

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

REGULATED INDUSTRIES
 Senator Jones, Chair
 Senator Sachs, Vice Chair

MEETING DATE: Tuesday, March 29, 2011
TIME: 1:00 —3:00 p.m.
PLACE: Toni Jennings Committee Room, 110 Senate Office Building

MEMBERS: Senator Jones, Chair; Senator Sachs, Vice Chair; Senators Altman, Braynon, Dean, Diaz de la Portilla, Hill, Norman, Rich, Siplin, Thrasher, and Wise

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
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Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointment to the office indicated.

Secretary of the Department of the Lottery

1	O'Connell, Cynthia F. (Tallahassee)	Pleasure of Governor
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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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2	SB 1196 Bogdanoff (Compare CS/H 941)	Construction Liens on Leased Premises; Specifies circumstances under which the interest of a lessor in leased premises is subject to a construction lien for an improvement made by a lessee. Provides that the interest of the lessor is not subject to a lien if certain documents relating to a lessor's liability for a construction lien are recorded in the official records before the recording of a notice of commencement. Provides that the owner of property for purposes of a notice of commencement is a lessee that contracts for an improvement on leased premises, etc.	
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RI 03/29/2011
 JU
 CM

3	SB 1428 Latvala (Similar H 1205)	Veterinary Practice; Defines the term "limited service veterinary vaccination clinic." Revises terminology. Requires that the Board of Veterinary Medicine establish minimum standards for limited service veterinary vaccination clinics rather than limited service veterinary medical practices.	
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RI 03/29/2011
 BC

COMMITTEE MEETING EXPANDED AGENDA

Regulated Industries

Tuesday, March 29, 2011, 1:00 —3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1824 Hays (Compare H 5005, H 5007)	Regulated Professions and Occupations; Authorizes the Department of Highway Safety and Motor Vehicles to release certain digital images to the Department of Business and Professional Regulation to identify certain persons. Authorizes the Department of Business and Professional Regulation to grant waivers of renewal fees under certain circumstances. Revises continuing education requirements for license reactivations, etc. RI 03/29/2011 TR BC	
5	SB 1096 Hays (Compare H 1115)	Columbaria; Exempts from regulation certain columbaria located on a motorsports entertainment complex. RI 03/29/2011 CM CA	
6	SB 854 Negron (Identical H 837)	Production and Shipment of Wine; Authorizes the direct shipment of wine into and within this state for personal consumption only. Requires licensure of winery shippers by the Division of Alcoholic Beverages and Tobacco. Provides license requirements. Requires recipients of a direct shipment of wine to be at least 21 years of age. Requires proof of age of a recipient. Provides for the payment of taxes, a monthly report, and recordkeeping by winery shippers, etc. RI 03/29/2011 CM BC	
7	SB 662 Jones (Identical H 413)	Public Accountancy; Authorizes the Board of Accountancy to establish a peer review oversight committee. Revises licensure renewal requirements for firms engaged in certain aspects of the practice of public accounting. Requires firms engaged in certain aspects of the practice of public accounting to enroll in peer review programs and undergo peer reviews. Limits the liability of certain persons relating to the performance of certain services and duties of peer review administering organizations, etc. RI 03/29/2011 JU BC	

1405

STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections

I, Kurt S. Browning, Secretary of State,
do hereby certify that

Cynthia F. O'Connell

is duly appointed

**Secretary,
Department of Lottery**

for a term beginning on the
Ninth day of February, A.D., 2011,
to serve at the pleasure of the Governor
and is subject to be confirmed by the Senate
during the next regular session of the Legislature.



*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Twenty-Eighth day of February, A.D., 2011.*

A handwritten signature in black ink, appearing to read "Kurt S. Browning".

Secretary of State



RICK SCOTT
GOVERNOR

RECEIVED
2011 FEB -9 PM 3:09
DEPARTMENT OF STATE
DIVISION OF ELECTIONS

February 8, 2011

Mr. Kurt S. Browning, Secretary
Department of State
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Browning:

Please be advised I have made the following appointment under the provisions of Section 20.317, Florida Statutes:

Mrs. Cynthia F. O'Connell
1505 O'Connell Lane
Tallahassee, Florida 32317

as Secretary of the Department of Lottery, succeeding Leonardo C. DiBenigno, subject to confirmation by the Senate. This appointment is effective February 9, 2011, for a term ending at the pleasure of the Governor.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott
Governor

RS/jlw

QUESTIONNAIRE FOR GUBERNATORIAL APPOINTMENTS

The information from this questionnaire will be used by the Governor's office and, where applicable, The Florida Senate in considering action on your confirmation. The questionnaire MUST BE COMPLETED IN FULL. Answer "none" or "not applicable" where appropriate. Please type or print in black ink.

2/15/2011

Date Completed

1. Name: Mrs. O'Connell Cynthia F. (widow)
MR./MRS./MS. LAST FIRST MIDDLE/MAIDEN

2. Business Address: 250 Marriott Drive Tallahassee
STREET OFFICE # CITY
FL 32301 850-487-7728
POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER

3. Residence Address: 1505 O'Connell Lane Tallahassee Leon
STREET CITY COUNTY
FL 32317-8154 850-878-5911
POST OFFICE BOX STATE ZIP CODE AREA CODE/PHONE NUMBER

Specify the preferred mailing address: Business ☒ Residence ☐ Fax # 850-487-7709
(optional)

4. A. List all your places of residence for the last five (5) years.

ADDRESS	CITY & STATE	FROM	TO
<u>1505 O'Connell Lane</u>	<u>Tallahassee, FL</u>	<u>1997</u>	<u>Current</u>

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

ADDRESS	CITY & STATE	FROM	TO
<u>Peachtree Towers, Peachtree St.</u>	<u>Atlanta, GA</u>	<u>1995</u>	<u>1996</u>

5. Date of Birth: 12-17-56 Place of Birth: Roanoke, VA

6. Social Security Number:

7. Driver License Number: Issuing State: FL

8. Have you ever used or been known by any other legal name? Yes ☒ No ☐ If "Yes" Explain

Cynthia F. Bowling (Maiden Name)

9. Are you a United States citizen? Yes ☒ No ☐ If "No" explain:

If you are a naturalized citizen, date of naturalization:

10. Since what year have you been a continuous resident of Florida? 1959-1960 Moved from Roanoke, VA at age of 2

11. Are you a registered Florida voter? Yes ☒ No ☐ If "Yes" list:

A. County of registration: Leon

B. Current party affiliation: Republican

12. Education

A. High School: Columbia High School Year Graduated: 1974

(NAME AND LOCATION)

B. List all postsecondary educational institutions attended:

NAME & LOCATION	DATES ATTENDED	CERTIFICATES/DEGREES RECEIVED
Lake City Community College	1974-1976	Associate of Arts
Florida State University	1976-1978	Bachelor of Science
Louisiana State University	1982-84/86 Continuing Education Program	Graduate Institute of Bank Marketing

13. Are you or have you ever been a member of the armed forces of the United States? Yes ☐ No ☒ If "Yes" list:

A. Dates of service:

B. Branch or component:

C. Date & type of discharge:

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of \$150 or less was paid.) If "Yes" give details: No

DATE	PLACE	NATURE	DISPOSITION
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15. Concerning your current employer and for all of your employment during the last five years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

EMPLOYER'S NAME & ADDRESS	TYPE OF BUSINESS	OCCUPATION/JOB TITLE	PERIOD OF EMPLOYMENT
Florida Lottery O'Connell Consulting	Lottery Industry Public Relations/Communications	Secretary Partner/Owner	2/9/11 to Current 11/2009 - 2/2011
Hill & Knowlton	Public Relations	General Manager/Sr. Vice Pres.	2004 - 2009
RBB/RBBO	Public Relations	Managing Dir./Managing Partner	2002 - 2004
Weber Shandwick	Public Relations	Managing Director	2001-2002

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes ☒ No ☐

If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

POSITION	EMPLOYING AGENCY	PERIOD OF EMPLOYMENT
Director of Promotions	Florida Lottery	1988-1991

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

As a member of the start-up team for the Florida Lottery, I witnessed firsthand the excitement of the citizens of Florida to this new entertainment vehicle,
implemented to enhance public education. Since 1991 until today, I have built a career filled with a multitude of new consumer brand introductions and marketing
programs for corporations and institutions of higher learning. My long-standing relationship with the state's university system both through my late husband,
Stephen C. O'Connell, former president of the University of Florida and as a 10-year member of UF's Board of Trustees has given me a unique perspective of the role
that higher education plays in stimulating our economy today and in the future. The combination of marketing and a branding expertise combined with the
understanding of the vital role higher education plays in all Floridians' lives further qualifies me for this position.

- B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes ☐ No ☒ If "Yes", list:
My academic credentials including a BS in Communications from Florida State University; a graduate level certification in
financial marketing from Louisiana State University, and my various statewide leadership positions and volunteer
assignments have individually and collectively prepared me for this appointment.

- C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes ☒ No ☐
If "Yes", list:

Honorary member of Florida Blue Key, University of Florida

Honorary member of UF Alumni Association

Outstanding Alumni 2001, Lake City Community College

- D. Identify all association memberships and association offices held by you that relate to this appointment:
Not applicable

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government?
Yes ☐ No ☒ If "Yes", list:

19. A. Have you ever been elected or appointed to any public office in this state? Yes ☐ No ☒ If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

<u>OFFICE TITLE</u>	<u>DATE OF ELECTION OR APPOINTMENT</u>	<u>TERM OF OFFICE</u>	<u>LEVEL OF GOVERNMENT</u>

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: at least quarterly/University of Florida, Board of Trustees

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

MEETINGS ATTENDED

MEETINGS MISSED

REASON FOR ABSENCE

All University of Florida Board of Trustees' meetings have been attended with the exception of two. Those meetings missed were 4/28/2003 and 9/5/2003; due to professional work assignments.

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes ☐ No ☒ If "Yes", give details:

DATE

NATURE OF VIOLATION

DISPOSITION

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes ☐ No ☒ If "Yes", list:

A. Title of office: _____ C. Reason for suspension: _____

B. Date of suspension: _____ D. Result: Reinstated ☐ Removed ☐ Resigned ☐

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes ☒ No ☐ If "Yes", list:

A. Title of Office: University of Florida, Board of Trustees inaugural term

B. Term of Appointment: 7/1/2001-1/6/2006, 6/23/2003-1/1/2006, 1/6/2006-1/6/2011

C. Confirmation results: Confirmed

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes ☐ No ☒ If "Yes", explain:

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes ☐ No ☒ If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

LICENSE/CERTIFICATE

ORIGINAL

ISSUING AUTHORITY

DISCIPLINARY ACTION/DATE

TITLE & NUMBER

ISSUE DATE

25. A. Have you, or businesses of which you have been and owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☒ No ☐ If "Yes", explain:

NAME OF BUSINESS

YOUR RELATIONSHIP TO BUSINESS

BUSINESS' RELATIONSHIP TO AGENCY

Florida Virtual School

Consultant

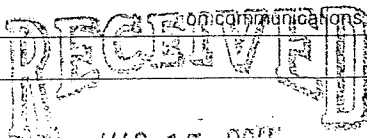
Public Relations

Agency for Workforce Innovation

Consultant/Subcontractor

Subcontractor to primary contractor

communications audit of AWI



MAR 15 2011

- B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☐ No ☒ If "Yes", explain:

<u>NAME OF BUSINESS</u>	<u>FAMILY MEMBER'S RELATIONSHIP TO YOU</u>	<u>FAMILY MEMBER'S RELATIONSHIP TO BUSINESS</u>	<u>BUSINESS' RELATIONSHIP TO AGENCY</u>
City of Lake City	Mother	Assistant City Manager	Administrative position in City Gov.
		(Retired)	

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes ☐ No ☒

A. Did you receive any compensation other than reimbursement for expenses? Yes ☐ No ☐

B. Name of agency or entity you lobbied and the principal(s) you represented:

<u>AGENCY LOBBIED</u>	<u>PRINCIPAL REPRESENTED</u>

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

<u>NAME</u>	<u>MAILING ADDRESS</u>	<u>ZIP CODE</u>	<u>AREA CODE/PHONE NUMBER</u>
The Honorable Wayne Mixson			
Dexter Douglas, Esq.			
Mr. Fred Dobbins			

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

<u>NAME</u>	<u>MAILING ADDRESS</u>	<u>OFFICE(S) HELD & TERM</u>	<u>DATE(S) OF MEMBERSHIP</u>
The Florida House	Number One Second St., N.E., Washington, DC	Board of Directors	1999-2013/ongoing member
Governor's Club	202 1/2 S. Adams Street, Tallahassee, FL	Board of Governors	2007-2010 /ongoing member
Economic Club of Florida	2952 Wellington Circle, Tallahassee, FL	Board of Directors	2008 to Current /ongoing member
University of Florida	P.O. Box 113125, Gainesville, FL	Board of Trustees	2001-2011
(See Addendum 1)			

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes ☐ No ☒ If "Yes", explain:

30. If required by law or administrative rule, will you file financial disclosure statements? Yes ☒ No ☐

ADDENDUM 1
QUESTIONNAIRE FOR GUBERNATORIAL APPOINTMENTS
CYNTHIA F. O'CONNELL

28. Name any business, professional, occupational, civic, or fraternal organization(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

<u>NAME</u>	<u>MAILING ADDRESS</u>	<u>OFFICE(S) HELD & TERM</u>	<u>DATE(S) OF MEMBERSHIP</u>
Florida Tax Watch	106 N. Bronough St., Tallahassee, FL	Board of Directors	2007-2009
The O'Connell Society	P.O. Box 118505, Gainesville, FL	Board of Directors	2008-2012
Sebastian Ferrero Foundation	105 S.W. 128 th St., Ste. 200, Jonesville, FL	Board of Directors	2011-ongoing
Leadership Florida	201 E. Park Avenue, Tallahassee, FL	Member	2002-ongoing

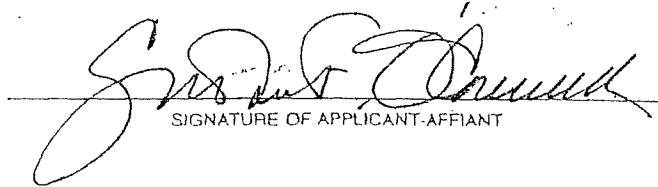
CERTIFICATION

STATE OF FLORIDA, COUNTY OF Leon

Before me, the undersigned Notary Public of Florida, personally appeared

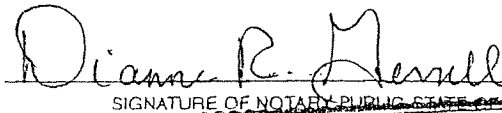
Cynthia F. O'Connell

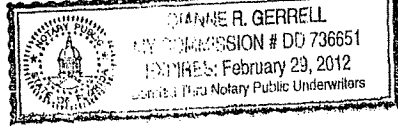
, who, after being duly sworn, says: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.


SIGNATURE OF APPLICANT-AFFIANT

Sworn to and subscribed before me

this 15th day of March, 2011


SIGNATURE OF NOTARY PUBLIC, STATE OF FLORIDA



(PRINT, TYPE OR STAMP COMMISSIONED NAME OF NOTARY PUBLIC)

My commission expires: _____

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____

RECEIVED
MAR 15 2011

COMMITTEE ON
ETHICS AND ELECTORALS

(SEAL)

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

County of Leon _____

2011 FEB -9 PM 3:09

DEPARTMENT OF STATE
DIVISION OF ELECTIONS

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Secretary of the Florida Lottery

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

Signature

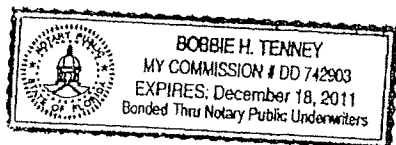
Sworn to and subscribed before me this 8th day of February, 2011.

Signature of Officer Administering Oath or of Notary Public

Bobbie H. Tenney
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☐ OR Produced Identification ☒

Type of Identification Produced _____



ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: Home Office

1505 OConnell Lane

Cynthia F. O'Connell

Street or Post Office Box

Print name as you desire commission issued

Tallahassee, Florida 32317

City, State, Zip Code

Signature



156912

LEGISLATIVE ACTION

Senate

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House

The Committee on Regulated Industries (Altman) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 713.10, Florida Statutes, is amended to
read:

713.10 Extent of liens.—

(1) Except as provided in s. 713.12, a lien under this part
shall extend to, and only to, the right, title, and interest of
the person who contracts for the improvement as such right,
title, and interest exists at the commencement of the
improvement or is thereafter acquired in the real property. When



156912

an improvement is made by a lessee in accordance with an agreement between such lessee and her or his lessor, the lien shall extend also to the interest of such lessor.

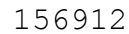
(2)(a) When the lease expressly provides that the interest of the lessor shall not be subject to liens for improvements made by the lessee, the lessee shall notify the contractor making any such improvements of such provision or provisions in the lease, and the knowing or willful failure of the lessee to provide such notice to the contractor shall render the contract between the lessee and the contractor voidable at the option of the contractor.

(b) The interest of the lessor shall not be subject to liens for improvements made by the lessee when:

1. The lease, or a short form or a memorandum of the lease that contains the specific language in the lease prohibiting such liability, is recorded in the official records of the county where the premises are located before the recording of a notice of commencement for improvements to the premises

~~(1) The lease or a short form thereof is recorded in the clerk's office and the terms of the lease expressly prohibit such liability; or~~

~~2.(2) The terms All of the lease expressly prohibit such liability and a notice advising that leases entered into by a lessor for the rental of premises on a parcel of land prohibit such liability and a notice which sets forth the following is~~
has been recorded by the lessor in the official public records of the county in which the parcel of land is located before the recording of a notice of commencement for improvements to the premises and the notice includes the following:



WARNING



156912

YOUR FAILURE TO SERVE THE REQUESTED VERIFIED COPY WITHIN 30 DAYS OR THE SERVICE OF A FALSE COPY MAY RESULT IN YOUR PROPERTY BEING SUBJECT TO THE CLAIM OF LIEN OF THE PERSON REQUESTING THE VERIFIED COPY.

Section 2. Paragraphs (a) and (d) of subsection (1) of section 713.13, Florida Statutes, are amended to read:

713.13 Notice of commencement.—

(1)(a) Except for an improvement that is exempt pursuant to s. 713.02(5), an owner or the owner's authorized agent before actually commencing to improve any real property, or recommencing completion of any improvement after default or abandonment, whether or not a project has a payment bond complying with s. 713.23, shall record a notice of commencement in the clerk's office and forthwith post either a certified copy thereof or a notarized statement that the notice of commencement has been filed for recording along with a copy thereof. The notice of commencement shall contain the following information:

1. A description sufficient for identification of the real property to be improved. The description should include the legal description of the property and also should include the street address and tax folio number of the property if available or, if there is no street address available, such additional information as will describe the physical location of the real property to be improved.

2. A general description of the improvement.

3. The name and address of the owner, the owner's interest in the site of the improvement, and the name and address of the fee simple titleholder, if other than such owner. A lessee who contracts for the improvements is an owner as defined under s.



156912

713.01(23) and must be listed as the owner.

4. The name and address of the contractor.

5. The name and address of the surety on the payment bond under s. 713.23, if any, and the amount of such bond.

6. The name and address of any person making a loan for the construction of the improvements.

7. The name and address within the state of a person other than himself or herself who may be designated by the owner as the person upon whom notices or other documents may be served under this part; and service upon the person so designated constitutes service upon the owner.

(d) A notice of commencement must be in substantially the following form:

Permit No..... Tax Folio No.....

NOTICE OF COMMENCEMENT

State of....

County of....

The undersigned hereby gives notice that improvement will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement.

1. Description of property: ...(legal description of the property, and street address if available)....

2. General description of improvement:.....

3. Owner information (A contracting party who is a lessee is an owner as defined under section 713.01(23), Florida Statutes, and must be listed here as the owner):.....



156912

129 a. Name and address:.....
130 b. Interest in property:.....
131 c. Name and address of fee simple titleholder (if other
132 than Owner):.....
133 4.a. Contractor: ...(name and address)....
134 b. Contractor's phone number:.....
135 5. Surety
136 a. Name and address:.....
137 b. Phone number:.....
138 c. Amount of bond: \$.....
139 6.a. Lender: ...(name and address)....
140 b. Lender's phone number:.....
141 7.a. Persons within the State of Florida designated by
142 Owner upon whom notices or other documents may be served as
143 provided by Section 713.13(1)(a)7., Florida Statutes: ...(name
144 and address)....
145 b. Phone numbers of designated persons:.....
146 8.a. In addition to himself or herself, Owner designates
147 of to receive a copy of the Lienor's
148 Notice as provided in Section 713.13(1)(b), Florida Statutes.
149 b. Phone number of person or entity designated by
150 owner:.....
151 9. Expiration date of notice of commencement (the
152 expiration date is 1 year from the date of recording unless a
153 different date is specified).....
154

155 WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE
156 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER
157 PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA



156912

STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

...(Signature of Owner or Owner's Authorized Officer/Director/Partner/Manager/Lessee—a contracting party who is a lessee meets the definition of owner under section 713.01(23), Florida Statutes, and should sign here as the owner)...

...(Signatory's Title/Office)...

The foregoing instrument was acknowledged before me this day of, ...(year)...., by ...(name of person)... as ...(type of authority, . . . e.g. officer, trustee, attorney in fact)... for ...(name of party on behalf of whom instrument was executed)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known OR Produced Identification

Type of Identification Produced.....

Verification pursuant to Section 92.525, Florida Statutes.

Under penalties of perjury, I declare that I have read the



156912

foregoing and that the facts stated in it are true to the best of my knowledge and belief.

...(Signature of Natural Person Signing Above)...

Section 3. This act shall take effect October 1, 2011.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to construction liens; amending s.
713.10, F.S.; specifying that a lessor's interest in
property is not subject to a construction lien for
improvements made by a lessee if certain documents
containing specific information and meeting certain
criteria are recorded in the official records of the
county before the recording of a notice of
commencement; authorizing certain contractors and
lienors to demand that a lessor serve verified copies
of a lease prohibiting liability for improvements made
by a lessee; subjecting the interest of a lessor to a
specified lien for failing to serve such verified
copies or serving a false or fraudulent copy;
requiring that the demand include a specified warning;
amending s. 713.13, F.S.; revising the form for notice
of commencement to include information relating to the
obligations of a lessee who contracts for improvements



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to property providing an effective date.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Regulated Industries Committee

BILL: SB 1196

INTRODUCER: Senator Bogdanoff

SUBJECT: Construction Liens on Leased Premises

DATE: March 25, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	Pre-meeting
2.			JU	
3.			CM	
4.				
5.				
6.				

I. Summary:

The construction lien law allows persons who are enhancing an owner's property to file a lien for the value of the improvement. In certain circumstances, a construction lien may be placed against a lessor's property for work done on behalf of a lessee. However, a lessor may limit or prohibit such liens provided the lessor includes a prohibition in the lease and records notice thereof in the public records. This bill amends when the interest of a lessor of leased premises is subject to a construction lien for an improvement made by a lessee.

The bill provides that a lessor may file a memorandum of the lease, in lieu of a copy of the lease, in the official records of the county where the leased premises are located. The bill provides that a lessor may file a notice in the public records that the leases prohibit liens, if the lessor leases multiple premises on a parcel and all of the leases expressly prohibit the imposition of liens; the notice must contain the name of the lessor, name of the lessee, and a statement that all of the leases prohibit the imposition of liens. In addition, if a lessor leases multiple premises but not all of the leases contain such a prohibition, the bill provides that a notice may be filed in the public records, but the notice must list all of the leases that do allow for the attachment of a lien on the leased property. A creditor or purchaser of the parcel may rely on the notice.

The bill provides that a contractor may serve a demand on the lessor for a verified copy of the provision in the lease. Failure of the lessor to comply with the demand may result in the contractor being able to attach a lien on the property.

The bill also provides that the lessee who contracts for an improvement must be listed on a Notice of Commencement as the owner of the property.

This bill substantially amends the following sections of the Florida Statutes: 713.1 and 713.13.

II. Present Situation:

Overview

A construction lien¹ is an equitable device designed to protect subcontractors, sub-subcontractors, laborers and suppliers of material who remain unpaid after the owner has paid the contractor directly.² The lien law protects subcontractors, sub-subcontractors, laborers, and suppliers of materials by allowing them to place a lien to ensure payment on the property receiving their services. Another purpose of lien law is to protect owners by requiring subcontractors to provide a notice of possible liens, thereby preventing double payments to contractors and subcontractors, material suppliers, or laborers for the same services or materials.

Construction lien statutes set forth a right of action that did not exist at common law, and thus construction liens are purely statutory.

Part I of ch. 713, F.S., requires various notices, demands and requests to be provided in writing to the homeowner, contractor, subcontractor, lender, and building officials. It requires that the notices, demands and requests be in a statutory form. The following notices are complicated but important for the homeowner to understand during this process: Notice of Commencement, Notice to Owner, Claim of Lien, Notice of Termination, Waiver and Release of Lien, Notice of Contest of Lien, Contractor's Final Payment Affidavit, and Demands of Written Statement of Account. The procedure that a homeowner follows in paying for improvements under part I of ch. 713, F.S., determines whether a payment is proper or improper.³ An improper payment could result in the homeowner paying twice for the same improvement.⁴

Notice of Commencement

Section 713.13, F.S., provides that the recording of a Notice of Commencement (NOC) gives constructive notice that claims of lien may be recorded and will have priority over any conveyance, encumbrance, or demand not recorded against the real property prior to the time the notice is recorded. However, any conveyance, encumbrance, or demand recorded prior to the

¹ Lien is not defined in ch. 713, F.S., but can be found elsewhere in the Florida Statutes to mean "a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien." See ss. 726.102(8) and 727.103(9), F.S.

² *Stunkel v. Gazebo Landscaping Design, Inc.*, 660 So. 2d 623 (Fla. 1995).

³ An improper payment is a payment made by a homeowner to a contractor that does not fall within the proper payment defense to a lien under s. 713.06(3), F.S. Improper payments can occur if the homeowner fails to file a Notice of Commencement or fails to obtain a release or waiver of lien after receiving a notice to owner and paying the subcontractor.

⁴ The procedure that a homeowner follows in paying for improvements under pt. I of ch. 713, F.S., determines whether a payment is proper or improper. Making a payment that is improper could result in the homeowner paying twice for the same improvement because the payment is not credited against the owners' potential liability for payment of liens. See Fred R. Dudley, *Florida Construction Liens: Representing the Residential Owner*, 79 Fla. Bar J. 34 (Dec. 2005). See also *Review of the Florida Construction Lien Law*, Interim Report No. 2009-124, Florida Senate Committee on Regulated Industries, October 2008.

time the notice is recorded and any proceeds thereof regardless of when disbursed, shall have priority over liens.

The NOC must be recorded with the clerk of the court where the property is located by the owner or the owner's agent before a contractor actually begins an improvement to real property or recommences completion of any improvement after default or abandonment. A certified copy of the recorded notice or a notarized statement of filing and a copy must be posted at the jobsite. The NOC must include the legal description of the property, the street address and the tax folio number, if available. It must also include a general description of the improvement, the name and address of the owner, the name and address of the contractor, the name and address of any person designated to receive notices, and the anticipated expiration date if different from one year. The form for the NOC is provided in s. 713.13(1)(d), F.S.

For contracts greater than \$2,500, the applicant for the building permit must file a certified copy of the recorded notice or a notarized statement of filing and a copy with the building permit authority. The notice must be filed before the first inspection or the property will not be inspected.⁵

A NOC is specifically not required prior to issuing a building permit.⁶ The building permit must include a 12-point capitalized warning regarding the necessity of filing a NOC.⁷ All liens from persons who do work to improve a property relate back to the filing of the NOC.⁸

The NOC is valid for 1 year, unless otherwise stated in the notice. Any payments made by the owner after the expiration of the NOC are considered to be improper payments.⁹ If the improvement described in the NOC is not commenced within 90 days of the recording of the notice, then the notice is "void and of no further effect" which results in any payments after that time also being improper.¹⁰

Liens on Leased Premises

Section 713.10, F.S., provides that a lien extends only to the right, title, and interest of the person who contracts for the improvement as such right, title, and interest exists at the commencement of the improvement or is later acquired in the property. If a lessee contracts for improvements to the real property, in agreement with the lessor, any resulting liens shall also extend to the interest of the lessor.¹¹ If the lease provides that the lessor is not subject to any resulting liens from contracts of the lessee, the lessee must disclose the terms of the lease to the contractor so that the contractor can act accordingly. If the lessee knowingly or willfully fails to notify the contractor of such a term in the lease, the contract is voidable at the option of the contractor.¹²

⁵ Section 713.135(1)(d), F.S. However, for a direct contract to repair or replace an existing heating or air conditioning system, the threshold is contracts greater than \$7,500.

⁶ Section 713.135(1)(d) and (e), F.S.

⁷ Section 713.135(1)(a), F.S.

⁸ Section 713.07(2), F.S.

⁹ Section 713(1)(c), F.S.

¹⁰ Section 713.13(2), F.S.

¹¹ Section 713.10, F.S.

¹² *Id.*

Section 713.10, F.S., provides two alternatives for lessors to avoid liens. The section provides that the interest of the lessor shall not be subject to liens when:

- The lease or a short form of the lease is recorded in the clerk's office and the terms of the lease expressly prohibit liability for liens;¹³ or
- All of the leases entered into by a lessor for the rental of premises on a parcel of land prohibit such liability and a notice which sets forth the following is recorded by the lessor in the public records of the county in which the parcel of land is located:
 - The name of the lessor.
 - The legal description of the parcel of land to which the notice applies.
 - The specific language contained in the various leases prohibiting the liability.
 - A statement that all leases entered into for premises on the parcel of land contain the language identified above.¹⁴

In addition, the interest of the lessor shall not be subject to liens when the lessee is a mobile home owner who is leasing a mobile home lot in a mobile home park from the lessor.¹⁵

Court Interpretation

In 2010, the Fourth District Court of Appeals held that a lessor who attempted to avail himself of the protection against liens resulting from contracts of tenants filed a defective notice.¹⁶ The lessor posted a notice that all of the leases on his property contained language prohibiting liens and the court held that the notice was defective because the notice did not contain the specific language prohibiting the liens from every contract. In this case, every lease for the property contained a prohibition against liens, although with variation in terms, but the notice that was filed contained language different from the language in the lease. Even though all leases and notices contained a prohibition against liens, and even though it was not in dispute that the notices were filed in the public records prior to the lessee contracting for the project, the court held that because the plain language of s. 713.10(2), F.S., requires the notice to contain the "specific language" contained in the various leases, the notice was defective because it contained different language.

Because of this interpretation, when a lessor seeks to prohibit liens from attaching to his property, a lessor must use the same language in every contract and must use that language in his notice. Otherwise, the lessor of properties on a parcel of land cannot avail themselves of s. 713.10(2), F.S., and must instead file a copy of every lease or short form with the clerk's office in the county where the property is located.

III. Effect of Proposed Changes:

The bill amends the procedures for protecting a leased premise from a construction lien when the improvement is contracted for by a tenant of the property.

¹³ Section 713.10(1), F.S.

¹⁴ Section 713.10(2), F.S.

¹⁵ Section 713.10(3), F.S.

¹⁶ *Everglades Electric Supply, Inc. v. Paraiso Granite, LLC*, 28 So.3d 235 (4th DCA 2010).

The bill amends s. 713.10(1), F.S., to add that a lessor may record a memorandum of the lease that contains the specific language in the lease that prohibits the imposition of a lien in the official records of the county where the leased premise is located in lieu of filing a copy of the actual lease. The bill also requires that the recording of the lease or memorandum of the lease must be recorded prior to the recording of a notice of commencement to be effective.

The bill amends s. 713.10(2), F.S., to provide that a lessor who leases more than one premise on a parcel of land, when all of the leases expressly prohibit the imposition of a lien, may record a notice in the official records of the county where the leased premises are located which includes:

- The name of the lessor.
- The name of the lessee.
- The legal description of the parcel of land to which the notice applies.
- A statement that all of the lessor's leases of premises on the parcel expressly prohibit the imposition of a lien.

The bill provides that if a lessor leases more than one premise on a parcel of land, but only some of the leases expressly prohibit the imposition of a lien, the lessor may record a notice in the official records of the county where the leased premises are located which includes:

- The name of the lessor.
- The name of the lessee.
- The legal description of the parcel of land to which the notice applies.
- The identification of each specific premise that may be subject to a lien for improvements made by the lessee, which list may be amended to revise the list of leased premises that may be subject to a lien so long as the recording occurs prior to any notice of commencement being filed.

The bill creates subsection (4) to provide that a creditor that is secured by an interest in a parcel, or a purchaser for consideration of a parcel, may rely on a recorded lease, memorandum of lease, or notice that prohibits the imposition of a lien. There is no duty to inquire into the terms of the lease to verify a memorandum or notice. Any lienor who is materially prejudiced by a willful misstatement of fact by a lessor in a memorandum or notice has a cause of action against the lessor for damages sustained in the amount that the lienor would have otherwise been able to establish as a construction lien.

The bill creates subsection (5) and provides that the identification of a premise in a memorandum of lease or recorded notice does not constitute actual or constructive notice of the lease or the interests of the named lessee. This subsection further provides that this subsection does not affect the rights of lienors against the interest of the lessor or lessee identified in a memorandum of lease or notice. The effect of this provision is unclear.

The bill amends s. 713.10(3), F.S., and rennumbers it as a new subsection (6).

The bill creates subsection (7) and provides that a contractor or lienor may serve written demand on a lessor for a verified copy of the provision in the lease between such lessee and lessor which prohibits the imposition of a lien for an improvement made by the lessee. A demand for a copy of the pertinent portion of the lease must contain a warning to the lessor in conspicuous type and be in substantially the following form:

WARNING: YOUR PROPERTY MAY BE SUBJECT TO A CONSTRUCTION LIEN
IF YOU FAIL TO SERVE A VERIFIED COPY OF THE LEASE PROVISION
WITHIN 30 DAYS AFTER YOU RECEIVE THIS DEMAND OR IF YOU SERVE A
FALSE OR FRAUDULENT COPY OF THE LEASE PROVISION.

The bill provides that the lessor must serve a copy of the provision of the lease, which must be verified, on the contractor or lienor within 30 days after receipt of the demand. If the lessor fails to comply, the lessor's property is subject to a lien if the party demanding the verified copy is otherwise entitled to a lien and did not have actual notice that the interest of the lessor is not subject to liens for improvements made by the lessee.

The bill amends s. 713.13(1)(a), F.S., to provide that a lessee who contracts for the improvement is an owner for purposes of the notice of commencement and must be listed as owner on the notice of commencement form.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill creates an additional method for a lessor to protect his property against liens and amends the current procedures. The bill appears to make it easier for a lessor to protect his property from contracts of his or her lessees.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.



521832

LEGISLATIVE ACTION

Senate

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House

The Committee on Regulated Industries (Norman) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (6) of section 474.202, Florida
Statutes, is amended to read:

474.202 Definitions.—As used in this chapter:

(6) "Limited-service veterinary vaccination clinic ~~medical
practice~~" means a veterinary practice at which a veterinarian
performs vaccinations or immunizations on multiple animals at a
temporary location and operates for a limited time ~~offering or
providing veterinary services at any location that has a primary~~



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~~purpose other than that of providing veterinary medical service at a permanent or mobile establishment permitted by the board; provides veterinary medical services for privately owned animals that do not reside at that location; operates for a limited time; and provides limited types of veterinary medical services.~~

Section 2. Subsection (7) of section 474.215, Florida Statutes, is amended to read:

474.215 Premises permits.—

(7) The board by rule shall establish minimum standards for the operation of limited service veterinary vaccination clinics ~~medical practices~~. Such rules shall ~~not restrict limited service veterinary medical practices and shall~~ be consistent with the type of limited veterinary vaccination and immunization services ~~medical service~~ provided.

(a) Any person that offers or provides limited service veterinary vaccination clinics ~~medical practice~~ shall obtain a biennial permit from the board the cost of which shall not exceed \$250. The limited service permittee shall register each location where a limited service veterinary vaccination clinic is held and shall pay a fee set by rule not to exceed \$25 to register each such location.

(b) All permits issued under this subsection are subject to the provisions of ss. 474.213 and 474.214.

(c) Notwithstanding any provision of this subsection to the contrary, any temporary rabies vaccination effort operated by a county health department in response to a public health threat, as declared by the State Health Officer in consultation with the State Veterinarian, is not subject to any preregistration, time limitation, or fee requirements, but must adhere to all other



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requirements for limited service veterinary vaccination clinics
~~medical practice~~ as prescribed by rule. The fee charged to the
public for a rabies vaccination administered during such
temporary rabies vaccination effort may not exceed the actual
cost of administering the rabies vaccine. Such rabies
vaccination efforts may not be used for any purpose other than
to address the public health consequences of the rabies
outbreak. The board shall be immediately notified in writing of
any temporary rabies vaccination effort operated under this
paragraph.

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

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to veterinary practice; amending s.
474.202, F.S.; defining the term "limited service
veterinary vaccination clinic"; amending s. 474.215,
F.S.; revising terminology; requiring that the Board
of Veterinary Medicine establish minimum standards for
limited service veterinary vaccination clinics rather
than limited service veterinary medical practices;
providing an effective date.



619342

LEGISLATIVE ACTION

Senate

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House

The Committee on Regulated Industries (Norman) recommended the following:

Senate Amendment to Amendment (521832) (with title amendment)

Between lines 51 and 52
insert:

Section 3. Section 455.2185, Florida Statutes, is amended
to read:

455.2185 Exemption for certain out-of-state or foreign
professionals; limited practice permitted.—

(1) A professional of any other state or of any territory
or other jurisdiction of the United States or of any other
nation or foreign jurisdiction is exempt from the requirements



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of licensure under this chapter and the applicable professional practice act under the agency with regulatory jurisdiction over the profession if that profession is regulated in this state under the agency with regulatory jurisdiction over the profession and if that person:

(a) Holds, if so required in the jurisdiction in which that person practices, an active license to practice that profession.

(b) Engages in the active practice of that profession outside the state.

(c) Is employed or designated in that professional capacity by a sports entity visiting the state for a specific sporting event.

(2) A professional's practice under this section is limited to the members, coaches, and staff of the team for which that professional is employed or designated ~~and to any animals used if the sporting event for which that professional is employed or designated involves animals. A professional practicing under authority of this section shall not have practice privileges in any licensed veterinary facility without the approval of that facility.~~

Section 4. Section 456.023, Florida Statutes, is amended to read:

456.023 Exemption for certain out-of-state or foreign professionals; limited practice permitted.—

(1) A professional of any other state or of any territory or other jurisdiction of the United States or of any other nation or foreign jurisdiction is exempt from the requirements of licensure under this chapter and the applicable professional practice act under the agency with regulatory jurisdiction over



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the profession if that profession is regulated in this state under the agency with regulatory jurisdiction over the profession and if that person:

(a) Holds, if so required in the jurisdiction in which that person practices, an active license to practice that profession.

(b) Engages in the active practice of that profession outside the state.

(c) Is employed or designated in that professional capacity by a sports entity visiting the state for a specific sporting event.

(2) A professional's practice under this section is limited to the members, coaches, and staff of the team for which that professional is employed or designated ~~and to any animals used if the sporting event for which that professional is employed or designated involves animals.~~ A professional practicing under authority of this section shall not have practice privileges in any licensed health care facility ~~or veterinary facility without the approval of that facility.~~

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Between lines 65 and 66
insert:

amending ss. 455.2185 and 456.023, F.S.; deleting provisions that limit the practice privileges of out-of-state or foreign health care professionals or veterinarians who are in this state for a specific sporting event;

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Regulated Industries Committee

BILL: SB 1428

INTRODUCER: Senator Latvala

SUBJECT: Veterinary Practice

DATE: March 23, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The bill defines the term “limited service veterinary vaccination clinic” to mean veterinary practice in which a veterinarian performs vaccinations or immunizations on multiple animals at a temporary location. The bill requires the board to establish by rule minimum standards for limited-service veterinary vaccination clinics. The rules must be consistent with the type of limited veterinary vaccination service provided.

This bill substantially amends sections 474.202 and 474.215, Florida Statutes.

II. Present Situation:

The Board of Veterinary Medicine (board) within the Department of Business and Professional Regulation (department) is the agency charged with the regulation of the practice of veterinary medicine under ch. 474, F.S.

Section 474.202(6), F.S., defines the term “limited-service veterinary medical practice” to mean:

offering or providing veterinary services at a location that has a primary purpose other than that of providing veterinary medical services at a permanent or mobile establishment permitted by the Board of Veterinary Medicine; provides veterinary medical services for privately owned animals that do not reside at that location; operates for a limited time; and provides limited types of veterinary medical services.

Section 474.202(9), F.S., defines the term “practice of veterinary medicine” to mean:

diagnosing the medical condition of animals and prescribing, dispensing, or administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease thereof; performing any manual procedure for the diagnosis of or treatment for pregnancy or fertility or infertility of animals; or representing oneself by the use of titles or words, or undertaking, offering, or holding oneself out, as performing any of these functions. The term includes the determination of the health, fitness, or soundness of an animal.

Section 474.215(7), F.S., requires the board to establish by rule minimum standards for limited-service veterinary medical practices. The rules cannot restrict limited service veterinary medical practices and must be consistent with the type of limited veterinary medical service provided. The board has defined by rule minimum standards to include vaccinations, immunizations and preventative procedures for parasitic control¹ on multiple animals at a temporary location and for a limited time.² The rule defines the term “limited time” as no more than once every two weeks and no more than four hours in any one day for any single location where a clinic is held.³

According to the department, anyone, such as a retailer, may obtain a permit for limited service veterinary medical permit, but a licensed veterinarian must perform the services. These limited service clinics are inspected on a random basis. There has been an issue with these clinics not notifying the department before the clinic is conducted.

Mobile veterinarian clinics are licensed, must have a premises permit for the mobile unit, and must be inspected prior to providing veterinarian services. A “mobile veterinary establishment” and “mobile clinic” is:

a mobile unit which contains the same treatment facilities as are required of a permanent veterinary establishment or which has entered into a written agreement with another veterinary establishment to provide any required facilities not available in the mobile unit. The terms do not refer to the use of a car, truck, or other motor vehicle by a veterinarian making a house call.⁴

III. Effect of Proposed Changes:

The bill creates s. 474.202(7), F.S., to define the term “limited service veterinary vaccination clinic.” The bill defines the term to mean veterinary practice in which a veterinarian performs vaccinations or immunizations on multiple animals at a temporary location.

The bill amends s. 474.215(7), F.S., to require the board to establish by rule minimum standards for limited-service veterinary vaccination clinics. It deletes the provision that requires the board

¹ According to the department, preventive services for parasitic control may require a prescription and testing to determine the health status of an animal.

² Rule 61G18-15.007, F.A.C.

³ Rule 61G18-15.007(1), F.A.C.

⁴ Section 474.202(7), F.S.

to establish by rules minimum standards for limited-service veterinary medical practices. The rules must be consistent with the type of limited veterinary vaccination service provided.

Rule 61G18-15.007, F.A.C., permits “limited-service veterinary medical practices” to perform preventive procedures for parasitic control. The bill would delete the board’s authority for this rule, and would not permit “limited service veterinary vaccination clinics” to perform preventive procedures for parasitic control.

The department indicated that this bill would not affect mobile veterinary clinics or veterinarians who make house calls.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



294240

LEGISLATIVE ACTION

Senate

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House

The Committee on Regulated Industries (Dean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 51 - 348
and insert:
the purpose of identifying subjects who are under investigation
for unlicensed activity pursuant to s. 455.228; to the
Department of State pursuant to an interagency agreement to
facilitate determinations of eligibility of voter registration
applicants and registered voters in accordance with ss. 98.045
and 98.075; to the Department of Revenue pursuant to an
interagency agreement for use in establishing paternity and
establishing, modifying, or enforcing support obligations in



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Title IV-D cases; to the Department of Children and Family Services pursuant to an interagency agreement to conduct protective investigations under part III of chapter 39 and chapter 415; to the Department of Children and Family Services pursuant to an interagency agreement specifying the number of employees in each of that department's regions to be granted access to the records for use as verification of identity to expedite the determination of eligibility for public assistance and for use in public assistance fraud investigations; or to the Department of Financial Services pursuant to an interagency agreement to facilitate the location of owners of unclaimed property, the validation of unclaimed property claims, and the identification of fraudulent or false claims.

Section 2. Subsection (12) is added to section 455.213, Florida Statutes, to read:

455.213 General licensing provisions.—

(12) The department may grant a fee waiver for a license renewal to a licensee on a case-by-case basis due to financial hardship or an error caused by the department.

Section 3. Subsection (10) of section 455.271, Florida Statutes, is amended to read:

455.271 Inactive and delinquent status.—

(10) The board, or the department if there is no board, shall require ~~Before reactivation,~~ an inactive or delinquent licensee, except a licensee under chapter 473 or chapter 475, to complete one renewal cycle of ~~shall meet the same~~ continuing education in order to reactivate a license ~~requirements, if any, imposed on an active status licensee for all biennial licensure periods in which the licensee was inactive or delinquent. This~~



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~~subsection does not apply to persons regulated under chapter
473.~~

Section 4. Subsection (1) of section 475.42, Florida
Statutes, is amended to read:

475.42 Violations and penalties.—

(1) VIOLATIONS.—

(a) A person may not operate as a broker or sales associate
without being the holder of a valid and current active license
therefor. Any person who violates this paragraph commits a
felony of the third degree, punishable as provided in s. 775.082
or s. 775.083, or, if a corporation, as provided in s. 775.083.

(b) A person licensed as a sales associate may not operate
as a broker or operate as a sales associate for any person not
registered as her or his employer.

(c) A broker may not employ, or continue in employment, any
person as a sales associate who is not the holder of a valid and
current license as sales associate; but a license as sales
associate may be issued to a person licensed as an active
broker, upon request and surrender of the license as broker,
without a fee in addition to that paid for the issuance of the
broker's active license.

(d) A sales associate may not collect any money in
connection with any real estate brokerage transaction, whether
as a commission, deposit, payment, rental, or otherwise, except
in the name of the employer and with the express consent of the
employer; and no real estate sales associate, whether the holder
of a valid and current license or not, shall commence or
maintain any action for a commission or compensation in
connection with a real estate brokerage transaction against any



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71 person except a person registered as her or his employer at the
72 time the sales associate performed the act or rendered the
73 service for which the commission or compensation is due.

74 ~~(e) A person may not violate any lawful order or rule of~~
75 ~~the commission which is binding upon her or him.~~

76 (e) ~~(f)~~ A person may not commit any conduct or practice set
77 forth in s. 475.25(1)(b), (c), (d), or (g) ~~(h)~~.

78 (f) ~~(g)~~ A person may not make any false affidavit or
79 affirmation intended for use as evidence by or before the
80 commission or a member thereof, or by any of its authorized
81 representatives, nor may any person give false testimony under
82 oath or affirmation to or before the commission or any member
83 thereof in any proceeding authorized by this chapter.

84 (g) ~~(h)~~ A person may not fail or refuse to appear at the
85 time and place designated in a subpoena issued with respect to a
86 violation of this chapter, unless because of facts that are
87 sufficient to excuse appearance in response to a subpoena from
88 the circuit court; nor may a person who is present before the
89 commission or a member thereof or one of its authorized
90 representatives acting under authority of this chapter refuse to
91 be sworn or to affirm or fail or refuse to answer fully any
92 question propounded by the commission, the member, or such
93 representative, or by any person by the authority of such
94 officer or appointee; nor may any person, so being present,
95 conduct herself or himself in a disorderly, disrespectful, or
96 contumacious manner.

97 (h) ~~(i)~~ A person may not obstruct or hinder in any manner
98 the enforcement of this chapter or the performance of any lawful
99 duty by any person acting under the authority of this chapter or



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interfere with, intimidate, or offer any bribe to any member of the commission or any of its employees or any person who is, or is expected to be, a witness in any investigation or proceeding relating to a violation of this chapter.

(i)~~(j)~~ A broker or sales associate may not place, or cause to be placed, upon the public records of any county, any contract, assignment, deed, will, mortgage, affidavit, or other writing which purports to affect the title of, or encumber, any real property if the same is known to her or him to be false, void, or not authorized to be placed of record, or not executed in the form entitling it to be recorded, or the execution or recording whereof has not been authorized by the owner of the property, maliciously or for the purpose of collecting a commission, or to coerce the payment of money to the broker or sales associate or other person, or for any unlawful purpose. However, nothing in this paragraph shall be construed to prohibit a broker or a sales associate from recording a judgment rendered by a court of this state or to prohibit a broker from placing a lien on a property where expressly permitted by contractual agreement or otherwise allowed by law.

(j)~~(k)~~ A person may not operate as a broker under a trade name without causing the trade name to be noted in the records of the commission and placed on the person's license, or so operate as a member of a partnership or as a corporation or as an officer or manager thereof, unless such partnership or corporation is the holder of a valid current registration.

(k)~~(l)~~ A person may not knowingly conceal any information relating to violations of this chapter.

(l)~~(m)~~ A person may not undertake to list or sell one or



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more timeshare periods per year in one or more timeshare plans on behalf of any number of persons without first being the holder of a valid and current license as a broker or sales associate pursuant to this chapter, except as provided in s. 475.011 and chapter 721.

(m)~~(n)~~ A broker or sales associate may not enter into any listing or other agreement regarding her or his services in connection with the resale of a timeshare period unless the broker or sales associate fully and fairly discloses all material aspects of the agreement to the owner of the timeshare period. Further, a broker or sales associate may not use any form of contract or purchase and sale agreement in connection with the resale of a timeshare period unless the contract or purchase and sale agreement fully and fairly discloses all material aspects of the timeshare plan and the rights and obligations of both buyer and seller. The commission is authorized to adopt rules pursuant to chapter 120 as necessary to implement, enforce, and interpret this paragraph.

(n)~~(o)~~ A person may not disseminate or cause to be disseminated by any means any false or misleading information for the purpose of offering for sale, or for the purpose of causing or inducing any other person to purchase, lease, or rent, real estate located in the state or for the purpose of causing or inducing any other person to acquire an interest in the title to real estate located in the state.

Section 5. Subsection (2) of section 477.0212, Florida Statutes, is amended to read:

477.0212 Inactive status.—

(2) The board shall promulgate rules relating to licenses



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which have become inactive and for the renewal of inactive licenses. The board shall prescribe by rule a fee not to exceed \$50 for the reactivation of an inactive license and a fee not to exceed \$50 for the renewal of an inactive license. The board shall also require a licensee to complete one renewal cycle of continuing education requirements.

Section 6. Subsection (1) of section 477.0265, Florida Statutes, is amended to read:

477.0265 Prohibited acts.—

(1) It is unlawful for any person to:

(a) Engage in the practice of cosmetology or a specialty without an active license as a cosmetologist or registration as a specialist issued by the department pursuant to the provisions of this chapter.

(b) Own, operate, maintain, open, establish, conduct, or have charge of, either alone or with another person or persons, a cosmetology salon or specialty salon:

1. Which is not licensed under the provisions of this chapter; or

2. In which a person not licensed or registered as a cosmetologist or a specialist is permitted to perform cosmetology services or any specialty.

~~(c) Engage in willful or repeated violations of this chapter or of any rule adopted by the board.~~

(c) ~~(d)~~ Permit an employed person to engage in the practice of cosmetology or of a specialty unless such person holds a valid, active license as a cosmetologist or registration as a specialist.

(d) ~~(e)~~ Obtain or attempt to obtain a license or



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registration for money, other than the required fee, or any other thing of value or by fraudulent misrepresentations.

(e) ~~(f)~~ Use or attempt to use a license to practice cosmetology or a registration to practice a specialty, which license or registration is suspended or revoked.

(f) ~~(g)~~ Advertise or imply that skin care services or body wrapping, as performed under this chapter, have any relationship to the practice of massage therapy as defined in s. 480.033(3), except those practices or activities defined in s. 477.013.

(g) ~~(h)~~ In the practice of cosmetology, use or possess a cosmetic product containing a liquid nail monomer containing any trace of methyl methacrylate (MMA).

Section 7. Subsection (1) of section 481.217, Florida Statutes, is amended to read:

481.217 Inactive status.—

(1) The board may prescribe by rule continuing education requirements as a condition of reactivating a license. The licensee must complete one renewal cycle of continuing education requirements in order to reactivate ~~The continuing education requirements for reactivating a license for a registered architect may not exceed 12 contact hours for each year the license was inactive. The minimum continuing education requirement for reactivating a license for a registered interior designer shall be those of the most recent biennium plus one-half of the requirements in s. 481.215 for each year or part thereof during which the license was inactive.~~ The board shall ~~only~~ approve continuing education that builds only upon the basic knowledge of interior design.

Section 8. Subsection (1) of section 481.315, Florida



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Statutes, is amended to read:

481.315 Inactive status.—

(1) A license that has become inactive or delinquent may be reactivated under this section upon application to the department and payment of any applicable biennial renewal or delinquency fee, or both, and a reactivation fee. The board shall also require a licensee to complete one renewal cycle of continuing education requirements. ~~The board may prescribe by rule continuing education requirements as a condition of reactivating the license. The continuing education requirements for reactivating a license may not exceed 12 classroom hours for each year the license was inactive.~~

Section 9. Subsections (3) and (6) of section 489.116, Florida Statutes, are amended to read:

489.116 Inactive and delinquent status; renewal and cancellation notices.—

(3) An inactive status certificateholder or registrant may change to active status at any time, provided the certificateholder or registrant meets all requirements for active status, pays any additional licensure fees necessary to equal those imposed on an active status certificateholder or registrant, ~~and~~ pays any applicable late fees, and completes one renewal cycle of continuing education requirements.

(6) An inactive certificateholder or registrant shall complete one renewal cycle of ~~comply with the same~~ continuing education requirements in order to reactive his or her certification or registration, ~~if any, that are imposed on an active status certificateholder or registrant.~~

Section 10. Subsection (1) of section 489.519, Florida



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Statutes, is amended to read:

489.519 Inactive status.—

(1) A certificate or registration that has become inactive may be reactivated under s. 489.517 upon application to the department. The licensee must complete one renewal cycle of continuing education requirements. ~~The board may prescribe, by rule, continuing education requirements as a condition of reactivating a certificate or registration. The continuing education requirements for reactivating a certificate or registration may not exceed 12 classroom hours for each year the certificate or registration was inactive.~~

Section 11. Effective July 1, 2014, paragraph (v) of subsection (1) of section 475.611, Florida Statutes, as amended by chapter 2010-84, Laws of Florida, is repealed.

Section 12. Notwithstanding the amendment made by this act to section 10 of chapter 2010-84, Laws of Florida, effective upon this act becoming a law, paragraphs (b) and (c) of subsection (1) of section 475.626, Florida Statutes, as amended by chapter 2010-84, Laws of Florida, are repealed.

Section 13. Subsection (14) of section 475.624, Florida Statutes, as amended by chapter 2010-84, Laws of Florida, is amended to read:

475.624 Discipline of appraisers.—The board may deny an application for registration or certification of an appraiser; may investigate the actions of any appraiser registered, licensed, or certified under this part; may reprimand or impose an administrative fine not to exceed \$5,000 for each count or separate offense against any such appraiser; and may revoke or suspend, for a period not to exceed 10 years, the registration,



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license, or certification of any such appraiser, or place any such appraiser on probation, if the board finds that the registered trainee, licensee, or certificateholder:

(14) Has violated any standard of professional practice, including standards for the development or communication of a real estate appraisal, as established by board rule ~~or other provision of the Uniform Standards of Professional Appraisal Practice.~~

Section 14. Section 475.628, Florida Statutes, is amended to read:

475.628 Professional standards for appraisers registered, licensed, or certified under this part.—Each appraiser registered, licensed, or certified under this part shall comply with the standards of professional practice as established by board rules. The board shall adopt rules stating the standards of practice that meet or exceed nationally recognized standards of appraisal practice, including the professional standards of the Appraisal Foundation ~~Uniform Standards of Professional Appraisal Practice.~~ Statements on appraisal standards which may be issued for the purpose of clarification, interpretation, explanation, or elaboration through the Appraisal Foundation shall also be binding on any appraiser registered, licensed, or certified under this part, upon adoption by board rule.

Section 15. Subsection (7) of section 509.032, Florida Statutes, is amended to read:

509.032 Duties.—

(7) PREEMPTION AUTHORITY.—The regulation of public lodging establishments and public food service establishments, including, but not limited to, ~~the inspection of public lodging~~



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~~establishments and public food service establishments for~~
~~compliance with the~~ sanitation standards, inspections, adopted
~~under this section, and the regulation of food safety protection~~
~~standards for required~~ training and testing of ~~food service~~
~~establishment~~ personnel, and matters related to the nutritional
content and marketing of foods offered in such establishments
are preempted to the state. This subsection does not preempt the
authority of a local government or local enforcement district to
conduct inspections of public lodging and public food service
establishments for compliance with the Florida Building Code and
the Florida Fire Prevention Code, pursuant to ss. 553.80 and
633.022.

Section 16. Subsection (1) of section 509.261, Florida
Statutes, is amended to read:

509.261 Revocation or suspension of licenses; fines;
procedure.—

(1) Any public lodging establishment or public food service
establishment that has operated or is operating in violation of
this chapter or the rules of the division, operating without a
license, or operating with a suspended or revoked license may be
subject by the division to:

(a) Fines not to exceed \$1,000 per offense;

(b) Mandatory completion attendance, at personal expense,
of a remedial at-an educational program administered sponsored
by a food safety training program provider whose program been
approved by the division, as provided in s. 509.049 the
~~Hospitality Education Program~~; and

(c) The suspension, revocation, or refusal of a license
issued pursuant to this chapter.



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Section 17. Effective upon this act becoming a law, section 10 of chapter 2010-84, Laws of Florida, is amended to read:

Section 10. This act shall take effect July 1, 2014 ~~2011~~.

Section 18. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2011.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 2 - 32

and insert:

An act relating to regulated professions and occupations; amending s. 322.142, F.S.; authorizing the Department of Highway Safety and Motor Vehicles to release certain digital images to the Department of Business and Professional Regulation to identify certain persons; amending s. 455.213, F.S.; authorizing the Department of Business and Professional Regulation to grant waivers of renewal fees under certain circumstances; amending s. 455.271, F.S.; revising continuing education requirements for certain license reactivations; amending s. 475.42, F.S.; revising violations and penalties for real estate professionals; amending s. 477.0212, F.S.; revising continuing education requirements for cosmetology license reactivations; amending s. 477.0265, F.S.; revising prohibited acts for cosmetologists; amending s. 481.217, F.S.; revising



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continuing education requirements for license
reactivation of architect or interior design licenses;
amending s. 481.315, F.S.; revising continuing
education requirements for landscape architect license
reactivations; amending s. 489.116, F.S.; revising
continuing education requirements for contractor
license reactivations; amending s. 489.519, F.S.;
revising continuing education requirements for
electrical and alarm system contractor license
reactivations; repealing s. 475.611(1)(v), F.S.,
relating to Uniform Standards of Professional
Appraisal Practice; repealing s. 475.626(1)(b) and
(c), F.S., relating to violations and penalties
against registered appraisers; amending s. 475.624,
F.S.; establishing professional standards for
appraisers by board rule; amending s. 475.628, F.S.;
authorizing the board to adopt rules establishing
standards of professional appraisal practice; amending
s. 509.032, F.S.; clarifying provisions relating to
the preemption to the state of the regulation of
public lodging and public food service establishments;
amending s. 509.261, F.S.; providing for remedial
training in response to certain violations by public
lodging and food service establishments; amending s.
10, chapter 2010-84, Laws of Florida; delaying the
effective date of provisions relating to the
discipline of appraisal management companies;
providing effective dates.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Regulated Industries (Dean) recommended the following:

Senate Amendment to Amendment (294240)

Delete lines 202 - 214
and insert:

(1) The board may prescribe by rule continuing education requirements as a condition of reactivating a license. The rules may not require more than one renewal cycle of continuing education in order to reactive ~~requirements for reactivating a license for a registered architect or interior designer may not exceed 12 contact hours for each year the license was inactive. The minimum continuing education requirement for reactivating a license for a registered interior designer shall be those of the~~



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13 ~~most recent biennium plus one-half of the requirements in s.~~
14 ~~481.215 for each year or part thereof during which the license~~
15 ~~was inactive.~~ The board may ~~shall only~~ approve continuing
16 education for an interior designer which ~~that~~ builds only upon
17 the basic knowledge of interior design.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Regulated Industries Committee

BILL: SB 1824

INTRODUCER: Senator Hays

SUBJECT: Regulated Professions and Occupations

DATE: March 23, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	Pre-meeting
2.			TC	
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill amends provisions related to the regulation of professions under the Department of Business and Professional Regulation (department). The bill authorizes the Department of Highway Safety and Motor Vehicles to release photographs to the department to identify suspects involved in unlicensed activity investigations. The bill provides that the department can waive renewal fees on a case-by-case basis for financial hardship. The bill provides that licensees who are required to obtain continuing education prior to license renewal need only complete one licensure cycle of continuing education to reactivate an inactive license.

The bill decriminalizes violations of board rules for cosmetology related professions and real estate professions.

In addition, the bill delays the implementation of the regulation of appraisal management companies, from July 1, 2011 to July 1, 2014.

This bill substantially amends the following sections of the Florida Statutes: 322.142, 455.213, 455.271, 475.42, 475.626, 477.0212, 477.0265, 481.217, 481.315, 489.116, and 489.519.

II. Present Situation:

Department of Business and Professional Regulation

The Department of Business and Professional Regulation (department) was established in 1993 with the merger of the Department of Business Regulation and the Department of Professional

Regulation.¹ The department is created in s. 20.165, F.S. Section 20.165(2), F.S., creates the following eleven divisions within the department:

- Division of Administration.
- Division of Alcoholic Beverages and Tobacco.
- Division of Certified Public Accounting.
- Division of Florida Condominiums, Timeshares, and Mobile Homes.
- Division of Hotels and Restaurants.
- Division of Pari-mutuel Wagering.
- Division of Professions.
- Division of Real Estate.
- Division of Regulation.
- Division of Technology.
- Division of Service Operations.

Professional Boards

Section 20.165(4)(a), F.S., establishes the following boards and professions within the Division of Professions:

- Board of Architecture and Interior Design, created under part I of ch. 481, F.S.
- Florida Board of Auctioneers, created under part VI of ch. 468, F.S.
- Barbers' Board, created under ch. 476, F.S.
- Florida Building Code Administrators and Inspectors Board, created under part XII of ch. 468, F.S.
- Construction Industry Licensing Board, created under part I of ch. 489, F.S.
- Board of Cosmetology, created under ch. 477, F.S.
- Electrical Contractors' Licensing Board, created under part II of ch. 489, F.S.
- Board of Employee Leasing Companies, created under part XI of ch. 468, F.S.
- Board of Landscape Architecture, created under part II of ch. 481, F.S.
- Board of Pilot Commissioners, created under ch. 310, F.S.
- Board of Professional Engineers, created under ch. 471, F.S.
- Board of Professional Geologists, created under ch. 492, F.S.
- Board of Veterinary Medicine, created under ch. 474, F.S.
- Home Inspection Services Licensing Program, created under part XV of ch. 468, F.S.
- Mold-Related Services Licensing Program, created under part XVI of ch. 468, F.S.

Section 20.165(4)(b), F.S., establishes the following board and commission within the Division of Real Estate:

- Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S.
- Florida Real Estate Commission, created under part I of ch. 475, F.S.

¹ Chapter 93-220, L.O.F.

Section 20.165(4)(c), F.S., establishes the Board of Accountancy, created under ch. 473, F.S., within the Division of Certified Public Accounting.

The Florida State Boxing Commission,² the Pilot Rate Review Board,³ and the Regulatory Council of Community Managers are also housed within the department. The department also has regulatory oversight responsibilities over the following professions:

- Child labor under part I of ch. 450, F.S.
- Farm labor contractors under part III of ch. 450, F.S.
- Talent agencies under part VII of ch. 468.

In addition to administering the professional boards, the department processes applications for licensure and license renewal. The department also receives and investigates complaints made against licensees and, if necessary, brings administrative charges.

Chapter 455, F.S., provides the general powers of the department and sets forth the procedural and administrative frame-work for all of the professional boards housed under the department, the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

Fees

Section 455.213, F.S., establishes general licensing provisions for the department, including the authority to charge licensing fees.

Continuing Education

Section 455.271(4), F.S., provides that an inactive licensee may change his or her status to active provided the licensee meets all requirements for active status, pays the appropriate fees, and meets all continuing education requirements.

Cosmetology

Section 477.019(7)(a), F.S., requires the Board of Cosmetology to prescribe by rule continuing education requirements, not to exceed 16 hours biennially,⁴ as a condition for renewal of a license or registration as a specialist. Section 477.0212, F.S., provides that a cosmetologist's license that has become inactive may be reactivated upon application to the department, which would require the inactive licensee to complete 16 hours of continuing education coursework for each cycle he or she was inactive.

Architecture and Interior Design

Section 481.215, F.S., provides that the continuing education requirements for renewal of architect and interior designer licenses shall be no less than 20 hours per license cycle. Section

²Section 548.003, F.S.

³*Id.*

⁴Licenses are renewed on a two-year cycle.

481.217(1), F.S., provides that the continuing education requirement for reactivating an architect's license may not exceed 12 hours for each year the license was inactive. The statute provides that the minimum continuing education requirement for reactivating an interior designer's license shall be the number of hours required for the most recent license cycle plus half of the requirements for each year or part in which the license was inactive.

Landscape Architecture

Section 481.315(1), F.S., provides that continuing education requirements for renewing an inactive landscape architect's license may not exceed 12 hours for each year the license was inactive.

Construction

Section 489.115, F.S., provides that the continuing education requirement for renewal of a construction contractor's license shall be at least 14 hours per license cycle. Section 489.116(6), F.S., provides that an inactive licensee shall comply with the same continuing education requirements that are imposed on an active licensee.

Electrical or Alarm Contracting

Section 489.517(3), F.S., provides that the continuing education requirement for renewal of an electrical or alarm contractor's license shall be at least 14 hours per license cycle. Section 489.519(1), F.S., provides that the continuing education requirements for reactivating a license may not exceed 12 classroom hours for each year the certificate or registration was inactive.

Appraisal Management Companies

Chapter 2010-84, L.O.F., created the regulation of a new license type for Appraisal Management Companies. The new regulations are to take effect on July 1, 2011. Since passage of the state legislation, the United State Congress passed H.R. 4173, also known as the Frank-Dodd Wall Street Reform and Consumer Protection Act, which was enacted into law on July 21, 2010.⁵ The new federal law requires states to regulate Appraisal Management Companies; however, according to the division, because final regulatory requirements have not been set by rule at this time, there remains uncertainty about how to proceed to ensure consistencies with the requirements of the federal law.

Criminalization of Rule Violations

Section 477.0265(1)(c), F.S., provides that it is unlawful for any person licensed or registered under ch. 477, F.S., to engage in willful or repeated violations of ch. 477, F.S., or any rule adopted by the Board of Cosmetology. Section 477.0265(2), F.S., provides that any person who violates any provision of s. 477.0265, F.S., commits a misdemeanor of the second degree.⁶

⁵ Public Law 111-203.

⁶ A misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days or a fine not to exceed \$500.

Section 475.42(1)(e), F.S., makes any violation of a lawful rule of the Florida Real Estate Commission a disciplinary action. Section 475.42(2), F.S., subjects the licensee to criminal sanctions for a rule violation.⁷ In addition, s. 475.626(2), F.S., makes it a crime to violate any rule of the Florida Real Estate Appraisal Board. Criminal sanctions may be imposed no matter how minor the rule violation.⁸

Driver's Licenses

Section 322.142, F.S., provides that reproduction of a driver's license digital image and signature from the file or record of the Department of Highway Safety and Motor Vehicles are exempt from the open records provisions in s. 119.07(1), F.S., except for specified departmental purposes. The Department of Highway Safety and Motor Vehicles may provide copies of licenses to the department pursuant to an interagency agreement for the purpose of accessing digital images for reproduction of licenses issued by the department.

The department is currently not authorized to access the digital images for the purpose of identifying subjects who are under investigation for unlicensed activity.

III. Effect of Proposed Changes:

Section 1. Provides that the Department of Highway Safety and Motor Vehicles may reproduce color photographic or digital imaged licenses and signatures of licensees to the Department of Business and Professional Regulation for the purpose of identifying subjects who are under criminal investigation for unlicensed activity.

Section 2. Creates subsection (12) of s. 455.213, F.S., to provide that the department may grant a fee waiver for a license renewal on a case-by-case basis due to financial hardship or an error caused by the department.

Section 3. Amends s. 455.271(4), F.S., to provide that a licensee, except a person licensed under ch. 475, F.S.,⁹ shall only be required to complete one renewal cycle of continuing education to reactive a license.

Sections 4 and 5. Eliminates rule violations of the Florida Real Estate Commission and Florida Real Estate Appraisers Board from the list of violations which may result in criminal penalties.

Section 6. Amends s. 477.0212(2), F.S., to provide that the Board of Cosmetology shall require a licensee to complete one renewal cycle of continuing education requirements prior to renewing an inactive license.

Section 7. Eliminates rule violations of the Board of Cosmetology from the list of violations which may result in a criminal penalty.

⁷ A misdemeanor of the second degree.

⁸ *Id.*

⁹ Chapter 475, F.S., pertains to real estate brokers, sales associates, appraisers, and schools.

Sections 8-11. Provides that architects, interior designers, landscape architects, construction contractors, electrical contractors, and alarm contractor licensees shall only be required to complete one renewal cycle of continuing education to reactive a license.

Section 12. Changes the effective date for the regulation of appraisal management companies to July 1, 2014.

Section 13. Provides that except as expressly provided in this act, the act shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill authorizes the department to waive renewal fees on a case-by-case basis.

B. Private Sector Impact:

The bill provides a reduction in the continuing education requirements for activating an inactive license. The reduction in requirements and potential for fee waivers would decrease costs to licensees.

C. Government Sector Impact:

The bill authorizes the department to waive fees due to financial hardship or fault of the department on a case-by-case basis. Because of this provision, there may be a reduction in department revenues, although the department anticipates that any reduction would be insignificant.

VI. Technical Deficiencies:

Lines 50-52 of the bill provides that the Department of Highway Safety and Motor Vehicles may allow the department to access a digital record of a driver's license for the purpose of identifying subjects who are under criminal investigation for unlicensed activity. The referenced section, s. 455.228, F.S., does not impose criminal sanctions on unlicensed conduct or authorize the

department to conduct criminal investigations. Instead, the department refers unlicensed activity violations to the proper state attorneys' offices as required under s. 455.2277, F.S. As a result, the word "criminal" should be deleted from line 51 of the bill. The committee has been advised that an amendment will be submitted to address this issue.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Regulated Industries (Dean) recommended the following:

Senate Amendment

Delete line 21
and insert:

subsection (2) and the intent of this chapter, subject to the following:

1. All services and activities that require licensure under this chapter must be performed by persons licensed under this chapter;

2. The owner of the complex must establish a care and maintenance fund pursuant to s. 497.268; and

3. Any required permits or approvals must be obtained from



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13 the local governmental entity that has jurisdiction over the
14 complex.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Regulated Industries Committee

BILL: SB 1096

INTRODUCER: Senator Hays

SUBJECT: Columbaria

DATE: March 22, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Young	Imhof	RI	Pre-meeting
2.			CM	
3.			CA	
4.				
5.				
6.				

I. Summary:

This bill would allow for the creation of columbaria at motorsports entertainment complexes. The bill requires that a columbarium established at such a motorsports entertainment complex must consist of up to five acres of land and must be constructed, kept, and maintained in accordance with s. 497.260(2), F.S.

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

This bill substantially amends section 497.260, Florida Statutes.

II. Present Situation:

Chapter 497, F.S., regulates funeral, cemetery, and consumer services. This chapter provides for the regulation of cemeteries, columbaria, cremation services, cremation practices, cemetery companies, pre-need contracts for funeral services or merchandise, dealers and monument builders, funeral directors, and funeral establishments.

A cemetery is defined as “a place dedicated to and used or intended to be used for the permanent interment of human remains or cremated remains. A cemetery may contain land or earth interment; mausoleum, vault, or crypt interment; a columbarium, ossuary, scattering garden, or other structure or place used or intended to be used for the interment or disposition of cremated remains; or any combination of one or more of such structures or places.”¹

¹ Section 497.005(11), F.S.

The term “columbaria” is defined as “a structure or building that is substantially exposed above the ground and that is intended to be used for the inurnment of cremated remains.”²

Under ch. 497, F.S., persons desiring to operate a cemetery must apply and be approved for licensure by The Department of Financial Services, have a net worth of \$50,000, establish a care and maintenance trust fund of \$50,000 and hold unencumbered fee simple title to all the cemetery land.³ The cemetery property must contain at least 30 contiguous acres and be in compliance with zoning and other provisions under this chapter.⁴ Chapter 497, F.S., establishes time limits for a cemetery company to construct columbaria (must be completed within five years of the first sale),⁵ provides standards for construction, alteration and renovation of columbaria,⁶ and mandates that a company which plans to offer for sale space in a section of a columbarium establish a preconstruction trust fund by written instrument.⁷

A person applying for a license to operate a cemetery will be approved if they meet all requirements provided in s. 497.263, F.S.

Section 497.260, F.S., states that all provisions of ch. 497, F.S., and rules made in connection with the chapter apply to all cemeteries, except under nine limited exceptions. Those exceptions include:

- A cemetery at a religious institution consisting of less than five acres and allowing for only single level ground burials;
- County and municipal cemeteries;
- Community and non-profit cemeteries that provide only single level ground burials and do not sell spaces or burial merchandise;
- Cemeteries owned and operated by religious institutions operated or dedicated prior to June 23, 1976;
- Cemeteries beneficially owned and operated by a fraternal organization or its corporate agent since July 1, 1915;
- A columbarium consisting of less than one-half acre which is owned by and immediately contiguous to an existing religious institution facility and is subject to local government zoning;
- Family cemeteries of less than two acres which do not sell burial spaces or burial merchandise;
- A mausoleum consisting of 2 acres or less which is owned by and immediately contiguous to an existing religious institution facility and is subject to local government zoning and;
- A columbarium consisting of 5 acres or less which is located on the main campus of a state university.⁸

² Section 497.005(16), F.S.

³ Section 497.263, F.S.

⁴ Section 497.263, F.S.

⁵ Section 497.272, F.S.

⁶ Section 497.271, F.S.

⁷ Section 497.272, F.S.

⁸ Section 497.260(1)(a-i), F.S.

All cemeteries in this state, including those covered by the above exemptions, are required to comply with the rules concerning the following subjects:

- The cemetery must keep a record of every burial that takes place at the cemetery;⁹
- The cemetery may not refuse to sell or issue a contract or provide services to any person on the basis race, color, creed, marital status, sex, or national origin;¹⁰
- The ability of the Department to regulate solicitation of sales of burial rights, merchandise or services by licensees covered in ch. 497, F.S.;¹¹
- The person buying a burial right, or other such disposition of remains, may permanently record their purchase of this right;¹²
- Forbidding the cemetery from charging for the installation of a monument not purchased from the cemetery;¹³
- Prohibits sellers of a grave space from tying that purchase to the purchase of a monument; and¹⁴
- The municipalities and the counties must follow certain provisions for dealing with abandoned cemeteries.¹⁵

Section 599.10, F.S., defines a motorsports entertainment complex as a closed-course motorsports facility and its ancillary grounds and facilities which:

- Has at least 70,000 fixed seats for race patrons;
- Has at least 7 scheduled days of motorsports events each calendar year;
- Has at least four motorsports events each calendar year;
- Serves food and beverages at the facility during sanctioned events each calendar year through concession outlets, a majority of which are staffed by individuals who represent or are members of one or more nonprofit civic or charitable organizations that directly financially benefit from such concession outlet sales;
- Engages in tourism promotion; and
- Has on the property permanent exhibitions of motorsports history, events, or vehicles.¹⁶

Daytona International Speedway and Homestead Miami Speedway are the only facilities in the Florida which meet that definition.¹⁷

According to information obtained from National Association for Stock Car Auto Racing (NASCAR) and confirmed by the International Speedway Corporation, there are currently no NASCAR Motor speedways that have a columbaria associated with them.¹⁸

⁹ Section 497.276(1), F.S.

¹⁰ Section 497.152(1)(d), F.S.

¹¹ Section 497.164, F.S.

¹² Section 497.2765, F.S.

¹³ Section 497.278, F.S.

¹⁴ Section 497.280, F.S.

¹⁵ Section 497.284, F.S.

¹⁶ Section 549.10, F.S.

¹⁷ Information obtained via conversation on March 23, 2011, with Cheryl Coxwell, representative of the International Speedway Corporation and ismotorsports.teamworkonline.com. (last visited March 23, 2011).

III. Effect of Proposed Changes:

This bill creates s. 497.260(1)(j), F.S., to provide an exception to the rules of ch. 497, F.S., for a columbarium at a motorsports entertainment complex.

The bill requires that a columbarium established at such a motorsports entertainment complex must consist of up to five acres of land and must be constructed, kept, and maintained in accordance with s. 497.260(2), F.S., and the intent of ch. 497, F.S.

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

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁸ Information obtained via www.NASCAR.com/races/tracks, (last visited March 23, 2011).

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Regulated Industries Committee

BILL: SB 854

INTRODUCER: Senator Negrón

SUBJECT: Production and Shipment of Wine

DATE: March 22, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Pre-meeting
2.			CM	
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill regulates the direct shipment of wine to Florida consumers by winery shippers and provides for licensure and regulation of winery shippers by the Division of Alcoholic Beverage and Tobacco (division). To legally ship wine directly to Florida consumers, an in-state or out-of-state winery shipper must meet the following basic qualifications for licensure. A winery shipper must:

- Be a manufacturer of wine that holds all applicable state and federal wine manufacturer permits and licenses;
- Not manufacture more than 250,000 gallons of wine per year, or be a subsidiary, or affiliated with, a winery that manufactures more than 250,000 gallons of wine annually;
- Not ship, or cause to be shipped, more than 12 cases of wine per calendar year to a household address;
- Meet the same basic license qualifications required for other Florida alcoholic beverage licensees; and
- Pay a \$250 license fee and renewal fee.

The bill also prohibits consumers from purchasing more than 12 cases of wine each calendar year. The bill provides that a licensed winery shipper may ship wine directly only to persons who are at least 21 years of age for personal use and not for resale. To ensure compliance with this requirement the bill requires that the winery shipper must:

- Verify the age of the purchaser at the time of sale and delivery; and
- Comply with the bill's container labeling requirement.

The bill also requires that the common carriers used to deliver the wine must keep records of wine deliveries into Florida for three years.

The bill requires that the winery shippers collect and remit all applicable excise taxes on wine to the division and sales taxes to the Department of Revenue, including discretionary local sales surtaxes. To ensure compliance with these requirements the bill requires that winery shippers:

- Register as a Primary American Source of Supply under s. 564.045, F.S.;
- Register with the Florida Department of Revenue;
- Calculate sales taxes as if the sale took place in this state;
- File a \$5,000 bond with the division;
- Make monthly reports to the division;
- Maintain records of sales for three years; and
- Submit to state audits.

The bill provides that licensed winery shippers consent to the jurisdiction of the division, any other state agency, and the courts of this state. They must also appoint a registered agent for acceptance of service of process.

It provides a second degree misdemeanor for any winery shipper, common carrier, permit carrier, or other commercial conveyance that delivers, ships, or causes to be shipped wine to a person under the age of 21. It provides a second degree misdemeanor for a consumer who violates the provisions of the bill by, for example, purchasing more than 12 cases of wine from winery shippers during a calendar year. A person who provides a winery shipper with a false date of birth would also commit a second degree misdemeanor.

The bill requires that at least 60 percent of wine produced by a Certified Florida Farm Winery must be made from Florida agricultural products. The Commissioner of Agriculture may waive this requirement in times of hardship. The bill authorizes the division to adopt rules to implement and administer the provisions of this act.

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

This bill substantially amends the following sections of the Florida Statutes: 561.24, 561.54, 561.545, 564.045, and 599.004. This bill creates section 561.222, Florida Statutes.

II. Present Situation:

Florida's Three-Tier System

In the United States, the regulation of alcohol has traditionally been through what is termed the "three-tier system." The system requires that the manufacture, distribution, and sale of alcoholic beverages be separated. Retailers must buy their products from distributors who in turn buy their products from the manufacturers. Manufacturers cannot sell directly to retailers or directly to consumers. The system is deeply rooted in the perceived evils of the "tied house" in which a bar

is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.¹

There are some exceptions to this regulatory system. The exceptions include allowing beer brew pubs to manufacture malt beverages and to sell them to consumers,² allowing individuals to bring small quantities of alcohol back from trips out-of-state,³ and allowing in-state wineries to manufacture and sell directly to consumers.⁴

In Florida, alcoholic beverages are regulated by the Beverage Law.⁵ These provisions regulate the manufacture, distribution, and sale of wine, beer, and liquor via manufacturers, distributors, and vendors.⁶ The Division of Alcoholic Beverage and Tobacco within the Department of Business and Professional Regulation is the agency authorized to administer and enforce the Beverage Law.⁷

In a three-tier system, each license classification has clearly delineated functions. For example, in Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.⁸ A manufacturer of wine may not be licensed as a distributor.⁹ Florida law also prohibits any distributor or vendor from having an interest in any manufacturer.¹⁰

In *Granholm v. Heald* (*Granholm*),¹¹ the U.S. Supreme Court held that states can regulate alcoholic beverages through a three-tier system, but states cannot provide an exception to that system that is limited to in-state businesses, i.e., in-state wine manufacturers.

Sales made outside the established three-tier systems by out-of-state alcoholic beverage manufacturers and retailers to consumers in another state are commonly termed “direct shipment.” The term also includes sales made directly to consumers by in-state manufacturers.

According to the Wine Institute,¹² as of July 2010, 37 states and the District of Columbia allow direct shipment of wine to consumers and many of these states require a license or permit.¹³

¹ Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington's Three-Tier System Challenged by Costco v. Washington State Liquor Control Board*, a copy can be found at: <http://www.wsba.org/media/publications/barnews/2004/june-04-price.htm> (last visited March 23, 2011).

² See s. 561.221(2), F.S., which permits the limited manufacture of beer by vendors (brew pubs).

³ See s. 562.16, F.S., which permits the possession of less than one gallon of untaxed alcoholic beverages when purchased by the possessor out-of-state in accordance with the laws of the state where purchased and brought into the state by the possessor.

⁴ See s. 561.221, F.S.

⁵ The Beverage Law means chs. 561, 562, 563, 564, 565, 567, and 568, F.S. See s. 561.01(6), F.S.

⁶ See s. 561.14, F.S.

⁷ Section 561.02, F.S.

⁸ Section 561.14(3), F.S. However, see discussion regarding the exception for certified Florida Farm Wineries in s. 561.221, F.S.

⁹ See s. 561.24, F.S. However, see discussion regarding the exception for Florida manufacturers of wine in s. 561.221, F.S.

¹⁰ See s. 561.42, F.S.

¹¹ *Granholm v. Heald*, 544 U.S. 460 (2005).

¹² The wine Institute is an advocacy and public policy association for California wine. It represents more than 1000 wineries and affiliated businesses in California. See <http://www.wineinstitute.org> (Last visited March 23, 2011).

¹³ Florida is included in this list due to the injunction against enforcement of the provisions of ss. 561.54(1)-(2) and 561.545(1), F.S., in the *Bainbridge* case. Florida consumers are required by s. 212.06(8), F.S., to pay use taxes on their out-

Thirteen states prohibit direct shipment of wine to consumers.¹⁴ The Wine Institute includes Florida among the states in which direct shipment is permitted but requires the payment of excise taxes and consumer taxes.

Granholm vs. Heald

In *Granholm v. Heald*,¹⁵ consolidated cases from Michigan and New York, the U.S. Supreme Court held that a state cannot allow in-state wineries to sell wine directly to consumers in that state while simultaneously prohibiting out-of-state wineries from also selling wine directly to consumers. The decision invalidated laws in Michigan and New York that discriminated between in-state and out-of-state wine manufacturers in this manner.

Michigan and New York regulated the sale and importation of wine through three-tier systems and required separate licenses for manufacturers, wholesalers, and retailers. These schemes allowed in-state, but not out-of-state, wineries to make direct sales to consumers. The Court held that this differential treatment violated the Commerce Clause, Art.I, s. 8, cl. 3 of the U.S. Constitution, which provides that “[t]he Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes”

Michigan Law

Under the Michigan law in place at the time,¹⁶ wine producers were required to distribute their wine through wholesalers. Michigan had an exception for the approximately 40 in-state wineries that were eligible for a wine maker license that allowed the direct shipment of wine to in-state consumers. Out-of-state wineries could apply for an out-of-state seller of wine license that allowed them to sell to in-state wholesalers, but not directly to Michigan consumers.¹⁷

In the Michigan case, Michigan residents, joined by an out-of-state winery, sued Michigan officials, claiming that the state’s laws violated the Commerce Clause. The state and an in-state wholesalers association responded that the direct shipment ban was a valid exercise of Michigan’s power under the Twenty-first Amendment of the U.S. Constitution. The Twenty-first Amendment provides in section 2 that “[t]he transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the law thereof, is hereby prohibited.” The United States District Court for the Eastern District of Michigan sustained the scheme, but the United States Court of Appeals for the Sixth Circuit reversed,¹⁸ rejecting the argument that the Twenty-first Amendment immunizes

of-state purchases, but the excise tax on wine imposed by s. 564.04, F.S., requires payment of the excise tax by manufacturers and distributors.

¹⁴ http://www.wineinstitute.org/files/direct_shipping_laws_map.pdf (Last visited March 23, 2011).

¹⁵ *Granholm v. Heald*, 544 U.S. 460, 471(2005). Certiorari was granted at 541 U.S. 1062 (2004).

¹⁶ See Michigan Comp. Laws Ann. ss. 436.1109(1), 436.1305, 436.1403, and 436.1607(1) (West 2000).

¹⁷ Effective December 16, 2005, Michigan amended its law to allow direct shipment of wine under certain circumstances, P.A. 2005, No. 268. See Mich. Comp. Laws Ann. s. 436.1203. Michigan’s direct wine shipping requirements can be found at http://www.michigan.gov/documents/LC-MW102_154466_7.DirectShipperRequirements.pdf (Last visited March 11, 2009). It allows for a winery anywhere in the US that obtains a direct shippers permit from the State of Michigan to ship up to 1,500 cases (9 liters per case) of wine annually to Michigan consumers. The winery must have an approved direct shipper's permit, register with the Michigan Department of Treasury, and pay sales and excise taxes. The license fee is \$100.

¹⁸ *Heald v. Engler*, 342 F.3d 517 (6th Cir. 2003).

state liquor laws from Commerce Clause provisions and holding that there was no showing that the state could not meet its policy objectives through nondiscriminatory means.

New York Law

New York's licensing scheme was somewhat different from Michigan's.¹⁹ It also provided for distribution through the three-tier system and made exceptions for in-state farm wineries. Wineries that produced wine only from New York grapes could apply for a license that allowed direct shipment to in-state consumers. An out-of-state winery could ship directly to consumers only if the winery became licensed as a New York Winery, established a distribution operation in New York, and had a physical presence in the state, i.e., a warehouse, office, or storeroom. Moreover, out-of-state wineries that established the requisite in-state presence were still not eligible for the farm winery license that provides the most direct means of shipping to New York consumers. Instead, they had to obtain a separate license that authorized direct shipping to consumers. New York law did not require a separate direct shipping license for its farm wineries.²⁰

In the New York case, out-of-state wineries and their New York customers filed suit against state officials, seeking a declaration that the State's direct shipment laws violated the Commerce Clause. State liquor wholesalers and retailers' representatives joined in support of the state. The United States District Court for the Southern District of New York granted the plaintiffs' summary judgment against the state, but the United States Court of Appeals for the Second Circuit reversed, holding that New York's laws fell within the state's powers under the Twenty-first Amendment.²¹

Supreme Court Decision

The United States Supreme Court consolidated the Michigan and New York cases into a single case to address this issue:

Does a State regulatory scheme that permits in-state wineries to directly ship alcohol to consumers but restricts the ability of out-of-state wineries to do so violate the dormant Commerce Clause in light of Section 2 of the Twenty-first Amendment?²²

The U.S. Supreme Court held in *Granholm* that:

¹⁹ See N. Y. Alco. Bev. Cont. Law Ann. ss.76-a(3) and 76-a(6)(a) and ss. 3(20-a) and 3(37) (West Supp. 2005).

²⁰ New York amended its law, effective August 11, 2005 to provide for a Direct Shipper's License under certain circumstances. See N. Y. Alco. Bev. Cont. Law Ann. s. 79-c. To be eligible for a license, the applicant out-of-state wine manufacturer must be located in a state that allows New York State wine manufacturers substantially similar direct wine shipping privileges. The applicant must have a tax authority certificate, register as an alcoholic beverage distributor, and consent to New York State jurisdiction, among other requirements. The direct wine shipper may not ship more than 36 cases of wine (9 liters per case) to a New York resident. The license fee is \$125 for an interstate direct shipper's license.

²¹ *Swedenburg v. Kelly*, 358 F.3d 223 (2nd Cir. 2004).

²² *Supra*

the laws in both States discriminate against interstate commerce in violation of the Commerce Clause, Art. I, s. 8, cl. 3, [United States Constitution] and that the discrimination is neither authorized nor permitted by the Twenty-first Amendment. Accordingly, we affirm the judgment of the Court of Appeals for the Sixth Circuit, which invalidated the Michigan laws; and we reverse the judgment of the Court of Appeals for the Second Circuit, which upheld the New York laws.²³

Granholm explicitly noted that states may regulate the distribution and sale of wine via a three-tier system of licensed manufacturers, distributors, and retailers. The court also noted that states may prohibit the direct shipment of alcoholic beverages to consumers.²⁴ However, states may not impose requirements on interstate commerce that discriminate in favor of in-state interests. States can regulate imported wine only to the same extent and in the same manner that they regulate domestically produced wine. The court applied the rule that the court must still consider whether a state's regulatory regime "advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives."²⁵

In *Granholm*, the court noted that New York could provide adequate safeguards for direct shipping of wine with licensing and self-reporting, because these methods were sufficient for wine distributed through the three-tier system. The court also noted that licensees could be required to submit regular sales reports and remit taxes. The court observed that licensing, reporting, and tax requirements have been used by other states that permit direct shipping and that these states have reported no problems with tax collection.²⁶ The court also noted that this is the approach sanctioned by the National Conference of State Legislatures in their Model Direct Shipping Bill.

Florida's Direct Shipping Prohibition

Section 561.545(1), F.S., prohibits the direct shipping of all alcoholic beverages to consumers from out-of-state. It also prohibits common carriers from transporting alcoholic beverages from an out-of-state location to anyone in this state who does not hold a valid manufacturer, wholesaler, or exporter's license, or who is not a state-bonded warehouse.

A first violation of this prohibition results in the issuance of an order to show cause why a cease and desist order should not be issued. A violation within two years of a cease and desist order, or within two years of a previous conviction, constitutes a felony of the third degree.

Section 561.545(5), F.S., provides an exception for the direct shipping of sacramental alcoholic beverages to bona fide religious organizations as authorized by the division. It also exempts registered exporters.

²³ *Granholm* at 466.

²⁴ The court's analysis is based, in part, upon the Webb-Kenyon Act, 27 U.S.C. s. 122, which prohibits the shipping of alcoholic beverages into a state in violation of that state's laws, and the Twenty First Amendment of the U.S. Constitution.

²⁵ See *Granholm* at 489, quoting *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 278 (1988).

²⁶ See *Granholm* at 491.

Section 561.54(1), F.S., prohibits deliveries of alcoholic beverages from out-of-state by common or permit carriers, operators of privately owned cars, trucks, buses, or other conveyances, except to manufacturers, wholesalers, or exporters, or bonded warehouses in this state. Section 561.54(2), F.S., provides a cause of action for any licensee who is aggrieved by a violation of this prohibition. The court must assess damages equal to three times the amount of delivery charges or the fair market value of the merchandise unlawfully brought into the state. The court must also award the plaintiff its costs and reasonable attorney's fees.

Florida's prohibition against direct shipping is limited to the direct shipping of alcoholic beverages from out-of-state to Florida; it does not prohibit direct shipping from a Florida winery to another state or from a Florida winery to a person in Florida.

Sales by Florida Wineries

Florida law provides an exception to the general prohibition against manufacturers of alcoholic beverages selling directly to consumers. Florida permits in-state wine²⁷ manufacturers to sell their wines directly to consumers. The premises licensed to conduct vendor sales must be situated on property contiguous to the manufacturing process.²⁸ Florida also permits wineries that are certified by the Department of Agriculture and Consumer Services as a Florida Farm Winery to conduct tastings and sales of wine directly to consumers at Florida fairs, trade shows, expositions, and festivals.²⁹

Florida wine manufacturers may also function in all three tiers of the state's regulatory system. Wineries may distribute any alcoholic beverages, including beer and liquor.³⁰ Although s. 561.24, F.S., prohibits manufacturers from being licensed as a distributor, this prohibition does not apply to Florida wineries.

Certified Florida Farm Wineries

To qualify as a certified Florida Farm Winery, a winery must meet each of the following standards:

1. Produce or sell less than 250,000 gallons of wine annually.
2. Maintain a minimum of 10 acres of owned or managed vineyards in Florida.
3. Be open to the public for tours, tastings, and sales at least 30 hours each week.
4. Make annual application to the department for recognition as a Florida Farm Winery, on forms provided by the department.

²⁷ Section 564.01(1), F.S., defines the term "wine" to mean:
all beverages made from fresh fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States, and includes all sparkling wines, champagnes, combination of the aforesaid beverages, vermouths, and like products. Sugar, flavors, and coloring materials may be added to wine to make it conform to the consumer's taste, except that the ultimate flavor or the color of the product may not be altered to imitate a beverage other than wine or to change the character of the wine.

²⁸ See s. 561.221(1), F.S.

²⁹ See s. 561.221(2), F.S.

³⁰ See s. 561.14(1), F.S.

5. Pay an annual application and registration fee of \$100.³¹

According to industry representatives, many Florida wines are blended with citrus or grapes grown outside the state. Current law does not require that wines from certified Florida Farm Wineries must consist of any particular percentage of Florida-grown grapes or other Florida-grown agriculture products.

Bainbridge v. Turner

Florida's direct shipping prohibition was challenged in the case of *Bainbridge v. Turner* by wine consumers and out-of-state wineries.³² This law suit challenged Florida's statutory scheme prohibiting out-of-state wineries from shipping their products directly to Florida consumers while permitting in-state wineries to do so.

Before the Supreme Court issued its decision in *Granholm*, the case resulted in two written federal appellate court opinions. In the first opinion, *Bainbridge v. Martelli (Bainbridge I)*,³³ the United States District Court for the Middle District of Florida held that s. 561.54, F.S., and the statutory scheme that bars direct shipping violated the Commerce Clause. In *Bainbridge v. Turner (Bainbridge II)*,³⁴ the United States Eleventh Circuit Court of Appeals held that, if Florida could demonstrate that its statutory scheme was closely related to raising revenue and was not a pretext to mere protectionism, Florida's statutory scheme could be upheld against a Commerce Clause challenge. The appellate court remanded the case to the district court for further consideration of this issue.

The case was held in abeyance because of the pending cases before the U.S. Supreme Court. On August 5, 2005, the United States District Court for the Middle District of Florida issued an order finding ss. 561.54(1)-(2) and 561.545(1), F.S., violated the Commerce Clause and were therefore unconstitutional under the authority in *Granholm*, and enjoined the enforcement of these provisions.³⁵ The court found that these statutes discriminate against out-of-state wineries by prohibiting them from selling and delivering wine directly to customers in Florida when in-state wineries are not so prohibited.

Primary American Source of Supply Brand Registration

Section 564.045, F.S., requires registration of wine brands for the purpose of tax revenue control. Before being shipped, sold, or offered for sale to a distributor or importer in Florida, a wine brand must be registered by the brand's "primary American source of supply," which s. 564.045(1), F.S., defines as the:

manufacturer, vintner, winery, or bottler, or their legally authorized exclusive agent, who, if the product cannot be secured directly from the manufacturer by an

³¹ See s. 599.004, F.S., which establishes the Florida Farm Winery program within the Department of Agriculture and Consumer Services.

³² *Bainbridge v. Turner*, No. 8:99-CV-2681-T-27TBM (M.D. Fla.).

³³ *Bainbridge v. Martelli*, 148 F.Supp.2d 1306 (M.D. Fla. 2001).

³⁴ *Bainbridge v. Turner*, 311 F.3d 1104 (11th Cir. 2002).

³⁵ *Bainbridge v. Turner*, No. 8:99-CV-2681-T-27TBM (M.D. Fla. August 5, 2005).

American distributor, is the source closest to the manufacturer in the channel of commerce from whom the product can be secured by an American distributor, or who, if the product can be secured directly from the manufacturer by an American distributor, is the manufacturer. It shall also include any applicant who directly purchases vinous beverages from a manufacturer, vintner, winery, or bottler who represents that there is no primary American source of supply for the brand and such applicant must petition the division for approval of licensure.

The annual license fee for each brand is \$15. All Florida wineries that conduct direct sales to consumers must register the brands they sell and pay the fee for each brand. According to the Wine Institute, some states require brands and labels to be registered before shipping those brands to consumers in the state.

License Fees

Under the Beverage Law, Florida wine manufacturers pay a state license tax for a manufacture's license, a distributor's license if they distribute their wines, and a vendor's license if they sell their wines at retail. Section 564.02(2)(a), F.S., imposes a license tax of \$1,000 for a license to engage in the manufacturing or bottling of wines and nothing else. Section 561.02(2)(b), F.S., imposes a license tax of \$1,250 to distribute wines, malt beverages, and fortified wines. Section 564.02(1), F.S., imposes the license taxes for vendors who sell wine.

Vendor licenses are divided into two types: vendors operating a business where beverages are sold for consumption on the premises, and vendors operating a business where beverages are sold only for consumption off the premises. The vendor license tax for consumption off the premises is equal to 50 percent of the license tax for the applicable vendor's license for consumption on the premises. The license tax for consumption on the premises is dependent on the population size of the county where the vendor's premises is located. These license taxes range from \$120 for counties having a population of less than 25,000 to \$280 for counties having a population of over 100,000. According to industry representatives, some wine manufacturers have a consumption on the premises license for sales and wine tastings at the winery.

If licensed as a vendor, a manufacturer would also be subject to the annual surtax imposed by s. 564.025, F.S., which is equal to 40 percent of the license fee for each wine vendor, regardless of the wine's alcoholic content.

Federal Wine Producer Permits

The Federal Alcohol Administration Act (FAA Act)³⁶ requires a basic permit issued by the Alcohol and Tobacco Tax and Trade Bureau (Tax and Trade Bureau or bureau) within the U.S. Department of the Treasury (formerly the Bureau of Alcohol, Tobacco, and Firearms) to engage in the business of importing into the United States distilled spirits, wine, or malt beverages. A basic permit is required to engage in the business of producing distilled spirits, producing wine, rectifying or blending distilled spirits or wine, or bottling, or warehousing and bottling, distilled spirits in the business of distilling spirits or producing wine, and for persons who engage in the

³⁶ See Federal Alcohol Administration Act, codified at 27 U.S.C. s. 203. See also, 27 C.F.R. part 1subpart C, section 1.20.

business of purchasing for resale at wholesale distilled spirits, wine or malt beverages. According to the Tax and Trade Bureau, as of March 2009, there are 6,231 active federal basic permits in the U.S. for wine premises (wineries). Retailers and beer manufacturers (brewers) are not required to obtain a basic permit under the FAA Act.

Interim Project 2006-146

The staff of the Senate Committee on Regulated Industries was assigned Interim Project Report 2006-146 to study the issues presented by the direct shipment of wine to Florida consumers by unlicensed out-of-state persons. This study included a review of the status of the current law and surveying the concerns of the affected interests.³⁷ The interim project resulted in the recommendation that the Legislature either continue to prohibit all direct shipment of wines into Florida and eliminate the ability of in-state wine manufacturers to sell wine directly to consumers, or legalize the direct shipment of wine and regulate the practice.

The study recommended that a single license classification to license out-of-state and in-state direct shippers of wines should be created and that licensure should be required as a condition of legal direct shipping. The study recommended the following licensure options:

- Licensure may be limited to persons who operate a winery located in the United States and hold all state and federal permits necessary to operate the winery;
- The Legislature may permit persons operating a winery outside the United States to qualify for licensure;
- In addition, the Legislature may permit non-manufacturers, e.g., out-of-state retailers, to be licensed direct shippers; and
- If the Legislature opts to limit licensed direct shippers to wine manufacturers, it may require that a winery licensed as a direct shipper must produce or sell less than 250,000 gallons of wine annually.

In addition to licensure, the study recommended consideration of the following options for regulating direct shipment of wine:

- Require, as a condition of licensure, that out-of-state direct shippers must satisfy all of the minimum license qualification requirements required under the Beverage Law for a Florida alcoholic beverage license;
- Require, as a condition of licensure, that the license holder submit to the jurisdiction of the regulatory agency and the courts of this state in regards to compliance with the laws of this state;
- Limit direct shipment sales to sales for personal consumption, and prohibit the resale at retail of wines purchased directly from a direct shipper;
- Require age verification procedures for the point of delivery, point of sale, or both, that, at minimum, require that an adult provide proof of age with a valid photographic identification at the time of the delivery;

³⁷ See *Direct Shipment of Wine to Florida Consumers*, Interim Report No. 2006-146, Senate Committee on Regulated Industries, October 2005.

- Require that containers of wine shipped directly to consumers must be conspicuously labeled with words that identify them as containing alcohol requiring the signature of a person 21 years of age or older before delivery can be made;
- Impose specific shipping requirements on common carriers, including requiring that the common carrier must require that the recipient of wine provide proof of age, and that the recipient of the wine must sign an acknowledgment of receipt. The common carrier should also be required to refuse delivery if the recipient refuses to provide proof of age;
- Require that direct shippers remit to the state all applicable Florida excise and sales taxes;
- Require that direct shippers register all wine brands before shipping, selling, or offering for sale any wine to a consumer in Florida;
- Require payment of a license fee comparable to the fee required for an in-state wine vendor;
- Require that direct shippers maintain records of sales and shipments of wine into Florida, and require that the direct shippers permit state regulators to have access to these records;
- Require that direct shippers pay all attorney's fees and costs in any action to collect unpaid taxes;
- Require monthly reporting to the Division of Alcoholic Beverage and Tobacco that details all shipment of wine into Florida, including the number of bottles shipped, to whom the wine was shipped, the identity of the common carrier making the shipment, and the brands shipped;
- Require periodic audits of direct shippers by the division, that all required reports should be signed by a certified public accountant, or both; and
- Require that direct shippers pay all travel related costs necessary to conduct a compliance audit of an out-of-state direct shipper if the state auditor must travel out-of-state to conduct the audit.

III. Effect of Proposed Changes:

The bill creates s. 561.222, F.S., to provide for the licensure of winery shippers.

Legislative Intent

Section 561.222(1), F.S., sets forth the legislative intent. The bill states that strict regulation of the sale of alcoholic beverages promotes temperance by discouraging consumption by underage persons, the abusive consumption by adults, and the collection of excise and sales taxes. The bill also reaffirms the legislative intent that the direct shipment of beer and spirits to residents of this state remains prohibited.

Licensure Requirements

Section 561.222(2), F.S., establishes the license requirements for a winery shipper license. It provides that a winery may directly ship wine to a resident of this state only with a winery shipper's license.

Section 561.222(2)(a), F.S., provides that, to qualify for the license, a winery must:

- Not manufacture or sell more than 250,000 gallons of wine per year;
- Ship wines that the winery manufactures;
- Obtain a winery shipper's license.

The bill also requires that wineries ship to residents of this state that are at least 21 years of age for that person's personal use and not for resale. The bill does not specifically prohibit retail vendors from purchasing wine from a winery shipper.³⁸

To qualify for the license, a winery shipper must also:

- Hold a wine producer basic permit issued in accordance with the Federal Alcohol Administration Act.³⁹
- Hold a current wine manufacturer's license from the state in which it manufactures wine; and
- Hold a current license as a Primary American Source of Supply under s. 564.045, F.S. and register with the division all brands shipped.

The bill also requires that applicants for a winery shipper's license must qualify for licensure under s. 561.15, F.S.⁴⁰ It is uncertain what effect the requirement to meet the license qualification requirements under s. 561.15, F.S., would have on the availability of out-of-state wines from out-of-state wineries. Based on a review of federal wine permit requirements, and the wine manufacturer license requirements in California, New York, Oregon, and Washington,⁴¹ Florida's alcoholic beverage license requirements appear to be more extensive than those states' minimum licensure requirements. For example, California does not have a specific minimum age requirement. California law requires that a licensee not have any felony conviction or conviction related to its beverage law, but California law does not set specific time periods.⁴² According to the California Department of Alcoholic Beverage Control, convicted felons may be licensed by the department if they can demonstrate that they have been rehabilitated. It is not clear whether a felony in another state would disqualify an applicant in California. Whether the applicant is a rehabilitated felon is within the discretion of the California Department of Alcoholic Beverage Control.

³⁸ Section 561.14(3), F.S., prohibits a retail vendor from purchasing an alcoholic beverage from a person that is not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law. It also prohibits a retail vendor from importing, or engaging in the importation of, any alcoholic beverages from places beyond the limits of the state. It is not clear whether purchases by a retail vendor from an out-of-state winery for the purpose of resale to consumers constitutes the importation of wine under the beverage law because s. 561.14(3), F.S., defines acting as an importer as selling, "or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else, in this state."

³⁹ See Federal Alcohol Administration Act, codified at 27 U.S.C. s. 203.

⁴⁰ Section 561.15, F.S., sets forth the basic qualifications for an alcoholic beverage license. To qualify, an applicant must be of good moral character and not less than 21 years of age. Section 561.15, F.S., also prohibits licensure and licensure renewal to persons convicted of:

- Any beverage law violation in this state, any other state, or the United States in the past five years;
- Any felony in this state, any other state, or the United States in the past fifteen years; or
- Any criminal violation of the controlled substance act of this state, any other state, or the United States.

⁴¹ According to the Wine Institute, these states represent approximately 98 percent of its member wineries.

⁴² Cal. Bus. Prof. Code, ss. 23952 and 23958.

The bill requires a license application under s. 561.17, F.S., for licensure as a winery shipper, and provides that the information on the license application must be in the same information required by the division for licensure as a wine manufacturer. The winery shipper license application must include a copy of the following:

- The current basic permit as a wine producer and blenders permit issued in accordance with the Federal Alcohol Administration Act;
- The current state license to manufacture wine;
- Appointment of a registered agent in Florida for acceptance of service of process, which must be maintained and notification to the division of any change in the appointment;
- A sales tax registration number issued by the Department of Revenue;
- An affirmation of consent to the jurisdiction in the court of Florida and its agencies for the enforcement of s. 561.222, F.S., and any related laws or rules, including actions by third parties for violations of this section;
- A surety bond with the division for payment of taxes. The bill requires a surety bond in the amount of \$5,000, but the division may accept a lesser bond if the volume of business done by the winery shippers is such that a lesser bond would be adequate to secure tax payments. If the winery already has a surety bond on file with the division an additional bond is not required. The bill further provides that the division may not accept a bond of less than \$1,000. It deems the surety bond currently on file with the division pursuant to s. 561.37, F.S., to comply with this provision; and
- Payment of a \$250 license fee, which must be renewed by August 1 of each year by paying a renewal fee of \$250.

Regarding the requirement that an applicant must consent to jurisdiction of the Florida courts for actions by third parties, it is not clear that s. 561.222, F.S., provides a cause of action that may be maintained by a third party.

Section 561.222(2)(b), F.S., specifies the following conditions under which the division may issue or renew a winery shipper license:

- Not violating the conditions of licensure, requirements, or limitations in s. 561.222, F.S.;
- Producing or selling less than 250,000 gallons of wine annually;
- Not having a subsidiary or being otherwise affiliated winery that manufactures more than 250,000 gallons of wine annually;
- Not having an appointed distributor in this state, unless the winery gives the distributor one-year's notice of its intent to obtain a winery shipper's license or the winery provides to the division a copy of the applicant's contract with the appointed distributor showing that the winery does not violate the requirements of the law.

The term "affiliated wineries" is not defined by the bill or in the Florida Statutes.

Age Verification and Shipping Requirements

Section 561.222(3)(a), F.S., provides age verification and shipping requirements for winery shippers and common carriers who ship wines from a winery shipper.

The bill requires that winery shippers verify the purchaser's age at the point of purchase before completing a sale and requires that the winery shippers refuse to sell wine to any person younger than 21 years of age. The bill does not specify a method of verification.

The bill provides a labeling requirement for each box of wine shipped directly to a resident of this state. Winery shippers must ensure that each box is conspicuously labeled with the following information:

- That the package contains alcohol;
- The recipient must be at least 21 years of age; and
- The signature of the recipient is required.

The bill requires that winery shippers must refuse to ship or cause to be shipped more than 12 cases containing more than nine liters each of its wine per calendar year to any "one household address" and "any household member's work address" in this state. The bill also prohibits consumers from purchasing more than 12 cases⁴³ containing more than nine liters each of its wine per calendar year.

The bill uses the terms "household" and "household address" but does not define either term.⁴⁴ It is not clear whether the use of alternate terms may lead to ambiguity and difficulty in enforcement. For example, if more than one household shares the same address, each household at the single address may be limited to purchasing less than the maximum allowable wine per year because of the bill's delivery restriction.

The winery shippers and common carriers must also require, before delivery, the signature of a person 21 years of age or older using one of the valid forms of identification specified in the bill, including a valid Florida driver's license or identification card,⁴⁵ an identification card issued by this state or another state, a passport, or United States armed services identification card.

As noted previously, the bill does not specifically prohibit the purchase by alcoholic beverage vendors of wine from a winery shipper. Although the bill requires that the sale of wines under s. 561.222, F.S., must be for personal use and not for resale, the bill does not specifically prohibit the purchase by vendors from winery shippers or the resale by vendors of wine purchased from a winery shipper. It is a second degree misdemeanor for any person to sell alcoholic beverages without an alcoholic beverage license issued by the division.⁴⁶ It is not clear whether the bill prohibits licensed vendors from receiving wine from a licensed winery shipper. Section 561.14(3), F.S., prohibits retail vendors from purchasing or acquiring "in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor,

⁴³ According to an industry representative, a standard case contains 12 bottles of wine, each bottle holds 750 milliliters, which equals 9 liters of wine per standard case.

⁴⁴ Section 196.075(1)(a), F.S., relating to the homestead exemption for persons 65 and older, defines the term household to mean "a person or group of persons living together in a room or group of rooms as a housing unit, but the term does not include persons boarding in or renting a portion of the dwelling." Section 409.509(4), F.S., defines a "household" as an individual or group of individuals living in a dwelling unit defined by the Department of Community Affairs.

⁴⁵ See s. 322.051, F.S.

⁴⁶ Section 562.12, F.S.

manufacturer, bottler, or distributor under the Beverage Law.” The bill does not clarify whether a winery shipper is a manufacturer under the meaning of the prohibitions in s. 561.14(3), F.S., and whether a vendor is prohibited from purchasing wine from a winery shipper.⁴⁷

Section 561.222(3)(b), F.S., requires that licensed winery shippers obtain the common carrier’s written policy declaring that the common carrier shall, before delivery, adhere to the age verification requirements of this bill.

Section 561.222(3)(c), F.S., requires that a winery shipper must offer to its distributor for purchase and sale per calendar year the same brands and quantities of wine shipped per calendar year under this bill.

Taxes

Section 561.222(4), F.S., requires that winery shippers pay monthly taxes to the Department of Revenue and all sales and excise taxes on wine to the division for sales in the preceding month. The bill provides that taxes shall be calculated as if the sale took place in this state and calculated as if the sales took place at the location where the delivery occurred. The bill requires the collection and payment of the discretionary sales surtaxes tax (local option sales tax), and that those funds must be deposited into the Discretionary Sales Surtax Clearing Trust Fund described in s. 212.054(4)(c), F.S., and distributed as provided in that provision.

In current law, s. 212.054(4)(b), F.S., requires that surtax collected by dealers located in the county must be returned to that county. The proceeds are transferred to the Discretionary Sales Surtax Clearing Trust Fund. The provision in the bill would conflict with s. 212.054(4)(b), F.S., to the extent it would require the in-state wineries not to return the collect discretionary tax to the county in which they are located.

Under current law, s. 212.0596, F.S., requires dealers making mail order sales in Florida to collect and remit Florida sales tax pursuant to s. 212.15, F.S. Section 212.15, F.S., provides for the monthly collection of sales tax and provides that the sales are due to the department on the first day of the succeeding month and are delinquent on the 21st day of such month.

Current law, in s. 212.0596(6), F.S., provides that dealers making mail order sales⁴⁸ in Florida are exempt from collecting and remitting any local option surtax unless the dealer is located in a county that imposes a surtax, the order is placed through the dealer’s location in such county, and the property purchased is delivered into such county, or into another county that imposes a surtax. The bill would exclude winery shippers’ sales from this exemption.

⁴⁷ Although s. 561.14(3), F.S., also prohibits the importation of alcoholic beverages by a retail vendor from places beyond the limits of the state, it is not clear whether purchase from an out-of-state winery shipper would constitute importation. The importation prohibition in s. 561.14(3), F.S., would not apply to purchases from in-state winery shippers. Therefore, the application of the importation prohibition to out-of-state winery shippers may raise constitutional concerns related to the disparate treatment of in-state and out-of-state winery shippers.

⁴⁸ Section 212.0596(1), F.S., defines “mail order sale” to include tangible personal property ordered by mail or any other means of communication.

Reporting and Recordkeeping Requirements

Section 561.222(5), F.S., requires that winery shippers report to the division, on a monthly basis, the following information regarding shipments during the previous month to residents of this state:

- Whether any wine was shipped;
- Quantity and brands of wine shipped;
- Total price of wine shipped;
- Amount of excise tax paid to the division; and
- Any other information that the division determines necessary to enforce this section.

This report is not required if the licensee files a monthly report pursuant to s. 561.55, F.S., that contains all the required information.⁴⁹ Section 561.222(6), F.S., requires each winery shipper licensee to maintain records, electronically or otherwise, for at least three years after the date of delivery. The records must be available for inspection by the DOR and division upon request.

The bill requires that winery shippers must permit the division and the DOR to audit their records upon request. The bill requires that winery shippers be audited at least once per year. It also requires that winery shippers furnish any documents within 30 days after a request is made.

The bill specifies the records that must be maintained by a winery shipper regarding wines shipped to residents of Florida, including:

- The license issued under s. 561.222, F.S.;
- Records of all wines ordered, sold, or shipped, the purchasers' names, address, and dates of birth of the purchasers,
- The name of the person to whom the wine was shipped, and the date of the shipment, quantity, and brands shipped; and
- All contracts with the common carriers for delivery, including the carrier's written wine delivery policy.

Common Carrier Requirements

Section 561.222(7), F.S., sets forth requirements for common carriers that deliver wines for the winery shippers. The bill requires that the common carriers:

- Register with the division and acknowledge the intent to deliver wines and the requirements for delivery of wine shipments;
- Maintain a written wine delivery policy as specified in the bill;

⁴⁹ In-state winery shippers would be required to file monthly reports under ss. 561.55 and 561.222, F.S. Under s. 561.55, F.S., licensed manufacturers are required to make monthly reports showing the amount of:

- (a) Beverages manufactured or sold within the state and to whom sold;
- (b) Beverages imported from beyond the limits of the state and to whom sold;
- (c) Beverages exported beyond the limits of the state, to whom sold, the place where sold, and the address of the person to whom sold.

- Refuse to deliver wine to recipients who appear to be under 21 years of age and who do not present a valid identification; and
- Obtain the recipient's signature.

The bill requires that the common carriers maintain such records for three years, and make the records available for inspection upon request by the division.

Penalties

Section 561.222(8), F.S., provides that the division may suspend or revoke a winery shipper's license or impose a fine for a violation of this section under its authority in s. 561.29, F.S., and any other cause of action authorized in that section. Section 561.29, F.S., provides various grounds for the suspension, revocation, or levying a fine against an alcoholic beverage licensee, including violations related to failure to maintain qualifications, violations of specified laws in other jurisdictions, and failure to comply with an order of the division.

Section 561.222(8), F.S., imposes criminal penalties. It provides a second degree misdemeanor violation for any winery shipper that ships or causes to be shipped wine to a person in this state under the age of 21.⁵⁰ This criminal penalty applies to a "winery shipper licensee." If a winery that is not licensed under s. 561.222, F.S., ships wine to a Florida consumer under 21 years of age, the criminal penalty does not appear to apply.⁵¹

The bill provides a second degree misdemeanor violation for any common carrier, permit carrier, or other commercial conveyance that delivers wine directly to any person in this state who is under 21 years of age.

A second degree misdemeanor violation is also provided for persons who obtain wine from a winery shipper in violation of s. 561.222, F.S. the only prohibition against obtaining wine in s. 561.222, F.S., is the prohibition against consumers purchasing more than 12 cases of wine from winery shippers per calendar year. Under this penalty provision, a consumer could be charged with a second degree misdemeanor if he or she purchases more than 12 case of wine from winery shippers during a calendar year.

A person who provides a winery shipper with a false date of birth also commits a second degree misdemeanor.

Rulemaking

The bill authorizes the division to adopt rules to administer and enforce s. 561.222, F.S.

⁵⁰ Section 775.082(4)(b), F.S., provides that a second degree misdemeanor is punishable by imprisonment for a finite term not longer than 60 days. Section 775.083(1)(e), F.S., provides that a second degree misdemeanor could also be punishable by a fine of not more than \$500.00.

⁵¹ Section 562.11, F.S., prohibits the selling, giving, or serving of an alcoholic beverage to a person under 21 years of age. The penalty is a misdemeanor of the second degree.

Primary American Source of Supply Brand Registration

The bill amends s. 564.045, F.S., to require primary American source of supply brand registration for winery shippers.

Other Shipping Provisions

The bill amends the shipping prohibitions in ss. 561.54 and 561.545, F.S., to exempt deliveries made under s. 561.575, F.S., by licensed winery shippers to persons over 21 years of age or older.

Florida Farm Wineries

The bill amends s. 561.24(5), F.S., to provide that any manufacturer of wine holding a license as a distributor on July 1, 2011, shall be entitled to renewal of that license. The bill deletes the provision that this subsection does not apply to certified Florida Farm wineries. The effect of this provision is to restrict any certified Florida Farm Winery from being licensed as a distributor if the winery is not licensed as a distributor on the effective date of this act.

The bill amends s. 599.004, F.S., to revise the qualifications for a Florida Farm Winery to replace the term “vineyards” with a reference to lands in Florida which produce commodities used in the production of wine. It also requires that at least 60 percent of wine produced by a Certified Florida Farm Winery shall be made from Florida’s agricultural products. The bill authorizes the Commissioner of Agriculture to waive this requirement in times of hardship. The bill does not define hardship.

Severability

The bill provides for severability if any provision of the act or its application to any person or circumstance is held invalid.

This provision does not reference the severability of any specific provisions in the bill. As noted in the *Manual for Drafting General Bills* for the Florida Senate, the “[c]ourts do not need a severability section to sever unconstitutional provisions or applications and allow the other provisions or applications to stand.”⁵² If a severability clause is included in a bill, the standard severability clause provides:

If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.⁵³

⁵² *Manual for Drafting General Bills*, Legal Research and Drafting Services, Office of the Secretary of the Senate, The Florida Senate (5th Edition, 1999) at page 50.

⁵³ *Id.*

Effective Date

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

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:**Gallonage Limits**

This bill raises Commerce Clause concerns under the U.S. Constitution because it prohibits direct shippers who produce more than 250,000 gallons of wine per year from being licensed to directly ship wine to Florida consumers. According to representatives for Florida producers, none of Florida's certified farm wineries produce more than the 250,000 gallons annually. Consequently, the limitation would only affect out-of-state wineries, and the bill may be considered as discriminating against out-of-state direct shippers because it provides for the regulation of out-of-state direct shippers of wine in a manner that differs from the requirements imposed on in-state wineries.

In *Granholm v. Heald*,⁵⁴ the U.S. Supreme Court held that laws in New York and Michigan that discriminated between in-state and out-of-state wineries in the regulation of the direct shipment of wine were unconstitutional. The Supreme Court held that these states' laws discriminated against interstate commerce in violation of the Commerce Clause, Art. I, s. 8, cl. 3 of United States Constitution and that the discrimination was not authorized nor permitted by the Twenty-first Amendment. The court stated that when a state statute directly regulates or discriminates against interstate commerce, or when its effect is to favor in-state economic interests over out-of-state interests, the court has generally struck down the statute without further inquiry. In determining the extent to which states may impose requirements on interstate commerce that discriminate in favor of in-state interests, *Granholm* applied the rule that states can generally regulate imported wine only to the same extent and in the same manner that they regulate domestically produced wine. If there is any disparate treatment, the court must consider whether a state's regulatory regime "advances a legitimate local purpose that cannot be adequately

⁵⁴ *Supra* at n. 19.

served by reasonable nondiscriminatory alternatives.”⁵⁵ It is not clear what “legitimate local purpose” is served by the 250,000 gallon limit that is not discriminatory in favor of in-state interests.

Alternatively, a gallonage cap may not violate the commerce clause as interpreted in *Granholm* if the cap is applied even-handedly to all in-state and out-of-state wineries. If limited to the issue of discrimination against interstate interests through distinctions between in-state and out-of-state wineries to the commerce clause concern in *Granholm* may not be implicated.

Four states have imposed limits on the number of gallons that wineries can produce annually to be eligible to direct ship wines to consumers in the state. The constitutionality of gallonage limits in Kentucky, Massachusetts, and Arizona have been challenged. The gallonage cap in Ohio has not been challenged. The gallonage limits in Arizona and Kentucky have been held to be constitutional. However, the gallonage limit in Massachusetts was held to be unconstitutional.

In the Kentucky case, *Cherry Hill Vineyards, L.L.C. v. Hudgins*,⁵⁶ the court held that the state’s 50,000 gallon limit did not discriminate against out-of-state producers and did not violate *Granholm* because the limit provides similar licensing opportunities to in-state and out-of-state wineries. The court stated that the limit does not give Kentucky wineries a competitive advantage over similarly situated out-of-state wineries.

In the Arizona case, *Black Star Farms, L.L.C. v. Oliver*,⁵⁷ the U.S. District Court for the District of Arizona found the state’s 20,000 gallon limit was constitutional. It noted that the number of out-of-state wineries that produced less than 20,000 gallons of wine a year “dwarfed the number of in-state wineries” that were able to qualify for Arizona’s direct shipment license. The district court also stated that “the simple fact that there are more out-of-state wineries than in-state wineries that produce more than 20,000 gallons of wine per year and are thus required to adhere to the three-tiered distribution system in order to gain access to Arizona’s wine market does not by itself establish patent discrimination in effect against interstate commerce.”⁵⁸ On appeal, the U.S. District Court of Appeals for the Ninth Circuit also held that the state’s 20,000 gallon limit was constitutional.⁵⁹ The Ninth Circuit noted that, when the gallonage cap was adopted in 2006, only one winery in Arizona produced more than 20,000 gallons. It also noted that, in 2004, wineries producing more than 25,000 gallons of wine per year accounted for about 98 percent of the total wine production in the United States. The Ninth Circuit then noted that more than 70 percent of the all wineries produced less than 25,000 gallon per year. The court reasoned that the Arizona statute applied to all small wineries whether located in-state or out-of-state.

⁵⁵ *Supra* at n. 22.

⁵⁶ *Cherry Hill Vineyards v. Hudgins, L.L.C.*, 488 F.S. Supp.2d 601 (W.D. Ky. 2006).

⁵⁷ *Black Star Farms, L.L.C. v. Oliver*, 544 F.Supp.2d 913 (D. Ariz. 2008).

⁵⁸ *Id.* at 925-926.

⁵⁹ *Black Star Farms, L.L.C. v. Oliver*, 2010 WL 1443284 (9th Cir. 2010).

However, in *Family Winemakers of California v. Jenkins*,⁶⁰ the court held that the 30,000 gallon limit in Massachusetts to be unconstitutional because it had the discriminatory effect and purpose to change the competitive balance between in-state and out-of-state wineries to the benefit of the in-state wineries. All of the Massachusetts wineries produced less than the 30,000 gallon limit.

Regulation of Common Carriers

The bill's requirements for winery shippers and common carriers raise concerns relating to federal preemption over the regulation of common carriers. The bill requires that common carriers maintain delivery records for three years and make the records available to inspection by the division upon request. In *Rowe v. New Hampshire Motor Transport Association*,⁶¹ the U.S. Supreme Court held that federal regulation of carriers, including the Motor Carrier Act of 1980⁶² and the Federal Aviation Administration Authorization Act of 1994,⁶³ pre-empted the State of Maine's regulations for the delivery of tobacco products that were intended to prevent the delivery and sale of tobacco products to minors. Maine's regulations required that the persons shipping cigarettes into Maine utilize only delivery companies that used specified delivery services, including recipient-verification services. The Supreme Court rejected the state's argument that its regulations were intended to prevent minors from obtaining cigarettes.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill imposes a \$250 license and an annual \$250 license renewal fee for the winery shipper license created under s. 561.222, F.S. Winery shipper licensees would have to pay excise taxes and sales taxes to the state.

As of the date of this analysis, the Revenue Estimating Conference has not determined the revenue impact of this bill. The bill is substantively identical to CS/SB 1096, that was filed during the 2008 Regular Session and that died in messages having passed the Senate. For CS/SB 1096, the Revenue Estimating Conference determined that the bill would have generated \$4 million in revenue for FY 2008-09 on an annualized basis. Of this amount, \$3 million was General Revenue, \$.5 million for the Alcoholic Beverage and Tobacco Trust Fund, and \$.5 million for local revenue.

According to the department, it is receiving approximately 850 monthly tax payment reports evidencing out-of-state wine deliveries to approximately 20,000 recipients. The division is uncertain whether all of the wine shippers are wineries.

For December 2010, the division's records indicate that 22,826 total gallons of wine were reported as shipped into the state directly to consumers. \$57,729.61 in excises taxes was

⁶⁰ *Family Winemakers of California v. Jenkins*, 592 F.3d 1 (1st Cir. 2010).

⁶¹ *Rowe v. New Hampshire Motor Transport Association*, 128 S.Ct. 989 (2008).

⁶² 94 Stat. 793.

⁶³ 108 Stat. 1605-1606.

paid to the division for that month. Since January 2006, \$1,861,225.55 in excise taxes has been paid to the division for the direct shipment of wine.

According to the division, Florida could be missing between \$407,606 and \$639,440 in excise taxes per year from unreported and unpaid out-of-state direct shipment wine sales to Florida consumers.

B. Private Sector Impact:

The Department of Business and Professional Regulation estimates that 2,575 wineries nationwide would become licensed winery shippers. In addition to the license fee, winery shipper licensees would incur costs related to the record keeping and reporting requirements of the bill.

Common carriers may incur expenses to comply with the record keeping requirements of this bill. One common carrier, United Parcel Service (UPS or “the carrier”), expressed its concerns with the provision in s. 561.222(7)(d), F.S., that requires common carriers to maintain delivery records for three years and make the records available to inspection by the division upon request. The carrier advised there would be significant costs related to maintaining its records of wine deliveries to Florida for three years. There also may be costs, including legal expenses, related to responding to the division’s inspection requests. It is not clear to what extent the UPS’s concerns reflect the concerns of other common carriers.

C. Government Sector Impact:

According to the Department of Business Regulation, the division would need three additional employees to accommodate the increased workload.

VI. Technical Deficiencies:

The bill creates s. 561.222(4), F.S., to require that winery shippers collect and pay the discretionary sales surtaxes tax (local option sales tax). Section 212.054(4)(b), F.S., requires that surtax collected by dealers located in the county must be returned to that county. The proceeds are transferred to the Discretionary Sales Surtax Clearing Trust Fund. The provision in the bill would conflict with s. 212.054(4)(b), F.S., to the extent it would require the in-state wineries not to return the collected discretionary tax to the county in which they are located.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Regulated Industries Committee

BILL: SB 662

INTRODUCER: Senator Jones

SUBJECT: Public Accountancy

DATE: March 24, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Pre-meeting
2.			JU	
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill requires, effective January 1, 2015, licensed certified public accountancy firms to enroll with a peer review organization and to undergo a peer review every three years as a condition for license renewal. The peer review requirements are limited to firms that practice public accountancy under s. 473.302(8)(a), F.S., which relates to public accountancy services that require the certified public accountant (CPA) to give a written opinion or attestation. The peer reviews would be performed by peer review organizations that would be approved by the Board of Public Accountancy (board).

The bill authorizes the board to establish a five-member peer review oversight committee to adopt rules for the qualifications, appointment, and terms of members. Each member of the committee must be a Florida-licensed CPA, and their firm must have undergone a peer review and received a review rating of "pass" on the most recent peer review. The term of appointment is at least 3 years and the member may not be a member of any state accountancy board or committee.

The bill provides immunity from civil liability for CPA's and other persons appointed or authorized to perform administrative services for the peer review administering organization for furnishing information or performing within the scope or function of the duties of the peer review administering organization. The bill also provides that the proceedings, records, and work papers of a peer review administering organization are privileged, confidential, and not subject to discovery in a civil or arbitration proceeding. It also prohibits persons from testifying in a civil or arbitration proceeding in connection with a peer review.

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

This bill substantially amends sections 473.311 and 473.323, Florida Statutes. The bill creates sections 473.3066 and 473.3125.

II. Present Situation:

The Board of Accountancy within the Department of Business and Professional Regulation (department) is the agency charged with regulating the practice of public accountancy.¹ The Division of Certified Public Accounting performs for the board all services concerning the enforcement of ch. 473, F.S., including, but not limited to, recordkeeping services, examination services, legal services, and investigative services, and those services in ch. 455, F.S., necessary to perform the board's duties under the chapter.

Section 473.302(4), F.S., defines a "certified public accountant" to mean a person who holds a license to practice public accounting in this state under the authority of ch. 473, F.S.

Section 473.302(8), F.S., defines the "practice of," "practicing public accountancy," or "public accounting" to mean:

(a) Offering to perform or performing for the public one or more types of services involving the expression of an opinion on financial statements, the attestation as an expert in accountancy to the reliability or fairness of presentation of financial information, the utilization of any form of opinion or financial statements that provide a level of assurance, the utilization of any form of disclaimer of opinion which conveys an assurance of reliability as to matters not specifically disclaimed, or the expression of an opinion on the reliability of an assertion by one party for the use by a third party;

(b) Offering to perform or performing for the public one or more types of services involving the use of accounting skills, or one or more types of tax, management advisory, or consulting services, by any person who is a certified public accountant who holds an active license, including the performance of such services by a certified public accountant in the employ of a person or firm; or

(c) Offering to perform or performing for the public one or more types of service involving the preparation of financial statements not included within paragraph (a), by a certified public accountant who holds an active license, a firm of certified public accountants, or a firm in which a certified public accountant has an ownership interest, including the performance of such services in the employ of another person. The board shall adopt rules establishing standards of practice for such reports and financial statements; provided, however, that nothing in this paragraph shall be construed to permit the board to adopt rules that have the result of prohibiting licensees employed by unlicensed firms from preparing financial statements as authorized by this paragraph.

¹ Section 473.303, F.S.,

However, these terms [of practice] shall not include services provided by the American Institute of Certified Public Accountants or the Florida Institute of Certified Public Accountants, or any full service association of certified public accounting firms whose plans of administration have been approved by the board, to their members or services performed by these entities in reviewing the services provided to the public by members of these entities.

Section 473.302(5), F.S., defines the term “firm” to mean “any entity that is engaged in the practice of public accounting.”

Section 473.3101(1)(a), F.S., requires that firms must hold a license if the firm:

- Uses the title “CPA,” “CPA firm,” or any other title, designation, words, letters, abbreviations, or device tending to indicate that the firm practices public accounting; or
- Does not have an office in this state but performs the services described in s. 473.3141(4), F.S.,² for a client having its home office in this state, as defined by rule of the board.

Section 473.311(1), F.S., requires that CPA licensee’s, as a condition of license renewal every two years, complete continuing education requirements, and pass an examination on chs. 455 and 473, F.S. The biennial renewal fee for individual active and inactive status licenses is \$105.00.³

The continuing education requirement provides that every two years before each license renewal CPA’s must successfully complete not less than 48 or more than 80 hours of continuing professional education programs in public accounting subjects approved by the board.⁴

The board may prescribe by rule additional continuing professional education hours, not to exceed 25 percent of the total hours required, for failure to complete the hours required for renewal by the end of the reestablishment period. Not less than 25 percent of the total hours required by the board must be in accounting-related and auditing-related subjects, as distinguished from federal and local taxation matters and management services. Not less than 5 percent of the total hours required by the board shall be in the practice of public accounting.⁵

Florida does not require that firms participate in a peer review program. It also does not have a peer review oversight committee or other oversight process for peer review. According to the Florida Institute of Certified Public Accountants (FICPA), 48 states have a peer review requirements. According to FICPA, Florida and Delaware are the only states without a peer review requirement.

Also according to the FICPA, the goal of a peer review is to help CPA firms improve their work, if needed, or to show that the CPA’s work meets professional auditing standards.

² Section 473.3141, F.S., provides the practice requirements for CPA’s from out-of-state.

³ See Rule 61H1-31.001, F.A.C., for the board’s fee schedule. Section 473.305, F.S., authorizes a maximum biennial renewal fee of \$250.

⁴ Section 473.312, F.S.

⁵ *Id.*

The Florida Institute of Certified Public Accountants has represented that Florida CPA firms that perform one or more audits, reviews, compilations, or any other agreed-upon attestation engagement, and are members of the American Institute of Certified Public Accountants are currently required to perform work under the Yellow Book standards⁶ and public company audits which requires that they enroll in a peer review program and undergo a peer review at least once every three years.

The American Institute of Certified Public Accountants Peer Review Board has approved 41 state CPA societies or groups of societies as “administering entities” to administer the peer review program for 55 licensing jurisdictions.⁷

The board has unanimously approved the concept of peer review as a requirement for firm license renewal.⁸

III. Effect of Proposed Changes:

Peer Review Oversight Committee

The bill creates s. 473.3066, F.S., to authorize the board to establish a five-member peer review oversight committee. The board is not required to establish this committee. If the board does establish the committee, it may adopt rules for the qualifications, appointment, and terms of members. Each member of the committee must be a Florida-licensed CPA, and their firm must have undergone a peer review and received a review rating of “pass” on the most recent peer review.

Members of any state board, members of another state accountancy board committee, and persons who perform enforcement-related duties for a state accountancy board may not serve on the committee. Committee members would serve without compensation, including no reimbursement for per diem or travel expenses. The bill provides for staggered term terms that are not to exceed three years.

The board’s rules may also establish the duties of the committee, may include, but are not limited to, providing or performing:

- Oversight for peer review programs and peer review administering organizations;
- Periodically reporting to the board on the effectiveness of peer review programs and providing a list of licensees that participate in the programs; and
- Other duties relating to oversight of peer review programs.

License Renewal Requirement

⁶ The “Yellow Book” provides the government auditing standards.

⁷ *Peer Review Resources*, American Institute of Certified Public Accountants, <http://www.aicpa.org/InterestAreas/PeerReview/Resources/Pages/default.aspx> (last visited March 27, 2011).

⁸ See correspondence from David C. Tipton, CPA, Chairman, Florida Board of Accountancy, to the Florida Institute of Certified Public Accountants, dated December 7, 2010, which is on file with the professional staff of the Senate Committee on Regulated Industries.

The bill amends s. 473.311, F.S., to clarify that the department shall renew a license issued under section 473.308 F.S.

The bill creates subsection (2) of s. 473.311, F.S., to require that, effective January 1, 2015, a firm must satisfactorily comply with the peer review requirements in order to renew a firm license. The firm's license may be renewed if the board has extended the time to comply with the peer review requirement.

The bill amends s. 473.311(3), F.S., to clarify that the board's authority to adopt rules for license renewals relates to the CPA license and the firm license under ss. 473.308 and 473.3101, F.S., respectively.

Peer Review

The bill creates s. 473.3125, F.S., to define terms as used in this section and to provide standards for peer review.

Section 473.3125(1)(a), defines the term "licensee" to mean firms that are required to be licensed under s. 473.3101, F.S., and that practice public accounting as defined in s. 473.302(8)(a), F.S.

Section 473.3125(1)(b), F.S., defines the term "peer review" to mean "the study, appraisal, or review by one or more independent certified public accountants of one or more aspects of the professional work of a licensee."

Section 473.3125(2)(a), F.S., requires that the CPA firm:

- Enroll in a peer review program of a peer review administering organization approved by the board; and
- Undergo a peer review at least once every 3 years which is performed according to this section and the rules of the board and submitted to and accepted by a peer review administering organization.

Section 473.3125(2)(b), F.S., provides that licensees are not required to enroll in a peer review program or undergo a peer review if they do not perform the accounting services defined in s. 473.302(8)(a), F.S.

Section 473.3125(2)(c), F.S., provides an exception from the requirements to enroll in a peer review program and for a peer review requirement for licensees that have been licensed less than 18 months.

Section 473.3125(2)(d), F.S., provides that a licensee that receives a review rating of "fail" on two consecutive peer reviews must submit any documentation requested by the board.

Section 473.3125(3), F.S., requires the board to adopt rules establishing minimum standards for peer review programs including establishing minimum criteria for the board's approval of one or more peer review administering organizations to facilitate and administer the peer review program. The rules must require the peer review administering organization to submit to the

board a written summary of the organization's peer review program that includes a description of its entire peer review process.

Section 473.3125(3)(c), F.S., sets forth the minimum standards for the board to approve peer review organizations. The organization must demonstrate the ability to administer its peer review program in the manner described in its written summary and to comply with the board's minimum standards.

Section 473.3125(3)(d), F.S., authorizes the board to withdraw its approval of any organization that fails to comply with s. 473.3125, F.S., or the board's rules.

Section 473.3125(4), F.S., provides immunity from civil liability for CPA's and other persons appointed or authorized to perform administrative services for the peer review administering organization for furnishing information or performing within the scope or function of the duties of the peer review administering organization.

Section 473.3125(5), F.S., provides that the proceedings, records, and work papers of a peer review administering organization are privileged, confidential, and not subject to discovery in a civil or arbitration proceeding. The bill also prohibits a person from testifying in a civil or arbitration proceeding in connection with a peer review. The privilege does not apply to public records and materials prepared for a particular engagement. The privilege does not apply to any dispute between a peer review administering organization and licensee relating to a subject arising from the performance of the peer review.

Disciplinary Proceedings

The bill amends s. 473.323 F.S., to authorize the board to discipline any licensed audit firm or public accounting firm that is subject to the peer review requirement if the firm fails to enroll in a peer review program or undergo a peer review as required by s. 473.3125, F.S.

The firm may also be disciplined by the board if it engages in material noncooperation with a peer review administering organization approved by the board.

Effective Date

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The confidentiality of records provided in s. 473.3125(5), F.S., would not apply to any documentation provided to the board, as provided in 473.3125(2)(d), F.S., and which are subject to the public records requirements in s. 119.07, F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Public accountancy firms that are licensed under s. 473.3101, F.S., and that practice public accounting as defined in s. 473.302(8)(a), F.S., would be required to enroll with a peer review organization and submit to peer review at least every three years as a condition for renewal of their license every two years. According to the Florida Institute of Certified Public Accountants, the cost of a peer review varies depending on the type of accountancy practiced and the complexity of the subject, but advised that a peer review may cost at least \$900.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.