

**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.)

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: CS/CS/SB 1420

INTRODUCER: Commerce and Tourism Committee, Community Affairs Committee and Senator Gruters

SUBJECT: Insulation Products

DATE: April 8, 2019

REVISED: \_\_\_\_\_

|    | ANALYST        | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|----------------|----------------|-----------|---------------|
| 1. | <u>Toman</u>   | <u>Yeatman</u> | <u>CA</u> | <b>Fav/CS</b> |
| 2. | <u>Harmsen</u> | <u>McKay</u>   | <u>CM</u> | <b>Fav/CS</b> |
| 3. | _____          | _____          | <u>RC</u> | _____         |

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1420 requires any person who advertises, sells, offers, provides, distributes, or markets a product as interior building envelope insulation to have a report that demonstrates the insulation's compliance with the Florida Building Code from a commission-approved testing laboratory. Failure to have such a report is a violation of the Florida Deceptive and Unfair Trade Practices Act.

Additionally, testing data that demonstrates an interior building envelope insulation product's compliance with the Florida Building Code must be provided to a local building official upon his or her request.

**II. Present Situation:**

**The Florida Building Code**

In 1974, Florida adopted a state minimum building code law requiring all local governments to adopt and enforce a building code. The system provided four separate model codes that local governments could consider and adopt to establish minimum standards of health and life safety for the public. In that system, the state's role was limited to adopting all or relevant parts of new

editions of the four model codes. Local governments could amend and enforce their local codes as they saw fit.<sup>1</sup>

In 1996 a study commission was appointed to review the system of local codes created by the 1974 law and to make recommendations for modernizing the entire system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and an enhanced oversight role for the state in local code enforcement. The same legislation created the Florida Building Commission (Commission) to develop and maintain the Florida Building Code and related programs and processes. The 2000 Legislature authorized implementation of the Florida Building Code, and the first edition replaced all local codes on March 1, 2002. There have been six editions to date, and the Commission initiated the development of the 7th Edition (2020) Florida Building Code in October of 2017.<sup>2</sup>

### ***The Florida Building Commission***

The Commission, which is housed within the Florida Department of Business and Professional Regulation (DBPR), is a 27-member technical body responsible for the development, maintenance, and interpretation of the Florida Building Code. The Commission also approves products for statewide acceptance. Members are appointed by the Governor and confirmed by the Senate and include design professionals, contractors, and government experts in the various disciplines covered by the Florida Building Code.<sup>3</sup>

### ***Florida Building Code Enforcement***

Section 553.73(1)(e), F.S., designates that the responsibility for the enforcement, interpretation, and regulation of the Florida Building Code be vested in a specified local board or agency. These responsibilities include reviews of building plans, building inspections, and building permitting. Each enforcement district is governed by a board whose composition is determined by the affected localities.<sup>4</sup> Day-to-day functions are typically carried out through municipal and county building departments and building officials.<sup>5</sup>

### ***Product Evaluation and Approval***

Section 553.842, F.S., provides the Commission with the authority to adopt rules to develop a product evaluation and approval system that applies statewide to operate in coordination with the Florida Building Code.<sup>6</sup> The system must rely on national and international consensus standards whenever such standards are adopted into the Florida Building Code to demonstrate compliance

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<sup>1</sup> See The Florida Building Commission, *Annual Report FY 2017-2018*, available at [https://www.floridabuilding.org/fbc/commission/FBC\\_0618/Commission/FBC\\_FY\\_2017-2018\\_Annual\\_Report.pdf](https://www.floridabuilding.org/fbc/commission/FBC_0618/Commission/FBC_FY_2017-2018_Annual_Report.pdf) (last visited Apr. 8, 2019).

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

<sup>3</sup> Section 553.74, F.S.

<sup>4</sup> Section 553.80(3)(a), F.S.

<sup>5</sup> The definition of "building official" in s. 468.603 F.S., references a person charged with the responsibility for direct regulatory administration or supervision of plan review, enforcement, or inspection of building construction, erection, repair, addition, remodeling, demolition, or alteration projects that require permitting.

<sup>6</sup> See Fla. Admin. Code R. 61G20-3.

with code standards.<sup>7</sup> Other standards which meet or exceed state requirements must also be considered.<sup>8</sup>

The Commission must use specific methods outlined in section 553.842(5), F.S., for its statewide approval process.<sup>9</sup> The categories of products subject to statewide approval are limited to panel walls, exterior doors, roofing, skylights, windows, shutters, impact protective systems, and structural components.<sup>10</sup>

The Commission must maintain a list of the state-approved products, product evaluation entities, testing laboratories, quality assurance agencies, certification agencies, and validation entities.<sup>11</sup>

Section 553.8425, F.S., governs approvals for products not identified as part of the statewide product approval program. Generally, products bearing a certification mark, label, or listing by an approved certification agency require no further documentation to establish compliance with the Florida Building Code.<sup>12</sup> Upon review of the compliance documentation and a finding that a product complies with the Florida Building Code, the authority having jurisdiction or a local building official approves products for use.<sup>13</sup>

### **Florida Deceptive and Unfair Trade Practices<sup>14</sup>**

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA or Act) broadly declares unlawful any unfair or deceptive acts or practices committed in the conduct of any trade or commerce. The Act is a separate cause of action intended to be an additional remedy, and it is aimed toward making consumers whole for losses caused by fraudulent consumer practices. The Act protects consumers from deceptive acts that mislead consumers, and protects the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce. Generally, an individual who violates the Act is subject to a \$10,000 maximum civil penalty for each violation, in addition to attorney's fees and costs.<sup>15</sup>

### **Labeling and Advertising of Home Insulation**

Federal regulations on the labeling and advertising of home insulation are governed by 16 CFR Part 460.<sup>16</sup> This regulation deals with home insulation labels, fact sheets, ads, and other

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<sup>7</sup> Section 553.842(2), F.S.

<sup>8</sup> *Id.* Equivalence of standards for product approval are standards for products which meet or exceed the standards referenced in the Florida Building Code, and which are certified as equivalent for purposes of determining code compliance (Fla. Admin. Code R. 61G20-3.015).

<sup>9</sup> *See* s. 553.842(5)(a)-(b), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> Section 553.842(13), F.S.

<sup>12</sup> Section 553.8425(5), F.S. Specific methods are provided for local approval of products or systems to demonstrate compliance with the structural windload requirements of the Florida Building Code in s. 553.8425(1), F.S.

<sup>13</sup> Section 553.8425(6), F.S.

<sup>14</sup> *See* ss. 501.201-213, F.S.

<sup>15</sup> Section 501.2075, F.S.

<sup>16</sup> *See* <https://www.law.cornell.edu/cfr/text/16/part-460> (last visited Apr. 8, 2019). Chapter 553, part V, F.S., Florida Building Code, makes no references to insulation. While the term insulation is used within thermal efficiency standards ss. 553.902,

promotional materials in or affecting commerce, as “commerce” is defined in the Federal Trade Commission Act.<sup>17</sup> Home insulation is defined as:

any material mainly used to slow down heat flow. It may be mineral or organic, fibrous, cellular, or reflective (aluminum foil). It may be in rigid, semirigid, flexible, or loose-fill form. Home insulation is for use in old or new homes, condominiums, cooperatives, apartments, modular homes, or mobile homes. It does not include pipe insulation. It does not include any kind of duct insulation except for duct wrap.<sup>18</sup>

The regulation covers members of the home insulation industry including individuals, firms, partnerships, corporations, manufacturers, distributors, franchisors, installers, retailers, utility companies, and trade associations.<sup>19</sup>

### **Building Thermal Envelope**

The Florida Building Code: Energy Conservation (2017) defines the “building thermal envelope” as the basement walls, exterior walls, floor, roof, and any other building elements that enclose *conditioned space*. “Thermal envelope” is defined as the primary insulation layer of a building; that part of the envelope that provides the greatest resistance to heat flow to or from the building. “Continuous insulation” refers to insulating material that is continuous across all structural members without thermal bridges other than fasteners and service openings. It is installed on the interior or exterior or is integral to any opaque surface of the building envelope.

### **Thermal Insulation Standards and Laboratory Accreditation**

ASTM<sup>20</sup> provides thermal insulation standards widely used in specifying and evaluating the materials and methods used to reduce the rate of heat transfer. These thermal insulation standards help laboratories, device and equipment manufacturers, construction companies, industrial firms, and other groups of people that deal with thermal insulating materials and procedures in examining these respective materials for efficiency.<sup>21</sup>

The American Association for Laboratory Accreditation (A2LA) is a nonprofit, non-governmental, public service membership society. A2LA provides services in laboratory accreditation and laboratory-related training.<sup>22</sup> The National Institute of Standards and

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553.905 and 553.906, F.S., the references do not directly define insulation or its manufacture. Section 202, Florida Building Code: Energy Conservation (2017) defines insulation as a material mainly used to retard the flow of heat.

<sup>17</sup> 16 CFR § 460.1. If covered by this regulation, breaking any of its rules is an unfair and deceptive act or practice or an unfair method of competition subject to fine.

<sup>18</sup> 16 CFR § 460.2

<sup>19</sup> 16 CFR § 460.3 Advertisers and advertising agencies as well as labs doing tests for industry members are also covered.

<sup>20</sup> ASTM is an international testing organization that develops and publishes technical standards that are arrived at through consensus and used on a voluntary basis for a wide variety of products, materials, systems and services.

<sup>21</sup> See ASTM, *International, Thermal Insulation Standards*, available at <https://www.astm.org/Standards/thermal-insulation-standards.html#C16.94> (last visited Apr. 8, 2019).

<sup>22</sup> See American Association for Laboratory Accreditation (A2LA) website, available at <https://www.a2la.org/> (last visited Apr. 8, 2019).

Technology administers the National Voluntary Laboratory Accreditation Program (NVLAP). NVLAP provides accreditation services through various laboratory accreditation programs.<sup>23</sup>

### III. Effect of Proposed Changes:

**Section 1** creates s. 553.843, F.S., pertaining to the approval of interior building envelope insulation products. A person who advertises, sells, offers, provides, distributes, or markets a product as interior building envelope insulation must have a report that demonstrates compliance with the Florida Building Code that was performed by a commission-approved testing laboratory. Failure to have such a report is subject to penalty under the FDUTPA.

Additionally, section 1 requires a person to provide testing data for interior building envelope insulation to a local building official upon his or her request.

**Section 2** provides an effective date of July 1, 2019.

### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

### V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

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<sup>23</sup> See National Voluntary Laboratory Accreditation on Program website, available at <https://www.nist.gov/nvlap/about-nvlap> (last visited Apr. 8, 2019).

C. **Government Sector Impact:**

Indeterminate.

**VI. Technical Deficiencies:**

A Department of Business and Professional Regulation analysis of the bill stated that because insulation products are not within the scope of the Florida Building Commission's statewide product approval program, these products are currently approved by the local authority having jurisdiction pursuant to s. 553.8425, F.S. The bill, as written, does not change this.<sup>24</sup>

It is unclear whether a person who advertises, sells, offers, provides, distributes, or markets an interior building envelope insulation product must provide the required testing data in the course of the sale, offering, provision distribution, or marketing of the product as well as to a local building official upon his or her request.

The bill could more clearly specify what product must be demonstrated as compliant with the Florida Building Code in a report issued by a commission-approved testing laboratory.

It appears that only the failure to have a report demonstrating compliance with the Florida Building Code from a commission-approved laboratory is subject to penalty under the FDUTPA. There is no specified penalty for the failure to provide testing data for interior building envelope insulation to a local building official.

The testing data provided to a local building official is not required to be performed by a commission-approved testing laboratory.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates s. 553.843, F.S.

**IX. Additional Information:**

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

**CS by Commerce and Tourism on April 8, 2019:**

- Subjects a person who advertises, sells, offers, provides, distributes, or markets a product as interior building envelope insulation without testing data that demonstrates the product's compliance with the Florida Building Code from a commission-approved testing laboratory to penalty under the FDUTPA; and

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<sup>24</sup> Florida Department of Business and Professional Regulation, *2019 Agency Legislative Bill Analysis for SB 1420* (March 14, 2019) (on file with the Senate Committee on Community Affairs).

- Requires the testing report to be provided to a local building official upon his or her request.

**CS by Community Affairs on March 26, 2019:**

The committee substitute:

- Changes the bill title to an act relating to insulation products;
- Creates a new section of law on the approval of interior building envelope insulation products; and
- Specifies national accrediting organizations for insulation testing labs.

**B. Amendments:**

None.