

REAL ESTATE

CS/SB 466 — Regulation of Real Estate Appraisers

by Regulated Industries Committee and Senator Constantine

The bill requires that a primary or secondary supervisory appraiser must provide training in addition to the supervision required under current law. It defines the terms “direct supervision” and “training” in the context of the supervisory appraiser and register appraiser trainee relationship. It also amends the definition of the term “supervisory appraiser” to provide that the board shall establish, by rule, the minimum qualifications and standards of a licensed or certified appraiser before he or she may act in the capacity of a supervisory appraiser.

The bill provides that a supervisory appraiser may not be employed by a trainee or by a company, firm, or partnership in which the trainee has a controlling interest.

The bill prohibits a person from issuing an appraisal report, whether or not the transaction is federally related, unless certified, licensed, or registered.

The bill requires, in addition to the approval and signature of a certified or licensed appraiser required under current law, that an appraisal report based upon work performed by a person who is not a certified or licensed appraiser, or a registered trainee appraiser must be supervised by a certified or licensed appraiser who has full responsibility for all requirements of the report and valuation report. Additionally, the bill provides that only the certified or licensed appraiser may issue an appraiser report and receive direct compensation for providing valuation services for the appraiser report.

The bill provides that any appraisal report prepared by a full-time degree program graduate student must be issued in the name of the supervisory individual who is responsible for the report’s content. The bill requires that any appraisal report or file memoranda used to support a claim for experience by an applicant must be maintained for not less than five years. It also authorizes the board to implement this reporting requirement by rule.

The bill also provides that a Florida licensed real estate broker, sales associate, or broker associate may provide valuation services for compensation. Current law does not require a Florida license.

The bill requires that the Florida Real Estate Appraisal Board (board) conform education and experience requirements to the standards adopted by the Appraisal Qualifications Board on February 20, 2004.

It requires that by July 1, 2006, an applicant for certification or registration must provide fingerprints in electronic format, and that an application expires one year from the date received.

The bill repeals the education and experience requirements for a licensed appraiser because, pursuant to s. 475.611(1)(l), F.S., the department has not issued licenses for the category since July 1, 2003.

The bill provides that, to be certified as a residential appraiser or a general appraiser, the applicant must present satisfactory evidence to the board that he or she has met the minimum education and experience requirements prescribed by rule of the board. It also requires that the board prescribe education and experience requirements that meet or exceed the qualification criteria adopted on February 20, 2004 by the Appraiser Qualifications Board.

The bill increases the number of classroom hours needed for registration as appraiser trainee (from 75 classroom hours to 100 classroom hours), certification as a residential appraiser (from 125 classroom hours to 200 classroom hours) and general appraiser from 180 classroom hours to 300 classroom hours). The bill requires that the classroom hours for general and residential appraisers must include a 15-hour National Uniform Standards of Professional Appraisal Practice course. It deletes the board's authority to increase the required number of hours for general and residential appraisers, and also increases the maximum number of hours that the board may require for registration from 100 to 125 classroom hours.

The bill provides for the issuance of a registration or certification upon receipt by the board of a completed application, successful course completion, proof of experience, and proof of passing a written examination, if required.

The bill requires that each appraiser registered, licensed or certified under ch. 475, part II, F.S., must furnish the department with the firm or business name for which he or she operates in the performance of appraisal services. It also specifies the documentation that must be presented for issuance of a registration or certification.

If approved by the Governor, these provisions take effect July 1, 2006.

Vote: Senate 38-0; House 120-0

HB 1009 — Real Estate Profession Regulation

by Rep. Cretul and others (CS/SB 1816 by Regulated Industries Committee and Senator Posey)

The bill permits the Florida Real Estate Commission (commission) to issue a license to a broker associate or sales associate as a limited liability company or professional limited liability company.

The bill increases from one year to two years the time for certification of an applicant after an application for licensure is received by the commission. It provides that the application expires if the applicant does not pass the examination during the new two year period. It also provides that the applicant's successful course completion is invalid for licensure if the applicant does not pass the licensing examination within two years after the successful course completion date. The bill provides additional education requirements for a licensee to reactivate his or her license when the license has become involuntarily inactive.

The bill increases the administrative fine that may be imposed by the commission from \$1,000 to \$5,000. It creates additional violations for brokers that fail to reasonably manage or supervise any broker or sales associate whose license is affiliated with that broker, and for the broker that fails to review the brokerage's trust accounting practices in order to ensure compliance with ch. 475, F.S.

The bill limits the time period for the filing of an administrative complaint against a sales associate to five years, and requires that the department or the commission promptly notify a licensee's broker or employer when a formal complaint is filed against a licensee by the department.

The bill deletes the "Important Notice" header and warning to the buyer or seller that they should not assume that a licensee represents them, and to not disclose confidential information unless the brokerage relationship has been agreed upon. It also deletes the disclosure notice for transaction brokers.

The bill repeals s. 475.452, F.S., which provides procedures for brokers that contract for, or collect, an advance fee for the listing of real property and which provides criminal penalties for failure to follow the advance fee procedures. The bill provides record keeping and reporting requirements for education providers.

The bill amends the Commercial Real Estate Sales Commission Lien Act in part III of ch. 475, F.S., to revise the provisions for calculating disputed commission amounts owed to brokers, and to provide the conditions that the closing agent must consider to resolve a dispute. It also provides for the payment of costs equally by the parties when neither the owner nor broker is the prevailing party in an action regarding a disputed commission.

The bill also amends the Commercial Real Estate Leasing Commission Lien Act in part IV of ch. 475, F.S., to provide conditions related to extending recorded liens, as long as the owner remains obligated to pay a commission to the broker.

If approved by the Governor, these provisions take effect July 1, 2006.

Vote: Senate 40-0; House 120-0

SB 1948 — Coastal Property/Sale/Disclosures

by Senators Smith and Dockery

This bill prescribes additional disclosure requirements for sellers of coastal real property that are seaward of the coastal construction control line. The seller is required to make the following disclosure at or prior to the time a seller and a purchaser both execute a contract for the sale and purchase of the real property:

- That the property may be subject to coastal erosion and certain federal, state, or local environmental laws that regulate coastal property, including the delineation of the coastal construction control line, rigid coastal protection structures, beach nourishment, and the protection of marine turtles; and
- That additional information can be obtained from the Department of Environmental Protection (DEP), including whether there are significant erosion conditions associated with the shore line of the property being purchased.

The disclosure may be set forth in the contract or in a separate writing.

The bill also provides that failure to deliver the disclosure, affidavit, or survey required by these provisions does not effect the enforcement of the sale and purchase contract, create a right of recession, or impair the property's title.

If approved by the Governor, these provisions take effect July 1, 2006.

Vote: Senate 38-0; House 112-0

COMMUNITY ASSOCIATIONS

HB 391 — Community Associations

by Rep. Domino and others (CS/SB 2358 by Regulated Industries Committee and Senator Bennett)

The bill provides that nonmandatory homeowner's associations may use the covenant revitalization procedures in ch. 720, F.S., relating to mandatory associations, to revitalize covenants that have lapsed.

The bill defines the term "equity facilities club" to mean a club comprised of recreational facilities in which proprietary membership interests are sold to individuals, and prohibits any law, ordinance, or regulation that establishes certain requirements on the equity facilities club form of ownership that are not applicable to other forms of ownership.

The bill provides the following rights, powers, and duties of condominium associations and their members:

- Prohibits local governments from limiting access to a public or private beach adjacent to the condominium for the condominium or its guests, licensees, or invitees;
- Extends the deadline of retrofitting with a fire sprinkler system in the common areas in high-rise buildings from 2014 to the end of 2025;
- Limits the enforcement of provisions in the governing documents recorded on or after October 1, 2006, or amendments thereto, that require the consent or joinder of some or all mortgagees of units or any other portion of the condominium property for those mortgages; and
- Prohibits the acquiring or entering into agreements acquiring leaseholds, memberships, or other possessory or use interests within 12 months after a declaration.

The bill provides the following requirements and limitations on the powers and duties of a homeowners' association:

- Allows homeowner's association to incorporate as profit entities under ch. 607, F.S.
- Provides that all meetings of a homeowner's association regarding a final decision for the spending of association funds, and to approve or disapprove architectural decisions with respect to a specific parcel of residential property must be open to all members;
- Provides that the homeowner's association has to provide or disclose only the information required by ch. 720, F.S.;
- Provides for the charging of a reasonable fee not to exceed \$150 plus photocopying and attorney's fees to a prospective purchaser or lienholder or the current parcel owner for providing good faith responses to requests for information, unless required by law;
- Provides that any member who prevails in an action against an association and is awarded attorney's fees may be awarded an amount sufficient to cover the member's share of assessments levied to fund the association's litigation expenses;
- Permits the merger or consolidation of one or more associations;
- Establishes for the maintenance of reserve accounts in the annual budget, including how to calculate reserves and conditions for waiving the maintenance of reserve accounts;
- Provides that an association may review and approve building plans only to the extent that it is specifically stated or reasonably inferred in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants;

- Provides that an association can only enforce setbacks specifically provided for in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants, and cannot enforce setback requirements that are inconsistent with applicable county or municipal setback standards;
- Provides that each parcel owner's rights and privileges as provided in the declaration of covenants cannot be unreasonably impaired concerning the use of the parcel, and the construction of permitted structures and improvements;
- Provides for auditing of financial records when an association is transferred from the developer to the homeowners;
- Provides procedures for the guarantee of common expenses by the developer; and
- Provides that an association cannot enforce any policy that is inconsistent with the rights and privileges of a parcel owner set forth in the declaration of covenants, whether the policy is uniformly applied or not.

The bill also increases from 60 days to 90 days the period after each fiscal year that an association must prepare and complete the annual financial report.

The bill specifies additional records and documents that the developer must provide to the association's board of directors upon the creation of the association. It also provides procedures for determining the developer's financial obligation to the homeowner's association upon the creation of the association.

This bill repeals the mediation of disputes between homeowners' associations and members by the Department of Business and Professional Regulation. Such disputes would be mediated by private mediators. The procedures are renamed as presuit mediation and specific procedures are established. The mediator may require advance payment of fees and costs. The bill deletes the \$200 filing fee for mediation.

If approved by the Governor, these provisions take effect July 1, 2006.

Vote: Senate 40-0; House 113-0

CS/CS/SB 1556 — Condominiums

by Judiciary Committee; Regulated Industries Committee; and Senator Geller

This bill substantially revises the provisions of the statute governing the termination of the condominium form of ownership of a property.

The bill provides legislative findings that it is the public policy of the state to provide a method to preserve the value of the property interests and the rights of alienation thereof that owners have in the condominium property before and after termination.

The bill requires a plan of termination to be prepared and presented to the unit owners in the condominium for approval before termination can occur. The plan must provide for the valuation of the individual units, the common elements, and the other assets of the condominium based upon their respective fair market values. The plan must further set out the share that each unit owner will receive if the plan of termination is adopted, and if the property is to be sold, it must state the minimum sale terms.

The bill provides three methods of approval of a plan of termination of the condominium form of ownership:

- **Economic Waste or Impossibility:** The plan of termination may be approved by the lesser of the majority of the total voting interests or as otherwise provided in the declaration for approval when the costs to repair and restore the property to its prior condition are more than the fair market value of the property after the repairs or when it is impossible to reconstruct the physical configuration of the condominium because of the current land use laws.
- **Court Approval (subsection heading: “Jurisdiction For Plan of Termination Review”):** The bill provides that termination approval may be pursued in circuit court by one or more unit owners if the plan of termination did not receive approval by at least 80 percent the community, and fewer than 20 percent of the total voting interests voted against the plan.
- **Optional Termination:** Except as provided in methods one and two or unless the declaration provides for a lower percentage, the plan of termination may be approved by 80 percent or more of the total voting interests.

The plan of termination becomes effective upon recording of the plan with the Clerk of the Circuit Court. Within 90 days of the recording, any owner who does not agree that the apportionment of the proceeds from the sale among the unit owners was fair and reasonable may bring an action in circuit court contesting the plan of termination.

The bill provides for quarterly reports prepared by the association, receiver, or termination trustee following the approval of the termination plan. The report shall provide the status and progress of the termination, costs and fees incurred, the expected completion date of termination, and the current financial condition of the association, receivership or trusteeship. Unit owners may recall or remove members of the board of administration with or without cause, and lienors of an association in termination representing at least 50 percent of the outstanding amounts of

liens may petition the court for the appointment of a termination trustee upon a showing of good cause.

A copy of the proposed plan of termination must be given to all of the unit owners (in the same manner as for notice of the annual meeting) at least 14 days prior to the meeting at which the plan will be voted upon. Once a plan of termination is approved, each unit owner and the holders of liens on property in condominiums must be mailed notice of the plan's adoption and the right to contest the plan within 30 days of the recording with the Clerk. Within 90 days after the effective date of the plan, a certified copy of the recorded plan must be provided to the Division of Land Sales, Condominiums, and Mobile Homes. The bill also requires a distribution notice. Not less than 30 days prior to the first distribution, notice of the estimated distribution shall be provided to all unit owners, lienors of the condominium property, and lienors of each unit.

The bill provides that unless another person is appointed as trustee in the plan of termination, the condominium association shall serve as the "termination trustee." Once the plan is effective, the termination trustee is vested with the title to the condominium property, and the unit owners become the beneficiaries of the proceeds realized from the plan of termination. The trustee is obligated to protect and maintain the property, to sell the assets of the condominium, and disburse the proceeds to the unit owners and the mortgagees as provided for in the plan.

The bill provides that value of each unit must be determined based upon the fair market value of the units immediately before the termination by one or more independent appraisers or based upon the values maintained by the county property appraiser. Unit owners are also entitled to the fair market value of their share of the common elements, association property, and the common surplus. Each unit's total share of the proceeds must be set out in the plan of termination.

It provides that consent of mortgagees is not required for the adoption of a plan of termination under the provisions of the bill unless the proceeds under the plan are less than the full satisfaction of the mortgage lien encumbering the unit.

If approved by the Governor, these provisions take effect July 1, 2006.

Vote: Senate 39-0; House 120-0

CONSTRUCTION CONTRACTING

HB 1089 — Construction Contracting

by Rep. Galvano and others (CS/SB 1940 by Regulated Industries Committee and Senators Clary and Bennett)

The bill decreases the period within which an action based on design, planning, or construction of an improvement to real property may be filed from 15 years to 10 years. It provides that

warranties of the developer under s. 718.618, F.S., apply to the conversion of an existing improvement if construction of the improvement was started before it was designated by the developer as a condominium. The bill further provides that the warranties of the developer to the purchaser of a unit under s. 718.203, F.S., does not apply to such a conversion.

If approved by the Governor, these provisions take effect July 1, 2006.

Vote: Senate 37-0; House 116-0

HB 1139 — Construction Defects/Property

by Rep. Murzin and others (CS/SB 2036 by Regulated Industries Committee and Senator Bennett)

The bill expands the applicability of ch. 558, F.S., which provides an alternative method to resolve construction disputes, to include construction defects in any real property, including mobile homes and excluding public transportation projects. To conform to the chapter's broadened applicability, the bill deletes provisions that limit the application of ch. 558, F.S., to residential property. The bill provides that the provisions of the chapter apply to contracts that include the notice prescribed by the chapter.

The bill amends s. 558.005(4), F.S., to provide that this chapter applies to all actions accruing or commenced on or after July 1, 2004, for a construction contract. It further provides that, notwithstanding the notice requirements of this section, the chapter applies to all contracts entered into between July 1, 2004 and September 30, 2006, and all actions occurring before July 1, 2004, but not yet commenced by that date. The failure to include the notice in a contract entered into prior to July 1, 2004, does not operate to bar the procedures of ch. 558, F.S., from applying to all such actions.

The bill provides that, notwithstanding the notice requirements of this section, for contracts entered into on or after October 1, 2006, this chapter applies to all actions accruing before July 1, 2004, but not yet commenced as of July 1, 2004. Failure to include such notice in a contract entered into before July 1, 2004, does not operate to bar the procedures of ch. 558, F.S., from applying to all such actions.

If approved by the Governor, these provisions take effect October 1, 2006.

Vote: Senate 40-0; House 118-0

HB 1351 — Electrical/Alarm System Contractors

by Rep. Reagan and others (CS/SB 744 by Banking and Insurance Committee and Senator Wise)

The bill provides that a certified electrical contractor, or certified or registered alarm system contractor is exempt from local requirement to be listed or certified by a national testing lab or regional or national certification organization. The bill provides that counties, municipalities or

special districts can require an electrical or alarm system contractor to provide documentation that the alarm system has been inspected by a nationally recognized testing lab as required under the National Fire Alarm Code (NFPA No. 72). It provides that a county, municipality, or special district is not prohibited from requiring compliance with NFPA 72.

The bill provides that, if no state or local license is required for the scope of work to be performed under the contract, the individual performing the work shall not be considered unlicensed.

The bill provides that a business organization entering into a contract may not be considered unlicensed if, before entering into the original contract for work, the individual possessing a license concerning the scope of the work to be performed under the contract submitted an application for a certificate of authority designating the individual as a qualifying agent for the business organization, and the application was not acted upon by the department or applicable board within the time limitations imposed by s. 120.60, F.S.

The bill provides exemptions from licensure as electrical or alarm system contractors under ch. 489, part II, F.S., for alarm system inspections, audits, or quality assurance services performed by a nationally recognized testing laboratory that the Occupational Safety and Health Administration has recognized as meeting the requirements of 29 C.F.R. s. 1910.7 and persons who install or repair lightning rods or related systems.

The bill amends the definition of “alarm system contractor” to include any person who contracts, offers, purports to undertake, bids, or engages in the business of alarm contracting. It also increases the voltage limitation from 77 to 98 volts within that classification.

The bill further amends the definition of “monitoring” to provide that the electric or electronic signal from the alarm or protective system may originate from any structure, and that the signal may also originate from outside the state, regardless of whether those signals are relayed through a jurisdiction outside the state. The bill also provides that the signal may be produced by an access-control system. The bill amends the definition of “burglar alarm system agent” to delete the requirement that selling of alarm systems be limited to onsite for burglar alarm and fire alarm system agents.

The bill defines “nationally recognized testing lab” as an organization that the Occupational Safety and Health Administration has legally recognized to be in compliance with 29 C.F.R. s. 1910.7 and that provides quality assurance, product testing, or certification services.

The bill establishes the qualifications for registration as a contractor to provide that an applicant be at least 18 years of age and of good moral character. It provides criteria for determining good moral character.

The bill requires the central monitoring station to employ call-verification methods for the premises generating the alarm signal if the first call is not answered. The bill exempts an audible fire alarm signal from the requirement in current law that every alarm system installed by a licensed contractor has a device that automatically terminates the audible signal within 15 minutes of activation.

The bill provides that sections dealing with business organization licensure are intended to be remedial in nature and to clarify existing law. These sections apply retroactively to all actions, including any action on a lien or bond claim initiated on or after, or pending as of, July 1, 2006. It provides for a severability clause.

If approved by the Governor, these provisions take effect July 1, 2006.

Vote: Senate 39-0; House 120-0

HB 1367 — Contracting Exemptions

by Rep. Evers and others (SB 2472 by Senator Peadar)

The bill increases the limit from \$25,000 to \$75,000 for construction work performed by a property owner acting as his or her own contractor when building or improving buildings.

The bill recognizes the Governor's declaration of a state of emergency due to damage caused by natural causes that pose a serious threat to the public health, safety and welfare. It creates a licensure exemption for property owners who repair or replace wood shakes or asphalt or fiberglass shingles on one-family, two-family, or three-family residences for the occupancy or use of the owner or owner's tenant and are not offered for sale within one year.

The bill requires the owner to satisfy local permitting agency requirements and prove that the owner has a complete understanding of the owner's legal obligations as specified in the exemption disclosure statement required by law.

The bill also provides that if any person violates the provisions of the exemption, the local permitting agency shall have the authority to withhold final approval, revoke the permit, or pursue any action or remedy for unlicensed activity against the owner and any person performing work that requires licensure under the permit.

If approved by the Governor, these provisions take effect July 1, 2006.

Vote: Senate 40-0; House 119-0

LIENS

HB 1443 — Liens

by Rep. Russell and others (CS/SB 588 by Criminal Justice Committee and Senator Constantine)

The bill amends s. 679.705, F.S., to extend by six months the time period during which financing statements are effective.

The bill amends s. 713.135, F.S., to:

- Allow for the local building department to electronically deliver a summary of the Construction Lien Law to the property owner;
- Provide that, in addition to a building permit issuing authority, a private provider performing inspection services may not perform or approve subsequent inspections until the applicant files by mail, facsimile, hand delivery, or any other means a certified copy of the recorded notice of commencement;
- Increase the threshold amount for a notice of commencement from \$5,000 to \$7,500 on those direct contracts to repair or replace an existing heating or air-conditioning system;
- Provide that an issuing authority or a building official may not require that a notice of commencement be recorded as a condition of the application, processing, or issuance of a building permit;
- Authorize authorities issuing building permits to accept permit applications electronically and requires an electronic application to include a sworn electronic submission statement; and
- Require that an authority responsible for issuing building permit applications which accept building permit applications in an electronic format provide public Internet access to the electronic building permit applications in a searchable format.

Section 713.18, F.S., is amended to provide electronic evidence of delivery of notices, claims of liens, affidavits and other instruments permitted or required under the construction lien law.

The bill amends s. 713.35, F.S., by revising the list of legal documents to include a waiver or release of lien, or other document in which it is a crime to knowingly and intentionally include certain false information about the payment status of subcontractors, sub-subcontractors, or suppliers in connection with the improvement of real property, knowing that the one to whom it was furnished will rely on it and will draw payments or final payment relying on the truth of such statements to do so.

If approved by the Governor, these provisions take effect October 1, 2006.

Vote: Senate 39-0; House 119-0

ARCHITECTURE AND INTERIOR DESIGN

CS/CS/SB 2060 — Architecture and Interior Design

by Community Affairs Committee; Regulated Industries Committee; and Senator Clary

The bill provides for the definition of “responsible supervising control” in ch. 481, part I, F.S. It authorizes the Board of Architecture and Interior Design to adopt rules governing the exercise of responsible supervising control by licensed architects and interior designers. It provides for the use of the terms “architect, retired” and “interior designer, retired” for licensees that fail to renew or relinquish licensure.

If approved by the Governor, these provisions take effect July 1, 2006.

Vote: Senate 35-0; House 120-0

VETERINARY MEDICINE

CS/SB 1540 — Veterinary Drug Distribution

by Regulated Industries Committee and Senator Baker

The bill establishes the limited prescription drug veterinary wholesaler permit (permittee) for any person that engages in the distribution, in or into this state, of veterinary prescription drugs and prescription drugs for human use to veterinarians. It provides that any prescription drug for human use that has been returned by a veterinarian to a permittee is an adulterated drug under s. 499.006, F.S.

The bill provides several requirements and conditions for the permit. The bill provides that a permittee must be engaged in the business of wholesaling veterinary prescription or legend drugs full-time, must limit prescription drugs prescribed for human use to no more than 30 percent of total annual drug sales, must not otherwise be authorized to wholesale prescription drugs for human use, must provide a \$20,000 bond or equivalent surety requirement, and must maintain a valid limited prescription drug veterinary wholesaler permit.

The bill provides that any prescription drug for human use which has been returned by a veterinarian may not be returned to inventory for subsequent wholesale distribution. It provides that an out-of-state prescription drug wholesale permit or a limited prescription drug veterinary wholesaler permit is not required for an intercompany sale or drug transfer from a licensed out-of-state establishment.

The bill also requires a limited prescription drug veterinary wholesaler to comply with s. 499.0121, F.S., except that the permit holder is not required to comply with the pedigree paper requirements of s. 499.0121(6)(f), F.S., upon the wholesale distribution of a prescription drug to a veterinarian.

The bill provides a fee for a limited prescription drug veterinary wholesaler's permit of not less than \$300 or no more than \$500 annually.

The bill requires the Department of Health to inspect each limited prescription drug veterinary wholesaler, and it authorizes the department to order the immediate closure of a limited prescription drug veterinary wholesaler if the department determines that it presents an immediate danger to the public health, safety, or welfare.

If approved by the Governor, these provisions take effect July 1, 2006.

Vote: Senate 38-0; House 117-0

ALCOHOLIC BEVERAGES AND TOBACCO

HB 95 — Alcoholic Beverages

by Rep. Henriquez and others (CS/SB 1154 by Criminal Justice Committee and Senators Haridopolos and Lynn)

The bill prohibits the purchase, sale, offering for sale, or use of alcohol-vaporizing devices that mix alcoholic beverages with pure oxygen or other gas to produce a vaporized product for consumption by inhalation.

The bill provides that selling or offering for sale an alcohol-vaporizing device constitutes a first-degree misdemeanor. It provides that a violation within five years of a previous conviction would be a third-degree felony. Purchasing or using an alcohol-vaporizing device would result in a \$250 fine. The bill provides an exception for the administration or prescription of alcohol-containing products by a health care practitioner licensed in Florida or another state.

If approved by the Governor, these provisions take effect July 1, 2006.

Vote: Senate 39-0; House 118-1

HB 317 — Stand-alone Bars/Licensed Vendors

by Rep. Domino and others (CS/SB 600 by Community Affairs Committee; and Senator Haridopolos)

The bill amends provisions that pertain to the exemption for stand-alone bars from the smoking prohibition in the Florida Clean Indoor Air Act, ch. 386, F.S., which implements the tobacco

smoking ban in s. 20, Art. X, Florida Constitution. It deletes the requirement that designated stand-alone bars must file, with the Division of Alcoholic Beverages and Tobacco, an agreed upon procedures report signed by a certified public accountant every three years after their initial designation as a stand-alone bar.

The bill provides for the suspension or revocation of a vendor's alcoholic beverage license, in addition to other penalties, if the vendor knowingly makes a false statement on the affidavit that stand-alone bars must file each year to certify that no more than 10 percent of the gross revenue of the business is from the sale of food consumed on the licensed premises.

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

Vote: Senate 39-0; House 120-0

HB 1271 — Alcoholic Beverages and Tobacco Division

by Rep. Cannon (CS/CS/SB 2412 by Criminal Justice Committee; Regulated Industries Committee; and Senator Haridopolos)

The bill amends s. 20.165(9)(b), F.S., to provide that law enforcement employees of the Division of Alcoholic Beverage and Tobacco (division) must be certified as law enforcement officers by the Florida Department of Law Enforcement under ch. 943, F.S. The bill provides that the division's law enforcement officers (ABT officers) have the same authority as provided for law enforcement officers generally under ch. 901, F.S. (warrants, arrests, searches, detention, etc.), and statewide jurisdiction. The ABT officers are also authorized to make warrantless arrests as provided in s. 901.15, F.S.

The bill provides that each division officer possesses the full law enforcement powers granted to other Florida peace officers, including the authority to make arrests, carry firearms, serve court process, and seize contraband and the proceeds of illegal activities.

The bill provides that the primary responsibility of an ABT officer includes investigating, enforcing, and prosecuting, throughout Florida, violations and violators of state laws relating to alcoholic beverage and tobacco (and rules adopted pursuant to those laws).

The bill provides that the secondary responsibility of each ABT officer is to enforce "all other state laws," provided that the enforcement is "incidental" to exercising the officer's primary responsibility to investigate, enforce, and prosecute violations and violators of state laws relating to alcoholic beverage and tobacco (and rules adopted pursuant to those laws) and the officer exercises the powers of a deputy sheriff only after consultation or coordination with the appropriate local sheriff's office or municipal police department or when the division participates in the Florida Mutual Aid Plan during a declared state emergency.

If approved by the Governor, these provisions take effect July 1, 2006.

Vote: Senate 38-0; House 119-0

CS/CS/SB 1322 — Driver's License Penalties/Alcohol

by Criminal Justice Committee; Regulated Industries Committee; and Senators King, Klein, and Wise

The bill provides that a court may order the Department of Highway Safety and Motor Vehicles to withhold the issuance of, or suspend or revoke, the driver's license or driving privilege of any person who violates s. 562.11(1), F.S., which prohibits selling, giving, serving or permitting alcoholic beverages to be served to a person under 21 years of age, or permitting a person under 21 years of age to consume alcoholic beverages on the licensed premises. The violation in s. 562.11(1), F.S., relates to transactions on alcoholic beverage licensed locations. The provision does not apply to alcoholic beverage licensees and employees or agents of a licensee who violate s. 562.11(1), F.S., while engaged within the scope of his or her employment, or agency.

The bill provides that the court may order the department to issue a driver's license restricted to business or employment purposes. The bill provides a time frame for the delay of issuance of a license or the suspension or revocation of a license of not less than 3 months or more than 6 months for a violation and one year for any subsequent violation.

If approved by the Governor, these provisions take effect October 1, 2006.

Vote: Senate 40-0; House 118-0

HB 7105 — Taxation/Alcoholic Beverages

by Finance and Tax Committee and Rep. Brummer and others (CS/SB 1292 by Regulated Industries Committee and Senators Fasano, Peaden, Dockery, Jones, Baker, Posey, Sebesta, Geller, Bennett, Alexander, Saunders, King, Haridopolos, Wise, Smith, Aronberg, Lawson, Crist, and Hill)

The bill repeals the surcharge tax imposed pursuant to s. 561.501, F.S., on alcoholic beverages sold by the drink for consumption on a retailer's licensed premises, effective July 1, 2007. The Division of Alcoholic Beverages and Tobacco is permitted to continue to audit and collect any surcharges that should have been remitted before July 1, 2007. This audit and collection authority is repealed effective July 1, 2008.

The bill deletes s. 561.121(4)(a)1., 2., and (b), F.S., effective July 1, 2007, which provides for depositing 27 percent of surcharge taxes collected under s. 561.501, F.S., into the Children and Adolescents Substance Abuse Trust Fund in the Department of Children and Family Services. The bill also terminates the Children and Adolescents Substance Abuse Trust Fund, and provides

that the current balance remaining in the trust fund shall be transferred to the General Revenue Fund on that date.

The bill appropriates \$11,298,205 from the General Revenue Fund to the Department of Children and Family Services for the purpose of reducing or eliminating substance abuse in children and adolescents.

If approved by the Governor, these provisions take effect July 1, 2007.

Vote: Senate 38-0; House 117-2

PUBLIC RECORDS

HB 7047 — Tobacco Settlement Agreement/OGSR

by Governmental Operations Committee and Rep. Rivera (CS/SB 1530 by Government Oversight and Productivity Committee and Regulated Industries Committee)

The bill reenacts the public records exemption in s. 569.215, F.S., for proprietary confidential business information received by the Governor, the Attorney General, or outside counsel representing the State of Florida in negotiations for settlement payments pursuant to the tobacco settlement agreement. It also exempts from public records requirements the proprietary confidential business information of the tobacco industry received by the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, or received by the Chief Financial Officer or the Auditor General for the purpose of verifying annual settlement payments.

The bill also amends s. 569.215, F.S., to provide that the term “trade secret” has the same meaning as the definition of that term in s. 688.002, F.S.

The bill saves the exemption from repeal as provided for under the Open Government Sunset Review Act. It deletes the provision that would repeal the exemption effective October 1, 2006, unless reenacted and saved from repeal by the Legislature.

If approved by the Governor, these provisions take effect October 1, 2006.

Vote: Senate 39-0; House 119-0

RESTAURANTS

CS/SB 1172 — Dixie Cup Clary Local Control Act

by Regulated Industries Committee; and Senators Aronberg and Argenziano

This bill creates a three-year pilot program that authorizes local governments to adopt an ordinance establishing procedures for public food service establishments to apply for a limited exemption from existing rules of the Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation that prohibit patrons' dogs in public food service establishments. The exemption would allow patrons' dogs in designated outdoor sections of public food service establishments.

This bill provides minimum requirements for permit applications and safety and sanitation regulations to be implemented by the local governments that choose to participate in the pilot program. The bill requires that the division provide assistance to participating local governments in the development of enforcement procedures and regulations. It also provides that a permit issued under the provisions of this bill shall not be transferred to a subsequent owner upon the sale of the public food service establishment, that the permit shall expire at the sale of the establishment, and the subsequent owner must reapply for the permit if he or she wishes to continue to accommodate a patron's dog.

The bill requires that participating local governments must monitor permitholders for compliance, and have a procedure to accept, document, and respond to complaints and to timely report to the division all complaints and the participating local government's response to all complaints. A participating local government is required to provide the division with a copy of all applications and permits issued, and these and all related materials must contain the appropriate division issued license number.

This provision will expire on July 1, 2009, unless reviewed by the Legislature and saved from repeal through reenactment.

If approved by the Governor, these provisions take effect July 1, 2006.

Vote: Senate 35-4; House 100-19