

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 689 Department of Business and Professional Regulation

SPONSOR(S): Government Operations & Technology Appropriations Subcommittee, Business & Professions Subcommittee, Rodriguez, A.

TIED BILLS: **IDEN./SIM. BILLS:** SB 912

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

SUMMARY ANALYSIS

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

Related to tobacco taxing and reporting regulations, the bill:

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

Related to alcohol regulations, the bill:

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

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

Related to condominium association regulations, the bill:

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Department of Business and Professional Regulation

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

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

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

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

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

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

- receipt and processing of license applications;
- collection and auditing of taxes, surcharges, and fees paid by licensees; and
- enforcement of the laws and regulations governing the sale of alcoholic beverages and tobacco products.⁶

¹ s. 20.165, F.S.

² Except the Board of Architecture and Interior Design, and the Florida Board of Professional Engineers. Florida Department of Business and Professional Regulation, *Division of Regulation*, <http://www.myfloridalicense.com/dbpr/reg/index.html> (last visited Dec. 19, 2019).

³ Florida Department of Business and Professional Regulation, *Division of Regulation*, <http://www.myfloridalicense.com/DBPR/division-of-regulation/> (last visited Jan. 8, 2020).

⁴ Department of Business and Professional Regulation, *Division of Florida Condominiums, Timeshares, and Mobile Homes*, <http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/>, (last visited Jan. 8, 2020).

⁵ *Id.*

⁶ Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, <http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/> (last visited Jan. 8, 2020).

Tobacco

Background

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

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

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

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

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

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

ABT collects monthly business records related to cigarettes, which are used to accurately collect and distribute cigarette taxes. Such records must be submitted to ABT by any manufacturer, importer, distributing agent, wholesale dealer, retail dealer, common carrier, or any other person handling, transporting, or possessing cigarettes for sale or distribution in Florida. ABT prescribes the manner in which these records are submitted.¹⁷

ABT also collects monthly returns showing the taxable price of each tobacco product, not including cigarettes or cigars, that is manufactured or brought or caused to be brought into Florida for sale. Such

⁷ S. 561.02, F.S.

⁸ Ss. 210.01(1), 210.25(12), F.S. “Nicotine dispensing device” means any product that employs an electronic, chemical, or mechanical means to produce vapor from a nicotine product. “Nicotine products” do not include tobacco products, certain smoking cessation products, and products with incidental nicotine. S. 877.112(1)(a),(b), F.S.

⁹ S. 569.003, F.S.

¹⁰ Ss. 210.01(21) and 210.15, F.S.

¹¹ Ss. 210.01(6) and 210.15(1), F.S.

¹² Ss. 210.01(14) and 210.15(1), F.S.

¹³ Ss. 210.01(20) and 210.15(1), F.S.

¹⁴ Ss. 210.01(17) and 210.15(1), F.S.

¹⁵ S. 210.65(2), F.S.

¹⁶ Ss. 210.25(5) and 210.40, F.S.

¹⁷ S. 210.09(2), F.S. Some tax forms are electronically filed with ABT, and some require manual transmission. Department of Business and Professional Regulation, *Alcoholic Beverages and Tobacco- Forms & Publications, Licensing Related Forms, Tax-Related Forms*, <http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/forms-and-publications/#1516309637983-6566a2a4-a2f1> (last visited Jan. 10, 2020).

returns must be submitted by every place of business that sells or manufactures such tobacco products in Florida. ABT prescribes the form and content for submitting such returns to ABT. Each return must be accompanied by a remittance for the full tax liability shown.¹⁸

Effect of the Bill

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

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

Alcoholic Beverages

Requirements for Licensees and License Applicants

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

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

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

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

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

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

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

- beverages manufactured or sold within the state and to whom sold;
- beverages imported from beyond the limits of the state and to whom sold; and

¹⁸ S. 210.55(1), F.S.

¹⁹ S. 561.02, F.S.

²⁰ S. 561.17(1), F.S.

²¹ *Id.*

²² *Id.*

²³ Ss. 561.01(11), 565.03(2)(c), F.S.; Email from Conner Mann, Office of Legislative Affairs, DBPR, RE: House Inquiry, (Dec. 19, 2019).

²⁴ S. 561.55(1), F.S.

- beverages exported beyond the limits of the state, to whom sold, the place where sold, and the address of the person to whom sold.

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

Credit for the Sale of Liquor

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

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

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

Permit Carriers

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

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

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

Auditing for Special Licenses

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

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

²⁵ S. 561.55(2), F.S.

²⁶ S. 561.42(3), F.S.

²⁷ S. 561.42(4), F.S.

²⁸ *Id.*

²⁹ S. 561.01(20), F.S.

³⁰ Ch. 2015-52, Laws of Fla.

³¹ *Id.*; S. 561.01, F.S.

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

Effect of the Bill

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

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

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

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

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

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

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

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

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

Pugilistic Exhibitions

Background

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

³² S. 561.20(2)(a)4., F.S.

³³ S. 548.003, F.S.

³⁴ S. 548.003(1), F.S.

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

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

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

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

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

There is a debate as to whether bare knuckle boxing is safer or more dangerous than competitions with gloves. Data on the topic is limited. Gloves were initially introduced to boxing matches in the 18th century as a way to protect the participants' hands, not heads.⁴² Experts opposed to bare knuckle matches argue that gloves help in blocks and other defensive moves, and therefore provide head protection, and that bare knuckle matches generally involve more body shots, which can result in serious internal injuries.⁴³ However, experts in favor of bare knuckle matches argue that the force behind a bare knuckle punch is generally less than a gloved punch, which can be safer for head strikes, and that a bare knuckle match generally involves less total strikes due to hand injuries resulting from no glove protection, which can lead to less injuries overall.⁴⁴

In 2011, the Yavapai Nation in Arizona oversaw a bare knuckle boxing match on an Indian reservation, that is generally believed to be the first sanctioned bare knuckle boxing match in the United States since 1889.⁴⁵ In 2018, Wyoming became the first state to allow bare knuckle boxing matches, and held a championship event.⁴⁶ On June 22, 2019, in Tampa, Florida, the FSBC sanctioned The Bare Knuckle Fighting Championship, where the participants wore gloves that exposed the knuckles.⁴⁷ Currently,

³⁵ A physician must be licensed pursuant to chapter 458 or chapter 459, must maintain a license in good standing, and must demonstrate satisfactory medical training or experience in boxing. S. 548.017, F.S.

³⁶ S. 548.021, F.S.

³⁷ S. 548.043(3), F.S.

³⁸ R. 61K1-3.030(2)(d), F.A.C.

³⁹ R. 61K1-3.030(2)(a), (b), F.A.C.

⁴⁰ R. 61K1-3.031(2)(b), F.A.C.

⁴¹ R. 61K1-3.031(2)(a), F.A.C.

⁴² Bob Moen, *Bare-knuckle boxing from a bygone era looks for a comeback*, AP News,

<https://apnews.com/a0926f603f6b4d83a958cc1d0fa9296e> (last visited Jan. 11, 2020); Nick Wong, *Why Bare-Knuckle Fighting May Be Safer Than Boxing*, Complex Media, Inc., <https://www.complex.com/sports/2015/11/bare-knuckle-boxing> (last visited Jan. 11, 2020).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Michael Woods, *Reviving a bygone, bare-knuckle era*, ESPN (Aug. 5, 2011),

https://www.espn.com/boxing/story/_/id/6835788/bringing-back-bygone-bare-knuckle-era-boxing (last visited Jan. 9, 2020).

⁴⁶ Josh Peter, *Bare-knuckle boxing legally held in United States for first time*, USA Today (Jun. 3, 2018),

<https://www.usatoday.com/story/sports/boxing/2018/06/02/bare-knuckle-boxing-official-return/666535002/> (last visited Jan. 9, 2020).

⁴⁷ Florida Department of Business and Professional Regulation, *Match Results*,

<http://www.myfloridalicense.com/dbpr/pro/sbc/documents/BKFC6MatchResults.pdf> (last visited Jan. 9, 2020); Combat Sports Law, *Let's Talk Florida and Bare Knuckle Boxing*, <https://combatsportslaw.com/2019/05/21/lets-talk-florida-and-bare-knuckle-boxing/> (last visited Jan. 9, 2020).

Wyoming, Mississippi, Florida, Kansas, and several Tribal Nations allow sanctioned bare knuckle boxing events.⁴⁸

Effect of the Bill

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

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

Condominiums

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

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., (the Condominium Act) comprised of units which may be owned by one or more persons along with an undivided right of access to common elements.⁵⁰ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.⁵¹ All unit owners are members of the condominium association, an entity responsible for the operation and maintenance of the common elements owned by the unit owners. The condominium association is overseen by an elected board of directors, which enacts bylaws which govern the administration of the association.

Annual Budget

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

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

Board Directors

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

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

⁴⁸ Combat Sports Law, Documenting Bare Knuckle Boxing Legality, <https://combatsportslaw.com/2019/06/23/documenting-bare-knuckle-boxing-legality/> (last visited Jan. 9, 2020).

⁴⁹ Department of Business and Professional Regulation, *Division of Florida Condominiums, Timeshares, and Mobile Homes*, <http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/>, (last visited Jan. 8, 2020).

⁵⁰ S. 718.103(11), F.S.

⁵¹ S. 718.104(2), F.S.

⁵² S. 718.112(2)(f), F.S.

⁵³ S. 718.112(2)(e), F.S.

⁵⁴ Ss. 718.112(2)(f), & 718.504(21), F.S.

⁵⁵ Ss. 718.103(4), 718.111, 718.112, F.S.

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

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

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

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

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

Condominium Ombudsman

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

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

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

Condominium Complaints Received by FCTMH

⁵⁶ S. 718.112(2)(d)4., F.S.

⁵⁷ Ss. 617.0809, & 718.112(2)(d)9., F.S.

⁵⁸ S. 718.112(2)(a), F.S.

⁵⁹ S. 718.112(2)(d), F.S.

⁶⁰ Ss. 718.112(2)(d), F.S.

⁶¹ S. 718.111(1)(d), F.S.

⁶² See Ch. 718, F.S.; David G. Muller, *Can delinquent owner run for a board*, Naples Daily News, Aug. 17, 2019, <https://www.naplesnews.com/story/money/real-estate/2019/08/17/can-delinquent-owner-run-board/1985170001/> (last visited Jan. 9, 2020); Joe Adams, *Term Limits Continue to Cause Confusion*, Florida Condo & HOA Law Blog, Dec. 17, 2018, <https://www.floridacondoalawblog.com/2018/12/17/term-limits-continue-to-cause-confusion/> (last visited Jan. 9, 2020).

⁶³ See Ch. 718, F.S.; Email from Gabe Peters, , Director of Legislative Affairs, Department of Business & Professional Regulation, Condo Language Clarification (Jan. 10, 2020).

⁶⁴ Ss. 718.5011 & 718.5012, F.S.

⁶⁵ *Id.*

⁶⁶ S. 718.5014, F.S.

FCTMH is charged with ensuring that condominium associations comply with the requirements of the Condominium Act and handling complaints alleging violations of the Condominium Act. FCTMH has complete jurisdiction to investigate complaints and enforce compliance with the Condominium Act for associations that are controlled by a developer, a bulk buyer, or a bulk assignee.⁶⁷ Once a developer has turned control of the condominium to the association, FCTMH only has jurisdiction to investigate complaints related to financial issues, elections, and unit owner access to official records.⁶⁸

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

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

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

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

Effect of the Bill

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

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

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

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

⁶⁷ A bulk assignee is a person who buys more than seven units in a single condominium and receives assignment of any of the developer's rights. A bulk buyer is a person who buys more than seven units in a single condominium but does not receive any of the developer's rights. S. 718.703, F.S.

⁶⁸ Ss. 718.117, & 718.501, F.S.

⁶⁹ S. 718.501(1)(m), F.S.

⁷⁰ S. 455.225(1), F.S.

⁷¹ Florida Department of Business & Professional Regulation, *How to File a Complaint*, <http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/complaints/#1572463379489-2bc8adc0-ec6a> (last visited Jan. 10, 2020); Florida Department of Business & Professional Regulation, *Instructions for Filing a Condominium/Cooperative Complaint*, <http://www.myfloridalicense.com/dbpr/lsc/documents/cccomplaint.pdf> (last visited Jan. 10, 2020).

⁷² Email from Gabe Peters, Director of Legislative Affairs, Department of Business & Professional Regulation, Condo Clarification (Jan. 10, 2020).

⁷³ S. 718.103(1), F.S.

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

B. SECTION DIRECTORY:

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may make it easier for licensees to maintain their licenses due to clarified regulatory schemes and regularized auditing.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

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

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

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