

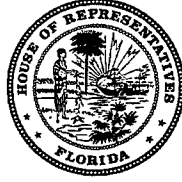


Business & Consumer Affairs Subcommittee

**Tuesday, February 8, 2011
9:00 AM – 12:00 PM
12 HOB**

**Dean Cannon
Speaker**

**Esteban L. Bovo, Jr.
Chair**



The Florida House of Representatives

Business & Consumer Affairs Subcommittee

Dean Cannon
Speaker

Esteban L. Bovo, Jr.
Chair

Meeting Agenda
Tuesday, February 8, 2011
12 House Office Building
9:00 a.m. – 12:00 p.m.

- I. **Call to Order**
- II. **Roll Call**
- III. **Welcome and Opening Remarks**
- IV. **HB 4009 - Outdoor Theaters** *by Rep. Workman*
- V. **HB 4013 - Television Picture Tubes** *by Rep. Eisnaugle*
- VI. **HB 4021 – Water Vending Machines** *by Rep. Workman*
- VII. **HB 4023 – Sales Representative Contracts Involving Commissions**
by Rep. Plakon
- VIII. **Presentation**
Carol Dover, Chief Executive Officer
Florida Restaurant and Lodging Association
- IX. **Discussion of Business Regulations in Florida**
- X. **Adjournment**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4009 Outdoor Theaters

SPONSOR(S): Workman

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee		Morton <i>MM</i>	Creamer <i>JC</i>
2) Economic Affairs Committee			

SUMMARY ANALYSIS

House Bill 4009 repeals ch. 555, F.S., removing the statutory requirements concerning access to and from public roads and other requirements that specifically apply to outdoor theaters.

The bill does not have a fiscal impact.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Outdoor Theaters

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hazardous conditions and locations in constructing outdoor theaters such as drive-ins.¹ The DOT reports the language is obsolete.

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.

Currently, about six drive-in theaters operate in Florida.²

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).³ 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 and development regulations also apply to outdoor theaters.

Proposed Changes

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.

¹ Chapter 28085, L.O.F.

² 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).

³ 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.

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

B. SECTION DIRECTORY:

Section 1 Repeals ch. 555, F.S.; relating to outdoor theaters.

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

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:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 4009

2011

1 A bill to be entitled
2 An act relating to outdoor theaters; repealing ch. 555,
3 F.S., relating to access to public roads from outdoor
4 theaters; removing provisions for entrances, exits,
5 enclosures, vehicle storage, screen orientation, tower
6 location, and driveway lighting; removing requirements for
7 a qualifying certificate to prove compliance with agency
8 regulations prior to issuance of an occupational license
9 by the tax collector; providing an effective date.

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11 Be It Enacted by the Legislature of the State of Florida:

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13 Section 1. Sections 555.01, 555.02, 555.03, 555.04,
14 555.05, 555.07, and 555.08, Florida Statutes, are repealed.

15

 Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4013 Television Picture Tubes

SPONSOR(S): Eisnaugle

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee		Livingston <i>[Signature]</i>	Greamer <i>[Signature]</i>
2) Economic Affairs Committee			

SUMMARY ANALYSIS

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.

The bill does not have a fiscal impact.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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.

- Black and white picture tube:
 - Grade AA - All new components and materials, including new glass envelope.
 - Grade A - Used glass envelope; all other components and materials are new.
 - Grade B - Used glass envelope, used phosphorescent viewing screen, used aluminization, and used internal conductive coating; all other components and materials are new.
 - Grade C - Used picture tube for resale; all significant components and materials are used.

- Color picture tube:
 - Grade AA - All new components and materials, including new glass envelope.
 - Grade A - Used glass envelope and new or used shadow mask; all other components and materials are new.
 - Grade B - New electron gun; all other components and materials are used.
 - Grade C - Used picture tube for resale; all significant components and materials are used.

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.:

- 775.082 Penalties; applicability of sentencing structures.
 - For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days.

- 775.083 Fines.

- o \$500, when the conviction is of a misdemeanor of the second degree or a noncriminal violation.

Proposed Changes

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. Repeals s. 817.559, F.S., relating to television picture tube labeling requirements.

Section 2. Effective date – July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Not anticipated to be significant. Business overhead costs could be anticipated to be reduced in association with the practice of placing labels on picture tubes.

D. FISCAL COMMENTS:

None.

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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 4013

2011

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A bill to be entitled
An act relating to television picture tubes; repealing s.
817.559, F.S., relating to television picture tube
labeling requirements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

- Section 1. Section 817.559, Florida Statutes, is repealed.
- Section 2. This act shall take effect July 1, 2011.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 4013 (2011)

Amendment No.

COUNCIL/COMMITTEE ACTION

ADOPTED ___ (Y/N)
ADOPTED AS AMENDED ___ (Y/N)
ADOPTED W/O OBJECTION ___ (Y/N)
FAILED TO ADOPT ___ (Y/N)
WITHDRAWN ___ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Business & Consumer Affairs
2 Subcommittee
3 Representative Eisnagle offered the following:

Amendment (with title amendment)

Remove line 8 and insert:

7 Section 1. Sections 817.559 and 817.56, Florida Statutes,
8 are repealed.

10 -----
11 **T I T L E A M E N D M E N T**

12 Remove lines 2-4 and insert:

13 An act relating to television picture tubes; repealing ss.
14 817.559 and 817.56, F.S., relating to television picture
15 tube labeling requirements and misrepresentations of
16 television picture tubes; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4021 Water Vending Machines

SPONSOR(S): Workman

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee		Livingston	Creamer
2) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill repeals 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 the operation of water vending machines.

The bill is anticipated to have a negative fiscal impact on state trust funds from the reduction in fees associated with permitting and operating water vending machines. The DACS estimates this reduction to be \$95,000 per fiscal year based on the \$35 fee paid to the DACS for each water vending machine.

A positive fiscal impact on state trust funds is anticipated to occur from the reduction in cost associated with processing permit applications. The DACS reports that this reduction would approach \$64,700 per year.

Additionally, the DACS reports that there are 106 "firm operators" that are issued a permit. Therefore, based on a \$10 surcharge currently collected by DACS and transferred to the Department of Health from each operator, this bill would have a negative fiscal impact on DOH trust funds of \$1,060.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

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, food¹ safety is the responsibility of various federal, state, and local agencies. At the state level, the Department of Agriculture and Consumer Services (DACs) regulates establishments selling primarily pre-packaged foods or beverages. The Department of Business and Professional Regulation 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.²

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:

¹ Section 500.03(1)(l)1., F.S., defines food to include "articles used for food or drink for human consumption.

² Section 500.459(5)(c), F.S.

- 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).³
- 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 system⁴ 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 to:

- 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 s. 120.54, F.S., 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.⁵

Effect of Proposed Changes

The bill repeals 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.

B. SECTION DIRECTORY:

Section 1. Repeals section 500.459, F.S., relating to the regulation of water vending machines.

Section 2. Amends section 500.511, F.S., to remove provisions relating to fees, enforcement, and preemption of regulation of water vending machines to the state.

Section 3. Effective date – July 1, 2011.

³ “Sanitize” means to adequately treat food-contact surfaces by a process that is effective in destroying vegetative cells of microorganisms of public health significance, and in substantially reducing numbers of other undesirable microorganisms, but without adversely affecting the product or its safety for the consumer.

⁴ “Public health: general provisions, s. 381.0062(2)(m), F.S., defines (m) “Public water system” means a water system that is not included or covered under the Florida Safe Drinking Water Act, which provides piped water to the public.

⁵ Section 500.511, F.S., No county or municipality may adopt or enforce any ordinance that regulates the licensure or operation of water vending machines unless it is determined that unique conditions exist within the county which require the county to regulate such entities in order to protect the public health.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill is anticipated to have a negative fiscal impact on state trust funds from the reduction in fees associated with permitting and operating water vending machines. The DACS estimates this reduction to be \$95,000 per fiscal year based on the \$35 fee paid to the DACS for each water vending machine.

Additionally, the DACS reports that there are 106 "firm operators" that are issued a permit. Therefore, based on a \$10 surcharge currently collected by DACS and transferred to the Department of Health from each operator, this bill would have a negative fiscal impact on DOH trust funds of \$1,060.⁶

The DACS application⁷ for a water vending machine permit includes the formula for an applicant to use for purposes of submitting the appropriate DACS fee and the surcharge fee for the Department of Health.

Determining your Fee: The fee for a Water Vending Machine Operating Permit is \$35 per machine. There is also a \$10 Epidemiology surcharge per operator collected for the Florida Department of Health .

(see example below when submitting an application for more than one machine permit.)

EXAMPLE for 10 machines:

\$ 35.00 (permit fee per machine)
x 10 (times number of machines)

\$350.00
+ \$ 10.00 (plus \$ 10 epidemiology surcharge)

= \$360.00 (fee)

* if you have machines permitted for the current permit year, the \$ 10 epidemiology surcharge does not apply.

2. Expenditures:

A positive fiscal impact on state trust funds is anticipated to occur from the reduction in cost associated with processing permit applications. The DACS reports that this reduction would approach \$64,700 per year. The DACS calculates that the reduction is a factor of the following workload for Fiscal Year 2009-2010 by the Division of Food Safety:

- permitted approximately 2,800 water vending firms at a cost of \$35 per permit;
- performed 309 inspections of water vending machines; and
- collected 673 vended water samples for testing.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

⁶ Section 381.006(10), F.S., specifies that the Department of Health conduct "An environmental epidemiology function which shall investigate food-borne disease, waterborne disease, and other diseases of environmental causation, whether of chemical, radiological, or microbiological origin. A \$10 surcharge for this function shall be assessed upon all persons permitted under chapter 500. This function shall include an educational program for physicians and health professionals designed to promote surveillance and reporting of environmental diseases, and to further the dissemination of knowledge about the relationship between toxic substances and human health which will be useful in the formulation of public policy and will be a source of information for the public.

⁷ Application for a Water Vending Machine Operating Permit, DACS-14802 (Oct. 2007).

1. Revenues:
Unknown if any. See C. below.
2. Expenditures:
Unknown if any. See C. below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The DACS reports that is unable to determine the full impact of this proposed legislation on local governments. The DACS notes that if adopted, regulation will no longer be preempted to the state and it will allow city and county jurisdictions to pursue local ordinances requiring permitting with fees, inspections and regulations unique to each local jurisdiction..

D. FISCAL COMMENTS:

None.

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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled
 An act relating to water vending machines; repealing s.
 500.459, F.S., relating to the regulation of water vending
 machines and the permitting of water vending machine
 operators; amending 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;
 providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 500.459, Florida Statutes, is repealed.

Section 2. Section 500.511, Florida Statutes, is amended
 to read:

500.511 Bottled water plants; packed ice plants; Fees;
~~enforcement; preemption.-~~

~~(1) FEES. All fees collected under s. 500.459 shall be
 deposited into the General Inspection Trust Fund and shall be
 accounted for separately and used for the sole purpose of
 administering the provisions of such section.~~

~~(2) ENFORCEMENT AND PENALTIES. In addition to the
 provisions contained in s. 500.459, the department may enforce
 s. 500.459 in the manner provided in s. 500.121. Any person who
 violates a provision of s. 500.459 or any rule adopted under
 such section shall be punished as provided in such section.~~

~~However, criminal penalties may not be imposed against any~~

HB 4021

2011

29 | ~~person who violates a rule.~~

30 | ~~(3) PREEMPTION OF AUTHORITY TO REGULATE.~~ Regulation of
 31 | bottled water plants, ~~water vending machines, water vending~~
 32 | ~~machine operators,~~ and packaged ice plants is preempted by the
 33 | state. No county or municipality may adopt or enforce any
 34 | ordinance that regulates the licensure or operation of bottled
 35 | water plants, ~~water vending machines,~~ or packaged ice plants,
 36 | unless it is determined that unique conditions exist within the
 37 | county which require the county to regulate such entities in
 38 | order to protect the public health. This subsection does not
 39 | prohibit a county or municipality from requiring a business tax
 40 | pursuant to chapter 205.



41 | Section 3. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4023 Sales Representative Contracts Involving Commissions

SPONSOR(S): Plakon

TIED BILLS: IDEN./SIM. **BILLS:** SB 474

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee		Morton 	Creamer 
2) Economic Affairs Committee			

SUMMARY ANALYSIS

House Bill 4023 repeals s. 686.201, F.S, removing the statutory requirements on sales representative contracts involving commissions and the provisions relating to a private cause of action.

The bill does not have a fiscal impact on state funds.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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 the 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."¹ Originally, the statute applied only to out-of-state principals, a classification ultimately found to be an unconstitutional burden on interstate commerce.² 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.³

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

Proposed Changes

The bill would repeal the requirements on sales representative contracts involving commissions and the provisions relating to a private cause of action.

¹ Rosenfeld v. Lu, 766 F.Supp. 1131, 1140 (S.D.Fla. 1991).

² *Id.*

³ *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.

B. SECTION DIRECTORY:

Section 1 Repeals s. 686.201, F.S., relating to sales representative contracts involving commissions.

Section 2 Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Principals who use sales representatives could see a reduction in costs as they will no longer be required to provide written contracts.

Sales representatives could see an increase in costs associated with recovering unpaid commissions after termination as principals would no longer be subject to treble damages for unpaid commissions.

These impacts could be negated by contract.

D. FISCAL COMMENTS:

The bill does not have a fiscal impact on state funds.

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:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 4023

2011

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A bill to be entitled
An act relating to sales representative contracts
involving commissions; repealing s. 686.201, F.S.,
relating to sales representative contracts involving
commissions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 686.201, Florida Statutes, is repealed.

Section 2. This act shall take effect July 1, 2011.

FRLA 2011 Industry Issues



**FLORIDA
RESTAURANT
& LODGING
ASSOCIATION**

FRLA = 10,000 Members



Restaurants



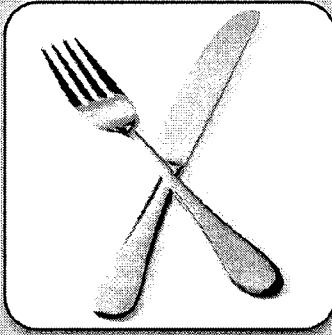
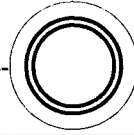
Public Lodging
Establishments

Allied

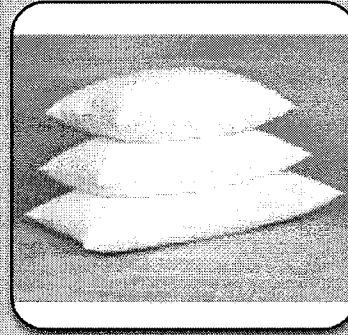


Members

The State of Florida has...



46,000
Food
Service
Establishments

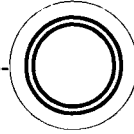


4,000
Public
Lodging
Establishments



32,000
Alcohol
Beverage
Licenses

The Hospitality Industry



Generates over \$57 Billion in Total Revenues



20% of Florida's Economy



3.4 Billion Dollars in Sales Tax Revenue



Employs More Than 950,000 People

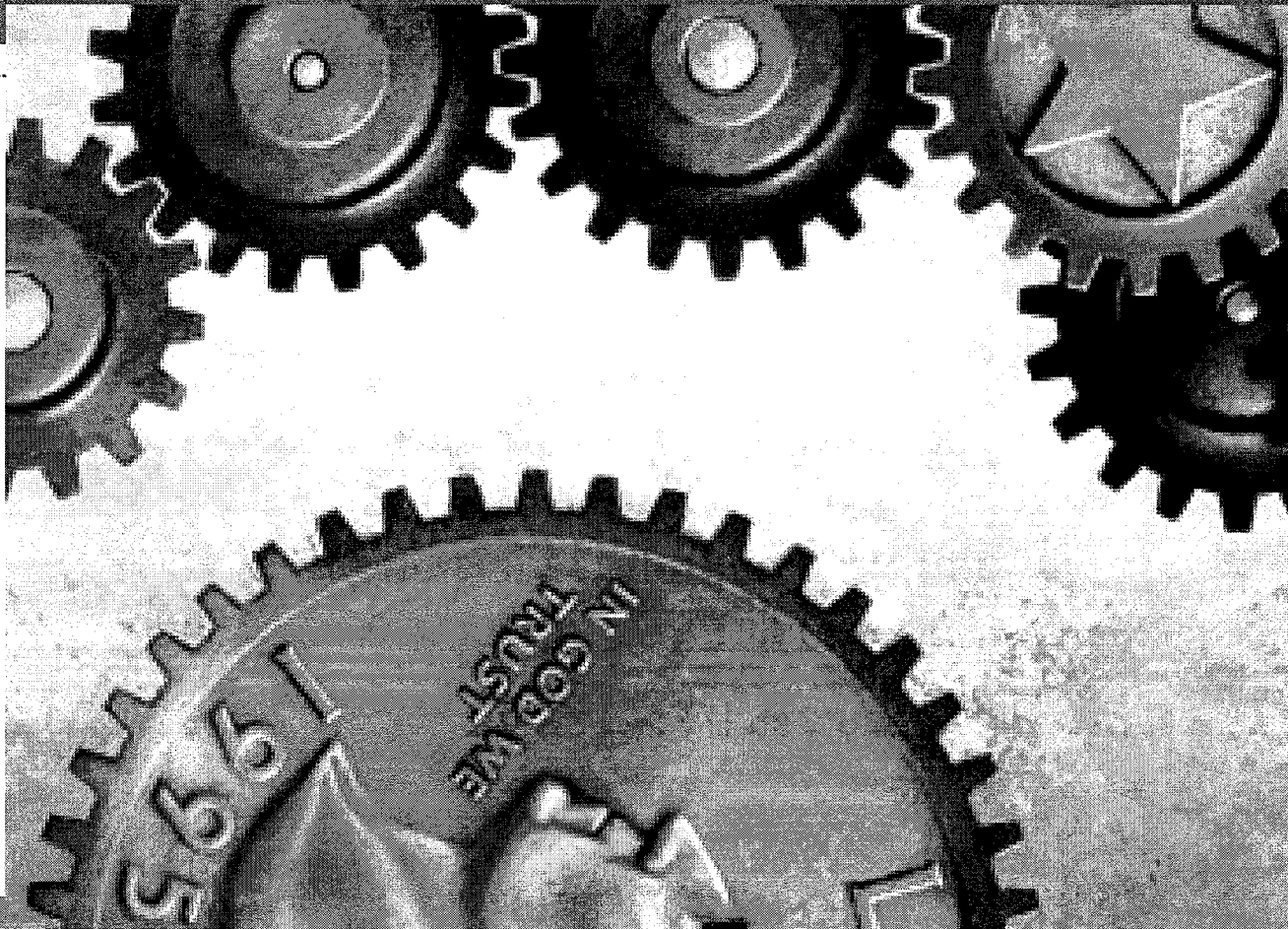


Florida's Largest Employer

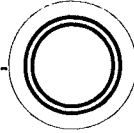


Generates 60 Billion in Travel Spending

THE HOSPITALITY INDUSTRY
IS THE *ECONOMIC ENGINE*
OF THIS STATE

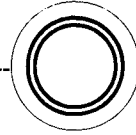


What Do These Things Have In Common?



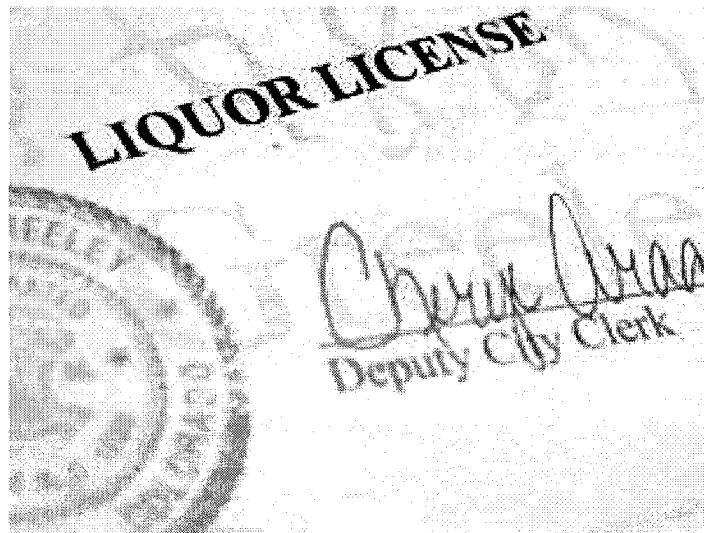
- Food Safety Inspectors
- The Department of Revenue
 - Local Zoning Boards
 - Building Code Authority
 - Fire Marshal Approval
 - DBPR “Plans Review”
 - Finger Print Companies
- The Division of Hotels and Restaurants
 - The Division of Alcoholic Beverages
 - The DBPR Call Center
 - ABT Law Enforcement/Auditing Personnel
- The Department of Health Water Safety Inspectors
- Division of Worker’s Compensation Insurance
 - Registration & Corporate Filings
 - Local Building

They are ALL INVOLVED in the...



“LICENSING PROCESS”

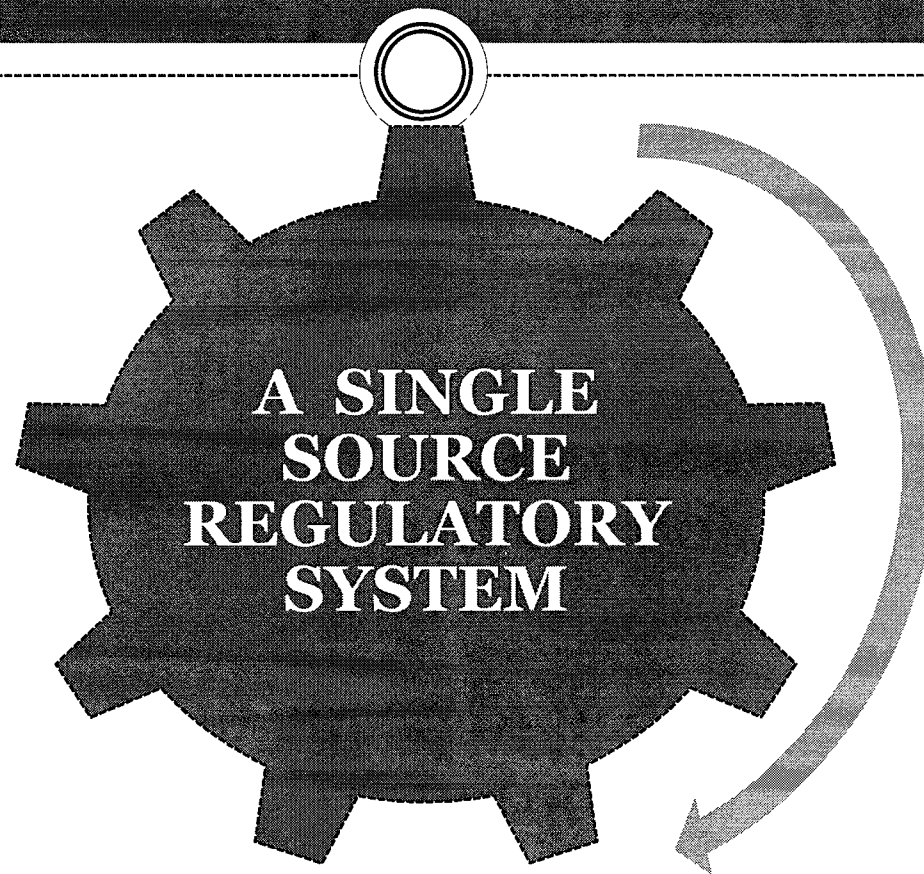
Of Restaurants and Public Lodging
Establishments



Other States



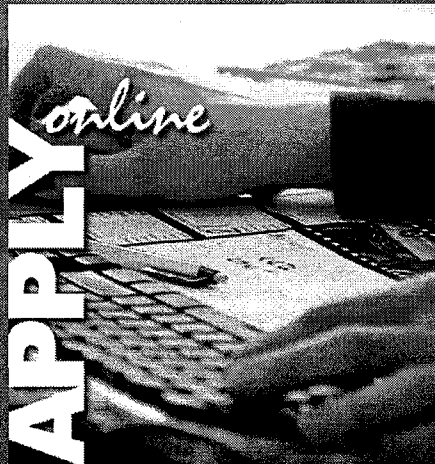
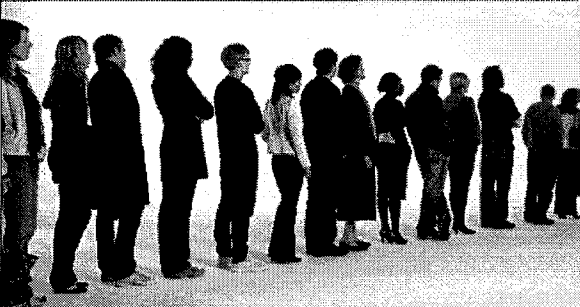
Florida Enjoys



**A SINGLE
SOURCE
REGULATORY
SYSTEM**



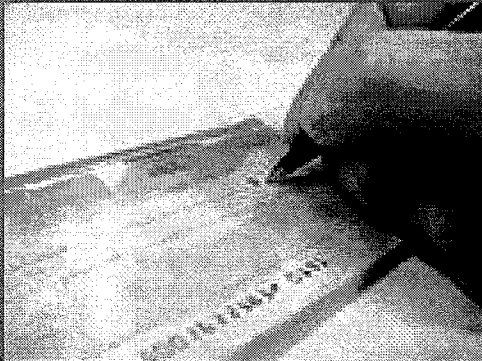
DBPR



- #1 - Still room for improvement in speed of licensing process
- #2 – Primary objective of DBPR should be to license new businesses as soon as possible
- #3 – Currently, license applications cannot be accepted over the internet. A customer must print the application, then fill it out, then mail copy to DBPR.



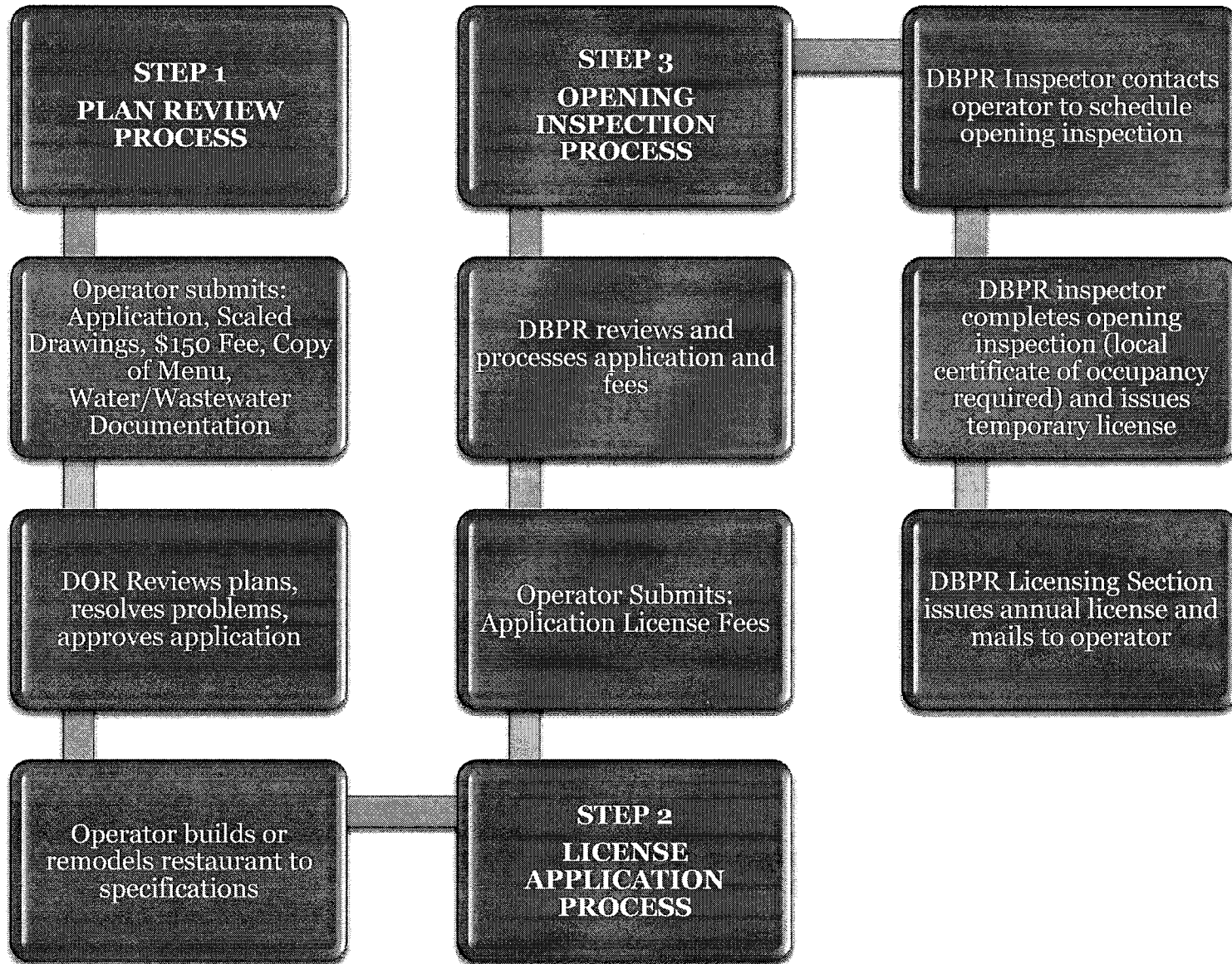
DBPR



- #4 – DBPR should accept payment of fees over internet
- #5 – Often Licensee's has to write multiple checks in order to get licensed – modify system so only one payment is necessary

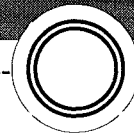
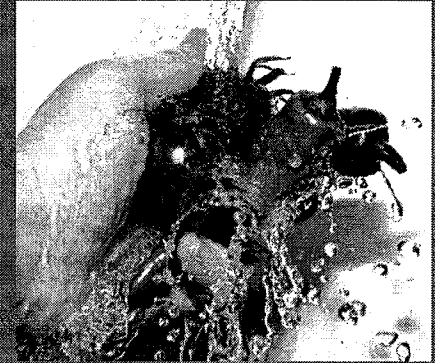


DBPR Food Service Licensing Process



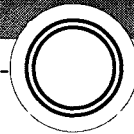


FOOD SAFETY



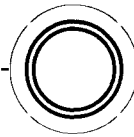
- **DBPR SHOULD CONCENTRATE IT'S EFFORTS ON RISK BASED FOOD SAFETY INSPECTIONS**
- **FOOD SERVICE ESTABLISHMENTS ARE REQUIRED BY LAW AND/OR RULE TO BE INSPECTED AT LEAST 3 TIMES A YEAR. THERE HAS NEVER BEEN ENOUGH RESOURCES TO ACCOMPLISH THIS GOAL**
- **FOCUS ON KNOWN HAZARDS. IDENTIFY HABITUAL OFFENDERS AND BRING THEM INTO COMPLIANCE BY REQUIRING REMEDIAL TRAINING OR SUSPEND THEIR LICENSE.**
- **DBPR FUNDED VIA LICENSE FEES, NO GENERAL REVENUE**

Division of ABT

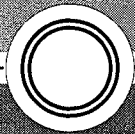


- **STREAMLINE LICENSING PROCESS**
- **EXAMINE NEED FOR INFORMATION REQUESTED ...IS IT REALLY NECESSARY?**
- **RE-EXAMINE RULES, PROCESSES & PROGRAMS**
 - **CONDUCT EXAMINATION OF LEGAL AND ADMINISTRATIVE CASES MADE IN PAST SEVERAL YEARS TO DETERMINE WHERE RESOURCES ARE REQUIRED AND SHOULD BE DEDICATED**

Hospitality Issues for 2011



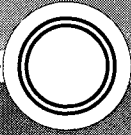
- **FLORIDA'S ECONOMY**
 - **IMMIGRATION**
- **UNEMPLOYMENT RATES**
 - **BED TAX EXPANSION**
 - **ON-LINE TRAVEL**
 - **GAMING**
- **SCHOOL TO CAREER**



School
to
Career
Program

- Introduced in 1994 by the National Restaurant Association Educational Foundation
- Two year program that covers 25 different subject areas in foodservice

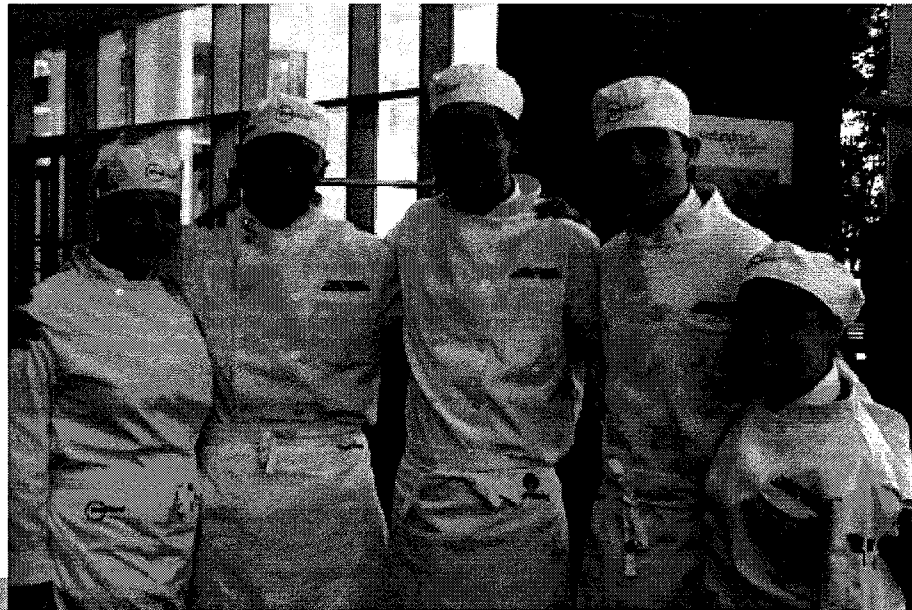


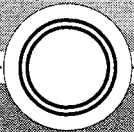


School
to
Career
Program

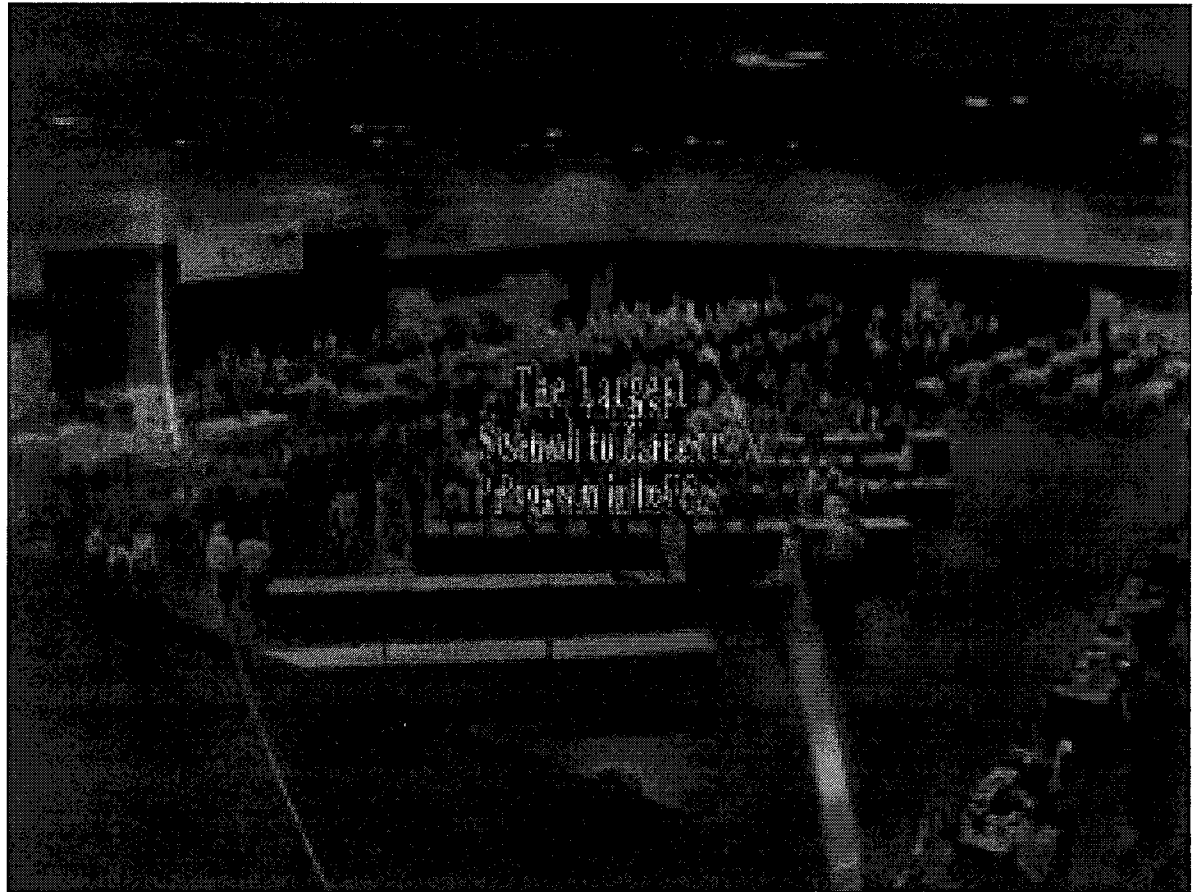


- Taught to students from 10th to 12th grades in 236 High Schools to nearly 20,000 students
- FRLA partners with restaurants to provide job experience for ProStart students in restaurant operations





School
to
Career
Program



**Business and Consumer Affairs Subcommittee
Regulation Review**

**Department of Business and Professional Regulation and portions of the Department of Agriculture and Consumer Services
Chair's Proposed Criteria Worksheet**

Line No.	Ref. Book Page No.	Business/Profession	Number of In-State Practitioners	⁽¹⁾ Is not indispensable to public health or safety	⁽²⁾ Has not had significant disciplinary actions taken	⁽³⁾ Does not require profession specific examination, continuing education courses, etc.	⁽⁴⁾ Designed only to limit competition	⁽⁵⁾ Is regulated by other entities	⁽⁶⁾ Consumers can be protected by other means
1	1	Accountants	34,141	X	X			X	X
2	5	Alcoholic Beverages And Tobacco (Including Manufacturers, Distributors And Retailers)	72,391			X	X	X	X
3	16	Animal Carcass or Animal Refuse Haulers	476	X	X	X			X
4	18	Architects	9,878	X	X		X		X
5	22	Asbestos Consultants	224 (includes Asbestos)	X	X		X	X	X
6	25	Asbestos Contractors	224 (includes Asbestos)	X	X		X	X	X
7	29	Athlete Agents	209	X	X	X	X	X	X
8	31	Auctioneer Apprentices	1,760 (includes Auctioneers)	X	X	X	X	X	X
9	34	Auctioneers	1,760 (includes Auctioneer)	X	X	X	X	X	X
10	37	Barbers	15,043	X	X		X		X
11	41	Boxing, Kick Boxing, and Mixed Martial Arts	3,550	X	X	X		X	X
12	44	Building Code Administrators And Inspectors	9,485	X	X			X	X
13	48	Business Opportunities	2,550	X	X	X	X	X	X
14	50	Cattle Owners with Officially Registered Brands	5,423	X	X	X			X
15	51	Charitable Organizations	16,588	X	X	X		X	X
16	54	Child Labor	198		X	X		X	X
17	57	Community Association Managers	16,622	X	X		X		X
18	60	Condominiums and Cooperatives	23,202 (associations, not	X	X	X			X
19	62	Construction Industry Contractors	86,499		X			X	X
20	71	Cosmetologists	195,812	X	X		X		X

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21	75	Dance Studios	223	X	X	X	X		X
22	77	Electrical Contractors	12,591		X			X	X
23	82	Elevator Safety	50,684					X	X
24	85	Employee Leasing Companies	700	X	X	X	X		X
25	89	Engineers	19,956		X			X	X
26	92	Fair Rides and Games	1,669		X	X			X
27	94	Farm Labor Contractor	3,050	X	X	X		X	X
28	97	Feral Swine Trappers or Facility Managers	1,380		X	X			X
29	99	Food Establishments (Pre-packaged Foods, i.e., Grocery Stores)	51,283	X	X	X		X	X
30	102	Game Promotions	5,928	X	X	X		X	X
31	104	Harbor Pilots	110	X	X		X	X	X
32	108	Health Studios (Gyms)	2,134	X	X	X		X	X
33	110	Home Inspection Services	Not Available	X	N/A		X		X
34	112	Homeowners Associations	Unknown	X	N/A	X			X
35	114	Interior Designers	3,047	X	X		X		X
36	118	Intrastate Movers	998	X	X	X		X	X
37	120	Landscape Architecture	1,489	X	X		X		X
38	124	Lodging	37,273		X	X		X	X
39	127	Mobile Home Parks	2,438 (MH Parks, not licenses)	X	X	X			X
40	129	Mold-Related Services	Not Available	X	N/A				X

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41	132	Motor Vehicle Repair Shops	24,484	X	X	X		X	X
42	134-140	Pari-Mutuel Wagering	31 Permits 30,631 Occupational						
43	135	Pari-Mutuel Wagering		X	X	X	X	X	X
44	137	Intertrack Wagering		X	X	X	X	X	X
45	138	Cardrooms		X	X	X	X	X	X
46	139	Slots		X	X	X	X	X	X
47	141	Pawn Shops	1,368	X	X	X		X	X
48	143	Professional Geology	2,267	X	X		X	X	X
49	147	Professional Surveyors And Mappers	3,770	X	X		X	X	X
50	150	Real Estate Appraisers And Appraisal Management Companies	10,073	X	X		X	X	X
51	156	Real Estate Brokers, Sales Associates, and Schools	296,382	X	X		X	X	X
52	161	Restaurants (Prepared Foods-Sit Down or Carry Out)	41,418			X		X	X
53	164-172	Security Industry:							
54	165	Firearms (Concealed Weapons Permits and Firearm Instructors)	661,591	X	X				X
55	166	Security Services	153,236		X				X
56	168	Private Investigative Services	13,271		X				X
57	170	Recovery Services	2,105		X				X
58	173	Sellers Of Travel	6,855	X	X	X		X	X
59	175	Swine Garbage Feeders	72	X	X	X		X	X
60	177	Talent Agencies	201	X	X	X	X		X

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61	179	Telemarketing	18,205	X	X	X		X	X
62	182	Timeshares	549 (Timeshare projects, not	X	X	X			X
63	184	Veterinary Medicine	8,325					X	X
64	187	Yacht and Ship Brokers	2,663	X	X	X			X

- (1) Whether the regulated practice of the profession or occupation is indispensable to public health or safety?
- (2) Whether there has been significant disciplinary actions taken that are primarily the result of consumer complaints related to health or safety violations ?
- (3) Whether the license/registration requires an examination or continuing education courses?
- (4) Whether the regulations are primarily designed to benefit the regulated entity by limiting competition?
- (5) Whether the regulated profession or occupation is regulated by other entities, i.e., Federal Government, Local Governments, State or National Associations, etc.?
- (6) Whether the consumers can be protected by other means such as statutory requirements and penalties for non-compliance?