

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 869 Department of Business and Professional Regulation Licensing  
**SPONSOR(S):** Commerce Committee, State Administration & Technology Appropriations Subcommittee, McClain  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 782

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	12 Y, 0 N	Wright	Anstead
2) State Administration & Technology Appropriations Subcommittee	12 Y, 0 N, As CS	Helpling	Topp
3) Commerce Committee	18 Y, 0 N, As CS	Wright	Hamon

### SUMMARY ANALYSIS

The Department of Business and Professional Regulation (DBPR) is responsible for licensing and regulating various businesses and professions throughout the state, including asbestos and mold-related professionals, electrical contractors, pugilistic exhibitions, hotels, restaurants, alcoholic beverages, the Building Code, and timeshares.

Related to mold-related and asbestos professional licensing regulations, the bill provides a pathway for a person who holds a license in another state to obtain a Florida license.

Related to electrical contractors licensing regulations, the bill allows certain local electrical and alarm contractors to be licensed statewide.

Related to pugilistic exhibitions, the bill removes the maximum participant weight differential requirement for all exhibition matches, to allow any exhibition to include participants who are not in the same weight category.

Related to public lodging establishments and public food service establishments, the bill:

- requires licensees to submit certain documents, fees, and communications online;
- allows notices to be served to the operator of a licensed establishment via email, in addition to in-person service and by mail; and
- allows the guest registry at a transient public lodging establishment to be kept online, and guests are no longer required to sign the registry.

Related to the Beverage Law, the bill allows package stores to sell nicotine products.

Related to the Building Code, the bill allows the Florida Building Commission to delay the effective date of the energy provisions for up to 3 months if energy code compliance software is not approved at least 3 months before the effective date of the updated Building Code.

Related to timeshares, the bill:

- revises certain provisions related to incidental benefits in the sale of a timeshare plan,
- extends the period for voiding certain unlawful contracts, from one year to five years, and
- provides that a developer is not required to file a separate public offering statement for any component site located within or outside Florida in order to include the component site in the multistate timeshare plan.

The bill has a positive fiscal impact on state government revenues. There is an indeterminate, but likely minimal negative fiscal impact on local governments and a positive fiscal impact on the private sector. See Fiscal Analysis & Economic Impact Statement.

The bill has an effective date of July 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Department of Business and Professional Regulation**

The Florida Department of Business and Professional Regulation (DBPR) regulates and licenses various businesses and professionals in Florida through the following divisions:

- The Division of Administration,
- The Division of Alcoholic Beverages and Tobacco,
- The Division of Certified Public Accounting,
- The Division of Drugs, Devices, and Cosmetics,
- The Division of Florida Condominiums, Timeshares, and Mobile Homes,
- The Division of Hotels and Restaurants,
- The Division of Pari-mutuel Wagering,
- The Division of Professions,
- The Division of Real Estate,
- The Division of Regulation,
- The Division of Technology, and
- The Division of Service Operations.<sup>1</sup>

The Division of Professions licenses and regulates various professions through 12 professional boards, five programs, and one council, including the:<sup>2</sup>

- Asbestos Licensing Unit,
- Electrical Contractors' Licensing Board (ECLB), and
- Mold-Related Services Program.

The Division of Regulation is the enforcement authority for Labor Organizations and Business Agents, the Florida Athletic Commission (FAC), Farm Labor Program, Child Labor Program, and any professional boards and programs housed within the Division of Professions.<sup>3</sup>

The Division of Hotels and Restaurants (H&R) licenses, inspects, and regulates public lodging and food service establishments in Florida.<sup>4</sup>

The Division of Alcoholic Beverages and Tobacco (ABT) administers and enforces the Beverage Law.<sup>5</sup>

The Division of Florida Condominiums, Timeshares, and Mobile Homes (CTMH) provides consumer protection for Florida residents living in regulated communities, including timeshares, through education, complaint resolution, alternative dispute resolution, and developer disclosure.<sup>6</sup>

#### **Mold-Related Services**

##### *Background*

Mold assessors and mold remediators are regulated by ch. 468, part XVI, F.S., and licensed by the Mold-Related Services Licensing Program<sup>7</sup> in DBPR.

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<sup>1</sup> S. 20.165, F.S.

<sup>2</sup> Florida Department of Business and Professional Regulation, *Division of Professions*, <http://www.myfloridalicense.com/DBPR/division-of-professions/> (last visited Feb. 24, 2023).

<sup>3</sup> Except the Board of Architecture and Interior Design, and the Florida Board of Professional Engineers. Florida Department of Business and Professional Regulation, *Division of Regulation*, <http://www.myfloridalicense.com/DBPR/division-of-regulation/> (last visited Feb. 24, 2023).

<sup>4</sup> Florida Department of Business and Professional Regulation, *Division of Hotels and Restaurants*, <http://www.myfloridalicense.com/DBPR/hotels-restaurants/> (last visited Feb. 24, 2023).

<sup>5</sup> S. 561.02, F.S.

<sup>6</sup> S. 721.02(2) and (3), F.S.

“Mold assessment” means a process performed by a mold assessor that includes the physical sampling and detailed evaluation of data obtained from a building history and inspection to formulate an initial hypothesis about the origin, identity, location, and extent of amplification of mold growth of greater than ten square feet.<sup>8</sup>

“Mold remediation” means the removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter of greater than ten square feet that was not purposely grown at that location; however, it may not include work that requires a contractor license under ch. 489, F.S.<sup>9</sup>

In order to be licensed as a mold assessor or mold remediator, an applicant must:

- be of good moral character,
- pass the required DBPR-approved examination offered by a nationally recognized organization that certifies persons in the specialty of mold assessment or mold remediation,
- have required liability insurance, and
- complete either:
  - at least a two-year associate of arts degree with certain course requirements and a minimum of one year of experience; or
  - a high school diploma or the equivalent with a minimum of four years of experience.<sup>10</sup>

A person who is licensed in another state is eligible for a license by endorsement in Florida if they:<sup>11</sup>

- are of good moral character;
- hold required general liability insurance;
- hold a valid license to practice as a mold assessor or mold remediator in another state or territory of the United States whose educational requirements are substantially equivalent to Florida; and
- have passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the required Florida examination.

Applicants for a mold-related license pay an initial licensure fee of \$230. There are currently 3,252 licensed mold assessors and 3,208 licensed mold remediators in the state. In the most recent fiscal year, there were 25 applicants for a license by endorsement.<sup>12</sup>

### *Effect of the Bill*

The bill allows applicants who hold a mold-related license in another state to obtain a license by endorsement in Florida, if they have held a valid license to practice in another state or territory of the United States for at least ten years before the date of application, without needing to take a Florida-specific examination or training.

Such applications for a Florida license by endorsement must be made either when the applicant’s license in another state or territory is active or within two years of when such license was last active.

The bill clarifies the provision relating to licensure examination requirements.

## **Asbestos Consultants and Contractors**

### *Background*

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<sup>7</sup> S. 468.84, F.S.

<sup>8</sup> S. 468.8411(3), F.S.

<sup>9</sup> S. 468.8411(5), F.S.

<sup>10</sup> S. 468.8413(2), F.S.

<sup>11</sup> S. 468.8414(3), (4), F.S.

<sup>12</sup> Email from Jonas Marquez, Legislative Affairs Director, Department of Business and Professional Regulation, RE: HB 869 (Feb. 28, 2023).

Asbestos consultants and contractors are regulated by ch. 469, F.S., and licensed by the Asbestos Licensing Unit in DBPR. Florida licensing standards must also comply with the U.S. Environmental Protection Agency's Asbestos Model Accreditation Plan for States (MAP), which includes mandatory nationwide standards for testing and education.<sup>13</sup>

"Asbestos abatement" means the removal, encapsulation, enclosure, or disposal of asbestos.<sup>14</sup>

An asbestos consultant may:

- conduct an asbestos survey,
- develop an operation and maintenance plan,
- monitor and evaluate asbestos abatement, and
- prepare asbestos abatement specifications.<sup>15</sup>

An asbestos contractor may perform the work of an asbestos consultant and conduct asbestos abatement work.<sup>16</sup>

In order to be eligible to be licensed as an asbestos consultant or contractor, an applicant must meet one of the following criteria:<sup>17</sup>

- hold a current, valid, active license as an architect issued under ch. 481, F.S.;
- hold a current, valid, active license as a professional engineer issued under ch. 471, F.S.,
- hold a current, valid, active license as a professional geologist under ch. 492, F.S.;
- be a diplomat of the American Board of Industrial Hygiene; or
- have been awarded designation as a Certified Safety Professional by the Board of Certified Safety Professionals.

An applicant for licensure as either an asbestos consultant or contractor also must:<sup>18</sup>

- if applying for an asbestos consultant license, complete DBPR-approved courses in the following topics:
  - building asbestos surveys and mechanical systems,
  - asbestos management planning,
  - respiratory protection, and
  - project designer.
- if applying for an asbestos contractor license, complete courses in the following topics:
  - asbestos contractor/supervisor, and
  - respiratory protection.
- provide evidence of satisfactory work on ten asbestos projects within the last five years,
- provide evidence of financial stability, and
- pass the DBPR-approved examination.

There is no provision which specifically allows or addresses licenses by endorsement for asbestos licensees of other states.

Applicants for an asbestos license pay an initial licensure fee of \$555, and an examination fee of \$316. There are currently 136 licensed asbestos contractors and 111 licensed asbestos consultants in the state. DBPR has received an average of 33 asbestos applications per year over the last three fiscal years. In the most recent fiscal year, there were 57 applicants for an asbestos professional license.<sup>19</sup>

### *Effect of the Bill*

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<sup>13</sup> 40 C.F.R. § 763 Appendix C to Subpart E.

<sup>14</sup> S. 469.001(1), F.S.

<sup>15</sup> S. 469.003, F.S.

<sup>16</sup> S. 469.003(3), F.S.

<sup>17</sup> S. 469.004(1), F.S.

<sup>18</sup> S. 469.005, F.S.

<sup>19</sup> DBPR, *supra* note 10.

The bill allows applicants who hold an asbestos license in another state license to obtain a license by endorsement in Florida if they have:

- passed a written examination in any state that meets the requirements of MAP,
- held a license as an asbestos consultant or asbestos contractor issued by another state or territory of the United States for at least ten years,
- demonstrated financial stability, and
- completed the required DBPR-approved courses.

Such applicants must apply while they hold an active license in another state or territory or within 2 years after such license was last active.

## **Electrical Contractors**

### *Background*

Statewide electrical, alarm system, and specialty contractors are regulated by of ch. 489, part II, F.S., and licensed and regulated by the ECLB within DBPR.<sup>20</sup> An electrical contractor engages in business as a contractor or performs electrical or alarm work for compensation.<sup>21</sup>

Electrical contractors may work on electrical wiring, fixtures, appliances, apparatus, raceways, and conduits which generate, transmit, transform, or utilize electrical energy in any form. The scope of an electrical contractor's license includes alarm system work.<sup>22</sup>

Alarm system contractors may lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace, or service burglary, fire, robbery, or medical emergency alarm systems.<sup>23</sup>

In order to become a certified electrical, alarm system, or specialty contractor, an applicant must:<sup>24</sup>

- be at least 18 years of age;
- be of good moral character;
- pass the certification examination;
- have workers' compensation insurance or an exemption, and public liability and property damage insurance; and
- meet certain training and education criteria.

A registered contractor is an individual that has taken and passed a local competency examination and can practice the specific category of contracting for which they are approved, only in the local jurisdiction for which the license is issued.<sup>25</sup> Locally registered contractors that are required to hold a contracting license to practice their profession in accordance with state law must register with DBPR after obtaining a local license.<sup>26</sup>

Section 489.514, F.S., created a pathway that allowed registered local electrical and alarm contractors who met certain criteria to have their local registration converted into a certified statewide license by the ECLB. The provision required applicants to apply by November 1, 2021, and is thus is no longer available for use by local registered contractors. This provision is commonly referred to as the "grandfathering provision."

Any registered contractor wishing to have their license "grandfathered" into a certified license had to submit a completed application to the ECLB, pay an appropriate fee, and show evidence of the following criteria:

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<sup>20</sup> S. 489.507, F.S.

<sup>21</sup> S. 489.505(9), F.S.

<sup>22</sup> Ss. 489.505(12) & 489.537(7), F.S.

<sup>23</sup> S. 489.505(1)-(2), F.S.

<sup>24</sup> S. 489.511(1) & (4), F.S.

<sup>25</sup> S. 489.505(21)-(23), F.S.

<sup>26</sup> S. 489.513, F.S.

- currently holds a valid registered local license in the certification of electrical contractor, alarm system contractor, or electrical specialty contractor sought;
- has, for the certification category sought, passed a written, proctored examination that the ECLB finds to be substantially similar to the examination required to be licensed as a certified contractor;
- has at least five years of experience as a contractor in the certification category sought, or as an inspector or building administrator with oversight over that category. For contractors, only time periods in which the contractor license is active and the contractor is not on probation shall count toward the required five years;
- has not had the contractor's license revoked at any time, suspended in the last five years, or assessed a fine in excess of \$500 in the last five years; and
- has the required workers' compensation insurance or an exemption, and public liability and property damage insurance.<sup>27</sup>

DBPR received 766 applications from local electrical and alarm contractors for a statewide license during the last period of grandfathering, from July 1, 2019, through November 1, 2021.<sup>28</sup>

### *Effect of the Bill*

The bill reopens the grandfathering provision for locally registered electrical, alarm system, and specialty contractors to obtain licensure as statewide certified contractors without an expiration date.

## **Pugilistic Exhibitions**

### *Background*

Chapter 548, F.S., governs the FAC under DBPR. The function of the FAC is to license and regulate pugilistic events and matches, including professional boxing, kickboxing, and mixed martial arts. The FAC ensures that all matches are conducted in accordance with provisions of state laws and rules.

A match participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician,<sup>29</sup> matchmaker, or promoter must be licensed by the FAC before directly or indirectly acting in such capacity in connection with any match. In order to obtain a license, an applicant must:<sup>30</sup>

- complete an application in a form prescribed by the FAC;
- be at least 18 years of age; and
- pay an application fee.

An "exhibition" is a boxing, kickboxing, or mixed martial arts engagement in which persons participating show or display their skill without necessarily striving to win using strikes and blows to the head or other full-contact maneuvers.<sup>31</sup> Participants in an exhibition, except one held solely for training purposes, must weigh within 12 pounds of each other.<sup>32</sup>

### *Effect of the Bill*

The bill removes the maximum participant weight differential requirement for all exhibition matches. This will allow any exhibition to include participants that weigh more or less than 12 pounds from their opponent.

## **Hotels and Restaurants**

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<sup>27</sup> S. 489.514, F.S.

<sup>28</sup> DBPR, *supra* note 10.

<sup>29</sup> A physician must be licensed pursuant to chapter 458 or chapter 459, must maintain a license in good standing, and must demonstrate satisfactory medical training or experience in boxing. S. 548.017, F.S.

<sup>30</sup> S. 548.021, F.S.

<sup>31</sup> S. 548.002(8), F.S.

<sup>32</sup> S. 548.043(2), F.S.

## Background

“Public lodging establishment” includes:<sup>33</sup>

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

Classifications of public lodging establishments include hotels, motels, vacation rentals, apartments, bed and breakfast inns, and timeshare projects.<sup>34</sup>

“Public food service establishments” means any building, vehicle, place, or structure, or any room or division thereof, where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption, with certain exceptions.<sup>35</sup>

Classifications of public food service establishments include permanent food service restaurants, catering services, mobile food dispensing vehicles, vending machines, theme park carts, culinary education programs, and temporary food service events.<sup>36</sup>

## Electronic Communications

While H&R has rulemaking authority to adopt rules to implement ch. 509, F.S., H&R does not have authority to adopt rules to require electronic submissions for any required document or fee from a licensee or for H&R to require online communications with a licensee.<sup>37</sup> There is also no statutory requirement that such documents, fees, or communications be transmitted online or for licensees to provide an email address to H&R.<sup>38</sup>

Notices that are served by H&R must be delivered to the operator of a licensed establishment by an H&R agent or by registered mail. If H&R is unable to effect service, the notice may be conspicuously posted at the licensee’s establishment.<sup>39</sup> Inspection reports may be served via electronic means.

Each transient public lodging establishment is required to maintain a register of guests who occupy rental units in the establishment. The guests must also sign the registry. There is not a specific allowance that the registry may be kept in an electronic format.

## *Effect of the Bill*

The bill requires all H&R licensees to provide an email address to function as the primary method of communication with H&R.

The bill allows H&R to serve notices or inspection reports to the operator of licensed establishments via email, in addition to in-person service and mail.

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<sup>33</sup> S. 509.013(4), F.S.

<sup>34</sup> S. 509.242, F.S.

<sup>35</sup> S. 509.013(5), F.S.

<sup>36</sup> R. 61C-1.002, F.A.C.; Florida Department of Business and Professional Regulation, *Hotels and Restaurants – Licensing Guides*, <http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/licensing-guides/> (last visited Feb. 24, 2023).

<sup>37</sup> S. 509.032, F.S.

<sup>38</sup> S. 509.091, F.S.

<sup>39</sup> S. 509.091(1), F.S.

The bill requires each public lodging establishment or a public food service establishment, and any person who plans to open a licensed establishment, to create and maintain an online account and provide an e-mail address to function as the primary contact for all communication from H&R. Licensed establishments are responsible for maintaining accurate contact information on file.

Each vacation rental or timeshare project must submit any change in the street or unit address or number of houses or units included under the license within 30 days of the change. All changes must be filed through the H&R's online system

The bill allows the guest registry at a transient public lodging establishment to be kept online, and will no longer require guests to sign the registry.

The bill clarifies that all fees be must be paid by the applicant when the license application is submitted to H&R.

The bill gives the division authority adopt rules to implement requirements for electronic communications. The rules must specify circumstances under which a person who plans to open a public lodging establishment or a public food service establishment and each licensee or licensed agent may opt out of the requirement to create and maintain a division online account.

## **Florida Vacation Plan and Timesharing Act**

### *Background*

A “timeshare plan” is any arrangement, plan, scheme, or similar device, other than an exchange program, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, or right-to-use agreement or by any other means, where a purchaser, for consideration, receives ownership rights in or a right to use accommodations and facilities, if any, for a period of time less than a full year during any given year, but not necessarily for consecutive years.<sup>40</sup> The term includes both personal property timeshare and real property timeshare plans.<sup>41</sup>

Chapter 721, F.S., the Florida Vacation Plan and Timesharing Act (Act), administered by CTMH, establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for full and fair disclosure to purchasers and prospective purchasers.<sup>42</sup> The Act applies to all timeshare plans consisting of more than seven timeshare periods over a period of at least three years when the accommodations and facilities are located or offered within Florida, with exceptions.<sup>43</sup>

Under the Act, a:

- “Timeshare unit” means an accommodation of a timeshare plan which is divided into timeshare periods.<sup>44</sup>
- “Timeshare period” means the period of time when a purchaser of a timeshare interest is afforded the opportunity to use a timeshare plan’s accommodations.<sup>45</sup>
- “Timeshare interest” means a timeshare estate, a personal property timeshare interest, or a timeshare license.<sup>46</sup>
- “Timeshare estate” means a right to occupy a timeshare unit, coupled with:
  - A freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof;
  - An ownership interest in a condominium or cooperative unit; or

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<sup>40</sup> S. 721.05(39), F.S.

<sup>41</sup> A “personal property timeshare plan” is a timeshare plan in which the accommodations are comprised of personal property that is not permanently affixed to real property. A “real property timeshare plan” is a timeshare plan in which the accommodations of the timeshare plan are comprised of or permanently affixed to real property. *Id.*

<sup>42</sup> S. 721.02(2) and (3), F.S.

<sup>43</sup> S. 721.03, F.S.

<sup>44</sup> See ss. 721.05(41) and 718.103(26), F.S.

<sup>45</sup> S. 721.05(38), F.S.

<sup>46</sup> S. 721.05(36), F.S.



- A direct or indirect beneficial interest in a trust, provided that the trust does not contain any personal property timeshare interests.<sup>47</sup>
- “Timeshare license” means the right to occupy a timeshare unit, which right is not a personal property timeshare interest or a timeshare estate.<sup>48</sup>
- “Personal property timeshare interest” means a right to occupy an accommodation located on or in or comprised of personal property that is not permanently affixed to real property, whether or not coupled with a beneficial or ownership interest in the accommodations or personal property.<sup>49</sup>

### Vacation Clubs

Part II of the Act governs vacation plans and multisite timeshare plans, known as vacation clubs.<sup>50</sup> A “multisite timeshare plan” is any method, arrangement, or procedure with respect to which a purchaser obtains, by any means, a recurring right to use and occupy accommodations or facilities or more than one component site, only through use of a reservation system, whether or not the purchaser may elect to cease participating in the plan.<sup>51</sup> However, this term does not include any method, arrangement, or procedure wherein:

- The contractually specified maximum total financial obligation is \$3,000 or less during the plan’s entire term; or
- The term is for a period of three years or less.<sup>52</sup>

A multisite timeshare plan must meet all the requirements of a traditional timeshare plan and additional requirements specific to multisite timeshare plans.<sup>53</sup> Any offering that does not comply with these additional requirements is deemed to be an offering of a timeshare license.<sup>54</sup>

A multisite timeshare plan may be specific or non-specific. A “specific multisite timeshare plan” is a multisite timeshare plan where a purchaser receives a specific right to use accommodations and facilities, if any, at one component site of a multisite timeshare plan, together with use rights in other accommodations and facilities of the plan created by or acquired through the reservation system.<sup>55</sup>

When a timeshare estate is offered in a specific multisite timeshare plan, the timeshare instrument must contain or provide for all of the following matters:

- The purchaser will receive a timeshare estate in one of the component sites of the specific plan. The use rights in the other component sites must be made available to the purchaser through the reservation system pursuant to the timeshare instrument.
- If the reservation system is terminated or otherwise becomes unavailable for any reason before the plan expires:
  - The purchaser will be able to continue to use the accommodations and facilities of the component site in which she or he has been conveyed a timeshare estate in the manner described in the timeshare instrument for that component site for the remaining term of the timeshare estate; and
  - Any use rights in that component site which had previously been made available through the reservation system to purchasers of the plan who were not offered a timeshare estate at that component site will terminate when the reservation system is terminated or otherwise becomes unavailable for any reason.<sup>56</sup>

Conversely, a “nonspecific multisite timeshare plan” is a multisite timeshare plan where a purchaser receives a right to use all of the accommodations and facilities, if any, of the multisite

<sup>47</sup> A timeshare estate is a parcel of real property under state law. S. 721.05(34), F.S.

<sup>48</sup> S. 721.05(37), F.S.

<sup>49</sup> S. 721.05(28), F.S.

<sup>50</sup> Ch. 721, F.S.

<sup>51</sup> Ss. 721.52(8) and 721.52(4), F.S.

<sup>52</sup> S. 721.52(4), F.S.

<sup>53</sup> S. 721.57(1), F.S.

<sup>54</sup> *Id.*

<sup>55</sup> S. 721.52(7), F.S.

<sup>56</sup> S. 721.57(2), F.S.

timeshare plan through the reservation system, but no specific right to use any particular accommodations and facilities for the remaining term of the plan if the reservation system is terminated for any reason before the plan expires.<sup>57</sup>

### Public Offering Statement

Current law requires a developer to submit a public offering statement to the Division before any timeshare plan is offered for sale, which public offering statement must contain specified information.<sup>58</sup> The Division may prescribe the form of the public offering statement and generally must approve the public offering statement before it is delivered to prospective purchasers, except that an unapproved public offering statement may be delivered to prospective purchasers after filing with the Division if specific notice is given and the developer delivers a fully completed and executed copy of the purchase contract containing a specific statement in conspicuous type.<sup>59</sup>

Specified documents must be included as exhibits to the filed public offering statement, if applicable.<sup>60</sup> The Developer must also furnish each purchaser with the following:

- A copy of the purchaser public offering statement text in the form approved by the Division for delivery to purchasers.
- Copies of the exhibits to the public offering statement required to be filed with the Division.
- A receipt for timeshare plan documents and a list describing any exhibit to the filed public offering statement filed with the Division which is not delivered to the purchaser.
  - The Division is authorized to prescribe by rule the form of the receipt for timeshare plan documents and the description of exhibits list that must be furnished to the purchaser.
  - The description of documents list utilized by a developer must be filed with the Division for review as part of the filed public offering statement.
  - The developer must provide the managing entity with a copy of the approved filed public offering statement and any approved amendments to be maintained by the managing entity as part of the books and records of the timeshare plan.
- Any other exhibit which the developer includes as part of the purchaser public offering statement, provided that the developer first files the exhibit with the Division.
- An executed copy of any document which the purchaser signs.
- A fully executed paper copy of the purchase contract.<sup>61</sup>

Each public offering statement for a multisite timeshare plan must comply with the offering statement requirements for a traditional timeshare plan and contain additional information and disclosures, including a description of each component site, which description may be disclosed in a written, graphic, tabular, or other form approved by the Division.<sup>62</sup> Specified documents must also be included as exhibits to the filed multisite timeshare plan public offering statement, if applicable.<sup>63</sup>

### Incidental Benefits

Current law allows the offering of specified incidental benefits to purchasers of timeshare interests in certain circumstances.<sup>64</sup> “Incidental benefit” means:<sup>65</sup>

...an accommodation, product, service, discount, or other benefit which is offered to a prospective purchaser of a timeshare plan or to a purchaser of a timeshare plan prior to the expiration of his or her initial 10-day voidability period pursuant to s. 721.10[, F.S.]; which is not an exchange program as defined in [s. 721.05(16), F.S.]; and which complies with the provisions of s. 721.075[, F.S.] The term shall not include an

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<sup>57</sup> S. 721.52(5), F.S.

<sup>58</sup> S. 721.07, F.S.

<sup>59</sup> S. 721.07(2) and (6), F.S.

<sup>60</sup> S. 721.07(7)(ff), F.S.

<sup>61</sup> S. 721.07(6), F.S.

<sup>62</sup> S. 721.55, F.S.

<sup>63</sup> S. 721.55(7), F.S.

<sup>64</sup> S. 721.075, F.S.

<sup>65</sup> S. 721.05(19), F.S.

offer of the use of the accommodations and facilities of the timeshare plan on a free or discounted one-time basis.

Examples of incidental benefits include exchange rights, travel insurance, bonus weeks, referral awards, and golf and tennis packages.<sup>66</sup>

Incidental benefits are subject to required disclosures and restrictions, including a limit on the aggregate represented value of all incidental benefits offered by a developer to a purchaser of not more than 15 percent of the purchase price. The incidental benefits must be filed with the Division for review in conjunction with the filing of a timeshare plan or in connection with a previously filed timeshare plan.<sup>67</sup> Additionally, each timeshare plan purchaser must execute a separate acknowledgment and disclosure statement with respect to all incidental benefits, which statement must include:

- A fair description of the incidental benefit, including any user fees or costs associated with the benefit and use or availability restrictions;
- A statement that the use of or participation in the incidental benefit is completely voluntary, and that payment of any fee or other cost associated with the benefit is required only upon such use or participation;
- A statement that the incidental benefit is not assignable or otherwise transferable by the prospective purchaser or purchaser;
- A statutorily-prescribed disclosure statement; and
- A statement indicating the source of the services, points or other products constituting the incidental benefit.<sup>68</sup>

The acknowledgement and disclosure statement must be filed with the Division before use,<sup>69</sup> and the developer must promptly notify the Division upon learning of any incidental benefit's unavailability.<sup>70</sup>

### Cancellations

Under current law, a timeshare plan purchaser may cancel the purchase contract until midnight of the tenth calendar day after whichever of the following occurs later:

- The execution date; or
- The date on which the purchaser received the last of all documents required to be given pursuant to s. 721.07(2)(d)2., F.S.<sup>71</sup>

Further, if the developer delivers to the purchaser a filed but unapproved public offering statement, the purchaser may cancel the purchase contract within 10 calendar days after the purchaser signs the purchase contract or receives the last of all documents required to be given under s. 721.07(6), F.S., whichever is later.<sup>72</sup>

It is unlawful to attempt to obtain a waiver of the timeshare plan purchaser's cancellation right or to hold the closing before the cancellation period's expiration, and such premature and unlawful closing is voidable at the option of the purchaser for a period of one year after the expiration of the cancellation period.<sup>73</sup>

### *Effect of the Bill*

The bill allows the description of each component site that each filed public offering statement for a multisite timeshare plan must contain to be provided to the purchaser electronically, such as through a

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<sup>66</sup> Law Insider, *Incidental Benefit Definition*, <https://www.lawinsider.com/dictionary/incidental-benefit#:~:text=Incidental%20benefit%20means%20an%20accommodation,voidability%20period%20pursuant%20to%20s> (last visited Feb. 16, 2022).

<sup>67</sup> S. 721.075(2), F.S.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> S. 721.075(3)(a), F.S.

<sup>71</sup> S. 721.10(1), F.S.

<sup>72</sup> S. 721.07(2)(d), F.S.

<sup>73</sup> S. 721.10(1), F.S.

website or other Internet-based access. The bill also provides that a developer is not required to file a separate public offering statement for any component site located within or outside Florida in order to include the component site in the multistate timeshare plan.

The bill allows a purchaser to assign or transfer an incidental benefit without the approval of the provider of the incidental benefit. The bill also removes the:

- Limitation on the aggregate represented value of all incidental benefits.
- Requirement that an acknowledgement and disclosure statement indicate the source of the services, points, or other products that constitute the incidental benefit.
- Requirement that the developer promptly notify the division upon learning of the unavailability of any incidental benefit.

The bill clarifies the term “execution date” to mean the execution date “of the contract.” The bill also extends the period for voiding a contract for which the closing unlawfully occurred before the cancellation period’s expiration from one year to five years. However, the period for voiding a contract for which an attempt was made to obtain a cancellation right waiver remains at one year.

## **Florida Building Code**

### *Background*

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code. In 1992, Hurricane Andrew demonstrated that Florida’s system of local codes did not work and a study was commissioned to make recommendations. In 1998, the Legislature adopted the recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Building Code, and that first edition replaced all local codes on March 1, 2002.<sup>74</sup> The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.<sup>75</sup>

Chapter 553, part IV, F.S., is known as the “Florida Building Codes Act” (Act). The Act provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.<sup>76</sup>

The Florida Building Commission (Building Commission) implements the Building Code. The Building Commission, which is housed within DBPR, reviews several International Codes published by the International Code Council, the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.<sup>77</sup>

The rule updating the Florida Building Code takes effect no sooner than 6 months after publication of the updated code. Any amendment to the Building Code which is adopted upon a finding by the Building Commission that the amendment is necessary to protect the public from immediate threat of harm takes effect immediately.<sup>78</sup>

### *Effect of the Bill*

The bill provides that if energy code compliance software is not approved by the Building Commission at least 3 months before the effective date of the updated Building Code, the Building Commission may

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<sup>74</sup> The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, [http://www.floridabuilding.org/fbc/2006\\_Legislature\\_Rpt\\_rev2.pdf](http://www.floridabuilding.org/fbc/2006_Legislature_Rpt_rev2.pdf) (last visited Feb. 13, 2023).

<sup>75</sup> Florida Building Commission Homepage, <https://floridabuilding.org/c/default.aspx> <https://floridabuilding.org/c/default.aspx> (last visited Feb. 13, 2023).

<sup>76</sup> See s. 553.72(1), F.S.

<sup>77</sup> Ss. 553.73, and 553.74, F.S.

<sup>78</sup> S. 553.73(7)(e), F.S.

delay the effective date of the energy provisions of the Florida Building Code for up to 3 additional months.

## **Package Stores**

### *Background*

In Florida, alcoholic beverages are regulated by the Beverage Law,<sup>79</sup> by ABT, which regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.<sup>80</sup>

A package store is a vendor operating a place of business where beverages are sold only in sealed containers for consumption off the premises.<sup>81</sup> Package stores may not sell, offer, or expose for sale any merchandise other than such beverages, and such places of business must be devoted exclusively to such sales. However, package stores may sell, in addition to alcoholic beverages:<sup>82</sup>

- bitters,
- grenadine,
- nonalcoholic mixer-type beverages,
- fruit juices produced in this state,
- home bar, and party supplies and equipment,
- miniatures of no alcoholic content, and
- tobacco products.

### *Effect of the Bill*

The bill adds “nicotine products” to the list of items a package store may sell.

The bill provides an effective date of July 1, 2023.

## **B. SECTION DIRECTORY:**

- Section 1:** Amends s. 468.8414, F.S., revising licensure requirements for mold assessors and remediators.
- Section 2:** Amends s. 469.004, F.S., revising licensure requirements for asbestos consultants and contractors.
- Section 3:** Amends s. 489.514, F.S., removing a deadline for an electrical contractor licensing provision.
- Section 4:** Amends s. 509.091, F.S., revising requirements for hotel and restaurant inspection reports.
- Section 5:** Amends s. 509.101, F.S., revising requirements for hotel guest registries.
- Section 6:** Amends s. 509.241, F.S., requiring certain persons, licensees, and licenses agents to create and maintain a division online account.
- Section 7:** Amends s. 548.043, F.S., revising participant weight differentials for certain pugilistic exhibitions.
- Section 8:** Amends s. 553.73, F.S., authorizing the Building Commission to delay the effective date of the energy provisions of the Building Code under certain circumstances.
- Section 9:** Amends s. 565.04, F.S., authorizing package stores to sell nicotine products.
- Section 10:** Amends s. 721.075, F.S., relating to timeshare incidental benefits.
- Section 11:** Amends s. 721.10, F.S., relating to timeshare contract cancellations.
- Section 12:** Amends s. 721.11, F.S., conforming cross-references.
- Section 13:** Amends s. 721.55, F.S., revising disclosure requirements for multisite timeshare plan public offering statements.

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<sup>79</sup> S. 561.01(6), F.S., provides that the “The Beverage Law” means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

<sup>80</sup> See s. 561.14, F.S.

<sup>81</sup> S. 565.02(1)(a), F.S.

<sup>82</sup> S. 565.04, F.S.

**Section 14:** Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

DBPR expects the following fiscal impacts on revenues:<sup>83</sup>

#### **Division of Professions**

Indeterminate; An increase of up to \$399,056 in revenue from the grandfathering fee over the next three years (see Fiscal Comments).

#### 2. Expenditures:

DBPR does not anticipate a change in state expenditures as a result of the bill.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

Local governments could see an insignificant decrease in revenues associated with renewal and reciprocity fees if eligible registered contractors choose to apply for the grandfathering provision created in the bill for ECLB licensees.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be a positive impact on the private sector by expanding the geographical scope of practice for those registered electrical contractors who choose to take advantage of the grandfathering provision. It would also allow more electrical contractors to work across the state.

### D. FISCAL COMMENTS:

Revenue from additional licenses issues in accordance with the electrical contractor grandfathering provision is indeterminate because it is unknown how many eligible registered ECLB licensees will apply.<sup>84</sup> The total fee (application fee, initial licensing fee, and unlicensed activity fee) for licenses previously issued under a grandfathering provision was \$196. There are 2,036 Registered Current Active/Inactive ECLB licensees who may be able to take advantage of the grandfathering provision. However, the department received only 766 applications during the last period of grandfathering, which was from July 1, 2019 to November 1, 2021.

Assuming total application/license fees of \$196, the grandfathering fees received by DBPR over the next three fiscal years could range from \$150,136.00 (if the department receives the same number of applications as the last grandfathering period) to a maximum of \$399,056.00 if all 2,036 Registered Current Active/Inactive licensees apply over the next three fiscal years.<sup>85</sup>

## III. COMMENTS

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<sup>83</sup> Department of Business and Professional Regulation (DBPR), Agency Analysis of 2023 Senate Bill 782, p. 6 (Mar. 2, 2023)

<sup>84</sup> *Id.* at 10.

<sup>85</sup> *Id.*

## A. CONSTITUTIONAL ISSUES:

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

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

### 2. Other:

None.

## B. RULE-MAKING AUTHORITY:

The bill will require DBPR to amend rules related to:

- Mold-related professional licensing standards,
- Asbestos professional licensing standards,
- Pugilistic exhibition requirements, and
- Licensed establishment electronic communications.

DBPR has current authority and authority in the bill to do so.

## C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 29, 2023, the State Administration & Technology Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute removed all modifications to hotels and restaurants licensing including modified schedules and maximum fees.

On April 17, 2023, the Commerce Committee adopted four amendments and reported the bill favorably as a committee substitute. The committee substitute:

- Required H&R to adopt rules relating to online account requirements for licensees, including rules to specify circumstances when a person who plans to open a public lodging establishment or a public food service establishment may opt out of the requirement to create and maintain an online account.
- Allowed the Building Commission to delay the effective date of the energy provisions of the Building Code for up to 3 months if energy code compliance software is not approved by the Building Commission at least 3 months before the effective date of the updated Building Code.
- Allowed package stores to sell nicotine products.
- Amended timeshare requirements in the following ways:
  - Eliminated certain requirements for the offering of incidental benefits in the sale of a timeshare plan.
  - Allowed a timeshare purchaser to assign incidental benefits without the approval of the provider.
  - Removed the requirement that an acknowledgement and disclosure statement indicate the source of the services, points, or other products that constitute the incidental benefit.
  - Removed the requirement that the developer promptly notify CTMH upon learning of the unavailability of any incidental benefit.
  - Extended the period for voiding a contract for which the closing unlawfully occurred before the cancellation period's expiration from one year to five years.
  - Allowed the description of each component site in each filed public offering statement for a multisite timeshare plan to be provided to the purchaser electronically.
  - Provided that a developer is not required to file a separate public offering statement for any component site located within or outside Florida in order to include the component site in the multistate timeshare plan.

This analysis is drafted to the committee substitute as passed by the Commerce Committee.

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