

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 Appropriations

BILL: SB 912

INTRODUCER: Senator Diaz

SUBJECT: Department of Business and Professional Regulation

DATE: March 2, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>IT</u>	Favorable
2.	<u>Toman</u>	<u>Ryon</u>	<u>CA</u>	Favorable
3.	<u>Davis</u>	<u>Kynoch</u>	<u>AP</u>	Pre-meeting

I. Summary:

SB 912 revises provisions related to the licensing and regulation of tobacco products, alcoholic beverages, pugilistic events, condominium associations, and public food and lodging establishments by the Department of Business and Professional Regulation (DBPR).

Related to reporting requirements for tobacco product wholesalers, the bill:

- Requires that reports required to be filed with the Division of Alcoholic Beverages and Tobacco must be filed through the agency's electronic system; and
- Revises the reporting requirements.

Related to procedures for licensing public lodging establishments and public food service establishments licensing, the bill:

- Deletes the requirement for a staggered license renewal schedule; and
- Requires that the full annual license fee be paid at the time of application, instead of the current requirement for payment of a prorated initial license fee.

Related to regulation of pugilistic events, the bill:

- Changes the name of the Florida State Boxing Commission to the Florida Athletic Commission (commission);
- Authorizes the commission to establish by rule the weight of any gloves used in pugilistic matches; and
- Deletes the requirement for all participants in pugilistic matches to wear gloves.

Related to alcohol beverage regulations, the bill:

- Requires applicants for an alcoholic beverage license to submit fingerprints to the DBPR electronically, provide proof of the applicant's right of occupancy for the entire premises for

which the applicant is seeking to license, and maintain a current electronic mail address with the DBPR;

- Requires licensees to submit reports on alcohol sales through the DBPR's electronic system;
- Requires notices related to a vendor's delinquent payment to a distributor be provided by the DBPR through electronic mail; and
- Revises the compliance audit timeframes for special restaurant licensees.

Related to condominium associations, the bill:

- Requires that a proposed annual budget be provided to members of the association and adopted by its board of directors no later than 30 days before the beginning of the fiscal year;
- Defines when a person is delinquent in a payment due to an association;
- Deletes the requirement that the condominium ombudsman keep his or her principal office in Leon County; and
- Authorizes the DBPR to adopt rules for the submission of complaints against condominium associations.

The bill has a significant fiscal impact on state revenues. According to the DBPR, the elimination of the staggered and prorated renewal schedule for food and lodging establishment licensees under the bill is estimated to reduce state revenues by \$1.4 million in Fiscal Year 2020-2021.

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

II. Present Situation:

For ease of reference, the Present Situation for each section of SB 912 is addressed in the Effect of Proposed Changes portion of this bill analysis. Background information about the Department of Business and Professional Regulation (DBPR) is provided below.

Organization of the Department of Business and Professional Regulation

Section 20.165, F.S., establishes the organizational structure of the DBPR, which has 12 divisions:

- 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.

The Florida State Boxing Commission is assigned to the DBPR for administrative and fiscal accountability purposes only.¹ The DBPR also administers the Child Labor Law and Farm Labor Contractor Registration Law.²

Powers and Duties of the DBPR

Chapter 455, F.S., applies to the regulation of professions constituting “any activity, occupation, profession, or vocation regulated by the [DBPR] in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation,”³ as well as the procedural and administrative framework for those divisions and all of the professional boards within the DBPR.⁴

The DBPR’s regulation of professions is to be undertaken “only for the preservation of the health, safety, and welfare of the public under the police powers of the state,”⁵ and regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.⁶

However, “neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention,” or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.⁷

Division of Florida Condominiums, Timeshares, and Mobile Homes

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.⁸ The FCTMH has limited regulatory authority over the following entities and individuals:⁹

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and

¹ Section 548.003(1), F.S.

² See Parts I and III of ch. 450, F.S.

³ See s. 455.01(6), F.S.

⁴ See s. 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by staff counsel of the DBPR. See s. 455.221(1), F.S.

⁵ Section 455.201(2), F.S.

⁶ *Id.*

⁷ Section 455.201(4)(b), F.S.

⁸ 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 Feb. 13, 2020).

⁹ *Id.*

- Homeowners' Associations (jurisdiction is limited to arbitration of election and recall disputes).

Division of Hotels and Restaurants

The Division of Hotels and Restaurants (DHR) licenses, inspects, and regulates public lodging and food service establishments in Florida. The DHR also licenses and regulates elevators, escalators, and other vertical conveyance devices.¹⁰

Division of Alcoholic Beverages and Tobacco

The Division of Alcoholic Beverages and Tobacco (DABT) 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.¹¹

III. Effect of Proposed Changes:

Tobacco Products Regulation and Taxation

Present Situation

The Division of Alcoholic Beverages and Tobacco (DABT) is responsible for the regulation of tobacco products under ch. 210, F.S., which sets out tax requirements for cigarettes and other tobacco products, and ch. 569, F.S., which sets out requirements for the retail sale of tobacco products.¹²

“Cigarettes” are defined in s. 210.01(1), F.S., for the purpose of taxation, 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.”

“Tobacco products” are defined in s. 210.25(11), F.S., in the context of 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.”

¹⁰ Florida Department of Business and Professional Regulation, Division of Hotels and Restaurants, <http://www.myfloridalicense.com/DBPR/hotels-restaurants/> (last visited Feb.12, 2020).

¹¹ Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, <http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/> (last visited Feb. 12, 2020).

¹² Section 561.02, F.S.

Cigars, nicotine products, and nicotine dispensing devices are not included in the above definitions and therefore are not taxed as a cigarette or tobacco product in Florida.¹³

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

- Retail tobacco products dealer;¹⁴
- Cigarette manufacturer;¹⁵
- Cigarette wholesale dealer;¹⁶
- Cigarette distributing agent;¹⁷
- Cigarette importer;¹⁸
- Cigarette exporter;¹⁹
- Cigar wholesale dealer;²⁰ or
- Tobacco wholesale dealer/distributor.²¹

The DABT collects monthly business records related to cigarettes, which are used to accurately collect and distribute cigarette taxes. Such records must be submitted to the DABT 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. The DABT prescribes the manner in which these records are submitted.²²

The DABT also collects monthly returns showing the taxable price of each tobacco product (other than cigarettes or cigars) brought or caused to be brought into Florida for sale, or made, manufactured, or fabricated in this state for sale in this state. Such returns must be submitted by every place of business that sells or manufactures such tobacco products in Florida. The DABT prescribes the form and content for submitting such returns to the DABT. Each return must be accompanied by a remittance for the full tax liability shown.²³

Effect of Proposed Changes

The bill amends ss. 210.09(2) and 210.55(1), F.S., related to monthly reports and records for cigarettes and other tobacco products, to require that all reports filed with the DABT must be made through the DABT's electronic data submission system.

¹³ Sections 210.01(1) and 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. Section 877.112(1)(a) and (b), F.S.

¹⁴ Section 569.003, F.S.

¹⁵ Sections 210.01(21) and 210.15, F.S.

¹⁶ Sections 210.01(6) and 210.15(1), F.S.

¹⁷ Sections 210.01(14) and 210.15(1), F.S.

¹⁸ Sections 210.01(20) and 210.15(1), F.S.

¹⁹ Sections 210.01(17) and 210.15(1), F.S.

²⁰ Section 210.65(2), F.S.

²¹ Sections 210.25(5) and 210.40, F.S.

²² Section 210.09(2), F.S. Some tax forms are electronically filed with the DABT, 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 Feb. 12, 2020).

²³ Sections 210.55(1), F.S.

The bill also amends s. 210.55(1), F.S., to require a tobacco wholesaler (the taxpayer) to submit a full and complete report with the DABT showing the tobacco products (other than cigars or cigarettes) brought or caused to be brought into Florida for sale, or made, manufactured, or fabricated in this state for sale in this state. The bill deletes the requirement that the report show the taxable price of each tobacco product.

Division of Hotels and Restaurants

Present Situation

The Division of Hotels and Restaurants (DHR) licenses, inspects, and regulates public lodging establishments and public food service establishments in Florida.²⁴

The term “public lodging establishment” includes:²⁵

- “Transient public lodging establishments,” which means “any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days, or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests;” and
- “Nontransient public lodging establishments,” which means “any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or one calendar month.”

“Public food service establishments” means “any building, vehicle, place, or structure, or any room or division thereof, where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption,” with certain exceptions.²⁶

Each public lodging establishment and public food service establishment must obtain a license from the DHR. Licenses are renewed annually, and the DHR must adopt a rule establishing a staggered schedule for license renewals.²⁷ For public lodging establishments, the DHR must adopt, by rule, a schedule of fees to be paid based on the number of rental units in the public lodging establishment, and based on seating capacity and services offered for public food service establishments. Such fees may not exceed \$1,000.²⁸

License fees generally range from \$91 for a temporary food vendor to \$370 for a hotel with more than 500 rental units.²⁹

²⁴ Section 509.032, F.S.

²⁵ Section 509.013(4), F.S.

²⁶ Section 509.013(5), F.S.

²⁷ Section 509.241(1), F.S.

²⁸ Section 509.251(1) and (2), F.S.

²⁹ See Fla. Admin. Code R. 61C-1.008 and Department of Business and Professional Regulation, *Hotel and Restaurants – Hotel-Motel Guide*, <http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/hotels-and-restaurants-hotel-motel-guide/> (last visited Feb. 12, 2020); Department of Business and Professional Regulation, *Hotel and Restaurants – Food*

The fee schedule for a public lodging establishment and public food service establishment license must require an applicant for an initial license to pay the full license fee if the application is made during the annual renewal period or more than six months before the next such renewal period, and one-half of the fee if the application is made six months or less before the next renewal period.³⁰

Effect of Proposed Changes

The bill amends s. 509.241(1), F.S., to delete the requirement for a staggered license renewal schedule for public lodging establishments and public food service establishments. The bill authorizes the DHR to adopt rules to establish procedures for license issuance and renewals.

The bill amends s. 509.251(1) and (2), F.S., to delete the requirement for payment of a prorated initial license fee based on when an application is submitted. Under the bill, the full annual license fees must be paid at the time of the initial license application.

State Boxing Commission

Present Situation:

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing,³¹ and mixed martial arts³² by the Florida State Boxing Commission (commission), which is assigned to the Department of Business and Professional Regulation (DBPR) for administrative and fiscal purposes.³³

The commission has exclusive jurisdiction over every boxing, kickboxing, and mixed martial arts match held in Florida³⁴ which involves a professional.³⁵ Professional matches held in Florida must meet the requirements set forth in ch. 548, F.S., and the rules adopted by the commission.³⁶ Chapter 548, F.S., does not apply to certain professional or amateur “martial arts,” such as karate, aikido, judo, and kung fu; the term “martial arts” is distinct from and does not include “mixed martial arts.”³⁷

However, as to amateur matches, the commission’s jurisdiction is limited to the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning

Service Fees, <http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/hotels-and-restaurants-hotel-motel-guide/> (last visited Feb. 12, 2020).

³⁰ Sections 509.251(1) and (2), F.S., relating to the fee schedule for public lodging establishments and public food service establishments, respectively, and Fla. Admin. Code R. 61C-1.008.

³¹ The term “kickboxing” means the unarmed combat sport of fighting by striking with the fists, hands, feet, legs, or any combination, but does not include ground fighting techniques. *See* s. 548.002(12), F.S.

³² The term “mixed martial arts” means the unarmed combat sport involving the use of a combination of techniques, including, but not limited to, grappling, kicking, striking, and using techniques from martial arts disciplines, including, but not limited to, boxing, kickboxing, Muay Thai, jujitsu, and wrestling. *See* s. 548.002(16), F.S.

³³ *See* s. 548.003(1), F.S.

³⁴ *See* s. 548.006(1), F.S.

³⁵ The term “professional” means a person who has “received or competed for a purse or other article of a value greater than \$50, either for the expenses of training or for participating in a match.” *See* s. 548.002(19), F.S.

³⁶ *See* s. 548.006(4), F.S.

³⁷ *See* s. 548.007(6), F.S., and *see supra* note 32 for the definition of “mixed martial arts.”

organizations for amateur boxing, kickboxing, and mixed martial arts matches held in Florida.³⁸ Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.³⁹ During Fiscal Year 2018-2019, there were 59 sanctioned professional events and 137 amateur events.⁴⁰

Under current law, certain persons providing certain services for a match involving a professional competing in a boxing, kickboxing, or mixed martial arts match must be licensed by the commission before directly or indirectly performing those services. Licensing is mandated for a participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician, matchmaker, or promoter.⁴¹

The commission must establish by rule appropriate weight of gloves to be used in each boxing match. All participants in boxing matches must wear gloves weighing not less than eight ounces each, and participants in mixed martial arts matches must wear gloves weighing between four to eight ounces each. Participants must also wear any protective devices that the commission deems necessary.⁴²

Effect of Proposed Changes

The bill amends s. 458.003, F.S., to change the name of the commission to the Florida Athletic Commission.

The bill amends s. 548.043(3), F.S., to authorize the commission to establish by rule the need for gloves, if any, in each pugilistic match. The bill also authorizes the commission to establish by rule the weight of any gloves used in pugilistic matches, and deletes the requirement that the gloves weigh between four to eight ounces each. The bill also deletes the requirement for all participants in pugilistic matches to wear gloves.

The bill amends ss. 455.219, 548.002, 548.05, 548.071, and 548.077, F.S., to conform references to the name of the commission.

Division of Alcoholic Beverages and Tobacco

Present Situation

The DABT 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.⁴³

³⁸ See s. 548.006(3), F.S.

³⁹ Section 548.002(2), F.S.

⁴⁰ See DBPR, *Florida State Boxing Commission Annual Report, Fiscal Year 2018-2019*, at p. 2, available at: http://www.myfloridalicense.com/dbpr/os/documents/Boxing18_19.pdf (last visited Feb. 12, 2020).

⁴¹ The term “participant” means a professional competing in a boxing, kickboxing, or mixed martial arts match. See s. 548.002, F.S., for the definitions of “participant,” “manager,” “second,” “judge,” “physician,” “matchmaker,” and “promoter.” The terms “trainer,” “timekeeper,” “referee,” and “announcer” are not defined in ch. 548, F.S.

⁴² Section 548.043(3), F.S.

⁴³ Section 561.02, F.S.

License Application Process

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 the DABT. 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 the DABT.⁴⁴

Before any application is approved, the DABT may require an applicant, and any person or persons interested directly or indirectly with the applicant in the business for which the license is being sought, to file a set of fingerprints with the DABT on regular United States Department of Justice forms.⁴⁵

All applications for alcoholic beverage licenses for consumption on the premises must be accompanied by a certificate from the DHR, 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 where the business is to be conducted meets all of the sanitary requirements of the state.⁴⁶

The application for an alcoholic beverage license must include a sketch of the licensed premises over which the applicant must have some dominion and control.⁴⁷ Current law does not require an applicant for an alcoholic beverage license to submit proof of the applicant's right of occupancy for the entire premises sought to be licensed.

Current law does not require an alcoholic beverage licensee or an applicant for a license to provide and maintain an electronic mail address for communications with the DABT.

Recordkeeping and Reporting Requirements

Each manufacturer, distributor, broker, sales agent, importer, and exporter must keep a complete and accurate record and make reports to the DABT showing the amount of alcoholic beverages:⁴⁸

- Manufactured or sold within the state and to whom sold;
- Imported from beyond the limits of the state and to whom sold; and
- 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 the DABT by the 10th day of each month for the previous calendar month. The report must be made out in triplicate with two copies sent to the DABT and a third copy to be retained for the licensee's record. Reports must be made on forms prepared and furnished by the DABT.⁴⁹

⁴⁴ Section 561.17(1), F.S.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Section 561.01(11), F.S., defining the term "licensed premises, and s. 565.03(2)(c), F.S., dealing with craft distilleries.

⁴⁸ Section 561.55(1), F.S.

⁴⁹ Section 561.55(2), F.S.

Credit for the Sale of Liquor

A retail vendor must make a timely payment to a distributor of alcoholic beverages within 10 days after the calendar week in which the alcoholic beverages were purchased. When a vendor does not make a timely payment, the distributor who made the sale must, within three days, notify the DABT in writing that payment has not been made.⁵⁰

The DABT must then give notice to the vendor that it has received a notice of payment delinquency from a distributor. The vendor has five days after receipt of the notice to show cause why further sales to the vendor should not be prohibited. The vendor may demand a hearing before the DABT. The demand for a hearing must be delivered to the DABT in person or by mail within those five days.⁵¹

If a vendor does not demand a hearing, the DABT must declare in writing to the vendor and to all manufacturers and distributors in Florida that all further sales to such vendor are prohibited until the DABT certifies in writing that such vendor has fully paid for all liquors previously purchased.⁵²

Permit Carriers

Section 561.57(1), F.S., permits an alcoholic beverage vendor to make deliveries away from its place of business for sales made at the licensed place of business. Deliveries made by a manufacturer, distributor, or a vendor away from its place of business may only be made in vehicles owned or leased by the licensee. By acceptance of an alcoholic beverage license and the use of vehicles owned by or leased by the vendor, the vendor agrees the vehicle is subject to be inspected and searched without a search warrant by employees of the division or law enforcement officers to ascertain compliance with all provisions of the alcoholic beverage laws.⁵³

The term “permit carrier” is defined as a licensee authorized to make deliveries as provided in s. 561.57, F.S.⁵⁴ A permit is not required for licensees making a delivery of alcoholic beverages under this section.

In 2015, the Legislature amended s. 561.57, F.S., to delete a requirement for a permit for each vehicle used to deliver alcoholic beverages from a distributor’s place of business to the vendor’s licensed premises or to an off-premises storage permitted by the DABT. The 2015 amendment to s. 561.57, F.S., also removed a requirement for vendors to possess an invoice or sales ticket during the transportation of alcoholic beverages.⁵⁵

⁵⁰ Section 561.42(3), F.S.

⁵¹ Section 561.42(4), F.S.

⁵² *Id.*

⁵³ Section 561.57(2), F.S.

⁵⁴ Section 561.01(20), F.S.

⁵⁵ Chapter 2015-52, Laws of Fla.

Special Restaurant 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 to allow the sale of beer, wine, and distilled spirits without a quota license and subject to conditions. 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. The DABT must perform an audit to confirm compliance with the food and nonalcoholic beverage sales percentage requirements during the first 60-day operating period and each 12-month operating period thereafter.⁵⁶

If a special restaurant licensee fails to satisfy the percentage requirements for the sale of food and nonalcoholic beverage, the license must be revoked or a pending license application must be denied. 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 or denial of a license application.⁵⁷

Effect of Proposed Changes

The bill deletes the definition for the term “permit carrier” in s. 561.01(20), F.S. The bill also corrects cross-references in s. 561.20(2)(a), F.S., affected by the deletion of the definition of the term “permit carrier.”

The bill amends the alcoholic beverage license application process in s. 561.17(1), F.S., to require applicants to file fingerprints electronically through an approved electronic fingerprinting vendor, or to use a form prescribed by the Florida Department of Law Enforcement. The bill deletes the requirement that the fingerprints be submitted on regular United States Department of Justice forms.

The bill amends s. 561.17(2), F.S., to require an applicant for any alcoholic beverage license to provide proof of the applicant’s right of occupancy for the entire premises sought to be licensed.

The bill creates s. 561.17(5), F.S., to require any person or entity 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 DABT to the licensee or permittee. Under the bill, licensees and permittees are responsible for maintaining accurate contact information with the DABT. The bill amends s. 561.20(2)(a)4., F.S., to revise the auditing timeframes for special restaurant licensees. Under the bill, the DABT must perform the initial compliance audit within the first 120 days of operation, instead of within the first 60 days.

⁵⁶ Section 561.20(2)(a)4., F.S.

⁵⁷ Section 561.20(2)(a)4., F.S.

In addition, the bill revises the frequency of subsequent audits. Under the bill, the frequency of compliance audits is determined by the percentage of the licensee's gross revenue from the sale of food and nonalcoholic beverages, as established by the licensee's most recent audit. The bill provides the following audit levels:

- 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 two years;
- Level 3 licensees, with 76 to 90 percent, will be audited every three years; and
- Level 4 licensees, with 91 to 100 percent, will be audited every four years.

The bill amends s. 561.42(4), F.S., to require the DABT to give a retail vendor notice of a payment delinquency via electronic mail. The bill deletes the requirement that the delinquency notice must be a written notice. The bill also allows a vendor to send a demand for a hearing to the DABT by electronic mail.

The bill amends s. 561.55(2), F.S., to delete the requirement that reports by a manufacturer, distributor, broker, sales agent, and importer must be made out in triplicate. Under the bill, the reports must be submitted to the DABT through the DABT's electronic data submission system.

Condominiums

Present Situation

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.⁵⁸ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.⁵⁹ 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.

Division of Florida Condominiums, Timeshares, and Mobile Homes

The Division of Florida Condominiums, Timeshares, and Mobile Homes (FCTMH) within the DBPR administers the provisions of chs. 718 and 719, F.S., for condominium and cooperative associations, respectively. The FCTMH may investigate complaints and enforce compliance with chs. 718 and 719, F.S., with respect to associations that are still under developer control.⁶⁰ The FCTMH also has the authority to investigate complaints against developers involving improper turnover or failure to transfer control to the association.⁶¹ After control of the condominium is transferred from the developer to the unit owners, the FCTMH's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records.⁶² For cooperatives, the FCTMH's jurisdiction extends to the development,

⁵⁸ Section 718.103(11), F.S.

⁵⁹ Section 718.104(2), F.S.

⁶⁰ Sections 718.501(1) and 719.501(1), F.S.

⁶¹ *Id.*

⁶² Section 718.501(1), F.S.

construction, sale, lease, ownership, operation, and management of residential cooperative units.⁶³

As part of the FCTMH's authority to investigate complaints, the FCTMH may subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties against developers and associations.⁶⁴

If the FCTMH has reasonable cause to believe that a violation of any provision of ch. 718, F.S., ch. 719, F.S., or a related rule has occurred, the FCTMH 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. The FCTMH may conduct an investigation and issue an order to cease and desist from unlawful practices and to take affirmative action to carry out the purpose of the applicable chapter. In addition, the FCTMH is authorized to petition a court to appoint a receiver or conservator to implement a court order, or to enforce an injunction or temporary restraining order. The FCTMH may also impose civil penalties.⁶⁵

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 association. The annual budget must include operating expenses for the coming year and reserve accounts for capital expenditures and deferred maintenance.⁶⁶

An association must hold a meeting to adopt a 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.⁶⁷ The proposed budget must be detailed, and, at a minimum, include the condominium's estimated revenues and expenses.⁶⁸ Current law does not define the timing for adoption of the budget.

Board of Directors – Eligibility based on Payment of Monetary Obligations

A condominium association is overseen by an elected board of directors (termed a Board of Administration). The board is responsible for managing the affairs of the association, has a fiduciary relationship with the unit owners, has the responsibility to act with the highest degree of good faith, and must place the interests of the unit owners above the personal interests of the directors.⁶⁹

To become a board member, a person may be:

- Elected to the board by the members of the association;⁷⁰ or

⁶³ Section 719.501(1), F.S.

⁶⁴ Sections 718.501(1) and 719.501(1), F.S.

⁶⁵ *Id.*

⁶⁶ Section 718.112(2)(f), F.S.

⁶⁷ Section 718.112(2)(e)1., F.S.

⁶⁸ Sections 718.112(2)(f) and 718.504(21), F.S.

⁶⁹ Sections 718.103(4), 718.111, and 718.112, F.S.

⁷⁰ Section 718.112(2)(d)4., F.S.

- 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.⁷¹

A condominium association's bylaws establish the eligibility requirements to serve on the association's board of directors.⁷² However, current law also establishes minimum qualification to serve on an association's board of directors.⁷³ To serve as a director, a person may not:⁷⁴

- 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 or by the FCTMH; or
- Have been convicted of a felony, under certain circumstances.⁷⁵

Chapter 718, F.S., does not define the terms "monetary obligation" or "delinquent." According to the DBPR, defining the term "delinquent" would assist in the FCTMH's investigation of cases in which the unit owner alleges they were left off of an election ballot because of a delinquent payment to the association.⁷⁶ The DBPR also maintains that it is the practice of a "controlling board of directors to issue fines to unit owners in an effort to limit the pool of eligible candidates who can compete in an election."⁷⁷

Condominium Ombudsman

The Office of the Ombudsman within the FCTMH 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 FCTMH, and the Legislature on any matter or subject within the jurisdiction of the FCTMH. In addition, the ombudsman may make recommendations to the FCTMH for changes in rules and procedures for the filing, investigation, and resolution of complaints.⁷⁸

The ombudsman also acts as a liaison among the FCTMH, unit owners, and condominium associations and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.⁷⁹

The ombudsman is required to maintain his or her principal office in Leon County.⁸⁰

⁷¹ Sections 617.0809 and 718.112(2)(d)9., F.S.

⁷² Section 718.112(2)(a), F.S.

⁷³ Section 718.112(2)(d), F.S.

⁷⁴ Section 718.112(2)(d), F.S.

⁷⁵ Section 718.111(1)(d), F.S.

⁷⁶ See Department of Business and Professional Regulation, *SB 912 Bill Analysis*, p. 5 (Dec. 9, 2019) (on file with Senate Committee on Innovation, Industry, and Technology).

⁷⁷ *Id.*

⁷⁸ Sections 718.5011 and 718.5012, F.S.

⁷⁹ *Id.*

⁸⁰ Section 718.5014, F.S.

Effect of Proposed Changes

The bill amends s. 718.112(2)(d)2.F.S., to replace the term “monetary obligation” with the term “assessment.” 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 (governing documents). If no due date is specifically identified in the governing documents, the due date is the first day of the monthly or quarterly assessment period.

The bill amends s. 718.112(2)(f), F.S., to require a condominium association’s annual budget to be proposed to unit owners and adopted by the board of directors no later than 30 days before the beginning of the fiscal year. Under the bill, an association must also satisfy the 14-day notice requirement in s. 718.112(2)(e)1., F.S., for any meeting at which a proposed annual budget of an association will be considered by the board or unit owners.

The bill amends s. 718.501, F.S., to authorize the FCTMH to adopt rules regarding the submission of a complaint against a condominium association.

The bill amends s. 718.5014, F.S., to delete the requirement that the condominium ombudsman maintain his or her principal office in Leon County.

Effective Date

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

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:

According to the Department of Business and Professional Regulation (DBPR), the bill may reduce license fees paid by food and lodging licensees during their first 12 months of licensure. The Division of Hotels and Restaurants (DHR) estimates licensees will save approximately \$1.4 million in Fiscal Year 2020-2021 by the elimination of the staggered and prorated renewal schedule which would provide new licensees with a full year of licensure.⁸¹

C. Government Sector Impact:

According to the DBPR, “tax revenue may be maximized by the required electronic submission of tax reports” to the Division of Alcoholic Beverages and Tobacco.⁸²

For the DHR, the DBPR projects that the bill will reduce the division’s revenue by approximately 3.9 percent (approximately \$1.4 million) for Fiscal Year 2020-2021.⁸³

The DBPR indicates that the bill will require modifications to the department’s regulatory data system and the Electronic Data Submission system. The DBPR indicates that these modifications can be implemented using existing resources.⁸⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the Florida Department of Law Enforcement (FDLE), to facilitate state and natural criminal history record checks, the FDLE recommends modifying the proposed language on lines 329-332 to read:

An applicant must submit a full set of fingerprints to the department or to a vendor, entity, or agency authorized by s. 943.053(13), F.S. The department, vendor, entity, or agency shall forward the fingerprints to the Department of Law Enforcement for state processing and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing.

⁸¹ See Department of Business and Professional Regulation, *SB 912 Bill Analysis*, (Dec. 9, 2019) (on file with Senate Committee on Innovation, Industry, and Technology).

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

Fees for the state and federal fingerprint processing shall be borne by the applicant. The state cost for fingerprint processing shall be as provided in s. 943.053(3)(e), F.S., for records provided to persons or entities other than those specified as exceptions therein.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 210.09, 210.55, 509.241, 509.251, 548.003, 548.043, 561.01, 561.17, 561.20, 561.42, 561.55, 718.112, 718.501, 718.5014, 455.219, 548.002, 548.05, 548.071, and 548.077.

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.