

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/CS/SB 782

INTRODUCER: Fiscal Policy Committee; Regulated Industries Committee; and Senator Hooper

SUBJECT: Department of Business and Professional Regulation

DATE: April 26, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Betta</u>	<u>AEG</u>	<u>Favorable</u>
3.	<u>Kraemer</u>	<u>Yeatman</u>	<u>FP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 782 revises licensing and regulatory requirements for businesses and professions administered by the Department of Business and Professional Regulation (DBPR), including mold-related professionals, asbestos abatement professionals, electrical and alarm system contractors, certain public lodging establishments, and certain public food service establishments.

Relating to mold-related professional licensing regulations, the bill authorizes a method for persons who have held a license in another state or territory for at least 10 years to obtain a Florida license.

Relating to asbestos professional licensing regulations, the bill:

- Authorizes a method for persons who have held a license in another state for at least 10 years and meet examination and education requirements to obtain a Florida license; and
- Removes limits of bondability and credit as required criteria for determining the financial stability of an applicant for licensure.

Relating to electrical and alarm system contractors licensing, the bill removes an existing deadline for registered electrical and alarm systems contractors to seek authorization to engage in their trades throughout the state at any time.

Relating to the licensing, inspection, and regulation of public lodging establishments and public food service establishments by the Division of Hotels and Restaurants (DHR) in the DBPR which are not otherwise exempt, the bill:

- Requires licensees to establish and accurately maintain an online account with the DHR and provide an email address to the DHR as a primary contact method; the DHR must implement the online account requirements and provide a method to opt-out of online accounts, by rule.
- Requires licensees and licensed agents managing a license classified as a vacation rental or timeshare project to timely submit address changes and changes in the number of houses or units covered by the license within 30 days of the change;
- Allows the DHR to serve inspection reports and other notices to operators of such establishments by email, in-person delivery, or mail;
- Allows a transient public lodging establishment guest register to be kept in an electronic format and removes the requirement for guests to sign the register; and
- Shortens the time for a public lodging establishment to correct deficiencies in human trafficking awareness training to 45 days for violations after July 1, 2023; the DHR may not provide another correction period to an establishment for any subsequent failure to comply and must impose a fine.

Relating to boxing matches held solely for training purposes, the bill removes a restriction on the maximum difference in weight of participants, eliminating the 12 pound weight differential for such matches in current law.

Relating to the Florida Building Code (building code), the bill authorizes the Florida Building Commission to delay the energy provisions of the building code, if energy code compliance software is not approved at least three months before the updated building code's effective date.

Regarding package stores licensed to sell beer, wine, and distilled spirits (liquor) for consumption off the premises which may only sell certain types of products including tobacco products, the bill authorizes such licensees to sell nicotine products such as electronic cigarettes.

Relating to timeshare plans, the bill:

- Eliminates certain requirements for the offering of incidental benefits in the sale of a timeshare plan, including repealing the 15 percent limitation on the aggregate represented value of all incidental benefits offered by the developer, the requirement that an acknowledgement and disclosure statement indicate the source of the services, points, or other products that constitute the incidental benefit, and that the developer promptly notify the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation (DBPR) upon learning of the unavailability of any incidental benefit;
- Extends from one year to five years the period to void a contract when a closing unlawfully occurred before the cancellation period's expiration, and retains the one-year right for a purchaser to void a contract if he or she knowingly or unknowingly waived the right to cancel the contract within the 10-day cancellation period;
- Revises public offering statement requirements to allow the developer's description of each component site for a multisite timeshare plan to be provided to the purchaser electronically, and to provide that a developer is not required to file a separate public offering statement for

any component site located within or outside Florida, in order to include the component site in the multistate timeshare plan.

The bill has a positive fiscal impact on state government revenues. According to the DBPR, the bill may result in an indeterminate, but likely minimal negative fiscal impact to local government.¹ See Section V, Fiscal Impact Statement.

The bill takes effect July 1, 2023.

II. Present Situation:

For ease of reference, the Present Situation for each section of the bill is addressed below 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 11 divisions:

- Administration;
- Alcoholic Beverages and Tobacco;
- Certified Public Accounting;
- Drugs, Devices, and Cosmetics;
- Florida Condominiums, Timeshares, and Mobile Homes;
- Hotels and Restaurants;
- Professions;
- Real Estate;
- Regulation;
- Service Operations; and
- Technology.

The Florida Athletic Commission is assigned to the DBPR for administrative and fiscal accountability purposes only.² The DBPR also administers the Child Labor Law and Farm Labor Contractor Registration Law.³

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,

¹ See Department of Business and Professional Regulation (DBPR), *2023 Agency Legislative Bill Analysis for SB 782* at 5-6 (Feb. 15, 2023) (on file with the Senate Committee on Regulated Industries).

² Section 548.003(1), F.S.

³ See Parts I and III of ch. 450, F.S.

Professions, Real Estate, and Regulation.”⁴ The chapter also provides the procedural and administrative framework for those divisions and the professional boards within the DBPR.⁵ 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.”⁶ Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.⁷

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.⁸

Chapter 455, F.S., provides the general powers of the DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under the DBPR as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.⁹ When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a “permit, registration, certificate, or license” to the licensee.¹⁰

Division of Certified Public Accounting

In Fiscal Year 2021-2022, there were 38,541 active licensees in the DBPR’s Division of Certified Public Accounting.¹¹

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.¹²

⁴ Section 455.01(6), F.S.

⁵ 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.

⁶ Section 455.201(2), F.S.

⁷ *Id.*

⁸ Section 455.201(4)(b), F.S.

⁹ 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 providing DBPR staff counsel. See s. 455.221(1), F.S.

¹⁰ Section 455.01(4) and (5), F.S.

¹¹ See Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2021-2022*, at 18, at <http://www.myfloridalicense.com/DBPR/os/documents/Division%20Annual%20Report%20FY%2021-22.pdf> (last visited Mar. 21, 2023).

¹² See Department of Business and Professional Regulation, *Annual Report, Division of Hotels and Restaurants*, at <http://www.myfloridalicense.com/DBPR/hotels-restaurants/> (last visited Mar. 28, 2023); see page 18 of the Annual Report summarizing the numbers of licenses issued each fiscal year to public lodging and food service establishments.

Division of Professions

In Fiscal Year 2021-2022, in the DBPR's Division of Professions, which regulates all licensees, there were 937,960 active licensees (of which 38,541 were licensed accountants; 66,936 were licensed engineers, and 345,026 were real estate-related licensees), including:¹³

- Accountants (CPAs);
- Architects and interior designers;
- Asbestos consultants and contractors;
- Athlete agents;
- Auctioneers;
- Barbers;
- Building code administrators and inspectors;
- Community association managers;
- Construction industry contractors;
- Cosmetologists;
- Electrical contractors;
- Employee leasing companies;
- Engineers;
- Geologists;
- Home inspectors;
- Harbor pilots (pilot commissioners);
- Landscape architects;
- Mold-related services;
- Real estate appraisers;
- Real estate (brokers/associates)
- Talent agencies; and
- Veterinarians.

Division of Real Estate

In Fiscal Year 2021-2022, there were 345,026 active licensees in the DBPR's Division of Real Estate.¹⁴

III. Effect of Proposed Changes:

Mold-Related Professionals

Present Situation

The Department of Business and Professional Regulation (DBPR) licenses and regulates mold-related professionals.¹⁵ Specifically, mold assessors and mold remediators are regulated by

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See part XIV of ch. 468, F.S., Mold-Related Services; and *Annual Report, Fiscal Year 2021-2022, for the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation* (2021-2022 Annual Report) at 10, available at <http://www.myfloridalicense.com/DBPR/os/documents/Division%20Annual%20Report%20FY%2021-22.pdf> (last visited Mar. 28, 2023).

Part XVI of ch. 468, F.S., and licensed by the Mold-Related Services Licensing Program¹⁶ in the DBPR. In Fiscal Year 2021-2022, there were 5,806 active licensees, and 654 inactive licensees.¹⁷ Of 127 complaints against licensees, 26 met the standard of legal sufficiency in s. 455.225(1), F.S., and the DBPR found probable cause that would reasonably indicate that a violation of the practice act or rules occurred in 16 cases.¹⁸

“Mold assessment” means a process performed by a mold assessor that includes the physical sampling and detailed evaluation of data obtained from a building history and inspection to formulate an initial hypothesis about the origin, identity, location, and extent of amplification of mold growth of greater than 10 square feet.¹⁹

“Mold remediation” means the removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter of greater than 10 square feet that was not purposely grown at that location; however, it may not include work that requires a contractor license under ch. 489, F.S.²⁰

In order to be licensed as a mold assessor or mold remediator, an applicant must:²¹

- Be of good moral character;
- Pass the required DBPR-approved²² examination offered by a nationally recognized organization that certifies persons in the specialty of mold assessment or mold remediation;
- Have the insurance required under s. 468.8421, F.S.; and
- Complete either:
 - At least a two-year associate of arts degree with certain course requirements and a minimum of one year of experience; or
 - A high school diploma or the equivalent with a minimum of four years of experience.

A person who is licensed in another state is eligible for a license by endorsement in Florida if they:²³

- Are of good moral character;
- Hold the insurance required under s. 468.8421, F.S.;
- Hold a valid license to practice as a mold assessor or mold remediator in another state or territory of the United States if the criteria for such license is substantially equivalent to the licensure criteria in Florida; and
- Are qualified to take the DBPR-approved examination as set forth in s. 468.8413, F.S., and have passed a national, regional, state, or territorial licensing examination that is DBPR-

¹⁶ Section 468.84, F.S.

¹⁷ See 2021-2022 Annual Report at 18.

¹⁸ *Id.* at 87.

¹⁹ Section 468.8411(3), F.S.

²⁰ Section 468.8411(5), F.S.

²¹ Section 468.8413(2), F.S.

²² Section 455.217, F.S., requires the DBPR’s Division of Professions to “provide, contract, or approve services for the development, preparation, administration, scoring, score reporting, and evaluation of all examinations,” and to seek the advice of the appropriate regulatory board in doing so. The Department of Business and Professional Regulation must act together with the Division of Service Operations, the Division of Professions, and the Division of Real Estate, to “ensure that examinations adequately and reliably measure an applicant’s ability to practice the profession” that is regulated. *Id.*

²³ Section 468.8414(3), (4), F.S.

approved as substantially equivalent to the required Florida examination, as set forth in s. 468.8414, F.S.

Applicants for a mold-related license must also pay initial fees of \$230.²⁴

Effect of Proposed Changes

Section 1 amends s. 468.8414, F.S., to allow licensure by endorsement to practice mold assessment or mold remediation for applicants who have held a valid license to practice mold assessment or mold remediation for at least 10 years in another state or territory before the date of application.

Applicants pursuing this avenue for licensure must apply either while they hold an active license in another state or territory, or within two years after such license was last active.

The bill clarifies the provision relating to licensure certification examination requirements.

Asbestos Abatement

Present Situation

The DBPR also licenses and regulates asbestos consultants and asbestos contractors.²⁵ Asbestos abatement means the removal, encapsulation, enclosure, or disposal of asbestos.²⁶

An asbestos consultant may:

- Conduct an asbestos survey;
- Develop an operation and maintenance plan;
- Monitor and evaluate asbestos abatement; and
- Prepare asbestos abatement specifications.²⁷

An asbestos contractor may work as an asbestos consultant and also conduct asbestos abatement work.²⁸

An asbestos consultant's license may only be issued to an applicant who:

- Holds a current, valid, active license as an architect issued under ch. 481, F.S.;
- Holds a current, valid, active license as a professional engineer issued under ch. 471, F.S.;
- Holds a current, valid, active license as a professional geologist issued under ch. 492, F.S.;
- Is a diplomat of the American Board of Industrial Hygiene; or

²⁴ As set forth in Fla. Admin. Code R. 61-31.101, this figure includes an application fee of \$125, a licensure fee of \$100, and an unlicensed activity fee of \$5.00.

²⁵ See ch. 469, F.S., Asbestos Abatement; and *Annual Report, Fiscal Year 2021-2022, for the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation (2020-2021 Annual Report)* at 26, available at http://www.myfloridialicense.com/DBPR/os/documents/DivisionAnnualReport_FY2021.pdf (last visited Mar. 28, 2023).

²⁶ See s. 469.001(1), F.S.

²⁷ See s. 469.003, F.S.

²⁸ See s. 469.003(3), F.S.

- Has been awarded designation as a Certified Safety Professional by the Board of Certified Safety Professionals.²⁹

An applicant for licensure as either an asbestos consultant or contractor must also:³⁰

- If applying for an asbestos consultant license, complete the DBPR-approved courses in the following topics:
 - Building asbestos surveys and mechanical systems;
 - Asbestos management planning;
 - Respiratory protection; and
 - Project designer.
- If applying for an asbestos contractor license, complete courses in the following topics:
 - Asbestos contractor/supervisor; and
 - Respiratory protection.
- Provide evidence of satisfactory work on ten asbestos projects within the last five years;
- Provide evidence of financial stability; and
- Pass a DBPR-approved examination.

In order to determine financial stability and adopt standards in related rules,³¹ the DBPR must use both the applicant's credit history and limits of bondability and credit.³² There is no provision allowing or addressing licenses by endorsement for asbestos licensees of other states.

In Fiscal Year 2021-2022, there were 442 active licensees, and nine inactive licensees.³³ Of nine complaints against licensees, two met the standard of legal sufficiency in s. 455.225(1), F.S., and the DBPR found probable cause that would reasonably indicate that a violation of the practice act or rules occurred in none of the cases.³⁴

If an individual proposes to engage in asbestos consulting or contracting as any legal entity or in a name other than the individual's legal name:

- The legal entity must apply for licensure through a qualifying agent; or
 - The applicant must apply for licensure under the fictitious name.³⁵
- A qualifying agent must be licensed under ch. 469, F.S., in order for a business organization to be licensed in the same category for which the qualifying agent is licensed.³⁶

There is no provision which specifically allows or addresses licenses by endorsement for asbestos licensees of other states.

Applicants for an asbestos license pay an initial fee of \$555, and an examination fee of \$316.

²⁹ See s. 469.004(1), F.S.

³⁰ See s. 469.005, F.S.

³¹ The standards for determining an applicant's financial stability may be found in Fla. Admin. Code R. 61E1-4.002.

³² See s. 469.006(2)(c)2., F.S.

³³ See 2021-2022 Annual Report at 18.

³⁴ *Id.* at 87.

³⁵ See s. 469.006(2)(a), F.S.

³⁶ See s. 469.005(3), F.S.

Effect of Proposed Changes

Section 2 amends s. 469.004, F.S., related to licensure of asbestos consultants and asbestos contractors, to allow licensure by endorsement to practice as an asbestos consultant or asbestos contractor for an applicant who has:

- Passed a written examination that meets the requirements of the United States Environmental Protection Agency Asbestos Model Accreditation Plan;
- Held a license as an asbestos consultant or asbestos contractor issued by another state or territory of the United States for at least 10 years before the application date and is applying for the same or similar license in Florida;
- Demonstrated financial stability; and
- Successfully completed all required DBPR-approved courses.³⁷

Applicants for licensure by endorsement must apply either while they hold an active license in another state or territory, or within two years after such license was last active.

Grandfathering Provision for Registered Electrical and Alarm System Contractors*Present Situation*

Section 489.514, F.S., authorizes the Electrical Contractors' Licensing Board (ECLB) to grandfather certain applicants for registered contractor status, but only if application was made before November 1, 2021; under this provision, which now appears obsolete, the ECLB must certify an electrical, electrical specialty, or alarm system contractor to engage in the specified trade category throughout the state, upon:

- Receipt of a completed application;
- Payment of the appropriate fee;³⁸ and
- Evidence that he or she qualifies for the certification in a trade category based on:
 - Having a valid registered local license;
 - Passing an approved written examination;
 - Having a minimum of five years' contracting experience in the applicable trade category (with an active license and excluding probationary periods);
 - Never having had a contractor's license revoked, and during the last five years, not having had a suspended license or been assessed a fine in excess of \$500; and
 - Meeting all required insurance and financial responsibility requirements.³⁹

³⁷ All applicants must complete a respiratory protection course, with those seeking licenses as asbestos consultants completing courses in building asbestos surveys and mechanical systems, asbestos management planning, and project design, and those seeking licenses as asbestos contractors completing an asbestos contractor/supervisor course. *See* ss. 469.005(2) and 469.005(3), F.S.

³⁸ The Electrical Contractors' Licensing Board (ECLB) has established a \$196 fee for applications for registered contractor certification. *See* s. 489.109, F.S., and Fla. Admin. Code R. ch. 61G6-8.001.

³⁹ *See* s. 489.515(1)(b), F.S., which provides that an applicant must submit satisfactory evidence of workers' compensation insurance or an acceptable exemption issued by the DBPR, public liability and property damage insurance in amounts determined by the ECLB, and evidence of financial responsibility, credit, and business reputation of either the contractor or the business sought to be qualified for certification.

The DBPR received 766 applications from local electrical and alarm contractors for a statewide license during the last period of grandfathering, from July 1, 2019, through November 1, 2021.⁴⁰

Effect of Proposed Changes

Section 3 amends s. 489.514(3), F. S., to remove the deadline for applicants with registered contractor status to seek certified licenses by November 1, 2021, allowing the ECLB to consider an application to certify an electrical, electrical specialty, or alarm system contractor to engage in the specified trade category throughout the state at any time.

Public Lodging Establishments/Public Food Service Establishments

Present Situation

The Division of Hotels and Restaurants (DHR) licenses, inspects, and regulates public lodging and food service establishments in Florida.⁴¹ A public lodging establishment includes establishments that are transient or nontransient.⁴² A “transient public lodging establishment” means:

any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.⁴³

A “nontransient public lodging establishment” means:

any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or one calendar month.⁴⁴

⁴⁰ See DBPR, *2023 Agency Legislative Bill Analysis for SB 782* at 8 (Feb. 15, 2023) (on file with the Senate Regulated Industries Committee).

⁴¹ The Division of Hotels and Restaurants (DHR) also licenses and regulates elevators, escalators, and other vertical conveyance devices. See DBPR, *Division of Hotels and Restaurants*, <http://www.myfloridalicense.com/DBPR/hotels-restaurants/> (last visited Mar. 28, 2023).

⁴² See s. 509.013(4)(a), F.S., which provides “license classifications of public lodging establishments, and the definitions therefor,” are set out in s. 509.242, F.S. For the purpose of licensure, the term does not include condominium common elements, as defined in s. 718.103, F.S.

⁴³ *Id.* Section 509.013(11), F.S., further provides that the term “transient establishment” means any public lodging establishment “that is rented or leased to guests by an operator whose intention is that such guests’ occupancy will be temporary.” Section 509.013(14), F.S., further provides the term “nontransient establishment” means any public lodging establishment “that is rented or leased to guests by an operator whose intention is that the dwelling unit occupied will be the sole resident of the guest.”

⁴⁴ *Id.*

A “public food service establishment” means:

any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption. The term includes a culinary education program, as defined in s. 381.0072(2), which offers, prepares, serves, or sells food to the general public, regardless of whether it is inspected by another state agency for compliance with sanitation standards.⁴⁵

Numerous places providing food service are exempted from the definition of public food service establishment, such as certain schools and universities operated for students and faculty, and places maintained by certain religious, fraternal, and civic organizations.⁴⁶

Establishments regulated under ch. 509, F.S., must be licensed and inspected by the DHR, and are subject to sanitary standards, staff training and test requirements, administrative rules, and immediate closure upon a finding that continued operation presents a severe and immediate threat to the public health.⁴⁷

Notices from the DHR pursuant to ch. 509, F.S., must be written and delivered personally by an agent of the DHR or by registered letter to the operator of the establishment, except lodging inspection reports and food service inspection reports, which may be delivered by electronic means.⁴⁸

Operators of a public lodging establishment or public food service establishment may establish rules for guests and employees which must be printed in English and posted prominently within the establishment.⁴⁹ Operators of public food service establishments must also maintain a copy of the latest food service inspection report and make it available to the DHR at the time of any inspection and to the public upon request.⁵⁰

In addition, operators of transient establishments⁵¹ must maintain a register in chronological order, signed by or for guests who occupy rental units in the establishment, indicating the dates of occupancy and the rates charged.⁵² Registers must be available for inspection by the DHR at any time, but need not be made available if they are more than two years old.⁵³

⁴⁵ See s. 509.013(5), F.S.

⁴⁶ *Id.*

⁴⁷ See ss. 509.032 and 509.035, F.S.

⁴⁸ See s. 509.091, F.S.

⁴⁹ See s. 509.101, F.S.

⁵⁰ *Id.*

⁵¹ See *supra* n. 43.

⁵² See s. 509.101, F.S.

⁵³ *Id.*

Human Trafficking

The Florida Legislature recognizes human trafficking as a form of modern-day slavery whose victims include young children, teenagers, and adults who may be citizens that are trafficked domestically within the borders of the United States or smuggled across international borders worldwide.⁵⁴ While victims of human trafficking are forced to work in prostitution or sexual entertainment, trafficking also occurs in forms of labor exploitation, such as domestic servitude, restaurant work, janitorial work, factory work, and agricultural work.⁵⁵ Many human trafficking victims are induced with false promises of financial or emotional security, but are forced or coerced⁵⁶ into commercial sexual activity,⁵⁷ domestic servitude, or other types of forced labor.⁵⁸

There are currently 63,690 public lodging establishments that are licensed by the Division of Hotels and Restaurants (DHR).⁵⁹ The following are classified as public lodging establishments:⁶⁰

- Hotel;
- Motel;
- Vacation rental;
- Nontransient apartment;
- Transient apartment;
- Bed and breakfast inn; and
- Timeshare project.⁶¹

Public lodging establishments must be licensed and inspected⁶² by the DHR, and are subject to sanitary standards, staff training and test requirements, administrative rules, and immediate closure upon a finding that continued operation presents a severe and immediate threat to the public health.⁶³ Public lodging establishments can be attractive locations for human traffickers, due to the privacy and anonymity afforded.⁶⁴

⁵⁴ Section 787.06, F.S.

⁵⁵ *Id.*

⁵⁶ Section 787.06(2)(a), F.S., defines “coercion” in the context of human trafficking as using or threatening physical force; restraining, isolating, or confining or threatening the same without lawful authority and against his or her will; using lending or other credit methods to establish a debt when labor or services are pledged as a security for the debt, if the reasonably assessed value of the labor or services is not applied toward liquidation of the debt, and the length and nature of the labor or service and not limited and defined; destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document of any person; causing or threatening to cause financial harm, enticing or luring by fraud or deceit; or providing controlled substances to any person for the purpose of exploitation.

⁵⁷ Section 787.062(2)(b), F.S., defines “commercial sexual activity” as any violation of ch. 796, F.S., or an attempt to commit any such offense, and includes sexually explicit performances and the production of pornography.

⁵⁸ The Department of Education, *Healthy Schools – Human Trafficking*, available at <http://www.fldoe.org/schools/healthy-schools/human-trafficking.stml> (last visited March 19, 2023).

⁵⁹ The Department of Business and Professional Regulation (DBPR), *Division of Hotels & Restaurants Annual Report 2021-22*, p. 8, available at http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2021_22.pdf (last visited April 20, 2023).

⁶⁰ Section 509.242(1)(a)-(g), F.S., sets out criteria that must be met in order for an establishment to be classified as a public lodging establishment pursuant to ch. 509, F.S.

⁶¹ *Id.*

⁶² Vacation rentals and timeshare projects are inspected upon request. *See* s. 509.032(2)(a), F.S.

⁶³ *See* ss. 509.032, 509.035, and 509.242, F.S.

⁶⁴ The Department of Homeland Security, Blue Campaign, *Human Trafficking Response Guide*, p. 2, available at https://www.dhs.gov/sites/default/files/2022-10/Hospitality%20Toolkit%20508c%2009_29_2022.pdf (last visited April 20, 2023).

Sex trafficking operations are often set up in public lodging establishments via online advertising, without the establishment operator's knowledge.⁶⁵ The use of websites to communicate and arrange meeting times and locations enable those involved in the operation to remain anonymous.⁶⁶ In a 10 year review, from December 2007 to December 2017, the National Human Trafficking Hotline (HT Hotline) recorded 3,596 cases of human trafficking involving a hotel or motel. Additionally, 75 percent of human trafficking survivors reported coming into contact with hotels at some point while being trafficked.⁶⁷

The DHR has emphasized the importance in educating staff at public lodging establishments on signs of trafficking activity. The following are ways to identify a victim of human trafficking:

- Signs of physical abuse or malnourishment;
- Person seems coached or controlled;
- Victim rarely left alone;
- Suspicious tattoos or branding on victim;
- Living conditions unsuitable;
- Victim demeaned or treated aggressively;
- Accompanied by older male;
- Avoids interaction with others;
- "Do not Disturb" sign used constantly;
- Receives lots of visitors;
- Pays for room with cash;
- Dresses inappropriately or provocatively;
- Few personal belongings;
- Refuses cleaning services;
- Room smells of bodily fluids and musk;
- Lots of cash in room;
- Alcohol and/or drugs in room; and
- Room monitored outside or in hallway.⁶⁸

Human Trafficking Awareness in Public Lodging Establishments

In 2019, the Legislature required a public lodging establishment to create and implement human trafficking awareness training and policies for employees of the establishment who perform housekeeping duties in the rental units or who work at the front desk or reception area where guests ordinarily check-in or check out.⁶⁹

⁶⁵ The DBPR Division of Hotels and Restaurants, *Human Trafficking Information Sheet*, (March 22, 2016) available at http://www.myfloridalicense.com/dbpr/hr/forms/documents/5022_104.pdf (last visited April 20, 2023).

⁶⁶ National Human Trafficking Hotline, *Hotel/Motel-Based*, available at <https://humantraffickinghotline.org/sex-trafficking-venuesindustries/hotelmotel-based> (last visited April 20, 2023).

⁶⁷ Polaris, *On-Ramps, Intersections, and Exit Routes: A Roadmap for Systems and Industries to Prevent and Disrupt Human Trafficking*, (July 2018) available at <https://polarisproject.org/resources/on-ramps-intersections-and-exit-routes-a-roadmap-for-systems-and-industries-to-prevent-and-disrupt-human-trafficking/> (last visited April 20, 2023).

⁶⁸ *Supra* n. 65.

⁶⁹ Chapter 2019-152 s. 6, Laws of Fla.; codified as s. 509.096, F.S.

A public lodging establishment must:

- Provide annual training regarding human trafficking awareness to employees who perform housekeeping duties or work at the front desk within 60 days after beginning employment, or by January 1, 2021, whichever occurs later. Proof of such employee training must be provided to the DHR upon request;
- Implement a procedure for the reporting of suspected human trafficking to the HT Hotline or to a local law enforcement agency by January 1, 2021; and
- Post a sign with the relevant provisions of the reporting procedure in a conspicuous place in the establishment that is accessible to employees by January 1, 2021.⁷⁰

Such training must include:

- The definition of human trafficking and the differences between sex trafficking and labor trafficking;
- Guidance specific to the public lodging sector on how to identify individuals who may be victims of human trafficking; and
- Guidance on the role of the employees of a public lodging establishment in reporting and responding to suspected human trafficking.⁷¹

The training must be submitted to and approved by the DHR before being provided to employees. The DHR must impose administrative fines of \$2,000 per day against a public lodging establishment that is not in compliance with statute, unless there are written assurances that each deficiency will be corrected within 90 days of the notice of violation.⁷²

Effect of Proposed Changes

Sections 4, 5, 6, and 7 address requirements imposed upon public lodging establishments and public food service establishments.

Section 4 amends s. 509.091, F.S., to require licensees and licensed agents to provide an email address to the DHR to serve as the primary method of contact for all communications. The bill authorizes service of the DHR's notices and inspection reports by email or regular mail, in addition to personal delivery, and removes a requirement for the use of registered mail. The bill also authorizes the DHR to post an inspection report in a conspicuous place at the establishment, when the operator refuses to accept or evades service, or the agent is unable to serve the report after due diligence.

Section 5 amends s. 509.096, F.S., relating to human trafficking awareness training. The time that a public lodging establishment has to correct training deficiencies on human trafficking awareness is shortened to 45 days (from 90 days), for a violation committed on or after July 1, 2023. Upon a second or subsequent failure to provide the required training, the DHR may not provide another correction period to the establishment and must impose the applicable administrative fines.

⁷⁰ Section 509.096(1), F.S.

⁷¹ Section 509.096(2), F.S.

⁷² Section 509.096(3), F.S.

Section 6 amends s. 509.101, F.S., to clarify the duty for operators of transient establishments to maintain a guest register in chronological order of guests that occupy rental units in the establishment. Operators must make the register available for inspection by the DHR at any time, and the requirement for guests to sign the register is removed. The bill authorizes operators to keep the register in an electronic format.

Section 7 amends s. 509.241, F.S., related to licenses held by public lodging and public food service establishments. Under the bill, persons who plan to open a public lodging establishment or a public food service establishment, and each licensee or licensed agent, must create and maintain a DHR online account, and provide an e-mail address to function as the primary contact for all communication from the DHR.

The bill provides licensees and licensed agents are responsible for maintaining accurate contact information on file with the DHR. A licensee or licensed agent managing a license classified as a vacation rental or timeshare project (as those terms are defined in s. 509.242(1)(c) and (g), F.S., respectively), must submit any change in the street or unit address or number of houses or units included under the license within 30 days of the change. All changes must be filed with the DHR through the mandatory online account. The DHR must adopt rules to implement the online account requirements, including a provision specifying the circumstances for opting out of the requirement to have an online account.

The bill makes technical and conforming changes.

Florida Athletic Commission (formerly State Boxing Commission)

Present Situation

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing,⁷³ and mixed martial arts⁷⁴ by the Florida Athletic Commission (commission), which is assigned to the DBPR for administrative and fiscal purposes.⁷⁵

The commission has exclusive jurisdiction over every boxing, kickboxing, and mixed martial arts match held in Florida,⁷⁶ which involves a professional.⁷⁷ Professional matches held in Florida must meet the requirements set forth in ch. 548, F.S., and the rules adopted by the commission.⁷⁸ 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.”⁷⁹

⁷³ 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.

⁷⁴ 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.

⁷⁵ Section 548.003(1), F.S.

⁷⁶ Section 548.006(1), F.S.

⁷⁷ 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.

⁷⁸ Section 548.006(4), F.S.

⁷⁹ Section 548.007(6), F.S., and *supra* n. 74 for the definition of “mixed martial arts.”

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.⁸⁰ Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.⁸¹

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. Section 548.017, F.S., requires licensing for a participant,⁸² manager, trainer, second, referee, judge, physician, matchmaker, or promoter.⁸³

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.⁸⁴

Effect of Proposed Changes

Section 8 amends s. 548.043, F.S., to remove a restriction requiring that the weight differential between participants in a boxing match held solely for training purposes not exceed 12 pounds. According to the DBPR, this change will provide greater flexibility to promoters and participants who wish to promote and participate in exhibition matches.⁸⁵

The Florida Building Code

Present Situation

The Florida Building Code (building code) is the unified building code applicable to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, and facilities in the state.⁸⁶ The building code must be applied, administered, and enforced uniformly and consistently throughout the state.⁸⁷

The Florida Building Commission (commission) adopts an updated building code every three years through review of codes published by the International Code Council and the National Fire

⁸⁰ Section 548.006(3), F.S.

⁸¹ Section 548.002(2), F.S.

⁸² Section 548.002(17), F.S., defines "participant" as a professional competing in a boxing, kickboxing, or mixed martial arts match.

⁸³ See s. 548.002, F.S., for the definitions of "manager," "second," "judge," "physician," "matchmaker," and "promoter." The terms "trainer" and "referee," are not defined in ch. 548, F.S.

⁸⁴ Section 548.043(3), F.S.

⁸⁵ See DBPR, *2023 Agency Legislative Bill Analysis for SB 782* at 4 (Feb. 15, 2023) (on file with the Senate Regulated Industries Committee).

⁸⁶ See s. 553.72, F.S. Part IV of ch. 553, F.S., is cited as the "Florida Building Codes Act." See s. 552.70, F.S., and the Florida Building Code, 7th Edition, (building code) available at https://www.floridabuilding.org/bc/bc_default.aspx (last visited Mar. 24, 2023).

⁸⁷ See s. 553.72(1), F.S.

Protection Association.⁸⁸ The current edition of the building code is the seventh edition, which is referred to as the 2020 Florida Building Code.⁸⁹

Chapter 553, part IV, F.S., is known as the “Florida Building Codes Act” (act). The purpose and intent of the act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The building code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.⁹⁰ The building code is adopted, updated, interpreted, and maintained by the commission, and is enforced by authorized state and local government agencies.⁹¹

The commission was statutorily created to implement the building code. The commission, which is housed within the DBPR, is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the building code. The commission reviews International Codes published by the International Code Council,⁹² the National Electric Code, and other nationally adopted model codes during its triennial update of the building code.⁹³

Effect of Proposed Changes

Section 9 amends s. 553.73, F.S., to authorize the commission to delay the energy provisions of the building code, if energy code compliance software is not approved at least three months before the updated building code’s effective date.

Package Store Restrictions and Nicotine Products

Present Situation

In Florida, alcoholic beverages are regulated by the Beverage Law,⁹⁴ by the Division of Alcoholic Beverages and Tobacco, which regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.⁹⁵

A package store is a vendor operating a place of business where beer, wine, and distilled spirits (liquor) are sold only in sealed containers for consumption off the premises.⁹⁶ Package stores may not sell, offer, or expose for sale any merchandise other than such beverages, and must be

⁸⁸ See s. 553.73(7), F.S., which requires review of the International Building Code, the International Fuel Gas Code, the International Existing Building Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association.

⁸⁹ The 2020 Florida Building Code, as updated by the Florida Building Commission on August 9, 2022, has been adopted as the building code for the state. See Fla. Admin. Code R. 61G30-1.001 (amended Jan. 3, 2023).

⁹⁰ Section 553.72(1), F.S.

⁹¹ See s. 553.72(3), F.S.

⁹² The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to “construct safe, sustainable, affordable and resilient structures.” International Code Council, *About the ICC*, available at <https://www.iccsafe.org/about/who-we-are/> (last visited Mar. 24, 2023).

⁹³ Sections 553.73 and 553.74, F.S.

⁹⁴ Section 561.01(6), F.S., provides that the “Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

⁹⁵ See s. 561.14, F.S.

⁹⁶ Section 565.02(1)(a), F.S.

devoted exclusively to such sales. Package stores are not allowed to sell nicotine products, e.g., electronic cigarettes. Package stores are only allowed to sell, in addition to alcoholic beverages:⁹⁷

- Bitters;
- Grenadine;
- Nonalcoholic mixer-type beverages;
- Fruit juices produced in this state;
- Home bar, and party supplies and equipment;
- Miniatures of no alcoholic content; and
- Tobacco products.

The Division of Alcoholic Beverages and Tobacco also regulates the sale of tobacco products under part I of ch. 569, F.S., and nicotine products under part II of ch. 569, F.S.

Section 569.31(4), F.S., defines the term “nicotine product” as:

[A]ny product that contains nicotine, including liquid nicotine, which is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means. The term also includes any nicotine dispensing device. The term does not include a:

- (a) Tobacco product, as defined in s. 569.002[, F.S.];⁹⁸
- (b) Product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act; or
- (c) Product that contains incidental nicotine.

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

[A]ny product that employs an electronic, chemical, or mechanical means to produce vapor or aerosol from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.

Effect of Proposed Changes

Section 10 amends s. 565.04(1), F.S., to allow package stores to sell “nicotine products.”

Vacation Plans and Timesharing

Present Situation

The Florida Vacation Plan and Timesharing Act, ch. 721, F.S., establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for

⁹⁷ Section 565.04, F.S.

⁹⁸ Section 569.002(8), F.S., defines the term “tobacco products” to include “loose tobacco leaves, and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing.”

full and fair disclosure to purchasers and prospective purchasers.⁹⁹ Chapter 721, F.S., applies to all timeshare plans consisting of more than seven timeshare periods over a period of at least three years in which the accommodations and facilities are located within this state or offered within this state.¹⁰⁰ Part I of ch. 721, F.S., relates to vacation plans and timesharing, and Part II of chapter 721, F.S., relates to multisite vacation and timeshare plans that are also known as vacation clubs.

A timeshare interest is a form of ownership of real and personal property.¹⁰¹ In a timeshare, multiple parties hold the right to use a condominium unit or a cooperative unit. Each owner of a timeshare interest is allotted a period of time during which the owner has the exclusive right to use the property.

A timeshare unit is an accommodation of a timeshare plan which is divided into timeshare periods or a condominium unit in which timeshare estates have been created.¹⁰²

A “timeshare estate” is a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof.¹⁰³ The term also includes an interest in a condominium unit, a cooperative unit, or a trust. Whether the term includes both direct and indirect interests in trusts is not specified. An example of an indirect interest in a trust is the interest of a trust beneficiary’s spouse or other dependent.

The “managing entity” for a timeshare property is the person who operates or maintains the timeshare plan pursuant to s. 721.13(1), F.S., which defines the managing entity as either the developer, a separate manager or management firm, or an owners' association.¹⁰⁴

Vacation Plans and Multisite Timeshare Plans

Part II of ch. 721, F.S., governs vacation plans and multisite timeshare plans, known as vacation clubs.¹⁰⁵

A “multisite timeshare plan” is any method, arrangement, or procedure with respect to which a purchaser obtains, by any means, a recurring right to use and occupy accommodations or facilities or more than one component site, only through use of a reservation system, whether or not the purchaser may elect to cease participating in the plan.¹⁰⁶ However, this term does not include any method, arrangement, or procedure wherein:¹⁰⁷

- The contractually specified maximum total financial obligation is \$3,000 or less during the plan’s entire term; or
- The term is for a period of three years or less.

⁹⁹ Section 721.02(2) and (3), F.S.

¹⁰⁰ Section 721.03, F.S.

¹⁰¹ See s. 721.05(36), F.S.

¹⁰² See ss. 721.05(41) and 718.103(26), F.S.

¹⁰³ Section 721.05(34), F.S.

¹⁰⁴ See s. 721.02(22), F.S., defining the term “managing entity.”

¹⁰⁵ Chapter 721, F.S.

¹⁰⁶ Ss. 721.52(8) and 721.52(4), F.S.

¹⁰⁷ S. 721.52(4), F.S.

A multisite timeshare plan must meet all the requirements of a traditional timeshare plan and additional requirements specific to multisite timeshare plans.¹⁰⁸ Any offering that does not comply with these additional requirements is deemed to be an offering of a timeshare license.¹⁰⁹

A multisite timeshare plan may be specific or non-specific. A “specific multisite timeshare plan” is a multisite timeshare plan where a purchaser receives a specific right to use accommodations and facilities, if any, at one component site of a multisite timeshare plan, together with use rights in other accommodations and facilities of the plan created by or acquired through the reservation system.¹¹⁰

When a timeshare estate is offered in a specific multisite timeshare plan, the timeshare instrument must contain or provide for all of the following matters:

- The purchaser will receive a timeshare estate in one of the component sites of the specific plan. The use rights in the other component sites must be made available to the purchaser through the reservation system pursuant to the timeshare instrument.
- If the reservation system is terminated or otherwise becomes unavailable for any reason before the plan expires:
 - The purchaser will be able to continue to use the accommodations and facilities of the component site in which she or he has been conveyed a timeshare estate in the manner described in the timeshare instrument for that component site for the remaining term of the timeshare estate; and
 - Any use rights in that component site which had previously been made available through the reservation system to purchasers of the plan who were not offered a timeshare estate at that component site will terminate when the reservation system is terminated or otherwise becomes unavailable for any reason.¹¹¹

A “nonspecific multisite timeshare plan” is a multisite timeshare plan where a purchaser receives a right to use all of the accommodations and facilities, if any, of the multisite timeshare plan through the reservation system, but no specific right to use any particular accommodations and facilities for the remaining term of the plan if the reservation system is terminated for any reason before the plan expires.¹¹²

Public Offering Statement

A developer of a timeshare plan must submit a public offering statement to the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) before any timeshare plan is offered for sale, which public offering statement must contain specified information.¹¹³ The division may prescribe the form of the public offering statement and generally must approve the public offering statement before it is delivered to prospective purchasers. An unapproved public offering statement may be delivered to prospective purchasers after filing with the division if

¹⁰⁸ Section 721.57(1), F.S.

¹⁰⁹ *Id.*

¹¹⁰ Section 721.52(7), F.S.

¹¹¹ Section 721.57(2), F.S.

¹¹² Section 721.52(5), F.S.

¹¹³ Section 721.07, F.S.

specific notice is given and the developer delivers a fully completed and executed copy of the purchase contract containing a specific statement in conspicuous type.¹¹⁴

Section 721.07(2)(d)1., F.S., provides that, if the developer delivers to the purchaser a filed but not division-approved public offering statement, the purchaser may cancel the purchase contract within 10 calendar days after signing the purchase contract or receiving the last of all documents required to be given under s. 721.07(6), F.S., whichever is later.¹¹⁵

Section 721.07(2)(d)2., F.S., provides that, after the developer receives an approval of a public offering statement from the division before closing and the revisions did not materially alter or modify the offering in a manner adverse to a purchaser, the developer must send a notice containing a statement in conspicuous type advising the purchaser that the developer is not required to deliver the revised documents because the revisions did not adversely affect the purchaser and that the purchaser's right to cancel expired 10 days after he or she signed the purchase contract.

Specified documents must be included as exhibits to the filed public offering statement, if applicable.¹¹⁶ The developer must also furnish each purchaser with the following:¹¹⁷

- A copy of the purchaser public offering statement text in the form approved by the division for delivery to purchasers.
- Copies of the exhibits to the public offering statement required to be filed with the division.
- A receipt for timeshare plan documents and a list describing any exhibit to the filed public offering statement filed with the division which is not delivered to the purchaser.
 - The division is authorized to prescribe by rule the form of the receipt for timeshare plan documents and the description of exhibits list that must be furnished to the purchaser.
 - The description of documents list utilized by a developer must be filed with the division for review as part of the filed public offering statement.
 - The developer must provide the managing entity with a copy of the approved filed public offering statement and any approved amendments to be maintained by the managing entity as part of the books and records of the timeshare plan.
- Any other exhibit which the developer includes as part of the purchaser public offering statement, provided that the developer first files the exhibit with the division.
- An executed copy of any document which the purchaser signs.
- A fully executed paper copy of the purchase contract.

Each public offering statement for a multisite timeshare plan must comply with the offering statement requirements for a traditional timeshare plan and contain additional information and disclosures, including a description of each component site, which description may be disclosed in a written, graphic, tabular, or other form approved by the division.¹¹⁸ Specified documents

¹¹⁴ Section 721.07(2) and (6), F.S.

¹¹⁵ Section 721.07(2)(d), F.S.

¹¹⁶ Section 721.07(7)(ff), F.S.

¹¹⁷ Section 721.07(6), F.S.

¹¹⁸ Section 721.55, F.S.

must also be included as exhibits to the filed multisite timeshare plan public offering statement, if applicable.¹¹⁹

Incidental Benefits

Incidental benefits may be offered to purchasers of timeshare interests in certain circumstances.¹²⁰ The term “incidental benefit” means:¹²¹

[A]n accommodation, product, service, discount, or other benefit which is offered to a prospective purchaser of a timeshare plan or to a purchaser of a timeshare plan prior to the expiration of his or her initial 10-day voidability period pursuant to s. 721.10[, F.S.]; which is not an exchange program as defined in [s. 721.05(16), F.S.]; and which complies with the provisions of s. 721.075[, F.S.] The term shall not include an offer of the use of the accommodations and facilities of the timeshare plan on a free or discounted one-time basis.

Examples of incidental benefits include exchange rights, travel insurance, bonus weeks, referral awards, and golf and tennis packages.¹²²

Incidental benefits are subject to required disclosures and restrictions, including a limit on the aggregate represented value of all incidental benefits offered by a developer to a purchaser of not more than 15 percent of the purchase price. The incidental benefits must be filed with the division for review in conjunction with the filing of a timeshare plan or in connection with a previously filed timeshare plan.¹²³ Additionally, each timeshare plan purchaser must execute a separate acknowledgment and disclosure statement with respect to all incidental benefits, which statement must include:

- A fair description of the incidental benefit, including any user fees or costs associated with the benefit and use or availability restrictions;
- A statement that the use of or participation in the incidental benefit is completely voluntary, and that payment of any fee or other cost associated with the benefit is required only upon such use or participation;
- A statement that the incidental benefit is not assignable or otherwise transferable by the prospective purchaser or purchaser;
- A statutorily-prescribed disclosure statement; and
- A statement indicating the source of the services, points or other products constituting the incidental benefit.¹²⁴

¹¹⁹ Section 721.55(7), F.S.

¹²⁰ Section 721.075, F.S.

¹²¹ Section 721.05(19), F.S.

¹²² Law Insider, *Incidental Benefit Definition*, <https://www.lawinsider.com/dictionary/incidental-benefit#:~:text=Incidental%20benefit%20means%20an%20accommodation,voidability%20period%20pursuant%20to%20s> (last visited Apr. 26, 2023).

¹²³ Section 721.075(2), F.S.

¹²⁴ *Id.*

The acknowledgement and disclosure statement must be filed with the division before use,¹²⁵ and the developer must promptly notify the division upon learning of any incidental benefit's unavailability.¹²⁶

Cancellations

Under current law, a timeshare plan purchaser may cancel the purchase contract until midnight of the tenth calendar day after the later of:¹²⁷

- The execution date; or
- The date on which the purchaser received the last of all documents required to be given pursuant to s. 721.07(2)(d)2., F.S., relating to the notice a developer must give a purchaser after the division has approved a public offering statement before closing with revisions that did not materially alter or modify the offering in a manner adverse to a purchaser.

It is unlawful to attempt to obtain a waiver of the timeshare plan purchaser's cancellation right or to hold the closing before the cancellation period's expiration, and such premature and unlawful closing is voidable at the option of the purchaser for a period of one year after the expiration of the cancellation period.¹²⁸

Effect of Proposed Changes

Section 11 amends s. 721.075, F.S., to repeal the 15 percent limitation on the aggregate represented value of all incidental benefits offered by the developer. The bill also prohibits the purchaser from assigning or transferring an incidental benefit without the approval of the provider of the incidental benefit. The bill also removes the requirement that:

- An acknowledgement and disclosure statement indicate the source of the services, points, or other products that constitute the incidental benefit.
- The developer promptly notify the division upon learning of the unavailability of any incidental benefit.

Under the bill, if an incidental benefit becomes unavailable and another benefit is substituted, the substituted benefit must be made available to the purchaser within 30 days after the date that the unavailability was made known to the developer. Under current law, the substituted incidental benefit must be delivered to the purchaser within that 30-day period.¹²⁹

Section 11 revises cross references to conform to changes made in the bill.

Section 12 amends s. 721.10, F.S, regarding a purchaser's right to cancel, to clarify the term "execution date" to mean the execution date of the contract. The bill also extends from one year to five years the period to void a contract when a closing unlawfully occurred before the cancellation period's expiration, and retains the one-year right for a purchaser to void a contract

¹²⁵ *Id.*

¹²⁶ Section 721.075(3)(a), F.S.

¹²⁷ Section 721.10(1), F.S.

¹²⁸ Section 721.10(1), F.S.

¹²⁹ Section 721.075(3), F.S.

if he or she knowingly or unknowingly waived the right to cancel the contract within the 10-day cancellation period.

Section 13 amends s. 721.55, F.S., to allow the developer's description of each component site in a public offering statement for a multisite timeshare plan to be provided to the purchaser electronically, such as through a website or other Internet-based access. The bill also provides that a developer is not required to file a separate public offering statement for any component site located within or outside Florida in order to include the component site in the multistate timeshare plan.

The bill makes technical and conforming changes.

Effective Date

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There may be a positive impact on the private sector by expanding the geographical scope of practice for those registered electrical contractors that choose to take advantage of the grandfathering provision. The Department of Business and Professional Regulation

(DBPR) noted that there will be reduced costs to licensees who will no longer have to maintain registrations in multiple jurisdictions.¹³⁰

C. Government Sector Impact:

As to electrical and alarm system license revenue, the Division of Professions of the DBPR indicates revenue from license fees for licensees using the grandfathering provision to seek statewide licensing is indeterminate as it is unknown how many eligible licensees will apply. The total fee (application fee, initial licensing fee, and unlicensed activity fee) during the end of the previous grandfathering period was \$196. The Division of Professions notes there are 2,036 registered licensees with current or inactive licenses who may be able to take advantage of the grandfathering provision. However, the [DBPR] received only 766 applications during the last grandfathering period of July 1, 2019, to November 1, 2021.¹³¹

Assuming total applications/license fees of \$196, the grandfathering fees received by the [DBPR] over the next three fiscal years could range from \$150,136 (if the [DBPR] receives the same number of applications as the last grandfathering period) to a maximum of \$399,056 if all 2,036 registered licensees apply over the next three fiscal years.¹³²

Local governments could experience a decrease in fees from registered electrical and alarm system contractors who seek statewide licensing using the grandfathering provision, but the impact is indeterminate.¹³³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 468.8414, 469.004, 489.514, 509.091, 509.096, 509.101, 509.241, 548.043, 553.73, 565.04, 721.075, 721.10, 721.11, and 721.55.

¹³⁰ See DBPR, *2023 Agency Legislative Bill Analysis for SB 782* at 7 (Feb. 14, 2023) (on file with the Senate Regulated Industries Committee).

¹³¹ *Id.* at 8.

¹³² *Id.*

¹³³ *Id.* at 5.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Fiscal Policy Committee on April 25, 2023:

The committee substitute:

- Shortens the time for a public lodging establishment to correct deficiencies in human trafficking awareness training to 45 days for violations after July 1, 2023; and makes the establishment ineligible for a correction period to avoid a fine for a second or subsequent failure to provide the required training.
- Authorizes the Building Commission to delay the energy provisions of the Building Code if energy code compliance software is not approved at least three months before the updated Building Code's effective date.
- Permits package stores licensed to sell beer, wine, and distilled spirits (liquor) for consumption off the premises to sell nicotine products such as electronic cigarettes. Under current law package stores may only sell certain types of products, including tobacco products.
- Eliminates certain requirements for the offering of incidental benefits, it extends from one year to five years the period for voiding a contract for which the closing unlawfully occurred before the cancellation period's expiration, and retains the one-year right for a purchaser to void a contract if he or she knowingly or unknowingly waived their right to cancel the contract within the 10-day cancellation period, and revises the public offering statement requirements to allow the developer's description of each component site for a multisite timeshare plan to be provided to the purchaser electronically and to provide that a developer is not required to file a separate public offering statement for any component to include the component in a multistate timeshare plan.

CS by Regulated Industries Committee on March 29, 2023:

The CS:

- Removes provisions allowing public lodging establishments and public food service establishments to obtain renewal licenses for two years rather than one year.
- Retains the requirement for public lodging establishments, public food service establishments, licensees, and licensed agents to maintain a division online account for communications with the DBPR; and
- Provides rulemaking authority for the DBPR to specify circumstances allowing an opt-out of the online account requirement.

B. Amendments:

None.