

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 Regulated Industries

BILL: CS/SB 1544

INTRODUCER: Regulated Industries Committee and Senator Hooper

SUBJECT: Department of Business and Professional Regulation

DATE: February 5, 2024

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|--------|
| 1. | Oxamendi | Imhof | RI | Fav/CS |
| 2. | | | AEG | |
| 3. | | | FP | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1544 revises the licensing process and other requirements for several licensees and permittees regulated by the Department of Business and Professional Regulation (DBPR). The bill requires persons and entities to create and maintain an online system account for the purpose of processing license, permit, or registration applications, as applicable, and to function as the primary means of contact between the regulating agency and the licensee, permittee, or registrant. Under the bill, the regulating agency may not process an application for the following licenses, permits, or registrations unless it is submitted through the online system:

- Licenses and permits for persons and entities licensed or permitted by the DBPR's Division of Alcoholic Beverages and Tobacco (DABT) under ch. 210, F.S., relating to the taxation of tobacco products;
- Alcoholic beverage licenses issued by the DABT; and
- Retail tobacco products dealer and a retail nicotine products dealer permits issued by the DABT.

The following persons must create and maintain an online account with the agency as a primary means of contact:

- Certified elevator inspectors, certified elevator technicians, or elevator companies registered with the Division of Hotels and Restaurants; and
- Certified public accountants licensed by the Board of Accountancy;

Regarding the Florida Homeowners' Construction Recovery Fund (recovery fund), the bill doubles the maximum amounts payable to claimants for claims that may be made against contractors from the recovery fund.

Under the bill, beginning January 1, 2025, for Division I and Division II contracts entered into on, or after, July 1, 2024, payment from the recovery fund is subject to a \$100,000 maximum payment for each Division I claim (\$50,000 maximum currently), and a \$30,000 maximum payment for each Division II claim (\$15,000 maximum currently)

The bill also increases the lifetime aggregate limits for claims made against a single licensee. Beginning January 1, 2025, for Division I and Division II contracts entered into on or after July 1, 2024, payment from the recovery fund is subject only to a total lifetime aggregate cap of \$2 million for each Division I claim (\$500,000 maximum currently), and a \$600,000 maximum payment for each Division II claim (\$150,000 maximum currently).

The bill also:

- Regarding pilots of navigable waters, repeals the requirement for:
 - Pilots and pilots in port to establish a competency-based mentor program for minority persons as defined in s. 288.703, F.S.;
 - The DBPR to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives containing information on the mentor programs; and
 - The DBPR to give consideration to minority and female state applicants when qualifying deputy pilots for certification.
- Eliminates the Board of Employee Leasing Companies and provides for its functions and duties to be performed by an employee leasing companies licensing program created by the bill to be administered by the DBPR.
- Revises the criteria for determining financial responsibility when licensing asbestos abatement consultants and contractors.
- Deletes the provision that, if an applicant for a real estate broker or sale associate license issued by the Florida Real Estate Commission fails to pass the required examination within two years of completing the education course, the applicant's successful course completion is invalid for licensure.
- Regarding barber and cosmetologists, repeals duplicative provisions allowing licensure by endorsement of persons licensed in another state for at least one year.
- Regarding construction contracting, authorizes local jurisdiction enforcement bodies to recommend to the Construction Industry Licensing Board (CILB) a recommended penalty of restitution, in addition to the recommended penalties that a local jurisdiction enforcement body is authorized to recommend to the CILB in current law.
- Provides additional types of work experience to qualify for certification as a designated representative of an entity licensed under the Drug and Cosmetic Act in part I of ch. 499, F.S.

The bill takes effect July 1, 2024.

II. Present Situation:

Department of Business and Professional Regulation

Licensure, Generally

The Department of Business and Professional Regulation (DBPR) has 11 divisions that are tasked with the licensure and general regulation of several professions and businesses in Florida.¹ Fifteen boards and programs exist within the Division of Professions,² two boards exist within the Division of Real Estate,³ and one board exists in the Division of Certified Public Accounting.⁴

Sections 455.203 and 455.213, F.S., establish the DBPR's general licensing authority, including its authority to charge license fees and license renewal fees. Each board within the DBPR must determine by rule the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.⁵ 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.⁶

In Fiscal Year 2022-2023, there were 950,380 active licensees regulated by the DBPR or a board within the department, including 39,336 active licensees in the Division of Certified Public Accounting, 486,336 active licensees in the Division of Professions, and 67, 827 active licensees under the Board of Professional Engineers.⁷

Other Relevant Topics

For ease of reference to each of the topics addressed in the bill, the Present Situation for each topic will be described in Section III of this analysis, followed immediately by an associated section detailing the Effect of Proposed Changes.

¹ See s. 20.165, F.S., creating the divisions of Administration; Alcoholic Beverages and Tobacco; Certified Public Accounting; Drugs, Devices, and Cosmetics; Florida Condominiums, Timeshares, and Mobile Homes; Hotels and Restaurants; Pari-mutuel Wagering; Professions; Real Estate; Regulation; Service Operations; and Technology.

² Section 20.165(4)(a), F.S., establishes the following boards and programs which are noted with the implementing statutes: Board of Architecture and Interior Design, part I of ch. 481, F.S.; Florida Board of Auctioneers, part VI of ch. 468, F.S.; Barbers' Board, ch. 476, F.S.; Florida Building Code Administrators and Inspectors Board, part XII of ch. 468, F.S.; Construction Industry Licensing Board, part I of ch. 489, F.S.; Board of Cosmetology, ch. 477, F.S.; Electrical Contractors' Licensing Board, part II of ch. 489, F.S.; Board of Employee Leasing Companies, part XI of ch. 468, F.S.; Board of Landscape Architecture, part II of ch. 481, F.S.; Board of Pilot Commissioners, ch. 310, F.S.; Board of Professional Engineers, ch. 471, F.S.; Board of Professional Geologists, ch. 492, F.S.; Board of Veterinary Medicine, ch. 474, F.S.; Home Inspection Services Licensing Program, part XV of ch. 468, F.S.; and Mold-related Services Licensing Program, part XVI of ch. 468, F.S.

³ See s. 20.165(4)(b), F.S. Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S., and Florida Real Estate Commission, created under part I of ch. 475, F.S.

⁴ See s. 20.165(4)(c), F.S., which establishes the Board of Accountancy, created under ch. 473, F.S.

⁵ Section 455.219(1), F.S.

⁶ Section 455.01(4) and (5), F.S.

⁷ See Department of Business and Professional Regulation, Division of Professions, Division of Certified Public Accounting, Division of Real Estate, and Division of Regulation, *Annual Report, Fiscal Year 2022-2023*, p. 18, available at <http://www.myfloridalicense.com/DBPR/os/documents/Division%20Annual%20Report%20FY%2022-23.pdf> (last visited Jan. 15, 2024).

III. Effect of Proposed Changes:

Taxation of Tobacco products

Present Situation

Part II of ch. 210, F.S., imposes a tax and a surcharge tax on tobacco products other than cigarettes or cigars. Cigarettes are taxed under part I of ch. 210, F.S. Cigars are not subject to a tax.

Section 210.15, F.S., requires every person, firm, or corporation desiring to engage in business as a manufacturer, importer, exporter, distributing agent or wholesale dealer of cigarettes within this state to file with the Division of Alcoholic Beverages and Tobacco (DABT) an application for a cigarette permit for each place of business located within this state or, in the absence of such place of business in this state, for wherever its principal place of business is located. Every application for a cigarette permit must be made on forms furnished by the DABT and set forth the name under which the applicant transacts or intends to transact business, the location of the applicant's place of business within the state, if any, and such other information as the DABT may require.

Distributors of tobacco products other than cigarettes must be licensed by the DABT.⁸ Section 210.40, F.S., provides a \$25 application fee for a license as a distributor of tobacco products other than cigarettes. The license application must be accompanied by a corporate surety bond issued by a surety company authorized to do business in this state, conditioned for the payment when due of all taxes, penalties, and accrued interest that may be due to the state. The required bond must be in the sum of \$1,000 and in a form prescribed by the DABT.⁹ If the DABT determines that the bond given by a licensee is inadequate in amount to fully protect the state, the DABT must require an additional bond in an amount deemed sufficient. A separate application for a license must be made for each place of business at which a distributor proposes to engage in business as a distributor of tobacco products other than cigarettes, but an applicant may provide one bond in an amount determined by the DABT for all applications made by the distributor.

Effect of Proposed Changes

Section 1 of the bill revises s. 210.15(1), F.S., relating to the taxation of cigarettes under part I of ch. 210, F.S., and **Section 2** of the bill creates s. 210.32, F.S., relating to the taxation of tobacco products other than cigarettes, to require every person or entity licensed or permitted under ch. 210, F.S., to require all persons or entities licensed or permitted by the DABT, or applying for a license or permit, to create and maintain an account with the DABT's online system.

An email address must be supplied by the licensee, permittee, or applicant, and will function as the primary means of contact between the DABT and the licensee, permittee, or applicant. The

⁸ Section 210.35, F.S.

⁹ Wholesale dealers, agents, or distributing agents of cigarettes must file with the division a surety bond, certificate of deposit, or irrevocable letter of credit acceptable to the division in an amount equal to 110 percent of the estimated tax liability for 30 days, but not less than \$2,000. Section 210.08, F.S.

licensee, permittee, and applicant is responsible for maintaining accurate contact information on file with the DABT.

The bill requires all persons or entities seeking a license or permit from the division to use the DABT's online system. Under the bill, the DABT may not process an application or a permit unless it is submitted through the online system.

Section 3 of the bill revises s. 210.40, F.S., to increase the required corporate surety bond from \$1,000 to \$25,000. The bill revises the term "surety bond" to "corporate surety bond." The bill requires the DABT to review the amount of a corporate surety bond on a semiannual basis to ensure that the bond is adequate to protect the state.

Under the bill, the DABT may increase the corporate surety bond amount before renewing a distributor's license or after completing its semiannual review of the bond amount. The bill allows the DABT to increase the corporate surety bond amount to the sum of the distributor's highest month of final audited tax liabilities, penalties, and accrued interest which are due to the state. A corporate surety bond, with the sum determined by the DABT in accordance with the paragraph, is required for the renewal of a distributor's license.

The bill authorizes the DABT to prescribe by rule increases in the bond amount.

The DABT may decrease a corporate security bond upon a distributor's showing of good cause and then set conditions and standards of review for decreasing a bond amount. A decrease is only authorized when criminal or administrative charges are fully resolved, the corporate entity displays responsible financial behavior, and for a showing of good cause. The bill prohibits decreasing the amount of a corporate security bond when the licensee is in default on tax liabilities, penalties, or interest due the state or is the subject of a criminal or administrative investigation or prosecution.

The bill requires the DABT to notify a distributor in writing of any change in the distributor's corporate surety bond requirements by the date the distributor's audited tax assessments become final.

The bill states that these provisions governing corporate surety bonds are not subject to s. 120.60, F.S., of the Administrative Procedure Act, which sets forth the administrative process for agency review of license application, including deadlines for the approval and denial of license applications.

Pilots of Navigable Waters

Present Situation

Chapter 310, F.S., relates to the regulation of the pilots of vessels utilizing the navigable waters of Florida. The term "pilot" means "a licensed state pilot or a certificated deputy pilot." The term "piloting" means the acts of pilots in conducting vessels through the navigable waters of Florida.

The qualifications for a pilot's license include being at least 21 years of age, being of good physical and mental health, having at least two years of service as a certified deputy pilot, and

satisfactorily completing the examination required under s. 310.081, F.S.¹⁰ The qualifications for a deputy pilot certificate include being at least 21 years of age, having specified maritime experience, and satisfactorily completing the examination required under s. 310.081, F.S.¹¹

Section 310.0015(3)(d)2., F.S., requires the pilot or pilots in a port to establish a competency-based mentor program by which minority persons as defined in s. 288.703, F.S., may acquire the skills for the professional preparation and education competency requirements of a licensed state pilot or certificated deputy pilot. The DBPR must provide the Governor, the President of the Senate, and the Speaker of the House of Representatives with a report each year on the number of minority persons who have participated in each mentor program, who are licensed state pilots or certificated deputy pilots, and who have applied for state pilot licensure or deputy pilot certification.

Effect of Proposed Changes

Section 4 of the bill revises section 310.0015, F.S., to repeal the requirement that pilot or pilots in port must establish a competency-based mentor program for minority persons as defined in s. 288.703, F.S., and that the DBPR submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives containing information on the mentor programs.

Section 5 of the bill revises s. 310.081(2), F.S., to repeal the requirement that the DBPR give consideration to minority and female state applicants when qualifying as deputy pilots, in the interest of ensuring diversification within the state piloting profession.

Certified Elevator Inspectors

Present Situation

Chapter 399, F.S., provides for the regulation of elevators in Florida, including the requirements of certified elevator inspectors,¹² certified elevator technicians,¹³ or elevator companies¹⁴ to register with the DBPR's Division of Hotels and Restaurants.

Effect of Proposed Changes

Section 6 of the bill creates s. 399.18, F.S., to require any certified elevator inspector, certified elevator technician, or registered elevator company, and any person applying for such certification or registration, to create and maintain an online account; and provide an e-mail address to function as the primary means of contact for all communication from the division. The bill requires that each person or entity maintain accurate contact information on file with the Division of Hotels and Restaurants. The bill authorizes the Division of Hotels and Restaurants to adopt rules to implement the provisions of the bill.

¹⁰ Section 310.073, F.S.

¹¹ Section 310.071, F.S.

¹² Section 399.17, F.S., relating to the registration requirement for certified elevator inspectors.

¹³ Section 399.01(14), F.S.

¹⁴ Section 399.03, F.S.

Employee Leasing Companies

Present Situation

Part XI of ch. 468, F.S., provide for the regulation of employee leasing companies. Section 468.521, F.S., creates the Board of Employee Leasing Companies within the DBPR, to regulate the profession of employee leasing, including licensure and discipline, and to adopt rules to implement the provisions of part XI of ch. 468, F.S. The Board of Employee Leasing Companies consists of seven members who are appointed by the Governor and confirmed by the Senate.¹⁵

The controlling person of an employee leasing company must be licensed by the DBPR. Generally, the term “employee leasing” means an arrangement whereby a leasing company assigns its employees to a client and allocates the direction of and control over the leased employees between the leasing company and the client.¹⁶ An employee leasing company may be a sole proprietorship, partnership, corporation, or other form of business entity engaged in employee leasing.¹⁷

Effect of Proposed Changes

Section 7 of the bill creates s. 468.519, F.S., to establish the employee leasing companies licensing program to be administered by the DBPR.

Section 8 of the bill repeals s. 468.521, F.S., which establishes the Board of Employee Leasing Companies.

Section 26 of the bill revises s. 20.165, F.S., which sets forth the boards and programs within the DBPR, to replace the Board of Employee Leasing Companies with the employee leasing companies licensing program.

Asbestos Consultants and Contractors

Present Situation

Chapter 469, F.S., governs the licensing and regulation of asbestos abatement consultants and contractors. The Asbestos Licensing Unit is a program located in the Division of Professions, which processes license applications and responds to consumer complaints and inquiries by monitoring activities and compliance within the asbestos abatement industry.

A person must be a licensed asbestos contractor in order to conduct asbestos abatement work,¹⁸ unless exempted.¹⁹ A person must be a licensed asbestos consultant to conduct an asbestos survey, develop an operation and maintenance plan, monitor and evaluate asbestos abatement, or

¹⁵ Section 468.521, F.S.

¹⁶ Section 468.520(4), F.S.

¹⁷ Section 468.520(5), F.S.

¹⁸ Section 469.003(3), F.S.

¹⁹ Section 469.002, F.S., provides that in limited circumstances, certain governmental employees with required training may engage in asbestos abatement work solely for maintenance purposes.

prepare asbestos abatement specifications.²⁰ Prerequisite qualifications for licensure as an asbestos consultant require that the applicant be actively licensed as an architect, professional engineer, or professional geologist; is a diplomat of the American Board of Industrial Hygiene; or has been designated as a Certified Safety Professional by the Board of Certified Safety Professionals.²¹

In addition, for applicants who wish to engage in consulting or contracting as a partnership, corporation, business trust, or other legal entity, or in any name other than the applicant's legal name, the applicant's legal entity must apply for licensure through a qualifying agent or the individual applicant must apply for licensure under the fictitious name as a business organization.

Applicants for licensure as an asbestos abatement professional or as an asbestos abatement business organization must provide evidence of financial stability.²² Section 469.006(2)(c)2., F.S., requires the DBPR to adopt rules to determine the financial stability of applicants for a license as an asbestos abatement business organization, which must include, but is not limited to, credit history and the limits of bondability and credit.

Effect of Proposed Changes

Section 9 of the bill revises s. 469.006(2)(c)2., F.S., to delete the requirement that criteria for bondability and credit be included in the DBPR's rule for determining financial responsibility.

Certified Public Accountants

Present Situation

The Board of Accountancy within the DBPR is charged with regulating the practice of public accountancy in Florida.²³ A person wishing to practice accounting²⁴ must be licensed as a Florida certified public accountant (CPA) and apply to the DBPR to take a licensure examination.²⁵ To sit for the license examination, a person must be of good moral character, pass the licensure exam, and have at least 120 semester hours or 180 quarter hours of education, with a focus on accounting and business.²⁶ To be licensed as a CPA, a person must have specified qualifications, including at least 150 hours of education. CPA firms must also be licensed.²⁷

Effect of Proposed Changes

Sections 10 and 11 of the bill revise ss. 473.306(2) and 473.308, F.S., to require persons applying to take the CPA licensure examination, applying for a CPA license, and applying for a CPA firm license to create and maintain an online account with the DBPR and provide an e-mail

²⁰ Section 469.003, F.S.

²¹ Section 469.004(1), F.S.

²² Section 469.006(2)(c)2., F.S.

²³ Section 473.303, F.S., creating the Board of Accountancy.

²⁴ See s. 473.302(8), F.S., defining the terms "practice of," "practicing public accountancy," or "public accounting."

²⁵ Section 473.306, F.S.

²⁶ Sections 473.308(2)-(5), F.S.

²⁷ *Id.*

address to function as the primary means of contact for all communication to the applicant from the DBPR. Each applicant is responsible for maintaining accurate contact information on file with the DBPR and must submit any change in their e-mail address or home address within 30 days after the change. All changes must be submitted through the DBPR's online system.

Real Estate Brokers, Sales Associates, Schools, and Appraisers

Present Situation

Part I of ch. 475, F.S., provides for the regulation of real estate brokers, sales associates, and real estate schools by the Florida Real Estate Commission (FREC).²⁸

A license issued by the FREC is required to practice as a real estate broker or a sales associate.²⁹ Section 475.181, F.S., requires that the FREC certify for licensure any applicant who meets the requirements for licensure.

The FREC may not certify an applicant who has violated any of the provisions of s. 475.42, F.S., which sets forth prohibited acts, or is subject to discipline under s. 475.25, F.S., which sets forth grounds for discipline. All applications expire after two years if the applicant fails to pass the appropriate examination. Additionally, applicants must satisfy education course approved by the FREC and successfully complete a license examination within two years of completing the required education.³⁰ If the applicant does not pass the licensing examination within two years after the successful course completion date, the applicant's successful course completion is invalid for licensure.³¹

Effect of Proposed Changes

Section 12 of the bill amends s. 475.181(2), F.S., to delete the provision that, if an applicant for a real estate broker or sale associate license fails to pass the required examination within two years of completing the required education course, the applicant's successful course completion is invalid for licensure.

Barbering

Present Situation

The Barbers' Board is responsible for licensing and regulating barbers.³²

The term "barbering" in ch. 476, F.S., the Barbers' Act, includes any of the following practices when done for payment by the public: shaving, cutting, trimming, coloring, shampooing,

²⁸ Section 475.02, F.S., creating the Florida Real Estate Commission, which has seven members who are appointed by the Governor and confirmed by the Senate.

²⁹ Section 475.181, F.S.

³⁰ See s. 475.161, F.S., relating to licensing of real estate brokers and sales associates, s. 475.17, F.S., relating to qualifications for practice, s. 475.175, F.S., relating to examinations, s. 475.180, F.S., relating to the licensing of persons who are not a resident of Florida and are licensed in another jurisdiction (nonresident licensees), and s. 475.181, F.S., relating to licensure.

³¹ Section 475.181(2), F.S.

³² Section 476.054, F.S., creating the Barber's Board.

arranging, dressing, curling, or waving the hair or beard or applying oils, creams, lotions, or other preparations to the face, scalp, or neck, either by hand or by mechanical appliances.³³

An applicant for licensure as a barber must pass an examination. To be eligible to take the examination, the applicant must be at least 16 years old, pay the application fee, and either:

- Have held an active valid license in another state for at least one year;
- Complete a minimum of 900 hours of training; or
- Passes the licensure examination after completing a minimum of 600 hours actual hours of school education.³⁴

Additionally, ch. 2020-160, Laws of Fla., amended s. 476.144(5), F.S., relating to the licensing of barbers, to provide licensure by endorsement of persons who hold a current active license to practice barbering in another state for at least one year.

A person may also apply for and receive a “restricted license” to practice barbering, which authorizes the licensee to practice only in areas in which he or she has demonstrated competency pursuant to rules of the Barbers’ Board.³⁵

The Barber’s Board may also license by endorsement barbering practitioners who desire to be licensed in this state who hold a current active license in another country and who have met qualifications that are substantially similar to, equivalent to, or greater than the qualifications required of applicants from this state.³⁶

Effect of Proposed Changes

Section 13 of the bill revises s. 476.114, F.S., to delete the licensure by endorsement provision, which is duplicative of the licensure by endorsement provision in s. 476.411, F.S.

Cosmetology

Present Situation

Chapter 477, F.S., governs the licensure and regulation of cosmetologists, nail specialists, facial specialists, full specialists, body wrappers and related salons in the state by the Board of Cosmetology, within the DBPR.

Persons may not engage in the practice of cosmetology without a license issued by the Board of Cosmetology.³⁷ Individuals are also prohibited from providing manicures, pedicures, nail painting services, or facials in Florida without a registration with the Board of Cosmetology.³⁸

³³ See s. 476.034(2), F.S. The term does not include those services when done for the treatment of disease or physical or mental ailments.

³⁴ See s. 476.114(2), F.S.

³⁵ See s. 476.144(6), F.S.

³⁶ Section 476.144(5), F.S.

³⁷ Section 477.014, F.S.

³⁸ See ss. 477.013(6) and 477.0201, F.S.

To qualify for a cosmetologist license, the applicant must be at least 16 years of age or have received a high school diploma, pay nonrefundable application and examination fees, and successfully complete a license examination.

In addition, s. 477.019(2), F.S., provides that an applicant for a cosmetologist license must either:

- Be authorized to practice cosmetology in another state or country for at least one year, and not qualify for licensure by endorsement as provided for in s. 477.019(5), F.S.; or
- Have received a minimum of 1,200 hours of training as established by the Board of Cosmetology.

However, s. 477.019(5), F.S., does not provide for licensure by endorsement.

Section 477.019(6), F.S., allows the Board of Cosmetology to certify as qualified for licensure by endorsement as a cosmetologist in this state an applicant who holds a current active license to practice cosmetology in another state.

Effect of Proposed Changes

Section 14 of the bill revises s. 477.019(2), F.S., to delete the licensure by endorsement provision, which is duplicative of the licensure by endorsement provision in s. 477.019(6), F.S.

Construction Contracting

Present Situation

Contractor Discipline (Penalties, Fines, and Other Penalties)

Section 489.131(7), F.S., relating to compliance with regulatory policies by licensed contractors, authorizes a local jurisdiction enforcement body to enforce its local ordinances and the provisions of part I of ch. 489, F.S., relating to construction contracting, against locally licensed or registered contractors. Fines and other penalties are authorized to ensure compliance with state laws and local jurisdiction ordinances.

The local jurisdiction enforcement body may conduct disciplinary proceedings and may require restitution, impose a suspension or revocation of a local license, or a fine not to exceed \$5,000, or a combination thereof, against the locally licensed or registered contractor, and may assess reasonable investigative and legal costs for the prosecution of the violation.

In addition to any action the local jurisdiction enforcement body may take against the individual's local license, and any fine the local jurisdiction may impose, the local jurisdiction enforcement body must issue a recommended penalty for board action. This recommended penalty may include a recommendation for no further action, or a recommendation for suspension, revocation, or restriction of the registration, or a fine to be levied by the board, or a combination thereof.

The local jurisdiction enforcement body must inform the disciplined contractor and the complainant of the local license penalty imposed, the board penalty recommended, the rights to appeal, and the consequences should an appeal not be taken. The local jurisdiction enforcement

body must, upon having reached adjudication or having accepted a plea of *nolo contendere*, immediately inform the board of its action and the recommended board penalty.

The DBPR, the disciplined contractor, or the complainant may challenge the local jurisdiction enforcement body's recommended penalty for board action to the Construction Industry Licensing Board (CILB). A challenge must be filed within 60 days after the issuance of the recommended penalty to the CILB, and if challenged, there is a presumptive finding of probable cause which allows the case to proceed without the need for a probable cause hearing.

Failure of the DBPR, the disciplined contractor, or the complainant to challenge the local jurisdiction's recommended penalty within the required time period constitutes a waiver of the right to a hearing before the CILB. A waiver of the right to a hearing before the CILB is deemed an admission of the violation, and the penalty recommended to the CILB becomes a final order without further board action, in accordance with procedures developed by CILB rule. The disciplined contractor may appeal this action to the district court.

The DBPR may investigate any complaint made to it, but may not initiate or pursue any complaint against a registered contractor who is not also a certified contractor where a local jurisdiction enforcement body has jurisdiction over the complaint, unless summary procedures are initiated by the secretary pursuant to s. 455.225(8), F.S., or unless the local jurisdiction enforcement body has failed to investigate and prosecute a complaint, or make a finding of no violation, within six months of receiving the complaint. The DBPR must refer the complaint to the local jurisdiction enforcement body for investigation, and if appropriate, prosecution. However, the DBPR may investigate such complaints to the extent necessary to determine whether summary procedures should be initiated.

Upon a recommendation by the DBPR, the CILB may make conditional, suspend, or rescind its determination of the adequacy of the local government enforcement body's disciplinary procedures granted under s. 489.117(2), F.S. However, local jurisdictions may not exercise disciplinary authority over certified contractors.

Florida Homeowners' Construction Recovery Fund

The Florida Homeowners' Construction Recovery Fund (recovery fund) was created by the Legislature in 1993 after Hurricane Andrew.³⁹ The recovery fund is the last resort to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed general, building, and residential contractors. Covered losses include financial mismanagement or misconduct, project abandonment, or fraudulent statement of a contractor or related party.⁴⁰ A homeowner must have engaged a contractor for construction or improvement of the homeowner's Florida residence, and the damage must have been caused by a Division I licensee or a Division II licensee.⁴¹

³⁹ See ch. 93-166, s. 21, Laws of Fla. and see Department of Business and Professional Regulation, *2024 Agency Legislative Bill Analysis for SB 414* at 2 (Nov. 20, 2023) (on file with the Senate Committee on Regulated Industries).

⁴⁰ See ss. 489.140-489.144, F.S.

⁴¹ Section 489.1402, F.S., defines the term "residence" to mean "a single-family residence, an individual residential condominium or cooperative unit, or a residential building containing not more than two residential units in which the owner

A claim must involve an act by a contractor under specific statutory provisions relating to mismanagement, abandonment of a project, and actions that give rise to disciplinary actions by the CILB against contractors, as follows:

- Section 489.129(1)(g), F.S., allows disciplinary proceedings for committing mismanagement or misconduct in the practice of contracting that causes financial harm to a customer. Financial mismanagement or misconduct occurs when the contractor fails to remove a valid lien after payment; the contractor has abandoned the job and has been paid for more than is completed; and the customer is made to pay more than the contract price.
- Section 489.129(1)(j), F.S., allows disciplinary proceedings for abandoning a construction project, under certain conditions.
- Section 489.129(1)(k), F.S., allows disciplinary proceedings for signing a false statement with respect to a project or contract indicating that the work is bonded, subcontractors have been paid, or workers' compensation and public liability insurance are provided.
- Section 713.35, F.S., provides for criminal penalties for any person who knowingly and intentionally makes an affidavit, a waiver or release of lien, or other document, whether or not under oath, with false information about the payment status of subcontractors, sub-subcontractors, or suppliers.

If a final judgment, CILB-issued restitution order, or arbitration award is not expressly based on s. 489.129(1)(g), (j), or (k), F.S., the claimant must present to the CILB sufficient evidence to show that the contractor engaged in activity described in those subsections.⁴²

The recovery fund is financed by a 1.5 percent surcharge on all building permit fees associated with the enforcement of the Code.⁴³ The local government that collects the permit fees retains 10 percent of the surcharge, and the net surcharge proceeds are then allocated equally to the recovery fund and the operations of the Building Code Administrators and Inspectors Board.⁴⁴

Duty of Contractor to Give Notice of Rights under Recovery Fund

Section 489.1425, F.S., creates a duty for a contractor to provide notice to a customer of rights under the recovery fund. Any agreement or contract for repair, restoration, improvement, or construction to residential real property must contain a written statement explaining the consumer's rights under the recovery fund, except where the value of all labor and materials does not exceed \$2,500, and must be substantially in the form required by statute.

Requirements to Make a Claim

The claimant must have obtained a final judgment, arbitration award, or CILB-issued restitution order against the contractor for damages that are a direct result of a compensable violation. The

contracting for the improvement is residing or will reside 6 months or more each calendar year upon completion of the improvement.”

⁴² Fla. Admin. Code R. 61G4-21.003.

⁴³ Section 468.631(1), F.S.

⁴⁴ The DBPR has the authority to transfer excess cash to the recovery fund if it determines it is not needed to support the operation of the Building Code Administrators and Inspectors Board; the amount transferred cannot exceed the amount appropriated in the General Appropriations Act or approved by the Legislative Budget Commission for payment of claims from the fund. *Id.*

statute of limitations to make a claim is one year after the conclusion of an action or award in arbitration that is based on the misconduct.⁴⁵ Certain persons are not eligible to make a claim against the recovery fund.⁴⁶

Limits

Section 489.143, F.S., relating to payment from the recovery fund, provides that an eligible claimant from the recovery fund will be an amount equal to the judgment, award, or restitution order or \$25,000, whichever is less, or an amount equal to the unsatisfied portion of such person's judgment, award, or restitution order, but only to the extent and amount of actual damages suffered by the claimant, and subject to the maximum per-claim amount and a total lifetime per-licensee maximum.⁴⁷

The maximum amounts payable for recovery fund claims and the total lifetime aggregate limits are set forth in s. 489.143, F.S.,⁴⁸ as follows:

- Beginning January 1, 2005, for each Division I contract entered into after July 1, 2004, recovery fund claims are limited to a \$50,000 maximum payment for each Division I claim, with a total lifetime aggregate limit of \$500,000 for each Division I licensee.
- Beginning January 1, 2017, for each Division II contract entered into on or after July 1, 2016, (the date that claims against Division II licensees were first authorized to be filed), recovery fund claims are limited to a \$15,000 maximum payment for each Division II claim, with a total lifetime aggregate limit of \$150,000 for each Division II licensee.

Claims are paid in the order that they are filed, up to the lifetime aggregate limits for each transaction and licensee, and to the limits of amounts appropriated to pay claims against the recovery fund.⁴⁹ Payments may not exceed the total claim limits or lifetime aggregate limits.⁵⁰

Appropriations; Excess Funds; License Suspension

Section 489.143(8), F.S., provides that if the annual appropriation is exhausted with claims pending, the pending claims must be carried over to the next fiscal year. Monies in excess of pending claims must be paid in accordance with s. 468.631, F.S., relating to the Building Code Administrators and Inspectors Fund.

Section 489.143(9), F.S., provides that, upon payment of any amount from the recovery fund in settlement of a claim in satisfaction of a judgment, award, or restitution order against a licensee,

⁴⁵ Section 489.141(1)(f), F.S.

⁴⁶ Section 489.141(2), F.S., provides certain persons are precluded from making a claim for recovery under the fund, if: (a) The claimant is the spouse of the judgment debtor or licensee or a personal representative of such spouse; (b) The claimant is a licensee who acted as the contractor in the transaction that is the subject of the claim; (c) The claim is based upon a construction contract in which the licensee was acting with respect to the property owned or controlled by the licensee; (d) The claim is based upon a construction contract in which the contractor did not hold a valid and current license at the time of the construction contract; or (e) The claimant was associated in a business relationship with the licensee other than the contract at issue.

⁴⁷ Section 489.143(2), F.S.

⁴⁸ For fund claims for contracts entered into before July 1, 2004, see s. 489.143(6), F.S.

⁴⁹ Section 489.143(7), F.S.

⁵⁰ *Id.*

the license of such licensee is automatically suspended, without further administrative action, upon the date of payment from the recovery fund. The license may not be reinstated until the licensee has repaid in full the amount paid from the recovery fund, plus interest.

Effect of Proposed Changes

Section 15 revises s. 489.131, F.S., relating to compliance with regulatory policies by licensed contractors, to authorize a local jurisdiction enforcement body to recommend to the CILB a recommended penalty of restitution, in addition to the recommended penalties that a local jurisdiction enforcement body is authorized to recommend to the CILB in current law. The bill also requires that a recommended penalty specify the violations of ch. 489, F.S., relating to contracting, upon which the recommendation is based.

Section 16 revises s. 489.143, F.S., to double the maximum amounts payable to claimants for claims that may be made against contractors from the Florida Homeowners' Construction Recovery Fund (recovery fund).

Under the bill, beginning January 1, 2025, for Division I and Division II contracts entered into on or after July 1, 2024, payment from the recovery fund is subject to a \$100,000 maximum payment for each Division I claim (\$50,000 maximum currently), and a \$30,000 maximum payment for each Division II claim (\$15,000 maximum currently).

The bill also increases the lifetime aggregate limits for claims made against a single licensee. Beginning January 1, 2025, for Division I and Division II contracts entered into on or after July 1, 2024, payment from the recovery fund is subject only to a total lifetime aggregate cap of \$2 million for each Division I claim (\$500,000 maximum currently), and a \$600,000 maximum payment for each Division II claim (\$150,000 maximum currently).

Florida Drug and Cosmetic Act

Present Situation

The Division of Drugs, Devices and Cosmetics safeguards 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 by administering the provisions of the Florida Drug and Cosmetic Act in part I of ch. 499, F.S. A permit is required before a person or establishment may engage in specified activities, including operating as a prescription drug manufacturer, device manufacturer, or cosmetic manufacturer.⁵¹

In pertinent part, each establishment that is issued an initial or renewal permit as a prescription drug wholesale distributor or an out-of-state prescription drug wholesale distributor must designate in writing to the DBPR at least one natural person to serve as the designated representative of the wholesale distributor. Such person must have an active certification as a designated representative from the DBPR.

⁵¹ See s. 499.01, F.S.

To be certified as a designated representative, a natural person must:

- Submit an application on a form furnished by the DBPR and pay the appropriate fees.
- Be at least 18 years of age.
- Have at least two years of verifiable full-time:
 - Work experience in a pharmacy licensed in this state or another state, where the person's responsibilities included, but were not limited to, recordkeeping for prescription drugs;
 - Managerial experience with a prescription drug wholesale distributor licensed in this state or in another state; or
 - Managerial experience with the United States Armed Forces, where the person's responsibilities included, but were not limited to, recordkeeping, warehousing, distributing, or other logistics services pertaining to prescription drugs.

In addition, the person must receive a passing score of at least 75 percent on an examination given by the DBPR regarding federal laws governing distribution of prescription drugs and part I of ch. 499, F.S., and the rules adopted by the DBPR governing the wholesale distribution of prescription drugs.

Effect of Proposed Changes

Section 17 of the bill revises s. 499.012 (15), F.S., relating to the requirements to be a certified designated representative, to provide the following additional types of work experience to qualify for certification:

- Managerial experience with a state or federal organization responsible for regulating or permitting establishments involved in the distribution of prescription drugs, whether in an administrative or a sworn law enforcement capacity; or
- Work experience as a drug inspector or investigator with a state or federal organization, whether in an administrative or a sworn law enforcement capacity, where the person's responsibilities related primarily to compliance with state or federal requirements pertaining to the distribution of prescription drugs.

Alcoholic Beverage Licenses

Present Situation

The DABT within the DBPR administers and enforces the Beverage Law,⁵² which regulates the manufacture, distribution, and sale of wine, beer, and liquor.

⁵² Section 561.01(6), F.S., provides that the "Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

Section 561.14, F.S., requires a license issued by the DABT to be a manufacturer,⁵³ distributor,⁵⁴ or vendor⁵⁵ of alcoholic beverages. A license is also required to be a broker or sales agent,⁵⁶ importer,⁵⁷ bottle club,⁵⁸ or exporter.⁵⁹

Section 562.12(1), F.S., prohibits the sale of alcoholic beverages without a license issued by the division. An alcoholic beverage licensee may only sell alcoholic beverages in the manner permitted by her or his license. In addition, a licensee or other person who keeps or possesses alcoholic beverages not permitted to be sold by her or his license, or not permitted to be sold without a license, with intent to sell or dispose of same unlawfully, or who keeps and maintains a place where alcoholic beverages are sold unlawfully, is guilty of a misdemeanor of the second degree.⁶⁰

Section 562.12(2), F.S., provides that it is unlawful for any person to operate as an exporter⁶¹ of alcoholic beverages within the state without registering as an exporter pursuant to s. 561.17, F.S. A person who violates this prohibition is guilty of a misdemeanor of the second degree.⁶²

Section 561.01(4)(a), F.S., defines the term “alcoholic beverages” to mean distilled spirits and all beverages containing one-half of one percent or more alcohol by volume.

Section 561.17, F.S., provides the process for applying with the DABT for a license or registration under the Beverage Law.

Effect of Proposed Changes

Section 18 of the bill revises s. 561.17(5), F.S., to require persons or entities 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 division to the licensee or permittee. Under the bill, the DABT may not process an application for alcoholic beverage license unless the application is submitted through the DABT’s online system.

⁵³ Section 561.14(1), F.S., relating to the license classification for “manufacturers.”

⁵⁴ Section 561.14(2), F.S., relating to the license classification for “distributors.”

⁵⁵ Section 561.14(3), F.S., relating to the license classification for “vendors.”

⁵⁶ Section 561.14(4), F.S., relating to the license classification for “brokers or sales agents.”

⁵⁷ Section 561.14(5), F.S., relating to the license classification for “importers.”

⁵⁸ Section 561.01(15), F.S., defining the term “bottle club,” and s. 561.14(6), F.S., relating to the license classification for “bottle clubs.”

⁵⁹ Section 561.14(7), F.S., relating to the license classification for “exporters.”

⁶⁰ Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S., provides that a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

⁶¹ Section 561.01(16), F.S., defines an “exporter” as “any person that sells alcoholic beverages to persons for use outside the state and includes a ship’s chandler and a duty-free shop.”

⁶² Section 561.17(4), F.S., requires persons to register with the division before engaging in the business of exporting alcoholic beverages.

Regulation of Tobacco Products and Nicotine Dispensing Devices

Present Situation

The DABT within the DBPR is the state agency responsible for the regulation and enforcement of tobacco products under part I of ch. 569, F.S., and nicotine products under part II of ch. 569, F.S.

A person must obtain a retail tobacco products dealer permit from the division for each place of business where tobacco products are sold, including sales made through a vending machine.⁶³ The fee for an annual permit is established by the division in rule at an amount to cover the regulatory costs of the program, not to exceed \$50. The fees are deposited into the Alcoholic Beverage and Tobacco Trust Fund within the DBPR.⁶⁴

A retail nicotine products dealer permit from the division is required for each place of business where nicotine products are sold, including sales made through a vending machine.⁶⁵ There is no fee for the permit. A person must be 21 years of age to qualify for a retail nicotine products dealer permit.⁶⁶

Effect of Proposed Changes

Sections 19 and 20 of the bill create ss. 569.00256 and 569.3156, F.S., relating to application for a retail tobacco products dealer permit and a retail nicotine products dealer permit, respectively, to require applicants for these permits to create and maintain an online account with the DBPR and provide an e-mail address to function as the primary means of contact for all communication to the applicant from the DABT.

Each applicant is responsible for maintaining accurate contact information. Applicants must use forms prepared by the DABT and filed through the DABT's online system before engaging in any business for which a license or permit is required. Under the bill, the DABT may not process an application for alcoholic beverage license unless the application is submitted through the DABT's online system.

Conforming Changes

Sections 27 through 44 amend ss. 210.16(2), 212.08(7), 440.02(19), 448.26, 468.520(2), 468.522, 468.524(2) and (4), 468.5245, 468.525(2) and (3), 468.526(3) and (5), 468.527(1), 468.5275(2), 468.529(2), (4), and (5), 468.530(3) and (4), 468.31(1), 468.532(1), (2), and (4), 476.144(6), and 627.192(2), F.S., respectively, to conform cross-references.

Effective Date

The bill takes effect July 1, 2024.

⁶³ Section 569.003, F.S.

⁶⁴ Section 569.003(1)(c), F.S.

⁶⁵ Section 569.32, F.S.

⁶⁶ Section 569.32(2)(a), F.S.

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:

The bill authorizes the Division of Alcoholic Beverages and Tobacco (DABT) to increase the corporate surety bond amount before renewing a license for a distributor or tobacco products other than cigarettes or after completing its semiannual review of the bond amount.

Regarding asbestos removal contractors, the removal of the bond/credit requirement will reduce the cost to license applicants, which the DBPR estimates to be \$100 per applicant.⁶⁷

Regarding the Florida Homeowners' Construction Recovery Fund (recovery fund), the bill doubles the maximum amounts payable to claimants for claims that may be made against contractors from the recovery fund.

⁶⁷ See Department of Business and Professional Regulation, *2024 Agency Legislative Bill Analysis for SB 1544* (Jan. 12, 2024) (on file with the Senate Regulated Industries Committee).

C. Government Sector Impact:

Regarding the recovery fund, the DBPR states that there is an indeterminate fiscal impact due to the increase of the aggregate cap lifetime per licensee and per-claim cap for each contract. It anticipates an increase in the number of claimants who receive compensation from the recovery fund.⁶⁸

Eliminating the Board of Employee Leasing Companies will result in a reduction of expenditures pertaining to board travel, costs, etc. However, according to the DBPR, the reduction in expenditures will be offset by the need for a consultant to review employee leasing licensure applications.⁶⁹

The bill requires several types of licensees and permittees to use the online licensing system of the DBPR, or the regulating agency or board. The DBPR states that it can implement this system using existing resources.⁷⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.165, 210.15, 210.16, 210.40, 212.08, 310.0015, 310.081, 320.08015, 440.02, 448.26, 468.520, 468.522, 468.524, 468.5245, 468.525, 468.526, 468.527, 468.5275, 468.529, 468.530, 468.531, 468.532, 469.006, 473.306, 473.308, 475.181, 476.114, 476.144, 477.019, 489.131, 489.143, 499.012, 561.17, and 627.192.

This bill creates the following sections of the Florida Statutes: 210.32, 399.18, 468.519, 569.00256, and 569.3156.

This bill repeals section 468.521 of the Florida Statutes.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

IX. Additional Information:

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

CS by Regulated Industries Committee on February 5, 2024:

The committee substitute removes from the bill:

- The repeal of s. 723.0611, F.S., which established the Florida Mobile Home Relocation Corporation (corporation);
- The revisions to ss. 723.061, 723.06115, 723.06116, and 723.0612, F.S., providing for the Division of Condominiums, Timeshares, and Mobile Homes to administer the duties and functions of the corporation.
- The reenacting of ss. 48.184(1), 723.031, 723.004(5), 723.004(5), 723.032(1), 723.085(2), 723.085(2), 723.08015(1), F.S., to incorporate into those provisions the revisions in the bill related to the repeal of s. 723.0611, F.S.

- B. **Amendments:**

None.