

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 1517 Department of Business and Professional Regulation

**SPONSOR(S):** Commerce Committee, State Administration & Technology Appropriations Subcommittee, Regulatory Reform Subcommittee, Duggan

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1966

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	14 Y, 0 N, As CS	Wright	Anstead
2) State Administration & Technology Appropriations Subcommittee	14 Y, 0 N, As CS	Helpling	Topp
3) Commerce Committee	17 Y, 0 N, As CS	Wright	Hamon

### SUMMARY ANALYSIS

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

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

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

Related to drugs, devices, and cosmetics, the bill:

- exempts certain cosmetics manufacturers from permit requirements,
- provides a temporary permit process to use during a change of ownership, and
- gives authority to DBPR to issue citations for certain violations.

Related to alcohol regulations, the bill:

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

Related to pugilistic events regulations, the bill:

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

Related to condominium association regulations, the bill:

- requires the board to adopt the annual budget at least 14 days prior to the start of their fiscal year,
- provides that a person may not serve on a board if they are delinquent on an assessment payment,
- removes the requirement that the Ombudsman keep his or her principal office in Leon County, and
- allows DBPR to adopt rules on the submission of complaints against condominium associations.

Related to cooperative association regulations, the bill requires the board to adopt the annual budget at least 14 days prior to the start of their fiscal year.

The bill has a negative fiscal impact on state government. The loss of revenue over three fiscal years would be an estimated \$374,541, of which \$39,324 would be a reduction in transfer to general revenue. See Fiscal Impact & Economic Impact Statement.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Department of Business and Professional Regulation**

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

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

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.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> FCTMH has limited regulatory authority over the following business entities and individuals:<sup>5</sup>

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

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

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;

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<sup>1</sup> s. 20.165, F.S.

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

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

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

<sup>5</sup> *Id.*

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

- 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.<sup>7</sup>

## **Tobacco**

### *Background*

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

“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.<sup>9</sup>

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,<sup>10</sup>
- cigarette manufacturer,<sup>11</sup>
- cigarette wholesale dealer,<sup>12</sup>
- cigarette distributing agent,<sup>13</sup>
- cigarette importer,<sup>14</sup>
- cigarette exporter,<sup>15</sup> or
- cigar wholesale dealer,<sup>16</sup> or
- tobacco wholesale dealer/distributor.<sup>17</sup>

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,

<sup>7</sup> Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, <http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/> (last visited Mar. 19, 2021).

<sup>8</sup> S. 561.02, F.S.

<sup>9</sup> 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.

<sup>10</sup> S. 569.003, F.S.

<sup>11</sup> Ss. 210.01(21) and 210.15, F.S.

<sup>12</sup> Ss. 210.01(6) and 210.15(1), F.S.

<sup>13</sup> Ss. 210.01(14) and 210.15(1), F.S.

<sup>14</sup> Ss. 210.01(20) and 210.15(1), F.S.

<sup>15</sup> Ss. 210.01(17) and 210.15(1), F.S.

<sup>16</sup> S. 210.65(2), F.S.

<sup>17</sup> Ss. 210.25(5) and 210.40, F.S.

transporting, or possessing cigarettes for sale or distribution in Florida. ABT prescribes the manner in which these records are submitted.<sup>18</sup>

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

### *Effect of the Bill*

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

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

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

## **Alcoholic Beverages**

### *Requirements for Licensees and License Applicants – Current Situation*

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

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.<sup>21</sup>

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.<sup>22</sup>

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.<sup>23</sup>

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.<sup>24</sup>

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

<sup>19</sup> S. 210.55(1), F.S.

<sup>20</sup> S. 561.02, F.S.

<sup>21</sup> S. 561.17(1), F.S.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> 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).

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:<sup>25</sup>

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

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

#### *Requirements for Licensees and License Applicants – Effect of the Bill*

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

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

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

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

#### *Cancellation of Quota Beverage Licenses – Current Situation*

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

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

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

#### *Cancellation of Quota Beverage Licenses – Effect of the Bill*

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

#### *Credit for the Sale of Liquor – Current Situation*

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<sup>25</sup> S. 561.55(1), F.S.

<sup>26</sup> S. 561.55(2), F.S.

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.<sup>27</sup>

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.<sup>28</sup>

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.<sup>29</sup>

#### *Credit for the Sale of Liquor – Effect of the Bill*

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

#### *Permit Carriers – Current Situation*

“Permit carrier” is defined as “a licensee authorized to make deliveries as provided in s. 561.57, F.S.”<sup>30</sup>

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.<sup>31</sup>

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.<sup>32</sup>

#### *Permit Carriers – Effect of the Bill*

The bill removes the obsolete definition for “permit carrier.”

#### *Auditing for Special Licenses – Current Situation*

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

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

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<sup>27</sup> S. 561.42(3), F.S.

<sup>28</sup> S. 561.42(4), F.S.

<sup>29</sup> *Id.*

<sup>30</sup> S. 561.01(20), F.S.

<sup>31</sup> Ch. 2015-52, Laws of Fla.

<sup>32</sup> *Id.*; S. 561.01, F.S.

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.<sup>33</sup>

### *Auditing for Special Licenses – Effect of the Bill*

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

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

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

### *Adulterating Liquors with Grains of Paradise – Current Situation*

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

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

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

### *Adulterating Liquors with Grains of Paradise – Effect of the Bill*

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

## **Contractors**

### *Background*

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<sup>33</sup> S. 561.20(2)(a)4., F.S.

<sup>34</sup> Merriam-Webster Dictionary, *Grains of Paradise*, <https://www.merriam-webster.com/dictionary/grains%20of%20paradise> (last visited Mar. 19, 2021).

<sup>35</sup> WebMD, *Grains of Paradise*, <https://www.webmd.com/vitamins/ai/ingredientmono-670/grains-of-paradise> (last visited Mar. 19, 2021); SPICEography, *Grains of Paradise: An African Spice with a European History*, <https://www.spiceography.com/grains-of-paradise/> (last visited Mar. 19, 2021).

<sup>36</sup> 21 C.F.R. § 182.10 (2020).

<sup>37</sup> *Marrache v. Bacardi U.S.A., Inc.*, No. 19-23856-Civ-Scola, 2020 WL 434928, at \*3 (S.D. Florida Jan. 1, 2020).

<sup>38</sup> *Id.* at \*2.

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

“Certified contractors” are contractors who are licensed by the CILB in a statutory license category and are allowed to practice in any jurisdiction in the state.<sup>41</sup> Applicants for a construction contractor license must meet the following criteria:<sup>42</sup>

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

The CILB licenses the following statutory types of contractors:<sup>44</sup>

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

“Registered contractors” are individuals that have taken and passed a local competency examination and can practice the specific category of contracting for which they are approved, only in the local jurisdiction for which the license is issued.<sup>45</sup> Locally registered contractors that are required to hold a contracting license to practice their profession in accordance with state law must register with DBPR after obtaining a local license.<sup>46</sup> Local governments may approve or deny applications for licensure as a registered contractor, review disciplinary cases, and conduct informal hearings relating to discipline of registered contractors licensed in their jurisdiction.<sup>47</sup>

### *Construction Contractor Grandfathering Provision – Current Situation*

Section 489.118, F.S., created a pathway that allowed registered local construction contractors who met certain criteria to have their local registration converted into a certified statewide license by the

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<sup>39</sup> S. 489.107, F.S.

<sup>40</sup> *Id.*

<sup>41</sup> S. 489.105, F.S.

<sup>42</sup> Ss. 489.111(2)(c)1.-3., 489.113, F.S.

<sup>43</sup> S. 489.115(5)(a)-(b), F.S.

<sup>44</sup> S. 489.105(a)-(q), F.S.; R. 61G4-15.015-040, F.A.C.

<sup>45</sup> S. 489.103, F.S.

<sup>46</sup> Ss. 489.105, & 489.117(4), F.S.

<sup>47</sup> Ss. 489.117, & 489.131 F.S.



CILB.<sup>48</sup> The provision required applicants to apply by November 1, 2015, and is thus no longer available for use by local registered contractors. This provision is commonly referred to as the “grandfathering provision.”

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

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

#### *Construction Contractor Grandfathering Provision – Effect of the Bill*

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

#### *Construction and Electrical Contractor Licensing Fees – Current Situation*

The Electrical Contractors’ Licensing Board (ECLB) within DBPR is responsible for licensing and regulating electrical contractors and alarm system contractors described in part II of ch. 489, F.S.<sup>50</sup> An electrical contractor engages in business as a contractor or performs electrical or alarm work for compensation.<sup>51</sup>

The CILB and ECLB must establish by rule reasonable fees to be paid by construction and electrical contractors for applications, certification and renewal, registration and renewal, and recordmaking and recordkeeping.<sup>52</sup>

In addition to such fees, all construction and electrical contractors must pay a fee of \$4 to DBPR at the time of application or renewal to fund projects relating to the building construction industry or continuing education programs offered to persons engaged in the building construction industry in Florida.<sup>53</sup>

The CILB and ECLB must advise DBPR on the most needed areas of research or continuing education based on:<sup>54</sup>

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

DBPR must ensure the distribution of related research reports and the availability of continuing education programs is made to all related segments of the construction industry. DBPR must report to CILB and ECLB in October of each year, summarizing the allocation of the funds by institution and summarizing the new projects funded and the status of previously funded projects.<sup>55</sup>

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<sup>48</sup> S. 489.118, F.S.

<sup>49</sup> *Id.*

<sup>50</sup> S. 489.507, F.S.

<sup>51</sup> S. 489.505(9), F.S.

<sup>52</sup> Ss. 489.109(1) & 489.509(1), F.S.

<sup>53</sup> Ss. 489.109(3) & 489.509(3), F.S.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

## *Construction and Electrical Contractor Licensing Fees - Effect of the Bill*

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

The bill makes a conforming change.

### **Drugs, Devices, and Cosmetics**

#### *Background*

The Division of Drugs, Devices, and Cosmetics (DDC) under DBPR protects the health, safety, and welfare of Floridians from adulterated, contaminated, and misbranded drugs, drug ingredients, and cosmetics by enforcing Part I of ch. 499, F.S., the Florida Drug and Cosmetic Act (FDCA).<sup>56</sup> The Act conforms to United States Food and Drug Administration (FDA) drug laws and regulations and authorizes DBPR to issue permits to Florida drug manufacturers and wholesale distributors and register drugs manufactured, packaged, repackaged, labeled, or relabeled in Florida.<sup>57</sup>

Florida has 18 distinct permits based on the type of entity and intended activity, and includes permits for entities within the state, out of state, or even outside of the United States.<sup>58</sup> DDC has broad authority to inspect and discipline permittees for violations of state or federal laws and regulations, which can include seizure and condemnation of adulterated or misbranded drugs or suspension or revocation of a permit.<sup>59</sup>

The types of permits issued by DDC are:<sup>60</sup>

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

#### *Cosmetic Manufacturer Permits – Current Situation*

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<sup>56</sup> Florida Department of Business and Professional Regulation, *Division of Drugs, Devices, and Cosmetics*, available at <http://www.myfloridalicense.com/DBPR/drugs-devices-and-cosmetics/> (last visited Mar. 19, 2021).

<sup>57</sup> S. 499.01, F.S.

<sup>58</sup> A permit is required for a prescription drug manufacturer; a prescription drug repackager; a nonresident prescription drug manufacturer; a prescription drug wholesale distributor; an out-of-state prescription drug wholesale distributor; a retail pharmacy drug wholesale distributor; a restricted prescription drug distributor; a complimentary drug distributor; a freight forwarder; a veterinary prescription drug retail establishment; a veterinary prescription drug wholesale distributor; a limited prescription drug veterinary wholesale distributor; an over-the-counter drug manufacturer; a device manufacturer; a cosmetic manufacturer; a third party logistics provider; or a health care clinic establishment. S. 499.01(1), F.S.

<sup>59</sup> Ss. 499.051, 499.062, 499.065, 499.066, 499.0661, and 499.067, F.S.

<sup>60</sup> S. 499.01(1), F.S.

The FDCA defines “cosmetic” as an article, with the exception of soap, that is:<sup>61</sup>

- Intended to be rubbed, poured, sprinkled, or sprayed on; introduced into; or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; or
- Intended for use as a component of any such article.

A cosmetic manufacturer permit is required for any person that manufactures or repackages cosmetics in Florida. A person that only labels or changes the labeling of a cosmetic, but does not open the container sealed by the manufacturer of the product, is exempt from obtaining a permit.<sup>62</sup>

Each cosmetics manufacturer must maintain business records that include:<sup>63</sup>

- The name and address of the seller or transferor of the product,
- The address of the location the product was shipped from,
- The date of the sale or distribution of the product,
- The name and quantity of the product involved, and
- The name and address of the person who purchased the product.

Cosmetics manufacturers must establish, maintain, or have the capability to create a current inventory of the cosmetics at an establishment where manufacturing activities are undertaken, and be able to produce such inventory for inspection by DBPR within 2 business days.<sup>64</sup>

#### *Cosmetic Manufacturer Permits – Effect of the Bill*

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

The bill provides that an exempt cosmetics manufacturer may only:

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

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

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

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

#### *Change of Ownership and Location – Current Situation*

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<sup>61</sup> S. 499.003(12), F.S.

<sup>62</sup> S. 499.01(2)(p), F.S.

<sup>63</sup> S. 499.0121(6)(c), F.S.

<sup>64</sup> S. 499.0121(6)(d), F.S.

A permit issued by the department is nontransferable. Each permit is valid only for the person or governmental unit to which it is issued and is not subject to sale, assignment, or other transfer, voluntarily or involuntarily. A permit is not valid for any establishment other than the establishment for which it was originally issued.<sup>65</sup> A permittee must notify DDC before making a change of address and pay the change of location fee.<sup>66</sup>

An application for a new permit is required when a majority of the ownership or controlling interest of a permitted establishment is transferred or assigned, or when a lessee agrees to undertake or provide services to the extent that legal liability for operation of the establishment will rest with the lessee. The application for the new permit must be made before the date of the sale, transfer, assignment, or lease.<sup>67</sup>

#### *Change of Ownership and Location – Effect of the Bill*

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

#### *Enforcement Actions – Current Situation*

Generally, if any person engaged in any activity covered by the FCDA has been found to have violated a provision, rule, or order under the FDCA, DDC may:<sup>68</sup>

- Obtain an injunction;
- Impose an administrative fine, not to exceed \$5,000 per violation per day;
- Issue an emergency order immediately suspending or revoking a permit;
- Issue an emergency order to immediately remove from commerce and public access any drug, device, or cosmetic;
- Issue a cease and desist order;<sup>69</sup> and
- Deny, suspend, or revoke a permit, certification, or registration.<sup>70</sup>

DDC does not currently have explicit authority to issue citations.

#### *Enforcement Actions – Effect of the Bill*

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

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<sup>65</sup> S. 499.012(6), F.S.

<sup>66</sup> S. 499.012(6)(a), F.S.

<sup>67</sup> S. 499.012(6)(b), F.S.

<sup>68</sup> S. 499.066, F.S.

<sup>69</sup> S. 499.0661(1), F.S.

<sup>70</sup> S. 499.067, F.S.

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

## **Pugilistic Exhibitions**

### *Background*

Chapter 548, F.S., governs the Florida State Boxing Commission (FSBC). The function of the FSBC is to license and regulate pugilistic events and matches, including professional boxing, kickboxing, and mixed martial arts. The FSBC ensures that all matches are conducted in accordance with provisions of state laws and rules. The FSBC designates employees to attend the matches, appoints match officials, and ensures the matches are held in a safe and fair manner.<sup>71</sup> Members of the FSBC are appointed by the Governor, and there are five members.<sup>72</sup>

A match participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician,<sup>73</sup> 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:<sup>74</sup>

- 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.<sup>75</sup>

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.<sup>76</sup> 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.<sup>77</sup>

For mixed martial arts participants, the FSBC requires gloves to be whole, clean, and in sanitary condition.<sup>78</sup> 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.<sup>79</sup>

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<sup>71</sup> S. 548.003, F.S.

<sup>72</sup> S. 548.003(1), F.S.

<sup>73</sup> 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.

<sup>74</sup> S. 548.021, F.S.

<sup>75</sup> S. 548.043(3), F.S.

<sup>76</sup> R. 61K1-3.030(2)(d), F.A.C.

<sup>77</sup> R. 61K1-3.030(2)(a), (b), F.A.C.

<sup>78</sup> R. 61K1-3.031(2)(b), F.A.C.

<sup>79</sup> R. 61K1-3.031(2)(a), F.A.C.

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 18<sup>th</sup> century as a way to protect the participants' hands, not heads.<sup>80</sup> 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.<sup>81</sup> 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.<sup>82</sup>

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.<sup>83</sup> In 2018, Wyoming became the first state to allow bare knuckle boxing matches, and held a championship event.<sup>84</sup> Florida has since hosted events where the participants wore gloves that exposed the knuckles.<sup>85</sup> Currently, Wyoming, Mississippi, Florida, Kansas, and several Tribal Nations allow sanctioned bare knuckle boxing events.<sup>86</sup>

### *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.

## **Condominium and Cooperative Associations**

### *Background*

FCTMH, a division within DBPR, provides education, complaint resolution, mediation and arbitration, and developer disclosures for condominium associations.<sup>87</sup>

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.<sup>88</sup> A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.<sup>89</sup> All unit owners are members of the condominium association, an entity responsible for the operation and maintenance

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<sup>80</sup> Bob Moen, *Bare-knuckle boxing from a bygone era looks for a comeback*, AP News, <https://apnews.com/a0926f603f6b4d83a958cc1d0fa9296e> (last visited Mar. 19, 2021); Nick Wong, *Why Bare-Knuckle Fighting May Be Safer Than Boxing*, Complex Media, Inc., <https://www.complex.com/sports/2015/11/bare-knuckle-boxing> (last visited Mar. 19, 2021).

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> 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](https://www.espn.com/boxing/story/_/id/6835788/bringing-back-bygone-bare-knuckle-era-boxing) (last visited Mar. 19, 2021).

<sup>84</sup> Josh Peter, *Bare-knuckle boxing legally held in United States for first time*, USA Today (Jun. 3, 2018), <https://www.usatoday.com/story/sports/boxing/2018/06/02/bare-knuckle-boxing-official-return/666535002/> (last visited Mar. 19, 2021).

<sup>85</sup> Florida Department of Business and Professional Regulation, *Match Results*, <http://www.myfloridalicense.com/dbpr/pro/sbc/documents/BKFC6MatchResults.pdf> (last visited Mar. 19, 2021); Combat Sports Law, *Let's Talk Florida and Bare Knuckle Boxing*, <https://combatsportslaw.com/2019/05/21/lets-talk-florida-and-bare-knuckle-boxing/> (last visited Mar. 19, 2021); Eric Kowal, *BKFC blankets Tampa, Florida with public events ahead of KnuckleMania*, <https://www.bareknuckle.tv/post/bkfc-blankets-tampa-florida-with-public-events-ahead-of-knucklemania> (last visited Mar. 20, 2021).

<sup>86</sup> Combat Sports Law, *Documenting Bare Knuckle Boxing Legality*, <https://combatsportslaw.com/2019/06/23/documenting-bare-knuckle-boxing-legality/> (last visited Mar. 19, 2021).

<sup>87</sup> Department of Business and Professional Regulation, *Division of Florida Condominiums, Timeshares, and Mobile Homes*, <http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/>, (last visited Mar. 19, 2021).

<sup>88</sup> S. 718.103(11), F.S.

<sup>89</sup> S. 718.104(2), F.S.

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.

A cooperative is a form of property ownership created pursuant to ch. 719, F.S. The real property is owned by the cooperative association, while individual units are leased to the residents who own shares in the cooperative association.<sup>90</sup> Cooperatives operate similarly to condominiums and the laws regulating cooperatives are in many instances nearly identical to those regulating condominiums.

#### *Condominium and Cooperative Annual Budget – Current Situation*

Every condominium or cooperative association must have an annual financial budget that sets forth the proposed expenditure of funds for the maintenance, management, and operation of the condominium or cooperative. The annual budget must include operating expenses for the coming year and reserve accounts for capital expenditures and deferred maintenance.<sup>91</sup>

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.<sup>92</sup> The proposed budget must be detailed, and, at a minimum, include the condominium's or cooperative's estimated expenses, the estimated expenses of each unit owner, and a condominium's proposed budget must include a statement that the proposed budget is a good faith estimate and represents an approximation of the future expenses.<sup>93</sup>

#### *Annual Budget – Effect of the Bill*

The bill provides that in addition to the current requirements for adopting a proposed annual budget, a condominium association board or a cooperative association board must adopt the annual budget at least 14 days prior to the start of the association's fiscal year. In the event that the board fails to timely adopt the annual budget a second time:

- It is deemed a minor violation of the Condominium Act or the Cooperative Act, and
- The association's prior year's budget will continue in effect until a new budget is adopted.

#### *Condominium Board Directors – Current Situation*

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.<sup>94</sup>

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

- A person may be elected to the board by the members of the association,<sup>95</sup> 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.<sup>96</sup>

A condominium association's bylaws will establish the eligibility requirements to serve on the association's board of directors.<sup>97</sup> However, current law also establishes minimum requirements in

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<sup>90</sup> S. 719.103(26), F.S.

<sup>91</sup> Ss. 718.112(2)(f) and 719.106(1)(j), F.S.

<sup>92</sup> Ss. 718.112(2)(e) and 719.106(1)(c), F.S., F.S.

<sup>93</sup> Ss. 718.112(2)(f), 718.504(21), and 719.106(1)(c), F.S.

<sup>94</sup> Ss. 718.103(4), 718.111, 718.112, F.S.

<sup>95</sup> S. 718.112(2)(d)4., F.S.

<sup>96</sup> Ss. 617.0809, & 718.112(2)(d)9., F.S.

<sup>97</sup> S. 718.112(2)(a), F.S.

order to serve on an association's board of directors.<sup>98</sup> In order to serve as a board director a person may not:<sup>99</sup>

- 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.<sup>100</sup>

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.<sup>101</sup>

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.<sup>102</sup>

#### *Condominium Board Directors – Effect of the Bill*

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.<sup>103</sup>

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.

#### *Condominium Ombudsman – Current Situation*

Within FCTMH is housed the Office of the Condominium Ombudsman (Ombudsman). The Ombudsman is an attorney appointed by the Governor and is 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.<sup>104</sup>

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.<sup>105</sup>

The Ombudsman is required to keep his or her principal office in Leon County.<sup>106</sup>

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<sup>98</sup> S. 718.112(2)(d), F.S.

<sup>99</sup> Ss. 718.112(2)(d), F.S.

<sup>100</sup> S. 718.111(1)(d), F.S.

<sup>101</sup> See Ch. 718, F.S.; David G. Muller, *Can delinquent owner run for a board*, Naples Daily News, Aug. 17, 2019, <https://www.naplesnews.com/story/money/real-estate/2019/08/17/can-delinquent-owner-run-board/1985170001/> (last visited Mar. 19, 2021); Joe Adams, *Term Limits Continue to Cause Confusion*, Florida Condo & HOA Law Blog, Dec. 17, 2018, <https://www.floridacondoahoalawblog.com/2018/12/17/term-limits-continue-to-cause-confusion/> (last visited Mar. 19, 2021).

<sup>102</sup> See Ch. 718, F.S.; Email from Gabe Peters, , Director of Legislative Affairs, Department of Business & Professional Regulation, Condo Language Clarification (Jan. 10, 2020).

<sup>103</sup> S. 718.103(1), F.S.

<sup>104</sup> Ss. 718.5011 & 718.5012, F.S.

<sup>105</sup> *Id.*

<sup>106</sup> S. 718.5014, F.S.



## *Condominium Ombudsman – Effect of the Bill*

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

## *Condominium Complaints Received by FCTMH – Current Situation*

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.<sup>107</sup> 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.<sup>108</sup>

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.<sup>109</sup>

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.<sup>110</sup> However, no such rules or requirements exists for filing complaints against condominiums with FCTMH.

FCTMH provides a complaint form for condominium complaints, including a checklist of documents to provide with the complaint, on its website. According to FCTMH, submitting a complaint on the FCTMH's complaint form "may expedite the processing of your complaint."<sup>111</sup>

According to DBPR, establishing rules and requirements for filing complaints against condominium associations would allow FCTMH to be more efficient in resolving complaints.<sup>112</sup>

## *Condominium Complaints Received by FCTMH – Effect of the Bill*

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

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

## 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. 210.60, F.S., revising reporting requirements for tobacco products sales
- Section 4** Amends s. 489.109, F.S., removing a contractor fee.

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<sup>107</sup> 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.

<sup>108</sup> Ss. 718.117, & 718.501, F.S.

<sup>109</sup> S. 718.501(1)(m), F.S.

<sup>110</sup> S. 455.225(1), F.S.

<sup>111</sup> Florida Department of Business & Professional Regulation, *How to File a Complaint*, <http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/complaints/#1572463379489-2bc8adc0-ec6a> (last visited Mar. 19, 2021); Florida Department of Business & Professional Regulation, *Instructions for Filing a Condominium/Cooperative Complaint*, <http://www.myfloridalicense.com/dbpr/lsc/documents/cccomplaint.pdf> (last visited Mar. 19, 2021).

<sup>112</sup> Email from Gabe Peters, Director of Legislative Affairs, Department of Business & Professional Regulation, Condo Clarification (Jan. 10, 2020).

<b>Section 5</b>	Amends s. 489.118, F.S., removing a deadline for a contractor licensing provision.
<b>Section 6</b>	Amends s. 489.509, F.S., removing a contractor fee.
<b>Section 7</b>	Amends s. 499.01, F.S., providing a permit exception for certain small manufacturers.
<b>Section 8</b>	Amends s. 499.012, F.S., providing requirements for a temporary permit.
<b>Section 9</b>	Amends s. 499.066, F.S., giving authority to issue citations.
<b>Section 10</b>	Amends s. 548.003, F.S., renaming the Florida State Boxing Commission as the Florida Athletic Commission.
<b>Section 11</b>	Amends s. 548.043, F.S., providing glove requirements for pugilistic events.
<b>Section 12</b>	Amends s. 553.841, F.S., conforming a provision.
<b>Section 13</b>	Amends s. 561.01, F.S., deleting the definition for “permit carrier.”
<b>Section 14</b>	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.
<b>Section 15</b>	Amends s. 561.19, F.S., revising when there is availability of quota licenses.
<b>Section 16</b>	Amends s. 561.20, F.S., revising audit requirements for special restaurant licenses.
<b>Section 17</b>	Amends s. 561.42, F.S., allowing certain notices to be given by electronic mail.
<b>Section 18</b>	Amends s. 561.55, F.S., revising requirements for reports related to alcohol licenses.
<b>Section 19</b>	Amends s. 562.455, F.S., revising qualities of adulterating liquors.
<b>Section 20</b>	Amends s. 718.112, F.S., providing eligibility requirements for members of a condominium board of directors and requirements of an annual budget.
<b>Section 21</b>	Amends s. 718.501, F.S., allowing FCTMH to adopt rules prescribing the form of condominium complaints.
<b>Section 22</b>	Amends s. 718.5014, F.S., revising primary office location requirements for the office of the condominium ombudsman.
<b>Section 23</b>	Amends s. 719.106, F.S., providing requirements of an annual budget.
<b>Section 24</b>	Amends s. 455.219, F.S., conforming a provision
<b>Section 25</b>	Amends s. 548.002, F.S., conforming a provision.
<b>Section 26</b>	Amends s. 548.05, F.S., conforming a provision.
<b>Section 27</b>	Amends s. 548.071, F.S., conforming a provision.
<b>Section 28</b>	Amends s. 548.077, F.S., conforming a provision.
<b>Section 29</b>	Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

DBPR expects the following fiscal impact on revenues:<sup>113</sup>

**Division of Alcoholic Beverages and Tobacco:** Tax revenue may be maximized by the required electronic submission of tax reports.

**Division of Professions:** The bill removes a \$4.00 fee that is currently required for CILB applications and renewals which, based on historical data, may result in a revenue reduction of \$129,622 in FY 2021-22, \$232,297 in FY 2022-23, and \$129,622 in FY 2023-24.

The \$4.00 fee collected in the Professional Regulations Trust fund is subject to the GR service charge. The removal of the fee would reduce transfers to GR by \$10,370 in FY 2021-22, \$18,584 in FY 2022-23, and \$10,370 in FY 2023-24. The total loss of revenue over the three fiscal years would be an estimated \$374,541, of which \$39,324 would be a reduction in transfers to GR. The net loss to the Professional Regulations Trust Fund would be an estimated \$335,217 over the next three fiscal years.

#### 2. Expenditures:

None.

<sup>113</sup> Department of Business and Professional Regulation, Agency Analysis of 2021 SB 1966, p. 9 (Mar. 12, 2021).

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may make it easier for licensees to maintain their licenses due to clarified regulatory schemes and routine auditing. The bill may allow more statewide contractors and cosmetics manufacturers to practice in the state based on easing licensing requirements.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

DBPR will need to create and update rules related to regulations on tobacco; alcohol; condominium associations; drugs, devices, and cosmetics; and pugilistic events. DBPR has adequate existing rulemaking authority or new rule making authority in the bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 24, 2021, the Regulatory Reform Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute removes a \$4 additional application and renewal fee for electrical contractors to fund projects and continuing education programs related to areas of need in the building construction industry.

On April 7, 2021, the State Administration and Technology Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute removes modifications to public lodging establishment and public food service establishment licensing, eliminating the fiscal impact to the Hotels and Restaurants Trust Fund.

On April 14, 2021, the Commerce Committee adopted three amendments and reported the bill favorably as a committee substitute. The committee substitute:

- Clarifies that denying entry or the ability to inspect the premises by DBPR of an unpermitted cosmetics manufacturer is a violation of the FDCA and is grounds for disciplinary action; and

- Provides that a condominium or a cooperative association board must adopt the annual budget at least 14 days prior to the start of the association's fiscal year, and failure to do so a second time:
  - Is deemed a minor violation of the Condominium Act, and
  - The association's prior year's budget will continue in effect until a new budget is adopted.

This analysis is drafted to the committee substitute as passed by the Commerce Committee.