

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB BCAS 11-01 Relating to deregulation of professions and occupations

**SPONSOR(S):** Business & Consumer Affairs Subcommittee

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Business & Consumer Affairs Subcommittee	10 Y, 5 N	Morton/Livingston/ Whittington	Creamer

### SUMMARY ANALYSIS

The bill repeals the regulation of the following professions, businesses and occupations:

- Athlete Agents
- Auctioneers and Auctioneer Apprentices
- Sellers of Business Opportunities
- Charitable Organizations
- Community Association Managers and Firms
- Condominiums, Cooperatives, Timeshares, and Mobile Home Parks
- Hair Braiders, Hair Wrappers, and Body Wrappers
- Dance Studios
- Employee Leasing Companies
- Professional Geologists
- Health Studios
- Home Inspectors
- Homeowners Associations
- Interior Designers
- Intrastate Movers
- Landscape Architects
- Mold-Related Services
- Motor Vehicle Repair Shops
- Sellers of Travel
- Surveyors and Mappers
- Talent Agents
- Telemarketing
- Yacht and Ship Brokers

It also repeals regulations relating to:

- Transportation access to outdoor theaters
- Roominghouses
- Sales representative contracts involving commissions
- Television tube labeling
- Water vending machines

The bill also eliminates the Division of Condominiums, Timeshares, and Mobile Homes as well as five professional boards.

The bill has a negative fiscal impact on state trust funds, with a corresponding reduction in expenditures. The bill has a positive fiscal impact on the private sector. See fiscal comments.

The bill has an effective date of July 1, 2011, unless otherwise noted.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: pcb01a.BCAS

DATE: 3/17/2011

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Regulatory Boards and Divisions**

###### Current Situation

The Department of Business and Professional Regulation (DBPR) is made up of the following divisions, which house the following boards and programs:

- Division of Administration.
- Division of Alcoholic Beverages and Tobacco.
- Division of Certified Public Accounting.
  - Board of Accountancy
- Division of Florida Condominiums, Timeshares, and Mobile Homes.
- Division of Hotels and Restaurants.
- Division of Pari-mutuel Wagering.
- Division of Professions.
  - Board of Architecture and Interior Design.
  - Florida Board of Auctioneers.
  - Barbers' Board.
  - Florida Building Code Administrators and Inspectors Board.
  - Construction Industry Licensing Board.
  - Board of Cosmetology.
  - Electrical Contractors' Licensing Board.
  - Board of Employee Leasing Companies.
  - Board of Landscape Architecture.
  - Board of Pilot Commissioners.
  - Board of Professional Engineers.
  - Board of Professional Geologists.
  - Board of Veterinary Medicine.
  - Home inspection services licensing program.
  - Mold-related services licensing program.
- Division of Real Estate.
  - Florida Real Estate Appraisal Board.
  - Florida Real Estate Commission.
- Division of Regulation.
- Division of Technology.
- Division of Service Operations.

###### Proposed Changes

Section 1 of the bill repeals the following division, boards and programs:

- Division of Florida Condominiums, Timeshares, and Mobile Homes.
- Florida Board of Auctioneers.
- Board of Employee Leasing Companies.
- Board of Landscape Architecture.
- Board of Professional Geologists.
- Home inspection services licensing program.
- Mold-related services licensing program.

The bill also effectively eliminates the trust fund associated with the Division of Florida Condominiums, Timeshares and Mobile Homes.

Section 1 of the bill also renames the Board of Architecture and Interior Design to the “Board of Architecture.”

## **Athlete Agents**

### Current Situation

Chapter 468, Part IX, F.S., establishes licensure requirements for athlete agents working with student athletes. The Part is substantially the same as the Uniform Athlete Agents Act (UAAA). Athlete agents are licensed by the Division of Regulation within the DBPR. Currently, there are 163 licensed athlete agents.

### *Uniform Athlete Agents Act*

The National Collegiate Athletic Association (NCAA) is a private association of four-year post-high-school educational institutions, deriving authority from the member institutions that created it.<sup>1</sup> NCAA members must follow rules and policies collectively adopted; bylaws have direct impact only on them; and only members can change, repeal, or request waivers from them. An obligation of NCAA membership is that member institutions must monitor the conduct of those for whom they are responsible and sanction them for violations. In this way, staff members and student-athletes can be affected by NCAA bylaws. But the effect of the bylaws on them is achieved indirectly through institutional enforcement.<sup>2</sup>

In 2000, at the urging of the NCAA and various universities, the National Conference of Commissioners on Uniform State Laws drafted the UAAA to regulate the relationship between student athletes and athlete agents. The UAAA has been passed in 40 states, including Florida. Three states regulate athlete agents, but have not adopted the UAAA. Seven states do not regulate athlete agents.<sup>3</sup>

### *Florida requirements for athlete agents*

Athlete agents represent and promote athletes to prospective employers. They may also handle contract negotiation and other business matters for clients. The Part defines “athlete agent” as:

a person who, directly or indirectly, recruits or solicits a student athlete to enter into an agent contract, or who, for any type of financial gain, procures, offers, promises, or attempts to obtain employment or promotional fees or benefits for a student athlete with a professional sports team or as a professional athlete, or with any promoter who markets or attempts to market the student athlete’s athletic ability or athletic reputation.

‘Student Athlete’ is defined as any student who:

Resides in Florida, has informed, in writing, a college or university of the student’s intent to participate in that school’s intercollegiate athletics, or who does participate in that school’s intercollegiate athletics and is eligible to do so; or

Does not reside in Florida, but has informed, in writing, a college or university in Florida of the student’s intent to participate in that school’s intercollegiate athletics, or who does participate in that school’s intercollegiate athletics and is eligible to do so.

Under section 468.453, F.S., an applicant for licensure as an athlete agent must:

- Be at least 18 years of age.

---

<sup>1</sup> Josephine R. Potuto, *The NCAA Rules Adoption, Interpretation, Enforcement, and Infractions Processes: The Laws that Regulate them and the Nature of Court Review*, 12 Vand. J. Ent. & Tech. L. 257, 259 (Winter 2010).

<sup>2</sup> *Id.* at 267.

<sup>3</sup> See Uniform Athlete Agents Act History and Status, National Collegiate Athletic Association, *available at* [http://www.ncaa.org/wps/portal/ncaahome?WCM\\_GLOBAL\\_CONTEXT=/ncaa/NCAA/Legislation+and+Governance/](http://www.ncaa.org/wps/portal/ncaahome?WCM_GLOBAL_CONTEXT=/ncaa/NCAA/Legislation+and+Governance/)

- Be of good moral character.
- Have completed an application and paid an applicable fee.
- Have submitted fingerprints for a criminal history records check and within the preceding 5 years, not have been convicted or found guilty of or entered a plea of nolo contendere for a crime which relates to the applicant's practice or ability to practice as an athlete agent.

Out-of-state athlete agents may submit their out-of-state application, license or certification in lieu of an application. The statute also provides for temporary licensure. Licenses are renewed biennially and there are no continuing education requirements.

Athlete agents must pay the following fees:

For initial licensure:

- Application Fee - \$500
- Active Licensure Fee - \$750
- Background Check Fee - \$39
- Unlicensed Activity Fee - \$5

For biennial license renewal:

- Athlete Agent - \$445
- Unlicensed Activity Fee - \$5

Chapter 468, Part IX, F.S., also includes contractual requirements for athlete agents. The contract must contain specified information about the agency relationship and a warning to the student-athlete that if the contract is signed, eligibility to compete in a sport is lost. If the contract does not conform to this section, it is voidable by the student-athlete.

Chapter 468, Part IX, F.S., makes certain prohibited acts criminal and punishable either as a misdemeanor or felony and revocation of the athlete agent's license. "Generally, the prohibition is geared toward acts intended to induce a student-athlete to enter into an agency contract and failing to register or willfully providing materially false information in a registration application."<sup>4</sup>

Section 468.4562, F.S., creates a cause of action for damages against the athlete agent, a student athlete or both for damages caused to an educational institution by a violation of the Part. "The purpose of this section is to give a cause of action to an educational institution that is sanctioned [by the NCAA] as a result of activities of an athlete agent, student-athlete or both."<sup>5</sup>

### Proposed Changes

Section 14 of the bill repeals all regulations and licensure requirements related to athlete agents.

### **Auctioneers and Auctioneer Apprentices**

#### Present situation

Part VI of chapter 468, F.S., provides for the regulation and licensing of auction businesses, auctioneers, and apprentice auctioneers by the Florida Board of Auctioneers (board) within DBPR. According to DBPR there are currently 1,760 licensed auctioneers and auctioneer apprentices.

Section 468.385(2), F.S., requires a license before any person can auction or offer to auction any property in this state, unless exempt from licensure under this act.

Section 468.383, F.S., exempts the following activities from the licensure requirement:  
 (1) Owner-conducted auctions, unless the owner acquired the goods to resell;

<sup>4</sup> Robert N. Davis, Exploring the Contours of Agent Regulation: The Uniform Athlete Agents Act, 8 Vill. Sports & Ent. L.J. 1, 15 (2001).

<sup>5</sup> *Id.*

- (2) Auctions required under a judicial or administrative order, or by law;
- (3) Auctions by or for a charitable, civic, or religious organization;
- (4) Livestock auctions under certain circumstances;
- (5) Trustee-conducted auctions pursuant to a power of sale in a deed of trust on real property;
- (6) Certain auctions conducted by the owner or agent of the lien on or interest in goods;
- (7) Auctions conducted as a part of the sale of real property by a real estate broker;
- (8) Auctions of motor vehicles among motor vehicle dealers if conducted by an auctioneer; and
- (9) Certain auctions conducted for training purposes.

Section 468.382(1), F.S., defines an 'auction business' as a "sole proprietorship, partnership, or corporation which in the regular course of business arranges, manages, sponsors, advertises, promotes, or carries out auctions, employs auctioneers to conduct auctions in its facilities, or uses or allows the use of its facilities for auctions."

Under section 468.385, F.S., in order to qualify for licensure as an auctioneer, an applicant must:

- be 18 years or older;
- not have committed any act or offense in the state or any other jurisdiction which would constitute a basis for disciplinary action under s. 468.389, F.S.;
- have held an apprentice license and have served as an apprentice for 1 year or more, or have completed a course of study, consisting of not less than 80 classroom hours of instruction, that meets standards adopted by the board;
- pass the required examination; and
- be approved by the board.

Special regulations apply to apprentices and require supervision by licensed auctioneers. An apprentice must be licensed and serve under a licensed auctioneer who has agreed to serve as the supervisor of the apprentice. An apprentice cannot conduct, or contract to conduct, an auction without the express approval of his or her supervisor. The supervisor must regularly review the apprentice's records, which are required to be maintained, to determine if such records are accurate and current.

"Auctioneer Apprentice" means any person who is being trained as an auctioneer by a licensed auctioneer.

Under section 468.385, F.S., in order to qualify for licensure as an auctioneer, an applicant must:

- have held an apprentice license and have served as an apprentice for 1 year or more, or have completed a course of study, consisting of not less than 80 classroom hours of instruction, that meets standards adopted by the board;
- be 18 years or older;
- not have committed any act or offense in the state or any other jurisdiction which would constitute a basis for disciplinary action under s. 468.389, F.S.;
- pass the required examination; and
- be approved by the board.

### Proposed Changes

Sections 5 and 6 of the bill repeal all licensure and regulatory requirements for auctioneers and auctioneer apprentices and make conforming changes to cross references.

### **Sellers of Business Opportunities**

#### Current Situation

A business opportunity is an offer to assist a person in starting his or her own business by providing (either through sales or lease) products, equipment, supplies or services needed to carry on the business. Examples of such business opportunities include addressing envelopes, assembling toys at home at a cost of a few dollars, establishing vending machine routes, or installing pay telephones.

The Sale of Business Opportunities Act, ss. 559.80-559.815, F.S., establishes registration requirements for the sale of business opportunities. Sellers of business opportunities must register with the Division of Consumer Services within the Department of Agriculture and Consumer Services (DACS). Currently, there are 2,550 registered sellers of business opportunities.

The Act defines a “business opportunity” as a transaction exceeding \$500, where the seller represents to the buyer that the seller will provide equipment, inventory, marketing locations or assistance, or that the buyer is guaranteed to derive a specified return over the initial investment in the opportunity. The definition specifically excludes the following transactions:

- The sale of an ongoing business, as long as the seller does not sell more than five of the opportunities or businesses;
- The not-for-profit sale of sales demonstration equipment, materials, or samples for a total price of \$500 or less; or
- The sale or lease of laundry and drycleaning equipment.

Annual registration awards applicants with an advertisement identification number and requires the filing of specified disclosures and a \$300 fee.

Sellers must post a bond of no less than \$50,000, if the seller guarantees either: that the purchaser will derive income from the business opportunity exceeding the price paid or rent charged or the seller will refund all or a part of the price paid, or that the seller will repurchase any of the products supplied if the purchaser is unsatisfied.

Franchise sales are exempt if the franchise is governed by the federal Disclosure Requirements and Prohibitions Concerning Business Opportunities Act, 16 C.F.R. ss. 437.1-437.3. The federal law requires certain sellers of business opportunities to give a prospective buyer a packet of disclosures 10 days before any agreements are made or payments made.

Although exempt, such franchisors must pay an annual fee of \$100 and disclose the following to the DACS: The names of the applicant, franchise and that under which the applicant transacts business, the applicant’s principal business address, and the applicant’s federal employer identification number.

Failure to provide or deliver the supplies or services is prohibited and subjects the seller to civil, criminal (3<sup>rd</sup> degree felony), and administrative penalties. The Act also prohibits the seller from committing the following:

- Failing to disclose the known required total investment;
- Failing to disclose efforts to establish additional franchises or distributorships in the same market and market area as the business opportunity is established;
- Misrepresenting the quality or quantity of the products to be sold or distributed;
- Misrepresenting the training and management assistance available;
- Misrepresenting the amount of profits from the operation of the business opportunity;
- Failing to disclose the termination, transfer, or renewal provision of the business opportunity agreement;
- Falsely claiming that a primary marketer or trademark sponsors or participates directly or indirectly in the business opportunity agreement;
- Assigning an “exclusive-territory” encompassing the same area to more than one purchaser;
- Providing vending locations for which written authorizations have not been granted by the property owners or lessees;
- Providing machines or displays substantially different from and inferior to those promised;
- Failing to provide the purchaser a written business opportunity contract;
- Misrepresenting the ability to provide locations or assist in finding locations expected to have a positive impact on the success of the business opportunity;
- Misrepresenting a material fact or creating a false or misleading impression in the sale of a business opportunity; or

- Failing to provide or deliver the products, equipment, supplies, or services as specified in the written contract.

Section 559.813, F.S., provides for remedies and the enforcement of violations of sellers of business opportunities. Within one year of the execution of the contract and upon written notice to the seller, the purchaser is allowed to rescind the business opportunity contract and is entitled to receive from the seller all funds paid for the business opportunity, if the seller commits the following violations:

- Uses untrue or misleading statements in the sale;
- Fails to give proper disclosures required; or
- Fails to deliver the equipment supplies, or products necessary for the business to begin operation within 45 days of the delivery date in the contract.

DACS has enforcement authority to impose penalties, including administrative fines up to \$5,000 and revocation of the seller's advertisement identification number.

The act's disclosure requirements can be waived by contract.<sup>6</sup>

### Proposed Changes

Section 138 of the bill repeals all registration requirements and regulations relating to the sale of business opportunities.

## **Charitable Organizations**

### Current Situation

Chapter 496, F.S., establishes registration requirements and sets out regulations for charitable solicitation. Charitable solicitations are overseen by the Division of Consumer Services within the Department of Agriculture and Consumer Services (DACS). Currently, there are 16,588 charitable organizations, professional fundraising consultants and professional solicitors registered with the DACS.

### *Registration Requirements*

"Charitable Organization or sponsor" means a person who is or holds herself or himself out to be established for any benevolent, educational, philanthropic, humane, scientific, artistic, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or other eleemosynary purpose, or any person who in any manner employs a charitable appeal as the basis for any solicitation or an appeal that suggests that there is a charitable purpose to any solicitation.

"Professional Fundraising Consultant" means a person retained by a charitable organization or sponsor for a fixed fee under a written agreement to work on a fundraiser who does not solicit contributions or have control of contributions.

"Professional Solicitor" means a person who, for compensation, solicits contributions for a charitable organization or sponsor or a person employed to work on a fundraiser who does not qualify as a professional fundraising consultant.

Each registrant is required to file initial registration statements and annual renewal statements. Applicants must disclose information about who their organization, finances, tax-exempt status, and history. Professional solicitors must also file a bond of \$50,000.

Solicitors must file a solicitation notice with the DACS before beginning any solicitation campaign or event. Such notice includes a variety of required information about the campaign or event. After the event, the solicitor must file a financial report of the campaign.

---

<sup>6</sup> S.J. Business Enterprises, Inc. v. Colorall Technologies, Inc., 755 So.2d 769 (Fla.App. 4 Dist., 2000).

The following organizations are exempt from registration requirements:

- Religious institutions, educational institutions, state agencies or other government entities, and political fundraising are exempt.
- Persons soliciting contributions for named individual, if all contributions turned over to beneficiary.
- Solicitations limited to members of the fundraising organization.
- Veterans' service organizations.

Charitable Organizations and sponsors must pay annual fees based on their previous year's total collected contributions:

- \$10, if less than \$5,000
- \$10, if less than \$25,000 and fundraisers are not compensated
- \$75, if between \$5,000 and \$100,000
- \$125, if between \$100,000 and \$200,000
- \$200, if between \$200,000 and \$500,000
- \$300, if between \$500,000 and \$1 million
- \$350, if between \$1 million and \$10 million
- \$400, if \$10 million or more

Professional fundraising consultant and professional solicitors must pay \$300 annually.

### *Other Regulations*

The chapter also contains contractual and recordkeeping requirements governing the relationship between charitable organizations and their hired solicitors. Likewise, the chapter governs the practice of solicitation, including what disclosures must be made to the public and how collected funds may be used.

The chapter prohibits:

- Unregistered solicitations,
- Filing false or misleading information with state authorities,
- Misrepresenting involvement or endorsement by a person or organization,
- Falsely identify oneself as a representative of a charitable organization, law enforcement agency or the U.S. military,
- Misrepresent the use or distribution of contributions,
- Misrepresent governmental approval,
- Misrepresent that contribution will bestow special treatment by emergency services or law enforcement,
- Using any device, scheme, or artifice to defraud or to obtain a contribution by means of any deception, false pretense, misrepresentation, or false promise,
- Notifying anyone that they have won a prize, if the person must pay some consideration to take part,
- Failing to pay a charitable organization the proceeds of a solicitation campaign,
- Failing to use contributions as solicited, and
- Failing to identify a professional relationship to the person for whom the solicitation is being made.

To enforce the chapter's requirements, the DACS is given the authority to investigate and seek civil and administrative penalties for complaints of fraudulent practices. The chapter also provides criminal penalties.

Under s. 496.425, F.S., airports and other public transportation authorities may permit solicitations at their facilities.

## Proposed Changes

Sections 100 through 108 of the bill repeal all regulation relevant to charitable organizations, professional solicitors and professional fundraising consultants and make conforming changes to cross references.

## **Community Association Managers**

### Current Situation

Chapter 468, Part VIII, F.S., establishes licensure requirements for community association managers. It is implemented by 61-20 and 61-E14, F.A.C. A community association manager or firm must be licensed if he or she serves as management for an association of more than 10 units or an association with a budget of \$100,000 or greater. Currently, there are 16,622 licensed community association managers. Community association managers are licensed by the Division of Professions with DBPR. The profession is overseen by the Regulatory Council of Community Association Managers.

Community association managers are managers of homeowner and condominium associations, rented or leased housing units, buildings, or land (including rights-of-way). "Community Association Management" means any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for payment and when the association served contains more than 10 units or has an annual budget in excess of \$100,000:

- Controlling or disbursing funds of a community association;
- Preparing budgets or other financial documents for a community association;
- Assisting in the noticing or conduct of community association meetings; and
- Coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association.

Under Chapter 468, Part VIII, F.S., there are two types of licensure available: community association manager and community association management firm.

Under sections 468.432 and 468.433, a person desiring to be licensed as a community association manager shall apply to the division to take the licensure examination approved by the Regulatory Council of Community Association Managers. Each applicant must file a complete set of fingerprints that have been taken by an authorized law enforcement officer, that set of fingerprints shall be submitted to the Department of Law Enforcement for state processing and to the Federal Bureau of Investigation for federal processing. The division shall examine each applicant who is at least 18 years of age, who has successfully completed all prelicensure education requirements, and who the department certifies is of good moral character. Good moral character means a personal history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation.

Under section 468.432, a community association management firm or other similar organization desiring to be licensed as a community association management firm shall apply to the division, together with the application and licensure fees. Each community association management firm applying for licensure must be actively registered and authorized to do business in this state. Each applicant shall designate on its application a licensed community association manager who shall be required to respond to all inquiries from and investigations by the department or division. If the license of at least one individual active community association manager member is not in force, the license of the community association management firm or other similar organization is canceled automatically during that time.

Community association managers and firms must pay the following fees:

#### Initial Fees:

- Application Fee - \$50
- Examination Fee - \$100
- Re-Examination - \$100

- Examination Review Fee - \$50
- Initial License - \$100
- Unlicensed Activity Fee - \$5
- Background Check - \$47

Biennial License Renewal Fees:

- Community Association Managers - \$100
- Community Association Management Firms - \$100
- Business Entity - \$100
- Unlicensed Activity Fee - \$5

Section 468.4337, F.S., provides that in order to renew a community association manager's license the licensee must complete the requisite number of continuing education hours, but not more than 10 hours annually will be required. Currently, the division requires 20 hours of continuing education per renewal period.<sup>7</sup>

The Chapter provides that the division shall investigate complaints and allegations of a violation of ch. 468, part VIII, chapter 455, or any rule adopted thereunder, filed against community association managers or firms and forwarded from other divisions under the DBPR. It also provides the department shall conduct an investigation and take action on a complaint within 90 days, and if that deadline is not met, the department shall notify the complainant, in writing on a monthly basis, the status of the investigation. Section 468.437, F.S., provides "Any person who violates any of the provisions of this part shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083."

Proposed Changes

Sections 8 through 13 of the bill repeal all licensure and regulatory requirements for community association managers and management firms and make conforming changes to cross references.

**Condominiums, Cooperatives, Timeshares, and Mobile Home Parks**

*Condominiums*

Current Situation

Chapter 718, F.S., known as the Condominium Act establishes the framework for condominiums. Chapters 61B-15 through 61B-24, F.A.C. implement the chapter. Condominiums are "creatures of statute"<sup>8</sup>; their creation, ongoing activities, termination and regulation are dictated by statute. The Act also dictates the rights and responsibilities of unit owners and the condominium association which governs each condominium.<sup>9</sup> The division groups cooperatives and condominiums together for statistical purposes. According to DBPR, currently there are 27,004 cooperatives and condominiums in the state containing over 1.5 million units.

Section 718.103 provides definitions applicable to the Condominium Act:

"Condominium" means that form of ownership of real property created pursuant to this chapter, which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.

"Association" means, in addition to any entity responsible for the operation of common elements owned in undivided shares by unit owners, any entity which operates or maintains other real property in which

<sup>7</sup> Chapter 61E14-4.001, F.A.C.

<sup>8</sup> PETER M. DUNBAR, THE CONDOMINIUM CONCEPT: A PRACTICAL GUIDE FOR OFFICERS, OWNERS, REALTORS, ATTORNEYS, AND DIRECTORS OF FLORIDA CONDOMINIUMS XV (11<sup>th</sup> ed. 2008).

<sup>9</sup> See *id.*

unit owners have use rights, where membership in the entity is composed exclusively of unit owners or their elected or appointed representatives and is a required condition of unit ownership.

“Unit owner” or “owner of a unit” means a record owner of legal title to a condominium parcel.

“Declaration” or “declaration of condominium” means the instrument or instruments by which a condominium is created, as they are from time to time amended.

A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.<sup>10</sup> A declaration is like a constitution in that it:

Strictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.<sup>11</sup>

A declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.<sup>12</sup> A declaration of condominium may be amended as provided in the declaration. If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of two-thirds of the units.<sup>13</sup> Condominiums are administered by a board of directors referred to as a board of administration.<sup>14</sup> Condominiums are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within DBPR, in accordance with ch. 718, F.S. The Bureau of Standards and Registration ensures that potential purchasers of condominiums have the appropriate disclosures to make informed decisions when buying a condominium.

Section 718.501(1), F.S., provides the duties of the division. Before a condominium community can be built, the developer must submit a filing to the division for its approval. The filing must meet the consumer protection requirements before units can be offered to sale to the public. The division has oversight over all the documents required to be given to prospective purchasers.<sup>15</sup> Section 718.501(1), F.S., gives the division the complete jurisdiction to investigate complaints and enforce compliance with ch. 718, F.S., with respect to associations that are still under developer control. It also has the authority to investigate complaints against developers involving improper turnover or failure to turnover, pursuant to s. 718.301, F.S. After control of the condominium is transferred from the developer to the unit owners, the division’s jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12), F.S. As part of the division’s authority to investigate complaints, s. 718.501(1), F.S., provides the division with the authority to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, file enforcement action in the Circuit Court on behalf of unit owners to seek declaratory or injunctive relief, and impose civil penalties (fines) against developers and associations.

Developers must maintain an escrow account containing 10% of the sale price received by the developer from the buyer towards the sale price if the developer offers units for sale before the construction, furnishing, and landscaping of the property is substantially complete. However, section 718.202, F.S., allows the director of the division to accept other assurances, including, but not limited to, a surety bond or an irrevocable letter of credit in an amount equal to the escrow requirements. Developers of condominiums must pay a filing fee of \$20 for each residential unit to be sold by the developer which is described in the documents filed with the division. Developers are also required to report the election of unit owner board members to the division.<sup>16</sup>

---

<sup>10</sup> Fla. Stat. s. 718.104(2).

<sup>11</sup> Neuman v. Grand View at Emerald Hills, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003).

<sup>12</sup> Fla. Stat. s. 718.104(5).

<sup>13</sup> Fla. Stat. s. 718.110(1)(a).

<sup>14</sup> Fla. Stat. s. 718.103(4).

<sup>15</sup> See Fla. Stat. s. 718.504.

<sup>16</sup> Fla. Stat. s. 718.301(2).

The division is required to employ full-time attorneys to act as arbitrators to conduct the arbitration hearings provided by chapter 718. The division is also required to adopt rules of procedure to govern such arbitration hearings including mediation incident thereto.<sup>17</sup> Prior to the institution of court litigation, a party to a dispute shall petition the division for nonbinding arbitration. Parties can request the dispute be referred to mediation before being submitted to arbitration.<sup>18</sup> Parties can also elect for the arbitration proceeding to be binding on both parties. Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the condominium is located.<sup>19</sup>

Currently, no officer, director, or manager may solicit, offer to accept, or accept anything or service of value or else they will be subject to civil penalty pursuant to s. 718.501(1)(d).<sup>20</sup> Additionally, any person who knowingly or intentionally defaces or destroys accounting records required to be created and maintained by chapter 718 during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the association or one or more of its members is personally subject to civil penalty.<sup>21</sup>

Section 718.5011, F.S., creates the Office of the Condominium Ombudsman, located for administrative purposes within the Division. The Governor appoints the Ombudsman and he or she must be an attorney admitted to practice before the Florida Supreme Court. Section 718.5012, F.S., enumerates the powers and the duties of the Ombudsman. These powers and duties include, but are not limited to:

To act as liaison between the division, unit owners, boards of directors, board members, community association managers, and other affected parties. To monitor and review procedures and disputes concerning condominium elections or meetings, including, but not limited to, recommending that the division pursue enforcement action in any manner where there is reasonable cause to believe that election misconduct has occurred. To make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by unit owners, associations, and managers. To provide resources to assist members of boards of directors and officers of associations to carry out their powers and duties consistent with this chapter, division rules, and the condominium documents governing the association. To encourage and facilitate voluntary meetings with and between unit owners, boards of directors, board members, community association managers, and other affected parties when the meetings may assist in resolving a dispute within a community association before a person submits a dispute for a formal or administrative remedy. Assist with the resolution of disputes between unit owners and the association or between unit owners when the dispute is not within the jurisdiction of the division to resolve. May appoint an election monitor to attend the annual meeting of the unit owners and conduct the election of directors when fifteen percent of the total voting interests in a condominium association, or six unit owners, whichever is greater petition the Ombudsman to do so.

In addition to the mediation services and consumer services provided by the Condominium Ombudsman, the division also provides training and educational programs for condominium association board members and unit owners. The training may, in the division's discretion, include web-based electronic media, and live training and seminars in various locations throughout the state. Additionally, the division maintains a toll-free telephone number accessible to condominium unit owners.

Section 718.1085, F.S., currently requires the division to collect certain information annually from condominiums; for example, condominium associations must report the membership vote and

---

<sup>17</sup> Fla. Stat. s. 718.1255.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Fla. Stat. s 718.111.

<sup>21</sup> *Id.*

recording of a certificate of compliance and, if retrofitting has been undertaken, the per-unit cost of such work. The section further requires the division to annually report to the Division of State Fire Marshal of the Department of Financial Services the number of condominiums that have elected to forego retrofitting.

Each condominium association is required to pay annual fees to the division based on the number of residential condominium units in the association. This fee is currently \$4 per unit and is due by January 1 of each year. If the fee is not paid by March 1, the association shall be assessed a penalty of 10% of the amount due, and the association will not have standing to maintain or defend any action in the courts of Florida until the amount due, plus any penalty, is paid.<sup>22</sup> All moneys collected by the division from fees, fines, or penalties or from costs awarded to the division by a court or administrative final order shall be paid into the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.<sup>23</sup>

## *Cooperatives*

### Current Situation

Chapter 719, F.S., known as the Cooperative Act, establishes the licensure and regulatory framework for cooperatives. The chapter is implemented by chapter 61B-75 through 61B-79, F.A.C. The division groups cooperatives and condominiums together for statistical purposes. Currently, there are 27,004 cooperatives and condominiums in the state containing over 1.5 million units.

“Cooperative” means that form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other title or possession granted by the association as the owner of all the cooperative property.

Cooperatives are regulated by the division within DBPR, but the division does not license cooperatives. Before a cooperative community can be built, the developer must submit a filing to the division for its approval. The filing must meet the consumer protection requirements of chapter 719 before units can be offered for sale to the public.<sup>24</sup> However, unlike condominium communities, the division maintains enforcement authority for the entire chapter from development through turnover and operation by the unit owners in the community. In addition, Cooperatives are concurrently regulated by the Division of Hotels and Restaurants to the extent provided in chapters 399 and 509, F.S.<sup>25</sup>

Each cooperative is required to pay annual fees to the division based on the number of residential cooperative units in the association. This fee is currently \$4 per unit and is due by January 1 of each year. Developers of cooperatives must pay a filing fee of \$20 for each residential unit to be sold by the developer which is described in the documents filed with the division.

The division uses the annual fee to investigate complaints, review and approve cooperative documents, provide copies of Chapters 719, Florida Statutes, publish educational brochures, hold educational seminars, employ full-time attorneys to act as arbitrators to conduct mandatory nonbinding arbitration of disputes, provide customer service to the public, and maintain a toll-free telephone line to assist customers.<sup>26</sup>

Section 719.104(4)(b), F.S., provides the division rule making authority over the financial reporting of the cooperative associations. “The division shall adopt rules that may require that the association deliver to the unit owners, in lieu of the financial report required by this section, a complete set of financial statements for the preceding fiscal year.” It also provides that developers still in control of the

---

<sup>22</sup> Fla. Stat. s. 718.501(2)(a).

<sup>23</sup> Fla. Stat. s. 718.509.

<sup>24</sup> See Fla. Stat. ss. 719.502, 719.503, 719.504, 719.505, & 719.506.

<sup>25</sup> Fla. Stat. s. 719.508.

<sup>26</sup> Fla. Stat. s. 719.501.

association and, later, a majority of the association members can waive the financial audit requirement. “In an association in which turnover of control by the developer has not occurred, the developer may vote to waive the audit requirement for the first 2 years of the operation of the association, after which time waiver of an applicable audit requirement shall be by a majority of voting interests other than the developer. The meeting shall be held prior to the end of the fiscal year, and the waiver shall be effective for only one fiscal year. This subsection does not apply to a cooperative that consists of 50 or fewer units.”

In addition to the prospectus filing and advertising filing requirements, the developer of a cooperative must notify the division and forward the name and address of the unit owner who is the first unit owner elected to the board other than the developer.<sup>27</sup>

Currently, the division may impose civil penalties on officers, directors, or managers who solicit, offer to accept, or accept anything or service of value.<sup>28</sup> In addition, the division annually requires, as part of the information collected from cooperatives, information concerning the membership vote about retrofitting and recording of a certificate of compliance.<sup>29</sup> The division must annually report to the Division of State Fire Marshal of the Department of Financial Services the number of cooperatives that have elected to forego retrofitting.<sup>30</sup>

The Cooperative Act currently provides for alternative resolution of disputes within communities. Section 719.106(l), F.S., requires the bylaws of cooperative associations to include a provision for mandatory nonbinding arbitration for internal disputes arising from the operation of the cooperatives in accordance with s. 719.1255, F.S. As such, section 719.1255, F.S., provides “The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation shall provide for alternative dispute resolution in accordance with s. 718.1255.”

The Cooperative Act currently provides the director of the division has discretion to accept other assurances, including, but not limited to, a surety bond or an irrevocable letter of credit in an amount equal to the 10% escrow requirement required by s. 719.202, F.S., in order to allow a developer to contract to sell cooperative parcels before the construction, furnishing, or landscaping are substantially complete.<sup>31</sup>

## *Timeshares*

### Current Situation

Chapter 721, F.S., known as the Florida Vacation Plan and Timesharing Act, establishes the regulatory framework of vacation and timeshares plans. It is implemented by chapters 61B-37 through 61B-41, F.A.C. Regulatory oversight is undertaken by the division within DBPR. However, timeshares are not licensed by the state. Florida is often referred to as the Timeshare Capital of the World; Florida is home to more than 2 million timeshare weeks.

“Timeshare plan” means any arrangement, plan, scheme, or similar device, other than an exchange program, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, or right-to-use agreement or by any other means, whereby a purchaser, for consideration, receives ownership rights in or a right to use accommodations, and facilities, if any, for a period of time less than a full year during any given year, but not necessarily for consecutive years.

The term “timeshare plan” includes: a “personal property timeshare plan,” means a timeshare plan in which the accommodations are comprised of personal property that is not permanently affixed to real

---

<sup>27</sup> Fla. Stat. s. 719.301(2).

<sup>28</sup> Fla. Stat. s. 719.104(8).

<sup>29</sup> Fla. Stat. s. 719.1055(5)(a)-(c).

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

<sup>31</sup> Fla. Stat. s. 719.202(1).

property and a “real property timeshare plan,” which means a timeshare plan in which the accommodations of the timeshare plan are comprised of or permanently affixed to real property.

Chapter 721 applies to all timeshare plans consisting of more than seven timeshare periods over a period of at least 3 years in which the accommodations and facilities, if any, are located within this state or offered within this state. Currently, there are 681 projects operating in the state.

Prior to offering any timeshare plan, the developer must submit a registered public offering statement to the division for approval.<sup>32</sup> The filing must meet the consumer protection requirements of chapter 721 before timeshare periods can be offered for sale to the public. Initially, developers who plan to offer time share plans must submit a filing fee of \$2 for each 7 days of annual use availability in each timeshare unit that may be offered as part of a proposed public offering of the timeshare plan.<sup>33</sup> Additionally, the developer must establish an escrow account with an escrow agent for the purpose of protecting the funds of purchasers.<sup>34</sup> The Bureau of Standards and Registration ensures that potential purchasers of timeshares have the appropriate disclosures to make informed decisions when buying a timeshare. The division has the power to require disclosure of provisions of an out of state timeshare instrument that do not conform to the Act.<sup>35</sup>

Within 45 days after receipt by the division of the registered public offering statement, or within 120 days in the case of a multisite timeshare plan, the division must notify the developer in writing of either approval or specified deficiencies. The developer is required to respond to a deficiency notice within 20 days of receipt of the deficiency notice. The division will then respond within 20 days after receipt of the developer’s response to any deficiency notice. This process occurs until the filing is approved, withdrawn, or rejected.<sup>36</sup> In addition, all advertising material relating to a timeshare plan, including prize and gift promotional offers, must be filed with the division by the developer prior to use, and must be in compliance with Chapter 721, F.S.<sup>37</sup> The use of incidental benefits for purchasers of timeshare units is available provided they conform to the requirements of section 721.075, F.S.

Any change to an approved public offering statement must be filed with the division for approval as an amendment prior to becoming effective. Upon filing the amendment, other than an amendment adding a phase to the timeshare plan, the developer must pay a fee of \$100.<sup>38</sup>

Section 721.03 provides that a timeshare plan containing accommodations or facilities located in Florida but is offered for sale outside the jurisdictional limits of the United States, that offer or sale shall be exempt from the requirements of chapter 721, provided that the developer either files the timeshare plan with the division for approval pursuant to chapter 721, or pay an exemption registration fee of \$100 and files certain minimum information pertaining to the timeshare plan with the division for approval.

Currently, resale service providers and lead dealers must maintain certain records for a period of 5 years from the date each piece of personal contact information is obtained.<sup>39</sup> The section also provides an additional remedy for parties who establish that a resale service provider or lead dealer wrongfully obtained or wrongfully used personal contact information with respect to owners of a timeshare plan or members of an exchange program.

Currently, any seller of a timeshare plan must be a licensed real estate broker, broker associate, or sales associate as defined in s. 475.01, F.S. But solicitors who engage only in the solicitation of prospective purchasers and any purchaser who refers no more than 20 people to a developer or managing entity per year or who otherwise provides testimonials on behalf of a developer or managing

---

<sup>32</sup> Fla. Stat. s. 721.03.

<sup>33</sup> Fla. Stat. s. 721.07(4)(a) .

<sup>34</sup> Fla. Stat. s. 721.08.

<sup>35</sup> See Fla. Stat. s. 721.03(c).

<sup>36</sup> Fla. Stat. s. 721.07(2).

<sup>37</sup> Fla. Stat. s. 721.11.

<sup>38</sup> Fla. Stat. s. 721.07(4)(b).

<sup>39</sup> Fla. Stat. s. 721.121.

entity are exempt from licensure under ch. 475. However, they are still subject to provisions of the Florida Vacation Plan and Timesharing Act.

The division currently maintains the Florida Timesharing, Vacation Club, and Hospitality Program. The primary purpose of this program is to provide the opportunity for a public-private partnership between the state and the timeshare, vacation club, hospitality, and tourism industries affecting this state. The director may designate funds from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund, not to exceed \$50,000 annually, to support the projects and proposals, however, all state trust funds expended must be matched equally with private moneys and shall comprise no more than half of the total moneys expended annually.<sup>40</sup>

Section 721.27, F.S., provides that on January 1 of each year, each managing entity of a timeshare plan located in Florida must collect as a common expense and pay to the division an annual fee of \$2 for each 7 days of annual use availability that exist within the timeshare plan.

### *Mobile Home Parks*

#### Current Situation

Chapter 723, F.S., known as the Florida Mobile Home Act, establishes the regulatory framework for Mobile Home Parks. It is implemented by chapters 61B-29 through 61B-32 & 61B-35, F.A.C. Regulatory oversight is undertaken by the division within DBPR. Currently, there are 2,420 mobile home parks in Florida with 297,409 lots. The law applies to any residential tenancy in which a mobile home is placed upon a rented or leased lot in a mobile home park in which 10 or more lots are offered for rent or lease.

Chapter 723, Florida Statutes, defines a mobile home as a residential structure, transportable in one or more sections, which is 8 body feet or more in width, over 35 body feet in length with the hitch, built on an integral chassis, designed to be used as a dwelling when connected to the required utilities, and not originally sold as a recreational vehicle, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.<sup>41</sup>

Before a park owner can offer lots in parks bigger than 26 lots, for rent to the public, the division must approve the park owners' prospectus. The prospectus details the rules and regulations of the park and provides disclosures to the tenants of their rights and obligations as a condition of their being able to rent a mobile home lot in the park. Upon filing the prospectus required by section 723.011, F.S., the park owner shall pay a prospectus filing fee for each prospectus filed. The fee shall be \$10 for each permitted lot offered for lease. However, a park owner who enters into a rental agreement in which a prospectus is not delivered must give the mobile home owner written disclosure in lieu of a prospectus.

The Bureau of Standards and Registration ensures that potential purchasers of mobile homes have the appropriate disclosures to make informed decisions when buying a mobile home. The bureau also ensures that tenants of a mobile home park get adequate disclosure of the rules and regulations that govern their tenancy.

Section 723.016, F.S., provides that "all advertising materials for, used by, or promoting any mobile home park shall be filed with the division by the developer, park owner, or mobile home dealer within 30 days of the end of each calendar quarter in which it was used, unless the material has been previously filed."

Each mobile home park owner must pay to the division an annual fee of \$4 for each mobile home lot within a mobile home park which he or she owns. In addition, to the annual fee, there is a \$1 surcharge levied to benefit the Florida Mobile Home Relocation Trust Fund. The surcharge is collected in the same manner as the annual fee and is deposited in the Florida Mobile Home Relocation Trust Fund.

---

<sup>40</sup> Fla. Stat. s. 721.301.

<sup>41</sup> Fla. Stat. s. 723.003(3).

Certain situations are exempt from Chapter 723, including:

- Does not apply to any other tenancy, including a tenancy in which both a mobile home and a mobile home lot are rented or leased by the mobile home resident or a tenancy in which a rental space is offered for occupancy by recreational-vehicle-type units which are primarily designed as temporary living quarters for recreational camping or travel use and which either have their own motor power or are mounted on or drawn by another vehicle.
- When both the mobile home and lot are rented or when fewer than 10 lots are available for rent or lease, the tenancy shall be governed by the provisions of part II of chapter 83, the "Florida Residential Landlord and Tenant Act." However, this chapter shall continue to apply to any tenancy in a park even though the number of lots offered in that park has been reduced to below 10 if that tenancy was subject to the provisions of this chapter prior to the reduction in lots.

Section 723.038, F.S., provides both homeowners and park owners may petition the division to appoint a mediator and initiate mediation proceedings. It also provides the division shall promulgate rules of procedure to govern such proceedings in accordance with the rules of practice and procedure adopted by the Supreme Court. The division shall also establish, by rule, the fee to be charged by a mediator. However, the parties are free to select their own mediator if they wish. A mediator appointed by the division or selected by the parties must comply with the rules adopted by the division. Upon receiving a petition to mediate a dispute, the division shall, within 20 days, notify the parties that a mediator has been appointed by the division. The parties may either accept the mediator appointed by the division or, within 30 days, select a mediator to mediate the dispute. The parties, by agreement, may waive mediation, or the petitioning party may withdraw the petition prior to mediation. Upon the conclusion of the mediation, the mediator shall notify the division that the mediation has been concluded. However, no resolution arising from a mediation proceeding as provided for in s. 723.037 or this section shall be deemed final agency action. Any party, however, may initiate an action in the circuit court to enforce a resolution or agreement arising from a mediation proceeding which has been reduced to writing. The court shall consider such resolution or agreement to be a contract for the purpose of providing a remedy to the complaining party.<sup>42</sup> Section 723.0381, F.S., further provides that after mediation of a dispute pursuant to s. 723.038 has failed to provide a resolution of the dispute, either party may file an action in the circuit court. The court may refer the action to nonbinding arbitration pursuant to s. 44.103 and the Florida Rules of Civil Procedure.

### *Homeowners Associations*

#### Current Situation

In 1992, special laws governing homeowners associations in Florida were enacted for the first time. In 2000, the special statutory provisions relating to mandatory homeowners associations were assigned to Chapter 720 of the Florida statutes.

Chapter 720, F.S., contains the framework and regulations for homeowners' associations operating in Florida. The chapter is implemented by chapter 61B-80 & 81, F.A.C. Currently, it is estimated there are approximately 14,000 homeowners associations operating in Florida.<sup>43</sup>

"Homeowners' association" or "association" means a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.<sup>44</sup> Homeowners associations are governed by covenants, which are enforced by elected boards who must balance the rights of parcel owners with the interests of the community. In these associations, membership is a mandatory condition of parcel ownership, with the voting membership made up of parcel owners. Mandatory membership homeowners associations, those empowered to

---

<sup>42</sup> Fla. Stat. s. 723.038.

<sup>43</sup> OPPAGA, report no. 10-20 (Feb. 2010).

<sup>44</sup> Fla. Stat. s. 720.301(9).

levy assessments and fines for non-payment, are defined by state law and required to register with the Department of State, Division of Corporations.<sup>45</sup>

Section 720.302(2), F.S., currently provides:

The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with s. 720.311, the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these disputes as more fully set forth in this chapter.

Homeowners' associations fall within the jurisdiction of the division within DBPR. However, the department only has jurisdiction to arbitrate homeowners' association election and recall disputes, with the cost of these services paid by the parties receiving the services.

Section 720.311, F.S., provides for mandatory arbitration by the department:

Any recall dispute filed with the department pursuant to s. 720.303(10) shall be conducted by the department in accordance with the provisions of ss. 718.112(2)(j) and 718.1255 and the rules adopted by the division. In addition, the department shall conduct mandatory binding arbitration of election disputes between a member and an association pursuant to s. 718.1255 and rules adopted by the division. Neither election disputes nor recall disputes are eligible for presuit mediation; these disputes shall be arbitrated by the department. At the conclusion of the proceeding, the department shall charge the parties a fee in an amount adequate to cover all costs and expenses incurred by the department in conducting the proceeding.

The party seeking mediation pursuant to chapter 720 must pay a filing fee of \$200. In addition, the prevailing party is eligible to recover costs and attorneys' fees from the losing party.

Homeowners' associations do not pay any annual fees to the division.

### Proposed Changes

Sections 142 through 211 makes the following changes to current law:

- Eliminates state regulation in the area of condominium, cooperative, mobile home lot, and timeshare development;
- Repeals the power and duty of the division to enforce and ensure compliance with the provisions of the Condominium Act, the Cooperative Act, the Florida Mobile Home Act, and the Florida Vacation Plan and Timesharing Act;
- Eliminates division initiated mediation proceedings related to condominiums, cooperatives, mobile home parks, and timeshares. However, unit owners, associations, mobile home park owners, and developers may still initiate proceedings in county or circuit court to resolve disputes;
- Deletes the mandatory arbitration requirement related to homeowners' association election disputes;
- Continues the role of the DBPR in resolving homeowner association recall and election disputes, but removes reference to the procedures outline in the Florida Condominium Act; and
- Makes conforming changes to cross references.

---

<sup>45</sup> Homeowners' Associations are also governed by ch. 617, F.S.

## Cosmetology Specialists

### Current Situation

Chapter 477, F.S., establishes licensure requirements for cosmetologists and cosmetology specialists. It is implemented by chapter 61G-5, F.A.C. Cosmetologists and cosmetology specialists are licensed by the Board of Cosmetology within DBPR. Currently, there are 4,447 body wrappers; 2,909 hair braiders; and 750 hair wrappers.

“Cosmetology” is defined as “the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services. Cosmetology services shall be performed only by licensed cosmetologists in licensed salons.”

There are several categories of specialty cosmetologists:

- Manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands. This term includes any procedure or process for the affixing of artificial nails, except those nails which may be applied solely by use of a simple adhesive.
- Pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet.
- Facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services.
- “Hair braiding” or the weaving or interweaving of natural human hair for compensation without cutting, coloring, permanent waving, relaxing, removing, or chemical treatment and does not include the use of hair extensions or wefts.
- “Hair wrapping” or the wrapping of manufactured materials around a strand or strands of human hair, for compensation, without cutting, coloring, permanent waving, relaxing, removing, weaving, chemically treating, braiding, using hair extensions, or performing any other service defined as cosmetology.
- “Body wrapping” or a treatment program that uses herbal wraps for the purposes of cleansing and beautifying the skin of the body, but does not include:
  - The application of oils, lotions, or other fluids to the body, except fluids contained in presoaked materials used in the wraps; or
  - Manipulation of the body’s superficial tissue, other than that arising from compression emanating from the wrap materials.
- “Skin care services” or the treatment of the skin of the body, other than the head, face, and scalp, by the use of a sponge, brush, cloth, or similar device to apply or remove a chemical preparation or other substance, except that chemical peels may be removed by peeling an applied preparation from the skin by hand. Skin care services must be performed by a licensed cosmetologist or facial specialist within a licensed cosmetology or specialty salon, and such services may not involve massage, as defined in s. 480.033(3), through manipulation of the superficial tissue.

Specialists must hold a certificate of completion from a board-approved school, with the following course work:

	Required Instruction
Hair Braiding Registration	Two-day 16 hour course
Hair Wrapping Registration	One-day, six hour course
Body Wrapping Registration	Two-day, 12 hour course

Each course must be approved by the board and have specific modules on HIV/AIDS and other communicable diseases, sanitation and sterilization, disorders and diseases of the scalp, and pertinent laws.

Every two years body wrappers, hair braiders, and hair wrappers must complete a board-approved, two hour HIV/AIDS continuing education course.

A cosmetologist licensed in another state may be licensed by endorsement, if he or she makes application and pays to the fee, and demonstrates that he or she has met education requirements at least as stringent as the state's.

Cosmetology or Specialty Salons may be licensed by submitting an application, paying the required fee and meeting the safety and sanitary requirements established by the board.

Body wrapping, hair wrapping and hair braiding services are not required to be practiced in a salon. However, when body wrapping is practiced outside a salon, implements must be either disposable or sanitized in a disinfectant approved for hospital use or by the federal Environmental Protection Agency.

Applicants for Hair Braider, Hair Wrapper or Body Wrapper Registration must pay \$25. Each registration or license is renewed biennially with the payment of the registration fee.

There are additional fees for delinquent renewals, inactive changes of status, inactive renewals, and reactivations.

### Proposed Changes

Sections 53 through 57 of the bill repeal all registration requirements for Hair Braiders, Hair Wrappers and Body Wrappers and make conforming changes to cross references.

### **Dance Studios**

#### Present Situation

Currently, s. 501.143, F.S., is cited as the "Dance Studio Act." Currently, there are 223 registered dance studios.

This section defines "ballroom dance studio" to mean:

any person that engages in the sale of ballroom dance studio lessons or services which are provided at a location specifically used for dance studio lessons or services or secures floor space at a registered ballroom dance studio facility or other facility which is not used primarily for rendering dance studio lessons or services and enters into contracts for future dance studio lessons or services.

It is common to use the reference to dance studio or ballroom dance studio interchangeably.

The owner or operator of a dance studio must register with DACS annually. The registration procedure requires:

- the legal business or trade name, mailing address, and business locations, and the full names, addresses, and telephone numbers of its owners or corporate officers and directors and the Florida agent of the corporation;
- copies of contracts to be offered to the public;
- payment of the registration fee of \$300;
- the DACS may refuse registration if the applicant or any of its directors, has been found guilty of a crime involving fraud, has not satisfied an administrative fine or civil judgment, or has a judgment against it for unfair trade practices.

If approved, the DACS issues a certificate evidencing proof of registration. The holder of the certificate is required to display the certificate at each business location. Additionally, each advertisement or contract of a ballroom dance studio must include the phrase "(NAME OF FIRM) is registered with the State of Florida as a Ballroom Dance Studio Registration No ....."

Statutory contract requirements specify that:

- the contract is in writing and all provisions, requirements, and prohibitions which are mandated by this statutory section must be contained in the written contract before it is signed by the customer;
- a copy of the signed contract must be given to the customer at the time the customer signs the contract; and
- the contract for ballroom dance studio services or lessons include the customer's total payment obligation for services or lessons and contain a written statement of the hourly or lesson rate charged for which the customer has contracted.

A contract for the sale of future dance studio services or lessons which are paid for in advance or which the buyer agrees to pay for in future installment payments must be in writing and contain a disclosure to include the following:

- a provision for the penalty-free cancellation of the contract within 3 days upon written notice to the ballroom dance studio (a refund must be issued within 20 days after receipt of the notice of cancellation made within the 3-day period);
- a provision for the cancellation of the contract, if the buyer dies or becomes unable to avail himself or herself of the lessons or services or if the lessons or services cease to be offered as stated in the contract (the studio must refund the balance in three equal monthly installments, to be completed within not more than 90 days); and
- studio management must keep a copy of each contract on file for as long as the contract is in effect and for a period of 2 years thereafter.

Each studio that has been in business under the same ownership for less than 3 years and receives an advance payment in excess of \$250 or enters into retail installment contract for payment is required to establish a mechanism for ensuring customer refunds.

Financial security is required by statute and must be maintained in the form of a bond, an irrevocable letter of credit, or a guaranty agreement that is secured by a certificate of deposit as follows:

- if the studio has been in business under the same ownership for less than 1 year - \$5,000;
- if the studio has been in business under the same ownership for at least 1 year, but less than 2 years - \$10,000; and
- if the studio has been in business under the same ownership for at least 2 years, but less than 3 years - \$15,000.

The DACS indicates that "the statute only addresses businesses under 3 years and the Department has interpreted that to mean NO bond is required" if a studio has been under the same ownership for more than three years.

Enforcement authority is vested with the DACS and the Department of Legal Affairs for administrative, civil, and criminal penalties. Subsection 501.143(9), F.S. specifies that any moneys recovered by the enforcing authority as a penalty must be deposited in the General Inspection Trust Fund if the action was brought by the DACS or the Legal Affairs Revolving Trust Fund if the action was brought by the Department of Legal Affairs.

Additionally, a customer injured by a fraudulent act in violation of this section may bring an action for the recovery of damages. Judgment may be entered for three times the amount, at which the actual damages are assessed plus costs and reasonable attorney's fees.

### Proposed Changes

Section 116 of the bill repeals all licensure and regulatory requirements for dance studios.

## Employee Leasing Companies

### Present situation

Essentially, the employment staffing industry in Florida has three basic segments:

- Day labor and labor pools. These entities, regulated under chapter 448, F.S., assign their employees on a day-to-day basis to client companies (employers).
- Temporary help firms. These firms, which are not regulated by the state, assign their employees on a weekly, monthly, seasonal, or other basis to client companies for a period of less than one year.
- Employee leasing companies or professional employer organizations. These companies are licensed and regulated by the DBPR under chapter 468, F.S. These companies assign and actively co-employ their employees with a client company. As of February 2008, the Board of Employee Leasing Companies within DBPR reports 701 employee leasing companies hold an active license in Florida.

In a traditional employee leasing arrangement, an employee leasing company will enter into an arrangement with an employer (“client company”) under which all or most of the client’s workforce would be employed by the leasing company and leased to the client company. Generally, the client company will terminate all or most of its employees and these employees will be engaged by the leasing company and leased to the client to perform the same work they previously performed as the client’s employees. Generally, the employee leasing company and the client establish a co-employer relationship by contract to the extent allowed by state law.

Section 468.525(4), F.S. requires the leasing company to maintain control over leased employees with limited exceptions; to pay wages to leased employees; to pay payroll taxes on leased employees; to retain authority to hire, terminate, discipline or reassign leased employees; to control safety at the worksite of leased employees which includes management of workers’ compensation claims of leased employees.

Business Entity - Each employee leasing company licensed by the department shall have a registered agent for service of process in this state and at least one licensed controlling person. Each controlling person licensed by the department shall:

- o Be at least 18 years of age.
- o Be of good moral character.
- o Have the education, managerial, or business experience to successfully operate or be a controlling person of an employee leasing company.
- o Submit fingerprints, for processing through appropriate law enforcement agencies, by the applicant and the examination of police records by the board.

The board may deny an application for licensure or renewal citing lack of good moral character.

Conviction of a crime within the last 7 years does not automatically bar any applicant or licensee from obtaining a license or continuing as a licensee. The board shall consider the type of crime committed, the crime’s relevancy to the employee leasing industry, the length of time since the conviction and any other factors deemed relevant by the Board of Employee Leasing Companies.

- De Minimus Operations (Registration only). An employee leasing company is exempt from the licensing requirements specified in s. 468.525 and from the fees specified in s. 468.526 if such company:
  - o Submits a properly executed request for registration and exemption on a form provided by the department;
  - o Is domiciled outside the state and is licensed or registered as an employee leasing company in its state of domicile or residence;
  - o Does not provide leased employees to a client whose business is located or domiciled in this state;

- Does not maintain an office in this state or solicit in any manner clients located or domiciled within this state; and
- Does not have more than 50 leased employees working in this state.

## Proposed Changes

Sections 15 through 28 of the bill repeal all licensure and regulatory requirements for employee leasing companies and make conforming changes to cross references.

## **Professional Geologists**

### Current Situation

Chapter 492, F.S., establishes licensure requirements for professional geologists and the practice of professional geology by a business entity. The chapter is implemented by chapter 61G-16, F.A.C. Currently, there are 2,267 licensed professional geologists.

Professional geologist practices the science of geology in a variety of fields, ranging from petrology and mineralogy to geochemistry to sedimentology. Florida law defines a geologist as: "An individual who, by reason of her or his knowledge of geology, soils, mathematics, and the physical and life sciences, acquired by education and practical experience, is capable of practicing the science of geology." It further defines a professional geologist as: "An individual who is licensed as a geologist under the provisions of this chapter."<sup>46</sup>

Professional geologist and professional geology business entities are licensed by the Division of Professions within the DBPR. A professional geologist has three methods of achieving licensure, each with different requirements. The three methods are licensure by examination, licensure by endorsement and a provisional license. In addition, a professional geology business entity must satisfy certain criteria.

Under section 492.105, F.S., in order to be eligible for licensure by examination, an applicant must meet the following qualifications:

- The department shall examine each applicant who the board certifies:
  - Has completed the application form and remitted a nonrefundable application fee and an examination fee which is refundable if the applicant is found to be ineligible to take the examination.
  - Is at least 18 years of age.
  - Has not committed any act or offense in any jurisdiction which would constitute the basis for disciplining a professional geologist licensed pursuant to this chapter.
  - Fulfills the following educational requirements at a college or university the geological curricula of which meet the criteria established by an accrediting agency recognized by the United States Department of Education:
    1. Graduation from such college or university with a major in geology or other related science acceptable to the board; and
    2. Satisfactory completion of at least 30 semester hours of geological courses, 24 of which must be at the third or fourth year or graduate level.

Under section 492.108, F.S., in order to be eligible for licensure by endorsement, an applicant must be certified by the Board of Professional Geologist that she or he:

- Meets the qualifications for licensure in this state;
- Is the holder of an active license in good standing in another state;

---

<sup>46</sup> Fla. Stat. §492.102 (2010).

- Was licensed through written examination in at least one state when the examination requirements of which have been approved by the Board of Professional Geologists as substantially equivalent to or more stringent than those of this state, and has received a score on such examination which is equal to or greater than the score required by this state for licensure by examination; and
- Has taken and successfully passed the laws and rules portion of the examination required for licensure as a professional geologist in this state.

Under section 492.106, the department may provide a provisional license to any person who is not a resident of and has not established a place of business in this state, and who is duly licensed in another state and who has qualifications which the Board of Professional Geologists deems comparable to those required of professional geologists in this state under the following restrictions:

- Satisfactory proof of licensure and certification of the license of the applicant from the issuing state;
- The practice of professional geology under a provisional license shall not exceed 1 year;
- The practice of professional geology under a provisional license shall be confined to one specified project; and
- The license may not be renewed or reissued for 5 years from the date of original issuance.

Under section 492.111, F.S., the practice of, or offer to practice, professional geology by individual professional geologists licensed under the provisions of this chapter through a firm, corporation, or partnership offering geological services to the public through individually licensed professional geologists as agents, employees, officers, or partners thereof is permitted subject to certain requirements:

- At all times that it offers geological services to the public, the firm, corporation, or partnership has on file with the department the name and license number of one or more individuals who hold a current, active license as a professional geologist in the state and are serving as a geologist of record for the firm, corporation, or partnership.
- The firm, corporation, or partnership has been issued a certificate of authorization by the department as provided in this chapter.
- All final geological papers or documents involving the practice of the profession of geology which have been prepared or approved for the use of such firm, corporation, or partnership, for delivery to any person for public record with the state, shall be dated and bear the signature and seal of the professional geologist or professional geologists who prepared or approved them.
- The fact that a licensed professional geologist practices through a corporation or partnership shall not relieve the registrant from personal liability for negligence, misconduct, or wrongful acts committed by her or him. Partnership and all partners shall be jointly and severally liable for the negligence, misconduct, or wrongful acts committed by their agents, employees, or partners while acting in a professional capacity. Any officer, agent, or employee of a corporation shall be personally liable and accountable only for negligent acts, wrongful acts, or misconduct committed by her or him or committed by any person under her or his direct supervision and control, while rendering professional services on behalf of the corporation. The personal liability of a shareholder of a corporation, in her or his capacity as shareholder, shall be no greater than that of a shareholder-employee of a corporation incorporated under chapter 607. The corporation shall be liable up to the full value of its property for any negligent acts, wrongful acts, or misconduct committed by any of its officers, agents, or employees while they are engaged on behalf of the corporation in the rendering of professional services.
- The firm, corporation, or partnership desiring a certificate of authorization shall file with the department an application therefor, upon a form to be prescribed by the department, accompanied by the required application fee.
- The department may refuse to issue a certificate of authorization if any facts exist which would entitle the department to suspend or revoke an existing certificate of authorization or if the department, after giving persons involved a full and fair hearing, determines that any of the officers or directors of said firm or corporation, or partners of said partnership, have violated the provisions of s. 492.113.

As mandated by Section 492.107, Florida Statutes, professional geologist licensees must secure a metal-type impression or stamped ink seal. Rule 61G16-2.001, FAC, illustrates the type of acceptable seal.

Professional geologist must pay the following fees:

Initial Fees:

- Professional Geologist
  - Application Fee - \$150, non-refundable is application is denied
  - Examination - \$250, non-refundable is exam is not passed
  - Initial Licensure - \$100
  - Application for license by Endorsement - \$150
  - Initial license fee by endorsement - \$100
- Business Entity
  - Application Fee - \$150, non-refundable is application is denied
  - Examination - \$250, non-refundable is exam is not passed
  - Initial Licensure - \$100
- Unlicensed activity fee - \$5

Biennial License Renewal Fees:

- Professional Geologist - \$125
- Business Entity - \$350
- Unlicensed activity fee - \$5

Professional geologists are not required to carry professional liability insurance by Florida law.

Section 492.112, F.S., prohibits a person, in general, from knowingly practicing without a license or holding one's self out as a professional geologist without a license. It provides that violators of the section commit a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. .

Section 492.115, F.S., requires the department to annually prepare a roster showing the names and places of business or residence of all licensed professional geologists and all firms, corporations, or partnerships holding certificates of authorization to practice professional geology in Florida.

Chapter 492 currently provides exemptions from its requirements to the following individuals: (1) Persons engaged solely in teaching the science of geology. (2) Persons engaged in geological research which does not affect the health, safety, or well-being of the public. (3) Officers and employees of the United States Government, the State of Florida, water management districts, or other local or regional governmental entities practicing solely as such officers or employees. (4) Regular full-time employees of a corporation not engaged in the practice of professional geology as such, who are directly supervised by a person licensed as a professional geologist under this chapter. (5) A person employed on a full-time basis as a geologist by an employer engaged in the business of developing, mining, or treating ores, other minerals, and petroleum resources if that person engages in geological practice exclusively for and as an employee of such employer and does not hold herself or himself out and is not held out as available to perform any geological services for persons other than her or his employer.

### Proposed Changes

Sections 87 through 98 of the bill repeal all licensure and regulatory requirements for professional geologists and make conforming changes to cross references.

## Health Studios

### Present Situation

Currently, s. 501.012–501.019, F.S., provides for the regulation of health studios.” Currently, there are 2,134 registered health studios.

Section 501.0125, F.S. defines “health studio” to mean:

any person who is engaged in the sale of services for instruction, training, or assistance in a program of physical exercise or in the sale of services for the right or privilege to use equipment or facilities in furtherance of a program of physical exercise.

The owner or operator of a health studio must register with DACS annually. Exemptions from registration include:

- tax-exempt non-profit organizations;
- gymnastics schools;
- golf, tennis or racquetball clubs;
- dance, aerobic exercise, or martial arts facilities; and
- country clubs for which a physical exercise program is incidental to membership.

The registration procedure requires:

- the identification of business locations;
- payment of the registration fee of \$300; and
- file security in the form of a bond or other approved instrument at the time of registration.

If approved, the DACS issues a certificate evidencing proof of registration. The holder of the certificate is required to display the certificate at each business location. Additionally, each advertisement or contract must include the registration number.

Each health studio is required to maintain for each separate business location a bond in the amount of \$50,000. In lieu of maintaining the bond, the health studio may furnish an irrevocable letter of credit in the amount of \$50,000 or a guaranty agreement which is secured by a certificate of deposit in the amount of \$50,000.

Statutory contract requirements specify that:

- the contract be in writing and all provisions, requirements, and prohibitions which are mandated by statute be contained in the written contract;
- a copy of the signed contract must be given to the customer at the time the customer signs the contract; and
- the contract for health studio services include the customer’s total payment obligation for services.

A contract for the sale of future health studio services which are paid for in advance or which the buyer agrees to pay for in future installment payments must be in writing and contain a disclosure to include the following:

- a provision for the penalty-free cancellation of the contract within 3 days upon written notice to the health studio (a refund must be issued within 30 days after receipt of the notice of cancellation made within the 3-day period), and
- a provision for the cancellation of the contract, if the buyer dies or becomes unable to avail himself or herself of the services.

Enforcement authority is vested with the DACS. Subsection 501.019, F.S. specifies that any moneys recovered by the enforcing authority as a penalty must be deposited in the General Inspection Trust Fund.

## Proposed Changes

Sections 114 and 115 of the bill repeal all licensure and regulatory requirements for health studios and make conforming changes to cross references.

## **Home Inspectors**

### Present situation

Currently, chapter 468, Part XV, F.S., relates to the licensure and regulation of home inspectors.

“Home inspection services” means a limited visual examination of the following readily accessible installed systems and components of a home: the structure, electrical system, HVAC system, roof covering, plumbing system, interior components, exterior components, and site conditions that affect the structure, for the purposes of providing a written professional opinion of the condition of the home.

A building inspection is often confused with a home inspection. A building inspection is a legally required act, performed by a local governmental entity through the permitting process for the purpose of determining whether a structure complies with the appropriate building code standards. By contrast, a home inspection is a discretionary endeavor. A home inspection is typically conducted for a potential purchaser of a home, although home inspections are sometimes conducted for the current owner of a home to issue an opinion as to its condition based on visual appearances. A home inspection is performed by private individuals rather than by local government inspectors.

In addition to submitting the application form, the applicant must pay the appropriate fees and meet the following criteria:

- be of good moral character: “good moral character” means a personal history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation as defined by s. 468.8313(5)(a), F.S.
- provide proof of completion of a course of study approved by the department of not less than 120 hours that covers at a minimum the following components of an inspection under the supervision of a licensed Florida home inspector:
  - Structure, exterior components, roof covering, site conditions that affect the structure, electrical system, interior components, HVAC system, plumbing system, and 20 hours of field-based inspection of the components of a home.
- submit a log of all inspections completed for purposes of providing proof of their field-based training, with verification of completion of the required training hours. The log must contain the following information:
  - the date of the inspections, the address of the properties inspected, the names of the clients, the amount of time spent on the inspections, and the name, license number and signature of the licensed home inspector providing the training.
- pass the required examination.

To be “grandfathered” into licensure an applicant must:

- either submit proof of certification as a home inspector by a state or national association that requires successful completion of a relevant proctored exam and completion of at least 14 hours of relevant verifiable education; or
- submit proof of 3 years experience as a home inspector, demonstrable by at least 120 inspection reports, and complete at least 14 hours of relevant verifiable education. Applications must be made before March 1, 2011.

The regulation of home inspector services was first enacted in 2007, however, the effective date was delayed until July 1, 2010. In 2010, legislation delayed unlicensed activity enforcement relating to home inspectors until July 1, 2011. This deferred enforcement, as a result, effectively delayed license requirements one year to allow applicants to have time to apply and be processed and approved or rejected and begin operations without the fear of being prosecuted for unlicensed activity. The responsibility of issuing licenses by DBPR has still existed during this interim period.

## Proposed Changes

Sections 29 through 31 of the bill repeal all licensure and regulatory requirements for home inspectors and make conforming changes to cross references.

## **Interior Designers**

### Present Situation

Part I of chapter 481, F.S., regulates architects and interior designers. Both professions are regulated by the Board of Architecture and Interior Design under the DBPR. Currently, there are 4,203 individuals and businesses hold interior design licenses.

Interior design means: “designs, consultations, studies, drawings, specifications, and administration of design construction contracts relating to *nonstructural* interior elements of a building or structure.”

“Nonstructural element” means an element which does not require structural bracing and which is something other than a load-bearing wall, load-bearing column, or other load-bearing element of a building or structure which is essential to the structural integrity of the building.

Florida law differentiates between interior design and interior decorating, which includes the selection or assistance in selection of surface materials, window treatments, wallcoverings, paint, floor coverings, surface-mounted lighting, surface-mounted fixtures, and loose furnishings not subject to regulation under applicable building codes.

### *Licensure*

To practice interior design, an applicant must:

- Pay applicable fees,
- Have a combination of 6 years of relevant education and experience, and
- Pass an examination.

Interior Designers pay an application fee of \$30, and a biennial licensure fee of \$125.

The education requirement entails at least a 2-year board-approved interior design program. The experience requirement entails at least one year of work under the supervision of a licensed interior designer. Applicants can structure their education and experience in any of the following ways:

- 5-year program + 1 year experience
- 4-year program + 2 years experience
- 3-year program + 3 years experience
- 2-year program + 4 years experience

The examination is a national 3-part exam administered by the National Council for Interior Design Qualification (NCIDQ) exam, at a cost of \$1,065, including the application fee. Other fees for late filing, updates to an application, and cancellation apply. Eligibility requirements, including education and experience requirements, to sit for the exam mirror Florida’s licensure requirements.<sup>47</sup>

Business entities, or persons operating under fictitious names, offering interior design services must also obtain a certificate of authorization. At least one principal officer or partner and all personnel who act on the business entity’s behalf in the state must be registered interior designers.

Like architects, interior designers must complete 20 hours of continuing education, in subjects or courses approved by the Board, each biennium to renew their license.

---

<sup>47</sup> See <http://www.ncidq.org>

## Exemptions

The law exempts the practice of *residential* interior design from licensure requirements.<sup>48</sup> Although the law prohibits an unlicensed actor from using the title “interior designer” or words to that effect, this provision was recently found to be an unconstitutional restriction on free speech.<sup>49</sup>

The law also exempts employees of retail establishments providing interior decorator services and a manufacturer of commercial food service equipment who prepares designs, specifications, or layouts for the sale or installation of such equipment.

## Grandfathering Provisions

The current law was originally enacted as a title act, authorizing interior designers who met certain criteria to use the title “registered interior designer,” but not prohibiting any person from performing interior design services.<sup>50</sup> When the title act was first enacted in 1988, it included a grandfathering provision, providing three alternative routes to licensure:

- Applicants before October 1, 1989, who had municipal or county licenses and a year’s experience could obtain licensure upon completing the NCIDQ exam,
- Applicants before October 1, 1989, who had 6 year’s experience as a principal in a design firm could obtain licensure upon completing the NCIDQ exam, and
- Applicants before October 1, 1990, who had been graduated from an existing 2-year interior design program at a public community college in Florida did not have to take the interior design licensure examination or otherwise meeting qualifications.

When the law was converted to a practice act in 1994, prohibiting unlicensed designers from performing interior design services, another grandfathering provision was included to allow designers who had qualified to use the title ‘registered interior designer’ to be licensed upon taking a board-approved examination, including the NCIDQ and others, if they applied by July 31, 1997.<sup>51</sup> This deadline was later extended to April 30, 1998.

In 1995, this grandfathering provision was extended to allow those qualified to use the title ‘registered interior designer’ to show completion of 10 hours of board-approved continuing education classes relating to building and barrier free code regulation if they had not passed an exam within 3 years of application.<sup>52</sup>

Of the current 2,561 licensed individual interior designers, a minimum of 986 met full license requirements (either by exam or endorsement). The DBPR cannot distinguish the route to licensure taken by the remaining 1,575.

## Constitutional Challenges

The licensure requirements have withstood constitutional challenges as limitations on 1<sup>st</sup> amendment free speech<sup>53</sup> and interstate commerce<sup>54</sup> and as violations of due process and equal protection.<sup>55</sup>

---

<sup>48</sup> Section 481.229(6)(a), F.S.

<sup>49</sup> *Locke v. Shore*, 682 F.Supp.2d 1283, 1295 (N.D.Fla., 2010).

<sup>50</sup> Chapter 88-383, s. 21, L.O.F.

<sup>51</sup> Chapter 94-119, s. 309, L.O.F.

<sup>52</sup> Chapter 95-389, s. 10, L.O.F.

<sup>53</sup> *Locke v. Shore*, 2011 WL 692238, 3 (11<sup>th</sup> Cir. (Fla.) 2011)(“Because the license requirement governs “occupational conduct, and not a substantial amount of protected speech,” it does not implicate constitutionally protected activity under the First Amendment.”).

<sup>54</sup> *Id.* at 5(“Out-of-state unlicensed interior designers may practice in commercial settings in Florida ‘under the instruction, control or supervision’ of a licensed architect or while ‘acting as a contractor in the execution of work designed by an architect.”).

<sup>55</sup> *Id.* at 8(“We reject Appellants’ argument that the legislature’s safety concern does not provide a rational basis for the license requirement because it was unfounded. A law ‘may be based on rational speculation unsupported by evidence or empirical data.’ A statute survives rational basis review even if it ‘seems unwise ... or if the rationale for it seems tenuous.’ Thus, the fact that, after Florida passed its license requirement, other states have considered and rejected the notion that the unlicensed practice of interior design poses safety concerns, is of no consequence.”).

## *Professional Organizations*

The American Society of Interior Designers is a voluntary professional organization promoting the profession of interior design through education and advocacy.<sup>56</sup> Professional membership in the American Society of Interior Designers mirrors Florida's licensure requirements for education, experience and examination. Membership also requires the completion of 6 continuing education hours every two years. Members pay annual dues of \$430 and an annual legislative assessment of \$15.

## *Other States*

Florida is one of five U.S. states or territories requiring interior designers be licensed.<sup>57</sup> About 20 other states offer title acts, allowing only candidates meeting statutory requirements to hold themselves out as 'registered interior designers.'<sup>58</sup>

## Proposed Changes

Sections 58 through 75 of the bill repeal all licensure and regulatory requirements for interior designers and make conforming changes to cross references.

## **Intrastate Movers**

### Current Situation

Chapter 507, F.S., establishes the registration requirements for intrastate movers in Florida. Currently, there are 998 registered intrastate movers in Florida.

"Mover" means a person who, for compensation, loads, transports or ships, or unloads household goods as part of a household move. "Moving Broker" means a person who, for compensation, arranges for another person to load, transport or ship, or unload household goods as part of a household move or who, for compensation, refers a shipper to a mover.

Intrastate movers and moving brokers must register with the DACS annually. In order to register as an intrastate mover or moving broker, the department requires disclosure of contact information and copies of contracts offered to the public. The department then issues a certificate of registration for registrants to display. The department may refuse registration if the mover or moving broker has been convicted of a crime involving fraud, has not satisfied an administrative fine or civil judgment, or has a judgment against it for unfair trade practices. In addition, movers must maintain liability insurance or post a \$25,000 security. They must also maintain motor vehicle insurance, including combined bodily injury and property damage liability coverage in varying amounts. Moving brokers must post a \$25,000 security.

Section 507.13, F.S., allows for local regulation and cooperative agreements between the DACS and local governments for enforcement:

- (1) This chapter does not preempt local ordinances or regulations of a county or municipality which regulate transactions relating to movers of household goods or moving brokers. As provided in s. 507.03(4), counties and municipalities may require, levy, or collect any registration fee or tax or require the registration or bonding in any manner of any mover or moving broker.
- (2) The department may enter into a cooperative agreement with any county or municipality which provides for the referral, investigation, and prosecution of consumer complaints alleging violations of this chapter.

---

<sup>56</sup> See <http://www.asid.org>

<sup>57</sup> Licensure is also required in Louisiana, Nevada, Puerto Rico, and Washington, D.C.

<sup>58</sup> For a list, see <http://www.asid.org/legislation/state/>.

Currently, Miami-Dade, Broward, Palm Beach, Pinellas and Broward counties have relevant local ordinances pursuant to this section.<sup>59</sup>

Under s. 507.10, F.S., the department is authorized to institute a civil action in a court of competent jurisdiction to recover any penalties or damages authorized by chapter 507, F.S., and for injunctive relief to enforce compliance with the chapter. The department may seek a civil penalty of up to \$5,000 for each violation of this chapter, and may seek restitution for and on behalf of any shipper aggrieved or injured by a violation of this chapter. The remedies provided for in s. 507.10, F.S., are in addition available to those for the same conduct, including those provided in local ordinances.

Section 507.11, F.S., provides for criminal penalties. Subsection (1) provides:

The refusal of a mover or a mover's employee, agent, or contractor to comply with an order from a law enforcement officer to relinquish a shipper's household goods after the officer determines that the shipper has tendered payment of the amount of a written estimate or contract, or after the officer determines that the mover did not produce a signed estimate or contract upon which demand is being made for payment, is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A mover's compliance with an order from a law enforcement officer to relinquish goods to a shipper is not a waiver or finding of fact regarding any right to seek further payment from the shipper.

Subsection (2) states that a violation of chapter 507, F.S., by any person or business, besides as provided in subsection (1) is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

In addition to the department, Florida consumers may also contact the attorney general if they experience a problem with an intrastate mover. While claims for damaged goods must be filed through the carrier, consumers may contact the Attorney General's No Fraud Hotline at 1-866-9-NO-SCAM (1-866-966-7226) to report improper conduct by movers, such as holding cargo "hostage" until higher fees are paid.<sup>60</sup>

Intrastate movers and moving brokers pay an annual registration fee of \$300.

### Proposed Changes

Sections 124 and 125 repeal all registration and regulatory requirements for intrastate movers and moving brokers and make conforming changes to cross references.

## **Landscape Architects**

### Present situation

Part II of chapter 481, F.S., regulates landscape architects. The profession is regulated by the Board of Landscape Architecture under DBPR. Currently, there are 1,489 licensed landscape architects in Florida.

Landscape architecture means:

the planning and designing of land areas for such projects as parks and other recreational facilities, airports, highways, hospitals, schools, land subdivisions, and commercial, industrial, and residential sites.

---

<sup>59</sup> Miami-Dade County, Sec. 8A-325; Palm Beach County Ordinance NO. 2005-007; Pinellas County, Sec. 42-357; Broward County Moving Ordinance sec. 20-176.90 et seq.

<sup>60</sup> Office of the Attorney General of Florida, Frequently Asked Questions, *available at* <http://myfloridalegal.com/pages.nsf/Main/20AFA53C4EC9E3EA85256CCB00522BE1#question21> (last visited March 2, 2011).

Scope of practice includes, but is not limited to:

- consultation, investigation, research, planning, design, preparation of drawings, specifications, contract documents and reports, responsible construction supervision, or landscape management in connection with the planning and development of land and incidental water areas, where the dominant purpose of such services or creative works is the preservation, conservation, enhancement, or determination of proper land uses, natural land features, ground cover and plantings, or naturalistic and aesthetic values;
- the determination of settings, grounds, and approaches for and the siting of buildings and structures, outdoor areas, or other improvements;
- the setting of grades, shaping and contouring of land and water forms, determination of drainage, and provision for storm drainage and irrigation systems where such systems are necessary to the purposes outlined herein.

Landscape Architect - means a person who holds a license to practice landscape architecture in this state.

Business Entity - means the practice of landscape architecture by registered landscape architects through a corporation or partnership offering landscape architectural services to the public, or through a corporation or partnership offering landscape architectural services to the public through individual registered landscape architects as agents, employees, officers, or partners.

Practitioners must meet licensure requirements in order to legally practice their profession. A person desiring to be licensed as a landscape architect must apply to the DBPR for licensure. The licensure examination is required for each applicant who has completed the application form and remitted the application and examination fees and who the board certifies:

- Has completed the application form and remitted all fees required; and
- Has completed a professional degree program in landscape architecture as approved by the Landscape Architectural Accreditation Board; or
- Presents evidence of not less than 6 years of actual practical experience in landscape architectural work of a grade and character satisfactory to the board. Each year of education completed in a recognized school shall be considered to be equivalent to 1 year of experience, with a maximum credit of 4 years.

Exemptions from licensure include: employees of those lawfully practicing as landscape architects from acting under the instructions, control, or supervision of their employers, supervision by builders or superintendents employed by builders in the installation of landscape projects by landscape contractors, general contractor certified or registered in this state when negotiating or performing services under certain design-build contracts, any person making any plans, drawings, or specifications for any real or personal property owned by her or him, any person who performs landscape architectural services not for compensation, or in their capacity as employees of municipal or county governments, the preparation of comprehensive plans or the practice of comprehensive urban or rural planning at the local, regional, or state level by persons, corporations, partnerships, or associations who are not licensed or registered as landscape architects, or any person from engaging in the practice of golf course architecture.

### Proposed changes

Sections 76 through 86 of the bill repeal all licensure and regulatory requirements for landscape architects and make conforming changes to cross references.

## Mold Services

### Present Situation

Currently, chapter 468, Part XVI, F.S., relates to the licensure and regulation of mold assessors and mold remediators by DBPR.

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

“Mold remediation” means the removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter of greater than 10 square feet that was not purposely grown at that location; however, such removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, may not be work that requires a license under chapter 489 unless performed by a person who is licensed under that chapter or the work complies with that chapter.

“Mold assessor” means any person who performs or directly supervises a mold assessment. “Mold remediator” means any person who performs mold remediation. A mold remediator may not perform any work that requires a license under chapter 489, F.S., (construction contracting) unless the mold remediator is also licensed under that chapter or complies with that chapter.

All applicants must submit to a criminal background check, disclose contact and background information and obtain general liability insurance. Applicants for licensure as a mold assessor must also obtain errors and omissions insurance for both preliminary and post remediation mold assessment.

### Mold Assessor

- Examination – Applicants must pass a department-approved proctored examination on mold assessment; and either hold at least an Associate of Arts degree, with 30 credit hours in microbiology, engineering, architecture, industrial hygiene or occupational safety or related field of science, or have a high school diploma and 4 years experience under the supervision of a licensed mold assessor or remediators.
- To be “grandfathered” into licensure – Applicants must either submit proof of certification as a mold assessor by a state or national association that requires successful completion of a relevant proctored exam and completion of at least 60 hours of relevant verifiable education; or submit proof of 3 years experience as a mold assessor, demonstrable by at least 40 invoices. Applications must be made before March 1, 2011.

### Mold Remediator

- Examination – Applicants must pass a department-approved proctored examination on mold remediation; and either hold at least an Associate of Arts degree in microbiology, engineering, architecture, industrial hygiene or occupational safety or related field of science and demonstrate a minimum of 1 year of documented field experience in microbial sampling or investigations, or applicants may submit proof of a high school diploma and 4 years experience under the supervision of a licensed mold assessor or remediators.
- To be “grandfathered” into licensure – Applicants must hold certification as a mold remediator by a state or national association that requires successful completion of a relevant proctored exam and completion of at least 30 hours of relevant verifiable education; or have at least 3 years of experience as a mold remediator, established by at least 40 invoices. Applications must be made before March 1, 2011.

The regulation of mold services was first enacted in 2007, however, the effective date was delayed until July 1, 2010. In 2010, legislation delayed unlicensed activity enforcement relating to mold assessors and mold remediators until July 1, 2011. This deferred enforcement, as a result, effectively

delayed license requirements one year to allow applicants to have time to apply and be processed and approved or rejected and begin operations without the fear of being prosecuted for unlicensed activity. The responsibility of issuing licenses by DBPR has still existed during this interim period.

### Proposed Changes

Sections 32 and 33 of the bill repeal licensure and regulatory requirements for mold assessors and mold remediators and make conforming changes to cross references.

## **Motor Vehicle Repair Shops**

### Current Situation

Chapter 599, Part IX, F.S., establishes registration requirements for motor vehicle repair shops. Motor vehicle repair shops are registered by the Division of Consumer Services within DACS. Currently, there are 24,484 registered motor vehicle repair shops.

The Motor Vehicle Repair Advisory Council, consisting of 11 members appointed by the Commissioner of Agriculture, advises and assists the DACS. Council members are uncompensated, but may receive per diem and travel expenses. The DACS provides administrative and staff support services.

“Motor vehicle repair shops” includes any person who, for compensation engages in the repair of motor vehicles owned by other persons. It includes mobile motor vehicle repair shops, motor vehicle and recreational vehicle dealers; garages; service stations; self-employed individuals; truck stops; paint and body shops; brake, muffler, or transmission shops; and shops doing glass work.

### *Registration Requirements*

Motor vehicle repair shops must register with the DACS biennially. Such registration requires disclosure of contact information and copies of estimates and contracts offered to the public. The DACS issues a certificate of registration for registrants to display.

The DACS may refuse registration if the repair shop, or any of its directors, has been convicted of a crime involving fraud, has not satisfied an administrative fine or civil judgment, or has a judgment against it for unfair trade practices.

The following are not required to register with the DACS:

- Governmental entities
- Repair shops servicing only vehicles kept for rental, auction and agricultural use
- Repair shops located in schools
- Individual repairmen with no employees or established place of business

Local licensure can also substitute for registration. Miami-Dade and Broward counties have relevant local ordinances.

The following are not required to pay annual registration fees:

- A repair shop with a local license, which the DACS determines requires the same or stronger standards as the statute; and
- Any motor vehicle dealer licensed pursuant to ch. 320, F.S.

Motor vehicle repair shops must pay a biennial registration fee based on the shop's number of employees and is calculated on a per-year basis as follows:

- \$50 per year for 1-5 employees (i.e. biennial fee of \$100)
- \$150 per year for 6-10 employees
- \$300 per year for 11 or more employees

## *Other Regulations*

In addition to registration, motor vehicle repair shops must comply with the following requirements:

- For repairs costing more than \$100, the shop must provide a written estimate
- The shop must get approval for repairs exceeding the estimate by 10 percent or \$10 (whichever greater)
- Customers must be allowed to inspect parts removed from their vehicle
- The shop must provide written invoices that contain specified information
- Shops must maintain records for one year

Motor vehicle repair shops are also prohibited from the following:

- Requiring waiver of rights as precondition to repair work,
- Refusing to return vehicle for failure to pay for unauthorized work,
- Making or charging for unauthorized repairs,
- Misrepresenting the repairs made,
- Misrepresenting necessary parts and repairs,
- Misrepresenting that the vehicle is in a dangerous condition,
- Fraudulently altering any customer contract, estimate, invoice, or other document,
- Fraudulently misusing any customer's credit card,
- Making untrue, deceptive or misleading statements,
- Making false promises to persuade a customer to authorize repairs,
- Substituting used, rebuilt, salvaged, or straightened parts for new replacement parts without notice to customer and insurance company,
- Having a customer sign any work order not stating the repairs requested or the odometer reading at the time of repair,
- Failing to provide a copy of any document requiring the customer's signature,
- Willfully departing from or disregarding accepted practices and professional standards,
- Having repair work subcontracted without the knowledge or consent of the customer,
- Rebuilding or restoring a rebuilt vehicle without the knowledge of the owner in such a manner that it does not conform to the original vehicle manufacturer's established repair procedures or specifications and allowable tolerances for the particular model and year, and
- Performing any other act that is a violation of this part or that constitutes fraud or misrepresentation.

The DACS, the state attorney and customers each have the ability to seek civil remedies. The DACS also has authority to seek administrative remedies. Certain violations subject shops to criminal penalties.

The DACS is authorized to use up to 10 percent of the annual proceeds from the registration of motor vehicle repair shops to provide financial assistance for individuals to undertake technical training or courses of study in motor vehicle repair.

The statute also provides a process by which a customer may recover a vehicle against which a repair shop or motor vehicle dealer has a possessory lien:

- The customer files a bond, in the amount of the unpaid invoice and any storage costs, with the clerk of court.
- The clerk issues a certificate notifying the lienor of the bond and directing release of the vehicle.
- The lienor has 60 days to file suit to recover the bond; prevailing party may be entitled to damages plus court costs and reasonable attorney's fees.
- If the lienor fails to file suit within 60 days, the bond is discharged.

## Proposed Changes

Sections 130 through 133 of the bill repeals all registration requirements and regulations relating to motor vehicle repair shops, including the Motor Vehicle Repair Advisory Council and the dispute resolution procedure for repair shops and dealers, and make conforming changes to cross references.

## **Sellers of Travel**

### Current Situation

Chapter 559, Part XI, F.S., establishes registration requirements for sellers of travel. Sellers of travel are registered by the Division of Consumer Services within the Department of Agriculture and Consumer Services. Currently, there are 6,855 registered sellers of travel.

“Seller of travel” includes any person who offers for sale prearranged travel, tourist-related services, or tour-guide services, including, vacation or tour packages, or vacation certificates in exchange for a fee, commission, or other valuable consideration. The term includes any business entity offering membership in a travel club or travel services for an advance fee or payment.

Sellers of travel are further classified by their scope of business activities:

- 559.9285(1)(a) sellers do not offer for sale prearranged travel, tourist-related services, or tour-guide services directly to any terrorist state and which originate in Florida;
- 559.9285(1)(b) sellers offer for sale only prearranged travel, tourist-related services, or tour-guide services directly to any terrorist state and which originate in Florida, but engage in no other business dealings or commerce with any terrorist state; or
- 559.9285(1)(c) sellers offer for sale prearranged travel, tourist-related services, or tour-guide services directly to any terrorist state and which originate in Florida, and also engage in any other business dealings or commerce with any terrorist state.

An “independent agent” is a person who represents a seller of travel by soliciting persons on its behalf, who has a written contract with a seller of travel that is operating in compliance with this part and any rules promulgated thereunder, who does not receive a fee, commission, or other valuable consideration directly from the purchaser for the sale of travel, who does not at any time have any unissued ticket stock or travel documents in his or her possession, and who does not have the ability to issue tickets, vacation certificates, or any other travel documents.

### *Registration Requirements*

Annual registration requires disclosure of contact information, copies of vacation certificates offered for sale and corporate structure. The DACS issues a certificate of registration for registrants to display.

Independent agents also file an affidavit annually with the DACS, disclosing contact information. The DACS issues a proof of filing for agents to display.

The DACS may refuse registration if the seller of travel, or any of its directors, has been found guilty of a crime involving fraud, has not satisfied an administrative fine or civil judgment, or has a judgment against it for unfair trade practices.

Additionally, sellers of travel must certify their business activities by filing an annual disclosure statement with the DACS. Certain sellers of travel must also post a bond of \$25,000 to \$250,000, depending on their scope of business activities.

Sellers of travel must pay an annual registration fee of \$300. Independent agents pay \$50. There is also an annual fee of \$100 to sell vacation certificates.

The following are not required to register with the DACS:

- Employees of a registered seller of travel
- Governmental entities and employees
- Intrastate common carriers

- Public accommodations
- Sellers of diving services

### *Other Regulations*

In addition to registration, sellers of travel offering vacation certificates are subject to recordkeeping, disclosure and contractual requirements.

Sellers of travel are prohibited from the following:

- Making false statements.
- Selling vacation certificates with an expiration date more than 18 months from the date of issuance.
- Requiring, requesting, encouraging or suggesting payment for the right to obtain a travel contract, certificate, or vacation package must be by credit card authorization or to otherwise announce a preference for that method of payment over any other when no correct and true explanation for such preference is likewise stated.
- Representing that the travel contract, certificate, or vacation package offered cannot be purchased later when no such restrictions or limitations in fact exist.
- Misrepresenting the purchaser's right to cancel.
- Selling any vacation certificate the duration of which exceeds the duration of any agreement between the seller and any business entity obligated thereby to provide accommodations or facilities pursuant to the vacation certificate.
- Misrepresenting the
  - amount or period of time accommodations will be available
  - location of accommodations offered
  - price, size, nature, extent, qualities, or characteristics of accommodations offered
  - nature or extent of other goods, services, or amenities offered
  - purchaser's rights, privileges, or benefits
  - conditions to obtain a reservation for use of offered accommodations.
- Failing to inform a purchaser of a nonrefundable cancellation policy.
- Failing to include in any advertisement the following: "This is an offer to sell travel."
- Failing to honor and comply with all provisions of the vacation certificate.
- Including in any vacation certificate or contract any provision purporting to waive or limit any right or benefit provided to purchasers under this part, or seeking such waiver.
- Offering vacation certificates for any accommodation or facility for which there is no contract with the owner securing the purchaser's right to occupancy and use, unless the seller is the owner.
- Using a local mailing address, registration facility, drop box, or answering service in the promotion, advertising, solicitation, or sale of vacation certificates, unless the seller's fixed business address is clearly disclosed during any telephone solicitation and is prominently and conspicuously disclosed on all solicitation materials and on the contract.
- Using any registered trademark, trade name, or trade logo in any promotional, advertising, or solicitation materials without written authorization from the holder of such.
- Representing any affiliation with, or endorsement by, any governmental, charitable, educational, medical, religious, fraternal, or civic organization or body, or any individual, in the promotion, advertisement, solicitation, or sale of vacation certificates without express written authorization.
- Selling a vacation certificate to any purchaser who is ineligible for its use.
- During the period of a vacation certificate's validity, in the event, for any reason whatsoever, of lapse or breach of an agreement for the provision of accommodations or facilities to purchasers, failing to procure similar agreement for the provision of comparable alternate accommodations.
- Violating any state or federal law restricting or prohibiting commerce with terrorist states.
- Doing any other act which constitutes fraud, misrepresentation, or failure to disclose a material fact.
- Failing to produce any document or record or disclose any information required to be produced or disclosed.

- Knowingly making a material false statement in response to any request or investigation by the department, the Department of Legal Affairs, or the state attorney.

The DACS has authority to seek administrative and civil remedies. Certain violations subject sellers to criminal penalties. Violations are also considered unfair and deceptive trade practices.

All regulation and taxation of sellers of travel is preempted to the state.

### Proposed Changes

Sections 134 through 139 of the bill repeal all regulations and registration requirements relating to sellers of travel and make conforming changes to cross references.

## **Surveyors and Mappers**

### Current Situation

The Professional Board of Surveyors and Mappers consists of nine members (seven surveyors and mappers, of whom one is a photogrammetric mapper, and two consumer members). The program is under the Department of Agriculture and Consumer Services. There are currently approximately 4,300 practitioners.

A licensed surveyor and mapper makes measurements and determines property boundaries. They provide data relevant to the shape, or dimension of land or land features on or near the earth's surface for engineering, mapmaking, mining, land evaluation, construction, and other purposes.

Applicants for licensure by examination are entitled to take the licensure examination, after approval by the Board, if the applicant is of a good moral character and have satisfied one of the following requirements:

Option 1: have received a degree in surveying and mapping of four years or more in a surveying and mapping degree program from a college or university recognized by the board and have experience of four or more years as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping.

The completed surveying and mapping degree must have included not fewer than 32 semester hours of study, or its academic equivalent, in the science of surveying and mapping or in board-approved surveying-and-mapping-related courses. Work experience acquired as a part of the education requirement does not count as experience in responsible charge.

Option 2: be a graduate of a four-year course of study, other than in surveying and mapping, at an accredited college or university approved by the board and have experience of six or more years as a subordinate to a registered surveyor and mapper in the active practice of surveying and mapping. The applicant must demonstrate that he or she was in responsible charge of the accuracy and correctness of the surveying and mapping work performed for at least five of the six years.

The course of study must have included not fewer than 32 semester hours of study or its academic equivalent. You must have completed a minimum of 25 semester hours in surveying and mapping subjects or in any combination of courses in civil engineering, surveying, mapping, mathematics, photogrammetry, forestry, or land law and the physical sciences. Work experience acquired as a part of the education requirement does not count as experience in responsible charge.

Professional surveyors and mappers are not required to carry professional liability insurance, but if they do not, they must disclose this fact to potential customers.

### Proposed Changes

Sections 34 through 52 of the bill repeal all licensure and regulatory requirements for surveyors and mappers and make conforming changes to cross references.

## **Talent Agents**

### Current Situation

Chapter 468, Part VII, F.S., establishes regulations and licensure requirements of talent agencies. Talent agencies are licensed by the Division of Regulation within DBPR. Talent agents represent and promote talent and performers to prospective employers. They may also handle contract negotiation and other business matters for clients. Currently, there are 201 licensed talent agencies.

"Talent Agency" is defined as "any person who, for compensation, engages in the occupation or business of procuring or attempting to procure engagements or any employment or placement of an artist, where the artist performs in his or her artistic capacity."

"Artist" is defined as "a person performing on the professional stage or in the production of television, radio, or motion pictures; a musician or group of musicians; or a model."

Under 468.405, F.S., an application for licensure must contain:

- The name and address of the owner of the talent agency.
- Proof of at least 1 year of direct experience in the talent agency business or as a subagent, casting director, producer, director, advertising agency, talent coordinator, or musical booking agent.
- The street and number of the building or place where the talent agency is to be located. If the applicant is other than a corporation, the application shall also include the names and addresses of all persons, except bona fide employees on stated salaries, financially interested, either as partners, associates, or profit sharers, in the operation of the talent agency in question, together with the amount of their respective interest.
- The application must be accompanied by affidavits of at least five reputable persons, other than artists, who have known or have been associated with the applicant for at least 3 years, stating that the applicant is a person of good moral character or, in the case of a corporation, has a reputation for fair dealing.

Additionally, an applicant for licensure must meet the following qualifications:

- Each person designated in an application as an owner or operator shall be of good moral character.
- Each application shall show whether or not the agency, any person, or any owner of the agency is financially interested in any other business of like nature and, if so, shall specify such interest or interests.
- Each licensed talent agency must post a \$5,000 bond.

Licenses are renewed biennially and there are no continuing education requirements.

Talent agencies must pay the following fees:

For initial licensure:

- Application Fee - \$300
- Initial License - \$400
- Unlicensed Activity Fee - \$5

For biennial license renewal:

- Talent Agency - \$400
- Unlicensed Activity Fee - \$5

Part VII of Chapter 468, F.S., also includes requirements for recordkeeping, prohibitions on registration fees, and contractual requirements. It also makes certain prohibited acts criminal and punishable as either a misdemeanor or felony and revocation of the talent agency's license.

## Proposed Changes

Section 7 of the bill repeals all regulations and licensure requirements of talent agents.

## **Telemarketers**

### Current Situation

Chapter 501, Part IV, F.S., establishes licensure requirements for telemarketers. Telemarketers are licensed by the Division of Consumer Services within DACS. Currently, there are 18,205 licensed telemarketers, including commercial telephone sellers and salespersons.

"Commercial telephone seller" means any person engaged in commercial telephone solicitation on his or her own behalf or through salespersons, including owners and others engaged in the management activities of a business entity pursuant to this part.

"Salesperson" means any individual employed by a commercial telephone seller to solicit sales on behalf of the commercial telephone seller.

"Commercial telephone solicitation" means:

- (a) An unsolicited telephone call to a person initiated by a commercial telephone seller or salesperson, or an automated dialing machine used in accordance with the provisions of s. 501.059(7) for the purpose of inducing the person to purchase or invest in consumer goods or services;
- (b) Other communication with a person where:
  1. A gift, award, or prize is offered; or
  2. A telephone call response is invited; and
  3. The salesperson intends to complete a sale or enter into an agreement to purchase during the course of the telephone call; or
- (c) Other communication with a person which represents a price, quality, or availability of consumer goods or services and which invites a response by telephone or which is followed by a call to the person by a salesperson.

### *Licensure Requirements*

The annual registration requires disclosure of contact and background information and copies of scripts or other materials used in solicitations. The DACS issues a certificate of registration for registrants to display. Commercial telephone sellers must also post a security of at least \$50,000.

Commercial telephone sellers must pay an annual registration fee of \$1,500. Salespersons pay \$50.

The following are exempt from registration requirements:

- Isolated commercial telephone solicitation
- Solicitations for nonprofit 501(c)(3) or 501(c)(6) organizations
- Solicitations from licensed investment brokers or advisors
- Solicitations from licensed insurance brokers or agents
- Solicitations from federal- or state-supervised financial institutions
- Solicitations from licensed real estate professionals
- Solicitations from those licensed to sell vacation and timeshares plans
- Solicitations from those licensed to sell funeral services
- Solicitations from those licensed to sell pest control services

- Solicitations from those licensed to sell food or produce
- Solicitations for newspaper sales
- Solicitations for book, video or record clubs regulated by the Federal Trade Commission
- Solicitations for cable television services
- Solicitations for telephone services
- Business-to-business solicitations
- Solicitations for maintenance or repair of goods previously purchased
- Licensed commercial telephone seller

### *Other Regulations*

In addition to registration, telemarketers are subject to disclosure and contractual requirements.

The DACS may take administrative action against a telemarketer, if the telemarketer:

- Has been convicted or found guilty of, or has entered a plea of guilty or a plea of nolo contendere to, racketeering or any offense involving fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property, or any other crime involving moral turpitude;
- Has been convicted or found guilty of, or has entered a plea of guilty or a plea of nolo contendere to, any felony;
- Has had entered against him or her or any business for which he or she has worked or been affiliated, an injunction, a temporary restraining order, or a final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property or the use of any untrue or misleading representation in an attempt to sell or dispose of real or personal property or the use of any unfair, unlawful, or deceptive trade practice;
- Is subject to or has worked or been affiliated with any company which is, or ever has been, subject to any injunction, temporary restraining order, or final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, or any restrictive court order relating to a business activity as the result of any action brought by a governmental agency, including any action affecting any license to do business or practice an occupation or trade;
- Has at any time during the previous 7 years filed for bankruptcy, been adjudged bankrupt, or been reorganized because of insolvency;
- Has been a principal, director, officer, or trustee of, or a general or limited partner in, or had responsibilities as a manager in, any corporation, partnership, joint venture, or other entity that filed the bankruptcy, was adjudged bankrupt, or was reorganized because of insolvency within 1 year after the person held that position;
- Has been previously convicted of or found to have been acting as a salesperson or commercial telephone seller without a license or whose licensure has previously been refused, revoked, or suspended in any jurisdiction;
- Falsifies or willfully omits any material information asked for in any application, document, or record required to be submitted or retained under this part;
- Makes a material false statement in response to any request or investigation by the department or the state attorney;
- Refuses or fails, after notice, to produce any document or record or disclose any information required to be produced or disclosed under this part or the rules of the department;
- Is not of good moral character; or
- Otherwise violates or is operating in violation of any of the provisions of this part or of the rules adopted or orders issued thereunder.

Telemarketers are also prohibited from the following:

- Requiring, or announcing a preference for, payment by credit card authorization.
- Making a commercial telephone solicitation phone call before 8:00 a.m. or after 9:00 p.m. local time at the called person's location.

- Taking any intentional action to prevent transmission of the telephone solicitor's name or telephone number to the party called when the equipment or service used by the telephone solicitor is capable of creating and transmitting the telephone solicitor's name or telephone number.

The DACS has authority to seek administrative and civil remedies. Certain violations subject telemarketers to criminal penalties. Violations are also considered unfair and deceptive trade practices. Injured parties may bring a civil action for recovery of actual damages and/or punitive damages, including costs, court costs, and attorney's fees.

### *Federal regulation*

The federal Telemarketing Sales Rule, 16 C.F.R. Part 310, requires telemarketers to make certain disclosures and prohibits lies. It gives state law enforcement officers the authority to prosecute fraudulent telemarketers who operate across state lines. It is also the basis for the DO-NOT-CALL list, which is managed in Florida by the DACS.

### Proposed Changes

Sections 119 through 123 of the bill repeal all regulations and registration requirements relating to telemarketers and make conforming changes to cross references.

## **Yacht and Ship Brokers**

### Present Situation

Currently, s. 326.001, F.S., is cited as the "Yacht and Ship Brokers' Act."(Act) The Act governs the licensing and regulation of yacht and ship brokers and salespersons in Florida. Specifically, a license is required to conduct business as a broker or salesperson in transactions involving vessels over 32' in length, and less than 300 gross tons. Chapter 326, F.S., does not regulate transactions involving the sale of a new yacht. DBPR reports that, currently, there are 2,536 licensees in the state.

Definitions of the Act specify:

- "Yacht" means "any vessel which is propelled by sail or machinery in the water which exceeds 32 feet in length, and which weighs less than 300 gross tons."
- "Broker" means "a person who, for or in expectation of compensation: sells, offers, or negotiates to sell; buys, offers, or negotiates to buy; solicits or obtains listings of; or negotiates the purchase, sale, or exchange of, yachts for other persons."
- "Salesperson" means "a person who, for or in expectation of compensation, is employed by a broker to perform any acts of a broker."

When the application has been determined to be in acceptable form, the application is evaluated by the division to determine the applicant's moral character. This process includes the determination that there are no convictions of a felony. The applicant must demonstrate they have a principal place of business in Florida, and remit the required application fee. A license is for 2 years and automatically expires if not renewed.

Before a license may be issued to a broker, he or she must deliver to the division a surety bond or irrevocable letter of credit in the sum of \$25,000. An applicant for a salesperson's license must deposit with the division a bond or equivalent securities in the sum of \$10,000.

The division has authority to impose civil penalties up to \$10,000 per violation, and suspend or revoke licenses. Investigations may be resolved by a consent order or other administrative action, and the division may bring action in circuit court. Anyone harmed as a result of a violation by a licensee may file a claim against the licensee's surety bond or letter of credit.

Section 212.06, F.S., grants an exemption from sales and use taxes for vessels imported into the state for sale by yacht brokers or dealers.

### Proposed Changes

Sections 2 through 4 of the bill repeal all licensure and regulatory requirements for yacht and ship brokers and salespersons and make conforming changes to cross references. The sales exemption for the sale of vessels by yacht brokers or dealers is preserved.

### **Outdoor Theaters**

#### Current Situation

Chapter 555, F.S., was created in 1953, to provide for the safe ingress and egress to and from public roads by preventing hazardous conditions and locations in constructing outdoor theaters such as drive-ins.<sup>61</sup> The DOT reports the language is obsolete. Currently, about six drive-in theaters operate in Florida.<sup>62</sup>

The law applies to outdoor theaters, including any place for outdoor assembly used for the showing of plays, operas, and motion pictures to an audience viewing from parked vehicles, constructed after June 2, 1953. A theater owner must prove compliance with the law before being issued an occupational license. The last time any section of this chapter was amended was in 1979.

The law provides that all entrances and exits to the theater must comply with the rules of the Department of Transportation (DOT) and the following:

- Not more than one entrance may be provided for each access road.
- The portion of the entrance or exit lying within a public road right-of-way must comply with the regulations applicable to that road.
- Not more than two exits may be provided for each access highway.
- No entrance or exit on a state road may be located within 500 feet of its intersection with another state road.
- Enclosures surrounding the theater may not begin less than 200 feet from the centerline of the nearest state road.

The law also provides requirements for storage space for vehicles, placement of movie screens, and lighting.

#### *Other Applicable Regulations*

Under the State Highway System Access Management Act, vehicular access and connections to or from the state highway system are regulated by the Department of Transportation (DOT).<sup>63</sup> Under the Act, a connection to a state road may not be constructed or substantially altered without first obtaining an access permit from the DOT.

Local land development regulations also apply to outdoor theaters.

---

<sup>61</sup> Chapter 28085, L.O.F.

<sup>62</sup> See database at <http://www.drive-ins.com>. Operating outdoor theaters include Joy-Lan Drive-In (Dade City), Swap Shop Drive-In (Fort Lauderdale), Lake Worth Drive-In (Lake Worth), Silver Moon Drive-In (Lakeland), Ruskin Family Drive-In (Ruskin) and Fun-Lan Drive-In (Tampa).

<sup>63</sup> Sections 335.18-335.188, F.S. Visit <http://www.dot.state.fl.us/planning/systems/sm/accman/> for information about the Department of Transportation's access management program.

## Proposed Changes

Section 128 of the bill repeals ch. 555, F.S., relating to outdoor theaters. This removes the statutory requirements concerning access to and from public roads and other requirements that specifically apply to outdoor theaters.

## **Roominghouses**

### Current Situation

Public lodging establishments are regulated by the Division of Hotels & Restaurants within DBPR. Chapter 509, F.S., establishes licensure and inspection requirements for public lodging establishments.

“Public lodging establishment” includes transient public lodging establishments and nontransient public lodging establishments:

1. “Transient public lodging establishment” means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.
2. “Nontransient public lodging establishment” means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

Roominghouses are classified as “Any public lodging establishment not classified as a hotel, motel, resort condominium, nontransient apartment, bed and breakfast inn, or transient apartment.”

Applicants seeking to open a roominghouse must submit disclosures of contact information and information about the roominghouse they are seeking to open, including location, type, target date for opening, and a certificate of balcony inspection.

Once an applicant is prepared to open the roominghouse, he or she must pass an inspection with the department before opening to the public. Roominghouse must meet sanitation and safety standards.

Annual fees for roominghouses vary, depending on where the roominghouse is located:

- Nontransient: \$170 - \$340
- Transient: \$190 - \$370

Applicants must also pay an application fee of \$50 and a Hospitality Education Program Fee of \$10. This fee goes toward the School-to-Career grant program to prepare students for employment in the hospitality industry.

Roominghouses are also subject to local requirements such as licensing, zoning, building requirements, etc., and compliance with local requirements is a pre-requisite to state licensure.

## Proposed Changes

Sections 126 and 127 of the bill removes roominghouses as a classification of public lodging establishments, thereby removing any applicable regulations.

## Sales Commission Contracts

### Current Situation

A sales representative contract is an agreement between a principal and a sales representative for the sales representative to solicit orders for the principal's product or service.

Sales representatives include persons or companies soliciting orders for a principal who are compensated, in whole or in part, by commission. Employees of the sales representative and resellers are not sales representatives.

Florida statute places the following restrictions on certain sales representative contracts involving commissions:

- Contracts must be in writing;
- Contracts must set forth the method by which commissions are computed and paid; and
- Sales representatives must be given a signed copy of the contract.

If a sales representative contract is not in writing, all commissions due must be paid within 30 days of the contract's termination. If the commissions are not paid, the sales representative has a cause of action for damages equal to three times the unpaid commissions. Attorney fees and court costs are awarded to the prevailing party.

Real estate professionals regulated under chapter 475, F.S., are exempt from regulation under this statute.

The statute was enacted in 1984. "It appears that the Florida legislature sought to address the inherent problem of the disparity in bargaining power between a sales representative and a manufacturer or importer."<sup>64</sup> Originally, the statute applied only to out-of-state principals, a classification ultimately found to be an unconstitutional burden on interstate commerce.<sup>65</sup> A federal court explained the premise for the statute as follows:

Upon termination of the employment relationship, sales representatives apparently encountered difficulties in recovering the commissions they had earned from out-of-state companies. According to [the State], the out-of-state principals were aware of the fact that the expense of litigation would deter sales representatives from filing a law suit. As a result, out-of-state corporations would allegedly withhold commissions, thereby forcing sales representatives to negotiate a distress settlement. Based on [the State's evidence], it appears that the purpose of the double damages provision of the bill was to neutralize the alleged unfair advantage of the principal and place the principal and sales representative on a parity for settlement.<sup>66</sup>

In 2004, the Legislature applied the statute to both in-state and out-of-state principals, curing the constitutionality problem.

### Proposed Changes

Section 140 of the bill repeals the regulations on sales representative contracts involving commissions.

---

<sup>64</sup> Rosenfeld v. Lu, 766 F.Supp. 1131, 1140 (S.D.Fla. 1991).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 1139. The original statute contained a cause of action for double the unpaid commissions. This was amended to provide for triple the unpaid commissions in 2004.

## Water Vending Machines

### Present Situation

Currently, Chapter 381, F.S., specifies legislative intent relating to public health generally to include:

- Subsection 381.001(1), F.S., the Legislature recognizes that the state's public health system must be founded on an active partnership between federal, state, and local government and between the public and private sectors, and, therefore, assessment, policy development, and service provision must be shared by all of these entities to achieve its mission.

Currently, food safety is the responsibility of various federal, state, and local agencies. At the state level, DACS regulates establishments selling primarily pre-packaged foods or beverages. DBPR regulates establishments selling primarily prepared foods, such as restaurants and mobile vendors. The Department of Health oversees food service in facilities such as schools and similar institutions. Each agency attempts to coordinate activities in an effort to avoid overlapping oversight of particular establishments.

Within the DACS, the water and ice program is located in the Division of Food Safety, Bureau of Food and Meat Inspection, Section on Sanitation & Safety. This section administers the permitting requirements for water vending machines and monitors the purity of water sold through these devices. It also monitors the processing and labeling of bottled water and packaged ice sold in Florida. The section is responsible for the oversight of inspections of water vending machines, as well as, bottled water plants and packaged ice plants, and coordination of required product sample collection.

Unchanged since its enactment in 1984 and currently codified as section 500.459(1), F.S., the statement of legislative intent relating to water vending machines currently specifies:

It is the intent of the Legislature to protect the public health through licensing and establishing standards for water vending machines to ensure that consumers obtaining water through such means are given appropriate information as to the nature of such water and that such consumers are assured that the water meets acceptable standards for human consumption.

“Water vending machine” is defined to mean a self-service device that, upon insertion of a coin or token or upon receipt of payment by other means, dispenses a serving of water into a container.

A water vending machine operator must annually obtain a permit from the DACS prior to operating a water vending machine. The operator must:

- Make application.
- Submit payment of a fee not to exceed \$200 (current rules of the DACS sets the fee at \$35).
- The application must state the location of each water vending machine, the source of the water to be vended, the treatment the water will receive prior to being vended, and any other information considered necessary by the department.

Operating standards specified in statute include:

- The placement of water vending machine indoors or otherwise protected against tampering and vandalism and located on flooring that is of cleanable construction.
- Surfaces of the machine with which water comes into contact must be made of nontoxic, corrosion-resistant, nonabsorbent material capable of withstanding repeated cleaning and sanitizing treatments. Section 500.459, F.S., defines “sanitized” to mean treated in conformity with 21 C.F.R. s. 110.3(o).
- Each water vending machine must have a backflow prevention device that conforms to the applicable provision of the Florida Building Code and an adequate system for collecting and handling dripping, spillage, and overflow of water.

- The source of water supply must be an approved public water system and must receive treatment and post disinfection according to approved methods established by rule of the DACS.
- Disclose on each water vending machine, in a position clearly visible to customers: the name and address of the operator; the operating permit number; the fact that the water is obtained from a public water supply; the method of treatment used; the method of post disinfection used; and a local or toll-free telephone number that may be called for obtaining further information, reporting problems, or making complaints.

Duties and responsibilities of the DACS relating to regulation of water vending machines include:

- Approve applications for a permit and deny operations if the DACS finds that the vended water will not meet drinking water quality standards (if denied, specific technical reasons for the denial must be given by the DACS).
- Adopt rules to implement the provisions of this section.
- Establish frequencies and standards for sampling water quality.
- Order an operator to discontinue the operation of a water vending machine which represents a threat to the life or health of any person, or when the vended water does not meet standards.

Penalties are specified for violations.

Regulation of this program is currently preempted to the state.

### Proposed Changes

Sections 112 and 113 of the bill repeal regulatory provisions relating to water vending machines. Section 500.459, F.S., is repealed outright and s. 500.511, F.S., is amended to remove reference to these machines. These changes remove the statutory requirements concerning regulation of the operation of water vending machines.

## **Television Tube Labeling**

### Present Situation

Currently, s. 817.559 establishes labeling standards for television picture tubes. "Picture tube" is defined to mean:

"a cathode ray tube, commonly known as a television picture tube, designed primarily for use in a home-type television receiver alone or in combination with any electronic device or appliance."

This section prohibits a manufacturer, processor, or distributor of television picture tubes from selling picture tubes unless the product and its container, if any, is labeled to indicate the new and used components and materials of each unit. The label must conform to the statutory schedule of new and used components and materials to be disclosed on the label based on the particular grade which applies to each tube.

When a picture tube is a "second," the tube must be designated by label as a "second" to the exclusion of any other grade designation or component description. The following additional notation must appear verbatim on the label:

"This picture tube is a manufacturer's reject or second line quality tube, but it is capable of giving satisfactory performance."

A violation of the labeling requirements constitutes a misdemeanor of the second degree, punishable as provided on s. 775.082 or s. 775.083, F.S.

## Proposed Changes

Section 141 of the bill repeals s. 817.559, F.S., relating to standards applicable to labeling of television picture tubes by a manufacturer, processor, or distributor. These products would no longer be required to be labeled to indicate the new and used components and materials of each unit.

### B. SECTION DIRECTORY:

Section 1 amends s. 20.165, F.S.; deleting provisions establishing the Division of Florida Condominiums, Timeshares, and Mobile Homes of DBPR; deleting provisions establishing the Florida Board of Auctioneers, the Barbers' Board, the Board of Employee Leasing Companies, the Board of Landscape Architecture, the Board of Professional Geologists, the home inspection services licensing program, and the mold-related services licensing program within the department's Division of Professions.

Sections 2 through 4 repeal chapter 326, F.S., relating to the licensure of yacht and ship brokers and salespersons and conforming provisions in ss. 212.06 and 213.053, F.S.

Sections 5 and 6 repeal part VI of chapter 468, F.S., relating to the licensure of auctioneers, apprentices, and auction businesses, the Florida Board of Auctioneers, the Auctioneer Recovery Fund, and the conduct of auctions; and conforming provisions in s. 538.03, F.S.

Section 7 repeals part VII of chapter 468, F.S., relating to the licensure and regulation of talent agencies.

Sections 8 through 13 repeal part VIII of chapter 468, F.S., relating to the licensure and regulation of community association managers and management firms and the Regulatory Council of Community Association Managers; and conforming provisions in ss. 455.2122, 718.111, 718.501, 719.104, and 721.13, F.S.

Section 14 repeals part IX of chapter 468, F.S., relating to the licensure and regulation of athlete agents.

Sections 15 through 28 repeal part XI of chapter 468, F.S., relating to the licensure and regulation of employee leasing companies and employee leasing company groups and the Board of Employee Leasing Companies; and conforming provisions in ss. 212.096, 212.097, 212.098, 220.03, 443.036, 443.101, 448.23, 448.26, 472.003, 626.112, 627.192, 627.3121, and 768.098, F.S.

Sections 29 and 30 repeal part XV of chapter 468, F.S., relating to the home inspection services licensing program, the licensure of home inspectors, the certification of corporations and partnerships practicing or offering to practice home inspection services, and the regulation of home inspection services; and conforming provisions in s. 627.0629, F.S.

Section 31 amends s. 627.711, F.S.; removing licensed home inspectors from list of persons from whom insurers must accept uniform mitigation verification inspection forms, to conform.

Sections 32 and 33 repeal part XVI of chapter 468, F.S., relating to the mold-related services licensing program, the licensure of mold assessors and remediators, the certification of corporations and partnerships practicing or offering to practice mold assessment or remediation, and the regulation of mold-related services; and conforming provisions in s. 455.2123, F.S.

Sections 34 through 52 repeal chapter 472, F.S., relating to the licensure of professional surveyors and mappers, the Board of Professional Surveyors and Mappers, and the practice of land surveying and mapping; and conforming provisions in ss. 161.57, 177.031, 177.36, 177.503, 177.508, F.S., 287.055, 334.044, 348.0008, 373.421, 403.0877, 440.02, 481.329, 492.102, 497.274, 556.108, 718.104, 725.08, and 810.12, F.S.

Sections 53 through 57 amend s. 477.0201, 477.013, 477.0132, F.S., repealing the registration of specialists of hair braiding, hair wrapping, body wrapping, and nail specialists and the registration and inspection of specialty salons; and conforming provisions in ss. 477.019, 477.025, 477.026, 477.0265, 477.028, and 477.029, F.S.

Sections 58 through 60 repeal ss. 481.2131 and 481.2251, F.S., repealing the registration of interior designers; and conforming provisions in ss. 481.201, and 481.203, F.S.

Section 61 amends s. 481.205, F.S.; changing the name of the Board of Architecture and Interior Design, to conform; revising membership of the board; conforming provisions.

Sections 62 through 75 amend ss. 481.207, 481.209, 481.211, 481.213, 481.215, 481.217, and 481.219, 481.221, 481.222, 481.223, 481.229, 481.231, 553.79, and 558.002, F.S.; conforming provisions to the repeal of the regulation of interior designers.

Sections 76 through 86 repeal part II of chapter 481, F.S., relating to the registration and licensure of landscape architects, the certification of corporations and partnerships practicing or offering to practice landscape architectural services, the Board of Landscape Architecture, and the regulation of landscape architectural services; providing a directive to the Division of Statutory Revision; and conforming provisions in ss. 287.055, F.S.; conforming provisions in ss. 339.2405, 373.62, 403.0877, 403.9329, 440.02, 479.106, 481.203, 489.103, 558.002, and 725.08, F.S.

Sections 87 through 98 repeal chapter 492, F.S., relating to the licensure of professional geologists, the Board of Professional Geologists, and the practice of professional geology; and conforming provisions in ss. 373.1175, 376.80, 377.075, 403.087, 403.0877, 469.004, 627.706, 627.707, 627.7072, 627.7073, and 627.7074, F.S.

Sections 99 through 111 repeal chapter 496, F.S., relating to the registration of professional fundraising consultants and professional solicitors and the regulation of solicitation of charitable contributions and charitable sales promotions; and conforming provisions in ss. 110.181, 316.2045, 320.023, 322.081, 413.033, 550.0351, 550.1647, 741.0305, 775.0861, 790.166, 843.16, and 849.0935, F.S.

Section 112 repeals s. 500.459, F.S., relating to the regulation of water vending machines and the permitting of water vending machine operators.

Section 113 amends s. 500.511, F.S.; deleting provisions for the deposit of operator permitting fees, the enforcement of the state's water vending machine regulations, penalties, and the preemption of county and municipal water vending machine regulations, to conform.

Sections 114 and 115 repeal ss. 501.012-501.019, F.S., relating to the registration of health studios and the regulation of health studio services; and conforming provisions in s. 501.165, F.S.

Sections 116 and 117 repeal s. 501.143, F.S., relating to the Dance Studio Act, the registration of ballroom dance studios, and the regulation of dance studio lessons and services; and conforming provisions in s. 205.1969, F.S.

Sections 118 through 123 repeal part IV of chapter 501, F.S., relating to the Florida Telemarketing Act, the licensure of commercial telephone sellers and salespersons and the regulation of commercial telephone solicitation; and conforming provisions in ss. 205.1973, 501.165, 648.44, 772.102, and 895.02, F.S.

Sections 124 and 125 repeal chapter 507, F.S., relating to the registration of movers and moving brokers and the regulation of household moving services; and conforming provisions in ss. 205.1975, F.S.

Sections 126 and 127 amend s. 509.242, F.S.; removing the license classifications of 'roominghouse' from public lodging establishments for purposes of provisions regulating such establishments; and conforming provisions in s. 509.221, F.S.

Section 128 repeals chapter 555, F.S., relating to the regulation of outdoor theaters in which audiences view performances from parked vehicles.

Section 129 repeals part VIII of chapter 559, F.S., relating to the Sale of Business Opportunities Act and the regulation of certain business opportunities.

Sections 130 through 133 repeal part IX of chapter 559, F.S., relating to the registration of motor vehicle repair shops, the Motor Vehicle Repair Advisory Council, and the regulation of motor vehicle repair; and conforming provisions in ss. 320.27, 445.025, and 713.585, F.S.

Sections 134 through 139 repeal part XI of chapter 559, F.S., relating to the Florida Sellers of Travel Act, the registration of sellers of travel, certification of certain business activities, and the regulation of prearranged travel, tourist-related services, tour-guide services, and vacation certificates; and conforming provisions in ss. 205.1971, 501.604, 501.608, 636.044, and 721.11, F.S.

Section 140 repeals s. 686.201, F.S., relating to contracts with sales representatives involving commissions;

Section 141 repeals s. 817.559, F.S., relating to the labeling of television picture tubes.

Sections 142 through 211 amend ss. 73.072, 192.037, 475.011, 718.103, 718.1085, 718.111, 718.112, 718.1255, 718.202, 718.301, 718.501, 718.5011, 718.5012, 718.5014, 718.50151, 718.50152, 718.50153, 718.50154, 718.50155, 718.502, 718.503, 718.504, 718.509, 719.608, 718.621, 719.103, 719.1035, 719.104, 719.1055, 719.106, 719.1255, 719.202, 719.301, 719.501, 719.502, 719.503, 719.504, 719.508, 719.608, 719.621, 720.303, 720.306, 720.311, 720.407, 721.03, 721.05, 721.06, 721.07, 721.071, 721.075, 721.08, 721.09, 721.10, 721.11, 721.111, 721.121, 721.13, 721.18, 721.20, 721.26, 721.265, 721.27, 721.28, 721.29, 721.301, 721.53, 721.55, 721.551, 721.552, 721.56, 721.58, 721.82, 721.98, 723.002, 723.003, 723.004, 723.005, 723.007, 723.008, 723.009, 723.011, 723.012, 723.013, 723.016, 723.031, 723.033, 723.035, 723.037, 723.038, 723.0381, 723.042, 723.06115, to delete powers and duties of the Division of Florida Condominiums, Timeshares, and Mobile Homes of DBPR as they relate to enforcement, compliance, and regulation of condominiums, cooperatives, timeshares, mobile home lots, and homeowner's associations; and to conform cross references.

Section 212 provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues and Expenditures:**

##### Department of Agriculture and Consumer Services

There is an anticipated negative fiscal impact to state trust fund revenues associated with the fees collected for registrations, fines, and penalties estimated at \$8,440,013. There is also a positive fiscal impact to state trust funds associated with the costs to administer the regulatory functions of \$3,585,070. The net negative fiscal impact to state trust funds \$4,854,943. There are 119 full time equivalent employees (FTE) currently performing the registration, investigation, enforcement, and call center functions within the agency. See chart below.

<b>Department of Agriculture and Consumer Services</b>			
<b>Fiscal Year 2011/12 Estimates</b>			
<b>Fiscal Year 2011/12 Estimates</b>	<b>Revenues</b>	<b>Expenditures</b>	<b>Net</b>
Business Opportunities	\$ (223,250)	\$ (160,452)	\$ (62,798)
Charitable Organizations	\$ (2,526,190)	\$ (865,388)	\$ (1,660,802)
Dance Studios	\$ (61,700)	\$ (26,236)	\$ (35,464)
Health Studios	\$ (612,600)	\$ (294,601)	\$ (317,999)
Motor Vehicle Repair Shops	\$ (1,421,162)	\$ (559,645)	\$ (861,517)
Intrastate Movers	\$ (316,695)	\$ (266,829)	\$ (49,866)
Sellers of Travel	\$ (775,838)	\$ (456,413)	\$ (319,425)
Telemarketing	\$ (1,711,946)	\$ (265,414)	\$ (1,446,532)
Surveyors and Mappers	\$ (695,632)	\$ (659,792)	\$ (35,840)
Water Vending Machines	\$ (95,000)	\$ (30,300)	\$ (64,700)
<b>Impact to State Trust Funds</b>	<b>\$ (8,440,013)</b>	<b>\$ (3,585,070)</b>	<b>\$ (4,854,943)</b>
<b>Impact to General Revenue-8% Service Charge</b>	<b>\$ (675,201)</b>		<b>\$ (675,201)</b>
<b>Total Impact to State Funds</b>	<b>\$ (9,115,214)</b>	<b>\$ (3,585,070)</b>	<b>\$ (5,530,144)</b>
<b>Estimated FTE Reduction</b>		<b>FTEs</b>	
Division of Consumer Services		(44.0)	
Division of Food Safety		-	
FTE in Call Center Funded from Revenues		(75.0)	
<b>Total Impact to FTE</b>		<b>(119.0)</b>	

#### Department of Business and Professional Regulation

There is an anticipated negative fiscal impact to state trust fund revenues associated with the fees collected for license, fines, and penalties estimated at \$20,503,178. There is also a positive fiscal impact to state trust funds associated with the costs to administer the regulatory functions of \$9,171,684. The net negative fiscal impact to state trust funds \$11,331,494. There are 155 full time equivalent employees (FTE) currently performing the licensing, education and testing, investigation, and enforcement functions within the agency. See chart below.

<b>Department of Business and Professional Regulation</b>			
<b>Fiscal Year 2011/12 Estimates</b>			
<b>Regulation Repealed</b>	<b>Revenues</b>	<b>Expenditures</b>	<b>Net</b>
Condominiums/Cooperatives	\$ (7,333,250)	\$ (4,753,333)	\$ (2,579,917)
Timeshare	\$ (4,815,200)	\$ (1,331,197)	\$ (3,484,003)
Mobile Homes	\$ (1,332,000)	\$ (565,418)	\$ (766,582)
Yacht and Ships	\$ (661,900)	\$ (255,871)	\$ (406,029)
Homeowners' Association	\$ (7,450)	\$ (50,852)	\$ 43,402
Rooming Houses	\$ (70,255)	*	\$ (70,255)
Architecture and Interior Design (Inter Designers only)	\$ (32,815)	*	\$ (32,815)
Athletic Agents	\$ (124,143)	\$ (44,860)	\$ (79,283)
Auctioneers and Auctioneer Apprentices	\$ (492,333)	\$ (223,869)	\$ (268,464)
Community Associations Managers & Firms	\$ (813,728)	\$ (1,030,749)	\$ 217,021
Cosmetology (Hair Braiders, Hair Wrappers, and Body Wrappers)	\$ (2,718,485)	*	\$ (2,718,485)
Employee Leasing	\$ (1,062,548)	\$ (234,845)	\$ (827,703)
Geologists	\$ (255,178)	\$ (181,217)	\$ (73,961)
Home Inspection (Program Began 7-1-2010)	\$ (58,750)	\$ (47,044)	\$ (11,706)
Landscape Architects	\$ (581,522)	\$ (303,825)	\$ (277,697)
Mold Related Services (Program Began 7-1-2010)	\$ (5,005)	\$ (52,023)	\$ 47,018
Talent Agents	\$ (138,616)	\$ (96,581)	\$ (42,035)
<b>Impact to State Trust Funds</b>	<b>\$ (20,503,178)</b>	<b>\$ (9,171,684)</b>	<b>\$ (11,331,494)</b>
NOTE: * - Unable to break out expenditures			
<b>Impact to General Revenue-8% Service Charge</b>	<b>\$ (1,640,254)</b>		<b>\$ (1,640,254)</b>
<b>Total Impact to State Funds</b>	<b>\$ (22,143,432)</b>		<b>\$ (12,971,748)</b>
<b>Estimated FTE Reduction</b>		<b>FTEs</b>	
Division of Professions		(6.0)	
Division of Regulation		(4.0)	
Bureau of Education and Testing		(5.0)	
Bureau of Financial Management		(1.0)	
Administration		(1.0)	
General Counsel		(4.0)	
Service Operations		(15.0)	
Information Technology		(1.0)	
Division of Condominiums, Timeshares, and Mobile Homes		(118.0)	
<b>Total Impact to FTE</b>		<b>(155.0)</b>	

In addition, the bill has a negative fiscal impact to General Revenue (GR) of \$2,315,455 due to the reduction in the 8 percent service charge transferred GR based on revenues collected by these agencies.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will reduce overhead costs for 114,511 currently licensed or registered private sector occupations and businesses by \$28,943,191 associated with opening certain businesses or entering certain professions. This is the direct result of removing requirements for various professionals and businesses to pay various fees and to submit applications and disclosures. There may be additional savings to the private sector in the futures as emerging practitioners and businesses are not required to pay these fees.

The following chart illustrates what these businesses and professionals are currently required to pay for initial licensing and examinations and periodical licensing and registration.

<b>Current Fiscal Impact of Regulation on the Private Sector</b>			
<b>Regulation</b>	<b>Initial Fees</b>	<b>Biennial Fees</b>	<b>Practitioners</b>
Athlete Agents	\$1,255	\$550	163
Auctioneers	\$446	\$155	1,760
Auctioneer Apprentices	\$205	n/a	
Body Wrappers	\$25	\$25	4,447
Charitable Organizations	Varies from \$10 - \$400 annually based on contributions		16,588
Solicitors & Consultants	\$300	\$600	
Community Association Manage	\$255	\$105	16,622
Condominiums & Cooperatives	\$4 per unit annually		
Dance Studios	\$300	\$600	223
Employee Leasing Companies	\$1,755 - \$3,005	\$1,505 - \$2,505 and annual assessment based on gross payroll ranging from \$72 to \$1,019.50	700
Controlling Person	\$1,155	\$1,000	
Professional Geologists	\$505	\$130	2,267
Hair Braiders	\$25	\$25	2,909
Hair Wrappers	\$25	\$25	750
Health Studios	\$300	\$600	2,134
Home Inspectors	\$330	\$405	n/a
Interior Designers	\$661	\$125	4,203
Intrastate Movers	\$300	\$600	998
Landscape Architects	\$1,257	\$305	1,489
Mold-Related Services	\$330	\$405	n/a
Motor Vehicle Repair Shops	Biennial fees based on number of employees ranging from \$100 to \$600		24,484
Sellers of Business Opportunitie	\$300	\$600	2,550
Sellers of Travel	\$300	\$600	6,855
Independent Agent	\$50	\$100	
Surveyors and Mappers	\$375 - \$615	\$255	4,300
Talent Agents	\$705	\$405	201
Telemarketing	\$1,500	\$3,000	18,205
Salesperson	\$50	\$100	
Yacht and Ship Brokers	\$600	\$500	2,663
<b>Total Practitioners</b>			<b>114,511</b>

D. FISCAL COMMENTS:

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that the counties or municipalities have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### **Condominiums**

The Division does not recommend removing the civil penalty for the destruction of association records, particularly the intentional destruction of records, approximately 20% of complaints to the Division involve association record disputes.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 15, 2011, the Business & Consumer Affairs Subcommittee took up the PCB, adopted an amendment, and passed the bill by a vote of 10-5.

The bill differs from the PCB as filed as deregulation of Barbers, Nail Technicians and Specialty Salons was removed from the bill.