers of associations to carry out their powers and duties consistent with this chapter and the governing documents of their respective associations.

(h) Encouraging and facilitating voluntary meetings between parcel owners, boards of directors, board members, community association managers, and other affected parties when the meetings may assist in resolving a dispute within a homeowners' association before a person submits a dispute for a formal or administrative remedy. The ombudsman shall act as a neutral resource for the rights and responsibilities of parcel owners,

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associations, and board members.

(i) Assisting with the resolution of disputes between parcel owners and the association, or between parcel owners, if applicable.

(j) Appointing an election monitor.

(k) Issuing subpoenas and conducting audits for investigations for the purposes of the Condominium and Homeowners' Association Economic Crime, Fraud, and Corruption Investigation Pilot Program established under s. 16.0151.

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

And the title is amended as follows:

Delete lines 3 - 40

and insert:

16.0151, F.S.; creating the Condominium and Homeowners' Association Economic Crime, Fraud, and Corruption Investigation Pilot Program within the Department of Legal Affairs in the Office of the Attorney General; providing the purpose of the pilot program; authorizing the department to contract with a private entity to achieve the program's purpose; requiring the department to hire specified personnel under certain circumstances; authorizing the submission of complaints to the Office of the Condominium Ombudsman or the Office of the Homeowners' Association Ombudsman; requiring the ombudsman to review such complaints and take specified actions; providing powers of and requirements for the department relating to the pilot program; requiring

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that the pilot program be funded from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund; requiring that the pilot program's primary office be located in Miami-Dade County; providing for future repeal of the pilot program unless it is reviewed and saved from repeal by the Legislature; amending s. 215.22, F.S.; exempting the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund from contributing to the General Revenue Fund; amending s. 718.111, F.S.; requiring the division to monitor condominium associations' compliance with requirements relating to maintenance of certain insurance or fidelity bonding of certain persons; authorizing the division to issue fines and penalties for noncompliance; creating s. 718.13, F.S.; requiring the division to establish a searchable cloud-based database by a specified date which contains specified information regarding each condominium association in this state; requiring a condominium association to notify the division of any changes to the information related to the association which is listed in the database; requiring that the creation and administration of the database be funded in part by specified proceeds; amending s. 718.501, F.S.; requiring the division to forward complaints received alleging fraud or corruption to the Office of the Condominium Ombudsman or the Office of the Homeowners' Association Ombudsman; amending s. 718.5012, F.S.;

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Regulated Industries (Garcia) recommended the following:

Senate Substitute for Amendment (549732) (with title amendment)

Delete lines 72 - 350
and insert:
16.0151 Condominium and Homeowners' Association Economic Crime, Fraud, and Corruption Investigation Pilot Program.—
(1) The Condominium and Homeowners' Association Economic Crime, Fraud, and Corruption Investigation Pilot Program is created within the Department of Legal Affairs, Office of the

Attorney General. The purpose of the pilot program is to investigate condominium and homeowners' association-related economic crime, fraud, and corruption in this state. For the purposes of this section, the term "corruption" means the act of an official or fiduciary person who unlawfully and wrongfully uses his or her position to procure some benefit for himself or herself or for another person, contrary to the duty and rights of others. The department may contract with a private entity that employs retired law enforcement officers who have subject matter expertise in financial fraud to achieve the purpose of the pilot program. If the department does not contract with a private entity, the department must hire a suitable number of financial investigators, investigators with previous law enforcement experience, and clerical employees to staff the pilot program.

(2) A person may submit a condominium or homeowners' association-related complaint to the Office of the Condominium and Homeowners' Ombudsman. The ombudsman shall review all complaints submitted to the office and determine which complaints to forward to the department for additional analysis and investigation under the pilot program. If a complaint submitted to the pilot program does not contain allegations of economic crimes, fraud, or corruption, the task force must forward the complaint to the Division of Florida Condominiums, Timeshares, and Mobile Homes, which shall investigate claims made pursuant to s. 718.501.

(3) The department has the power to issue subpoenas and conduct audits for investigations in furtherance of the pilot program, and may administer oaths, subpoena witnesses, and

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compel production of books, papers, or other records relevant to such investigations. If, after reviewing a complaint filed under the pilot program, the department finds sufficient evidence for criminal prosecution, it must refer the case to the appropriate state attorney for prosecution.

(4) The department shall fund the pilot program from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund as specifically appropriated annually in the General Appropriations Act.

(5) The pilot program's primary office shall be located in Miami-Dade County.

(6) This section is repealed October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Paragraph (w) is added to subsection (1) of section 215.22, Florida Statutes, to read:

215.22 Certain income and certain trust funds exempt.—

(1) The following income of a revenue nature or the following trust funds shall be exempt from the appropriation required by s. 215.20(1):

(w) The Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.

Section 3. Paragraph (h) of subsection (11) of section 718.111, Florida Statutes, is amended to read:

718.111 The association.—

(11) INSURANCE.—In order to protect the safety, health, and welfare of the people of the State of Florida and to ensure consistency in the provision of insurance coverage to condominiums and their unit owners, this subsection applies to

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every residential condominium in the state, regardless of the date of its declaration of condominium. It is the intent of the Legislature to encourage lower or stable insurance premiums for associations described in this subsection.

(h) The association shall maintain insurance or fidelity bonding of all persons who control or disburse funds of the association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the association or its management agent at any one time. The division shall monitor compliance with this paragraph and may issue fines and penalties established by the division for failure of an association to maintain the required insurance policy or fidelity bond. As used in this paragraph, the term "persons who control or disburse funds of the association" includes, but is not limited to, those individuals authorized to sign checks on behalf of the association, and the president, secretary, and treasurer of the association. The association shall bear the cost of any such bonding.

Section 4. Section 718.13, Florida Statutes, is created to read:

718.13 Database for condominium association information.—

(1) By July 1, 2026, the division shall establish a searchable cloud-based database that contains information regarding each condominium association operating within this state. The division shall establish rules and procedures for how an association is to provide such information. The database must allow a user to search the name by which a condominium property is identified to find the association that governs such property. At a minimum, the database must include all of the

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following information for each association:

(a) The names, e-mail addresses, and other contact information of officers and directors of the association.

(b) An indication that the association is self-managed, or, if not self-managed, the contact information for any person licensed under part VIII of chapter 468 and responsible for management of the association.

(c) A copy of the association's governing documents, including, but not limited to, declarations, bylaws, and rules and any amendments thereto.

(d) A copy of the association's adopted annual budget, in a file format that is compatible with the database, which includes the amount and purpose of any monthly assessments and current or pending special assessments levied by the association.

(e) A copy of any studies regarding funds in reserve accounts held by the association or any reports regarding the physical inspection of properties maintained by the association, including any structural integrity reserve studies conducted under s. 718.112(2)(g) of such properties.

(2) An association must notify the division of any changes to the information related to the association which is included in the database within 30 days after such changes occur.

(3) Expenses associated with the creation and administration of the database must be funded in part by proceeds from the annual fee paid by associations pursuant to s. 718.501(2)(a).

Section 5. Subsection (1) of section 718.501, Florida Statutes, is amended to read:

718.501 Authority, responsibility, and duties of Division


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of Florida Condominiums, Timeshares, and Mobile Homes.—

(1) The division may enforce and ensure compliance with this chapter and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units and complaints related to the procedural completion of milestone inspections under s. 553.899. 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 s. 718.111(12), and the procedural completion of structural integrity reserve studies under s. 718.112(2)(g). If the division receives a complaint about an association which alleges economic crimes, fraud, or corruption, the division must forward the complaint to the Office of the Condominium and Homeowners' Ombudsman, pursuant to s. 16.0151.

(a)1. The division may make necessary public or private investigations within or outside this state to determine whether any person has violated this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms.

2. The division may submit any official written report, worksheet, or other related paper, or a duly certified copy


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thereof, compiled, prepared, drafted, or otherwise made by and duly authenticated by a financial examiner or analyst to be admitted as competent evidence in any hearing in which the financial examiner or analyst is available for cross-examination and attests under oath that such documents were prepared as a result of an examination or inspection conducted pursuant to this chapter.

(b) The division may require or permit any person to file a statement in writing, under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter to be investigated.

(c) For the purpose of any investigation under this chapter, the division director or any officer or employee designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon the failure by a person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all affected persons, the division may apply to the circuit court for an order compelling compliance.

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or

related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, as follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the developer, bulk assignee, bulk buyer, association, developer-designated officer, or developer-designated member of the board of administration, developer-designated assignees or agents, bulk assignee-designated assignees or agents, bulk buyer-designated assignees or agents, community association manager, or community association management firm to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division carry out the purposes of this chapter. If the division finds that a developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, is violating or is about to violate any provision of this chapter, any rule adopted or order issued by the division, or any written agreement entered into with the division, and presents an immediate danger to the public requiring an immediate final order, it may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective for 90 days. If the division begins

nonemergency cease and desist proceedings, the emergency cease and desist order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57.

3. If a developer, bulk assignee, or bulk buyer fails to pay any restitution determined by the division to be owed, plus any accrued interest at the highest rate permitted by law, within 30 days after expiration of any appellate time period of a final order requiring payment of restitution or the conclusion of any appeal thereof, whichever is later, the division must bring an action in circuit or county court on behalf of any association, class of unit owners, lessees, or purchasers for restitution, declaratory relief, injunctive relief, or any other available remedy. The division may also temporarily revoke its acceptance of the filing for the developer to which the restitution relates until payment of restitution is made.

4. The division may petition the court for appointment of a receiver or conservator. If appointed, the receiver or conservator may take action to implement the court order to ensure the performance of the order and to remedy any breach thereof. In addition to all other means provided by law for the enforcement of an injunction or temporary restraining order, the circuit court may impound or sequester the property of a party defendant, including books, papers, documents, and related records, and allow the examination and use of the property by the division and a court-appointed receiver or conservator.

5. The division may apply to the circuit court for an order of restitution whereby the defendant in an action brought under subparagraph 4. is ordered to make restitution of those sums shown by the division to have been obtained by the defendant in

violation of this chapter. At the option of the court, such restitution is payable to the conservator or receiver appointed under subparagraph 4. or directly to the persons whose funds or assets were obtained in violation of this chapter.

6. The division may impose a civil penalty against a developer, bulk assignee, or bulk buyer, or association, or its assignee or agent, for any violation of this chapter or related rule. The division may impose a civil penalty individually against an officer or board member who willfully and knowingly violates this chapter, an adopted rule, or a final order of the division; may order the removal of such individual as an officer or from the board of administration or as an officer of the association; and may prohibit such individual from serving as an officer or on the board of a community association for a period of time. The term "willfully and knowingly" means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The division, before initiating formal agency action under chapter 120, must afford the officer or board member an opportunity to voluntarily comply, and an officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but the penalty for any offense may not exceed $5,000. The division shall adopt, by rule, penalty guidelines applicable to possible violations or to categories of violations of this chapter or

rules adopted by the division. The guidelines must specify a meaningful range of civil penalties for each such violation of the statute and rules and must be based upon the harm caused by the violation, upon the repetition of the violation, and upon such other factors deemed relevant by the division. For example, the division may consider whether the violations were committed by a developer, bulk assignee, or bulk buyer, or owner-controlled association, the size of the association, and other factors. The guidelines must designate the possible mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules. It is the legislative intent that minor violations be distinguished from those which endanger the health, safety, or welfare of the condominium residents or other persons and that such guidelines provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct. This subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. If a developer, bulk assignee, or bulk buyer fails to pay the civil penalty and the amount deemed to be owed to the association, the division shall issue an order directing that such developer, bulk assignee, or bulk buyer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall pursue enforcement in

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a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order is not effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

7. If a unit owner presents the division with proof that the unit owner has requested access to official records in writing by certified mail, and that after 10 days the unit owner again made the same request for access to official records in writing by certified mail, and that more than 10 days has elapsed since the second request and the association has still failed or refused to provide access to official records as required by this chapter, the division shall issue a subpoena requiring production of the requested records where the records are kept pursuant to s. 718.112.

8. In addition to subparagraph 6., the division may seek the imposition of a civil penalty through the circuit court for any violation for which the division may issue a notice to show cause under paragraph (r). The civil penalty shall be at least $500 but no more than $5,000 for each violation. The court may also award to the prevailing party court costs and reasonable attorney fees and, if the division prevails, may also award reasonable costs of investigation.

(e) The division may prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of residential condominiums in assessing the rights, privileges, and duties pertaining thereto.

(f) The division may adopt rules to administer and enforce

this chapter.

(g) The division shall establish procedures for providing notice to an association and the developer, bulk assignee, or bulk buyer during the period in which the developer, bulk assignee, or bulk buyer controls the association if the division is considering the issuance of a declaratory statement with respect to the declaration of condominium or any related document governing such condominium community.

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

(i) The division shall annually provide each association with a summary of declaratory statements and formal legal opinions relating to the operations of condominiums which were rendered by the division during the previous year.

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

(k) The division shall maintain a toll-free telephone number accessible to condominium unit owners.

(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 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.

(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 under ss. 120.569 and 120.57. The division may adopt rules regarding the submission of a complaint against an association.

(n) Condominium association directors, officers, and employees; condominium developers; bulk assignees, bulk buyers, and community association managers; and community association management firms have an ongoing duty to reasonably cooperate with the division in any investigation under this section. The division shall refer to local law enforcement authorities any person whom the division believes has altered, destroyed, concealed, or removed any record, document, or thing required to be kept or maintained by this chapter with the purpose to impair its verity or availability in the department’s investigation.

(o) The division may:

1. Contract with agencies in this state or other jurisdictions to perform investigative functions; or

2. Accept grants-in-aid from any source.

(p) The division shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, public offering statements, advertising standards, and rules and common administrative practices.

(q) The division shall consider notice to a developer, bulk assignee, or bulk buyer to be complete when it is delivered to

the address of the developer, bulk assignee, or bulk buyer currently on file with the division.

(r) In addition to its enforcement authority, the division may issue a notice to show cause, which must provide for a hearing, upon written request, in accordance with chapter 120.

(s) The division shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees an annual report that includes, but need not be limited to, the number of training programs provided for condominium association board members and unit owners, the number of complaints received by type, the number and percent of complaints acknowledged in writing within 30 days and the number and percent of investigations acted upon within 90 days in accordance with paragraph (m), and the number of investigations exceeding the 90-day requirement. The annual report must also include an evaluation of the division's core business processes and make recommendations for improvements, including statutory changes. The report shall be submitted by September 30 following the end of the fiscal year.

Section 6. Subsection (1) of section 718.5011, Florida Statutes, is amended to read:

718.5011 Ombudsman; appointment; administration.—

(1) There is created an Office of the Condominium and Homeowners' Ombudsman, to be located for administrative purposes within the Division of Florida Condominiums, Timeshares, and Mobile Homes. The functions of the office shall be funded by the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. The ombudsman shall be a bureau chief of the


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division, and the office shall be set within the division in the same manner as any other bureau is staffed and funded.

Section 7. Subsections (3) through (10) of section 718.5012, Florida Statutes, are amended, and subsections (11), (12), and (13) are added to that section, to read:

718.5012 Ombudsman; powers and duties.—The ombudsman shall have the powers that are necessary to carry out the duties of his or her office for this chapter and chapter 720, including the following specific powers:

(3) To prepare and issue reports and recommendations to the Governor, the department, the division, the Advisory Council on Condominiums, the President of the Senate, and the Speaker of the House of Representatives on any matter or subject within the jurisdiction of the division. The ombudsman shall make recommendations he or she deems appropriate for legislation relative to division procedures, rules, jurisdiction, personnel, and functions.

(4) To act as liaison between the division, unit owners, boards of directors, board members, community association managers, and other affected parties under this chapter and chapter 720. The ombudsman shall develop policies and procedures to assist homeowners, unit owners, boards of directors, board members, community association managers, and other affected parties to understand their rights and responsibilities as set forth in this chapter and the ~~condominium~~ documents governing their respective associations ~~association~~. The ombudsman shall coordinate and assist in the preparation and adoption of educational and reference material, and shall endeavor to coordinate with private or volunteer providers of these

services, so that the availability of these resources is made known to the largest possible audience.

(5) To monitor and review procedures and disputes concerning ~~condominium~~ elections or meetings, including, but not limited to, recommending that the division pursue enforcement action in any manner where there is reasonable cause to believe that election misconduct has occurred and reviewing secret ballots cast at a vote of the association.

(6) To make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by homeowners, unit owners, associations, and managers.

(7) To provide resources to assist members of boards of directors and officers of associations to carry out their powers and duties consistent with this chapter, chapter 720, division rules, and the condominium documents governing the association.

(8) To encourage and facilitate voluntary meetings with and between homeowners, unit owners, boards of directors, board members, community association managers, and other affected parties when the meetings may assist in resolving a dispute within a community association before a person submits a dispute for a formal or administrative remedy. It is the intent of the Legislature that the ombudsman act as a neutral resource for both the rights and responsibilities of homeowners, unit owners, associations, and board members.

(9) To assist with the resolution of disputes between homeowners, unit owners, and the association or between homeowners or unit owners when the dispute is not within the jurisdiction of the division to resolve.

(10) To appoint an election monitor to attend the annual meeting of the homeowner or unit owners and conduct the election of directors if 15 percent of the total voting interests in an association, or six owners, whichever is greater, make such a petition to the ombudsman ~~Fifteen percent of the total voting interests in a condominium association, or six unit owners, whichever is greater, may petition the ombudsman to appoint an election monitor to attend the annual meeting of the unit owners and conduct the election of directors~~. The ombudsman shall appoint a division employee, a person or persons specializing in homeowners' association or condominium election monitoring, as applicable, or an attorney licensed to practice in this state as the election monitor. All costs associated with the election monitoring process shall be paid by the association. The division shall adopt a rule establishing procedures for the appointment of election monitors and the scope and extent of the monitor's role in the election process.

(11) To void an election if the ombudsman determines that a violation of this chapter or chapter 720 has occurred relating to elections.

(12) To petition the court to appoint a receiver if the appointment of a receiver is in the best interests of the association or owners.

(13) To issue subpoenas and conduct audits for investigations for the purposes of the Condominium and Homeowners' Association Economic Crime, Fraud, and Corruption Investigation Pilot Program established under s. 16.0151.

Section 8. Subsection (2) of section 718.509, Florida Statutes, is amended to read:


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718.509 Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.—

(2) All moneys collected by the division from fees, fines, or penalties or from costs awarded to the division by a court or administrative final order must ~~shall~~ be paid into the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. The Legislature shall appropriate funds from this trust fund sufficient to administer ~~carry out the provisions of~~ this chapter and the ~~provisions of~~ law with respect to each category of business covered by the trust fund. The division shall maintain separate revenue accounts in the trust fund for each of the businesses regulated by the division. The division shall provide for the proportionate allocation among the accounts of expenses incurred by the division in the performance of its duties with respect to each of these businesses. As part of its normal budgetary process, the division shall prepare an annual report of revenue and allocated expenses related to the operation of each of these businesses, which may be used to determine fees charged by the division. ~~This subsection shall operate pursuant to the provisions of s. 215.20.~~

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

And the title is amended as follows:

Delete lines 3 - 66

and insert:

16.0151, F.S.; creating the Condominium and Homeowners' Association Economic Crime, Fraud, and Corruption Investigation Pilot Program within the Department of Legal Affairs in the Office of the

Attorney General; providing the purpose of the pilot program; defining the term "corruption"; authorizing the department to contract with a private entity to achieve the program's purpose; requiring the department to hire specified personnel under certain circumstances; authorizing the submission of complaints to the Office of the Condominium and Homeowners' Ombudsman; requiring the ombudsman to review such complaints and take specified actions; providing powers of and requirements for the department relating to the pilot program; requiring that the pilot program be funded from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund; requiring that the pilot program's primary office be located in Miami-Dade County; providing for future repeal of the pilot program unless it is reviewed and saved from repeal by the Legislature; amending s. 215.22, F.S.; exempting the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund from contributing to the General Revenue Fund; amending s. 718.111, F.S.; requiring the division to monitor condominium associations' compliance with requirements relating to maintenance of certain insurance or fidelity bonding of certain persons; authorizing the division to issue fines and penalties for noncompliance; creating s. 718.13, F.S.; requiring the division to establish a searchable cloud-based database by a specified date which contains specified information regarding each


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condominium association in this state; requiring the division to establish rules and procedures for associations to report such information; requiring a condominium association to notify the division of any changes to the information related to the association which is listed in the database; requiring that the creation and administration of the database be funded in part by specified proceeds; amending s. 718.501, F.S.; requiring the division to forward complaints received alleging fraud or corruption to the Office of the Condominium and Homeowners' Ombudsman; amending s. 718.5011, F.S.; renaming the Office of the Condominium Ombudsman as the Office of the Condominium and Homeowners' Ombudsman; amending s. 718.5012, F.S.; revising the powers of the ombudsman; amending s. 718.509, F.S.; conforming a provision to changes made by the act; making technical changes; providing an effective date.

By Senator Garcia

36-00295-24 2024426__

A bill to be entitled

An act relating to community associations; creating s. 16.0151, F.S.; creating the Condominium Fraud Investigation Pilot Program within the Department of Legal Affairs in the Office of the Attorney General; providing the purpose of the pilot program; authorizing the department to contract with a private entity to achieve the program's purpose; requiring the department to hire specified personnel under certain circumstances; authorizing the submission of complaints to the Office of the Condominium Ombudsman; requiring the ombudsman to review such complaints and take specified actions; providing powers of and requirements for the department relating to the pilot program; requiring that the pilot program be funded from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund; providing for future repeal of the pilot program unless it is reviewed and saved from repeal by the Legislature; amending s. 215.22, F.S.; exempting the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund from contributing to the General Revenue Fund; amending s. 718.111, F.S.; requiring the division to monitor condominium associations' compliance with requirements relating to maintenance of certain insurance or fidelity bonding of certain persons; authorizing the division to issue fines and penalties for noncompliance; creating s. 718.13, F.S.; requiring the division to establish a searchable cloud-based

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database by a specified date which contains specified information regarding each condominium association in this state; requiring a condominium association to notify the division of any changes to the information related to the association which is listed in the database; requiring that the creation and administration of the database be funded in part by specified proceeds; amending s. 718.501, F.S.; requiring the division to forward complaints received alleging fraud or corruption to the Office of the Condominium Ombudsman; amending s. 718.5012, F.S.; revising the powers of the ombudsman; amending s. 718.509, F.S.; conforming a provision to changes made by the act; making technical changes; creating s. 720.319, F.S.; creating the Office of the Homeowners' Association Ombudsman within the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation; providing for funding of the office; directing the Governor to appoint the ombudsman; requiring that the ombudsman be an attorney admitted to practice before the Florida Supreme Court; prohibiting the ombudsman, officers, or full-time employees of the office from holding certain positions, engaging in certain activities, or receiving certain remuneration; providing for the principal location of the ombudsman's office; authorizing the ombudsman to establish branch offices upon the concurrence of the Governor; specifying the powers and duties of the

ombudsman; providing a process for monitoring homeowners' association elections; providing for the appointment of an election monitor to attend an annual meeting of parcel owners and to conduct the election of directors; requiring that an association subject to election monitoring pay all costs associated with the process; requiring the division to adopt rules; providing an effective date.

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

Section 1. Section 16.0151, Florida Statutes, is created to read:

16.0151 Condominium Fraud Investigation Pilot Program.—

(1) The Condominium Fraud Investigation Pilot Program is created within the Department of Legal Affairs, Office of the Attorney General. The purpose of the pilot program is to investigate condominium-related fraud and corruption in this state. The department may contract with a private entity that employs retired law enforcement officers who have subject matter expertise in financial fraud to achieve the purpose of the pilot program. If the department does not contract with a private entity, the department must hire a suitable number of financial investigators, investigators with previous law enforcement experience, and clerical employees to staff the pilot program.

(2) A person may submit a complaint to the Office of the Condominium Ombudsman. The ombudsman shall review all complaints submitted to the office and determine which complaints to forward to the department for additional analysis and

investigation under the pilot program. If a complaint submitted to the office does not contain allegations of fraud or corruption, the ombudsman must forward the complaint to the Division of Florida Condominiums, Timeshares, and Mobile Homes, which shall investigate claims made pursuant to s. 718.501.

(3) The department has the power to issue subpoenas and conduct audits for investigations in furtherance of the pilot program, and may administer oaths, subpoena witnesses, and compel the production of books, papers, or other records relevant to such investigations. If, after reviewing a complaint filed under the pilot program, the department finds sufficient evidence for criminal prosecution, it must refer the case to the appropriate state attorney for prosecution.

(4) The department shall fund the pilot program from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund as specifically appropriated annually in the General Appropriations Act.

(5) This section is repealed October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Paragraph (w) is added to subsection (1) of section 215.22, Florida Statutes, to read:

215.22 Certain income and certain trust funds exempt.—

(1) The following income of a revenue nature or the following trust funds shall be exempt from the appropriation required by s. 215.20(1):

(w) The Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.

Section 3. Paragraph (h) of subsection (11) of section

718.111, Florida Statutes, is amended to read:

718.111 The association.—

(11) INSURANCE.—In order to protect the safety, health, and welfare of the people of the State of Florida and to ensure consistency in the provision of insurance coverage to condominiums and their unit owners, this subsection applies to every residential condominium in the state, regardless of the date of its declaration of condominium. It is the intent of the Legislature to encourage lower or stable insurance premiums for associations described in this subsection.

(h) The association shall maintain insurance or fidelity bonding of all persons who control or disburse funds of the association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the association or its management agent at any one time. The division shall monitor compliance with this paragraph and may issue fines and penalties established by the division for failure of an association to maintain the required insurance policy or fidelity bond. As used in this paragraph, the term "persons who control or disburse funds of the association" includes, but is not limited to, those individuals authorized to sign checks on behalf of the association, and the president, secretary, and treasurer of the association. The association shall bear the cost of any such bonding.

Section 4. Section 718.13, Florida Statutes, is created to read:

718.13 Database for condominium association information.—

(1) By July 1, 2026, the division shall establish a searchable cloud-based database that contains information

regarding each condominium association operating within this state. The database must allow a user to search the name by which a condominium property is identified to find the association that governs such property. At a minimum, the database must include all of the following information for each association:

(a) The names, e-mail addresses, and other contact information of officers and directors of the association.

(b) An indication that the association is self-managed, or, if not self-managed, the contact information for any person licensed under part VIII of chapter 468 and responsible for management of the association.

(c) A copy of the association's governing documents, including, but not limited to, declarations, bylaws, and rules and any amendments thereto.

(d) A copy of the association's adopted annual budget, in a file format that is compatible with the database, which includes the amount and purpose of any monthly assessments and current or pending special assessments levied by the association.

(e) A copy of any studies regarding funds in reserve accounts held by the association or any reports regarding the physical inspection of properties maintained by the association, including any structural integrity reserve studies conducted under s. 718.112(2)(g) of such properties.

(2) An association must notify the division of any changes to the information related to the association which is included in the database within 30 days after such changes occur.

(3) Expenses associated with the creation and administration of the database must be funded in part by

proceeds from the annual fee paid by associations pursuant to s. 718.501(2)(a).

Section 5. 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 this chapter and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units and complaints related to the procedural completion of milestone inspections under s. 553.899. 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 s. 718.111(12), and the procedural completion of structural integrity reserve studies under s. 718.112(2)(g). If the division receives a complaint about an association which alleges fraud or corruption, the division must forward the complaint to the Office of the Condominium Ombudsman pursuant to s. 16.0151.

Section 6. Subsection (10) of section 718.5012, Florida Statutes, is amended, and subsections (11) through (13) are

added to that section, to read:

718.5012 Ombudsman; powers and duties.—The ombudsman shall have the powers that are necessary to carry out the duties of his or her office, including the following specific powers:

(10) To appoint an election monitor to attend the annual meeting of the unit owners and conduct the election of directors if 15 percent of the total voting interests in a condominium association, or six owners, whichever is greater, make such a petition to the ombudsman. ~~Fifteen percent of the total voting interests in a condominium association, or six unit owners, whichever is greater, may petition the ombudsman to appoint an election monitor to attend the annual meeting of the unit owners and conduct the election of directors.~~ The ombudsman shall appoint a division employee, a person or persons specializing in condominium election monitoring, or an attorney licensed to practice in this state as the election monitor. All costs associated with the election monitoring process shall be paid by the association. The division shall adopt a rule establishing procedures for the appointment of election monitors and the scope and extent of the monitor's role in the election process.

(11) To void an election if the ombudsman determines that a violation of this chapter has occurred relating to condominium elections.

(12) To petition the court to appoint a receiver if the appointment of a receiver is in the best interests of the association or owners.

(13) To issue subpoenas and conduct audits for investigations for the purposes of the Condominium Fraud Investigation Pilot Program established under s. 16.0151.

Section 7. Subsection (2) of section 718.509, Florida Statutes, is amended to read:

718.509 Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.—

(2) All moneys collected by the division from fees, fines, or penalties or from costs awarded to the division by a court or administrative final order must ~~shall~~ be paid into the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. The Legislature shall appropriate funds from this trust fund sufficient to administer ~~carry out the provisions of~~ this chapter and the ~~provisions of~~ law with respect to each category of business covered by the trust fund. The division shall maintain separate revenue accounts in the trust fund for each of the businesses regulated by the division. The division shall provide for the proportionate allocation among the accounts of expenses incurred by the division in the performance of its duties with respect to each of these businesses. As part of its normal budgetary process, the division shall prepare an annual report of revenue and allocated expenses related to the operation of each of these businesses, which may be used to determine fees charged by the division. ~~This subsection shall operate pursuant to the provisions of s. 215.20.~~

Section 8. Section 720.319, Florida Statutes, is created to read:

720.319 Office of the Homeowners' Association Ombudsman.—

(1) ADMINISTRATION; APPOINTMENT; LOCATION.—

(a) There is created the Office of the Homeowners' Association Ombudsman to be located, for administrative purposes, within the Department of Business and Professional

Regulation. The functions of the office shall be funded by the General Appropriations Act.

(b) The Governor shall appoint the ombudsman. The ombudsman must be an attorney admitted to practice before the Florida Supreme Court and shall serve at the pleasure of the Governor. The ombudsman, an officer, or a full-time employee of the ombudsman's office may not actively engage in any other business or profession that directly or indirectly relates to or conflicts with his or her work in the ombudsman's office; serve as the representative or an executive, officer, or employee of any political party, executive committee, or other governing body of a political party; receive remuneration for activities on behalf of any candidate for public office; or engage in soliciting votes or other activities on behalf of a candidate for public office. The ombudsman, an officer, or a full-time employee of the ombudsman's office may not become a candidate for election to public office unless he or she first resigns from his or her office or employment.

(c) The ombudsman shall maintain his or her principal office at a location convenient to the department, 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 this state upon the concurrence of the Governor.

(2) POWERS AND DUTIES.—The ombudsman has the powers necessary to carry out the duties of his or her office, including, but not limited to:

(a) Having access to and use of all files and records of the division.

(b) Employing professional and clerical staff as necessary for the efficient operation of the office.

(c) Preparing and issuing reports and recommendations to the Governor, the department, the President of the Senate, and the Speaker of the House of Representatives on any matter or subject within the jurisdiction of this chapter.

(d) Acting as a liaison between the department, parcel owners, boards of directors, board members, community association managers, and other affected parties. The ombudsman shall develop policies and procedures to assist parcel owners, boards of directors, board members, community association managers, and other affected parties in understanding their rights and responsibilities as set forth in this chapter and in the governing documents of their respective associations. The ombudsman shall coordinate and assist in the preparation and adoption of educational and reference materials and shall endeavor to coordinate with private or volunteer providers of such services so that the availability of such resources is made known to the largest possible audience.

(e) Monitoring and reviewing procedures and disputes concerning association elections or meetings, including, but not limited to, recommending that the division pursue enforcement action in any manner if there is reasonable cause to believe that election misconduct has occurred, as well as reviewing secret ballots cast at a vote of the association.

(f) Making recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by parcel owners, associations, or managers.

(g) Providing resources to assist members of boards of directors and officers of associations to carry out their powers and duties consistent with this chapter and the governing documents of their respective associations.

(h) Encouraging and facilitating voluntary meetings between parcel owners, boards of directors, board members, community association managers, and other affected parties when the meetings may assist in resolving a dispute within a homeowners' association before a person submits a dispute for a formal or administrative remedy. The ombudsman shall act as a neutral resource for the rights and responsibilities of parcel owners, associations, and board members.

(i) Assisting with the resolution of disputes between parcel owners and the association, or between parcel owners, if applicable.

(j) Appointing an election monitor.

(3) ELECTION MONITORING.—

(a) Fifteen percent of the total voting interests in a homeowners' association, or six parcel owners, whichever is greater, may petition the ombudsman to appoint an election monitor to attend the annual meeting of the parcel owners and conduct the election of directors.

(b) The ombudsman shall appoint a division employee, a person who specializes in homeowners' association election monitoring, or an attorney licensed to practice in this state as the election monitor.

(c) The association shall pay all costs associated with the election monitoring process.

(d) The division shall adopt rules establishing procedures

for the appointment of election monitors and the scope and extent of the monitor's role in the election process.

Section 9. This act shall take effect July 1, 2024.

The Florida Senate

Committee Agenda Request

To: Senator Joe Gruters, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: December 4, 2023

I respectfully request that **Senate Bill #426**, relating to Community Associations, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Senator Ileana Garcia
Florida Senate, District 36

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL:	SB 1040
INTRODUCER:	Senator Bradley
SUBJECT:	Veterinary Practices
DATE:	February 2, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	**Pre-meeting**
2.			AG	
3.			RC	

I. Summary:

SB 1040 creates an act that may be cited as the Providing Equity in Telehealth Services (PETS) Act (PETS act), which establishes a framework for the practice of veterinary telehealth.

In Florida, the practice of "veterinary medicine" means the diagnosis of medical conditions of animals, and the prescribing or administering of medicine and treatment to animals for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease. Veterinarians are licensed and regulated by the Board of Veterinary Medicine (board) in the Department of Business and Professional Regulation (DBPR), pursuant to ch. 474, F.S., relating to the statutory standards for veterinary medical practice (practice act). The purpose of the practice act is to ensure that every veterinarian practicing in Florida meets minimum requirements for safe practice to protect public health and safety.[1]

Current law defines a "veterinarian/client/patient relationship" (VCPR) as one in which a veterinarian has assumed responsibility for making medical judgments about the health of an animal and its need for medical treatment. Veterinarians are permitted to prescribe drugs in the course of veterinary practice; however, the veterinarian must be either personally acquainted with the keeping and caring of the animal and have recently seen the animal, or have made medically appropriate and timely visits to the premises where the animal is kept before prescribing drugs in the course of practice.

The use of electronic communications to facilitate patient health care (telehealth) is not addressed in the practice act and is not specifically prohibited or authorized in Florida. However, medical doctors may practice telehealth in Florida and may establish a patient relationship with a patient evaluation via telehealth under certain circumstances.[2]

[1] Section 474.201, F.S.

[2] *See* s. 456.47, F.S., relating to the use of telehealth to provide healthcare services.

The regulatory framework for the PETS act, which establishes a framework for the practice of veterinary telehealth as follows:

- Authorizes a veterinarian practicing veterinary telehealth to order, prescribe, or make available medicinal drugs or drugs as defined in s. 465.003, F.S., the Florida Pharmacy Act.
- Limits a veterinarian's authority to use telehealth to prescribe a controlled substance listed in Schedule II of s. 893.03, F.S.
- Allows veterinarians who are personally acquainted with the caring or keeping of an animal or group of animals for food-producing animal operations, who have recently seen the animals or made medically appropriate and timely visits to practice veterinary telehealth for these animals.
- Specifies that only Florida licensed veterinarians may practice veterinary telehealth, and grants the board jurisdiction over the practice of veterinary telehealth.
- Allows an animal control authority under the "indirect supervision" of a veterinarian to administer rabies vaccinations.

According to the Department of Business and Professional Regulation (DBPR), there is no impact expected on state or local government revenues and expenditures.[3] See Section V, Fiscal Impact Statement.

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

II. Present Situation:

Veterinary Medicine, the Practice of Veterinary Medicine, and Exempted Persons

In 1979, the Legislature determined the practice of veterinary medicine to be potentially dangerous to public health and safety if conducted by incompetent and unlicensed practitioners and that minimum requirements for the safe practice of veterinary medicine are necessary.[4] The Board of Veterinary Medicine (board) in the Department of Business and Professional Regulation (DBPR) implements the provisions of ch. 474, F.S., on Veterinary Medical Practice.[5] A veterinarian is a health care practitioner licensed to engage in the practice of veterinary medicine in Florida under ch. 474, F.S.[6] In Fiscal Year 2022-2023, there were 13,285 actively licensed veterinarians in Florida.[7]

Veterinary medicine[8] includes, with respect to animals:[9]

- Surgery;
- Acupuncture;

[3] *See* Department of Business and Professional Regulation, *2024 Agency Legislative Bill Analysis for HB 849 (identical to SB 1040* at 5 (Dec. 13, 2023) (on file with the Senate Committee on Regulated Industries).
[4] *See* s. 474.201, F.S.
[5] S*ee* s. 474.204 through 474.2125, F.S., concerning the powers and duties of the board.
[6] See s. 474.202(11), F.S.
[7] *See* Department of Business and Professional Regulation, *Division of Professions Annual Report Fiscal Year 2022-2023*, at page 18, at http://www.myfloridalicense.com/DBPR/os/documents/Division%20Annual%20Report%20FY%2021-22.pdf (last visited Feb. 1, 2024).
[8] *See* s. 474.202(13), F.S.
[9] Section 474.202(1), F.S., defines "animal" as "any mammal other than a human being or any bird, amphibian, fish, or reptile, wild or domestic, living or dead."

- Obstetrics;
- Dentistry;
- Physical therapy;
- Radiology;
- Theriogenology (reproductive medicine);[10] and
- Other branches or specialties of veterinary medicine.

The practice of veterinary medicine is the diagnosis of medical conditions of animals, and the prescribing or administering of medicine and treatment to animals for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease, or holding oneself out as performing any of these functions.[11] Veterinarians who are incompetent or present a danger to the public are subject to discipline and may be prohibited from practicing in the state.[12]

Eleven categories of persons are exempt from complying with ch. 474, F.S.:[13]

- Faculty veterinarians with assigned teaching duties at accredited[14] institutions;
- Intern/resident veterinarians at accredited institutions who are graduates of an accredited institution, but only until they complete or terminate their training;
- Students in a school or college of veterinary medicine who perform assigned duties by an instructor (no accreditation of the institution is required), or work as preceptors[15] (if the preceptorship is required for graduation from an accredited institution);
- Doctors of veterinary medicine employed by a state agency or the United States Government while actually engaged in the performance of official duties at the installations for which the services were engaged;
- Persons or their employees caring for the persons' own animals, as well as part-time or temporary employees, or independent contractors, who are hired by an owner to help with herd management and animal husbandry tasks (excluding immunization or treatment of

[10] The Society for Theriogenology, established in 1954, is composed of veterinarians dedicated to standards of excellence in animal reproduction. *See* https://www.therio.org/ (last visited Feb. 1, 2024).
[11] Section 474.201, F.S. *See* s. 474.202(9), F.S. Also included is the determination of the health, fitness, or soundness of an animal, and the performance of any manual procedure for the diagnosis or treatment of pregnancy, fertility, or infertility of animals.
[12] *See* s. 474.213, F.S., on prohibited acts, and s. 474.214, F.S., on disciplinary proceedings.
[13] *See* s. 474.203, F.S.
[14] Sections 474.203(1) and (2), F.S., provide that accreditation of a school or college must be granted by the American Veterinary Medical Association (AVMA) Council on Education, or the AVMA Commission for Foreign Veterinary Graduates. The AVMA Council on Education is recognized by the Council for Higher Education Accreditation (CHEA) as the accrediting body for schools and programs that offer the professional Doctor of Veterinary Medicine degree (or its equivalent) in the United States and Canada, and may also approve foreign veterinary colleges. *See* https://www.avma.org/education/center-for-veterinary-accreditation/accreditation-policies-and-procedures-avma-council-education-coe/coe-accreditation-policies-and-procedures-accreditation (last visited Feb. 1, 2024). The AVMA Commission for Foreign Veterinary Graduates assists graduates of foreign, non-accredited schools to meet the requirement of most states that such foreign graduates successfully complete an educational equivalency assessment certification program. *See* https://www.avma.org/professionaldevelopment/education/foreign/pages/ecfvg-about-us.aspx (last visited Feb. 1, 2024). In turn, the Council for Higher Education Accreditation, a national advocate for regulation of academic quality through accreditation, is an association of degree-granting colleges and universities. See http://chea.org/about (last visited Feb. 1, 2024).
[15] A preceptor is a skilled practitioner or faculty member, who directs, teaches, supervises, and evaluates students in a clinical setting to allow practical experience with patients. See https://www.merriam-Webster.com/dictionary/preceptor#medicalDictionary (last visited Feb. 1, 2024).

diseases that are communicable to humans and significant to public health) for herd and flock animals, with certain limitations; however, the exemption is not available to a person licensed as a veterinarian in another state and temporarily practicing in Florida, or convicted of violating ch. 828, F.S., on animal cruelty, or of any similar offense in another jurisdiction, and employment may not be provided for the purpose of circumventing ch. 474, F.S.;

- Certain entities or persons[16] that conduct experiments and scientific research on animals as part of the development of pharmaceuticals, biologicals, serums, or treatment methods or techniques to diagnose or treat human ailments, or in the study and development of methods and techniques applicable to the practice of veterinary medicine;
- Veterinary aides, nurses, laboratory technicians, preceptors, or other employees of a licensed veterinarian, who administer medication or provide help or support under the responsible supervision[17] of a licensed veterinarian;
- Certain non-Florida veterinarians who are licensed and actively practicing veterinary medicine in another state, are board certified in a specialty recognized by the Florida Board of Veterinary Medicine, and are assisting upon request of a Florida-licensed veterinarian to consult on the treatment of a specific animal or on the treatment on a specific case of the animals of a single owner;
- Employees, agents, or contractors of public or private animal shelters, humane organizations, or animal control agencies operated by a humane organization, county, municipality, or incorporated political subdivision, whose work is confined solely to implanting radio frequency identification device microchips in dogs and cats in accordance with s. 823.15, F.S;[18]
- Paramedics or emergency medical technicians providing emergency medical care to a police canine[19] 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; and
- Veterinarians who hold an active license to practice veterinary medicine in another jurisdiction in the United States, are in good standing in such jurisdiction, and who perform dog or cat sterilization services or routine preventative health services at the time of sterilization as an unpaid volunteer under the responsible supervision of a veterinarian licensed in Florida. Out-of-state veterinarians practicing pursuant to this exemption are not eligible to apply for premises permits for veterinary establishments.

Persons who are eligible faculty veterinarians, intern veterinarians, resident veterinarians, or state or federal veterinarians exempt from complying with ch. 474, F.S., are deemed to be duly licensed practitioners authorized to prescribe drugs or medicinal supplies.[20]

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[16] *See* s. 474.203(6), F.S., which states that the exemption applies to "[s]tate agencies, accredited schools, institutions, foundations, business corporations or associations, physicians licensed to practice medicine and surgery in all its branches, graduate doctors of veterinary medicine, or persons under the direct supervision thereof. . . ."

[17] The term "responsible supervision" is defined in s. 474.202(10), F.S., as the "control, direction, and regulation by a licensed doctor of veterinary medicine of the duties involving veterinary services" delegated to unlicensed personnel.

[18] *See* s. 823.15(5), F.S., which authorizes such persons to perform microchipping of dogs and cats.

[19] Section 401.254, F.S., 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; the enforcement of laws; the investigation of fires; or the apprehension of offenders." 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.

[20] *See* s. 474.203, F.S. (flush left language).

Veterinarian/Client/Patient Relationship

The practice act defines a "patient" as any animal for which a veterinarian practices veterinary medicine.[21]

The practice act defines a "veterinarian/client/patient relationship" (VCPR) as one in which a veterinarian has assumed responsibility for making medical judgments about the health of an animal and its need for medical treatment.[22]

Veterinarians are permitted to prescribe drugs in the course of veterinary practice, but may be disciplined by the board for certain related violations, including ordering, prescribing, or making available medicinal drugs or drugs[23] or controlled substances[24] for use other than for the specific treatment of animal patients for which there is a documented VCPR and without:

- Having sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal, which means that the veterinarian is personally acquainted with the keeping and caring of the animal and has recently seen the animal or has made medically appropriate and timely visits to the premises where the animal is kept;
- Being available to provide for follow-up care and treatment in case of adverse reactions or failure of the regimen of therapy; and
- Maintaining records which document patient visits, diagnosis, treatment, and other relevant information required under the practice act.[25]

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Veterinary Telemedicine

The use of electronic communications to facilitate patient health care (veterinary telemedicine) is not addressed in the practice act and is neither specifically prohibited nor is it specifically authorized for practitioners of veterinary medicine in Florida statute.[26]

According to research conducted by the American Veterinary Medical Association (AVMA), almost one-third of all pets in the U.S. do not regularly see a veterinarian.[27] The reasons for this include cost of veterinary care, logistical obstacles, and a shortage of licensed veterinarians.[28]

Veterinary telemedicine has been found to "help pet owners avoid additional expenses related to unnecessary time off work or transportation and may provide cost-effective options. Telemedicine can also address problems with bringing pets to clinics that may be faced by many

[21] Section 474.202(8), F.S.
[22] Section 474.202(12), F.S.
[23] Section 465.003(8), F.S.
[24] Section 893.02(4), F.S.
[25] Section 474.214(1)(y), F.S.
[26] Fla. Admin. Code 64B8-9.0141. Currently, medical doctors may practice telemedicine in Florida when in a patient relationship with a patient evaluation, under certain circumstances.
[27] Malinda Larkin, *New, Old Challenges Beg for Radical Change in Veterinary Profession*, JAVMA News (Dec. 3, 2020), https://www.avma.org/javma-news/2020-12-15/new-old-challenges-beg-radical-change-veterinary-profession (last visited Jan. 31, 2024).
[28] The Veterinary Care Accessibility Project, *Veterinary Care Accessibility Score*, https://www.accesstovetcare.org/ (last visited Jan. 31, 2024).

pet owners, such as seniors, disabled individuals, those without transportation, and owners of fearful, large, or potentially aggressive pets."[29]

"Interest in veterinary telemedicine has grown significantly in recent years, driven in part by a critical shortage of veterinary professionals in the workforce and boosted by COVID-19 pandemic emergency orders that temporarily suspended legal barriers to veterinary telemedicine."[30]

Expanding access to veterinary telemedicine may alleviate some of these problems, including, "industry problems with workforce shortages of veterinary professionals, increased caseloads, and limited work-life balance."[31]

In the human health setting, a 50 state survey conducted by the AVMA found that "all states allow a physician to establish a relationship with a new patient over telemedicine."[32] However, the same approach does not appear to exist with veterinary medicine.

Opponents of veterinary telemedicine argue that animals cannot articulate symptoms like humans, making physical examinations necessary to diagnose animal ailments. However, it has been found that "while animals cannot verbally communicate, they provide behavioral signals, which can potentially be more informative than seeing an animal in an unfamiliar place where the animal is not behaving as it customarily would. In a clinic setting, dogs and cats may become extremely fearful and withdrawn, and, in a situation that they perceive as threatening, animals may mask their pain as a survival mechanism."[33]

Veterinary Telemedicine during the COVID-19 Pandemic

On March 24, 2020, the U.S. Food and Drug Administration (FDA) announced that it would temporarily suspend enforcement of certain prescription limitations in order to allow veterinarians to better utilize telemedicine to address animal health needs during the COVID-19 pandemic. Specifically, the FDA provided guidance related to suspending the enforcement of the animal examination and premises visit VCPR requirements relevant to FDA regulations governing extra-label drug use in animals[34] and veterinary feed directive drugs.[35] This allowed veterinarians to prescribe or authorize the use of drugs without direct examination or making

[29] Camille DeClementi, Jennifer Hobgood, and Diana Ferguson, *IN THE CARDS: BETTING ON VETERINARY TELEMEDICINE LEGAL REFORM*, Florida Bar Journal, (Dec. 2022), https://www.floridabar.org/the-florida-bar-journal/in-the-cards-betting-on-veterinary-telemedicine-legal-reform/ (last visited Jan. 31, 2024).
[30] *Id.*
[31] *Id.*
[32] American Medical Association, *50-State Survey: Establishment of a Patient-Physician Relationship Via Telemedicine*, https://www.ama-assn.org/system/files/2018-10/ama-chart-telemedicine-patient-physician-relationship.pdf (last visited Jan. 31, 2024).
[33] Mark Epstein, et al., *2015 AAHA/AAFP Pain Management Guidelines for Dogs and Cats*, American Animal Hospital Association (2015), https://www.aaha.org/globalassets/02-guidelines/pain-management/2015_aaha_aafp_pain_management_guidelines_for_dogs_and_cats.pdf (last visited Jan. 31, 2024).
[34] 21 C.F.R. part 530.
[35] 21 C.F.R. s. 558.6.

visits to patients, in an effort to limit human-to-human interaction and potential spread of COVID-19 in the community.[36]

According to the FDA, veterinarians are licensed by their state veterinary licensing board and must meet the requirements of the licensing board to practice in that state. FDA regulates the devices and drugs that veterinarians use, and the conditions under which veterinarians may prescribe drugs for extra-label uses. When an approved drug is used in a manner other than what is stated on the label, it is an extra-label use. This is commonly called an "off-label" use because the drug is used in a way that is "off the label."[37]

On March 27, 2020, the DBPR issued emergency order EO 2020-04, which suspended any restrictions in the practice act or the administrative rules set forth in ch. 61G-18, of the Florida Administrative Code, that would have prohibited an active Florida-licensed veterinarian from practicing telemedicine on a patient. The order specified that attending veterinarians must be comfortable assessing the patient remotely and feel able to exercise good clinical judgment to assist the patient.[38]

The FDA withdrew its temporary guidance suspending the enforcement of the animal examination and premises visit VCPR requirements on February 21, 2023.[39]

The DBPR's emergency order allowing Florida-licensed veterinarians to practice telemedicine ended with the expiration of Florida's COVID-19 state of emergency (EO 20-52) on Saturday June 26, 2021.[40]

Veterinary Telemedicine in Other States

The use of telemedicine by veterinarians varies by state. Some states allow telemedicine to be used at the veterinarian's discretion, others allow it after the establishment of a VCPR, some do not allow it at all, and others limit telemedicine for purposes of prescribing medication or controlled substances.

According to the Veterinary Virtual Care Association, state laws relating to veterinary telemedicine generally fall within the following categories: 25 states and the District of Columbia require the provider to have "seen" or become "acquainted with" the animal; 10 states require a physical examination for a VCPR; five states allow telemedicine to create a VCPR; one state allows telemedicine to create a VCPR except for prescriptions; one state does not reference

[36] U.S. Food and Drug Administration, *Coronavirus (COVID-19) Update: FDA Helps Facilitate Veterinary Telemedicine During Pandemic*, https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-update-fda-helps-facilitate-veterinary-telemedicine-during-pandemic (last visited Jan. 31, 2024).
[37] Food and Drug Administration, *What FDA Does and Does Not Regulate*, https://www.fda.gov/animal-veterinary/animal-health-literacy/what-fda-does-and-does-not-regulate#top (last visited Jan. 31, 2024).
[38] Department of Business and Professional Regulation, *Emergency Order EO 2020-04*, Mar. 27, 2020, http://www.myfloridalicense.com/dbpr/os/documents/EO_2020-04.pdf (last visited Jan. 31, 2024).
[39] 87 F.R. 78111, Dec. 21, 2022.
[40] On March 9, 2020, Governor DeSantis issued Executive Order 20-52 which declared a state of emergency for the entire state due to COVID-19. The Executive Order was extended several times. Executive Order 21-94 extended the state of emergency for sixty days from April 27, 2021. The sixtieth day was Saturday June 26, 2021, and the order was not renewed by the Governor.

and therefore does not define or use the term VCPR; and nine states expressly prohibit using telemedicine to establish a VCPR.[41]

The state of Virginia allows veterinarians to practice telemedicine. In addition, it allows a veterinarian who performs or has performed an appropriate examination of a patient to prescribe certain controlled substances to a patient via the practice of telemedicine. The Virginia Board of Veterinary Medicine adopted guidance effective September 17, 2020, for telehealth in the practice of veterinary medicine, which indicates that:

Using telehealth technologies in veterinary practice is considered a method of service delivery. The current, applicable regulations apply to all methods of service delivery, including telehealth. The licensee is responsible for using professional judgment to determine if the type of service can be delivered via telehealth at the same standard of care as in-person service.[42]

The Idaho Board of Veterinary Medicine provides the following guidance on telehealth:

The veterinarian must employ sound profession judgment to determine whether using Telehealth is appropriate in particular circumstances each and every time animal care is provided and only provide medical advice or treatment via Telehealth to the extent that it is possible without a hands on examination. A veterinarian using Telehealth must take appropriate steps to obtain Informed Consent, establish the VCPR and conduct all appropriate evaluations and history of the patient consistent with traditional standards of care for the particular patient presentation. As such, some situations and patient presentations are appropriate for the utilization of Telehealth as a component of, or in lieu of, hands on medical care, while others are not.[43]

The state of Oklahoma only allows a veterinarian to prescribe drugs via telemedicine under the following conditions:

The veterinarian assumes responsibility for making medical judgments regarding the health of the animal based on a current thorough medical knowledge of the animal(s), such knowledge is gained by recently seeing or being personally acquainted with the keeping and care of the animal to the extent necessary to properly make appropriate medical decisions . . . .[44]

The state of Washington only allows telemedicine after a VCPR has been established:

The veterinarian shall not establish a veterinary-client-patient relationship solely by telephonic or other electronic means. However, once established, a veterinary-client-patient relationship may

[41] Veterinary Virtual Care Association, *Veterinary Telemedicine Regulatory Map*, https://vvca.org/telemedicine-map/ (last visited Jan. 31, 2024).
[42] Virginia Board of Veterinary Medicine, *Guidance for Telehealth in the Practice of Veterinary Medicine, Guidance Document: 150-25*, https://www.dhp.virginia.gov/media/dhpweb/docs/vet/guidance/150-25.pdf (last visited Jan. 31, 2024).
[43] Idaho Board of Veterinary Medicine, *Policy Number 2018-02 Telemedicine (Oct. 15, 2021)*, https://dopl.idaho.gov/wp-content/uploads/2023/07/Telemed-Policy-6-8-18-with-Revision-10-15-21.pdf (last visited Jan. 31, 2024).
[44] Oklahoma State Board of Veterinary Medical Examiners, *Veterinarian-Client-Patient-Relationship-VCPR*, https://www.okvetboard.com/client-information/62-vcpr (last visited Jan. 31, 2024).

be maintained between medically necessary examinations via telephone or other types of consultations.[45]

The state of Michigan has also repealed the need for an in-person exam prior to practicing telemedicine. As of April 15, 2021, a veterinarian providing a "telehealth service" in Michigan must have sufficient knowledge of the animal patient by having recently examined the animal patient in person or have obtained current knowledge of the animal patient through the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically, or have conducted medically appropriate and timely visits to the premises where the group of animal patients is kept.[46]

Telehealth for Medical Doctors

Current law broadly defines "telehealth" as the use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services, including, but not limited to:[47]

- Assessment, diagnosis, consultation, treatment, and monitoring of a patient;
- Transfer of medical data;
- Patient and professional health-related education;
- Public health services; and
- Health administration.

Telehealth does not include e-mail messages, or facsimile transmission under Florida law.[48] No express authority is needed to communicate using these methods.

Health care services may be provided via telehealth by a Florida-licensed health care practitioner, a practitioner licensed under a multistate health care licensure compact of which Florida is a member,[49] or a registered out-of-state health care provider.[50]

Out-of-state telehealth providers must register biennially with the Department of Health (DOH) or the applicable board to provide telehealth services, within the relevant scope of practice established by Florida law and rule, to patients in this state. To register or renew registration as an out-of-state telehealth provider, the health care professional must:

- Hold an active and unencumbered license, which is substantially similar to a license issued to a Florida practitioner in the same profession, in a U.S. state or jurisdiction and
- Not have been subject to licensure disciplinary action during the five years before submission of the registration application;[51]
- Not be subject to a pending licensure disciplinary investigation or action;
- Not have had license revoked in any state or jurisdiction;

[45] Wash. Rev. Code s. 246-933-200(2).
[46] Mich. Gen. R. 338.4901a.
[47] Section 456.47(1)(a), F.S.
[48] *Id*.
[49] Florida is a member of the Nurse Licensure Compact. Section 464.0095, F.S.
[50] S. 456.47(4), F.S.
[51] *See* s. 456.47(4), F.S., which requires the DOH to consult the National Practitioner Data Bank to verify registration submitted by applicants.

- Designate a registered agent in this state for the service of process;
- Maintain professional liability coverage or financial responsibility, which covers services provided to patients not located in the provider's home state, in the same amount as required for Florida-licensed practitioners;[52] and
- Prominently display a link to the DOH website, described below, which provides public information on registered telehealth providers.[53]

Telehealth Standards of Practice

Current law sets the standard of care for telehealth providers at the same level as the standard of care for health care practitioners or health care providers providing in-person health care services to patients in this state. This ensures that a patient receives the same standard of care irrespective of the modality used by the health care professional to deliver the services. A patient receiving telehealth services may be in any location at the time services are rendered and a telehealth provider may be in any location when providing telehealth services to a patient.[54]

Practitioners may perform a patient evaluation using telehealth. A practitioner using telehealth is not required to research a patient's medical history or conduct a physical examination of the patient before providing telehealth services to the patient if the telehealth provider is capable of conducting a patient evaluation in a manner consistent with the applicable standard of care sufficient to diagnose and treat the patient when using telehealth.

Emergency Orders

On January 31, 2020, the U.S. Secretary of Health and Human Services issued a public health emergency.[55] On March 16, 2020, the federal Drug Enforcement Administration (DEA) published a COVID-19 Information page on the Diversion Control Division website, authorizing DEA-registered practitioners to issue prescriptions for all Schedule II-V controlled substances to patients without first conducting an in-person medical evaluation, provided all of the following conditions are met:

- The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of his/her professional practice.
- The evaluation is conducted using an audio-visual, real-time, two-way interactive communication system.

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[52] Florida law requires physicians, acupuncturists, chiropractic physicians, dentists, anesthesiologist assistants, advanced practice registered nurses, and licensed midwives to demonstrate $100,000 per claim and an annual aggregate of $300,000 of professional responsibility (*see* ss. 458.320 and 459.0085, F.S.; r. 64B1-12.001. F.A.C; r. 64B2-17.009, F.A.C.; 64B5-17.0105, F.A.C.; r. 64B8-31.006 and 64B15-7.006, F.A.C.; r. 64B9-4.002, F.A.C.; and r. 64B24-7.013, F.A.C.; respectively). Podiatric physicians must demonstrate professional responsibility in the amount of $100,000 (*see* Fla Admin. Code R. 64B18-14.0072).

[53] Section 456.47(4), F.S.

[54] Section 456.47(2), F.S.

[55] U.S. Department of Health & Human Services, *Determination that a Public Health Emergency Exists*, (Jan. 31, 2020) https://aspr.hhs.gov/legal/PHE/Pages/2019-nCoV.aspx#:~:text=Azar%20II%2C%20Secretary%20of%20Health,January%2027%2C%202020%2C%20nationwide (last visited Jan. 31, 2024).

- The practitioner is acting in accordance with applicable federal and state law.[56]

Controlled Substances – Florida Law

Chapter 893, F.S., is the Florida Comprehensive Drug Abuse Prevention and Control Act. The chapter classifies controlled substances into five schedules in order to regulate the manufacture, distribution, preparation, and dispensing of the substances. The scheduling of substances in Florida law is generally consistent with the federal scheduling of substances under 21 U.S.C. s. 812:

- A Schedule I substance has a high potential for abuse and no currently accepted medical use in treatment in the United States and its use under medical supervision does not meet accepted safety standards. Examples include heroin and lysergic acid diethylamide (LSD).
- A Schedule II substance has a high potential for abuse, a currently accepted but severely restricted medical use in treatment in the United States, and abuse may lead to severe psychological or physical dependence. Examples include cocaine and morphine.
- A Schedule III substance has a potential for abuse less than the substances contained in Schedules I and II, a currently accepted medical use in treatment in the United States, and abuse may lead to moderate or low physical dependence or high psychological dependence or, in the case of anabolic steroids, may lead to physical damage. Examples include lysergic acid; ketamine; and some anabolic steroids.
- A Schedule IV substance has a low potential for abuse relative to the substances in Schedule III, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule III. Examples include alprazolam, diazepam, and phenobarbital.
- A Schedule V substance has a low potential for abuse relative to the substances in Schedule IV, a currently accepted medical use in treatment in the United States, and abuse may lead to limited physical or psychological dependence relative to the substances in Schedule IV. Examples include low dosage levels of codeine, certain stimulants, and certain narcotic compounds.

Controlled Substances – Federal Law

The Federal Controlled Substances Act[57] also classifies controlled substances into schedules based on the potential for abuse and whether there is a currently accepted medical use for the substance. The DEA is required to consider the following when determining where to schedule a substance:[58]

- The substance's actual or relative potential for abuse;
- Scientific evidence of the substance's pharmacological effect, if known;
- The state of current scientific knowledge regarding the substance;

[56] U.S. Drug Enforcement Administration, *DEA's response to COVID-19*, https://www.dea.gov/press-releases/2020/03/20/deas-response-covid-19 (last visited Jan. 31, 2024); Letter from Thomas Prevoznik, Deputy Assistant Administrator, Diversion Control Division, U.S. Department of Justice Drug Enforcement Administration, to DEA Qualifying Practitioners and Other Practitioners, (Mar. 31, 2020) https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-022)(DEA068)%20DEA%20SAMHSA%20buprenorphine%20telemedicine%20%20(Final)%20+Esign.pdf (last visited Jan. 31, 2024).
[57] 21 U.S.C. s. 812.
[58] 21 U.S.C. s. 811(c).

- The substance's history and current pattern of abuse;
- The scope, duration, and significance of abuse;
- What, if any, risk there is to public health;
- The substance's psychic or physiological dependence liability; and
- Whether the substance is an immediate precursor of a substance already controlled.

Telehealth Prescribing of Controlled Substances

The FDA regulations governing Extra-label Drug Use in Animals and Veterinary Feed Directives—limited in application to circumstances where a veterinarian is using a drug in a manner other than the purpose for which it was approved or in feed directives—require a valid VCPR, which "can exist only when the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal(s) by virtue of examination of the animal(s), and/or by medically appropriate and timely visits to the premises where the animal(s) are kept."[59]

A corresponding regulation in the Florida Administrative Code blocks veterinarians from such prescribing unless they have 'recent contact' with the animal.[60] The practice act contains no such 'recent contact" requirement for a VCPR or for such prescribing.[61]

Federal law specifically prohibits prescribing controlled substances via the Internet without an in-person evaluation, but the Ryan Haight Online Pharmacy Consumer Protection Act (Haight Act),[62] signed into law in October 2008,[63] created a pathway for telehealth practitioners to dispense controlled substances via telehealth.

The practitioner is still subject to the requirement that all controlled substance prescriptions be issued for a legitimate purpose by a practitioner acting in the usual course of professional practice. But, once an in-person evaluation of the patient has occurred, the practitioner may provide future prescriptions for controlled substances for that patient using telehealth services.[64]

Florida law currently prohibits a telehealth provider (human) from using telehealth services to prescribe a controlled substance except when treating a psychiatric disorder, an inpatient at a licensed hospital, a patient receiving hospice services, or a resident of a nursing home facility.[65]

[59] 21 C.F.R. s. 530.1 and s. 530.3(i)(3).
[60] Fla. Admin Code R. 61G18-30.001 (2)(y).
[61] Camille DeClementi, Jennifer Hobgood, and Diana Ferguson, *IN THE CARDS: BETTING ON VETERINARY TELEMEDICINE LEGAL REFORM*, Florida Bar Journal, (Dec. 2022), https://www.floridabar.org/the-florida-bar-journal/in-the-cards-betting-on-veterinary-telemedicine-legal-reform/ (last visited Jan. 31, 2024).
[62] Ryan Haight Online Consumer Protection Act of 2008, Public Law 110-425 (H.R. 6353).
[63] 21 C.F.R. s. 829, the in-person medical evaluation requires that the patient be in the physical presence of the provider without regard to the presence or conduct of other professionals.
[64] *Id*.
[65] Section 456.47(2)(c), F.S.

Prescription Drug Law for Veterinarians

In order to purchase, prescribe, administer or dispense controlled substances in Florida, veterinarians must register and comply with DEA requirements, but there are no restrictions in the practice act for the purchasing and prescribing of controlled drugs.[66]

The DEA is a division within the U.S. Department of Justice and reports to the U.S. Attorney General. In consultation with the U.S. Secretary of the federal Department of Health and Human Services (HHS) and others, the Attorney General oversees the listing of substances on five schedules (Classes I, II, III, IV or V) of controlled agents as described in Title 21 United States Code (USC) of the Controlled Substances Act. The central mission of the DEA is to enforce controlled substances laws and regulations.[67]

Two opioids are approved and marketed for use in animals, butorphanol and buprenorphine. Due to the limited number of approved and marketed veterinary opioids, veterinarians who need to use opioids to control pain in their patients generally use products approved for use in people.[68]

Rabies Vaccinations

In Florida, all dogs, cats, and ferrets[69] four months of age or older must be vaccinated against rabies at the expense of their owners by a licensed veterinarian.[70] Rabies is a fatal but preventable viral disease that can spread to people and pets bitten or scratched by a rabid animal.[71] According to the Centers for Disease Control and Prevention (CDC), a component of the United States Department of Health and Human Services, most rabies deaths in people around the world are caused by dog bites.[72] Because of laws in the United States requiring dogs to be vaccinated for rabies, dogs make up only about one percent of rabid animals reported nationally each year.[73]

Rabies vaccines are licensed by the United States Department of Agriculture, and revaccinations are required 12 months after the initial vaccine.[74] Thereafter, the interval between vaccinations is set by the vaccine manufacturer.[75]

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[66] *See* the information promulgated by the University of Florida, College of Veterinary Medicine on accreditation and licensure requirements for veterinarians, at https://education.vetmed.ufl.edu/dvm-curriculum/florida-and-national-board-information/ (last visited Feb. 1, 2024).
[67] *See* the DEA mission statement at https://www.dea.gov/about/mission#:~:text=The%20mission%20of%20the%20Drug,members%20of%20organizations%2C%20involved%20in (last visited Feb. 1, 2024).
[68] U.S. FDA, *The Opioid Epidemic: What Veterinarians Need to Know*, https://www.fda.gov/animal-veterinary/resources-you/opioid-epidemic-what-veterinarians-need-know (last visited Jan. 31, 2024).
[69] Ferrets that are vaccinated as required must be quarantined when necessary, in accordance with administrative rules of the Florida Department of Health. See s. 828.30(4), F.S., and Fla. Admin. Code R. 64D-3.040.
[70] *See* s. 828.30, F.S.
[71] *See* https://www.cdc.gov/rabies/index.html (last visited Feb. 1, 2024). In the United States, rabies is mostly found in wild animals like bats, raccoons, skunks, and foxes.
[72] *Id.*
[73] *Id.*
[74] *See* s. 828.30(1), F.S.
[75] *Id*. Evidence of rabies antibodies may not be substituted for a current vaccination in managing rabies exposure or determining the need for booster vaccinations.

A dog, cat, or ferret is exempt from vaccination against rabies if a licensed veterinarian has examined the animal and certified that vaccination at that time would endanger the animal's health because of its age, infirmity, disability, illness, or other medical considerations; however, an exempt animal must be vaccinated against rabies as soon as its health permits.[76]

After administering a rabies vaccination, the licensed veterinarian must provide a certificate to the animal's owner and the animal control authority, using the "Rabies Vaccination Certificate" of the National Association of State Public Health Veterinarians (NASPHV), or an equivalent form approved by the local government that contains the same information as the NASPHV certificate.[77] A signature stamp may be used in lieu of the veterinarian's actual signature.

An animal owner's name, street address, phone number, and animal tag number in a rabies vaccination certificate provided to an animal control authority is a public record exempt from the inspection and copying requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.[78] However, all information in a rabies vaccination certificate for a particular animal biting, scratching, or otherwise causing exposure, may be provided to:

- A person who has been bitten, scratched, or otherwise exposed to a disease such as rabies that spreads between animals and people (zoonotic disease),[79] or that person's physician;
- A veterinarian treating an animal that has been bitten, scratched, or otherwise exposed to a zoonotic disease; or
- The owner of an animal that has been bitten, scratched, or otherwise exposed to a zoonotic disease.[80]

In addition, any person with an animal tag number may receive vaccination certificate information with regard to that animal. The following entities must be provided the information in rabies vaccination certificates for the purpose of controlling the transmission of rabies, but may not release the exempt information to third parties:

- Law enforcement and prosecutorial agencies;
- Other animal control authorities;
- Emergency and medical response and disease control agencies; or
- Other governmental health agencies.[81]

Release of exempt information contained in a rabies vaccine certificate is a civil infraction that could subject those cited for a violation to a civil penalty of up to $500.[82]

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[76] *See* s. 828.30(2), F.S.
[77] *See* s. 828.30(3), F.S.
[78] *See* s. 828.30(5), F.S.
[79] See information from the CDC about zoonotic diseases that are caused by germs that spread between animals and people at https://www.cdc.gov/onehealth/basics/zoonotic-diseases.html (last visited Feb. 1, 2024).
[80] *See* s. 828.30(5), F.S.
[81] *Id.*
[82] *See* s. 828.30(6), F.S., and s. 828.27(2), F.S., authorizing the governing body of a county or municipality to enact ordinances relating to animal control or cruelty, and setting forth requirements for penalties, citations, and related procedures, respectively.

Municipalities and counties are not prohibited from establishing similar or more stringent requirements than those described above for rabies control ordinances; however, local governments may not mandate revaccination of currently vaccinated animals except in instances involving treatment for rabies after an exposure.[83]

III. Effect of Proposed Changes:

The bill authorizes licensed veterinarians in Florida to practice veterinary telehealth on a limited basis as described in the PETS act, and indirectly supervise rabies vaccinations of impounded animals.

Regarding veterinary telemedicine, the bill:

- Allows a veterinarian who holds a current license to practice veterinary medicine in Florida to practice veterinary telehealth;
- Defines the term "telehealth" to have the same meaning as the human telehealth definition in s. 456.47(1), F.S., for the health care and related services;[84]
- Gives the board jurisdiction over a veterinarian practicing veterinary telehealth, regardless of where the veterinarian's physical office is located;
- Deems the practice of veterinary to occur at the premises where the patient is located at the time the veterinarian practices veterinary telehealth;
- Prohibits practicing veterinary telehealth unless it is within the context of a veterinarian/client/patient relationship (VCPR);
- Requires the practice of telehealth to be consistent with a veterinarian's scope of practice and the prevailing professional standard of practice for a veterinarian who provides in-person veterinary services to patients in Florida;
- Authorizes veterinarians practicing telehealth to perform a patient evaluation, and specifies that if a veterinarian practicing telehealth conducts a patient evaluation sufficient to diagnose and treat the patient, the veterinarian is not required to research a patient's medical history or conduct a physical examination of the patient before using veterinary telehealth to provide a veterinary health care service to the patient;
- Requires veterinarians practicing telehealth to prescribe all drugs and medications in accordance with all federal and state laws;
- Authorizes a veterinarian practicing veterinary telehealth to order, prescribe, or make available medicinal drugs or drugs as defined in s. 465.003, F.S.;
- Prohibits a veterinarian from using telehealth to prescribe a controlled substance listed in Schedule II of s. 893.03, F.S.; and
- Authorizes veterinarians who are personally acquainted with the caring and keeping of an animal or group of animals on food-producing animal operations on land classified as agricultural pursuant to s. 193.461, F.S., who has recently seen the animal or group of animals or has made medically appropriate and timely visits to the premises where the animal or group of animals is kept to practice veterinary telehealth for animals on such operations.

[83] *See* s. 828.30(7), F.S.

[84] Section 456.57, F.S., defines the term to mean "the use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include e-mail messages or facsimile transmissions."

Regarding rabies vaccinations, the bill:

- Allows an employee, an agent, or a contractor of a county or municipal animal control authority, or sheriff, acting under the indirect supervision of a veterinarian, to administer rabies vaccinations to impounded dogs, cats, and ferrets that will be transferred, rescued, fostered, adopted, or reclaimed by the owner;
- Provides that the supervising veterinarian assumes responsibility for any person vaccinating animals at his or her direction or under his or her direct or indirect supervision;
- Defines "indirect supervision," to mean the supervising veterinarian is required to be available for consultation through telecommunications but is not required to be physically present during such consultation; and
- Authorizes veterinarians who supervise the administration of a rabies vaccination by persons at the veterinarian's direction or under direct or indirect supervision, to affix his or her signature stamp in lieu of an actual signature to the rabies vaccination certificate.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not 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.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Licensed veterinarians will be permitted to practice veterinary telehealth, including limited prescription authority, providing them more flexibility in their practice similar to the licensed health care providers in Florida authorized to provide telehealth services.

Animal owners may have greater access to veterinarians and may feel more comfortable, especially during a state of emergency. Visitors and tourists with pets may be able to obtain veterinary care without having to locate a veterinarian's office in an unfamiliar area and transport their animal.

Certain rabies vaccinations may be administered by an employee, an agent, or a contractor of a county or municipal animal control authority, or sheriff, acting under the indirect supervision of a veterinarian, to administer rabies vaccinations to impounded dogs, cats, and ferrets that will be transferred, rescued, fostered, adopted, or reclaimed by the owner. This vaccination method may allow vaccination of impounded animals to occur more quickly and reduce costs to animal control authorities and sheriff's departments responsible for animal control.

C. Government Sector Impact:

According to the Department of Business and Professional Regulation (DBPR), there is no impact expected on state or local government revenues and expenditures.[85]

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Business and Professional Regulation (DBPR) notes the following relating to the definition of telehealth in the bill: [86]

> Lines 32-35 states the term "telehealth" has the same meaning as in s. 456.47(1) [F.S.]. This term for human medicine might get amended in the future to reference medical technologies that would not be applicable to veterinary medicine. Therefore, adding it as a definition in 456.471(1), F.S. might have unintended consequences in its applicability, so adding it as a new definition under section 474.202, F.S., will ensure applicability to the veterinary medicine profession.

[85] *See* Department of Business and Professional Regulation, *2024 Agency Legislative Bill Analysis for HB 849 (identical to SB 1040* (DBPR analysis) at 5 (Dec. 13, 2023) (on file with the Senate Committee on Regulated Industries).
[86] *Id. at 6.*

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 474.203, 474.2165, 767.16, 828.29, and 828.30.

This bill creates the following section of the Florida Statutes: 474.2021.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Regulated Industries (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 27 - 62

and insert:

Section 1. Subsection (14) is added to section 474.202, Florida Statutes, to read:

474.202 Definitions.—As used in this chapter:

(14) "Veterinary telehealth" means the use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services, including, but not

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limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include e-mail messages or facsimile transmissions.

Section 2. Section 474.2021, Florida Statutes, is created to read:

474.2021 Veterinary telehealth.—

(1) This section may be cited as the "Providing Equity in Telehealth Services Act."

(2) A veterinarian who holds a current license to practice veterinary medicine in this state may practice veterinary telehealth.

(3) The board has jurisdiction over a veterinarian practicing veterinary telehealth, regardless of where the veterinarian's physical office is located. The practice of veterinary medicine is deemed to occur at the premises where the patient is located at the time the veterinarian practices veterinary telehealth.

(4) A veterinarian practicing veterinary telehealth:

(a) May not engage in the practice of veterinary telehealth unless it is within the context of a veterinarian/client/patient relationship;

(b) Must practice in a manner consistent with his or her scope of practice and the prevailing professional standard of practice for a veterinarian who provides in-person veterinary services to patients in this state;

(c) May use veterinary telehealth to perform a patient evaluation if the evaluation is conducted using synchronous,

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audiovisual communication. If a veterinarian practicing telehealth conducts a patient evaluation sufficient to diagnose and treat the patient, the veterinarian is not required to research a patient's medical history or conduct a physical examination of the patient before using veterinary telehealth to provide a veterinary health care service to the patient;

(d) Shall provide the client with a statement containing the veterinarian's name, license number, and contact information and the contact information for at least one physical veterinary clinic in the vicinity of the pet's location and instructions for how to receive patient follow-up care or assistance if the veterinarian and client are unable to communicate because of a technological or equipment failure or if there is an adverse reaction to treatment. The veterinarian shall obtain from the client a signed and dated statement indicating the client has received the required information;

(e) Shall prescribe all drugs and medications in accordance with all federal and state laws and the following requirements:

1. A veterinarian practicing veterinary telehealth may order, prescribe, or make available medicinal drugs or drugs specifically approved for use in animals by the United States Food and Drug Administration, the use of which conforms to the approved labeling. Prescriptions based solely on a telehealth evaluation may be issued for up to 1 month for parasite treatment and prevention medications and up to 14 days for other animal drugs.

2. A veterinarian practicing veterinary telehealth may not order, prescribe, or make available medicinal drugs or drugs as defined in s. 465.003 approved by the United States Food and

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Drug Administration for human use, including compounded antibacterial, antifungal, antiviral, or antiparasitic medications, unless the veterinarian has conducted an in-person physical examination of the animal or made medically appropriate and timely visits to the premises where the animal is kept.

3. A veterinarian may not use veterinary telehealth to prescribe a controlled substance as defined in chapter 893 unless the veterinarian has conducted an in-person physical examination of the animal or made medically appropriate and timely visits to the premises where the animal is kept.

4. A veterinarian practicing veterinary telehealth may not prescribe a drug or other medication for use on a horse engaged in racing or training at a facility under the jurisdiction of the Florida Gaming Control Commission or on a horse that is a covered horse as defined in the federal Horseracing Integrity and Safety Act, 15 U.S.C. ss. 3051 et seq.;

(f) Shall be familiar with available veterinary resources, including emergency resources, near the patient's location and be able to provide the client with a list of nearby veterinarians who may be able to see the patient in person upon the request of the client;

(g) Shall keep, maintain, and make available a summary of the patient record as provided in s. 474.2165; and

(h) May not use veterinary telehealth to issue an international or interstate travel certificate or a certificate of veterinary inspection.

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

And the title is amended as follows:

141662

Delete lines 2 - 6

and insert:

An act relating to veterinary practices; amending s. 474.202, F.S.; defining the term "veterinary telehealth"; creating s. 474.2021, F.S.; providing a short title; authorizing licensed veterinarians to practice veterinary telehealth in accordance with specified criteria; specifying the powers

By Senator Bradley

6-01681A-24 20241040__

A bill to be entitled

An act relating to veterinary practices; creating s. 474.2021, F.S.; providing a short title; authorizing licensed veterinarians to practice veterinary telehealth in accordance with specified criteria; defining the term "telehealth"; specifying the powers of the Board of Veterinary Medicine related to the practice of telehealth; specifying the conditions under which a veterinarian may practice veterinary telehealth; specifying the drugs a veterinarian practicing telehealth may not provide under specified circumstances; providing specific authorizations for cases where a patient is a food-producing species; amending s. 474.2165, F.S.; conforming a provision to changes made by the act; amending s. 828.30, F.S.; authorizing certain persons to administer rabies vaccinations to certain animals under indirect supervision of a veterinarian; providing that a supervising veterinarian assumes responsibility for specified people who provide vaccinations; defining the term "indirect supervision"; amending ss. 474.203, 767.16, and 828.29, 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. Section 474.2021, Florida Statutes, is created to read:

474.2021 Veterinary telehealth.—

6-01681A-24 20241040__

(1) This section may be cited as the "Providing Equity in Telehealth Services Act."

(2) A veterinarian who holds a current license to practice veterinary medicine in this state may practice veterinary telehealth. For purposes of this section, the term "telehealth" has the same meaning as in s. 456.47(1).

(3) The board has jurisdiction over a veterinarian practicing veterinary telehealth, regardless of where the veterinarian's physical office is located. The practice of veterinary medicine is deemed to occur at the premises where the patient is located at the time the veterinarian practices veterinary telehealth.

(4) A veterinarian practicing veterinary telehealth:

(a) May not engage in the practice of veterinary telehealth unless it is within the context of a veterinarian/client/patient relationship;

(b) Must practice in a manner consistent with his or her scope of practice and the prevailing professional standard of practice for a veterinarian who provides in-person veterinary services to patients in this state;

(c) May use telehealth to perform a patient evaluation. If a veterinarian practicing telehealth conducts a patient evaluation sufficient to diagnose and treat the patient, the veterinarian is not required to research a patient's medical history or conduct a physical examination of the patient before using veterinary telehealth to provide a veterinary health care service to the patient; and

(d) Must prescribe all drugs and medications in accordance with all federal and state laws. A veterinarian practicing

veterinary telehealth may order, prescribe, or make available medicinal drugs or drugs as defined in s. 465.003. A veterinarian may not use telehealth to prescribe a controlled substance listed in Schedule II of s. 893.03.

(5) A veterinarian personally acquainted with the caring and keeping of an animal or group of animals on food-producing animal operations on land classified as agricultural pursuant to s. 193.461 who has recently seen the animal or group of animals or has made medically appropriate and timely visits to the premises where the animal or group of animals is kept may practice veterinary telehealth for animals on such operations.

Section 2. Subsection (1) of section 474.2165, Florida Statutes, is amended to read:

474.2165 Ownership and control of veterinary medical patient records; report or copies of records to be furnished.—

(1) As used in this section, the term "records owner" means any veterinarian who generates a medical record after making an ~~a physical~~ examination of, or administering treatment or dispensing legend drugs to, any patient; any veterinarian to whom records are transferred by a previous records owner; or any veterinarian's employer, provided the employment contract or agreement between the employer and the veterinarian designates the employer as the records owner.

Section 3. Subsections (1) and (3) of section 828.30, Florida Statutes, are amended to read:

828.30 Rabies vaccination of dogs, cats, and ferrets.—

(1)(a) All dogs, cats, and ferrets 4 months of age or older must be vaccinated by a licensed veterinarian or a person authorized under paragraph (b) against rabies with a vaccine

that is licensed by the United States Department of Agriculture for use in those species.

(b) Acting under the indirect supervision of a veterinarian, an employee, an agent, or a contractor of a county or municipal animal control authority or sheriff may vaccinate against rabies dogs, cats, and ferrets in the custody of an animal control authority or a sheriff that will be transferred, rescued, fostered, adopted, or reclaimed by the owner. The supervising veterinarian assumes responsibility for any person vaccinating animals at his or her direction or under his or her direct or indirect supervision. As used in this paragraph, the term "indirect supervision" means that the supervising veterinarian is required to be available for consultation through telecommunications but is not required to be physically present during such consultation.

(c) The owner of every dog, cat, and ferret shall have the animal revaccinated 12 months after the initial vaccination. Thereafter, the interval between vaccinations shall conform to the vaccine manufacturer's directions. The cost of vaccination must be borne by the animal's owner. Evidence of circulating rabies virus neutralizing antibodies may ~~shall~~ not be used as a substitute for current vaccination in managing rabies exposure or determining the need for booster vaccinations.

(3) Upon vaccination against rabies, the licensed veterinarian shall provide the animal's owner and the animal control authority with a rabies vaccination certificate. Each animal control authority and veterinarian shall use the "Rabies Vaccination Certificate" of the National Association of State Public Health Veterinarians (NASPHV) or an equivalent form

approved by the local government that contains all the information required by the NASPHV Rabies Vaccination Certificate. The veterinarian who administers the rabies vaccination or who supervises the administration of the rabies vaccination as provided in paragraph (1)(b) ~~vaccine~~ to an animal as authorized ~~required~~ under this section may affix his or her signature stamp in lieu of an actual signature.

Section 4. Paragraph (a) of subsection (5) of section 474.203, Florida Statutes, is amended to read:

474.203 Exemptions.—This chapter does not apply to:

(5)(a) 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, unless title is transferred or employment provided for the purpose of circumventing this law. This exemption does not apply to any person licensed as a veterinarian in another state or foreign jurisdiction and practicing temporarily in this state. However, except as provided in s. 828.30, only a veterinarian may immunize or treat an animal for diseases that are communicable to humans and that are of public health significance.

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 5. Subsection (2) of section 767.16, Florida Statutes, is amended to read:

767.16 Police canine or service dog; exemption.—

(2) Any dog used as a service dog for blind, hearing impaired, or disabled persons that bites another animal or a human is exempt from any quarantine requirement following such bite if the dog has a current rabies vaccination that was administered as provided in s. 828.30 ~~by a licensed veterinarian~~.

Section 6. Paragraph (b) of subsection (1) and paragraph (b) of subsection (2) of section 828.29, Florida Statutes, are amended to read:

828.29 Dogs and cats transported or offered for sale; health requirements; consumer guarantee.—

(1)

(b) For each dog offered for sale within the state, the tests, vaccines, and anthelmintics required by this section must be administered by or under the direction of a veterinarian, licensed by the state and accredited by the United States Department of Agriculture, who issues the official certificate of veterinary inspection. The tests, vaccines, and anthelmintics must be administered before the dog is offered for sale in the state, unless the licensed, accredited veterinarian certifies on the official certificate of veterinary inspection that to inoculate or deworm the dog is not in the best medical interest of the dog, in which case the vaccine or anthelmintic may not be administered to that particular dog. Each dog must receive vaccines and anthelmintics against the following diseases and internal parasites:

1. Canine distemper.

2. Leptospirosis.

3. Bordetella (by intranasal inoculation or by an

alternative method of administration if deemed necessary by the attending veterinarian and noted on the health certificate, which must be administered in this state once before sale).

4. Parainfluenza.

5. Hepatitis.

6. Canine parvo.

7. Rabies, provided the dog is over 3 months of age and the inoculation is administered as provided in s. 828.30 ~~by a licensed veterinarian~~.

8. Roundworms.

9. Hookworms.

If the dog is under 4 months of age, the tests, vaccines, and anthelmintics required by this section must be administered no more than 21 days before sale within the state. If the dog is 4 months of age or older, the tests, vaccines, and anthelmintics required by this section must be administered at or after 3 months of age, but no more than 1 year before sale within the state.

(2)

(b) For each cat offered for sale within the state, the tests, vaccines, and anthelmintics required by this section must be administered by or under the direction of a veterinarian, licensed by the state and accredited by the United States Department of Agriculture, who issues the official certificate of veterinary inspection. The tests, vaccines, and anthelmintics must be administered before the cat is offered for sale in the state, unless the licensed, accredited veterinarian certifies on the official certificate of veterinary inspection that to

inoculate or deworm the cat is not in the best medical interest of the cat, in which case the vaccine or anthelmintic may not be administered to that particular cat. Each cat must receive vaccines and anthelmintics against the following diseases and internal parasites:

1. Panleukopenia.

2. Feline viral rhinotracheitis.

3. Calici virus.

4. Rabies, if the cat is over 3 months of age and the inoculation is administered as provided in s. 828.30 ~~by a licensed veterinarian~~.

5. Hookworms.

6. Roundworms.

If the cat is under 4 months of age, the tests, vaccines, and anthelmintics required by this section must be administered no more than 21 days before sale within the state. If the cat is 4 months of age or older, the tests, vaccines, and anthelmintics required by this section must be administered at or after 3 months of age, but no more than 1 year before sale within the state.

Section 7. This act shall take effect July 1, 2024.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Committee on Criminal and Civil Justice, *Chair*
Criminal Justice, *Vice Chair*
Appropriations
Children, Families, and Elder Affairs
Community Affairs
Regulated Industries

SELECT COMMITTEE:
Select Committee on Resiliency

SENATOR JENNIFER BRADLEY
6th District

January 8, 2024

Senator Joe Gruters, Chairman
Senate Committee on Regulated Industries
413 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Gruters:

I respectfully request that Senate Bill 1040 be placed on the committee's agenda at your earliest convenience. This bill relates to veterinary practices.

Thank you for your consideration.

Sincerely,

Jennifer Bradley

Jennifer Bradley

cc: Booter Imhof, Staff Director
Susan Datres, Administrative Assistant

REPLY TO:
❒ 1845 East West Parkway, Suite 5, Fleming Island, Florida 32003 (904) 278-2085
❒ 124 Northwest Madison Street, Lake City, Florida 32055 (386) 719-2708
❒ 408 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

Senate's Website: *www.flsenate.gov*

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

2024 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Business & Professional Regulation

BILL INFORMATION	
BILL NUMBER:	HB 849
BILL TITLE:	Veterinary Practices
BILL SPONSOR:	General Bill by Rep. Killebrew & Rep. Buchanan
EFFECTIVE DATE:	07/01/2024

1) Regulatory Reform & Economic Development Subcommittee
2) Commerce Committee
3) Click or tap here to enter text.
4) Click or tap here to enter text.
5) Click or tap here to enter text.

CURRENT COMMITTEE
Commerce Committee

SIMILAR BILLS	
BILL NUMBER:	SB 1162
SPONSOR:	Sen. Ingoglia

PREVIOUS LEGISLATION	
BILL NUMBER:	Click or tap here to enter text.
SPONSOR:	Click or tap here to enter text.
YEAR:	Click or tap here to enter text.
LAST ACTION:	Click or tap here to enter text.

IDENTICAL BILLS	
BILL NUMBER:	SB 1040
SPONSOR:	Sen. Bradley

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	12/13/23
LEAD AGENCY ANALYST:	Megan Kachur, Professions
ADDITIONAL ANALYST(S):	Ruthanne Christie, Executive Director Tracy Dixon, Service Operations Craig Doyle, Division of Technology G.W. Harrell, Division of Regulation
LEGAL ANALYST:	Brande Miller, Deputy General Counsel - Professions
FISCAL ANALYST:	Garrett Blanton, Office of Planning and Budget

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill authorizes veterinarians to practice “veterinary telemedicine”; regulates prescribing of controlled substances; authorizes employees, agents, or contractors of animal control authorities to administer rabies vaccinations under veterinarian’s “indirect supervision;” provides jurisdiction to the Florida Board of Veterinary Medicine, provides conforming provisions to changes made by the bill, and provides an effective date of July 1, 2024.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

The Department of Business and Professional Regulation regulates the practice of Veterinary Medicine under Ch. 474, F.S., which does not currently address veterinary telemedicine or telehealth.

474.202(12), F.S. defines a “Veterinarian/client/patient relationship” to mean a relationship where the veterinarian has assumed the responsibility for making medical judgments regarding the health of the animal and its need for medical treatment.

Section 474.214 (1)(y) F.S., states the grounds for disciplinary actions relating to the prescription of medicinal drugs. Before the prescribing, the veterinarian shall have sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal, which means that the veterinarian is personally acquainted with the keeping and caring of the animal and has recently seen the animal of has made medically appropriate and timely visits to the premises where the animal is kept.

Under the current statute a licensee with a valid veterinarian/client/patient relationship who has recently seen the animal is not prohibited from providing services by telemedicine methods to their patients when they feel it is within the standard of care and medically appropriate.

Under the current statute, it is impossible for a veterinarian to establish a valid veterinarian/client/patient relationship to prescribe medicine solely by means of telehealth, as they must have seen the animal in person at some point.

474.2165 (2), F.S. requires each person who provides veterinary medical services shall maintain medical records, as established by rule.

Rule 61G18-18.002, F.A.C. Maintenance of Medical Records details the information that is required for a complete medical record. Specifically, they shall contain the following information: physical examination to include, but not limited to, patient weight, temperature, pulse, and respiration, or noted exceptions to the collection of said information. A record based solely on a telemedicine visit would likely not meet the requirements.

Section 828.30, F.S., states that all dogs, cats, and ferrets 4 months of age or older must be vaccinated by a licensed veterinarian against rabies with a vaccine that the United States Department of Agriculture licenses for use in those species. Upon vaccination against rabies, the licensed veterinarian shall provide the animal’s owner and the animal control authority with a rabies vaccination certificate.

Currently, Florida law does not allow anyone other than a veterinarian to administer a rabies vaccine. Other vaccines, anesthesia, and tranquilization can be administered by a veterinary aide, nurse, laboratory technician, intern, or other employee of a licensed veterinarian while under the “immediate supervision” of a licensed veterinarian. “Immediate supervision” means a licensed Doctor of Veterinary Medicine is on the premises whenever veterinary services are being provided.

Chapter 474.203(5)(a), F.S. provides that only a veterinarian may immunize or treat an animal for diseases that are communicable to humans and that are of public health significance.

2. EFFECT OF THE BILL:

Section 1. The bill creates section 474.2021, F.S., and designates this act to be cited in the short title as the "Providing Equity in Telemedicine Services (PETS) Act."

The new section also provides for:

- Authorizes a veterinarian with a current license to practice veterinary telehealth and that the term “telehealth” has the same meaning in section 456.47(1), F.S.
- Specifies that the Board of Veterinary Medicine has jurisdiction over a veterinarian practicing veterinary telehealth, regardless of where the veterinarian’s physical office is located. Additionally, the practice of veterinary medicine is deemed to occur at the premises where the patient is located at the time the veterinarian practices veterinary telehealth.
- Requires a veterinarian practicing veterinary telehealth to:
    - Not engage in the practice of veterinary telehealth unless it is within the context of a veterinarian/client/patient relationship;
    - Practice in a manner consistent with his or her scope of practice and the prevailing professional standard of practice for a veterinarian who provides in-person veterinary services to patients in this state;
    - Use telehealth to perform a patient evaluation. If a veterinarian practicing telehealth conducts a patient evaluation sufficient to diagnose and treat the patient, the veterinarian is not required to research a patient's medical history or conduct a physical examination of the patient before using veterinary telehealth to provide a veterinary health care service to the patient; and
    - Prescribe all drugs and medications in accordance with all federal and state laws. A veterinarian practicing veterinary telehealth may order, prescribe, or make available medicinal drugs or drugs as defined in s. 465.003, F.S. A veterinarian may not use telehealth to prescribe a controlled substance listed in Schedule II of s. 893.03, F.S.
- Authorizes a veterinarian personally acquainted with the caring and keeping of an animal or group of animals on food-producing animal operations on land classified as agricultural pursuant to s. 193.461, F.S., who has recently seen the animal or group of animals or has made a medically appropriate and timely visit to the premises where the animal or group of animals is kept may practice veterinary telehealth for animals on such operations.

Section 2. The bill amends subsection 474.2165(1), F.S., regarding ownership of medical records to state the term "records owner" means any veterinarian who generates a medical record after making an examination of a patient and deletes the requirement that the exam be “a physical exam.”

Section 3. The bill amends section 828.30, F.S., related to the vaccination of dogs, cats, and ferrets for rabies.

Subsection 828.30(1)(a), F.S., is amended to establish that except as provided in paragraph (b), all dogs, cats, and ferrets 4 months of age or older must be vaccinated by a licensed veterinarian or a person authorized under paragraph (b) against rabies with a vaccine that the United States Department of Agriculture licenses for use in those species.

The bill creates paragraph (1)(b) under 828.30, F.S. which:

- Allows an employee, an agent, or contractor of an animal control authority acting under the indirect supervision of a veterinarian to perform rabies vaccinations for dogs, cats, and ferrets in the custody of the animal control authority or a sheriff that will be transferred, rescued, fostered, adopted, or reclaimed by the owner.
- Specifies that the supervising veterinarian assumes responsibility for the veterinary care provided to the animal by any person working under or at his or her direction or under his or her direct or indirect supervision.
- Establishes that the term "indirect supervision" means the supervising veterinarian is required to be available for consultation through telecommunications but is not required to be physically present during such consultation.

Paragraph (1)(c) of 828.30, F.S., is amended to authorize a veterinarian who administers the rabies vaccination or who supervises the administration of the rabies vaccination as provided in paragraph (1)(b) to affix a signature stamp in lieu of an actual signature.

Section 4. Section 474.203, F.S., is amended to conform to provisions of the bill referencing s. 828.30, F.S.

Section 5. Subsection 767.16(2), F.S., is amended to conform to provisions of the bill referencing s. 828.30, F.S.

Section 6. Paragraphs (1)(b) and (2)(b) of section 828.29, F.S., is amended to conform to provisions of the bill referencing s. 828.30, F.S.

Section 7. The bill provides an effective date of July 1, 2024.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y☐ N☒

If yes, explain:	Click or tap here to enter text.
Is the change consistent with the agency's core mission?	Y☐ N☐
Rule(s) impacted (provide references to F.A.C., etc.):	If the bill becomes law, Rules 61G18-18.002, 61G18-17.006, F.A.C., will need to be amended as those provide for the maintenance of medical records and that you must be a licensed veterinarian to provide rabies vaccinations.

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and summary of position:	Unknown
Opponents and summary of position:	Unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y☐ N☒

If yes, provide a description:	Click or tap here to enter text.
Date Due:	Click or tap here to enter text.
Bill Section Number(s):	Click or tap here to enter text.

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y☐ N☒

Board:	Click or tap here to enter text.
Board Purpose:	Click or tap here to enter text.
Who Appoints:	Click or tap here to enter text.
Changes:	Click or tap here to enter text.
Bill Section Number(s):	Click or tap here to enter text.

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y☐ N☒

Revenues:	Click or tap here to enter text.
Expenditures:	Click or tap here to enter text.
Does the legislation increase local taxes or fees? If yes, explain.	Click or tap here to enter text.
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	Click or tap here to enter text.

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y☐ N☒

Revenues:	Click or tap here to enter text.
Expenditures:	Click or tap here to enter text.
Does the legislation contain a State Government appropriation?	Click or tap here to enter text.
If yes, was this appropriated last year?	Click or tap here to enter text.

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y☒ N☐

Revenues:	Click or tap here to enter text.
Expenditures:	The bill would reduce the costs of animal control authorities hiring veterinarians to provide rabies vaccinations to dogs, cats, and ferrets 4 months of age or older. The cost reduction is indeterminate.
Other:	Click or tap here to enter text.

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y☐ N☒

If yes, explain impact.	Click or tap here to enter text.
Bill Section Number:	Click or tap here to enter text.

TECHNOLOGY IMPACT

1. **DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?** Y☐ N☒

If yes, describe the anticipated impact to the agency including any fiscal impact.	

FEDERAL IMPACT

1. **DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?** Y☐ N☒

If yes, describe the anticipated impact including any fiscal impact.	Click or tap here to enter text.

ADDITIONAL COMMENTS

Professions

Lines 32-35 states the term "telehealth" has the same meaning as in s. 456.47(1). This term for human medicine might get amended in the future to reference medical technologies that would not be applicable to veterinary medicine. Therefore, adding it as a definition in 456.471(1), F.S. might have unintended consequences in its applicability, so adding it as a new definition under section 474.202, F.S., will ensure applicability to the veterinary medicine profession.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	Click or tap here to enter text.

G. ROBERT WEEDON, DVM, MPH

February 5, 2024

The Honorable Joe Gruters, Chair
Regulated Industries Committee
404 South Monroe Street
Tallahassee, FL 32399-1100

Delivered by electronic mail to gruters.joe@flsenate.gov

Dear Chair Gruters, Vice Chair Hooper, and Members:

As a licensed Florida veterinarian, I am writing to ask you to support Florida SB 1040, "The Providing Equity in Telehealth Services ('PETS') Act" by Senator Bradley, a bill that will enable licensed Florida veterinarians like me to use telehealth technology effectively to reach more patients. Modeled on Florida's proven telehealth provider healthcare law, The PETS Act will update and clarify statute so that outdated, excessive regulations will no longer block qualified veterinarians from using telemedicine to treat pets when we believe it is appropriate to do so.

I am on a Task Force convened by the United Spay Alliance to identify and address the issue of access to veterinary care as a result of manpower shortages in veterinary practice in the United States. The veterinary industry is facing a critical shortage of professionals in the workforce, and Florida's animal shelters and families are struggling to access veterinary care for pets. Research conducted by a former Dean of the University of Florida College of Veterinary Medicine, James Lloyd, DVM, Ph.D., shows that 75 million pets in the U.S. could be without veterinary care by 2030 if we do not update our approach to providing these services.[1] According to the Veterinary Care Accessibility Project (VCAP), counties across Florida have low access to veterinary care. Based on data from the Centers for Disease Control, U.S. Census Bureau, Esri GIS mapping software, and the American Veterinary Medical Association, VCAP gives Florida a Veterinary Care Accessibility Score of 43 out of 100—on a scale of zero to 100, where zero means access is "nearly inaccessible" and 100 means care is "very accessible"—essentially a dismal, failing grade in access to veterinary care.[2]

As we have seen in the human healthcare field, telemedicine can help bridge gaps in care created by workforce shortages or other barriers to healthcare access.[3] Physicians in all 50 states establish new doctor-patient relationships over telemedicine, including for infants and other nonverbal people, and it makes no sense for Florida regulations to block veterinarians from using telehealth technology to establish new relationships with clients for animal patient care.[4] Telemedicine is an effective, safe means for delivering care, and highly educated, licensed Florida veterinarians can be trusted to assess when an animal needs to have an in-person examination and when to ask the client to bring the animal to a clinic. The rigorous education

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and Board-sanctioned requirements that Florida veterinarians undertake to become licensed in the state prepare them to utilize professional judgement in determining whether the use of telemedicine is appropriate in the care of a particular animal or a particular condition. Veterinary professional associations such as The American Association of Veterinary State Boards, Veterinary Innovation Council, Coalition for the Veterinary Professional Associate, Association of Shelter Veterinarians, and Veterinary Virtual Care Association support enabling veterinarians to establish new veterinarian-client-patient relationships (VCPRs) through veterinary telemedicine at the discretion of the individual, licensed veterinarian.

Modern telemedicine technology in a connected world offers veterinarians the ability to examine an animal in a home environment for many medically appropriate, common situations, such as triage, quality of life assessment, palliative or hospice care, management and monitoring of chronic conditions, behavioral consultations, nutritional consultations, dermatological conditions, parasites such as fleas, ticks, or ear mites, and more.[5] During the COVID-19 pandemic, North American governments relaxed longstanding state and federal rules restricting telemedicine, and according to the Veterinary Virtual Care Association, no U.S. or Canadian jurisdiction reports problems with harm to pets from telemedicine.[6] Ensuring broad access to telemedicine provides more options for professionals who wish to offer these services to more patients and for pet owners eager to obtain greater access to veterinary care.

In an era when the benefits of telemedicine technology are widely recognized and promoted for people, public policy should provide for the broadest, timely access to medically appropriate veterinary telemedicine services for animals. A regulatory patient physical exam requirement—as many interpret current Florida regulations to require as a gateway to veterinary practice—blocks access to veterinary telemedicine for professionals and consumers. While physical veterinary medical examinations are, of course, sometimes necessary, responsible use of telemedicine as an additional, optional veterinary tool can bring essential care to more animals. Expanding access to safe, convenient veterinary telemedicine as SB 1040 does, holds great promise for elevating the veterinary profession, helping Florida pet owners across the geographic and economic spectrum better access veterinary care, enhancing animal welfare, and supporting animal sheltering programs.

This legislation has the potential to benefit Floridians, their pets, and veterinarians licensed in the state. I am grateful to Senator Bradley for filing this important bill and respectfully ask you to endorse these changes to the practice act for the good of all Floridians. Please do not hesitate to contact me should you have any questions about this proposed legislation.

Thanking you in advance, I remain,

Very truly yours,

G. Robert Weedon, DVM, MPH

CC:

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Members:	
SB 1040 Sponsor, The Honorable Jennifer Bradley	Bradley.jennifer@flsenate.gov
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The Honorable Shev Jones	Jones.shevrin@flsenate.gov
The Honorable Rosalind Osgood	Osgood.rosalind@flsenate.gov
Committee Staff Director Booter Imhof	Imhof.booter@flsenate.gov

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[1] "Staffing shortage threatens health of 75 million pets by 2030: Banfield addressed industry-wide shortage at its annual summit." September 16, 2020. https://www.veterinarypracticenews.com/75-million-pets-may-lose-access-to-care-by-2030/Lloyd, James W. "Pet Healthcare in the US: Are there Enough Veterinarians?" Animal Health Economics, LLC. See: https://www.marsveterinary.com/wp-content/uploads/2023/08/Characterizing-the-Need.pdf & https://www.marsveterinary.com/wp-content/uploads/2022/03/Characterizing%20the%20Need%20-%20DVM%20-%20FINAL_2.24.pdf

[2] https://www.accesstovetcare.org/vcas-map Accessed January 26, 2023

[3] Nesbitt, Thomas S., M.D., M.P.H. "The Role of Telehealth in an Evolving Health Care Environment: Workshop Summary." 2012 Nov 20. https://www.ncbi.nlm.nih.gov/books/NBK207141/.

[4] AMA's 2018 "50-state survey: Establishment of a patient-physician relationship via telemedicine," finds that "all states allow a physician to establish a relationship with a new patient over telemedicine." See https://www.ama-assn.org/system/files/2018- 10/ama-chart-telemedicine-patient-physician-relationship.pdf. See also Curfman MD, MBA, FAAP, et al. "Telehealth: Improving Access to and Quality of Pediatric Health Care." Pediatrics Vol. 148. No 3 September 2021. American Academy of Pediatrics. https://pediatrics.aappublications.org/content/pediatrics/early/2021/08/27/peds.2021-053129.full.pdf

[5] Veterinary Virtual Care Association. "Best Practices: Evaluation and Treatment of Patients." June 2020. Accessed online September 10, 2021 at https://vvca.org/wp-content/uploads/2020/08/BP-Evaluation-and-Treatment_min.pdf

[6] Cushing, Mark, J.D. "Incremental Change is a Step Forward: Smart Veterinary Reform Strategies." Veterinary Virtual Care Association 2nd Annual Summit. August 18, 2021