

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/SB 1966

INTRODUCER: Appropriations Committee; Regulated Industries Committee; and Senator Diaz and others

SUBJECT: Department of Business and Professional Regulation

DATE: April 18, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Sadberry</u>	<u>AP</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1966 revises provisions relating to the licensing and regulation of cosmetics manufacturers, construction contractors, tobacco products, alcoholic beverages, pugilistic events, condominium associations, and public food and lodging establishments by the Department of Business and Professional Regulation (DBPR).

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

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

Relating to construction contracting, the bill allows registered contractors to apply for a statewide certified contractors' license without having to take the state licensure examination.

Relating to construction and electrical contractors, the bill repeals the \$4 fee all certificate holders and registrants must pay to the DBPR at the time of application or renewal, to fund projects relating to the building construction industry or continuing education programs offered to building construction industry workers in Florida.

Relating to cosmetic manufacturers, the bill:

- Creates an exemption from the cosmetic manufacturing permit requirements for a person who manufactures limited cosmetic products, such as soaps, and has annual gross sales of \$25,000 or less;
- Authorizes a temporary permit for 90 calendar days to allow continued operation of a cosmetics establishment when there is a change of ownership, controlling interest, or location; and
- Authorizes the DBPR to issue remedial, nondisciplinary citations for violations that do not pose a substantial threat to the public health, safety, or welfare.

Relating 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 the weight of any gloves used in pugilistic matches by rule; and
- Deletes the requirement for all participants in pugilistic matches to wear gloves.

Relating to alcoholic 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 they are seeking to license, and maintain a current electronic mailing address with the DBPR;
- Requires licensees to submit alcohol sales reports 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;
- Revises the compliance audit timeframes for special restaurant licensees; and
- Removes "grains of paradise" from the list of prohibited ingredients in liquor under the crime of "adulterating liquor."

Relating to condominium and cooperative associations, the bill:

- Requires a proposed annual budget to be provided to members of the association and adopted by its board of directors no later than 14 days before the beginning of the fiscal year;
- Provides the board's failure to timely adopt the annual budget a second time is a minor violation and the prior year's budget will continue in effect until a new budget is adopted.

Relating to condominium associations, the bill:

- Defines the circumstances 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 submitting complaints against condominium associations.

The bill has a negative fiscal impact on state revenues. According to the DBPR, state government revenues deposited in the Professional Regulation Trust Fund will be reduced by \$162,266 in Fiscal Year 2021-2022 and \$281,937 in Fiscal Year 2022-2023 resulting from the elimination of the \$4 fee for construction licensure applications and renewals. As a result, revenues transferred to the General Revenue Fund as the general revenue service charge will be reduced by \$35,536 over the next two fiscal years.

The bill takes effect July 1, 2021.

## II. Present Situation:

For ease of reference, the Present Situation for each section of SB 1966 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 DBPR

Section 20.165, F.S., establishes the organizational structure of the DBPR, which has the following 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.
- Technology.

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

### 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.”<sup>3</sup> The chapter also provides the procedural and administrative framework for those divisions and the professional boards within the DBPR.<sup>4</sup>

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.”<sup>5</sup> Regulation is required when:

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

<sup>2</sup> See parts I and III of ch. 450, F.S.

<sup>3</sup> Section 455.01(6), F.S.

<sup>4</sup> 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.

<sup>5</sup> Section 455.201(2), F.S.

- 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.<sup>6</sup>

However, “neither the [DBPR] 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 desiring to engage in a profession or occupation from finding employment.<sup>7</sup>

### **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.<sup>8</sup> The FCTMH has limited regulatory authority over the following entities and individuals:<sup>9</sup>

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks;
- 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).

### **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.<sup>10</sup>

### **Division of Alcoholic Beverages and Tobacco**

The Division of Alcoholic Beverages and Tobacco regulates the manufacturing, 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.<sup>11</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> Section 455.201(4)(b), F.S.

<sup>8</sup> Department of Business and Professional Regulation (DBPR), *Division of Florida Condominiums, Timeshares, and Mobile Homes*, <http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/> (last visited Apr. 8, 2021).

<sup>9</sup> *Id.*

<sup>10</sup> DBPR, *Division of Hotels and Restaurants*, <http://www.myfloridalicense.com/DBPR/hotels-restaurants/> (last visited Apr. 8, 2021).

<sup>11</sup> DBPR, *Division of Alcoholic Beverages and Tobacco*, <http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/> (last visited Apr. 8, 2021).

### 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.<sup>12</sup>

“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(12), 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.

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.<sup>13</sup>

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.<sup>14</sup>
- Cigarette manufacturer.<sup>15</sup>
- Cigarette wholesale dealer.<sup>16</sup>
- Cigarette distributing agent.<sup>17</sup>
- Cigarette importer.<sup>18</sup>

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<sup>12</sup> Section 561.02, F.S.

<sup>13</sup> 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. Sections 877.112(1)(a) and (b), F.S.

<sup>14</sup> Section 569.003, F.S.

<sup>15</sup> Sections 210.01(21) and 210.15, F.S.

<sup>16</sup> Sections 210.01(6) and 210.15(1), F.S.

<sup>17</sup> Sections 210.01(14) and 210.15(1), F.S.

<sup>18</sup> Sections 210.01(20) and 210.15(1), F.S.

- Cigarette exporter.<sup>19</sup>
- Cigar wholesale dealer.<sup>20</sup>
- Tobacco wholesale dealer/distributor.<sup>21</sup>

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.<sup>22</sup>

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.<sup>23</sup>

### ***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. Under the bill, manufacturers, importers, distributing agents, wholesale dealers, agents, and retail dealers may keep records in an electronic or paper format.

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 replaces the term "return" with the term "report." It requires the tax report to be submitted to the DABT electronically, and permits any records that are required to be kept to be in an electronic or paper format.

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<sup>19</sup> Sections 210.01(17) and 210.15(1), F.S.

<sup>20</sup> The term "cigar wholesale dealer" is not defined or referenced in ch. 210, F.S. However, the DABT issues a permit for "cigar wholesale dealer." See DBPR, *Permits for Cigarettes and Other Tobacco Products*, page 20, available at [www.myfloridalicense.com/dbpr/abt/documents/ABTLicenses.pdf](http://www.myfloridalicense.com/dbpr/abt/documents/ABTLicenses.pdf) (last visited Apr. 8, 2021).

<sup>21</sup> Sections 210.25(5) and 210.40, F.S.

<sup>22</sup> Section 210.09(2), F.S. Some tax forms are electronically filed with the DABT, and some require manual transmission. DBPR, *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 Apr. 8, 2021).

<sup>23</sup> Section 210.55(1), F.S.

## Construction Industry Licensing Board

### *Present Situation*

#### Construction Contractor Divisions

The Construction Industry Licensing Board (CILB) within the Department of Business and Professional Regulation (DBPR) is responsible for licensing and regulating the construction industry in this state under part I of ch. 489, F.S.<sup>24</sup> The CILB is divided into two divisions with separate jurisdictions:

- Division I comprises the general contractor, building contractor, and residential contractor members of the CILB. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors.
- Division II comprises the roofing contractor, sheet metal contractor, air-conditioning contractor, mechanical contractor, pool contractor, plumbing contractor, and underground utility and excavation contractor members of the CILB. Division II has jurisdiction over the regulation of roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors.<sup>25</sup>

Under current law, a “certified contractor” has met competency requirements for a particular trade category and holds a geographically unlimited certificate of competency from the DBPR, which allows the contractor to contract in any jurisdiction in the state without being required to fulfill the competency requirements of other jurisdictions.<sup>26</sup>

The term “registered contractor” means a contractor who has registered with the DBPR as part of meeting competency requirements for a trade category in a particular jurisdiction, which limits the contractor to contracting only in the jurisdiction for which the registration is issued.<sup>27</sup>

Section 489.118, F.S., permits registered contractors to obtain statewide certification without taking the state licensure examination if they meet certain criteria. To qualify for this examination exception, a registered contractor must have applied to the DBPR before November 1, 2015. Because the “grandfathering” date of the November 1, 2015, has passed, registered contractors must sit for and satisfactorily pass the state certified license examination to receive a state certified contractor’s license.

#### License Fees

As provided in s. 489.109, F.S., an applicant for certification as a contractor is required to pay an initial application fee not to exceed \$150, and, if an examination cost is included in the application fee, the combined amount may not exceed \$350. For an applicant for registration as a contractor, the initial application fee may not exceed \$100, and the initial registration fee and the

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<sup>24</sup> See s. 489.107, F.S.

<sup>25</sup> Section 489.105(3), F.S.

<sup>26</sup> Sections 489.105(8) and 489.113(1), F.S.

<sup>27</sup> Sections 489.105(10) and 489.117(1)(b), F.S.

renewal fee may not exceed \$200.<sup>28</sup> The initial application fee and the renewal fee is \$50 for an application to certify or register a business.<sup>29</sup>

Fees must be adequate to ensure the continued operation of the CILB, and must be based on the DBPR's estimates of revenue required to implement part I of ch. 489, F.S., and statutory provisions regulating the construction industry.<sup>30</sup>

All certificate holders and registrants must pay a fee of \$4 to the DBPR at the time of application or renewal, to fund projects relating to the building construction industry or continuing education programs offered to building construction industry workers in Florida, to be selected by the Florida Building Commission.<sup>31</sup> The Florida Building Commission's advice is not binding on the DBPR, but the DBPR must ensure the distribution of research reports and the availability of continuing education programs to all segments of the building construction industry.<sup>32</sup>

Electrical contractors licensed by the Electrical Contractors' Licensing Board (ECLB) are also required to pay a fee of \$4 to the DBPR at the time of application or renewal, to fund projects relating to the building construction industry or continuing education programs offered to building construction industry workers in Florida, to be selected by the Florida Building Commission.<sup>33</sup>

Each biennium, upon receipt of funds from the CILB and the ECLB collected under ss. 489.109(3) and 489.509(3), F.S., the DBPR must determine the amount of funds available for the Florida Building Code Compliance and Mitigation Program.<sup>34</sup>

### ***Effect of Proposed Changes***

The bill amends ss. 489.109(3) and 489.509(3), F.S., to repeal the \$4 fee all construction contracting and electrical contracting, respectively, certificate holders and registrants must pay to the DBPR at the time of application or renewal to fund projects relating to the building construction industry or continuing education programs offered to building construction industry workers in Florida.

The bill repeals s. 553.841(5), F.S., to delete the requirement that the CILB and ECLB each biennium determine the amount of funds available for the Florida Building Code Compliance and Mitigation Program from the \$4 fee collected under ss. 489.109(3) and 489.509(3), F.S.

The bill amends s. 489.118, F. S., to delete the November 1, 2015, application deadline for registered contractors to apply for a statewide certified contractors' license without having to take the state licensure examination.

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<sup>28</sup> Section 489.109, F.S. Any applicant who seeks certification as a contractor under part I of ch. 489, F.S., by taking a practical examination must pay as an examination fee the actual cost incurred by the DBPR in developing, preparing, administering, scoring, score reporting, and evaluating the examination, if the examination is conducted by the DBPR.

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

<sup>30</sup> *Id.*

<sup>31</sup> Section 489.109(3), F.S.

<sup>32</sup> *Id.*

<sup>33</sup> Section 489.509(3), F.S.

<sup>34</sup> Section 553.841, F.S.



## Cosmetic Manufacturers

### *Present Situation*

The Division of Drugs, Devices and Cosmetics within the DBPR administers the “Florida Drug and Cosmetic Act,” in part I of ch. 499, F.S., which is intended to safeguard the health, safety, and welfare of the citizens of the state of Florida from injury due to the use of adulterated, contaminated, misbranded drugs, drug ingredients and cosmetics.

Section 499.01(2)(p), F.S., requires a person manufacturing or repackaging cosmetics in the state to obtain a cosmetic manufacturing permit. Current law provides an exemption from the permit requirement if a person only labels or changes the labeling of a cosmetic, but does not open the container sealed by the manufacturer of the product.

According to the DBPR, there are numerous home businesses without the cosmetic manufacturing permit who manufacture “pour soaps,” creams, and lotions.<sup>35</sup> These cosmetic products are typically offered for sale at flea markets, online, and at open markets.

A cosmetic manufacturer’s permit holder must comply with current good manufacturing practices that apply to all cosmetic manufacturers whether the cosmetic manufacturer is manufacturing a “pour soap,” bath wash, eye liner, lip gloss, or liquid foundation. According to the DBPR, many initial applicants for a cosmetic manufacturing permit cannot meet the criteria for the permit and are currently manufacturing cosmetics as unlicensed cosmetic manufacturers.<sup>36</sup>

A cosmetics manufacturer permit is nontransferable, and is valid only for the person or governmental unit for which the permit is issued.<sup>37</sup> A permit is also only valid for the establishment, i.e., the physical location,<sup>38</sup> for which the permit is issued.<sup>39</sup> A cosmetics manufacturer must submit an application for a new permit when a change of ownership, change of controlling interest, or a change of location occurs. According to the DBPR, cosmetics manufacturers are often unable to present the documentation to establish the change of ownership or controlling interest when submitting the application for the new permit because the legal change of ownership, controlling interest, or location has not occurred.<sup>40</sup> Consequently, there may be a period between such change and an application during which the permit holder is not legally compliant. For example, when an establishment changes location a lapse may occur because the business rarely is able to shut down one location and move equipment to the new location simultaneously with the issuance of the new permit thus requiring the business to maintain two permitted locations to continue to operate.<sup>41</sup>

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<sup>35</sup> See Department of Business and Professional Regulation, *CS/SB 1966 Bill Analysis*, p. 4, (Apr. 1, 2021) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

<sup>36</sup> *Id.*

<sup>37</sup> Section 499.012(6), F.S.

<sup>38</sup> See s. 499.003(18), F.S.

<sup>39</sup> Section 499.012(6), F.S.

<sup>40</sup> See DBPR, *CS/SB 1966 Bill Analysis*, p. 4, (Apr. 1, 2021) (on file with Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

<sup>41</sup> *Id.*

If a person violates any criminal provision in ch. 499, F.S., the DBPR may provide relevant information to the appropriate state attorney or prosecuting agency having jurisdiction. The DBPR may seek a cease and desist order in circuit court to permanently or temporarily enjoin any person violating any provision of ch. 499, F.S., or any rule adopted under that chapter. The DBPR may also impose an administrative fine not to exceed \$5,000 per day, for a violation relating to ch. 499, F.S., or any rule adopted under that chapter.

The DBPR or the Florida Department of Health (DOH) may issue such citations as a remedial or nondisciplinary tool for resolution of violations for which there is no substantial threat to the public health, safety, or welfare, but for which the licensee or permit holder has been provided prior opportunity to correct.<sup>42</sup> Current law does not authorize the DBPR to issue a remedial, nondisciplinary citation for violations of ch. 499, F.S., or any rule adopted thereunder.

### *Effect of Proposed Changes*

#### Permit Exemption

The bill amends s. 499.01(2)(p), F.S., to exempt from the requirement for a cosmetic manufacturing permit a person who manufactures cosmetics with annual gross sales of \$25,000 or less. Under the bill, an exempt cosmetics manufacturer may only:

- Sell prepackaged cosmetics affixed with a label containing information required by the United States Food and Drug Administration.
- Manufacture and sell cosmetics that are soaps, not otherwise exempt from the definition of cosmetics, lotions, moisturizers, and creams.
- Sell cosmetic products that are not adulterated or misbranded, in accordance with 21 U.S.C. ss. 361 and 362.

Each unit of cosmetic product must contain, in a contrasting color, a statement in the form provided by the bill, indicating that the product is “made by a manufacturer exempt from Florida’s cosmetic manufacturing permit requirements.”

The bill authorizes the DBPR to investigate complaints. It provides that any officer or employee of the DBPR may enter and inspect the premises of an exempt cosmetic manufacturer to determine compliance with ch. 499, F.S., and rules of the DBPR. A refusal to permit entry to the premises or to permit an inspection is a violation of the prohibition in s. 499.005(6), F.S.,<sup>43</sup> which prohibits refusing to allow an authorized officer or employee of the DBPR to enter the premises to conduct an inspection. Under the bill, refusal to allow an inspection is grounds for disciplinary action pursuant to s. 499.066, F.S., which provides remedies and penalties for violations of ch. 499, F.S., including administrative fines of up to \$5,000 per violation.

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<sup>42</sup> See ss. 455.224 and 456.077, F.S., authorizing the DBPR and the Department of Health (DOH) to issue citations, respectively.

<sup>43</sup> Section 499.005, F.S., specifies several prohibited acts, but does not specify any disciplinary actions. Disciplinary actions for violations of ch. 499, F.S., are specified in s. 499.066, F.S., relating to penalties and remedies, s. 499.0661, F.S., relating to cease and desist orders, and s. 499.067, F.S., relating to denial, suspension, or revocation of permit, certification, or registration.

The bill clarifies that s. 499.01(2)(p), F.S., does not exempt any person from any state or federal tax law, rule, regulation, or county or municipal law or ordinance that applies to cosmetic manufacturing.

#### Temporary Permits

The bill creates s. 499.012(6)(d), F.S., to authorize a 90 day temporary permit for issuance upon an application for change of ownership, controlling interest, or location. The existing permit expires when the DBPR authorizes the temporary permit. The temporary permit would allow the new owner to continue to operate for 90 days until the new owner's permit is issued, and would allow an establishment to continue to operate at the old location without renewing the permit if necessary until the new location is inspected and appropriately permitted, thus avoiding two separate permitting fees.

#### Citations

The bill creates s. 499.066(8), F.S., to authorize the DBPR to adopt rules to issue remedial, nondisciplinary citations to a permit holder alleged to have committed a violation. The bill specifies the information that must be included in the citation, including a brief factual statement, the sections of law allegedly violated, and the monetary assessment or other remedial measures imposed. The person receiving the citation will have 30 days after the citation is served to contest the citation by providing supplemental and clarifying information to the DBPR.

The citation must clearly state that the person may choose, in lieu of accepting the citation, to have the DBPR rescind the citation and conduct an investigation of violations alleged in the citation. The DBPR may rescind the citation if the person remedies or corrects the violations or deficiencies contained in the citation within 30 days after the citation is served. However, if the person does not successfully contest the citation to the satisfaction of the department, or complete the remedial action, the citation becomes a final order but does not constitute discipline.

Although the bill provides that a citation may become a final order and that such order does not constitute discipline, the bill requires the citation to include any monetary assessment imposed for the violation. The bill also provides that the DBPR is entitled to recover the costs of investigation, in addition to any penalty provided according to DBPR rule, as part of the penalty levied pursuant to a citation.

The DBPR must issue a citation within six months after the filing of a complaint against the manufacturer, e.g., a consumer or other person notifies the DBPR alleging a violation, which is the basis for the citation.

The citation may be served by personal service or certified mail, restricted delivery, to the person at their last known address of record with the DBPR, or to the person's Florida registered agent.

The bill authorizes the DBPR to adopt rules to designate the violations for which a person may be subject to issuance of a citation and the monetary assessments 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. The DBPR may amend such rules.

## **State Boxing Commission**

### ***Present Situation***

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing,<sup>44</sup> and mixed martial arts<sup>45</sup> by the Florida State Boxing Commission (commission), which is assigned to the DBPR for administrative and fiscal purposes.<sup>46</sup>

The commission has exclusive jurisdiction over every boxing, kickboxing, and mixed martial arts match held in Florida,<sup>47</sup> which involves a professional.<sup>48</sup> Professional matches held in Florida must meet the requirements set forth in ch. 548, F.S., and the rules adopted by the commission.<sup>49</sup> 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.”<sup>50</sup>

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 organizations for amateur boxing, kickboxing, and mixed martial arts matches held in Florida.<sup>51</sup> Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.<sup>52</sup> During Fiscal Year 2018-2019, there were 59 sanctioned professional events and 137 amateur events.<sup>53</sup>

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,<sup>54</sup> manager, second, judge, physician, matchmaker, promoter,<sup>55</sup> trainer, timekeeper, referee, or announcer.<sup>56</sup>

<sup>44</sup> 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.

<sup>45</sup> 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.

<sup>46</sup> Section 548.003(1), F.S.

<sup>47</sup> Section 548.006(1), F.S.

<sup>48</sup> 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.

<sup>49</sup> Section 548.006(4), F.S.

<sup>50</sup> Section 548.007(6), F.S., and *supra* n. 50 for the definition of “mixed martial arts.”

<sup>51</sup> Section 548.006(3), F.S.

<sup>52</sup> Section 548.002(2), F.S.

<sup>53</sup> *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](http://www.myfloridalicense.com/dbpr/os/documents/Boxing18_19.pdf) (last visited Apr. 8, 2021).

<sup>54</sup> Section 548.002(17), F.S., defines “participant” as a professional competing in a boxing, kickboxing, or mixed martial arts match.

<sup>55</sup> *See* s. 548.002, F.S., for the definitions of “manager,” “second,” “judge,” “physician,” “matchmaker,” and “promoter.”

<sup>56</sup> The terms “trainer,” “timekeeper,” “referee,” and “announcer” are not defined in ch. 548, F.S.

The commission must establish, by rule, the appropriate weight of gloves 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 the commission deems necessary.<sup>57</sup>

### ***Effect of Proposed Changes***

The bill amends s. 548.003, 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, as revised by the bill.

## **Division of Alcoholic Beverages and Tobacco**

### ***Present Situation***

The Division of Alcoholic Beverages and Tobacco (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.<sup>58</sup>

### **Permit Carriers**

Section 561.57(1), F.S., permits an alcoholic beverage vendor to make deliveries. Deliveries made by a manufacturer, distributor, or 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 DABT or law enforcement officers to ascertain compliance with all provisions of the alcoholic beverage laws.<sup>59</sup>

The term “permit carrier” is defined as a licensee authorized to make deliveries as provided in s. 561.57, F.S.<sup>60</sup> A separate 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 that each vehicle used to deliver alcoholic beverages from a distributor’s place of business to the vendor’s licensed

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<sup>57</sup> Section 548.043(3), F.S.

<sup>58</sup> Section 561.02, F.S.

<sup>59</sup> Section 561.57(2), F.S.

<sup>60</sup> Section 561.01(20), F.S.

premises or to an off-premises storage have a permit. 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.<sup>61</sup>

#### License Application Process

Before engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages, a person 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.<sup>62</sup>

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.<sup>63</sup>

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 DOH, 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.<sup>64</sup>

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.<sup>65</sup> 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.

#### Quota 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.

Section 561.19(2)(a), F.S., authorizes the DABT to hold a public drawing by double random selection to determine which applicants may be considered for a quota license when one or more additional licenses become available due to an increase in county population or if a quota license

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<sup>61</sup> Chapter 2015-52, Laws of Fla.

<sup>62</sup> Section 561.17(1), F.S.

<sup>63</sup> *Id.*

<sup>64</sup> Section 561.17(2), F.S.

<sup>65</sup> Section 561.01(11), F.S., defining the term "licensed premises," and s. 565.03(2)(c), F.S., for craft distilleries.

is revoked. Current law does not reference the availability of a quota license due to the cancellation of a license.

### Special Restaurant Licenses

A “special license” is an exception to the quota licensing scheme that allows 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.<sup>66</sup>

If a special restaurant licensee fails to satisfy the percentage requirements of food and nonalcoholic beverage sales, 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.<sup>67</sup>

### 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:<sup>68</sup>

- 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 10<sup>th</sup> 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.<sup>69</sup>

### 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.<sup>70</sup>

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

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<sup>66</sup> Section 561.20(2)(a)4., F.S.

<sup>67</sup> *Id.*

<sup>68</sup> Section 561.55(1), F.S.

<sup>69</sup> Section 561.55(2), F.S.

<sup>70</sup> Section 561.42(3), F.S.

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.<sup>71</sup>

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.<sup>72</sup>

### Adulterated Liquor

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.<sup>73</sup> This law was enacted in 1868.

Grains of paradise is a spice related to ginger and native to West Africa.<sup>74</sup> It is commonly used in alcoholic beverages, food, and medicine.<sup>75</sup> Grains of paradise has been found to be generally regarded as safe by the Food and Drug Administration (FDA).<sup>76</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>77</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 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 seeks to advance food technology by allowing the use of safe food additives, and the Florida law prohibits the use of an additive that is generally regarded as safe by the FDA.<sup>78</sup>

### ***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.”

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<sup>71</sup> Section 561.42(4), F.S.

<sup>72</sup> *Id.*

<sup>73</sup> Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

<sup>74</sup> Merriam-Webster Dictionary, *Grains of Paradise*, <https://www.merriam-webster.com/dictionary/grains%20of%20paradise> (last visited Mar. 24, 2021).

<sup>75</sup> WebMD, *Grains of Paradise*, <https://www.webmd.com/vitamins/ai/ingredientmono-670/grains-of-paradise> (last visited Mar. 24, 2021); SPICEography, *Grains of Paradise: An African Spice with a European History*, <https://www.spiceography.com/grains-of-paradise/> (last visited Mar. 24, 2021).

<sup>76</sup> 21 C.F.R. s. 182.10 (2021).

<sup>77</sup> *Marrache v. Bacardi U.S.A., Inc.*, 2020 WL 434928 (S.D. Fla. 2020).

<sup>78</sup> *Id.* at p. 2.



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. 561.19(2)(a), F.S., to authorize the DABT to hold a public drawing by double random selection to determine which applicants may be considered for a quota license when one or more additional licenses become available due to the cancellation of a license.

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.

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, 51 to 60 percent, will be audited every year;
- Level 2 licensees, 61 to 75 percent, will be audited every two years;
- Level 3 licensees, 76 to 90 percent, will be audited every three years; and
- Level 4 licensees, 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 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 be made out in triplicate. Under the bill, the reports must be submitted to the DABT through the DABT's electronic data submission system.

The bill amends s. 562.455, F.S., to remove "grains of paradise" as an ingredient that if added to liquor, would cause the liquor to be adulterated. Anyone who sells adulterated liquor commits a third degree felony.

## Condominiums and Cooperative Associations

### *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.<sup>79</sup> A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.<sup>80</sup> 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 governing the administration of the association.<sup>81</sup>

### 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.<sup>82</sup> The FCTMH also has the authority to investigate complaints against developers involving improper turnover or failure to transfer control to the association.<sup>83</sup> 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.<sup>84</sup> For cooperatives, the FCTMH's jurisdiction extends to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.<sup>85</sup>

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.<sup>86</sup>

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 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.<sup>87</sup>

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<sup>79</sup> Section 718.103(11), F.S.

<sup>80</sup> Section 718.104(2), F.S.

<sup>81</sup> Section 718.103(4), F.S.

<sup>82</sup> Sections 718.501(1) and 719.501(1), F.S.

<sup>83</sup> *Id.*

<sup>84</sup> Section 718.501(1), F.S.

<sup>85</sup> Section 719.501(1), F.S.

<sup>86</sup> Sections 718.501(1) and 719.501(1), F.S.

<sup>87</sup> *Id.*

### Annual Budget - Condominium and Cooperative Associations

Every condominium and 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 association. The annual budget must include operating expenses for the coming year and reserve accounts for capital expenditures and deferred maintenance.<sup>88</sup>

A condominium and cooperative association must hold a meeting to adopt a proposed budget. These associations 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>89</sup> The proposed budget must be detailed, and, at a minimum, include the condominium's estimated revenues and expenses.<sup>90</sup>

Current law does not define the timing for adoption of the budget for a condominium or cooperative association.

### 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.<sup>91</sup>

To become a board member, a person may be:

- Elected to the board by the members of the association;<sup>92</sup>
- Appointed to the board by the developer if the developer is still entitled to representation; or
- Appointed by the board of directors if a vacancy on the board occurs between meetings.<sup>93</sup>

A condominium association's bylaws establish the eligibility requirements to serve on the association's board of directors.<sup>94</sup> However, current law also establishes minimum qualifications to serve on an association's board of directors.<sup>95</sup> To serve as a director, a person may not:<sup>96</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 or by the FCTMH; or
- Have been convicted of a felony, under certain circumstances.<sup>97</sup>

<sup>88</sup> Sections 718.112(2)(f) and 719.106(1)(j), F.S., relating to condominium and cooperative associations, respectively.

<sup>89</sup> Sections 718.112(2)(e)1 and 718.106(1)(e), F.S., relating to condominium and cooperative associations, respectively.

<sup>90</sup> Sections 718.112(2)(f) and 719.106(1)(j), F.S., relating to condominium and cooperative associations, respectively.

<sup>91</sup> Sections 718.103(4), 718.111, and 718.112, F.S.

<sup>92</sup> Section 718.112(2)(d)4., F.S.

<sup>93</sup> Sections 617.0809 and 718.112(2)(d)9., F.S.

<sup>94</sup> Section 718.112(2)(a), F.S.

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

<sup>96</sup> *Id.*

<sup>97</sup> Section 718.111(1)(d), F.S.

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.<sup>98</sup> 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.”<sup>99</sup>

### 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.<sup>100</sup>

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.<sup>101</sup>

The ombudsman is required to maintain his or her principal office in Leon County.<sup>102</sup>

### *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 governing documents, which include the declaration, articles of incorporation, and bylaws. If no due date is specifically identified in the governing documents, the due date is the first day of the assessment period.

The bill amends ss. 718.112(2)(f) and 719.106(1)(j), F.S., to require the annual budget for condominium and cooperative associations to be proposed to unit owners and adopted by the board of directors no later than 14 days before the beginning of the fiscal year. Under the bill, the failure by an association’s board to timely adopt the annual budget a second time is a minor violation<sup>103</sup> and the prior year’s budget shall continue in effect until a new budget is adopted.

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<sup>98</sup> See Department of Business Professional Regulation, *SB 1966 Bill Analysis*, p. 4, (Mar. 12, 2021) (on file with Senate Committee on Regulated Industries).

<sup>99</sup> *Id.*

<sup>100</sup> Sections 718.5011 and 718.5012, F.S.

<sup>101</sup> *Id.*

<sup>102</sup> Section 718.5014, F.S.

<sup>103</sup> The term “minor violation” is not defined in ch. 718 and 719, F.S. Fla. Admin. Code R. 61B-21.001(3), relating to condominium resolution guidelines for unit owner-controlled associations, defines a “minor violation” as a violation in which the FCTMH will issue a notice of noncompliance as a first response to a violation of a rule due to the violation’s lower potential for public harm. Failure to timely comply with the notice of noncompliance may result in further sanctions and enforcement. Fla. Admin. Code R. 61B-77.003(7)(a), provides a comparable definition for the term for violations related to cooperative associations.

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 takes effect July 1, 2021.

#### **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:

The Division of Professions of the Department of Business and Professional Regulation (DBPR) estimates that the bill will result in a reduction of application and license renewal fees paid by the private sector of approximately \$162,266 in Fiscal Year 2021-2022 and \$281,937 in Fiscal Year 2022-2023.<sup>104</sup>

B. Private Sector Impact:

The bill has an indeterminate positive fiscal impact for the private sector. Under the bill, construction and electrical contractors would not have to pay the \$4 fee to the Department of Business and Professional Regulation (DBPR) at the time of application or

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<sup>104</sup> See Department of Business and Professional Regulation, *CS/SB 1966 Bill Analysis*, p. 10, (Apr. 1, 2021) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

renewal to fund projects relating to the building construction industry or continuing education programs.

The bill may provide an opportunity for small cosmetic manufacturing businesses to generate revenues up to \$25,000 in annual gross sales without the cost of a cosmetic manufacturing permit.

Relating to cosmetic manufacturers, the bill may save license expenses needed to continue operation of the business during permitting transfers due to change of ownership, change of controlling interest, or change of location. According to the DBPR, the bill will eliminate the dual permit fee many firms currently pay to continue operating pending approval of the new permit.<sup>105</sup>

### C. Government Sector Impact:

The DBPR expects the following fiscal impact on revenues:<sup>106</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 repeals the \$4 fee for Construction Industry Licensing Board (CILB) and the Electrical Contractors' Licensing Board (ECLB) license applications and license renewals. According to the DBPR, based on historical data, the repeal of the fee may result in a revenue reduction of \$162,266 in Fiscal Year 2021-2022 and \$281,937 in Fiscal Year 2022-2023 deposited into the Professional Regulation Trust Fund for the CILB and ECLB.<sup>107</sup>

The \$4.00 fee collected in the Professional Regulation Trust fund is also subject to the GR service charge. The elimination of the fee would reduce transfers to GR by \$12,981 in Fiscal Year 2021-2022, and \$22,555 in Fiscal Year 2022-2023. The total loss of revenue over the two fiscal years would be an estimated \$479,739, of which \$35,536 would be a reduction in transfers to GR. The net loss to the Professional Regulations Trust Fund would be an estimated \$444,203 over the next two fiscal years.

The bill amends s. 489.118, F.S., to delete the November 1, 2015, application deadline for registered contractors to apply for a statewide certified contractors' license without having to take the state licensure examination. According to the DBPR, by allowing registered contractors to be certified without sitting for the certification examination, there may be an indeterminate reduction in local registered license, renewal, and reciprocity fees.<sup>108</sup>

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

<sup>106</sup> *Id.*

<sup>107</sup> See Department of Business and Professional Regulation, *CS/SB 1966 Bill Analysis*, p. 10, (Apr. 1, 2021) (on file with the Senate Appropriations Subcommittee on Agriculture, Environment, and General Government).

<sup>108</sup> *Id.*

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 210.09, 210.55, 210.60, 489.109, 489.118, 489.509, 499.01, 499.012, 499.066, 548.003, 548.043, 553.841, 561.01, 561.17, 561.19, 561.20, 561.42, 561.55, 562.455, 718.112, 718.501, 718.5014, 719.106, 455.219, 548.002, 548.05, 548.071, and 548.077.

**IX. Additional Information:**

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

**CS/CS by Appropriations on April 15, 2021:**

The committee substitute:

- Removes from the bill the provisions amending ss. 509.241 and 509.251, F.S., to revise the staggered licensing schedule for public lodging establishments.
- Reduces from 30 days to 14 days before the beginning of the fiscal year the date by which the bill requires the annual budget for a condominium association to be proposed to unit owners and adopted by the board of directors.
- Requires the board of a cooperative association to propose to the unit owners and adopt the annual budget at least 14 days before the beginning of the fiscal year.
- Provides that, in the event the board of a condominium or cooperative association fails to timely adopt the annual budget a second time, it is deemed a minor violation and the prior year's budget shall continue in effect until a new budget is adopted.

**CS by Regulated Industries on March 30, 2021:**

The committee substitute (CS):

- Repeals s. 489.509(3), F.S., to delete the \$4 fee that all certified and registered electrical contractors must pay to the DBPR at the time of application or renewal.
- Clarifies that refusal to permit an authorized officer or employee of the Department of Business and Professional Regulation to enter the premises is a violation of s. 499.005(6), F.S., and is grounds for disciplinary action pursuant to s. 499.066, F.S.

- B. **Amendments:**

None.