

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/HB 1335 Department of Business and Professional Regulation

**SPONSOR(S):** Commerce Committee and State Administration & Technology Appropriations Subcommittee, Maggard and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 1544

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**FINAL HOUSE FLOOR ACTION:** 102 Y's      9 N's      **GOVERNOR'S ACTION:** Pending

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### SUMMARY ANALYSIS

CS/CS/HB 1335 passed the House on February 22, 2024. The bill was amended in the Senate on March 5, 2024, and returned to the House. The House concurred in the Senate amendment and subsequently passed the bill as amended on March 7, 2024.

The Department of Business and Professional Regulation (DBPR) is responsible for licensing and regulating various businesses and professions throughout the state, including tobacco; nicotine products; alcohol; drugs, devices, and cosmetics; construction and electrical contractors; asbestos abatement; pilots; elevators; employee leasing companies; certified public accountants (CPAs); engineers, barbers; and cosmetologists.

The bill:

- Requires applicants and licensees for the following to create and maintain an online account for communication with DBPR:
  - Tobacco and nicotine product industry,
  - Alcohol industry,
  - CPAs and firms, and
  - Elevator industry.
- Increases the amount of the required surety bond that a tobacco product distributor must maintain with DBPR to \$25,000, from \$1,000.
- Allows DBPR to determine additional surety amounts or reduce surety amounts for tobacco products distributors based on certain factors.
- Reduces the lookback period relating to a conviction for a felony that may be used to disqualify an applicant for a license under the Beverage Law, to 10 years, from 15 years.
- Allows DBPR to perform the powers and duties of the Board of Employee Leasing Companies when a sufficient number of appointed board members do not exist to constitute a quorum.
- Increases caps on claims and lifetime limits for the Florida Homeowners' Construction Recovery Fund.
- Removes obsolete provisions from the barber and cosmetology practice acts.
- Removes certain mentorship and eligibility requirements for pilots.
- Removes certain financial responsibility proof requirements for asbestos abatement professionals.
- Allows local construction contractor licensing agencies to recommend restitution as a disciplinary action.
- Allows applicants to be a designated representative for certain pharmaceutical wholesalers to prove experience in two new ways.
- Clarifies that an exclusion from engineering licensing requirements applies to all business organizations, not just corporations.
- Allows specialty electrical contractors to perform maintenance on nonelectrical signs.

The bill has a negative, indeterminate fiscal impact on state government and no impact on local governments. See Fiscal Impact & Economic Impact Statement.

Subject to the Governor's veto powers, the bill is effective July 1, 2024.

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

**STORAGE NAME:** h1335z.DOCX

**DATE:** 3/7/2024

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF 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 (ABT),
- The Division of Certified Public Accounting (DCPA),
- The Division of Drugs, Devices, and Cosmetics (DDC),
- The Division of Florida Condominiums, Timeshares, and Mobile Homes (FCTMH),
- The Division of Hotels and Restaurants (H&R),
- The Division of Pari-mutuel Wagering,
- The Division of Professions (Professions),
- The Division of Real Estate (DRE),
- The Division of Regulation,
- The Division of Technology, and
- The Division of Service Operations.<sup>1</sup>

Professions licenses and regulates more than 434,000 professionals through the following professional boards and programs:

- Board of Architecture and Interior Design,
- Asbestos Licensing Unit,
- Athlete Agents,
- Board of Auctioneers,
- Barbers' Board,
- Building Code Administrators and Inspectors Board,
- Regulatory Council of Community Association Managers,
- Construction Industry Licensing Board,
- Board of Cosmetology,
- Electrical Contractors' Licensing Board,
- Board of Employee Leasing Companies,
- Home Inspectors,
- Board of Landscape Architecture,
- Mold-Related Services,
- Board of Pilot Commissioners,
- Board of Professional Geologists,
- Talent Agencies,
- Board of Veterinary Medicine, and
- Florida Board of Professional Engineers.<sup>2</sup>

DCPA is responsible for the regulation of certified public accountants and accounting firms in the state.<sup>3</sup>

DRE is responsible for the regulation of real estate sales associates, brokers, and appraisers, in conjunction with the Florida Real Estate Commission and the Florida Real Estate Appraisal Board.<sup>4</sup>

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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 Jan. 21, 2024).

<sup>3</sup> S. 473.3035, F.S.; Florida Department of Business and Professional Regulation, *Certified Public Accounting*, [Certified Public Accounting – MyFloridaLicense.com](http://www.myfloridalicense.com) (last visited Jan. 21, 2024).

<sup>4</sup> S. 475.021, F.S.

The Division of Regulation is the enforcement authority for the Florida Athletic Commission, Farm Labor Program, Child Labor Program, and any professional boards and programs housed within Professions.<sup>5</sup> To ensure compliance with applicable laws and rules by those professions and related businesses, the division investigates complaints, utilizes compliance mechanisms, and performs inspections.<sup>6</sup>

DDC protects the health, safety, and welfare of Floridians from adulterated, contaminated, and misbranded drugs, drug ingredients, and cosmetics by enforcing Part I of ch. 499, F.S., the Florida Drug and Cosmetic Act (FDCA).<sup>7</sup> The Act conforms to United States Food and Drug Administration (FDA) drug laws and regulations and authorizes DBPR to issue permits to Florida drug manufacturers and wholesale distributors and register drugs manufactured, packaged, repackaged, labeled, or relabeled in Florida.<sup>8</sup>

ABT regulates the manufacture, distribution, sale, and service of alcoholic beverages and tobacco products in Florida, including:

- receipt and processing of license applications;
- collection and auditing of taxes, surcharges, and fees paid by licensees; and
- enforcement of the laws and regulations governing the sale of alcoholic beverages and tobacco products.<sup>9</sup>

FCTMH provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure.<sup>10</sup> FCTMH has limited regulatory authority over the following business entities and individuals:<sup>11</sup>

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowners' Associations (jurisdiction is limited to arbitration of election and recall disputes).

H&R licenses, inspects and regulates public lodging and food service establishments in Florida. The division also licenses and regulates elevators, escalators and other vertical conveyance devices.<sup>12</sup>

## **Tobacco and Nicotine Products – Current Situation**

ABT is responsible for the regulation of tobacco products under ch. 210, F.S., which sets out tax requirements specific to cigarettes and tobacco products, and ch. 569, F.S., which sets out requirements for tobacco sales.<sup>13</sup>

A person, firm, association, or corporation must obtain a permit from ABT to function as any of the following in Florida:

- Retail tobacco products dealer,<sup>14</sup>

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<sup>5</sup> Except the Board of Architecture and Interior Design, and the Florida Board of Professional Engineers.

<sup>6</sup> Florida Department of Business and Professional Regulation, *Division of Regulation*, <http://www.myfloridalicense.com/DBPR/division-of-regulation/> (last visited Jan. 21, 2024).

<sup>7</sup> Florida Department of Business and Professional Regulation, *Division of Drugs, Devices, and Cosmetics*, available at <http://www.myfloridalicense.com/DBPR/drugs-devices-and-cosmetics/> (last visited Mar. 19, 2021).

<sup>8</sup> S. 499.01, F.S.

<sup>9</sup> Florida Department of Business and Professional Regulation, *Division of Alcoholic Beverages and Tobacco*, <http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/> (last visited Mar. 19, 2021).

<sup>10</sup> Department of Business and Professional Regulation, *Division of Florida Condominiums, Timeshares, and Mobile Homes*, <http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/>, (last visited Mar. 19, 2021).

<sup>11</sup> *Id.*

<sup>12</sup> Florida Department of Business and Professional Regulation, *Division of Hotels and Restaurants*, <http://www.myfloridalicense.com/DBPR/hotels-restaurants/> (last visited Mar. 19, 2021).

<sup>13</sup> S. 561.02, F.S.

<sup>14</sup> S. 569.003, F.S.

- Cigarette manufacturer,<sup>15</sup>
- Cigarette wholesale dealer,<sup>16</sup>
- Cigarette distributing agent,<sup>17</sup>
- Cigarette importer,<sup>18</sup>
- Cigarette exporter,<sup>19</sup> or
- Cigar wholesale dealer,<sup>20</sup>
- Tobacco wholesale dealer/distributor,<sup>21</sup> or
- Retail nicotine products dealer.<sup>22</sup>

“Cigarettes” are defined in s. 210.01(1), F.S., relating to state taxes on cigarettes, as “any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient.” This definition does not include cigars.

“Tobacco products” are defined in s. 210.25(11), F.S., relating to state taxes on tobacco products other than cigarettes or cigars, as “loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing.”

“Nicotine product” means any product that contains nicotine, including liquid nicotine, which is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means. The term also includes any nicotine dispensing device. The term does not include a:

- Tobacco product.
- Product regulated as a drug or device by the FDA under Chapter V of the FDCA; or
- Product that contains incidental nicotine.<sup>23</sup>

There is currently no requirement that a tobacco or nicotine products licensee must apply using or maintain an online account with ABT.

### ***Tobacco and Nicotine Product Online Account – Effect of the Bill***

The bill requires each person or entity licensed or permitted or applying for a cigarette, tobacco product, nicotine, or cigar license or permit within Florida to:

- Create and maintain an account with ABT's online system, and
- Provide an e-mail address to ABT to function as the primary means of contact for all communication by ABT to the licensee, permittee, or applicant.
- maintaining accurate contact information on file with ABT.

The bill also provides that:

- A person or an entity seeking such a license or permit must apply using forms furnished by ABT which are filed through ABT's online system before commencing operations.
- ABT may not process an application for a license or permit unless the application is submitted through ABT's online system.

<sup>15</sup> Ss. 210.01(21) and 210.15, F.S.

<sup>16</sup> Ss. 210.01(6) and 210.15(1), F.S.

<sup>17</sup> Ss. 210.01(14) and 210.15(1), F.S.

<sup>18</sup> Ss. 210.01(20) and 210.15(1), F.S.

<sup>19</sup> Ss. 210.01(17) and 210.15(1), F.S.

<sup>20</sup> S. 210.65(2), F.S.

<sup>21</sup> Ss. 210.25(5) and 210.40, F.S.

<sup>22</sup> S. 569.31(6), F.S.

<sup>23</sup> S. 569.31(4), F.S.

## ***Surety Bond for Tobacco Product Distributor's License – Current Situation***

Each application for a tobacco product distributor's license must be accompanied by a corporate surety bond issued by a surety company authorized to do business in Florida, conditioned for the payment when due of all taxes, penalties, and accrued interest which may be due the state. The bond must be in the sum of \$1,000 and in a form prescribed by ABT.

Whenever ABT finds that the bond given by a licensee is inadequate to fully protect the state, ABT must require an additional bond in such amount as is deemed sufficient. A separate application for a license must be made for each place of business at which a distributor proposes to engage in business as a distributor, but an applicant may provide one bond in an amount determined by ABT for all applications made by the distributor.<sup>24</sup>

## ***Surety Bond for Tobacco Product Distributor's License – Effect of the Bill***

The bill increases the amount of the required tobacco product distributor corporate surety bond to \$25,000, from \$1,000.

The bill requires ABT to review the amount of the corporate surety bond on a semiannual basis to ensure that the bond amount is adequate to protect the state. ABT may increase the corporate surety bond amount before renewing a distributor's license or after completing its semiannual review of the bond amount. The corporate surety bond amount may be increased to the sum of the distributor's highest month of final audited tax liabilities, penalties, and accrued interest which are due to the state.

The bill requires that a corporate surety bond, with the sum determined by ABT, is required for renewal of a distributor's license.

The bill allows ABT to prescribe by rule increases in the corporate surety bond amounts required as a condition of licensure.

The bill allows ABT to reduce the amount of a corporate surety bond upon a distributor's showing of **good cause**. In determining the amount of the surety bond:

- "Good cause" means a consistent pattern of **responsible financial behavior** by the distributor over a period of at least the preceding 4 years, and having the sum of the distributor's final audited tax liabilities, penalties, and interest be less than the amount of the distributor's corporate surety bond for every month for a period of at least the preceding 4 years.
- "Responsible financial behavior" includes the timely and complete reporting and payment of all tax liabilities, penalties, and accrued interest due to the state for a period of at least the preceding 4 years.

The bill prohibits ABT from reducing a corporate surety bond amount when a licensee:

- Is in default of any tax liabilities, penalties, or interest due to the state;
- Is the subject of a pending criminal prosecution in any jurisdiction until such prosecution has been fully resolved;
- Has pending administrative charges brought by an authorized regulatory body or agency which have not been fully resolved in accordance with applicable rules and procedures; or
- Is under investigation by any administrative body or agency for potential criminal violations until any such investigation is completed and the findings of the investigation have been fully resolved in accordance with applicable law.

The bill provides that such a matter is "fully resolved" if the criminal or administrative charges or investigations have been definitively closed or dismissed, have resulted in an acquittal, or have

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<sup>24</sup> S. 210.40, F.S.

otherwise ended in such a manner that no further legal or administrative actions relating to charges or investigations are pending against a licensee under applicable laws, rules, or regulations.

The bill requires ABT to notify a distributor in writing of any change in the distributor's corporate surety bond requirements by the date on which the distributor's audited tax assessments become final.

The bill provides that a decision by ABT on the amount of the surety bond is not subject to review under s. 120.60, F.S., including judicial review.<sup>25</sup>

The bill allows ABT to adopt rules related to surety bonds.

### **Alcohol – Current Situation**

In Florida, the Beverage Law<sup>26</sup> regulates the manufacture, distribution, and sale of wine, beer, and liquor by licensed or permitted manufacturers, distributors, and vendors.<sup>27</sup>

Any person or entity currently licensed or permitted by ABT must provide an electronic mail address to function as the primary contact for all communication by ABT to the licensee or permittee. Licensees and permittees are responsible for maintaining accurate contact information on file with ABT.<sup>28</sup> However, there is no similar requirement for applicants.

A license under the Beverage Law may not be issued to any person who has been convicted:<sup>29</sup>

- Within the last past 5 years of any offense against the beverage laws of Florida, the United States, or any other state;
- Within the last past 5 years in Florida or any other state or the United States of:
  - Soliciting for prostitution,
  - Pandering,
  - Letting premises for prostitution, or
  - Keeping a disorderly place, or
  - Any criminal violation of the controlled substance act of Florida, any other state, or the Federal Government.
- In the last past **15 years** of **any felony** in this state or any other state or the United States; or to a corporation, or any of the officers that have been convicted.

The term “conviction” includes an adjudication of guilt on a plea of guilty or nolo contendere or the forfeiture of a bond when charged with a crime.<sup>30</sup>

### **Alcohol – Effect of the Bill**

The bill requires all applicants for an alcohol license or permit to:

- Provide an electronic mail address to function as the primary means of contact for all communication by ABT,
- Maintain accurate contact information on file with ABT, and
- Apply using forms prepared by ABT and filed through ABT's online system before engaging in any business for which a license or permit is required.

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<sup>25</sup> Chapter 120, F.S., the Administrative Procedure Act (APA), provides uniform procedures for state agencies, including the conduct of rulemaking, implementing disciplinary actions, and the granting and denial of license applications. Section 120.60, F.S., provides the process for the granting or denial of license applications upon receipt of a license application, including judicial review of a decision.

<sup>26</sup> Section 561.01(6), F.S., provides that the “Beverage Law” includes chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

<sup>27</sup> See s. 561.14, F.S.

<sup>28</sup> S. 561.17(5), F.S.

<sup>29</sup> S. 561.15(2), F.S.

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

The bill provides that ABT may not process an application for an alcohol license unless the application is submitted through the ABT's online system.

The bill reduces the lookback period relating to a **conviction for a felony** that may be used to disqualify an applicant for a license under the Beverage Law, to **10 years**, from 15 years.

### **Elevators – Current Situation**

Chapter 399, F.S., regulates elevator safety procedures, and is enforced by H&R. H&R issues the following:<sup>31</sup>

- Permits to install, relocate, or alter elevators,
- Certificates of operation for elevators, and
- Licenses for:
  - Elevator companies,
  - Elevator technicians, and
  - Elevator inspectors.

Currently, applicants for examination or licensure do not have to create or maintain an online account with DBPR.

### **Elevators – Effect of the Bill**

The bill requires persons who have or are applying for an elevator license, certificate, or permit to:

- Create and maintain an online account with H&R,
- Provide an e-mail address to the division to function as the primary means of contact for all communication from H&R, and
- Maintain accurate contact information on file with H&R.

The bill allows H&R to adopt rules to implement this provision.

### **Certified Public Accountants – Current Situation**

The Florida Board of Accounting under DCPA is responsible for regulating and licensing certified public accountants (CPA) and accounting firms in Florida.<sup>32</sup>

Currently, applicants for examination or licensure do not have to create or maintain an online account with DBPR.

### **Certified Public Accountants – Effect of the Bill**

A person applying to the department to take the licensure examination, or for licensure as a CPA or firm, must:

- Create and maintain an online account with DBPR,
- Provide an e-mail address to function as the primary means of contact for all communication to the applicant from DBPR,
- Maintain accurate contact information on file with DBPR, and
- Submit any change in the applicant's e-mail address or home address within 30 days after any contact information changes. All changes must be submitted through DBPR's online system.

### **Pilots – Current Situation**

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<sup>31</sup> S. 399.01, F.S.

<sup>32</sup> S. 473.303, F.S.

Chapter 310, F.S., regulates the piloting of vessels utilizing the navigable waters of Florida in order that such resources, the environment, life, and property may be protected to the fullest extent possible.<sup>33</sup> The Board of Pilot Commissioners is responsible for licensing and regulating pilots and determines the number of pilots in a port based on the supply and demand for piloting services and the public interest in maintaining efficient and safe piloting services.<sup>34</sup>

“Pilot” means a licensed state pilot or a certificated deputy pilot.<sup>35</sup>

The pilot or pilots in a port must train and compensate all deputy pilots in that port and establish a competency-based mentor program by which minority persons<sup>36</sup> may acquire the skills for the professional preparation and education competency requirements of a licensed state pilot or certificated deputy pilot. DBPR must provide the Governor, the President of the Senate, and the Speaker of the House of Representatives with a report each year on the number of minority persons who:

- Have participated in each mentor program,
- Are licensed state pilots or certificated deputy pilots, and
- Have applied for state pilot licensure or deputy pilot certification.<sup>37</sup>

When DBPR examines applications for a certificate as deputy pilot, and finds them qualified, DBPR must certify all such applicants as qualified, provided that not more than five persons who passed the examination are certified for each declared opening.<sup>38</sup>

If more than five applicants per opening pass the examination, the persons having the highest scores must be certified as qualified up to the number of openings times five. DBPR must give consideration to the minority and female status of applicants when qualifying deputy pilots, in the interest of ensuring diversification within the state piloting profession. DBPR must appoint and certificate such number of deputy pilots from those applicants deemed qualified as in the discretion of the board are required in the respective ports of the state.<sup>39</sup>

### **Pilots – Effect of the Bill**

The bill removes the requirement for a competency-based mentor program for minority persons and the related report.

The bill removes the requirement that DBPR must consider the minority and female status of applicants when qualifying deputy pilots.

### **Employee Leasing Companies – Current Situation**

Generally, “employee leasing” means an arrangement whereby a leasing company assigns its employees to a client and allocates the direction of and control over the leased employees between the leasing company and the client, with exceptions.<sup>40</sup>

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<sup>33</sup> S. 310.001, F.S.

<sup>34</sup> S. 310.061, F.S.

<sup>35</sup> S. 310.002(2), F.S.

<sup>36</sup> As defined in s. 288.703, which means a lawful, permanent resident of Florida who is:

• An African American, a person having origins in any of the black racial groups of the African Diaspora, regardless of cultural origin.

• A Hispanic American, a person of Spanish or Portuguese culture with origins in Spain, Portugal, Mexico, South America, Central America, or the Caribbean, regardless of race.

• An Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands, including the Hawaiian Islands before 1778.

• A Native American, a person who has origins in any of the Indian Tribes of North America before 1835, upon presentation of proper documentation thereof as established by rule of the Department of Management Services.

• An American woman.

<sup>37</sup> S. 310.0015(3)(d), F.S.

<sup>38</sup> S. 310.081(2), F.S.

<sup>39</sup> *Id.*

<sup>40</sup> S. 468.520(4), F.S.



The Board of Employee Leasing Companies licenses and regulates employee leasing companies<sup>41</sup> and consists of seven members to be appointed by the Governor and confirmed by the Senate, as follows:<sup>42</sup>

- Five members of the board must be chosen from licensed individuals already engaged in the employee leasing industry.
- Two board members must be Florida residents and must not be, or ever have been, connected with the business of employee leasing.<sup>43</sup>

### **Employee Leasing Companies – Effect of the Bill**

The bill provides that, if at any time a sufficient number of appointed board members does not exist to constitute a quorum, DBPR may, only during the absence of such quorum, exercise all powers and duties granted to the Board of Employee Leasing Companies.

### **Barbers and Cosmetologists – Current Situation**

The Barbers' Board under Ch. 476, F.S., governs the regulation and licensing of barbers and barbershops in the state. A barber license is required to perform barbering services.<sup>44</sup> Barbering services include hair services and limited skin care services when done for compensation, but not for medical purposes.<sup>45</sup>

The Board of Cosmetology under Ch. 477, F.S., governs the licensing and regulation of cosmetologists, nail specialists, facial specialists, full specialists, and related salons in the state. A cosmetology license or a specialty registration is required to perform cosmetology services. Cosmetology services include hair services, nail services, and skin care services when done for compensation, but not for medical purposes.<sup>46</sup>

Both practice acts contain conflicting provisions related to licensure by endorsement, where one provision requires licensure in another jurisdiction for a year to qualify,<sup>47</sup> and another allows a license by endorsement regardless of how long the applicant has held the license in another jurisdiction.<sup>48</sup>

### **Barbers and Cosmetologists – Effect of the Bill**

The bill removes a conflicting provision for licensure by endorsement, and allows barbers and cosmetologists licensed in another jurisdiction to qualify for a license by endorsement regardless of how long the applicant has held the license in another jurisdiction.

### **Asbestos Consultants and Contractors – Current Situation**

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>49</sup>

"Asbestos abatement" means the removal, encapsulation, enclosure, or disposal of asbestos.<sup>50</sup>

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<sup>41</sup> S. 468.521, F.S.

<sup>42</sup> S. 468.521(1), F.S.

<sup>43</sup> S. 468.521(2), F.S.

<sup>44</sup> S. 476.144(1), F.S.

<sup>45</sup> S. 476.034(2), F.S.

<sup>46</sup> S. 477.013(4), F.S.

<sup>47</sup> Ss. 476.114(2)(c)1. and 477.019(2)(c)1., F.S.

<sup>48</sup> Ss. 476.144(5) and 477.019(6), F.S.

<sup>49</sup> 40 C.F.R. § 763 Appendix C to Subpart E.

<sup>50</sup> S. 469.001(1), F.S.

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>51</sup>

An asbestos contractor may perform the work of an asbestos consultant and conduct asbestos abatement work.<sup>52</sup>

In addition to proving certain experience, education, and completion of examination, an applicant for licensure as either an asbestos consultant or contractor also must provide evidence of financial responsibility. Criteria used by DBPR to determine financial responsibility must include, but is not be limited to, credit history and limits of bondability and credit.<sup>53</sup>

### **Asbestos Consultants and Contractors – Effect of the Bill**

The bill removes the requirement for DBPR to consider an applicant's limits of bondability when determining an asbestos consultant or contractor applicant's financial responsibility.

### **Engineers – Current Situation**

Professional engineers and related qualified business organizations are regulated by Ch. 471, F.S., and by the Florida Board of Professional Engineers under DBPR.<sup>54</sup>

“Engineering” includes the term “professional engineering” and means any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, teaching of the principles and methods of engineering design, engineering surveys, and the inspection of construction for the purpose of determining in general if the work is proceeding in compliance with drawings and specifications, any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property; and includes such other professional services as may be necessary to the planning, progress, and completion of any engineering services....”<sup>55</sup>

The practice act provides several exclusions from engineering licensing requirements, including for regular full-time employees of a **corporation** not engaged in the practice of engineering as such, whose practice of engineering for such **corporation** is limited to the design or fabrication of manufactured products and servicing of such products.<sup>56</sup>

### **Engineers – Effect of the Bill**

The bill clarifies that such exclusion from engineering licensing requirements applies to regular full-time employees of all **business organizations**, whose practice of engineering for such **business organization** is limited to the design or fabrication of manufactured products and servicing of such products, not just such employees of corporations.

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<sup>51</sup> S. 469.003, F.S.

<sup>52</sup> S. 469.003(3), F.S.

<sup>53</sup> S. 469.005-.006, F.S.

<sup>54</sup> S. 20.165(4)(a)11., F.S.

<sup>55</sup> S. 471.005(7), F.S.

<sup>56</sup> S. 471.003(2)(c), F.S.

## Designated Representatives – Current Situation

DDC has broad authority to inspect and discipline DDC permittees for violations of state or federal laws and regulations, which can include seizure and condemnation of adulterated or misbranded drugs or suspension or revocation of a permit.<sup>57</sup>

Each establishment that is issued a permit as a prescription drug wholesale distributor or an out-of-state prescription drug wholesale distributor must designate in writing to DBPR at least one natural person to serve as the designated representative of the wholesale distributor. Such person must have an active certification as a designated representative from DBPR.<sup>58</sup>

A designated representative:

- Must be actively involved in and aware of the actual daily operation of the wholesale distributor.
- Must be employed full time in a managerial position by the wholesale distributor.
- Must be physically present at the establishment during normal business hours, except for time periods when absent due to illness, family illness or death, scheduled vacation, or other authorized absence.
- May serve as a designated representative for only one wholesale distributor at any one time.<sup>59</sup>

To be certified as a designated representative, a natural person must:

- Submit an application and pay the appropriate fees.
- Be at least 18 years of age.
- Have at least 2 years of verifiable full-time:
  - Work experience in a pharmacy licensed in Florida or another state, where the person's responsibilities included, but were not limited to, recordkeeping for prescription drugs;
  - Managerial experience with a prescription drug wholesale distributor licensed in Florida or in another state; or
  - Managerial experience with the United States Armed Forces, where the person's responsibilities included, but were not limited to, recordkeeping, warehousing, distributing, or other logistics services pertaining to prescription drugs.
- Pass the required examination.
- Provide DBPR with a personal information statement and fingerprints.<sup>60</sup>

## Designated Representatives – Effect of the Bill

The bill adds two additional ways that an applicant may demonstrate work experience in order to obtain a license as a designated representative, as follows:

- Managerial experience with a state or federal organization responsible for regulating or permitting establishments involved in the distribution of prescription drugs, whether in an administrative or a sworn law enforcement capacity; and
- Work experience as a drug inspector or investigator with a state or federal organization, whether in an administrative or a sworn law enforcement capacity, where the person's responsibilities related primarily to compliance with state or federal requirements pertaining to the distribution of prescription drugs.

## Local Construction Contractor Licensing – Current Situation

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<sup>57</sup> Ss. 499.051, 499.062, 499.065, 499.066, 499.0661, and 499.067, F.S.

<sup>58</sup> S. 499.012(15)(a), F.S.

<sup>59</sup> S. 499.012(15)(d), F.S.

<sup>60</sup> S. 499.012(15)(b), F.S.

Chapter 489, F.S., relates to “contracting,” with part I addressing the licensure and regulation of construction contracting, and part II addressing the licensure and regulation of electrical and alarm system contracting.

Construction contractors are either certified or registered by the Construction Industry Licensing Board (CILB) housed within DBPR. The CILB is responsible for licensing statewide construction contractors and regulating the construction industry in Florida under part I of Ch. 489, F.S.,<sup>61</sup> and is divided into two divisions with separate jurisdictions:

- Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors.<sup>62</sup>
- Division II has jurisdiction over the regulation of roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors.<sup>63</sup>

“Certified contractors” are individuals who pass the state competency examination and obtain a certificate of competency issued by DBPR. Certified contractors are able to obtain a certificate of competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.<sup>64</sup>

“Certified specialty contractors” are contractors whose scope of work is limited to a particular phase of construction, such as drywall or demolition. Certified specialty contractor licenses are created by the CILB through rulemaking. Certified specialty contractors are permitted to practice in any jurisdiction in the state.<sup>65</sup>

“Registered contractors” are individuals licensed at the local level that have taken and passed a local competency examination and can practice the specific category of contracting for which he or she is approved, only in the local jurisdiction for which the license is issued.<sup>66</sup> Registered contractors must register the local license with the CILB.

The local governing body of a county or municipality, or its local enforcement body, is authorized to enforce the provisions of part I of Ch. 489, F.S., as well as its local ordinances against locally licensed or registered contractors, as appropriate. The local jurisdiction enforcement body may conduct disciplinary proceedings against a locally licensed or registered contractor and may:

- Require restitution,
- Impose a suspension or revocation of the local license,
- Impose a fine not to exceed \$5,000, or
- Impose a combination thereof.<sup>67</sup>

In addition to any disciplinary action the local jurisdiction enforcement body may take against the local licensee, the local jurisdiction enforcement body must issue a recommended penalty to the CILB for the CILB to take additional action. This recommended penalty may include a recommendation for:

- No further action,
- Suspension,
- Revocation,
- Restriction of the registration,
- A fine to be levied by CILB, or

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<sup>61</sup> See s. 489.107, F.S.

<sup>62</sup> See s. 489.105(3)(a)-(c), F.S.

<sup>63</sup> S. 489.105(3) (d) - (q), F.S.

<sup>64</sup> S. 489.105(8), F.S.

<sup>65</sup> S. 489.105(3)(q), F.S.

<sup>66</sup> S. 489.105(10), F.S.

<sup>67</sup> S. 489.131(7)(b), F.S.

- A combination thereof.<sup>68</sup>

Currently, a local jurisdiction enforcement body may not recommend that the CILB require restitution as an action against the local contractor.

### **Local Construction Contractor Licensing – Effect of the Bill**

The bill allows a local jurisdiction enforcement body to recommend that the CILB require restitution from the local contractor.

The bill requires that the recommended penalty must specify the practice act violations upon which the recommendation is based.

### **Specialty Electrical Contractors – Current Situation**

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>69</sup> An electrical contractor engages in business as a contractor or performs electrical or alarm work for compensation.<sup>70</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>71</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>72</sup>

A "specialty contractor" means a contractor whose scope of practice is limited to a specific segment of electrical or alarm system contracting established in a category adopted by board rule, including, but not limited to, residential electrical contracting, maintenance of electrical fixtures, and fabrication, erection, installation, and maintenance of **electrical** advertising signs together with the interrelated parts and supports thereof.<sup>73</sup>

### **Specialty Electrical Contractors – Effect of the Bill**

The bill allows a specialty electrical contractor to also perform maintenance on **nonelectrical** advertising signs.

### **Florida Homeowners’ Construction Recovery Fund – Current Situation**

The Florida Homeowners’ Construction Recovery Fund is used to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed contractors. Covered losses include financial mismanagement or misconduct, project abandonment, or fraudulent statement of a contractor or related party.<sup>74</sup> A homeowner must have engaged a contractor for construction or improvement of the homeowner’s Florida residence, and the damage must have been caused by a Division I licensee or a Division II licensee.<sup>75</sup>

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<sup>68</sup> S. 489.131(7)(c), F.S.

<sup>69</sup> S. 489.507, F.S.

<sup>70</sup> S. 489.505(9), F.S.

<sup>71</sup> Ss. 489.505(12) & 489.537(7), F.S.

<sup>72</sup> S. 489.505(1)-(2), F.S.

<sup>73</sup> S. 489.505(19), F.S.

<sup>74</sup> See ss. 489.140-489.144, F.S.

<sup>75</sup> Section 489.1402, F.S., defines the term “residence” to mean “a single-family residence, an individual residential condominium or cooperative unit, or a residential building containing not more than two residential units in which the owner contracting for the improvement is residing or will reside 6 months or more each calendar year upon completion of the improvement.”

Claims are filed with DBPR, who reviews for completeness and statutory eligibility. DBPR then presents the claim to the Construction Industry Licensing Board (CILB) for review.<sup>76</sup>

Current law requires all local governments to assess and collect a separate 1.5% surcharge on any building permit issued by their enforcement agency for the purpose of enforcing the Building Code. The local governments collect the assessment and remit the surcharge fees to DBPR, where it is divided equally to fund the activities of the Building Code Administrators and Inspectors Board (BCAIB) and the Florida Homeowners' Construction Recovery Fund.<sup>77</sup>

The maximum amounts payable for recovery fund claims and the total lifetime aggregate limits are set forth in s. 489.143, F.S.,<sup>78</sup> as follows:

- Beginning January 1, 2005, for each Division I contract entered into after July 1, 2004, recovery fund claims are limited to a \$50,000 maximum payment for each Division I claim, with a total lifetime aggregate limit of \$500,000 for each Division I licensee.
- Beginning January 1, 2017, for each Division II contract entered into on or after July 1, 2016, (the date that claims against Division II licensees were first authorized to be filed), recovery fund claims are limited to a \$15,000 maximum payment for each Division II claim, with a total lifetime aggregate limit of \$150,000 for each Division II licensee.

Claims awarded to a claimant by the CILB are paid in the order that they are filed, up to the lifetime aggregate limits for each transaction and licensee, and to the limits of amounts appropriated to pay claims against the recovery fund.<sup>79</sup> Payments may not exceed the total claim limits or lifetime aggregate limits.<sup>80</sup>

As of July 31, 2023, the overall Recovery Fund balance was \$23,235,064.00. For fiscal years 20/21, 21/22, and 22/23, the average amount of revenue going into the fund from the surcharge per fiscal year was \$6,188,495.00, and the average amount of claims awarded was \$2,882,184 per fiscal year. However, between FY 20/21 and FY 22/23, the number of claims presented and awarded each year more than doubled. In FY 22/23, **232** claims were awarded for a total amount of \$4,449,552.00. Of the 232 claims, 125 were against Division I contractors, and 107 were against Division II contractors.<sup>81</sup>

**Florida Homeowners' Construction Recovery Fund – Effect of the Bill**

The bill increases the maximum amounts payable for recovery fund claims and the total lifetime aggregate limits as follows:

- Beginning January 1, 2025, for each Division I contract entered into after July 1, 2024, recovery fund claims are limited to a \$100,000 maximum payment for each Division I claim, with a total lifetime aggregate limit of \$2 million for each Division I licensee.
- Beginning January 1, 2025, for each Division II contract entered into on or after July 1, 2024, recovery fund claims are limited to a \$30,000 maximum payment for each Division II claim, with a total lifetime aggregate limit of \$600,000 for each Division II licensee.

The bill provides an effective date of July 1, 2024.

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

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

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<sup>76</sup> S. 489.1401(2), F.S.  
<sup>77</sup> S. 468.631, F.S.  
<sup>78</sup> For recovery fund claims for contracts entered into before July 1, 2004, see s. 489.143(6), F.S.  
<sup>79</sup> S. 489.143(7), F.S.  
<sup>80</sup> *Id.*  
<sup>81</sup> DBPR, Agency Analysis of 2024 House Bill 1335, p.3 (Jan. 8, 2024).

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

By increasing the aggregate cap per licensee and the per claim cap for each contract, the number of claimants who receive compensation from the Florida Homeowner's Construction Recovery Fund and the amount of compensation will increase.

Removing the bondability requirement for asbestos abatement professionals will reduce the cost to applicants, estimated to be \$100 per applicant.<sup>82</sup>

D. FISCAL COMMENTS:

According to DBPR:

Since recovery fund claims under the Florida Homeowner's Construction Recovery Fund are required to be based on contracts for eligible work, and must be based on either a final order, judgment, or decree, any fiscal impact from the increase in the caps will likely not occur for at least a year, July 2025 at the earliest.<sup>83</sup>

Modifications to DBPR's licensing system, Versa: Regulation (VR), and online system, Versa: Online (VO), related to creating and maintaining online accounts and changes to licensure processes, are required.<sup>84</sup> These changes can be made using existing resources.

By increasing the aggregate cap per licensee and the per-claim cap for each contract, the number and amounts of Florida Homeowner's Construction Recovery Fund claims awarded will increase. However, the impact is indeterminate.

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<sup>82</sup> *Id.* at 10.

<sup>83</sup> *Id.* at 12.

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