

## **ALCOHOLIC BEVERAGES**

### **CS/CS/SB 2520 — Beverage Law**

by Commerce, Economic Opportunities, and Consumer Services Committee; Regulated Industries Committee; and Senator Diaz de la Portilla

The bill provides procedures for the issuance of a revoked quota alcoholic beverage license by allowing it to be put in a double random drawing under s. 561.19, F.S. It also provides enforcement protections for a person holding a perfected lien or security interest in the revoked license.

The bill amends s. 561.422, F.S., to add the requirement that nonprofit civic organizations must present a building permit and zoning permit upon the filing of an application to sell alcoholic beverages, and to require that all net profits from sales of alcoholic beverages collected during the permit period must be retained by the nonprofit civic organization.

The bill amends s. 561.65(1), F.S., to provide that a person with a bona fide mortgage, lien, or security interest in a spirituous alcoholic beverage license has a right to enforcement of the lien within 180 days after any order of revocation or suspension, and it bars the issuance of a revoked alcoholic beverage license that is encumbered with a lien or security interest until the 180-day period has elapsed or the enforcement proceeding is final.

This bill creates the “Christopher Fugate Act” to prohibit an alcoholic beverage licensee or the licensee’s agents, officers, servants, and employees from providing alcoholic beverages to employees younger than 21 years of age, except as authorized pursuant to ss. 562.111 or 562.13, F.S., or permitting a person younger than 21 years of age to consume alcoholic beverages on the licensed premises. It provides that a violation of this provision is a misdemeanor of the first degree.

If approved by the Governor, these provisions take effect July 1, 2003.

*Vote: Senate 39-0; House 116-1*

## **CONSTRUCTION INDUSTRY**

### **CS/CS/SB 1138 — Construction Monitoring**

by Appropriations Committee; Governmental Oversight and Productivity Committee; and Senator Clary

The bill amends s. 768.28(10), F.S., to provide that the following entities or persons are agents of the Department of Transportation (DOT) for purposes of the waiver of sovereign immunity contained in s. 768.28, F.S.: (1) professional firms that provide monitoring and inspection services of the work required for state roadway, bridge, or other transportation facility construction projects; or (2) firm employees who perform such services.

The bill specifies that these agents must indemnify the state for agent liability, including reasonable attorney's fees, up to the \$100,000/\$200,000 limits specified in s. 768.28(5), F.S.

The bill also provides that its provisions shall not be construed as designating persons who provide monitoring and inspection services as employees or agents of the state for purposes of ch. 440, F.S. The bill specifies that the grant of sovereign immunity does not apply if the agents are involved in an accident while operating a motor vehicle, or to a firm engaged by the DOT to provide design or construction of a state roadway, bridge, or other transportation facility.

If approved by the Governor, these provisions take effect upon becoming law.

*Vote: Senate 39-0; House 116-0*

### **HB 1277 — Unlicensed Contractors**

by Rep. Kottkamp (CS/CS/SB 1382 by Commerce, Economic Opportunities, and Consumer Services Committee; Regulated Industries Committee; and Senator Clary)

The bill amends ss. 489.128 and 489.532, F.S., to make unenforceable, in law or equity, contracts that are entered into on or after October 1, 1990, by a contractor who fails to obtain or maintain a license under ch. 489, F.S. It provides that a person is unlicensed if the individual fails to obtain or maintain a license required under ch. 489, F.S. It provides that a business organization is unlicensed if it fails to have a primary or secondary qualifying agent.

If a contract is rendered unenforceable under this section, no lien or bond shall exist in favor of the unlicensed contractor. The bill does not affect the rights of parties other than the unlicensed contractor to enforce the contract, lien, or bond remedies. The bill does not affect the rights or obligations of a surety that has provided a bond on behalf of an unlicensed contractor. The fact that the principal or indemnitor is unlicensed under this section may not be used as a defense to any claim on a bond or indemnity agreement.

The bill provides that a townhouse is considered a single family residence for purposes of performing specialty contracting services without obtaining a local professional license if the person is supervised by a contractor. The bill specifies that authorized supervision does not require a direct contract between the contractor and the person performing the specialty contracting services. The bill clarifies that a general contractor may perform, on public or private property, the same services that a licensed underground utility and excavation contractor may perform.

The bill provides that a business organization proposing to engage in contracting is not required to apply for a certificate of authority through a qualifying agent if it satisfies the registration, certification, and net worth conditions set forth in the bill.

The bill provides for the retroactive application of specific sections of the bill and further provides that if the retroactive application of any section is held invalid, the invalidity shall not affect the retroactive application of the other sections. The bill provides for the severability of any provision declared invalid.

If approved by the Governor, these provisions take effect upon becoming law.

*Vote: Senate 38-0; House 116-0*

### **CS/CS/SB 1286 — Construction Defects**

by Judiciary Committee; Regulated Industries Committee; and Senator Bennett

The bill creates a process to give homeowners, subsequent purchasers of a dwelling, tenants, associations, and construction professionals the opportunity to settle legal claims related to construction defects arising out of the construction of a dwelling before a lawsuit is filed.

Sixty days before filing a lawsuit against a construction professional for a claim related to a construction defect, the bill requires that the claimant must serve a written notice of claim on the construction professional. The construction professional has a right to inspect the dwelling within 5 days of the notice of claim. Within 10 days of the notice of claim the construction professional must serve a copy of the notice of claim to any other construction professional that he or she thinks is responsible for the construction defect. These construction professionals also have a right to inspect the alleged construction defect.

Within 20 days after the notice of claim, the construction professional must respond to the claimant with a written offer to remedy the claim, a written offer to settle the claim, or a written dispute of the claim. The claimant has 15 days, or 45 days for an association, to accept or reject the offer to settle and compromise the claim or to remedy the alleged construction defect.

The claimant can file suit without further notice if he or she rejects the construction professional's offer to remedy the alleged construction defect, or offer to settle and compromise

the claim. The claimant may also file a lawsuit without further notice after the construction professional rejects the claim or the construction professional does not meet the agreed timetable to remedy the construction defect or make the settlement payment.

Failure by any party to follow the procedures in the bill is admissible in court. The bill does not bar or limit a claimant from making any emergency repairs to the claimant's dwelling. The bill provides that the provisions relating to legislative findings, definitions, and abatement of the action for noncompliance do not bar or limit any defense, or create any new defense, except as specifically provided in the bill.

If approved by the Governor, these provisions take effect upon becoming law.

*Vote: Senate 37-1; House 111-0*

### **HB 1719 — Construction Lien Law**

by Rep. Dean (CS/SB 2458 by Regulated Industries Committee and Senator Argenziano)

The bill provides mandatory provisions regarding lien law for direct contracts between an owner and a contractor related to improvements to real property consisting of single or multiple family dwellings up to and including four units.

It provides warning language in the Notice to Owner form that alerts owners to liens that may be filed against their property by unpaid contractors, subcontractors, and sub-subcontractors, and establishes the form for the contractor's final payment affidavit. It provides warning language in the Claim of Lien form alerting the owner of the real property that a lien has been placed on his or her property and what steps can be taken to shorten the time the lien can be valid.

It includes an "explanation of owner's rights" regarding the steps to take if no notice is furnished by a lienor in the currently required statement issued to building permit applicants and the owners of the real property by the permitting authority. The Department of Business and Professional Regulation provides the statements to the permitting authority for distribution to each non-owner permit applicant. The non-owner permit applicant, as a condition to issuance of the permit, must deliver the statement to the owner.

It creates a permissive inference that a person knowingly and intentionally misapplied construction funds when a valid lien has been recorded against the property of the owner and the person who recorded the lien has received sufficient funds for the construction and has failed, for a period of at least 45 days, to remit sufficient funds to pay off the labor, services, or materials.

It requires a state attorney or statewide prosecutor to forward a copy to the department of an indictment or information that charges a contractor, subcontractor, or sub-subcontractor with the willful filing of a fraudulent lien, misapplication of construction funds, or making false statements for inducing payment. It also requires the department to promptly open an

investigation, and if probable cause is found, furnish a copy of any investigative report to the prosecutor and to the owner of the property.

It requires a lender, prior to making any loan disbursement, to provide a written warning statement regarding lien releases.

If approved by the Governor, these provisions take effect October 1, 2003.

*Vote: Senate 40-0; House 113-0*

## **REAL ESTATE**

### **CS/CS/SB 2238 — Real Estate Appraisers and Brokers**

by Appropriations Committee; Regulated Industries Committee; and Senator Constantine

#### *Real Estate Appraisers*

The bill changes the classification of “registered assistant appraiser” to “registered trainee appraiser.” It also defines several other terms. The bill permits a broker, salesperson, or broker-salesperson who is not a certified real estate appraiser or registered trainee appraiser to provide valuation services for compensation.

It authorizes the Florida Real Estate Appraisal Board (appraisal board) within the Department of Business and Professional Regulation to make rules to establish standards for, and to regulate, supervisory appraisers. It provides for the supervision of registered trainee appraisers by a supervisory appraiser.

The bill authorizes the appraisal board to recognize completion of a distance learning course as satisfactory completion of the continuing education requirement for certification or renewal of registration, and permits independent certification organizations to certify and approve a method of distance learning courses.

The bill changes the appraisal board’s authority to adopt rules establishing a procedure for the renewal of registration, licenses, certifications, and instructor permits every 4 years. It provides that registered trainee licenses may be renewed for two biennial terms only, and further provides that after 6 years a registered trainee appraiser is not eligible for renewal but must qualify as a new applicant.

The bill grants the appraisal board the discretion to enter into written agreements with similar licensing or certification authorities of other states, territories, or jurisdictions of the United States to ensure Florida licensees nonresident licensure opportunities comparable to those

afforded to nonresidents by Florida law. The bill provides post-licensure education requirements for registered trainee appraisers.

The bill requires that nonresident applicants must file an irrevocable consent to suits and actions in this state, and must also consent to allowing the director of the Division of Real Estate to accept service of process on behalf of the applicant. The bill would require any state-certified appraiser who becomes a nonresident to notify the appraisal board of a change of residency within 60 days of a change in residency, and to comply with nonresident requirements. It authorizes the appraisal board to adopt rules necessary for the regulation of nonresident appraisers and licensees.

### ***Real Estate Brokers, Broker Associates, Schools***

The bill replaces the term “salespersons” with the term “broker associates.” It also replaces the term “salesperson” with the term “sales associate.” These changes are made throughout the bill. It amends the definition of “transaction broker” to specify that this form of limited representation is designed to facilitate a real estate transaction by providing assistance to both the buyer and the seller. It provides that the parties give up their right to the undivided loyalty of the licensee.

The bill requires the Real Estate Commission to license a broker associate as an individual or, upon authorization from the Department of State, as a professional corporation or limited liability company. It amends s. 475.175, F.S., to permit real estate licensure applicants to submit electronically authenticated applications, and eliminates the requirement that the application include two photographs taken within the preceding year. It requires applicants to, effective July 1, 2006, provide fingerprints in electronic format. The bill eliminates the authority of the commission to make rules prescribing the form and minimum dimensions of signs at the entrance to a broker’s principal office and each branch office.

The bill would authorize the commission to make rules to set forth circumstances in which a licensee may disburse property from his or her escrow account without notifying the commission or employing one of the procedures in s. 475.25, F.S. The bill allows brokers to maintain up to \$5,000 of personal or brokerage business funds in the broker’s escrow account, and up to \$1,000 of personal or brokerage funds in the broker’s sales escrow account.

The bill requires that an administrative complaint against a broker associate must be filed be filed within 5 years after the act that gave rise to the complaint occurred or should have been discovered. The bill requires that the commission must promptly report to the proper prosecuting authority any criminal violation relating to the practice of real estate.

It creates the presumption of a transaction brokerage relationship unless a single agent or no brokerage relationship is expressly established in writing with a customer. Effective July 1, 2008, a transaction broker would no longer be required to provide the disclosures existing under current law regarding the duties a transaction broker owes to a buyer or seller of real estate.

It prohibits, as a felony of the third degree, a person from operating as a broker or sales associate without a license.

The bill requires the payment of court costs and attorney fees by the commission when a broker defends an escrow disbursement from the Real Estate Recovery Fund, and increases the amount covered. The commission must also pay attorney's fees and costs if the plaintiff prevails in court.

It provides that the fact that the property was the site of a homicide, suicide, or death does not have to be disclosed to a purchaser of real estate.

The bill eliminates the restriction that a real estate school must advertise only as a school and under the registered name of that school and may not advertise the school in connection with an advertisement of an affiliated broker. It establishes procedures, conditions, and requirements for temporary licensure by brokers licensed in other states.

If approved by the Governor, these provisions take effect July 1, 2003.

*Vote: Senate 39-0; House 115-0*

## **OPEN GOVERNMENT SUNSET REVIEW**

### **HB 1039 — Open Government Sunset Review/Investigative Information**

by State Administration Committee and others (SB 1446 by Regulated Industries Committee)

This bill amends and reenacts the provisions of s. 498.047(8), F.S., which make information concerning an investigation into land sales practices by the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation confidential and exempt from the public records law, s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution. The bill provides for the sharing of information with other governmental entities when a request is made in connection with its official duties. The bill removes the repeal of the exemption scheduled under the Open Government Sunset Review Act of 1995, s. 119.15, F.S.

If approved by the Governor, these provisions take effect October 1, 2003.

*Vote: Senate 39-0; House 113-0*

## **PARI-MUTUEL WAGERING**

### **HB 1059 — Pari-mutuel Wagering; Cardrooms**

by Rep. Robaina and others (SB 1490 by Senator Diaz de la Portilla)

The bill allows for special racing awards for special races involving competition between Florida-breds and other state bred horses pursuant to an agreement between the breeders, the permitholder, and the Florida Horsemen's Benevolent Protective Association, Inc.

It changes the definition of "authorized games" to a "game or series of games of poker." The current definition includes "a game or series of games of poker, pinochle, bridge, rummy, canasta, hearts, dominoes, or mah-jongg."

It allows thoroughbred racing permitholders, in a county where cardrooms are approved by the county commissioners, to operate a cardroom when conducting live races during its current race meet and to receive and rebroadcast out-of-state races after the hour of 7 p.m. on any day during which the permitholder conducts live races.

It allows permitholders who have operated a cardroom during the previous three fiscal years, but failed to include a request for a cardroom in its license renewal, to amend the application to include the operation of a cardroom. Harness permitholders must have requested authorization to conduct a minimum of 140 live performances during the fiscal year immediately prior to application. If more than one permitholder operates at a shared cardroom facility, each permitholder must apply for a license to conduct a full schedule of live racing.

It allows for the operation of cardrooms between the hours of 12 noon and 12 midnight on any day a pari-mutuel event is conducted live, as a part of its authorized meet.

It allows a permitholder to operate between the hours of 12 noon and 12 midnight on any day that live racing of the same class of permit is occurring within 35 miles of its facility, if no other holder of the same class within 35 miles is operating a cardroom at the same time and if all holders of the same class of permit within the 35-mile area have given their permission in writing to the permitholder.

It eliminates the \$10 pot limit and provides, instead, for a \$2 maximum wager with a maximum of three raises in any round of betting.

If approved by the Governor, these provisions take effect July 1, 2003.

*Vote: Senate 27-11; House 104-10*



## **ENGINEERING**

### **CS/CS/SB 2464 — Engineering**

by Governmental Oversight and Productivity Committee; Regulated Industries Committee; and Senator Clary

The bill provides clarification of examination requirements for engineers. It permits business organizations, rather than just partnerships or corporations, to become certified to practice engineering. It increases the caps on administrative fines from \$1,000 to \$5,000 and adds “restitution” as a penalty. It revises the duties of the Florida Board of Professional Engineers (board), the Florida Engineers Management Corporation, and the Department of Business and Professional Regulation (department). It removes the department from direct oversight of many areas related to the regulation of professional engineers. It allows for the president of the management corporation to serve as executive director to the board. It gives the board authority to handle unlicensed activity enforcement.

If approved by the Governor, these provisions take effect July 1, 2003.

*Vote: Senate 38-0; House 119-0*

