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# Careers & Competition Subcommittee

Tuesday, January 16, 2018  
3:00 PM – 6:00 PM  
216 Capitol

## Meeting Packet

Richard Corcoran  
Speaker

Halsey Beshears  
Chair

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Careers & Competition Subcommittee

**Start Date and Time:** Tuesday, January 16, 2018 03:00 pm  
**End Date and Time:** Tuesday, January 16, 2018 06:00 pm  
**Location:** 216 Capitol  
**Duration:** 3.00 hrs

**Consideration of the following bill(s):**

CS/HB 469 Salvage of Pleasure Vessels by Natural Resources & Public Lands Subcommittee, Harrison  
HB 813 Licensure of Unarmed Security Guards by Willhite  
HB 891 St. Lucie County by Harrell  
HB 965 Laser Hair Removal Or Reduction by Fine  
HB 1033 Dockless Bicycle Sharing by Toledo  
HB 6037 Fireworks by Grant, J.

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Friday, January 12, 2018.

By request of Chair Beshears, all Careers & Competition Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Friday, January 12, 2018.

**NOTICE FINALIZED on 01/11/2018 4:08PM by Rigas.Amanda**



# The Florida House of Representatives

Commerce Committee

Careers & Competition Subcommittee

Richard Corcoran  
Speaker

Halsey Beshears  
Chair

## AGENDA

Tuesday, January 16, 2018

216 Capitol

3:00 PM – 6:00 PM

- I. Call to Order & Roll Call
- II. Welcoming Remarks
- III. Consideration of the following bills(s):
  - CS/HB 469 by / *Rep. Harrison*  
Salvage of Pleasure Vessels
  - HB 813 by *Rep. Willhite*  
Licensure of Unarmed Security Guards
  - HB 891 by *Rep. Harrell*  
St. Lucie County
  - HB 965 by *Rep. Fine*  
Laser Hair Removal or Reduction
  - HB 1033 by *Rep. Toledo*  
Dockless Bicycle Sharing
  - HB 6037 by *Rep. Grant*  
Fireworks
- IV. Adjournment



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 469 Salvage of Pleasure Vessels  
**SPONSOR(S):** Harrison; Natural Resources & Public Lands Subcommittee  
**TIED BILLS:** IDEN./SIM. BILLS: CS/SB 664

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Natural Resources & Public Lands Subcommittee	13 Y, 0 N, As CS	Moore	Shugar
2) Careers & Competition Subcommittee		Willson MW	Anstead <i>Jo</i>
3) Government Accountability Committee			

### SUMMARY ANALYSIS

Currently, state law does not require salvors of pleasure vessels to notify customers regarding the potential costs prior to salvage. Salvage is the amount allowed to persons who voluntarily assist a ship at sea or her cargo or both, whether saved in whole or in part from impending sea peril, or in the recovery of such property from actual peril or loss. In determining a salvage award, several factors are considered resulting in awards ranging from a few hundred dollars to thousands of dollars.

This bill creates the "Florida Salvage of Pleasure Vessels Act" (Act) providing certain consumer protections, similar to those contained in part IX of ch. 559, F.S., related to the repair of motor vehicles. The bill applies, with a few exceptions, to all salvors operating in Florida.

The bill defines "salvage work" to include any assistance, services, repairs, or other efforts rendered by a salvor relating to saving, preserving, or rescuing a pleasure vessel or its passengers and crew that are in marine peril, but does not include towing, and defines a "pleasure vessel" as a watercraft that is no more than 60 feet in length used solely for personal pleasure, family use, or the transportation of executives, persons under the employment, and guests of the owner.

The bill requires salvors:

- to present a written disclosure statement if the salvage work will exceed \$500;
- to obtain acknowledgment and signature from the customer;
- to prepare a written estimate if requested by the customer;
- to promptly notify the customer if a salvor's charges exceed the written estimate by more than 20 percent and allow the customer to modify, or cancel the order for salvage;
- to expeditiously place the pleasure vessel back into a condition reasonably similar to the condition in which it was received, if the customer cancels the order upon notice that the work cannot be accomplished within the previous estimate, unless the effort or to do so would be unsafe;
- to charge for salvage work already provided only up to the point of cancellation, but not in excess of the agreed cancellation fee;
- to have signs posted in a conspicuous manner on their vessels that can be read from a customer's pleasure vessel, informing the customer that the salvors are professional salvors that charge for their services and that the customer has a right to a written estimate for the services offered.

The bill provides for violations of the Act and provides that a customer injured by a violation who prevails in court is entitled to damages in the amount of three times that charged by the salvor, plus actual damages, court costs, reasonable attorney fees, injunctive relief, and any other remedy provided by law.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides for an effective date of July 1, 2018.

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

STORAGE NAME: h0469b.CCS.DOCX

DATE: 1/12/2018

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Generally, only a vessel of the United States or a numbered motorboat owned by a citizen may engage in any salvage operation in territorial waters of the United States.<sup>1</sup>

“Salvage is the compensation allowed to persons by whose voluntary assistance to a ship at sea or her cargo or both have been saved in whole or in part from impending sea peril, or in recovering such property from actual peril or loss, as in cases of shipwreck, derelict, or recapture.”<sup>2</sup>

Federal law provides for the following factors that have traditionally been considered in determining a salvage award:

- the labor expended by the salvors in rendering the salvage service;
- the promptitude, skill, and energy displayed in rendering the service and saving the property;
- the value of the property employed by the salvors in rendering the service, and the danger to which such property was exposed;
- the risk incurred by the salvors in securing the property from the impending peril; the value of the property saved; and
- the degree of danger from which the property was rescued.<sup>3</sup>

The 1989 International Convention on Salvage, to which the United States is a party,<sup>4</sup> added additional factors to consider when making a salvage award determination, which include consideration for prevention or minimization of environmental damage.<sup>5</sup>

In weighing these factors, a salvage award can vary greatly from a few hundred dollars<sup>6</sup> to thousands of dollars.<sup>7</sup> Currently, neither federal nor state law require salvors to notify customers of the potential costs involved in the salvage of their vessel.

##### *United States Coast Guard and the Commercial Towing Industry*

Historically, the United States Coast Guard performed the majority of all the on-the-water assistance required by boaters in the United States.<sup>8</sup> In 1982, Congress directed the Coast Guard “to review Coast Guard policies and procedures for towing and salvage of disabled vessels in order to further minimize

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<sup>1</sup> 19 C.F.R. § 4.97(a) (1969).

<sup>2</sup> *The Sabine*, 101 U.S. 384 (1879).

<sup>3</sup> *The Blackwall*, 77 U.S. 1 (1869).

<sup>4</sup> United Nations. *International Convention on Salvage*, <https://treaties.un.org/doc/Publication/UNTS/Volume%201953/v1953.pdf>, (last visited Nov. 17, 2017).

<sup>5</sup> *International Convention on Salvage, 1989*, <http://treaties.fco.gov.uk/docs/pdf/1996/TS0093.pdf> (last visited Nov. 17, 2017);

International Maritime Organization. *International Convention on Salvage*.

<http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-on-Salvage.aspx>, (last visited Nov. 17, 2017).

<sup>6</sup> *Hernandez v. Roberts*, 675 F.Supp. 1329, (S.D.Fla.1988).

<sup>7</sup> *Lewis v. JPI Corp.*, No. 07-20103-CIV, 2009 WL 3761984 (S.D. Fla. Nov. 9, 2009); *Esoteric, LLC v. One (1) 2000 Eighty-Five Foot Azimut Motor Yacht Named M/V “Star One”*, No. 10-15652 (11th Cir. June 12, 2012).

<sup>8</sup> C-PORT & Capt. Steve Winkler, *Liability and Assistance Towing: Issues of interest to Harbormasters, Marine Police, Fire, and other Local and State Marine Response Units*, (2010), at 1, available at

<http://cport.wsiefusion.net/Images/AnnouncementImages/Liability%20and%20Assistance%20Document%202010.pdf>

the possibility of Coast Guard competition or interference with ... commercial enterprise.”<sup>9</sup> According to the Coast Guard, “the review was directed because of congressional concern that Coast Guard resources were being used unnecessarily to provide non-emergency assistance to disabled vessels that could be adequately performed by the private sector.”<sup>10</sup> The Coast Guard responded with its Maritime Search and Rescue Assistance Policy (MSAP), which gave rise to the commercial assistance towing industry we are familiar with today.<sup>11</sup>

The Coast Guard is prohibited from charging a fee for search and rescue services<sup>12</sup>, and generally does not provide assistance to recreational boaters when a commercial towing service is able to respond. Coast Guard regulations provide that “rescue operations may also be performed for the purpose of preventing or mitigating property loss or damage. However, missions shall not normally be performed for the purpose of salvage or recovery of property when those actions are not essential to the saving of life.”<sup>13</sup>

#### Towing<sup>14</sup>

A common affirmative defense to a salvage claim is that the services rendered constituted “simple towage” services rather than salvage services.<sup>15</sup> Simple towage, as opposed to salvage, is a towage service that is based on the “employment of one vessel to expedite the voyage of another, when nothing more is required than the [acceleration of the second vessel’s] progress.”<sup>16</sup> Simple towage is regarded as having taken place when a tow was called for or taken by a sound vessel merely as a means of saving time or for convenience.<sup>17</sup>

The hallmark of simple towage is the absence of peril. For example, in *American Home Assurance Co. v. L & L Marine Service, Inc.*, 875 F.2d 1351 (8th Cir. 1989), the court held that a grounded vessel with fuel leaking into the surf was in peril when rescued by the Coast Guard, but it was no longer in peril after being pulled into open water; therefore, the tow back to port was evaluated as towage services, not salvage services.

The typical simple towage case arises when a power vessel has run out of fuel or is disabled and becomes adrift at sea, but the only assistance required is a tow to a safe mooring.<sup>18</sup> In simple towage cases, the level of towage services is extremely low if rendered in harbor or close to shore, in calm weather, or when numerous other vessels or towboats are available to render the same service.<sup>19</sup> It is the almost-universal practice of salvors to provide towage services on a fixed-price basis or hourly rate. The distinction between towage and salvage is important because when good weather and calm seas are replaced with high seas and an approaching hurricane, or when the locale is moved many miles

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<sup>9</sup> U.S. Department of Homeland Security, United States Coast Guard, ADDENDUM TO THE UNITED STATES NATIONAL SEARCH AND RESCUE SUPPLEMENT (NSS) to The International Aeronautical and Maritime Search and Rescue Manual (IAMSAR), Section 4.1, Maritime SAR Assistance Policy (MSAP) at 4-5. (January 2013).

<sup>10</sup> USCG, ADDENDUM TO THE UNITED STATES NATIONAL SEARCH AND RESCUE SUPPLEMENT (NSS) at 4-5.

<sup>11</sup> David Weil, *How do the U.S. Coast Guard, SeaTow and Vessel Assist respond to distress calls?* Boating World Magazine (January 7, 2015), <http://www.boatingworld.com/asktheattorney/ask-the-attorney-2015-01-02/>

<sup>12</sup> 46 U.S.C. 2110(a)(5).

<sup>13</sup> USCG, ADDENDUM TO THE UNITED STATES NATIONAL SEARCH AND RESCUE SUPPLEMENT (NSS), at PPO-2.

<sup>14</sup> MARITIME LAW AND PRACTICE at 10-11.

<sup>15</sup> The admiralty courts of the United States have addressed the difference between “simple towage” and salvage services on numerous occasions and have expressly held that, in most situations, services rendered by a salvor constitute salvage services. *See, e.g., Mississippi Valley Barge Line Co. v. Indian Towing Co.*, 232 F.2d 750 (5th Cir. 1956).

<sup>16</sup> *The Princess Alice*, 3 W.Rob. 138, 140 (1849).

<sup>17</sup> *Scott v. The Clara E. Bargain*, 21 F.Cas. 1201 (D. S.C. 1882). *See* 3A BENEDICT ON ADMIRALTY § 185 (Matthew Bender & Co. 7th rev. ed. 1993).

<sup>18</sup> *See, e.g., Baker v. Hemenway*, 2 F.Cas. 463 (D. Mass. 1876).

<sup>19</sup> *See, e.g., J.M. Guffey Petroleum Co. v. Borison*, 211 F. 594 (5th Cir. 1914); *Sears v. S.S. American Producer*, 1972 A.M.C. 1647 (N.D. Cal. 1972).

offshore where no other assistance is available, the entire context of the services and their value change radically.<sup>20</sup>

Membership organizations such as Sea Tow<sup>21</sup> and or Boat Owners Association of The United States (BoatU.S.)<sup>22</sup> offer annual memberships for specific marine services at fixed rates. For example, the Sea Tow membership offers certain, limited service privileges, such as towing, alternatives to towing, ungroundings and dock-to-dock tows.<sup>23</sup> The membership agreement explicitly states that "Salvage operations, including, but not limited to, vessels abandoned, wrecked, beached, on fire, damaged by fire, taking on water, sinking, sunk, previously sunk, in the surf or surf line, or in any other state of peril, are not privileges of membership."<sup>24</sup>

### *Jurisdiction*

Salvage is a concept exclusively within federal maritime law and is not a part of state common law.<sup>25</sup> Federal district courts have original jurisdiction for any civil case of admiralty or maritime jurisdiction, exclusive of the courts of the States saving to suitors in all cases all other remedies to which they are otherwise entitled.<sup>26</sup> Salvage awards are unique to maritime and admiralty law, and unlike other areas of law where the amount of the award is calculated as fair compensation for work performed, salvage generously rewards the voluntary salvor for public policy purposes.<sup>27</sup>

A salvor may bring its action in state court, under certain circumstances.<sup>28</sup> If the parties have entered into a contract, which itself provides the means for measurement of the salvage award, the salvage action may proceed in contract, which is clearly a remedy provided within state court jurisdiction.<sup>29</sup>

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<sup>20</sup> See, e.g., *The Mercer*, 297 F. 981 (2d Cir. 1924). *Evanow v. M/V Neptune*, 163 F.3d 1108 (9th Cir. 1998) (when vessel adrift during storm conditions was assessed by Coast Guard as pollution risk, that was peril that justified salvage situation); *The Catalina*, 105 F. 633 (5th Cir. 1900) (when steamship in Gulf of Mexico, 60 miles from mouth of Mississippi, was disabled by breaking of her shaft beyond any temporary repairs that could be made, and in need of assistance to reach her port, although not in immediate peril, she was so in distress that aid voluntarily given her by towing her to mouth of river constituted salvage services); *The Rebecca Shepherd*, 148 F. 727 (D. Me. 1906).

<sup>21</sup> See <https://www.seatow.com/membership/membership-agreement>

<sup>22</sup> See <https://www.boatus.com/membership/>

<sup>23</sup> <https://www.seatow.com/membership/membership-agreement>

<sup>24</sup> *Id.*

<sup>25</sup> John Howard Thomas and Andrew W. Anderson, *The Florida Bar, MARITIME LAW AND PRACTICE*, CH. 8: SALVAGE 3 (5<sup>th</sup> ed. 2017).

<sup>26</sup> Modern admiralty jurisdiction is codified in 28 U.S.C. § 1333

<sup>27</sup> *Lewis* at 3. See also 67B Am. Jur. 2d Salvage § 1 "Because of the commercial and humanitarian importance of aiding persons and ships in distress, as well as preserving property and maintaining navigable waterways, public policy favors rewarding seamen for salvage services on a basis far out of proportion to quantum meruit both to liberally reward them and to withdraw from them every temptation toward embezzlement and dishonesty. Courts of admiralty, therefore, do not view salvage awards merely as pay or remuneration for labor but as a reward given for perilous services, voluntarily rendered, and as an inducement to seamen and others to embark on such undertakings to save life and property."

<sup>28</sup> *Sebastian Tow Boat & Salvage, Inc. v. Vernon Slavens & Allstate Floridian Insurance Co.*, 16 FLW Fed. D187 (M.D. Fla. 2002)

<sup>29</sup> John Howard Thomas and Andrew W. Anderson, *The Florida Bar, MARITIME LAW AND PRACTICE*, CH. 8: SALVAGE 4 (5<sup>th</sup> ed. 2017).

"When a federal court sits as an admiralty court, it applies the general federal maritime law and federal statutes. *Southern Pacific Co. v. Jensen*, 244 U.S. 205, 37 S.Ct. 524, 61 L.Ed. 1086 (1917), *superseded on other grounds* 459 U.S. 297. Federal district courts are granted exclusive jurisdiction for maritime cases, including salvage, under 28 U.S.C. § 1333, but the "saving to suitors clause" allows state court jurisdiction in all cases of remedies to which suitors are otherwise entitled. 28 U.S.C. § 1333(1). Thus, 28 U.S.C. § 1333(1) creates an exception to exclusive jurisdiction of the federal courts, providing for concurrent jurisdiction in state courts as well as federal question jurisdiction for admiralty-type claims pursuant to 28 U.S.C. § 1331, and allows for supplemental jurisdiction for other common-law claims in diversity within an admiralty claim. See *O'Neill v. Schoenbrod*, 355 So.2d 440 (Fla. 3d DCA 1978)(The court held that salvage, as a matter peculiarly within the jurisdiction of the admiralty courts because of the peculiar system awarding the compensation, was within the exclusive jurisdiction of the federal district court sitting in admiralty. The same plaintiff was subsequently prevented from bringing the same claim as a state court action for unjust enrichment, as a "disguised salvage claim.")



When the object of salvage is located in non-navigable waters (e.g., a lake that is not navigable to another state or the sea), there is no admiralty jurisdiction and no cause of action for marine salvage.<sup>30</sup>

### *Cause of Action for Salvage*<sup>31</sup>

Under the law of salvage, three kinds of salvage services have been recognized:<sup>32</sup>

- (1) voluntary, wherein the compensation is not contracted for and is dependent on success (i.e., pure salvage);
- (2) rendered under a contract for a per diem or per horam wage, payable at all events<sup>33</sup>; or
- (3) under a contract for a compensation payable only in case of success.

Pure salvage actions are based on the scheme of salvage awards developed under federal maritime law. Salvage services are considered “pure salvage” even when a contract exists, “if the contract does not contain either an agreement to pay a given sum or to pay without regard to success, but provides only that the salvor will be entitled to an award in the event of success on a “no cure-no pay” basis, the services do not become contract salvage but retain their status as pure salvage services.”<sup>34</sup>

To have a valid maritime salvage claim for pure salvage under either (1) or (3) above and be entitled to a liberal salvage award, a salvor first must establish that the services rendered were in fact maritime salvage services. For a valid claim of having rendered pure salvage services, a salvor must establish the following three elements by a preponderance of the evidence:

- a maritime peril<sup>35</sup> from which the ship or other property could not have been rescued without the salvor's assistance;
- a voluntary act by the salvor without a pre-existing contractual, official, or legal duty to render assistance; and
- success in saving or helping to save at least part of the property at risk.<sup>36</sup>

A salvor must obtain permission before beginning salvage operations, or the salvor becomes a trespasser or officious intermeddler.<sup>37</sup> There is no question that salvage services cannot be thrust on an unwilling vessel master or owner who refuses them.<sup>38</sup>

When a vessel is exposed to a marine peril and no one is aboard to refuse or accept the salvage services (whether it is derelict, abandoned, or has simply been left temporarily), it is not necessary for the salvor to attempt to locate the owner or to obtain permission before undertaking salvage operations.

<sup>30</sup> *Id.*, citing *Historic Aircraft Recovery Corp. v. Wrecked & Abandoned Voight F4U-1 Corsair Aircraft*, 294 F.Supp.2d 132 (D. Me. 2003)

<sup>31</sup> John Howard Thomas and Andrew W. Anderson, *The Florida Bar, MARITIME LAW AND PRACTICE*, CH. 8: SALVAGE (5<sup>th</sup> ed. 2017).

<sup>32</sup> *MARITIME LAW AND PRACTICE* at 4, citing *The Elfrida*, 172 U.S. 186, 19 S.Ct. 146, 43 L.Ed. 413 (1898).

<sup>33</sup> *MARITIME LAW AND PRACTICE* at 11, “The practitioner should note that fixed-price salvage contracts are uncommon for rescues except in cases of raising vessels sunk at their berths in shallow water or in the salvage of vessels of relatively low value. Therefore, although some use is made of contract salvage for vessels, primarily in the context of wreck removal, most salvage contracts presented to vessel operators and owners are “pure salvage, no cure-no pay.””

<sup>34</sup> *The Camanche*, 75 U.S. (8 Wall.) 448, 19 L.Ed. 397 (1869).

<sup>35</sup> *MARITIME LAW AND PRACTICE* at 4-5. “To justify a salvage award, it is sufficient that, when the salvage service is rendered, the vessel has encountered danger, misfortune, peril, or other circumstances that might expose it to damage or destruction if the services were not rendered. A situation of reasonable apprehension, though not of actual danger, is sufficient . . . it is not the degree of peril that makes for salvage service. If distress or peril is present, after voluntary service and success, a valid salvage service has been performed entitling the salvor to a salvage award. The degree of peril — whether slight, moderate, or severe — affects only the amount, not entitlement to, a salvage award. *New Bedford Marine Rescue, Inc. v. Cape Jeweler's Inc.*, 240 F.Supp.2d 101 (D. Mass. 2003). Therefore, the presence of peril in any degree — whether imminent or potential, and whether the damages to the vessel are slight or nonexistent — will support a claim for salvage services. However, the degree, imminence, and extent of the peril figure largely in the amount of the salvage award.”

<sup>36</sup> *Id.*

<sup>37</sup> *Merritt & Chapman Derrick & Wrecking Co. v. United States*, 274 U.S. 611, 47 S.Ct. 663, 71 L.Ed. 1232 (1927), citing *The Annapolis*, 167 Eng.Rep. 150, 161 (P.C. 1861).

<sup>38</sup> *The Indian*, 159 F. 20 (5<sup>th</sup> Cir. 1908); *The Choteau*, 9 F. 211 (C.C. D. La. 1881); *The Bolivar*, 3 F.Cas. 1611 (C.C. D. Tex. 1872).

Under such circumstances, the salvor is not a trespasser and may proceed to assist the vessel, and make a claim for a salvage award.<sup>39</sup>

### Salvage Contracts

Standard "no cure-no pay" salvage contracts are in general use by salvors, as prepared by such entities as Lloyd's Salvage Arbitration Branch ("Lloyd's Open Form"), the Society of Maritime Arbitrators ("U.S. Open Form") and BOAT/U.S.<sup>40</sup> Courts have found that a vessel owner is bound by signing a written salvage contract, even if later the owner claimed to have not read and understood it.<sup>41</sup>

"Many of the same factors that will void a contract under common law, such as fraud, collusion, mutual mistake, misrepresentation or suppression of material facts, or compulsion, also will void a salvage contract. An admiralty court will scrutinize a salvage contract closely for any sign of overreaching, improper coercion, or overcharging by the salvor. The court will set aside the contract if it finds that the salvor took advantage of the situation to impose unconscionable or inequitable contract terms on the vessel. Extortionate demands forced by a salvor on the master of a vessel *in extremis* not only will void the contract but often result in a salvage award that is less than it otherwise would be. If, however, the terms of the contract are reasonable and not oppressive, the contract will be upheld without regard to pressures created by the emergency faced by the vessel."<sup>42</sup>

### Professional Salvors<sup>43</sup>

Public policy provides that, to encourage professional salvors to relieve the taxpayers from the necessity of buying, equipping, and maintaining salvage vessels, as well as training and maintaining their crews, professional salvors are entitled not only to compensation for services rendered, but to a so-called equitable "uplift" or incentive bonus to induce both small and large salvors to remain in business, prepared to respond to the next call for assistance.<sup>44</sup>

A professional salvor is entitled to claim a special bonus award for a successful salvage.<sup>45</sup> The concept that professional salvors are entitled to premium pay for successful completion of their services is long-standing and widespread.<sup>46</sup> There is strong public policy that a professional salvor is entitled to a more liberal award than an amateur or chance salvor, to encourage professional salvors to maintain salvage equipment and expertise.<sup>47</sup>

Exactly what constitutes a professional salvor has not been defined precisely. However, the court in *The Lamington* provided guidance as to this issue, in which it set out some factors as to what

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<sup>39</sup> *Rickard v. Pringle*, 293 F.Supp. 981 (E.D. N.Y. 1968); *The Ann L. Lockwood*, 37 F. 233 (D. Del. 1888). See 3A BENEDICT ON ADMIRALTY § 136 (Matthew Bender & Co. 7th rev. ed. 1993).

<sup>40</sup> MARITIME LAW AND PRACTICE at 12. "The defense of a salvage contract may extend to a vessel owner whose vessel master has the authority to sign such agreement without special authority from the owner. *Andrews v. Wall*, 44 U.S. (3 How.) 568, 11 L.Ed. 729 (1845); *The G.W. Jones*, 48 F. 925 (S.D. N.Y. 1892). However, the vessel owner cannot assert this defense when the signing of a salvage agreement by the master after the vessel has been assisted requires authorization by the vessel owner."

<sup>41</sup> MARITIME LAW AND PRACTICE at 12. See, e.g., *Royal Insurance Company of America v. BHRS, LLC*, 333 F.Supp.2d 1293 (S.D. Fla. 2004) (court held that salvage contract was enforceable when boat owner asked salvor whether any money was owed for salvage and salvor replied that owner should not worry because insurance will pay).

<sup>42</sup> MARITIME LAW AND PRACTICE at 12. *The Elfrida*, 172 U.S. 186, 19 S.Ct. 146, 43 L.Ed. 413 (1898); *Magnolia Petroleum Co. v. National Oil Transport Co.*, 286 F. 40 (5th Cir. 1923); *The Emulous*, 8 F.Cas. 705 (C.C. D. Mass. 1832).

<sup>43</sup> MARITIME LAW AND PRACTICE at 14-15.

<sup>44</sup> See *In re Shopping Spree*, 1992 WL 12561364 (Arbitr. Mass. 1992); *H.R.M., Inc. v. S/V Venture VII*, 972 F.Supp. 92 (D. R.I. 1997); *H.R.M., Inc. v. S/V Martina Mia II*, 1992 A.M.C. 1347 (D. R.I. 1991).

<sup>45</sup> *B.V. Bureau Wijsmuller v. United States*, 487 F.Supp. 156 (S.D. N.Y. 1979), aff'd 633 F.2d 202

<sup>46</sup> See *The Ocklawaha*, 1964 A.M.C. 2695 (S.D. N.Y. 1963), modified 348 F.2d 627; *Devine v. United Transportation*, 1956 WL 89486 (W.D. Wash. 1956).

<sup>47</sup> 8 BENEDICT ON ADMIRALTY § 802 (Matthew Bender & Co. 7th rev. ed. 1993). See also *The Lamington*, 86 F. 675 (2d Cir. 1898); *Rainbow Line Inc. v. M/V Tequila*, 341 F.Supp. 459 (S.D. N.Y. 1972), aff'd 480 F.2d 1024.

constitutes a professional salvor, including machinery, skills, and appliances being ready for instant service, even if called for only occasionally.<sup>48</sup>

### Salvage Awards<sup>49</sup>

In determining the size of the salvage award to which the salvor is entitled, the amount of the award is not based on work and labor performed on an hourly or fixed-rate basis, but is given as a reward to ensure safety of property and life at sea. As previously stated, there is a strong public policy in favor of encouraging salvors to save and restore property to its owners and to encourage others to venture out and save distressed property. As a result, salvage awards are liberally construed in the form of a "reward," not quantum meruit.<sup>50</sup> Specifically, public policy dictates that a salvor's award should be such as to encourage others to aid vessels in distress.<sup>51</sup>

Computation of a salvage award traditionally has followed the longstanding guidance provided by the United States Supreme Court more than a century ago. In *The Blackwall*, 77 U.S. (10 Wall.) 1, 19 L.Ed. 870 (1870), Justice Clifford set out the six factors to be considered in determining the amount of a salvage award. The Second Circuit has arranged these factors in descending order of importance as follows:

- (1) the degree of danger from which the ship was rescued;
- (2) the post-casualty value of the property saved;
- (3) the risk incurred in saving the property from impending peril;
- (d) the promptitude, skill, and energy displayed in rendering the service and salvaging the property;
- (4) the value of the property employed by the salvors and the danger to which it was exposed; and
- (5) the costs in terms of labor and materials expended by the salvors in rendering the salvage service.<sup>52</sup>

In considering its award, the court must consider not only the peril immediately faced by the vessel, but the dangers presented by the situation that reasonably might have developed but for the actions of the salvors. Although the flexible approach adopted by the United States in *The Blackwall* is still cited authority for salvage award determinations, technically the case has been superseded by the International Convention on Salvage, 1989 ("SALCON 89"), to which the United States is a party. Pursuant to the SALCON 89, there are additional factors that a court must consider when making its salvage award determination, which include consideration of life salvage and consideration for prevention of environmental damage.

Specifically, as to the second factor — the post-casualty value of the property — "[t]he salvaged value is the post-casualty value of the property, in [its] damaged state, at the time of the salvage or after the vessel is brought into safe harbor."<sup>53</sup> Typically, the fair market value of the property determines the property value under this factor. However, when there has been no established market value, use of a pre-casualty book value for the vessel and deducting the actual cost of repairs is an acceptable measure of the vessel's value after salvage or salvaged value.<sup>54</sup> In any event, the actual selling price of

<sup>48</sup> *Bindon v. Jones*, 1986 A.M.C. 1403 (W.D. Wash. 1984); *B.V. Bureau Wijsmuller*.

<sup>49</sup> MARITIME LAW AND PRACTICE at 17-18.

<sup>50</sup> *B.V. Bureau Wijsmuller v. United States*, 702 F.2d 333, 339 (2d Cir. 1983); *Lancaster v. Smith*, 330 F.Supp. 65 (S.D. Ala. 1971). See also 3A BENEDICT ON ADMIRALTY § 259 (Matthew Bender & Co. 7th rev. ed. 1993).

<sup>51</sup> *Tonder v. M/V "Burkholder"*, 630 F.Supp. 691 (D.C. v.I. 1986). See also, *American Petroleum Co. v. The Veendam*, 46 F. 489 (S.D. N.Y. 1891).

<sup>52</sup> *B.V. Bureau Wijsmuller*, 702 F.2d at 339. See *Brown v. Johansen*, 881 F.2d 107 (4th Cir. 1989); *Platoro Limited, Inc. v. Unidentified Remains of a Vessel*, 695 F.2d 893, 904 (5th Cir. 1983); *Ocean Services Towing & Salvage, Inc. v. Brown*, 810 F.Supp. 1258 (S.D. Fla. 1993).

<sup>53</sup> *Lewis v. JPI Corp.*, 2009 WL 3761984, \*7 (S.D. Fla. 2009), citing *Beach Salvage Corp. of Florida v. The Cap't. Tom*, 201 F.Supp. 479 (S.D. Fla. 1961). See also 3A BENEDICT ON ADMIRALTY, *supra*.

<sup>54</sup> *The Oxford*, 66 F. 590 (5th Cir. 1895); *San Francisco Bar Pilots v. Vessel Peacock*, 733 F.2d 680 (9th Cir. 1984); *Girard v. The M/Y "Quality Time"*, 4 F.Supp.3d 1352 (S.D. Fla. 2014), *aff'd in part* 596 F.App'x 846.

the salvaged vessel, if conducted in a commercially reasonable manner, "is the best manifestation of the fair market value of the [vessel]."<sup>55</sup>

The court will consider that a salvage award, as a percentage of the salvaged vessel's value, should be adjusted so that the salvor is fairly compensated without undue hardship to the salvaged vessel owner. The courts recognize that a generous award to the salvor should be allowed when the salvaged property value justifies a high award, to compensate salvors for services that are frequently performed when the property is so small that adequate remuneration cannot be given without a hardship to the owner.<sup>56</sup> If it becomes apparent to the court that the proceeds of any sale would clearly be inadequate to pay the salvor its full reward, the court might, as a matter of discretion, award the salvor title to the property in lieu of the proceeds of sale, thereby saving the costs of sale. The salvor does not have a direct right, however, to title in the property.<sup>57</sup> When salvage expenses exceed the book value of the vessel and the owner fails to respond in the salvage action, a court may award 100% of the vessel sale proceeds as a salvage award to the salvor.<sup>58</sup>

The time involved in a salvage operation is a factor, but is not in itself determinative. For example, in *Mahoney Marine Services, Inc. v. 28' Boston Whaler "EllieRose"*, 2002 WL 34104081 (Arbit. Pa. 2002), a 7-minute successful salvage operation to remove a vessel from a rocky beach with minimal damage justified a generous salvage award. The shortness of time required to perform rescue services does not prevent the service from being a salvage service, thereby affording a more liberal award.<sup>59</sup>

The record of salvage awards does not reveal a consistent formula for determining the value of salvage.<sup>60</sup> The awards ordinarily range from a negligible amount<sup>61</sup>, to half the value of the salvaged vessel.<sup>62</sup> In addition, as in other maritime cases, the award of attorneys' fees is discretionary and may be awarded by the court or arbitrator for acts of bad faith, either in the salvage action itself or in litigation or arbitration of the dispute.<sup>63</sup>

#### Arbitration<sup>64</sup>

Maritime arbitration is by contract.<sup>65</sup> Many salvage contracts include a provision under which disputes as to a salvor's compensation will be submitted to binding arbitration.<sup>66</sup> The most widespread of these worldwide is Lloyd's Open Form (LOF) standard salvage agreement.<sup>67</sup>

<sup>55</sup> *Ocean Services Towing & Salvage, Inc.*, 810 F.Supp. at 1263. See *JPI Corp.*

<sup>56</sup> *The Neto*, 15 F. 819 (S.D. Fla. 1883).

<sup>57</sup> *R.M.S. Titanic, Inc. v. Wrecked & Abandoned Vessel*, 286 F.3d 194 (4th Cir. 2002).

<sup>58</sup> See, e.g., *Falgout Bros., Inc. v. S/V Pangaea*, 966 F.Supp. 1143 (S.D. Ala. 1997).

<sup>59</sup> See, e.g., *The Connemara*, 108 U.S. 352, 2 S.Ct. 754, 27 L.Ed. 751 (1883).

<sup>60</sup> A salvage award of \$4.125 million was upheld for services in rescue of a barge carrying an external fuel tank for the NASA space shuttle. *Margate Shipping Co. v. M/V Ja Orgeron*, 143 F.3d 976 (5th Cir. 1998). Additional reported awards include, but are not limited to, the following: *New Bedford Marine Rescue, Inc. v. Cape Jeweler's Inc.*, 240 F.Supp.2d 101 (D. Mass. 2003) (18% of post-casualty value for 30-foot boat); *Salty Dawg Marina, Inc. v. M/Y Eastern Star*, 2004 WL 1159544 (Arbitr. N.Y. 2004) (\$12,750 awarded for rescue of \$1 million yacht); *In re Coastal Marine Services, Inc.*, 2003 WL 21371848 (Arbitr. N.Y. 2003) (15% of post-casualty value, plus 5% uplift); *BHRS, Inc. v. M/V Big Daddy*, Case No. 3773, Soc'y of Mar. Arbitrators, Inc. (Feb. 20, 2003) (Peters, Arb.) (23% awarded); *Coastal Towing & Salvage, Inc. v. M/Y Playtime*, Case No. 3700, Soc'y of Mar. Arbitrators, Inc. (Aug. 29, 2001) (Siciliano, Arb.) (14% awarded, plus 5% uplift). For a recent, positive survey of salvage awards, see *M/Y "Quality Time"*.

<sup>61</sup> *Hernandez v. Roberts*, 675 F.Supp. 1329 (S.D. Fla. 1988) (\$500); *Reliable Salvage & Towing, Inc. v. 35' Sea Ray*, 2011 WL 1058863 (M.D. Fla. 2011) (10%)

<sup>62</sup> *Ocean Services Towing & Salvage, Inc.* (50%); *Waterman S.S. Corp. v. Shipowners & Merchants Towboat Co.*, 199 F.2d 600 (9th Cir. 1952) (55%).

<sup>63</sup> See, e.g., *Reinholtz v. Retriever Marine Towing & Salvage*, 1994 WL 930679 (S.D. Fla. 1994).

<sup>64</sup> MARITIME LAW AND PRACTICE at 25-26.

<sup>65</sup> *Continental Group, Inc. v. NPS Communications, Inc.*, 873 F.2d 613 (2d Cir. 1989).

<sup>66</sup> *Southland Corp. v. Keating*, 465 U.S. 1, 104 S.Ct. 852, 79 L.Ed.2d 1 (1984).

<sup>67</sup> See, e.g., *Jones v. Sea Tow Services Freeport NY Inc.*, 30 F.3d 360 (2d Cir. 1994).

When there is an arbitration clause in a signed contract, the parties have at least presumptively agreed to arbitrate any disputes, including those disputes about the validity of the contract in general.<sup>68</sup> Even if a vessel owner does not read and understand the arbitration provision in a salvage contract that is signed, the arbitration agreement in the contract is binding.<sup>69</sup> Courts have not accepted the excuse of signing an arbitration contract under duress.<sup>70</sup>

For recreational boat salvage between parties who are United States citizens, involving services provided to a U.S. vessel in U.S. waters, courts have held that they will not compel arbitration in London under agreement nor enforce an arbitration award if one was entered.<sup>71</sup> Maritime arbitration in the United States is governed by two primary sources: the Federal Arbitration Act<sup>72</sup> and the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention")<sup>73</sup>

### **Effect of Proposed Changes**

The bill provides certain consumer protections for salvaging of pleasure vessels, similar to those contained in part IX of ch. 559, F.S., related to the repair of motor vehicles.

The bill directs the Division of Law Revision and Information to change the title of part XII of ch. 559, F.S., from "Miscellaneous Provisions" to "Internet Sales," and to create a new part XIII of ch. 559, F.S., consisting of ss. 559.9601-559.9608, F.S., to be entitled "Salvage of Pleasure Vessels."

The bill creates s. 559.9601, F.S., providing a short title. The bill provides that ss. 559.9601-559.9608, F.S., may be cited as the "Florida Salvage of Pleasure Vessels Act" (Act).

The bill provides that the Act applies to all salvors operating in Florida, with the following exceptions:

- a person who performs salvage work while employed by a municipal, county, state, or federal government when carrying out the functions of that government;
- a person who engages solely in salvage work for pleasure vessels that are owned, maintained, and operated exclusively by such person and for that person's own use or for-hire pleasure vessels that are rented for periods of 30 days or less;
- a person who owns or operates a marina or shore-based repair facility and is in the business of repairing pleasure vessels, where the salvage work takes place exclusively at that person's facility;
- a person who is in the business of repairing pleasure vessels who performs the repair work at a landside or shoreside location designated by the customer; and
- a person who is in the business of recovering, storing, or selling pleasure vessels on behalf of insurance companies that insure the vessels.

The bill creates s. 559.9603, F.S., providing definitions. The bill defines:

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<sup>68</sup> *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 87 S.Ct. 1801, 18 L.Ed.2d 1270 (1967).

<sup>69</sup> *Royal Insurance Company of America v. BHRS, LLC*, 33 F.Supp.2d 1293 (S.D. Fla. 2004).

<sup>70</sup> *Farnsworth, III v. Towboat Nantucket Sound, Inc.*, 790 F.3d 90 (1st Cir. 2015).

<sup>71</sup> *Reinholtz v. Retriever Marine Towing & Salvage*, 1993 WL 414719 (S.D. Fla. 1993), *aff'd* 46 F.3d 71. See also *Jones; Brier v. Northstar Marine, Inc.*, 1992 WL 350292 (D. N.J. 1992).

<sup>72</sup> 9 U.S.C. §§ 1-16

<sup>73</sup> 21 U.S.T. 2517, 330 U.N.T.S. 38; See also the arbitration rules of the Society of Maritime Arbitrators, Inc. (New York City — (212) 786-7404) (available at [www.smany.org/doc1-arbitrationRules.html](http://www.smany.org/doc1-arbitrationRules.html)), Miami Maritime Arbitration Council (Miami — (954) 523-1004), Houston Maritime Arbitrators Association (Houston — (713) 222-1515) (available at [www.hmaatexas.org/arbitration-rules](http://www.hmaatexas.org/arbitration-rules)), or Boat Owners Association of The United States (BoatU.S.) (Virginia — (703) 461-2878). For a detailed discussion of the governance of maritime arbitration, see Chapter 1 of the *Maritime Law and Practice* (5<sup>th</sup> ed. 2017), as well as VanVector, *Three's a Crowd: The Unhappy Interplay Among the New York Convention, FAA, and McCarran-Ferguson Act*, 36 Tul.Mar.L.J. 313 (Winter 2011).

- "Customer" as the person who requests or signs the written salvage estimate or is entitled to receive a written salvage estimate, or any other person whom the person who requests, signs, or is entitled to receive the written salvage estimate designates on the written salvage estimate as a person who may authorize salvage work;
- "Employee" as an individual who is employed full-time or part-time by a salvor and performs salvage work;
- "Pleasure vessel" as any watercraft no more than 60 feet in length which is used solely for personal pleasure, family use, or the transportation of executives, persons under the employment, and guests of the owner;
- "Salvage work" as any assistance, services, repairs, or other efforts rendered by a salvor relating to saving, preserving, or rescuing a pleasure vessel or its passengers and crew, which are in marine peril. Salvage work does not include towing a pleasure vessel; and
- "Salvor" as a person in the business of voluntarily providing assistance, services, repairs, or other efforts relating to saving, preserving, or rescuing a pleasure vessel or the vessel's passengers and crew which are in marine peril, in exchange for compensation.

The bill creates s. 559.9604, F.S., requiring a written disclosure statement and salvage work estimate.

The bill requires that if the salvage work will exceed \$500, the customer is present on the vessel, and there is no imminent threat of injury or death to any person the salvor must present a written disclosure statement to the customer.

The bill also requires that the written disclosure statement contain the following statement in a separate, blocked section, in capital letters of at least 12-point type:

PLEASE READ CAREFULLY, CHECK ONE OF THE STATEMENTS BELOW,  
AND SIGN:

I UNDERSTAND THAT, UNDER STATE LAW, I AM ENTITLED TO A  
WRITTEN ESTIMATE IF MY FINAL BILL MAY EXCEED \$500.

.... I REQUEST A WRITTEN ESTIMATE.

.... I DO NOT REQUEST A WRITTEN ESTIMATE AS LONG AS THE  
SALVAGE CHARGES DO NOT EXCEED \$ ..... THE SALVOR MAY NOT  
EXCEED THIS AMOUNT WITHOUT MY WRITTEN OR ORAL APPROVAL.

.... I DO NOT REQUEST A WRITTEN ESTIMATE.

SIGNED .....

DATE ....

The bill requires a salvor to provide a written salvage work estimate when a customer requests such estimate any time before or during the rendering of any salvage work. The written estimate must be in a form stating the estimated cost of salvage work, including the cost of any inspections or diagnostic work. The estimate must include:

- the name, address, and telephone number of the salvor's business;
- the name, address, and telephone number of the customer;
- the date and time of the written salvage estimate;
- a general description of the pleasure vessel;
- a general description of the customer's problem or request for repair work or service relating to the pleasure vessel;
- a statement as to the basis on which the customer is being charged, such as a flat rate, an hourly rate, or both;
- the estimated cost of the salvage work;

- a statement indicating the daily charge for storing the customer's pleasure vessel if it is to be towed or otherwise transported to a different location than where the salvor performs the salvage work; and
- a cancellation fee, as determined by the salvor, in the event a customer cancels the order for services.

If the salvor does not possess sufficient information concerning the source, cause, or nature of the marine peril to formulate an estimate for the salvage work, then the salvor must provide the customer an estimate for the effort required to determine the source, cause, or nature of the marine peril. When the salvor has sufficient information to provide an estimate for the cost of the salvage work, the salvor must provide the estimate.

The bill requires that a copy of the disclosure statement and, if requested, the written salvage estimate be given to the customer before salvage work begins. The disclosure statement and the written estimate may be on the same form. However, a salvor is not required to give a written estimated price if the salvor does not agree to provide any assistance, service, repairs, or other effort to a potential customer.

The bill allows a customer to cancel the salvage work at any time.

The bill creates s. 559.9605, F.S., regarding notification of charges in excess of salvage estimate; unlawful charges.

The bill requires that if a salvor determines that the actual charges for the assistance, service, or repair work will exceed the written estimate by more than 20 percent, then the customer must be verbally notified promptly of the additional estimated charge. A customer so notified may, orally or in writing, authorize, modify, or cancel the order for salvage. The salvor may only continue work on the pleasure vessel upon authorization from the customer and work must continue only within the scope the customer authorized.

The bill also provides that if a customer cancels the order for salvage after being advised that authorized salvage work cannot be accomplished within the previously authorized estimate, then the salvor must expeditiously place the pleasure vessel back into a condition reasonably similar to the condition in which it was received, unless the customer waives that effort or to do so would be unsafe. After cancellation, the salvor may charge for salvage work provided up to the point of cancellation, but the salvor's charge may not exceed the agreed cancellation fee. The salvor may only charge for any work undertaken on the agreed-upon basis.

The bill creates s. 559.9606, F.S., requiring disclosure; signs; and notice to customers. The bill requires that all vessels used by salvors in connection with performing salvage work have signs posted in a manner conspicuous to customers and potential customers and that can be read from customers' and potential customers' pleasure vessels. The signs must inform customers and potential customers that the salvors are professional salvors that charge for their services and that customers and potential customers have a right to a written estimate for the services offered.

The bill creates s. 559.9607, F.S., regarding unlawful acts and practices. The bill provides that it is a violation for a salvor or its employees to:

- provide or charge for services that have not been expressly or implicitly authorized by the customer when the customer is present on the pleasure vessel;
- misrepresent that a pleasure vessel being inspected is in a dangerous condition or that the customer's continued use of the pleasure vessel may be hazardous to the customer or cause great damage to, or loss of, the vessel;
- fraudulently alter any customer contract, estimate, invoice, or other document;
- fraudulently misuse any customer's credit card;

- make or authorize in any manner or by any means whatsoever any written or oral statement which is untrue, deceptive, or misleading, and which is known, or which by the exercise of reasonable care the salvor should know, to be untrue, deceptive, or misleading;
- make false statements of a character likely to influence, persuade, or induce a customer to authorize salvage work for a pleasure vessel;
- require that any customer waive her or his rights provided in this part as a precondition to performing salvage work;
- charge a customer more than 20 percent over the written estimate provided to the customer, unless the salvor has obtained authorization to exceed the written estimate; or
- perform any other act that violates this part or that constitutes fraud or misrepresentation.

The bill creates s. 559.9608, F.S., providing remedies. The bill provides that a customer injured by a violation may bring an action in the appropriate court for relief. A customer who prevails is entitled to damages in the amount of three times that charged by the salvor, plus actual damages, court costs, and reasonable attorney fees. The customer may also bring an action for injunctive relief. The bill provides that these remedies are in addition to any other remedy provided by law.

#### B. SECTION DIRECTORY:

- Section 1. Directs the Division of Law Revision and Information to redesignate Florida Statutes.
- Section 2. Creates s. 559.9601, F.S., providing a short title.
- Section 3. Creates s. 559.9602, F.S., providing scope and application.
- Section 4. Creates s. 559.9603, F.S., providing definitions.
- Section 5. Creates s. 559.9604, F.S., regarding written disclosure statement and salvage work estimate.
- Section 6. Creates s. 559.9605, F.S., regarding notification of changes in excess of salvage estimate; unlawful charges.
- Section 7. Creates s. 559.9606, F.S., regarding required disclosure; signs; notice to customers.
- Section 8. Creates s. 559.9607, F.S., regarding unlawful acts and practices.
- Section 9. Creates s. 559.9608, F.S., providing remedies.
- Section 10. Provides an effective date of July 1, 2018.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

1. Revenues:

None.

2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:



1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill could have a significant negative impact on the commercial marine salvage industry, which according to the industry could possibly extinguish any financial incentive for salvage and rescue of pleasure vessels by private enterprise.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 6, 2017, the Natural Resources & Public Lands Subcommittee adopted two amendments and reported the bill favorable with committee substitute. The amendments:

- Direct the Division of Law Revision and Information to change the title of part XII of ch. 559, F.S., from "Miscellaneous Provisions" to "Internet Sales," and to create a new part XIII of ch. 559, F.S., consisting of ss. 559.9601-559.9608, F.S., to be entitled "Salvage of Pleasure Vessels;"
- Exempt any person who is in the business of recovering, storing, or selling pleasure vessels on behalf of insurance companies that insure the vessels from the Act;
- Clarify the definition of "pleasure vessel;" and
- Require a salvor to present a written disclosure statement to the customer if the salvage work will exceed \$500, the customer is present on the vessel, and there is no imminent threat of injury or death to any person.

This analysis is drafted to the committee substitute as approved by the Natural Resources & Public Lands Subcommittee.

1                           A bill to be entitled  
2           An act relating to the salvage of pleasure vessels;  
3           providing a directive to the Division of Law Revision  
4           and Information; creating s. 559.9601, F.S.; providing  
5           a short title; creating s. 559.9602, F.S.; providing  
6           scope and applicability; creating s. 559.9603, F.S.;  
7           providing definitions; creating s. 559.9604, F.S.;  
8           requiring salvors of pleasure vessels to provide a  
9           specified written disclosure statement and salvage  
10          work estimate; creating s. 559.9605, F.S.; requiring  
11          such salvors to obtain customer permission before  
12          exceeding the written estimate by more than a  
13          specified amount; specifying salvor responsibilities  
14          and rights to certain fees in the event that a  
15          customer cancels the order for salvage; creating s.  
16          559.9606, F.S.; requiring salvors to post specified  
17          signage on their vessels; creating s. 559.9607, F.S.;  
18          specifying violations; creating s. 559.9608, F.S.;  
19          providing remedies; specifying that such remedies are  
20          in addition to others provided by law; providing an  
21          effective date.

22  
23   Be It Enacted by the Legislature of the State of Florida:

24  
25          Section 1. The Division of Law Revision and Information is

26 directed to change the title of part XII of chapter 559, Florida  
 27 Statutes, from "Miscellaneous Provisions" to "Internet Sales,"  
 28 and create a new part XIII of chapter 559, Florida Statutes,  
 29 consisting of ss. 559.9601-559.9608, Florida Statutes, to be  
 30 entitled "Salvage of Pleasure Vessels."

31 Section 2. Section 559.9601, Florida Statutes, is created  
 32 to read:

33 559.9601 Short title.—Sections 559.9601-559.9608 may be  
 34 cited as the "Florida Salvage of Pleasure Vessels Act."

35 Section 3. Section 559.9602, Florida Statutes, is created  
 36 to read:

37 559.9602 Scope and application.—This part shall apply to  
 38 all salvors operating in Florida, except:

39 (1) Any person who performs salvage work while employed by  
 40 a municipal, county, state, or federal government when carrying  
 41 out the functions of that government.

42 (2) Any person who engages solely in salvage work for:

43 (a) Pleasure vessels that are owned, maintained, and  
 44 operated exclusively by such person and for that person's own  
 45 use; or

46 (b) For-hire pleasure vessels that are rented for periods  
 47 of 30 days or less.

48 (3) Any person who owns or operates a marina or shore-  
 49 based repair facility and is in the business of repairing  
 50 pleasure vessels, where the salvage work takes place exclusively

51 at that person's facility.

52 (4) Any person who is in the business of repairing  
 53 pleasure vessels who performs the repair work at a landside or  
 54 shoreside location designated by the customer.

55 (5) Any person who is in the business of recovering,  
 56 storing, or selling pleasure vessels on behalf of insurance  
 57 companies that insure the vessels.

58 Section 4. Section 559.9603, Florida Statutes, is created  
 59 to read:

60 559.9603 Definitions.—As used in this part, the term:

61 (1) "Customer" means the person who requests or signs the  
 62 written salvage estimate or is entitled to receive a written  
 63 salvage estimate, or any other person whom the person who  
 64 requests, signs, or is entitled to receive the written salvage  
 65 estimate designates on the written salvage estimate as a person  
 66 who may authorize salvage work.

67 (2) "Employee" means an individual who is employed full-  
 68 time or part-time by a salvor and performs salvage work.

69 (3) "Pleasure vessel" means any watercraft no more than 60  
 70 feet in length which is used solely for personal pleasure,  
 71 family use, or the transportation of executives, persons under  
 72 the employment, and guests of the owner.

73 (4) "Salvage work" means any assistance, services,  
 74 repairs, or other efforts rendered by a salvor relating to  
 75 saving, preserving, or rescuing a pleasure vessel or its

76 passengers and crew which are in marine peril. Salvage work does  
77 not include towing a pleasure vessel.

78 (5) "Salvor" means a person in the business of voluntarily  
79 providing assistance, services, repairs, or other efforts  
80 relating to saving, preserving, or rescuing a pleasure vessel or  
81 the vessel's passengers and crew which are in marine peril, in  
82 exchange for compensation.

83 Section 5. Section 559.9604, Florida Statutes, is created  
84 to read:

85 559.9604 Written disclosure statement and salvage work  
86 estimate.-

87 (1) If the cost of salvage work will exceed \$500, the  
88 customer is present on the vessel, and there is no imminent  
89 threat of injury or death to any person, the salvor must present  
90 to the customer a written notice conspicuously disclosing in a  
91 separate, blocked section only the following statement, in  
92 capital letters of at least 12-point type:

93  
94 PLEASE READ CAREFULLY, CHECK ONE OF THE STATEMENTS BELOW, AND  
95 SIGN:

96 I UNDERSTAND THAT, UNDER STATE LAW, I AM ENTITLED TO A  
97 WRITTEN ESTIMATE IF MY FINAL BILL MAY EXCEED \$500.

98  
99 .... I REQUEST A WRITTEN ESTIMATE.

100

101 | .... I DO NOT REQUEST A WRITTEN ESTIMATE AS LONG AS THE  
 102 | SALVAGE CHARGES DO NOT EXCEED \$ ..... THE SALVOR MAY NOT  
 103 | EXCEED THIS AMOUNT WITHOUT MY WRITTEN OR ORAL APPROVAL.

104 |  
 105 | .... I DO NOT REQUEST A WRITTEN ESTIMATE.

106 |  
 107 | SIGNED .....DATE ....

108 |  
 109 | (2) When a customer requests an estimate for the cost of  
 110 | salvage work any time before or during the rendering of any  
 111 | salvage work by a salvor, the salvor shall prepare a written  
 112 | estimate for the costs of its services, in a form stating the  
 113 | estimated cost of salvage work, including the cost of any  
 114 | inspections or diagnostic work. The written salvage estimate  
 115 | must also include the following items:

116 | (a) The name, address, and telephone number of the  
 117 | salvor's business.

118 | (b) The name, address, and telephone number of the  
 119 | customer.

120 | (c) The date and time of the written salvage estimate.

121 | (d) A general description of the pleasure vessel.

122 | (e) A general description of the customer's problem or  
 123 | request for repair work or service relating to the pleasure  
 124 | vessel.

125 | (f) A statement as to the basis on which the customer is

126 being charged, such as a flat rate, an hourly rate, or both.

127 (g) The estimated cost of the salvage work. If the salvor  
 128 does not possess sufficient information concerning the source,  
 129 cause, or nature of the marine peril to formulate an estimate  
 130 for the salvage work, the salvor must provide the customer an  
 131 estimate for the effort required to determine the source, cause,  
 132 or nature of the marine peril in accordance with this section.  
 133 At such time that the salvor has sufficient information to  
 134 provide an estimate for the cost of the salvage work, the salvor  
 135 shall provide that estimate according to this section.

136 (h) A statement indicating the daily charge for storing  
 137 the customer's pleasure vessel if it is to be towed or otherwise  
 138 transported to a different location than where the salvor  
 139 performs the salvage work.

140 (i) A cancellation fee, as determined by the salvor, in  
 141 the event a customer cancels the order for services in  
 142 accordance with s. 559.9605(1).

143 (3) A copy of the disclosure statement required by  
 144 subsection (1) and, if requested, the written salvage estimate  
 145 required by subsection (2) must be given to the customer before  
 146 salvage work begins. The disclosure statement may be provided on  
 147 the same form as the written estimate.

148 (4) This section may not be construed to require a salvor  
 149 to give a written estimated price if the salvor does not agree  
 150 to provide any assistance, service, repairs, or other effort to

151 a potential customer.

152 (5) A customer may cancel the salvage work at any time.

153 Section 6. Section 559.9605, Florida Statutes, is created  
154 to read:

155 559.9605 Notification of charges in excess of salvage  
156 estimate; unlawful charges.--

157 (1) If a determination is made by a salvor that the actual  
158 charges for the assistance, service, or repair work will exceed  
159 the written estimate by more than 20 percent, the customer must  
160 be promptly verbally notified of the additional estimated  
161 charge. A customer so notified may, orally or in writing,  
162 authorize, modify, or cancel the order for salvage. Except as  
163 specified in this section, the salvor may only continue work on  
164 the pleasure vessel upon authorization from the customer and  
165 work must continue only within the scope the customer  
166 authorized.

167 (2) If a customer cancels the order for salvage after  
168 being advised that salvage work which she or he has authorized  
169 cannot be accomplished within the previously authorized  
170 estimate, the salvor must expeditiously place the pleasure  
171 vessel back into a condition reasonably similar to the condition  
172 in which it was received unless:

173 (a) The customer waives that effort; or

174 (b) To do so would be unsafe.

175



176 After cancellation of the salvor's service, the salvor may  
 177 charge for salvage work provided up to the point of  
 178 cancellation, but the salvor's charge may not exceed the  
 179 cancellation fee agreed to by the salvor pursuant to s.  
 180 559.9604(2)(i). The salvor may only charge for any work  
 181 undertaken on the agreed-upon basis.

182 Section 7. Section 559.9606, Florida Statutes, is created  
 183 to read:

184 559.9606 Required disclosure; signs; notice to customers.-  
 185 All vessels used by salvors in connection with performing  
 186 salvage work shall have signs posted in a manner conspicuous to  
 187 customers and potential customers and that can be read from  
 188 customers' and potential customers' pleasure vessels. Those  
 189 signs must inform customers and potential customers that the  
 190 salvors are professional salvors that charge for their services  
 191 and that customers and potential customers have a right to a  
 192 written estimate for the services offered.

193 Section 8. Section 559.9607, Florida Statutes, is created  
 194 to read:

195 559.9607 Unlawful acts and practices.-It is a violation of  
 196 this act for a salvor or its employees to:

197 (1) Provide or charge for services that have not been  
 198 expressly or implicitly authorized by the customer when the  
 199 customer is present on the pleasure vessel.

200 (2) Misrepresent that a pleasure vessel being inspected is

201 | in a dangerous condition or that the customer's continued use of  
 202 | the pleasure vessel may be hazardous to the customer or cause  
 203 | great damage to, or loss of, the vessel.

204 | (3) Fraudulently alter any customer contract, estimate,  
 205 | invoice, or other document.

206 | (4) Fraudulently misuse any customer's credit card.

207 | (5) Make or authorize in any manner or by any means  
 208 | whatsoever any written or oral statement which is untrue,  
 209 | deceptive, or misleading, and which is known, or which by the  
 210 | exercise of reasonable care the salvor should know, to be  
 211 | untrue, deceptive, or misleading.

212 | (6) Make false statements of a character likely to  
 213 | influence, persuade, or induce a customer to authorize salvage  
 214 | work for a pleasure vessel.

215 | (7) Require that any customer waive her or his rights  
 216 | provided in this part as a precondition to performing salvage  
 217 | work.

218 | (8) Charge a customer more than 20 percent over the  
 219 | written estimate provided to the customer pursuant to s.  
 220 | 559.9604, unless the salvor has obtained authorization to exceed  
 221 | the written estimate in accordance with s. 559.9605(1).

222 | (9) Perform any other act that violates this part or that  
 223 | constitutes fraud or misrepresentation.

224 | Section 9. Section 559.9608, Florida Statutes, is created  
 225 | to read:

226        559.9608 Remedies.—

227        (1) Any customer injured by a violation of this part may  
 228 bring an action in the appropriate court for relief. A customer  
 229 who prevails in such an action shall be entitled to damages in  
 230 the amount of three times that charged by the salvor, plus  
 231 actual damages, court costs, and reasonable attorney fees. The  
 232 customer may also bring an action for injunctive relief in the  
 233 circuit court.

234        (2) The remedies provided for in this section shall be in  
 235 addition to any other remedy provided by law.

236        Section 10. This act shall take effect July 1, 2018.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 813 Licensure of Unarmed Security Guards  
**SPONSOR(S):** Willhite  
**TIED BILLS:** IDEN./SIM. BILLS: SB 1574

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee		Wright <i>W</i>	Anstead <i>La</i>
2) Commerce Committee			

**SUMMARY ANALYSIS**

The Department of Agriculture and Consumer Services (DACS), Division of Licensing, is responsible for the licensure and regulation of private security, private investigations, and recovery services professionals.

To act as an unarmed security officer, a person must obtain a Class "D" private security license, which includes the completion of a 40 hour training course. Currently, this course must be taken in person at a school or training facility.

The bill will allow:

- applicants for a Class "D" unarmed security officer license to take the required training online.
- applicants for a Class "D" school and training facility license to offer such training courses online.

The bill does not appear to have a fiscal impact on state or local government.

The bill has an effective date of July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

The Department's mission is to safeguard the public and support Florida's agricultural economy by:

- Ensuring the safety and wholesomeness of food and other consumer products through inspection and testing programs;
- Protecting consumers from unfair and deceptive business practices and providing consumer information;
- Assisting Florida's farmers and agricultural industries with the production and promotion of agricultural products; and
- Conserving and protecting the state's agricultural and natural resources by reducing wildfires, promoting environmentally safe agricultural practices, and managing public lands. .<sup>1</sup>

The Division of Licensing (DOL) within the Department is responsible for protecting the public from unethical business practices on the part of persons providing private security, private investigative and recovery services to the public through licensure and regulation of those industries pursuant to Chapter 493, F.S. Additionally, the DOL is responsible for the issuance of Concealed Weapon or Firearm Licenses in accordance with s. 790.06, F.S.<sup>2</sup>

##### Security Officers

Section 493.6101, F.S., defines the following:

- "Security officer" means any individual who, for consideration, advertises as providing or performs bodyguard services or otherwise guards persons or property; attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other documents, papers, and articles of value or procurement of the return thereof. The term also includes armored car personnel and those personnel engaged in the transportation of prisoners.<sup>3</sup>
- "Security agency" means any person who, for consideration, advertises as providing or is engaged in the business of furnishing security services, armored car services, or transporting prisoners.

##### Class "D" License

To become an unarmed security officer in Florida, a Class "D" private security license from DOL is required.<sup>4</sup>

"Unarmed" means that no firearm shall be carried while providing security officer services.<sup>5</sup>

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<sup>1</sup> The Florida Department of Agriculture and Consumer Services, *About*, <http://www.freshfromflorida.com/About/> (last visited Jan. 10, 2018).

<sup>2</sup> The Florida Department of Agriculture and Consumer Services, *Division of Licensing*, <http://www.freshfromflorida.com/Divisions-Offices/Licensing> (last visited Jan. 10, 2018).

<sup>3</sup> s. 493.6101(19), F.S.

<sup>4</sup> s. 493.6301(5), F.S. Exceptions to the licensure requirement are listed in s. 493.6102, F.S.

<sup>5</sup> s. 493.6101(9), F.S. Carrying a firearm in the course of performing such duties requires a Class "G" license in addition. See s. 493.6115(2), F.S.

To qualify for a Class "D" license, an applicant must:

- be at least 18 years old;
- be one of the following:
  - a United States citizen,
  - a permanent legal resident, or
  - a holder of a work visa from the United States Citizenship and Immigration Service;
- have no disqualifying criminal history;
- be of good moral character;
- have no history of:
  - mental illness,
  - alcohol abuse,
  - or substance abuse;
- submit an application to DOL with certain identifying information;<sup>6</sup> and
- complete 40 hours of required training.<sup>7</sup>

Currently, the required training must take place in-person at a licensed school or training facility that has a physical location.<sup>8</sup> Many states, including California and Georgia, do not prohibit online training for unarmed security officers.<sup>9</sup>

#### Class "D" Schools and Training Facilities

To provide required training services for Class "D" license applicants, a school or training facility must submit an application for licensure to DOL with the following information:

- the name and address of the school or training facility,
- the street address of the place where training will be conducted, and
- a copy of the curriculum and final exam to be administered,<sup>10</sup> in accordance with the requirements set forth by DACS.<sup>11</sup>

Currently, such schools and training facilities may only provide live, in-person classes.<sup>12</sup>

#### Effect of the Bill

The bill will allow applicants for a Class "D" unarmed security officer license to take the required training online.

The bill will also allow applicants for a Class "D" school and training facility license to list a website address on their application in lieu of a physical address, thus allowing them to offer online courses.

The bill provides an effective date of July 1, 2018.

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<sup>6</sup> s. 493.6105, F.S.

<sup>7</sup> s. 493.6303(4)(a), F.S.

<sup>8</sup> See ss. 493.6303(4)(a) and 493.6304, F.S.; and Florida Department of Agriculture and Consumer Services, Agency Analysis of HB 813, p. 1 (Dec. 27, 2018).

<sup>9</sup> See Cal. Bus. & Prof. § 7583.6 (2017); Ga. Comp. R. & Regs. r. 509-3-.02; O.C.G.A. § 43-38-7.1(a).

<sup>10</sup> s. 493.6304, F.S.

<sup>11</sup> r. 5N-1.140, F.A.C.

<sup>12</sup> *supra* note 8.

**B. SECTION DIRECTORY:**

- Section 1 Amends s. 493.6303, F.S., to allow online training for applicants for a Class "D" license.
- Section 2 Amends s. 493.6304, F.S., to allow an entity to list its website address in lieu of a physical address on its application for a license as a Class "D" school or training facility.
- Section 3 Provides an effective date for the bill.

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

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

- 1. Revenues:  
None.
- 2. Expenditures:  
None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

- 1. Revenues:  
None.
- 2. Expenditures:  
None.

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

Online training may make the profession more accessible based on increased ease in obtaining the required training. Schools and training facilities may also offer training at a lower cost due to reduced costs from running physical facilities.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

- 1. Applicability of Municipality/County Mandates Provision:  
Not applicable. This bill does not appear to affect county or municipal governments.
- 2. Other:  
None.

**B. RULE-MAKING AUTHORITY:**

DACS will need to develop rules to implement this bill. Authority to do so is found in ss. 493.6303(4)(a) and 493.6304(3), F.S.



**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The bill is unclear regarding the information which must be listed on an application for licensure for Class "D" schools and training facilities. It does not amend all related requirements to provide a street address where the training will take place, which could create confusion as to whether a physical location is needed.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2       An act relating to licensure of unarmed security  
 3       guards; amending s. 493.6303, F.S.; authorizing  
 4       security officer training classes to be offered  
 5       online; amending s. 493.6304, F.S.; conforming  
 6       provisions to changes made by the act; providing an  
 7       effective date.

8  
 9   Be It Enacted by the Legislature of the State of Florida:

10  
 11       Section 1. Paragraph (a) of subsection (4) of section  
 12       493.6303, Florida Statutes, is amended to read:

13           493.6303 License requirements.—In addition to the license  
 14       requirements set forth elsewhere in this chapter, each  
 15       individual or agency must comply with the following additional  
 16       requirements:

17           (4)(a) An applicant for a Class "D" license must submit  
 18       proof of successful completion of a minimum of 40 hours of  
 19       professional training at a school or training facility licensed  
 20       by the department. Such training may be conducted by in-person  
 21       instruction or online through the school or facility's website.  
 22       The department shall by rule establish the general content and  
 23       number of hours of each subject area to be taught.

24       Section 2. Paragraph (a) of subsection (2) of section  
 25       493.6304, Florida Statutes, is amended to read:

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26 493.6304 Security officer school or training facility.-

27 (2) The application shall be signed and verified by the  
 28 applicant under oath as provided in s. 92.525 and must contain,  
 29 at a minimum, the following information:

30 (a) The name and address of the school or training  
 31 facility, or if the training is conducted online, the school or  
 32 facility's name and website address, and, if the applicant is an  
 33 individual, her or his name, address, and social security or  
 34 alien registration number.

35 Section 3. This act shall take effect July 1, 2018.

## CAREERS & COMPETITION SUBCOMMITTEE

### HB 813 by Rep. Willhite Licensure of Unarmed Security Guards

#### AMENDMENT SUMMARY January 16, 2018

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**Amendment 1 by Rep. Willhite (Strike-all):** The amendment:

- provides that online training for unarmed security guard applicants is valid only if DACS receives verification of such applicant's identity, attendance, and successful completion of such training, and
- clarifies language to allow schools and training facilities to offer online courses.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Careers & Competition  
2 Subcommittee

3 Representative Willhite offered the following:

4  
5 **Amendment**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (a) of subsection (4) of section  
8 493.6303, Florida Statutes, is amended to read:

9 493.6303 License requirements.—In addition to the license  
10 requirements set forth elsewhere in this chapter, each  
11 individual or agency must comply with the following additional  
12 requirements:

13 (4)(a) An applicant for a Class "D" license must submit  
14 proof of successful completion of a minimum of 40 hours of  
15 professional training at a school or training facility licensed  
16 by the department. Such training may be conducted by in-person



Amendment No. 1

17 instruction or online through the school or facility's secure  
18 website provided that the applicant's identity, attendance, and  
19 successful completion of the training are verified, and such  
20 verification is provided to the department upon completion of  
21 the training. The department shall by rule establish the general  
22 content, ~~and~~ number of hours of each subject area to be taught,  
23 and reporting requirements for verification of training  
24 submission.

25 Section 2. Paragraphs (a) and (b) of subsection (2) of  
26 section 493.6304, Florida Statutes, is amended to read:

27 493.6304 Security officer school or training facility.—

28 (2) The application shall be signed and verified by the  
29 applicant under oath as provided in s. 92.525 and must contain,  
30 at a minimum, the following information:

31 (a) The name and address of the school or training  
32 facility, or if the training is conducted online, the school or  
33 facility's name and website address, and, if the applicant is an  
34 individual, her or his name, address, and social security or  
35 alien registration number.

36 (b) The street address or website address of the place at  
37 which the training is to be conducted.

38 Section 3. This act shall take effect July 1, 2018.



## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** HB 891 St. Lucie County  
**SPONSOR(S):** Harrell  
**TIED BILLS:** **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	14 Y, 0 N	Renner	Miller
2) Careers & Competition Subcommittee		Willson MW	Anstead La
3) Government Accountability Committee			

### SUMMARY ANALYSIS

In 1967, the Legislature enacted ch. 67-1990, Laws of Florida, to provide specific requirements regarding the issuance of Special Restaurant Beverage (SRX) licenses in St. Lucie County. Under the special act, in St. Lucie County SRX licenses may be issued to any bona fide restaurant with service for 200 or more patrons at tables and occupying more than 4,000 square feet of floor space.

The bill repeals ch. 67-1990, Laws of Florida, relating to the issuance of SRX licenses for restaurants in St. Lucie County. The issuance of subsequent SRX licenses in the county will be as provided under general law.

The bill does not appear to have a fiscal impact on state or local government.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

The Division of Alcoholic Beverages and Tobacco (DABT) of the Department of Business and Profession Regulation (DBPR) is responsible for the enforcement of Florida's Beverage Laws.<sup>1</sup>

Florida law limits the number of alcoholic beverage licenses that may be issued to one license for every 7,500 residents in a county, known as the "quota".<sup>2</sup> Special Restaurant Beverage (SRX) licenses may be issued in excess of the quota limitations in s. 561.20(1), F.S., and are regulated under Rule 61A-3.0141, F.A.C. To qualify for the SRX license, a restaurant must have a service area of at least 2,500 square feet, be equipped to serve at least 150 persons full meals at one time, and derive at least 51% of its revenue from the sale of food and nonalcoholic beverages.<sup>3</sup>

The specific requirements regarding the issuance of SRX licenses in St. Lucie County are found in ch. 67-1990, Laws of Florida.

In St. Lucie County, SRX licenses may be issued to any bona fide restaurant with service for 200 or more patrons at tables and occupying more than 4,000 square feet of floor space. Licensees are prohibited from selling alcoholic beverages in packages for consumption off of the premises and from operating as a package store.

##### Effect of Proposed Changes

The bill repeals ch. 67-1990, Laws of Florida, relating to the issuance of SRX licenses for bona fide restaurants in St. Lucie County. The issuance of subsequent SRX licenses in the county will be as provided under general law.

#### B. SECTION DIRECTORY:

Section 1 Repeals Chapter 67-1990, Laws of Florida, relating to the issuance of SRX licenses in St. Lucie County

Section 2 Provides an effective date upon becoming law.

### II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? September 24, 2017

WHERE? *St. Lucie News-Tribune*

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?

<sup>1</sup> Chs. 561-568, F.S.

<sup>2</sup> Section 561.20(1), F.S.

<sup>3</sup> Section 561.20(2)(a)4., F.S.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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1                                   A bill to be entitled  
2           An act relating to St. Lucie County; repealing ch. 67-  
3           1990, Laws of Florida, relating to the issuance of  
4           alcoholic beverage licenses; providing an effective  
5           date.  
6  
7   Be It Enacted by the Legislature of the State of Florida:  
8  
9           Section 1.   Chapter 67-1990, Laws of Florida, is repealed.  
10          Section 2.   This act shall take effect upon becoming a law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 965 Laser Hair Removal Or Reduction

**SPONSOR(S):** Fine

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 744

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee		Wright <i>W</i>	Anstead <i>La</i>
2) Appropriations Committee			
3) Commerce Committee			

### SUMMARY ANALYSIS

The Electrolysis Council (EC) and the Board of Medicine (BOM) under the Florida Department of Health (DOH) currently regulate the licensing and practice of electrology. "Electrology" or "electrolysis" generally means a process to permanently remove body hair using a probing device which uses electrical or heat energy to destroy the hair follicle. In order to be an electrologist, a person must obtain a license by completing a 120-hour training program, 200 practice hours, and an exam.

If an electrologist uses laser or light-based devices to remove hair, they must be supervised by a physician. Additional training is required, but maintaining additional certification is not.

The bill:

- transfers the regulation of electrology from DOH to the Department of Business and Professional Regulation (DBPR) via a type two transfer;
- eliminates the EC and establishes the electrology licensing program at DBPR, which will regulate electrologists and electrology facilities without an advisory council or oversight from BOM or DOH;
- requires licensed electrologists to maintain a nationally-recognized certification to use laser or pulsed-light devices;
- removes current rulemaking ability related to training programs and curricula, licensing procedures, and continuing education requirements;
- eliminates temporary permits to practice electrology; and
- clarifies definitions.

The bill has an indeterminate fiscal impact on state government and does not appear to have a fiscal impact on local government.

The bill has an effective date of July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

###### Background

The mission of the Florida Department of Health (DOH) is to protect, promote, and improve the health of all people in Florida through integrated state, county, and community efforts.<sup>1</sup> This entails regulating health practitioners for the preservation of the health, safety, and welfare of the public through various professional boards and programs.<sup>2</sup>

The Florida Board of Medicine (BOM) is one such professional board. It licenses, monitors, disciplines, educates, and rehabilitates physicians and other practitioners to assure their fitness and competence in the service of the people of Florida.<sup>3</sup> Electrology is a practice that is regulated by the BOM, with input by the Electrolysis Council (EC). The EC is a body that is housed within the BOM and advises in matters related to setting the standards of electrology practice and promulgating rules to regulate electrology.<sup>4</sup>

These entities are given authority to investigate complaints, impose discipline on a license, and perform inspections related to electrolysis.<sup>5</sup>

###### Practice of Electrology

“Electrolysis or electrology” is the practice of “permanent removal of hair by destroying the hair-producing cells of the skin and vascular system, using equipment and devices approved by the board which have been cleared by and registered with the United States Food and Drug Administration (FDA) and that are used pursuant to protocols approved by the board.”<sup>6</sup> The process starts by inserting a probe into the hair follicle, which destroys the hair with chemical or heat energy. The hair is then removed with tweezers.<sup>7</sup> The procedure must take place in a DOH-licensed electrology facility.<sup>8</sup>

A professional license is required to practice electrology.<sup>9</sup> However, allopathic and osteopathic medical physicians can perform electrolysis and laser and light-based hair removal or reduction without an electrology license.<sup>10</sup>

To qualify for licensure as an electrologist, an applicant must:

- be at least 18 years old,
- be of good moral character,
- possess a high school diploma or equivalent,

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<sup>1</sup> FLORIDA DEPARTMENT OF HEALTH, *Mission, Vision and Values*, <http://www.floridahealth.gov/about-the-department-of-health/about-us/mission-and-vision.html> (last visited Jan. 12, 2018).

<sup>2</sup> *Id.* at Licensing and Regulation.

<sup>3</sup> FLORIDA BOARD OF MEDICINE, <http://flboardofmedicine.gov/> (last visited Jan. 12, 2018).

<sup>4</sup> s. 478.44, F.S.

<sup>5</sup> ss. 478.43, 478.51, and 478.52, F.S.

<sup>6</sup> s. 478.42(5), F.S.

<sup>7</sup> WEBMD, LLC, *Electrolysis for Hair Removal*, <https://www.webmd.com/beauty/cosmetic-procedures-electrolysis#1> (last visited Jan. 11, 2018).

<sup>8</sup> s. 478.51, F.S.

<sup>9</sup> s. 478.49, F.S.

<sup>10</sup> ss. 458.348(2), 459.025(2), and 478.54, F.S.

- have not committed acts which would constitute grounds to discipline an electrologist in Florida,
- have completed the required 120-hour electrolysis training program and board approved 200-hour practical application, and
- pass a written exam approved by DOH.<sup>11</sup>

DOH is permitted to issue temporary permits to qualified applicants to practice electrology that are valid until the following board meeting where licensing decisions take place, or the next exam results are issued.<sup>12</sup> The implementation of continuous testing has lessened the need for temporary permits.<sup>13</sup>

If a licensee violates the electrology practice act, they can be disciplined<sup>14</sup> and be given penalties set forth in the physician practice act, which include: suspension, probation, fines, reprimands, refunds, and remedial education.<sup>15</sup>

Currently, there are 1,343 licensed electrologists and 310 active electrologist facilities in Florida.<sup>16</sup> For Fiscal Year 2016- 2017, 30 complaints were received by DOH against electrologists, 11 of which were found legally sufficient, and 2 of which had administrative complaints filed.<sup>17</sup>

Reports indicate that the popularity of electrolysis is on the rise<sup>18</sup> and employment in the field is expected to grow by twelve percent by 2024.<sup>19</sup>

#### Laser and Pulsed-Light Devices for Hair Removal in Florida

Both laser devices and light-based devices used for hair removal or reduction work by producing light energy that is absorbed by the melanin in the hair follicle, which causes damage to the hair, therefore reducing hair growth. Specifically, laser devices produce a single, concentrated wavelength of light, and light-based devices produce a broad spectrum of light to target hair follicle melanin. Generally, a cooling gel or cooling device is applied to the skin during the procedure for protection.<sup>20</sup>

If a licensed electrologist wants to use laser or light-based devices in hair removal or reduction, which are procedures above the initial scope of licensure, they must:

- have completed a 30-hour training course in laser or light-based devices for hair removal or reduction,
- have passed the Certified Medical Electrologist test given by the Society for Clinical and Medical Hair Removal (SCMHR),
- use only the devices for which they have been trained, and
- operate under the direct supervision of a licensed physician who has been trained in such procedures.<sup>21</sup>

<sup>11</sup> s. 478.45, F.S.

<sup>12</sup> s. 478.46, F.S.

<sup>13</sup> Florida Department of Health, Agency Analysis of 2018 HB 965, p. 3 (November 2, 2017).

<sup>14</sup> s. 478.52, F.S.

<sup>15</sup> s. 456.072(2), F.S.

<sup>16</sup> *supra* note 13 at 6.

<sup>17</sup> Florida Department of Health, *Annual Report & Long-Range Plan*, Fiscal Year 2016- 2017, pp. 23, 26 (October 30, 2015), available at [http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/\\_documents/annual-report-1617.pdf](http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/annual-report-1617.pdf).

<sup>18</sup> Healthline Media, *Laser Hair Removal vs. Electrolysis: Which Is Better?*, <https://www.healthline.com/health/beauty-skin-care/laser-hair-removal-vs-electrolysis#takeaway> (last visited Jan. 13, 2018).

<sup>19</sup> *supra* note 13 at 2.

<sup>20</sup> ASC IP Holdings Pty Ltd, *Laser V IPL/VPL*, <https://thecosmeticclinic.co.nz/treatments/laser/laser-hair-removal/ipl-hair-removal/> (last visited Jan. 12, 2018); WebMD, LLC, *Laser Hair Removal: Benefits, Side Effects, and Cost*, <https://www.webmd.com/beauty/laser-hair-removal#1> (last visited Jan. 12, 2018); and WebMD, LLC, *Beyond Lasers: Pulse-Light Therapy for That Fantasy Face*, <https://www.webmd.com/beauty/news/20000727/beyond-lasers-pulse-light-therapy-for-that-fantasy-face#1> (last visited Jan. 12, 2018).

<sup>21</sup> r. 64B8-56.002, F.A.C.

Currently, there are 168 licensed electrologists who have the required protocols to practice laser and light-based hair removal or reduction.<sup>22</sup>

SCMHR is the national organization that offers certification for use of laser and light-based devices, education programs for hair removal procedures, and membership services.<sup>23</sup> The exam that is required by DOH is \$200 for members of the organization and \$300 for non-members.<sup>24</sup> Certification that is obtained by passing the test lasts for 5 years, at which time either taking continuing education units (7.5 units at \$25 per<sup>25</sup>) or a reexamination is required to renew.<sup>26</sup> Membership costs \$195 annually.<sup>27</sup> Currently, electrologists using laser or light-based devices do not need to maintain such certification to continue to use such devices.<sup>28</sup>

### National Use of Laser and Pulsed-Light Devices for Hair Removal

Laser and light-based hair removal devices were first cleared by the FDA in 1995.<sup>29</sup> However, federal law does not govern what kind of training is required to use such devices, which is left to individual states.<sup>30</sup>

In some other states, only a doctor is permitted to do laser hair removal, while in others, it must be done under supervision.<sup>31</sup> Some states do not have laws governing the practice.<sup>32</sup>

Over one million laser and light-based procedures were performed in 2012 and the number of such procedures had been rising steadily since 2000.<sup>33</sup> While the industry is growing, so are related lawsuits for related injuries. Over a 27-year period, 63 such legal cases were found related to injuries from such devices, a retrospective study found.<sup>34</sup>

A similar study found that part of this rise was non-physician operators performing such procedures without physician supervision, but this could be counteracted by adequate training.<sup>35</sup> While one third of laser hair removal procedures in total are performed by a non-physician operator, seventy-five percent of the lawsuits related to laser hair removal were done by non-physician operators. Most of these cases were performed outside of a traditional medical setting.<sup>36</sup>

### Type Two Transfer

A type two transfer is a transfer of a whole or a portion of one state agency to another state agency. This generally includes the transfer of its statutory powers, duties, functions, property, personnel, and

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<sup>22</sup> *supra* note 13 at 2.

<sup>23</sup> THE SOCIETY FOR CLINICAL & MEDICAL HAIR REMOVAL, INC., *About Us*, <https://www.scmhr.org/education/home-study/past-webinars> (last visited Jan. 11, 2018).

<sup>24</sup> *Id.* at Certified Medical Electrologist (CME) Examination Application.

<sup>25</sup> *Id.* at Past Webinars (Home Study).

<sup>26</sup> *supra* note 6 at Certified Medical Electrologist (CME).

<sup>27</sup> *supra* note 6 at Membership Application.

<sup>28</sup> *supra* note 5

<sup>29</sup> Anna Jane Grossman, Zapping teenage torment, *THE NEW YORK TIMES* (Jun. 5, 2008),

<http://www.nytimes.com/2008/06/05/health/05iht-05skin.13492066.html>.

<sup>30</sup> H. Ray Jalian, MD, Chris A. Jalasn, MD, and Mathew Avran, MD, JD; *Common Causes of Injury and Legal Action in Laser Surgery Causes*, 149 *JAMA DERMATOLOGY* 188 (2013).

<sup>31</sup> H. Ray Jalian, MD, Chris A. Jalasn, MD, and Mathew Avran, MD, JD, *Increased Risk of Litigation Associated with Laser Surgery by Nonphysician Operators*, 150 *JAMA DERMATOLOGY* 410 (2014).

<sup>32</sup> Roni Caryn Rabin, Laser Hair Removal's Risks, *THE NEW YORK TIMES*, (Jan. 6, 2014),

<https://well.blogs.nytimes.com/2014/01/06/laser-hair-removals-risks/> (last visited Jan. 13, 2018).

<sup>33</sup> Satori Laser, *Laser Hair Removal Spending Statistics*, <https://www.satorilaser.com/blog/laser-hair-removal-statistics/> (last visited Jan. 13, 2018).

<sup>34</sup> *supra* note 30 at 190.

<sup>35</sup> *supra* note 31 at 410.

<sup>36</sup> *Id.*



funds. Unless otherwise provided by law, the administrative rules in effect under the transferred agency at the time of transfer remain in effect until specifically changed in a manner provided by law.<sup>37</sup>

### Department of Business and Professional Regulation

The Florida Department of Business and Professional Regulation (DBPR), through various divisions, regulates and licenses businesses and professionals in Florida.<sup>38</sup>

The Division of Professions (Professions) licenses and regulates more than 434,000 DBPR professionals through professional boards or in DBPR- regulated licensing programs.<sup>39</sup> The Division of Regulation (Regulations) is DBPR's enforcement authority. To ensure compliance with applicable laws and rules by those professions and related businesses, Regulations investigates complaints, utilizes compliance mechanisms, and performs inspections. Together, Professions and Regulations regulate those professions without a professional board, which include the home inspection services licensing program and mold-related service licensing program.<sup>40</sup>

In addition to any disciplinary standards in a given DBPR profession's practice act, DBPR professional licensees are subject to the broad disciplinary standards imposed on all such licensees. The available penalties for violating DBPR standards are: suspension, probation, fines, and reprimands.<sup>41</sup>

### **Effect of the Bill**

The bill transfers the regulation of electrology from the Department of Health (DOH) to the Department of Business and Professional Regulation (DBPR) via a type two transfer, including its statutory powers, duties, functions, property, personnel, and funds. This action will not affect judicial or administrative actions pending at 11:59 p.m. on the day before the transfer. Lawful orders related to electrology issued by DOH will remain in effect and will be enforceable. Persons who hold a valid electrologist license or permit at the time of the transfer will retain such license or permit in the same capacity after the transfer.

The bill eliminates the Electrolysis Council and establishes the electrology licensing program at DBPR. The profession will be regulated by DBPR through the Divisions of Professions and Regulations without an advisory council or oversight from the Board of Medicine or DOH. Disciplinary penalties for electrologists will be the same as current DBPR standards for other professions.

The bill adds a requirement that licensed electrologists must maintain a nationally-recognized certification in order to use laser or pulsed-light devices in hair removal or reduction procedures.

Under the bill, DBPR will have the ability to inspect electrology facilities and promulgate related rules.

The bill simplifies the definition of "electrolysis or electrology" to "the permanent removal of hair using equipment and devices that have been cleared by and registered with the United States Food and Drug Administration." The bill clarifies terminology from "light-based devices" to "pulsed-light devices."

Temporary permits are no longer allowed under the bill.

The bill provides an effective date of July 1, 2017.

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<sup>37</sup> s. 20.06, F.S.

<sup>38</sup> s. 20.165, F.S.

<sup>39</sup> FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, *Division of Professions*, <http://www.myfloridalicense.com/dbpr/pro/index.html> (last visited Feb. 20, 2017).

<sup>40</sup> *Id.* at Division of Regulation.

<sup>41</sup> s. 455.227(2), F.S.

**B. SECTION DIRECTORY:**

- Section 1 Amends s. 20.165, F.S., to create the electrolysis licensing program at DBPR.
- Section 2 Amends s. 20.43, F.S., to remove the regulation of electrolysis from DOH.
- Section 3 Amends s. 478.42, F.S., to revise definitions.
- Section 4 Repeals s. 478.43, F.S., relating to BOM powers and duties.
- Section 5 Repeals s. 478.44, F.S., relating to EC composition, functions, and powers.
- Section 6 Amends s. 478.45, F.S., to make conforming changes.
- Section 7 Repeals s. 478.46, F.S., relating to temporary permits.
- Section 8 Amends s. 478.47, F.S., to make conforming changes.
- Section 9 Amends s. 478.49, F.S., to require additional certification to use laser or pulsed-light devices.
- Section 10 Amends s. 478.50, F.S., to make conforming changes.
- Section 11 Amends s. 478.51, F.S., to make conforming changes.
- Section 12 Amends s. 478.52, F.S., to conform to DBPR disciplinary standards.
- Section 13 Amends s. 478.53, F.S., to make conforming changes.
- Section 14 Amends s. 478.55, F.S., to make conforming changes.
- Section 15 Amends s. 456.037, F.S., to remove electrology facilities from DOH regulation.
- Section 16 Transfers the regulation of electrology from DOH to DBPR via a type two transfer.
- Section 17 Provides an effective date.

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

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

**1. Revenues:**

Related to DOH

DOH will experience a recurring decrease in revenue associated with the collection of application, initial licensure, renewal, and miscellaneous fees for electrologist and electrolysis facilities. The electrolysis profession collected \$320,799, of which \$15,560 was for unlicensed activity (ULA), in the previous biennium (FY15-16 and FY16-17). As of June 30, 2017, there were 1,343 active and inactive electrologist and 310 active electrolysis facilities.<sup>42</sup>

Related to DBPR

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<sup>42</sup> *supra* note 13 at 6.  
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Without the data related to applications, licenses (initial and renewals) and inspections, accurate revenue is unable to be calculated. However, preliminary review of potential license revenue and the current level of program expenses and additional DBPR transition expenses will result in continued fund deficits.<sup>43</sup>

2. Expenditures:

Related to DOH

According to the fiscal analysis provided by DOH, DOH will experience a recurring decrease in expenditures associated with the regulation of electrologists and electrolysis facilities. The electrolysis profession cost in the previous biennium (FY15-16 and FY16-17) was \$442,993, of which \$69,892 was for ULA. These costs include operational, regulation, investigation, and prosecution costs. The costs by categories for the previous biennium are as follows:

Category	Description	FY15-16	FY16-17	Total Biennium
010000	Salary	56,839.20	76,769.18	133,608.38
030000	OPS	5,820.57	6,356.15	12,176.72
040000	Expense	13,847.83	16,185.82	30,033.65
060000	OCO	57.30	107.13	164.43
100021	Motor Vehicles	77.07	-	77.07
100399	ULA	19,609.56	50,282.78	69,892.34
100777	Contracted Services	65,845.57	67,228.67	133,074.24
103241	Risk Management	957.54	1,057.47	2,015.01
105281	Lease/Purchase Equip	382.93	461.86	844.79
107040	HR	455.77	577.43	1,033.20
180000	Non-Operating Trans	32,195.42	27,878.03	60,073.45
		196,088.76	246,904.52	442,993.28

The electrology profession employs one (1) FTE Regulatory Specialist II, (PG 17), who does not travel, and is responsible for processing Electrologist and Electrolysis Facility licensure applications, training school and continuing education provider applications, preparing meeting agendas and providing customer service to applicants and licensees. Based on LBR standards, the annual costs for this FTE is \$46,211 (Salary & Fringe/\$39,934, Recurring Expense/\$5,948, HR/\$329).

Note: The non-recurring expense standard is not included in the FTE cost. Existing equipment will be transferred.

Oversight of the electrology profession is handled by one Program Administrator with responsibility for three other regulatory boards and an Executive Director with responsibility for six additional regulatory boards.

Additional personnel involved in regulation of this profession includes an Assistant Attorney General with responsibility for four other regulatory boards; the Bureau of Enforcement, which employed 0.3 FTE to complete its related inspections during fiscal year 2016-17; and the DOH Prosecution Services Unit, which utilized 0.13 FTE to handle its workload of related cases during fiscal year 2016-2017.

As of June 30, 2017, the licensed cash balance was a negative \$706,406 and the ULA cash balance was a negative \$190,027.

<sup>43</sup> Florida Department of Business and Professional Regulation, Agency Analysis of 2018 SB 744, p. 9 (Dec. 4, 2017).  
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DOH will incur non-recurring costs associated with rule development, yet current budget authority is adequate to absorb.<sup>44</sup>

#### Related to DBPR

According to DBPR's fiscal analysis, DBPR has determined that total fiscal expenditures are indeterminate.<sup>45</sup>

#### *Technology*<sup>46</sup>

DBPR anticipates that the addition of electrolysis licenses, transactions, complaints, inspections, exams and continuing education for facilities and professions (by examination or endorsement), and approval of pre-licensure training programs, will require modification to Versa: Regulation, Versa: Online, OnBase document management system routing, reports, website, portal search, and the Interactive Voice Response (IVR) System. These modifications can be made with existing resources.

It will be necessary to upload existing license and application data from DOH's technology resources to DBPR's single licensing system, Versa: Regulation. These modifications can be made with existing resources.

#### *Infrastructure and Licensing Costs – Additional DBPR Staff*<sup>47</sup>

Additional staffing required to implement the provisions of this bill (see Additional Comments below) would result in technology infrastructure and licensing costs. Assuming there is not adequate office space in existing DBPR offices, additional undetermined infrastructure costs will be incurred based on number, location and suitability.

For one (1) Environmental Health Specialist (Inspector) in the Division of Regulation:

- Non-recurring cost for iPads – \$732.24
- Non-recurring cost for iPad monitoring software license - \$75.00
- Non-recurring costs for network drop and standard software license - \$2,194.15
- Recurring iPad software license and data service - \$483.00
- Recurring standard software license maintenance - \$301.26

For one (1) Regulatory Specialist II position in the Bureau of Central Intake and Licensure:

- Non-recurring costs for network drop and standard software license - \$2,194.15
- Recurring standard software license maintenance - \$301.26

#### *Infrastructure and Licensing Costs – Type Two Transfer of DOH Staff*<sup>48</sup>

Additional staffing resulting from the type two transfer of employees from DOH to DBPR will increase technology infrastructure and licensing costs. Although type two transfer includes equipment, DBPR will need to replace outdated or incompatible technology to ensure continuity of operations. The number of transferred staff is unclear.

For each additional employee:

- Non-recurring cost for desktop computers - \$1,100.00
- Non-recurring cost for Cisco desk phones - \$600.00
- Non-recurring costs for network drops - \$150.00
- Non-recurring costs for standard software licenses - \$1,694.15

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<sup>44</sup> *supra* note 13 at 6 and 7.

<sup>45</sup> *supra* note 43 at 6.

<sup>46</sup> *Id.* at 7.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 8.

- Recurring standard software license maintenance - \$301.26

If inspections are required:

- Non-recurring cost for iPads – \$732.24
- Non-recurring cost for iPad monitoring software license - \$75.00
- Recurring iPad software license and data service - \$483.00

If there is not adequate office space in existing DBPR offices for the transferred staff, additional undetermined infrastructure costs will be incurred based on number, location and suitability for the addition of staff

*Division of Regulation*<sup>49</sup>

The Division of Regulation is responsible for the intake of complaints, inspection of establishments and investigations of businesses and professions under the Division of Professions. The addition of the regulation of electrology will cause additional complaints to analyze, inspections to be conducted and investigations to report. In their 2016-17 Annual Report, the Department of Health's Division of Medical Quality Assurance reported that the Electrolysis Council had 39 complaints, 21 legally sufficient for investigation and 220 inspections completed. The division is requesting 1 FTE Environmental Health Specialist (Inspector) to handle the additional work. The Division of Regulation will request an additional inspection position using the following methodology for calculation:

39 complaints / 1200 complaints per analyst, per year	= .03	
220 inspections/ 1200 inspections per year, per inspector	= .18	
21 investigations/ 140 investigations per year, per investigator	= .25	
Misc. (investigative report review, mail, phone calls, Certificates of non-licensure)	=.05	
		.51 FTE

*Bureau of Education and Testing*<sup>50</sup>

Applicants for licensure by examination under the electrolysis program are required to complete 120 hours of academic training and evidence 200 hours of practical training and experience. Existing training programs will need to be transferred to the department's licensing system for tracking. Additionally, future training programs will need to be reviewed and evaluated by the Bureau. According to the Department of Health's list of "Florida Approved Training Schools", there are currently 24 approved electrolysis training programs.

The electrolysis program's rules require applicants to take and pass the International Board Electrologist Certification (IBEC) licensure examination developed by the American Electrology Association (AEA) and administered by a third-party examination vendor. It is unclear whether this will require the Bureau to engage in a contract with AEA and/or the third-party vendor to provide examinations to candidates. Additional staffing in the Bureau's Testing Unit may be required to accommodate examination requests.

Prior to renewal, electrolysis licensees must complete 20 hours of continuing education. Existing continuing education courses will need to be transferred to the department's licensing system for tracking. Additionally, future continuing education courses will need to be reviewed and evaluated by the Bureau. The number of courses currently approved is unknown. Additional staffing in the Bureau's Continuing Education Unit may be required to accommodate course approval requests. The department provides continuing education monitoring services that are performed by a third-party vendor for the Department of Health. This may impact the Department of Health's vendor contract.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 8 and 9.

*Division of Service Operations*<sup>51</sup>

Based upon the unknown complexity of the business processes associated with this program the Bureau of Central Intake and Licensure will need one FTE Regulatory Specialist II position. The Bureau will perform the document intake, revenue processing, renewal administration and the processing of all applications once the program is transferred to the Department.

*Fiscal Comment*<sup>52</sup>

The FY 2017-18 DOH annual report indicated the EC fund is in a negative balance. The annual report also indicates annual expenses are greater than revenues and the fund will continue in a negative balance for the foreseeable future.

In addition to the current DOH regulatory expenses, DBPR will require two additional FTEs to perform license processing and regulatory inspections and investigations. These two FTEs will require \$94,265 of recurring Salaries and Benefits funding and \$17,787 non-recurring and \$13,191 recurring Expenses funding. Other program support needs will require \$3,000 recurring Operation of Motor Vehicles funding for regulatory inspections.

The known additional budgetary needs are as follows:

	FY2018-19	FY 2019-20	FY 2020-21
Salaries and Benefits	94,265	94,265	94,265
Expenses	30,978	13,191	13,191
Operation of Motor Vehicles	3,000	3,000	3,000
Transfer to DMS-HR Services	658	658	658
<b>Total</b>	<b>128,901</b>	<b>111,114</b>	<b>111,114</b>

Additional costs may be associated with the unknown number of FTEs that would be transferred from DOH to DBPR, the number of vehicles and property transferred, unanticipated IT costs associated with integrating DOH data into DBPR data infrastructure and unknown initial and renewal licensing processes, continuing education requirements and regulatory impact. The expenditure and revenue impact of this bill is unable to be determined until additional information is available from DOH.<sup>53</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

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

The bill will increase costs to maintain an electrology license for those who use laser and pulsed-light devices because the licensee will have to maintain their SCMHR certification and pay costs associated with doing so. Current policy is that the licensee has to pass the exam only one time to continually use such devices.

<sup>51</sup> *Id.* at 9.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

The cost for running an electrology facility which uses laser and pulsed-light devices may be cheaper in certain circumstances because doctor supervision will no longer be required.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DBPR will need to develop rules to implement this bill. Authority to do so is found in some sections of the bill, but there is insufficient authority for DBPR to promulgate rules in all areas of electrology regulation. See *Drafting Issues or Other Comments* section below.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill gives DBPR rulemaking authority to promulgate rules related to electrology facilities, discipline, and inactive licenses, but does not give enough authority to DBPR to implement rules related to issuing licenses, curriculum requirements, and continuing education procedures.

The bill does not repeal portions of the physician practice acts that mandate direct supervision of a physician over the use of laser or light-based devices by an electrologist. Because any oversight by the BOM is deleted from the electrology practice act, this may create confusion.

The bill gives an effective date of July 1, 2018. DBPR has indicated that this is not enough time to fully implement the bill.<sup>54</sup>

Representative Fine has indicated an amendment is forthcoming that will address these issues.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>54</sup> *Id.* at 10.

1                               A bill to be entitled  
 2           An act relating to laser hair removal or reduction;  
 3           amending ss. 20.165 and 20.43, F.S.; transferring the  
 4           regulation of electrology from the Department of  
 5           Health to the Department of Business and Professional  
 6           Regulation; amending s. 478.42, F.S.; revising  
 7           definitions; repealing ss. 478.43, 478.44, and 478.46,  
 8           F.S., relating to the Board of Medicine, the  
 9           Electrolysis Council, and temporary permits,  
 10          respectively; amending s. 478.49, F.S.; providing  
 11          certification requirements for licensed electrologists  
 12          who perform laser hair removal or reduction;  
 13          conforming a provision to changes made by the act;  
 14          amending ss. 456.037, 478.45, 478.47, 478.50, 478.51,  
 15          478.52, 478.53, and 478.55, F.S.; conforming  
 16          provisions to changes made by the act; providing that  
 17          the statutory powers, duties, and functions, records,  
 18          personnel, property, and unexpended balances of  
 19          appropriations, allocations, or other funds for the  
 20          administration of ch. 478, F.S., relating to  
 21          electrolysis are transferred by a type two transfer  
 22          from the Department of Health to the Department of  
 23          Business and Professional Regulation; declaring that  
 24          the transfer may not affect the validity of any  
 25          judicial or administrative action pending as of a



26 certain date; specifying that certain lawful orders  
 27 remain in effect and enforceable; providing that  
 28 certain permits and certifications issued by the  
 29 Department of Health are valid; providing an effective  
 30 date.

31

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

33

34 Section 1. Paragraph (a) of subsection (4) of section  
 35 20.165, Florida Statutes, is amended to read:

36 20.165 Department of Business and Professional  
 37 Regulation.—There is created a Department of Business and  
 38 Professional Regulation.

39 (4) (a) The following boards and programs are established  
 40 within the Division of Professions:

- 41 1. Board of Architecture and Interior Design, created  
 42 under part I of chapter 481.
- 43 2. Florida Board of Auctioneers, created under part VI of  
 44 chapter 468.
- 45 3. Barbers' Board, created under chapter 476.
- 46 4. Florida Building Code Administrators and Inspectors  
 47 Board, created under part XII of chapter 468.
- 48 5. Construction Industry Licensing Board, created under  
 49 part I of chapter 489.
- 50 6. Board of Cosmetology, created under chapter 477.

51 |       7. Electrical Contractors' Licensing Board, created under  
52 | part II of chapter 489.

53 |       8. Board of Employee Leasing Companies, created under part  
54 | XI of chapter 468.

55 |       9. Board of Landscape Architecture, created under part II  
56 | of chapter 481.

57 |       10. Board of Pilot Commissioners, created under chapter  
58 | 310.

59 |       11. Board of Professional Engineers, created under chapter  
60 | 471.

61 |       12. Board of Professional Geologists, created under  
62 | chapter 492.

63 |       13. Board of Veterinary Medicine, created under chapter  
64 | 474.

65 |       14. Home inspection services licensing program, created  
66 | under part XV of chapter 468.

67 |       15. Mold-related services licensing program, created under  
68 | part XVI of chapter 468.

69 |       16. Electrolysis licensing program, created under chapter  
70 | 478.

71 |       Section 2. Paragraph (g) of subsection (3) of section  
72 | 20.43, Florida Statutes, is amended to read:

73 |       20.43 Department of Health.—There is created a Department  
74 | of Health.

75 |       (3) The following divisions of the Department of Health

76 are established:

77 (g) Division of Medical Quality Assurance, which is  
 78 responsible for the following boards and professions established  
 79 within the division:

- 80 1. The Board of Acupuncture, created under chapter 457.
- 81 2. The Board of Medicine, created under chapter 458.
- 82 3. The Board of Osteopathic Medicine, created under  
 83 chapter 459.
- 84 4. The Board of Chiropractic Medicine, created under  
 85 chapter 460.
- 86 5. The Board of Podiatric Medicine, created under chapter  
 87 461.
- 88 6. Naturopathy, as provided under chapter 462.
- 89 7. The Board of Optometry, created under chapter 463.
- 90 8. The Board of Nursing, created under part I of chapter  
 91 464.
- 92 9. Nursing assistants, as provided under part II of  
 93 chapter 464.
- 94 10. The Board of Pharmacy, created under chapter 465.
- 95 11. The Board of Dentistry, created under chapter 466.
- 96 12. Midwifery, as provided under chapter 467.
- 97 13. The Board of Speech-Language Pathology and Audiology,  
 98 created under part I of chapter 468.
- 99 14. The Board of Nursing Home Administrators, created  
 100 under part II of chapter 468.

101 15. The Board of Occupational Therapy, created under part  
102 III of chapter 468.

103 16. Respiratory therapy, as provided under part V of  
104 chapter 468.

105 17. Dietetics and nutrition practice, as provided under  
106 part X of chapter 468.

107 18. The Board of Athletic Training, created under part  
108 XIII of chapter 468.

109 19. The Board of Orthotists and Prosthetists, created  
110 under part XIV of chapter 468.

111 ~~20. Electrolysis, as provided under chapter 478.~~

112 20.21. The Board of Massage Therapy, created under chapter  
113 480.

114 21.22. The Board of Clinical Laboratory Personnel, created  
115 under part III of chapter 483.

116 22.23. Medical physicists, as provided under part IV of  
117 chapter 483.

118 23.24. The Board of Opticianry, created under part I of  
119 chapter 484.

120 24.25. The Board of Hearing Aid Specialists, created under  
121 part II of chapter 484.

122 25.26. The Board of Physical Therapy Practice, created  
123 under chapter 486.

124 26.27. The Board of Psychology, created under chapter 490.

125 27.28. School psychologists, as provided under chapter

126 490.

127 28.29- The Board of Clinical Social Work, Marriage and  
 128 Family Therapy, and Mental Health Counseling, created under  
 129 chapter 491.

130 29.30- Emergency medical technicians and paramedics, as  
 131 provided under part III of chapter 401.

132 Section 3. Section 478.42, Florida Statutes, is amended to  
 133 read:

134 478.42 Definitions.—As used in this chapter, the term:

135 ~~(1) "Board" means the Board of Medicine.~~

136 ~~(2) "Council" means the Electrolysis Council.~~

137 (1)(3) "Department" means the Department of Business and  
 138 Professional Regulation Health.

139 (2)(4) "Electrologist" means a person who engages in the  
 140 practice of electrolysis.

141 (3)(5) "Electrolysis or electrology" means the permanent  
 142 removal of hair ~~by destroying the hair producing cells of the~~  
 143 ~~skin and vascular system,~~ using equipment and devices that  
 144 ~~approved by the board which~~ have been cleared by and registered  
 145 with the United States Food and Drug Administration ~~and that are~~  
 146 ~~used pursuant to protocols approved by the board.~~

147 Section 4. Section 478.43, Florida Statutes, is repealed.

148 Section 5. Section 478.44, Florida Statutes, is repealed.

149 Section 6. Section 478.45, Florida Statutes, is amended to  
 150 read:

151 478.45 Requirements for licensure.—

152 (1) An applicant applying for licensure as an  
 153 electrologist shall file a written application, accompanied by  
 154 the application for licensure fee prescribed in s. 478.55, on a  
 155 form provided by the department ~~board~~, showing to the  
 156 satisfaction of the department ~~board~~ that the applicant:

157 (a) Is at least 18 years old.

158 (b) Is of good moral character.

159 (c) Possesses a high school diploma or a high school  
 160 equivalency diploma.

161 (d) Has not committed an act in any jurisdiction which  
 162 would constitute grounds for disciplining an electrologist in  
 163 this state.

164 (e) Has successfully completed the academic requirements  
 165 of an electrolysis training program, not to exceed 120 hours,  
 166 and the practical application thereof as approved by the  
 167 department ~~board~~.

168 (2) Each applicant for licensure must ~~shall~~ successfully  
 169 pass a written examination developed by the department or a  
 170 national examination that has been approved by the department  
 171 ~~board~~. The examinations must ~~shall~~ test the applicant's  
 172 knowledge relating to the practice of electrology, including the  
 173 applicant's professional skills and judgment in the use of  
 174 electrolysis techniques and methods, and any other subjects that  
 175 ~~which~~ are useful to determine the applicant's fitness to

176 practice.

177 (3) The department, ~~upon approval of the board,~~ may adopt  
 178 a national examination in lieu of any part of the examination  
 179 required by this section. The department ~~board,~~ with the  
 180 ~~assistance of the council,~~ shall establish standards for  
 181 acceptable performance.

182 (4) The department shall issue a license to practice  
 183 electrology to any applicant who passes the examination, pays  
 184 the licensure fee as set forth in s. 478.55, and otherwise meets  
 185 the requirements of this chapter.

186 (5) The department shall conduct licensure examinations at  
 187 least two times a year. The department shall give public notice  
 188 of the time and place of each examination at least 60 days  
 189 before it is administered and shall mail notice of such  
 190 examination to each applicant whose application is timely filed,  
 191 pursuant to department ~~board~~ rule.

192 (6) The department may not issue a license to any  
 193 applicant who is under investigation in another jurisdiction for  
 194 an offense that ~~which~~ would be a violation of this chapter,  
 195 until such investigation is complete. Upon completion of such  
 196 investigation, if the applicant is found guilty of such offense,  
 197 the department ~~board~~ shall apply the applicable provisions of s.  
 198 478.52.

199 Section 7. Section 478.46, Florida Statutes, is repealed.

200 Section 8. Section 478.47, Florida Statutes, is amended to

201 read:

202 478.47 Licensure by endorsement.—The department shall  
 203 issue a license by endorsement to any applicant who submits an  
 204 application and the required fees as set forth in s. 478.55 and  
 205 who holds an active license or other authority to practice  
 206 electrology in a jurisdiction whose licensure requirements are  
 207 determined by the department ~~board~~ to be equivalent to the  
 208 requirements for licensure in this state.

209 Section 9. Section 478.49, Florida Statutes, is amended to  
 210 read:

211 478.49 License and certification required.—

212 (1) A person may not ~~No person may~~ practice electrology or  
 213 hold herself or himself out as an electrologist in this state  
 214 unless she or he ~~the person~~ has been issued a license by the  
 215 department and holds an active license pursuant to ~~the~~  
 216 ~~requirements of~~ this chapter.

217 (2) A licensee shall display her or his license in a  
 218 conspicuous location in her or his place of practice and provide  
 219 it to the department ~~or the board~~ upon request.

220 (3) A licensee who uses a laser or pulsed-light device in  
 221 a laser hair removal or reduction procedure must be certified by  
 222 a nationally recognized electrology organization in the use of  
 223 these devices.

224 Section 10. Subsections (2) and (4) of section 478.50,  
 225 Florida Statutes, are amended to read:



226 478.50 Renewal of license; delinquent status; address  
 227 notification; continuing education requirements.-

228 (2) A license that is not renewed at the end of the  
 229 biennium prescribed by the department automatically reverts to  
 230 delinquent status. The department ~~board~~ shall adopt rules  
 231 establishing procedures, criteria, and fees as set forth in s.  
 232 478.55 for reactivation of an inactive license.

233 (4)(a) An application for license renewal must be  
 234 accompanied by proof of the successful completion of 20 hours of  
 235 continuing education courses or proof of successfully passing a  
 236 reexamination for licensure within the immediately preceding  
 237 biennium which meets the criteria established by the department  
 238 ~~board~~. Both the continuing education and reexamination shall  
 239 contain education on blood-borne diseases.

240 (b) The department ~~board~~, ~~with the assistance of the~~  
 241 ~~council~~, shall approve criteria for, and content of,  
 242 electrolysis training programs and continuing education courses  
 243 required for licensure and renewal as set forth in this chapter.

244 (c) Continuing education programs shall be approved by the  
 245 department ~~board~~. Applications for approval shall be submitted  
 246 to the department ~~board~~ not less than 60 days or ~~not~~ more than  
 247 360 days before they are held.

248 Section 11. Subsections (2), (3), and (11) of section  
 249 478.51, Florida Statutes, are amended to read:

250 478.51 Electrology facilities; requisites; facility

251 licensure; inspection.—

252 (2) The facility license shall be displayed in a  
 253 conspicuous place within the facility and shall be made  
 254 available upon request of the department ~~or board~~.

255 (3) The department ~~board~~ shall adopt rules governing the  
 256 licensure and operations of such facilities, personnel, safety  
 257 and sanitary requirements, and the licensure application and  
 258 granting process.

259 (11) Renewal of license registration for electrology  
 260 facilities shall be accomplished pursuant to rules adopted by  
 261 the department ~~board~~.

262 Section 12. Section 478.52, Florida Statutes, is amended  
 263 to read:

264 478.52 Disciplinary proceedings.—

265 (1) The following acts constitute grounds for denial of a  
 266 license or disciplinary action, as specified in s. 455.227(2) ~~s.~~  
 267 ~~456.072(2)~~:

268 (a) Obtaining or attempting to obtain a license by  
 269 bribery, fraud, or knowing misrepresentation.

270 (b) Having a license or other authority to deliver  
 271 electrolysis services revoked, suspended, or otherwise acted  
 272 against, including denial of licensure, in another jurisdiction.

273 (c) Being convicted or found guilty of, or entering a plea  
 274 of nolo contendere to, regardless of adjudication, a crime, in  
 275 any jurisdiction, which directly relates to the practice of

276 electrology.

277 (d) Willfully making or filing a false report or record,  
 278 willfully failing to file a report or record required for  
 279 electrologists, or willfully impeding or obstructing the filing  
 280 of a report or record required by this act or inducing another  
 281 person to do so.

282 (e) Circulating false, misleading, or deceptive  
 283 advertising.

284 (f) Unprofessional conduct, including any departure from,  
 285 or failure to conform to, acceptable standards related to the  
 286 delivery of electrolysis services.

287 (g) Engaging or attempting to engage in the illegal  
 288 possession, sale, or distribution of any illegal or controlled  
 289 substance.

290 (h) Willfully failing to report any known violation of  
 291 this chapter.

292 (i) Willfully or repeatedly violating a rule adopted under  
 293 this chapter, or an order of the ~~board or~~ department previously  
 294 entered in a disciplinary hearing.

295 (j) Engaging in the delivery of electrolysis services  
 296 without an active license.

297 (k) Employing an unlicensed person to practice  
 298 electrology.

299 (l) Failing to perform any statutory or legal obligation  
 300 placed upon an electrologist.

301 (m) Accepting and performing professional responsibilities  
 302 which the licensee knows, or has reason to know, she or he is  
 303 not competent to perform.

304 (n) Delegating professional responsibilities to a person  
 305 the licensee knows, or has reason to know, is unqualified by  
 306 training, experience, or licensure to perform.

307 (o) Gross or repeated malpractice or the inability to  
 308 practice electrology with reasonable skill and safety.

309 (p) Judicially determined mental incompetency.

310 (q) Practicing or attempting to practice electrology under  
 311 a name other than her or his own.

312 (r) Being unable to practice electrology with reasonable  
 313 skill and safety because of a mental or physical condition or  
 314 illness, or the use of alcohol, controlled substances, or any  
 315 other substance that ~~which~~ impairs one's ability to practice.

316 1. The department may, upon probable cause, compel a  
 317 licensee to submit to a mental or physical examination by  
 318 physicians designated by the department. The cost of an  
 319 examination shall be borne by the licensee, and her or his  
 320 failure to submit to such an examination constitutes an  
 321 admission of the allegations against her or him, consequent upon  
 322 which a default and a final order may be entered without the  
 323 taking of testimony or presentation of evidence, unless the  
 324 failure was due to circumstances beyond her or his control.

325 2. A licensee who is disciplined under this paragraph

326 shall, at reasonable intervals, be afforded an opportunity to  
 327 demonstrate that she or he can resume the practice of  
 328 electrology with reasonable skill and safety.

329 3. In any proceeding under this paragraph, the record of  
 330 proceedings or the orders entered by the department ~~board~~ may  
 331 not be used against a licensee in any other proceeding.

332 (s) Disclosing the identity of or information about a  
 333 patient without written permission, except for information which  
 334 does not identify a patient and which is used for training  
 335 purposes in an approved electrolysis training program.

336 (t) Practicing or attempting to practice any permanent  
 337 hair removal except as described in s. 478.42(3) ~~s. 478.42(5)~~.

338 (u) Operating any electrolysis facility unless it has been  
 339 duly licensed as provided in this chapter.

340 (v) Violating any provision of this chapter or chapter 455  
 341 ~~456~~, or any rules adopted pursuant thereto.

342 (2) The department ~~board~~ may enter an order denying  
 343 licensure, ~~or~~ imposing any of the penalties in s. 455.227(2), or  
 344 imposing costs as provided in s. 455.227(3) ~~s. 456.072(2)~~  
 345 against any applicant for licensure or licensee who is found  
 346 guilty of violating any provision of subsection (1) of this  
 347 section or who is found guilty of violating any provision of s.  
 348 455.227(1) ~~s. 456.072(1)~~.

349 (3) The department ~~board~~ may not issue or reinstate a  
 350 license to a person it has deemed unqualified until it is

351 satisfied that such person has complied with the terms and  
 352 conditions of the final order and that the licensee can safely  
 353 practice electrology.

354 (4) The department board, ~~with the assistance of the~~  
 355 ~~council~~, may, by rule, establish guidelines for the disposition  
 356 of disciplinary cases involving specific types of violations.  
 357 The guidelines may include minimum and maximum fines, periods of  
 358 supervision on probation, or conditions upon probation or  
 359 reissuance of a license.

360 Section 13. Subsection (6) of section 478.53, Florida  
 361 Statutes, is amended to read:

362 478.53 Penalty for violations.—It is a misdemeanor of the  
 363 first degree, punishable as provided in s. 775.082 or s.  
 364 775.083, to:

365 (6) Practice or attempt to practice any permanent hair  
 366 removal except as described in s. 478.42(3) ~~s. 478.42(5)~~.

367 Section 14. Subsection (1) of section 478.55, Florida  
 368 Statutes, is amended to read:

369 478.55 Fees; facility; disposition.—

370 (1) The department board shall establish by rule the  
 371 collection of fees for the following purposes:

- 372 (a) License application fee: a fee not to exceed \$100.
- 373 (b) Examination fee: a fee not to exceed \$300.
- 374 (c) Initial licensure fee: a fee not to exceed \$100.
- 375 (d) Renewal fee: a fee not to exceed \$100 biennially.

376 (e) Reactivation fee: a fee not to exceed \$100.

377 (f) Inspection fee for facility: a fee not to exceed \$100  
 378 biennially.

379 Section 15. Subsection (5) of section 456.037, Florida  
 380 Statutes, is amended to read:

381 456.037 Business establishments; requirements for active  
 382 status licenses; delinquency; discipline; applicability.—

383 (5) This section applies to any business establishment  
 384 registered, permitted, or licensed by the department to do  
 385 business. Business establishments include, but are not limited  
 386 to, dental laboratories, ~~electrology facilities,~~ massage  
 387 establishments, pharmacies, and pain-management clinics required  
 388 to be registered under s. 458.3265 or s. 459.0137.

389 Section 16. (1) All of the statutory powers, duties, and  
 390 functions, records, personnel, property, and unexpended balances  
 391 of appropriations, allocations, or other funds for the  
 392 administration of chapter 478, Florida Statutes, relating to  
 393 electrolysis are transferred by a type two transfer, as defined  
 394 in s. 20.06(2), Florida Statutes, from the Department of Health  
 395 to the Department of Business and Professional Regulation.

396 (2) The transfer of regulatory authority under chapter  
 397 478, Florida Statutes, provided by this section may not affect  
 398 the validity of any judicial or administrative action pending as  
 399 of 11:59 p.m. on the day before the effective date of this  
 400 section to which the Department of Health is at that time a

401 party, and the Department of Business and Professional  
 402 Regulation is substituted as a party in interest in any such  
 403 action.

404 (3) All lawful orders issued by the Department of Health  
 405 implementing or enforcing or otherwise in regard to any  
 406 provision of chapter 478, Florida Statutes, issued before the  
 407 effective date of this section shall remain in effect and  
 408 enforceable after the effective date of this section unless  
 409 thereafter modified in accordance with law.

410 (4) Notwithstanding the transfer of regulatory authority  
 411 under chapter 478, Florida Statutes, provided by this section,  
 412 persons and entities holding in good standing any permit under  
 413 chapter 478, Florida Statutes, as of 11:59 p.m. on the day  
 414 before the effective date of this section are, as of the  
 415 effective date of this section, deemed to hold in good standing  
 416 a permit in the same capacity as that for which the permit was  
 417 formerly issued.

418 (5) Notwithstanding the transfer of regulatory authority  
 419 under chapter 478, Florida Statutes, provided by this section,  
 420 persons holding in good standing any certification issued under  
 421 chapter 478, Florida Statutes, or rules adopted pursuant  
 422 thereto, as of 11:59 p.m. on the day before the effective date  
 423 of this section are, as of the effective date of this section,  
 424 deemed to be certified in the same capacity in which they were  
 425 formerly certified.



HB 965

2018

426

Section 17. This act shall take effect July 1, 2018.

## CAREERS & COMPETITION SUBCOMMITTEE

### HB 965 by Rep. Fine Laser Hair Removal or Reduction

#### AMENDMENT SUMMARY January 16, 2018

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**Amendment 1 by Rep. Fine (Strike-all):** The amendment:

- removes language in the medical practice acts which requires electrologists to be supervised by a physician during laser and light-based hair removal procedures,
- gives the Department of Business and Professional Regulation rulemaking authority for all aspects of electrology regulation, and
- provides for a later effective date of October 1, 2018.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Careers & Competition  
 2 Subcommittee  
 3 Representative Fine offered the following:

**Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:  
 7 Section 1. Paragraph (a) of subsection (4) of section  
 8 20.165, Florida Statutes, is amended to read:

9 20.165 Department of Business and Professional  
 10 Regulation.—There is created a Department of Business and  
 11 Professional Regulation.

12 (4) (a) The following boards and programs are established  
 13 within the Division of Professions:

14 1. Board of Architecture and Interior Design, created  
 15 under part I of chapter 481.



Amendment No. 1

- 16           2. Florida Board of Auctioneers, created under part VI of  
17 chapter 468.
- 18           3. Barbers' Board, created under chapter 476.
- 19           4. Florida Building Code Administrators and Inspectors  
20 Board, created under part XII of chapter 468.
- 21           5. Construction Industry Licensing Board, created under  
22 part I of chapter 489.
- 23           6. Board of Cosmetology, created under chapter 477.
- 24           7. Electrical Contractors' Licensing Board, created under  
25 part II of chapter 489.
- 26           8. Board of Employee Leasing Companies, created under part  
27 XI of chapter 468.
- 28           9. Board of Landscape Architecture, created under part II  
29 of chapter 481.
- 30           10. Board of Pilot Commissioners, created under chapter  
31 310.
- 32           11. Board of Professional Engineers, created under chapter  
33 471.
- 34           12. Board of Professional Geologists, created under  
35 chapter 492.
- 36           13. Board of Veterinary Medicine, created under chapter  
37 474.
- 38           14. Home inspection services licensing program, created  
39 under part XV of chapter 468.

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Amendment No. 1

40 15. Mold-related services licensing program, created under  
41 part XVI of chapter 468.

42 16. Electrolysis licensing program, created under chapter  
43 478.

44 Section 2. Paragraph (g) of subsection (3) of section  
45 20.43, Florida Statutes, is amended to read:

46 20.43 Department of Health.—There is created a Department  
47 of Health.

48 (3) The following divisions of the Department of Health  
49 are established:

50 (g) Division of Medical Quality Assurance, which is  
51 responsible for the following boards and professions established  
52 within the division:

53 1. The Board of Acupuncture, created under chapter 457.

54 2. The Board of Medicine, created under chapter 458.

55 3. The Board of Osteopathic Medicine, created under  
56 chapter 459.

57 4. The Board of Chiropractic Medicine, created under  
58 chapter 460.

59 5. The Board of Podiatric Medicine, created under chapter  
60 461.

61 6. Naturopathy, as provided under chapter 462.

62 7. The Board of Optometry, created under chapter 463.

63 8. The Board of Nursing, created under part I of chapter  
64 464.

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Amendment No. 1

- 65           9. Nursing assistants, as provided under part II of  
66 chapter 464.
- 67           10. The Board of Pharmacy, created under chapter 465.
- 68           11. The Board of Dentistry, created under chapter 466.
- 69           12. Midwifery, as provided under chapter 467.
- 70           13. The Board of Speech-Language Pathology and Audiology,  
71 created under part I of chapter 468.
- 72           14. The Board of Nursing Home Administrators, created  
73 under part II of chapter 468.
- 74           15. The Board of Occupational Therapy, created under part  
75 III of chapter 468.
- 76           16. Respiratory therapy, as provided under part V of  
77 chapter 468.
- 78           17. Dietetics and nutrition practice, as provided under  
79 part X of chapter 468.
- 80           18. The Board of Athletic Training, created under part  
81 XIII of chapter 468.
- 82           19. The Board of Orthotists and Prosthetists, created  
83 under part XIV of chapter 468.
- 84           ~~20. Electrolysis, as provided under chapter 478.~~
- 85           20.21. The Board of Massage Therapy, created under chapter  
86 480.
- 87           21.22. The Board of Clinical Laboratory Personnel, created  
88 under part III of chapter 483.



Amendment No. 1

89        ~~22.23.~~ Medical physicists, as provided under part IV of  
90 chapter 483.

91        ~~23.24.~~ The Board of Opticianry, created under part I of  
92 chapter 484.

93        ~~24.25.~~ The Board of Hearing Aid Specialists, created under  
94 part II of chapter 484.

95        ~~25.26.~~ The Board of Physical Therapy Practice, created  
96 under chapter 486.

97        ~~26.27.~~ The Board of Psychology, created under chapter 490.

98        ~~27.28.~~ School psychologists, as provided under chapter  
99 490.

100       ~~28.29.~~ The Board of Clinical Social Work, Marriage and  
101 Family Therapy, and Mental Health Counseling, created under  
102 chapter 491.

103       ~~29.30.~~ Emergency medical technicians and paramedics, as  
104 provided under part III of chapter 401.

105       Section 3. Subsection (2) is amended and present  
106 subsections (3) through (5) of section 458.348, Florida  
107 Statutes, are redesignated as subsections (2) through (4),  
108 respectively, to read:

109       ~~(2) PROTOCOLS REQUIRING DIRECT SUPERVISION. All protocols~~  
110 ~~relating to electrolysis or electrology using laser or light-~~  
111 ~~based hair removal or reduction by persons other than physicians~~  
112 ~~licensed under this chapter or chapter 459 shall require the~~  
113 ~~person performing such service to be appropriately trained and~~

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Amendment No. 1

114 ~~work only under the direct supervision and responsibility of a~~  
115 ~~physician licensed under this chapter or chapter 459.~~

116 Section 4. Subsection (2) is amended and present  
117 subsections (3) through (5) of section 459.025, Florida  
118 Statutes, are redesignated as subsections (2) through (4),  
119 respectively, to read:

120 ~~(2) PROTOCOLS REQUIRING DIRECT SUPERVISION. All protocols~~  
121 ~~relating to electrolysis or electrology using laser or light-~~  
122 ~~based hair removal or reduction by persons other than~~  
123 ~~osteopathic physicians licensed under this chapter or chapter~~  
124 ~~458 shall require the person performing such service to be~~  
125 ~~appropriately trained and to work only under the direct~~  
126 ~~supervision and responsibility of an osteopathic physician~~  
127 ~~licensed under this chapter or chapter 458.~~

128 Section 5. Section 478.42, Florida Statutes, is amended to  
129 read:

130 478.42 Definitions.—As used in this chapter, the term:

131 ~~(1) "Board" means the Board of Medicine.~~

132 ~~(2) "Council" means the Electrolysis Council.~~

133 (1)(3) "Department" means the Department of Business and  
134 Professional Regulation Health.

135 (2)(4) "Electrologist" means a person who engages in the  
136 practice of electrolysis.

137 (3)(5) "Electrolysis or electrology" means the permanent  
138 removal of hair ~~by destroying the hair-producing cells of the~~

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Amendment No. 1

139 ~~skin and vascular system,~~ using equipment and devices that  
140 ~~approved by the board which~~ have been cleared by and registered  
141 with the United States Food and Drug Administration ~~and that are~~  
142 ~~used pursuant to protocols approved by the board.~~

143 Section 6. Section 478.43, Florida Statutes, is amended to  
144 read:

145 478.43 Department Board of Medicine; powers and duties.-

146 (1) The department board, ~~with the assistance of the~~  
147 ~~Electrolysis Council,~~ is authorized to establish minimum  
148 standards for the delivery of electrolysis services and to adopt  
149 rules pursuant to ss. 120.536(1) and 120.54 to implement the  
150 provisions of this chapter.

151 (2) The department board may administer oaths, summon  
152 witnesses, and take testimony in all matters relating to its  
153 duties under this chapter.

154 ~~(3) The board may delegate such powers and duties to the~~  
155 ~~council as it may deem proper.~~

156 (4) The department board, ~~in consultation with the council,~~  
157 ~~shall recommend proposed rules, and the board shall adopt rules~~  
158 ~~for a code of ethics for electrologists and~~ rules related to the  
159 curriculum and approval of electrolysis training programs,  
160 sanitary guidelines, the delivery of electrolysis services,  
161 continuing education requirements, and any other area related to  
162 the practice of electrology.

163 Section 7. Section 478.44, Florida Statutes, is repealed.



Amendment No. 1

164 Section 8. Section 478.45, Florida Statutes, is amended to  
165 read:

166 478.45 Requirements for licensure.-

167 (1) An applicant applying for licensure as an  
168 electrologist shall file a written application, accompanied by  
169 the application for licensure fee prescribed in s. 478.55, on a  
170 form provided by the department ~~board~~, showing to the  
171 satisfaction of the department ~~board~~ that the applicant:

172 (a) Is at least 18 years old.

173 (b) Is of good moral character.

174 (c) Possesses a high school diploma or a high school  
175 equivalency diploma.

176 (d) Has not committed an act in any jurisdiction which  
177 would constitute grounds for disciplining an electrologist in  
178 this state.

179 (e) Has successfully completed the academic requirements  
180 of an electrolysis training program, not to exceed 120 hours,  
181 and the practical application thereof as approved by the  
182 department ~~board~~.

183 (2) Each applicant for licensure must ~~shall~~ successfully  
184 pass a written examination developed by the department or a  
185 national examination that has been approved by the department  
186 ~~board~~. The examinations must ~~shall~~ test the applicant's  
187 knowledge relating to the practice of electrology, including the  
188 applicant's professional skills and judgment in the use of

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Amendment No. 1

189 electrolysis techniques and methods, and any other subjects that  
190 ~~which~~ are useful to determine the applicant's fitness to  
191 practice.

192 (3) The department, ~~upon approval of the board,~~ may adopt  
193 a national examination in lieu of any part of the examination  
194 required by this section. The department ~~board,~~ ~~with the~~  
195 ~~assistance of the council,~~ shall establish standards for  
196 acceptable performance.

197 (4) The department shall issue a license to practice  
198 electrology to any applicant who passes the examination, pays  
199 the licensure fee as set forth in s. 478.55, and otherwise meets  
200 the requirements of this chapter.

201 (5) The department shall conduct licensure examinations at  
202 least two times a year. The department shall give public notice  
203 of the time and place of each examination at least 60 days  
204 before it is administered and shall mail notice of such  
205 examination to each applicant whose application is timely filed,  
206 pursuant to department ~~board~~ rule.

207 (6) The department may not issue a license to any  
208 applicant who is under investigation in another jurisdiction for  
209 an offense that ~~which~~ would be a violation of this chapter,  
210 until such investigation is complete. Upon completion of such  
211 investigation, if the applicant is found guilty of such offense,  
212 the department ~~board~~ shall apply the applicable provisions of s.  
213 478.52.

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214 Section 9. Section 478.46, Florida Statutes, is repealed.

215 Section 10. Section 478.47, Florida Statutes, is amended  
216 to read:

217 478.47 Licensure by endorsement.—The department shall  
218 issue a license by endorsement to any applicant who submits an  
219 application and the required fees as set forth in s. 478.55 and  
220 who holds an active license or other authority to practice  
221 electrology in a jurisdiction whose licensure requirements are  
222 determined by the department ~~board~~ to be equivalent to the  
223 requirements for licensure in this state.

224 Section 11. Section 478.49, Florida Statutes, is amended  
225 to read:

226 478.49 License and certification required.—

227 (1) A person may not ~~No person may~~ practice electrology or  
228 hold herself or himself out as an electrologist in this state  
229 unless she or he ~~the person~~ has been issued a license by the  
230 department and holds an active license pursuant to ~~the~~  
231 ~~requirements of~~ this chapter.

232 (2) A licensee shall display her or his license in a  
233 conspicuous location in her or his place of practice and provide  
234 it to the department ~~or the board~~ upon request.

235 (3) A licensee who uses a laser or pulsed-light device in  
236 a laser hair removal or reduction procedure must be certified by  
237 a nationally recognized electrology organization in the use of  
238 these devices.

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Amendment No. 1

239 Section 12. Subsections (2) and (4) of section 478.50,  
240 Florida Statutes, are amended to read:

241 478.50 Renewal of license; delinquent status; address  
242 notification; continuing education requirements.—

243 (2) A license that is not renewed at the end of the  
244 biennium prescribed by the department automatically reverts to  
245 delinquent status. The department ~~board~~ shall adopt rules  
246 establishing procedures, criteria, and fees as set forth in s.  
247 478.55 for reactivation of an inactive license.

248 (4)(a) An application for license renewal must be  
249 accompanied by proof of the successful completion of 20 hours of  
250 continuing education courses or proof of successfully passing a  
251 reexamination for licensure within the immediately preceding  
252 biennium which meets the criteria established by the department  
253 ~~board~~. Both the continuing education and reexamination shall  
254 contain education on blood-borne diseases.

255 (b) The department ~~board, with the assistance of the~~  
256 ~~council~~, shall approve criteria for, and content of,  
257 electrolysis training programs and continuing education courses  
258 required for licensure and renewal as set forth in this chapter.

259 (c) Continuing education programs shall be approved by the  
260 department ~~board~~. Applications for approval shall be submitted  
261 to the department ~~board~~ not less than 60 days or ~~not~~ more than  
262 360 days before they are held.



Amendment No. 1

263 Section 13. Subsections (2), (3), and (11) of section  
264 478.51, Florida Statutes, are amended to read:

265 478.51 Electrology facilities; requisites; facility  
266 licensure; inspection.—

267 (2) The facility license shall be displayed in a  
268 conspicuous place within the facility and shall be made  
269 available upon request of the department ~~or board~~.

270 (3) The department board shall adopt rules governing the  
271 licensure and operations of such facilities, personnel, safety  
272 and sanitary requirements, and the licensure application and  
273 granting process.

274 (11) Renewal of license registration for electrology  
275 facilities shall be accomplished pursuant to rules adopted by  
276 the department board.

277 Section 14. Section 478.52, Florida Statutes, is amended  
278 to read:

279 478.52 Disciplinary proceedings.—

280 (1) The following acts constitute grounds for denial of a  
281 license or disciplinary action, as specified in s. 455.227(2) ~~s.~~  
282 ~~456.072(2)~~:

283 (a) Obtaining or attempting to obtain a license by  
284 bribery, fraud, or knowing misrepresentation.

285 (b) Having a license or other authority to deliver  
286 electrolysis services revoked, suspended, or otherwise acted  
287 against, including denial of licensure, in another jurisdiction.

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288 (c) Being convicted or found guilty of, or entering a plea  
289 of nolo contendere to, regardless of adjudication, a crime, in  
290 any jurisdiction, which directly relates to the practice of  
291 electrology.

292 (d) Willfully making or filing a false report or record,  
293 willfully failing to file a report or record required for  
294 electrologists, or willfully impeding or obstructing the filing  
295 of a report or record required by this act or inducing another  
296 person to do so.

297 (e) Circulating false, misleading, or deceptive  
298 advertising.

299 (f) Unprofessional conduct, including any departure from,  
300 or failure to conform to, acceptable standards related to the  
301 delivery of electrolysis services.

302 (g) Engaging or attempting to engage in the illegal  
303 possession, sale, or distribution of any illegal or controlled  
304 substance.

305 (h) Willfully failing to report any known violation of  
306 this chapter.

307 (i) Willfully or repeatedly violating a rule adopted under  
308 this chapter, or an order of the ~~board~~ or department previously  
309 entered in a disciplinary hearing.

310 (j) Engaging in the delivery of electrolysis services  
311 without an active license.



Amendment No. 1

312 (k) Employing an unlicensed person to practice  
313 electrology.

314 (l) Failing to perform any statutory or legal obligation  
315 placed upon an electrologist.

316 (m) Accepting and performing professional responsibilities  
317 which the licensee knows, or has reason to know, she or he is  
318 not competent to perform.

319 (n) Delegating professional responsibilities to a person  
320 the licensee knows, or has reason to know, is unqualified by  
321 training, experience, or licensure to perform.

322 (o) Gross or repeated malpractice or the inability to  
323 practice electrology with reasonable skill and safety.

324 (p) Judicially determined mental incompetency.

325 (q) Practicing or attempting to practice electrology under  
326 a name other than her or his own.

327 (r) Being unable to practice electrology with reasonable  
328 skill and safety because of a mental or physical condition or  
329 illness, or the use of alcohol, controlled substances, or any  
330 other substance that ~~which~~ impairs one's ability to practice.

331 1. The department may, upon probable cause, compel a  
332 licensee to submit to a mental or physical examination by  
333 physicians designated by the department. The cost of an  
334 examination shall be borne by the licensee, and her or his  
335 failure to submit to such an examination constitutes an  
336 admission of the allegations against her or him, consequent upon

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337 which a default and a final order may be entered without the  
338 taking of testimony or presentation of evidence, unless the  
339 failure was due to circumstances beyond her or his control.

340 2. A licensee who is disciplined under this paragraph  
341 shall, at reasonable intervals, be afforded an opportunity to  
342 demonstrate that she or he can resume the practice of  
343 electrology with reasonable skill and safety.

344 3. In any proceeding under this paragraph, the record of  
345 proceedings or the orders entered by the department board ~~board~~ may  
346 not be used against a licensee in any other proceeding.

347 (s) Disclosing the identity of or information about a  
348 patient without written permission, except for information which  
349 does not identify a patient and which is used for training  
350 purposes in an approved electrolysis training program.

351 (t) Practicing or attempting to practice any permanent  
352 hair removal except as described in s. 478.42(3) ~~s. 478.42(5)~~.

353 (u) Operating any electrolysis facility unless it has been  
354 duly licensed as provided in this chapter.

355 (v) Violating any provision of this chapter or chapter 455  
356 ~~456~~, or any rules adopted pursuant thereto.

357 (2) The department board ~~board~~ may enter an order denying  
358 licensure, ~~or~~ imposing any of the penalties in s. 455.227(2), or  
359 imposing costs as provided in s. 455.227(3) ~~s. 456.072(2)~~  
360 against any applicant for licensure or licensee who is found  
361 guilty of violating any provision of subsection (1) of this

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362 section or who is found guilty of violating any provision of s.  
363 455.227(1) ~~s. 456.072(1)~~.

364 (3) The department ~~board~~ may not issue or reinstate a  
365 license to a person it has deemed unqualified until it is  
366 satisfied that such person has complied with the terms and  
367 conditions of the final order and that the licensee can safely  
368 practice electrology.

369 (4) The department ~~board, with the assistance of the~~  
370 ~~council,~~ may, by rule, establish guidelines for the disposition  
371 of disciplinary cases involving specific types of violations.  
372 The guidelines may include minimum and maximum fines, periods of  
373 supervision on probation, or conditions upon probation or  
374 reissuance of a license.

375 Section 15. Subsection (6) of section 478.53, Florida  
376 Statutes, is amended to read:

377 478.53 Penalty for violations.—It is a misdemeanor of the  
378 first degree, punishable as provided in s. 775.082 or s.  
379 775.083, to:

380 (6) Practice or attempt to practice any permanent hair  
381 removal except as described in s. 478.42(3) ~~s. 478.42(5)~~.

382 Section 16. Subsection (1) of section 478.55, Florida  
383 Statutes, is amended to read:

384 478.55 Fees; facility; disposition.—

385 (1) The department ~~board~~ shall establish by rule the  
386 collection of fees for the following purposes:

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- 387 (a) License application fee: a fee not to exceed \$100.  
388 (b) Examination fee: a fee not to exceed \$300.  
389 (c) Initial licensure fee: a fee not to exceed \$100.  
390 (d) Renewal fee: a fee not to exceed \$100 biennially.  
391 (e) Reactivation fee: a fee not to exceed \$100.  
392 (f) Inspection fee for facility: a fee not to exceed \$100  
393 biennially.

394 Section 17. Subsection (5) of section 456.037, Florida  
395 Statutes, is amended to read:

396 456.037 Business establishments; requirements for active  
397 status licenses; delinquency; discipline; applicability.-

398 (5) This section applies to any business establishment  
399 registered, permitted, or licensed by the department to do  
400 business. Business establishments include, but are not limited  
401 to, dental laboratories, ~~electrology facilities~~, massage  
402 establishments, pharmacies, and pain-management clinics required  
403 to be registered under s. 458.3265 or s. 459.0137.

404 Section 18. (1) All of the statutory powers, duties, and  
405 functions, records, personnel, property, and unexpended balances  
406 of appropriations, allocations, or other funds for the  
407 administration of chapter 478, Florida Statutes, relating to  
408 electrolysis are transferred by a type two transfer, as defined  
409 in s. 20.06(2), Florida Statutes, from the Department of Health  
410 to the Department of Business and Professional Regulation.

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411 (2) The transfer of regulatory authority under chapter  
412 478, Florida Statutes, provided by this section may not affect  
413 the validity of any judicial or administrative action pending as  
414 of 11:59 p.m. on the day before the effective date of this  
415 section to which the Department of Health is at that time a  
416 party, and the Department of Business and Professional  
417 Regulation is substituted as a party in interest in any such  
418 action.

419 (3) All lawful orders issued by the Department of Health  
420 implementing or enforcing or otherwise in regard to any  
421 provision of chapter 478, Florida Statutes, issued before the  
422 effective date of this section shall remain in effect and  
423 enforceable after the effective date of this section unless  
424 thereafter modified in accordance with law.

425 (4) Notwithstanding the transfer of regulatory authority  
426 under chapter 478, Florida Statutes, provided by this section,  
427 persons and entities holding in good standing any permit under  
428 chapter 478, Florida Statutes, as of 11:59 p.m. on the day  
429 before the effective date of this section are, as of the  
430 effective date of this section, deemed to hold in good standing  
431 a permit in the same capacity as that for which the permit was  
432 formerly issued.

433 (5) Notwithstanding the transfer of regulatory authority  
434 under chapter 478, Florida Statutes, provided by this section,  
435 persons holding in good standing any certification issued under

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Amendment No. 1

436 chapter 478, Florida Statutes, or rules adopted pursuant  
437 thereto, as of 11:59 p.m. on the day before the effective date  
438 of this section are, as of the effective date of this section,  
439 deemed to be certified in the same capacity in which they were  
440 formerly certified.

441 Section 19. This act shall take effect October 1, 2018.

442

443 -----

444 **T I T L E A M E N D M E N T**

445 Remove lines 6-7 and insert:

446 Regulation; amending ss. 458.348 and 459.025, F.S., removing the  
447 direct supervision requirement; amending s. 478.42, F.S.;  
448 revising definitions; amending s. 478.43, F.S., providing  
449 rulemaking authority to the Department of Business and  
450 Professional Regulation; repealing ss. 478.44 and 478.46,



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1033 Dockless Bicycle Sharing
SPONSOR(S): Toledo
TIED BILLS: IDEN./SIM. BILLS: SB 1304

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: 1) Careers & Competition Subcommittee, Willson MW, Anstead [Signature]. Row 2: 2) Commerce Committee.

SUMMARY ANALYSIS

Bicycle sharing is a service in which bicycles are made available for rental on a short term basis for a price.

Section 316.2065, F.S., regulates the operation of bicycles in Florida. Bicycle riders are generally subject to the same rights and duties that are applied to the driver of any other vehicle under state traffic laws codified in the State Uniform Traffic Control Law, Ch. 316, F.S.

Currently, the regulation of bicycle sharing companies is left up to local jurisdictions.

The bill preempts the governance of dockless bicycles and dockless bicycle sharing companies to the state and creates a regulatory framework governing the operation of dockless bicycle sharing companies in the state.

The bill creates s. 341.851, F.S., relating to dockless bicycle sharing.

The bill defines "dockless bicycle" as a bicycle, including an electric bicycle, that is self-locking and that is not connected to a docking station.

The bill defines "bicycle sharing company" as an entity that makes dockless bicycles available for private use by reservation through an online application, software, or website.

The bill also defines a number of other terms as they relate to the regulation of dockless bicycle sharing.

The bill provides that a person or entity may not operate a dockless bicycle sharing company in this state unless the person or entity maintains a current and valid combined single-limit policy of commercial general liability insurance coverage in the amount of at least \$500,000 per occurrence for bodily injury and property damage.

The bill requires that dockless bicycles made available for reservation by a dockless bicycle sharing company must meet certain specifications. The bill requires that the dockless bicycle sharing company must provide for an interface allowing for the communication of certain notifications. The bill imposes certain responsibilities on the dockless bicycle sharing company relating to maintenance and operability requirements.

The fiscal impact on local or state government is indeterminate.

The bill has an effective date of July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

###### Bicycle regulation

Section 316.2065, F.S., regulates the operation of bicycles in Florida. Bicycle riders are generally subject to the same rights and duties that are applied to the driver of any other vehicle under state traffic laws codified in the State Uniform Traffic Control Law, Ch. 316, F.S.<sup>1</sup>

Title 16 C.F.R. part 1512 relates to consumer product safety, and provides for bicycle specifications, including mechanical and safety requirements as well as testing and certification standards and requirements.

Currently, the regulation of bicycle sharing companies is left up to local jurisdictions. Neither state nor federal laws regulate bicycle sharing companies or require general liability insurance coverage.

###### Bicycle Share Programs

Bicycle share programs allow users to rent available bicycles located at one or more unmanned, designated bicycle racks. The user unlocks the bicycle using information provided by or transmitted from the program's mobile application on their mobile phone, and the bicycle may be used according to the terms of the program agreement. Many jurisdictions require that the bicycle share company acquire a permit for operations.

Rental options vary by program, but generally allow some combination of a single use rate for a flat fee, or a weekly, monthly, or annual subscription allowing the member to rent a bicycle for either an unlimited number of rides or a certain number of minutes per day during the subscription period.<sup>2</sup>

Additionally, bicycle share programs: allow bicycles to be reserved; penalize or charge an extra fee for using the integrated lock to secure the bicycle away from a designated bicycle rack, station, or "hub"; equip their bicycles with GPS technology to allow users to locate bicycles available nearby via their mobile application or allow the company to locate bicycles, track movement, calculate distance traveled, or apply geofencing technology to control where bicycles may be rented, returned, parked, etc. set minimum or maximum amounts that can be charged per day; or offer "rewards" to incentivize the transport or return of bicycles to certain locations.

Local governments in Florida, and across the country, have entered into public-private partnerships with bicycle share companies to facilitate bicycle share programs in their jurisdiction. Proponents of this approach cite the importance of such partnerships in the successful implementation of bicycle share programs in local communities.<sup>3</sup> Specific examples include the use of dockless bicycle share data to

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<sup>1</sup> s. 316.2065(1), F.S.

<sup>2</sup> See, e.g., Broward B-cycle <https://broward.bicycle.com/>; Juice Orlando Bike Share <https://juicebikeshare.com/#about>

<sup>3</sup> See Letter from NASBA, Re: Opposition to SB 1304/HB 1033: Dockless Bicycle Sharing (Jan. 12, 2018). Copy on file with Careers and Competition Subcommittee. The North American Bikeshare Association (NASBA) was formed to support, promote and enhance bikeshare across North America on behalf of its members, who represent a wide share of the bikeshare industry, including system owners, operators, host cities, equipment manufacturers and technology providers.

Letter from SPIN, Re: Opposition to HB 1033/SB1304: Dockless Bicycle Sharing (Jan. 10, 2018). Copy on file with Careers and Competition Subcommittee. Letter on file with Careers and Competition Subcommittee. SPIN is a leading stationless bike share company in the United States, operating in over two-dozen markets.



assist in local bicycle network planning, prioritization, and evaluation, and the use of local regulations to incentivize users to start or end their trip at a mass transit stop in order to combat first-mile, last-mile challenges.<sup>4</sup> Local partnership advocates believe that working closely with local governments is necessary to ensure that sufficient safety standards are in place, control over the public right-of-way is properly maintained, sensitive customer data is protected, and that bicycle share operations are tailored to the needs and characteristics of local communities.

Some local governments and bicycle share companies have entered into an exclusive, long term contracts, effectively banning any other company from operating within that jurisdiction.<sup>5</sup>

### Dockless Bicycles

The absence of designated bicycle racks, stations, or hubs to “dock” the bicycles when not in use distinguishes the “dockless” bicycle sharing model from more traditional bicycle sharing models. In the past few years, the dockless bicycle sharing industry has experienced tremendous growth both in the United States and abroad.<sup>6</sup>

Dockless bicycle companies require a smaller initial capital investment due to not having to set up expensive stations and sometimes do not require that rental fees be paid to the local government.<sup>7</sup> Advocates of the dockless bicycle share model see dockless bicycles as a way for private industry to provide alternative transportation options with little or no up-front investment by local government.

Opponents of the dockless bicycle model highlight that, because the bicycles aren’t locked to anything, there is the potential for bicycles to be left in inconvenient places such as in the middle of the sidewalk, blocking curb ramps and other ADA-sensitive locations, businesses and transit access points. Additionally, some cities have experienced problems with bicycles being thrown into bodies of water, stranded in trees, on rooftops, and other undesirable places.<sup>8</sup>

### Bicycle Share in Florida

Currently, a variety of bicycle share programs are offered by a number of companies in different local jurisdictions across the state.<sup>9</sup>

### Home Rule and Preemption

#### *Counties*

A county without a charter has such power of self-government as provided by general<sup>10</sup> or special law, and may enact county ordinances not inconsistent with general law.<sup>11</sup> General law authorizes counties

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<sup>4</sup> *Id.*

<sup>5</sup> Johana Bhuiyan and Rani Molla. *A bike-sharing war is coming to the U.S. as investors pour money into new entrants*, RECODE (Oct. 23, 2017) <https://www.recode.net/2017/10/23/16496908/bike-sharing-dockless-limebike-fofo-motivate-citi-bike-spin>

<sup>6</sup> See, e.g. Evgeny Tchebotarev, *With Hundreds Of Millions Of Dollars Burned, The Dockless Bike Sharing Market Is Imploding*, FORBES (Dec. 16, 2017), <https://www.forbes.com/sites/evgenytchebotarev/2017/12/16/with-hundreds-of-millions-of-dollars-burned-the-dockless-bike-sharing-market-is-imploding/#12fb1fa4543b>; Henry Grabar, *Docks Off*, SLATE (Dec. 18, 2017), <https://slate.com/business/2017/12/dock-less-bike-share-is-ready-to-take-over-u-s-cities.html>

<sup>7</sup> See Bhuiyan & Molla. *A bike-sharing war is coming to the U.S. as investors pour money into new entrants*.

<sup>8</sup> Josh Cohen, *Seattle Test Will Lead to Regulating Dockless Bike-Share*, NEXT CITY (Dec. 21, 2017) <https://nextcity.org/daily/entry/seattle-dockless-bikeshare-pilot-regulation>

<sup>9</sup> See e.g., Florida Bicycle Associate, *Florida Bike Share Programs* <http://floridabicycle.org/florida-bike-share-programs/>; Ryan Pfeffer, *America’s first dockless bike-share company launches in Coral Gables*, TIMEOUT (Nov. 10, 2017) <https://www.timeout.com/miami/blog/americas-first-dockless-bike-share-company-launches-in-coral-gables-111017>; Nancy Dahlberg, *You’ll find more shared bikes around town — and pay less to use them, too*, MIAMI HERALD (Nov. 12, 2017) <http://www.miamiherald.com/news/business/article183868451.html>

<sup>10</sup> ch. 125, Part I, F.S.

<sup>11</sup> FLA. CONST. art. VIII, s. 1(f).

“the power to carry on county government”<sup>12</sup> and to “perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law.”<sup>13</sup>

Chapter 166, F.S., also known as the Municipal Home Rule Powers Act,<sup>14</sup> acknowledges the constitutional grant to municipalities of governmental, corporate, and proprietary power necessary to conduct municipal government, functions, and services.<sup>15</sup> Chapter 166, F.S., provides municipalities with broad home rule powers, respecting expressed limits on municipal powers established by the Florida Constitution, applicable laws, and county charters.<sup>16</sup>

### *Municipalities*

Chapter 166, F.S., also known as the Municipal Home Rule Powers Act,<sup>17</sup> acknowledges the constitutional grant to municipalities of governmental, corporate, and proprietary power necessary to conduct municipal government, functions, and services.<sup>18</sup> Chapter 166, F.S., provides municipalities with broad home rule powers, respecting expressed limits on municipal powers established by the Florida Constitution, applicable laws, and county charters.<sup>19</sup>

Section 166.221, F.S., authorizes municipalities to levy reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter.

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature “has preempted a particular subject area” or (2) the local enactment conflicts with a state statute. Where state preemption applies it precludes a local government from exercising authority in that particular area.<sup>20</sup> Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.<sup>21</sup> Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.<sup>22</sup> In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.<sup>23</sup> In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.<sup>24</sup>

### **Effect of the Bill**

The bill creates s. 341.851, F.S., relating to dockless bicycle sharing. The bill preempts the governance of dockless bicycles and dockless bicycle sharing companies to the state and creates a regulatory framework governing the operation of dockless bicycle sharing companies in the state.

### *Legislative Intent*

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<sup>12</sup> s. 125.01(1), F.S.

<sup>13</sup> s. 125.01(1)(w), F.S.

<sup>14</sup> s. 166.011, F.S.

<sup>15</sup> Local Government Formation Manual 2017-2018, p. 16.

<sup>16</sup> s. 166.021(4), F.S.

<sup>17</sup> s. 166.011, F.S.

<sup>18</sup> Local Government Formation Manual 2017-2018, p. 16.

<sup>19</sup> s. 166.021(4), F.S.

<sup>20</sup> Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

<sup>21</sup> See *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008).

<sup>22</sup> *Mulligan*, 934 So. 2d at 1243.

<sup>23</sup> *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

<sup>24</sup> See, e.g., *Nat’l Rifle Ass’n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

The bill provides that it is the intent of the Legislature to provide Florida residents with access to innovative, environmentally friendly transportation options and to ensure the safety and reliability of bicycle sharing services within the state.

### *Definitions*

The bill defines the following terms as they relate to the regulation of dockless bicycle sharing:

- "Bicycle sharing company" means an entity that makes dockless bicycles available for private use by reservation through an online application, software, or website.
- "Dockless bicycle" means bicycle, including an electric bicycle, that is self-locking and that is not connected to a docking station.
- "Local governmental entity" means a county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision.
- "User" means a person who reserves a dockless bicycle through a bicycle sharing company's online application, software, or website.

### *Insurance Requirements*

The bill provides that a person or entity may not operate a dockless bicycle sharing company in this state unless the person or entity maintains a current and valid combined single-limit policy of commercial general liability insurance coverage in the amount of at least \$500,000 per occurrence for bodily injury and property damage.

### *Bicycle Requirements*

The bill requires that dockless bicycles made available for reservation by a bicycle sharing company must:

- Meet the requirements for bicycles set forth in 16 C.F.R. part 1512.
- Be available for reservation 24 hours a day, 7 days a week.
- Prominently display the bicycle company's trade dress.
- Display an e-mail address and telephone number at which a user may contact the bicycle sharing company for customer support.
- Be lawfully parked when not in use.

### *Dockless Bicycle Sharing Company Responsibilities*

The bill requires that the online application, software, or website of a dockless bicycle sharing company must provide:

- Notification that a rider of a dockless bicycle must operate the dockless bicycle in compliance with state and local law.
- An interface that enables a user to notify the bicycle sharing company of an issue relating to the safety or maintenance of a dockless bicycle.

The bill specifies that a bicycle sharing company is responsible for:

- the maintenance and rebalancing of each dockless bicycle that it makes available for reservation, and
- the removal of any such dockless bicycle that is for any reason inoperable.

### *Preemption*

The bill provides that it is the intent of the Legislature to provide for uniformity of laws governing dockless bicycles and bicycle sharing companies throughout the state.

The bill preempts the governance of dockless bicycles and dockless bicycle sharing companies to the state, and prohibits local governments from:

- imposing a tax on, or requiring a license for, a dockless bicycle or a bicycle sharing company relating to reserving a dockless bicycle;
- subjecting a dockless bicycle or a bicycle sharing company to any rate, entry, operation, or other requirement;
- requiring a bicycle sharing company to obtain a business license or any other type of authorization to operate within the jurisdiction of the local governmental entity; or
- entering into a private agreement containing a provision that prohibits a bicycle sharing company from operating within the jurisdiction of the local governmental entity or that limits the operation of a bicycle sharing company within such jurisdiction.

The bill provides that any provision in a local governmental agreement that limits or prohibits the operation of a dockless bicycle sharing company within its jurisdiction will be unenforceable once the bill takes effect.

The bill specifies that the preemption section does not prohibit an airport or seaport from designating locations for staging, pickup, and other similar operations relating to dockless bicycles at the airport or seaport.

The bill has an effective date of July 1, 2018.

**B. SECTION DIRECTORY:**

Section 1      Creates s. 341.851, F.S.; providing legislative intent; providing definitions; providing insurance requirements for a bicycle sharing company; providing requirements for dockless bicycles made available for reservation by such company; providing company responsibilities; providing for preemption; providing construction.

Section 2.      Provides an effective date of July 1, 2018.

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

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

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

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

Opponents of the bill, including a national bicycle share membership organization and a leading stationless bicycle share company, have stated that their growth and success would not be possible without partnering with local jurisdictions.<sup>25</sup>

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is not clear whether the bill is intended to apply, in any respect, to bicycle sharing companies generally. Currently, it appears that the bill only applies to dockless bicycle sharing companies without regard to their competition with non-dockless bicycle sharing companies.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>25</sup> Letter from NASBA; Letter from SPIN.

1                                   A bill to be entitled  
 2           An act relating to dockless bicycle sharing; creating  
 3           s. 341.851, F.S.; providing legislative intent;  
 4           providing definitions; providing insurance  
 5           requirements for a bicycle sharing company; providing  
 6           requirements for dockless bicycles made available for  
 7           reservation by such company; providing company  
 8           responsibilities; providing for preemption; providing  
 9           construction; providing an effective date.

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

Section 1. Section 341.851, Florida Statutes, is created to read:

341.851 Dockless bicycle sharing.-

(1) LEGISLATIVE INTENT.-It is the intent of the Legislature to provide Florida residents with access to innovative, environmentally friendly transportation options and to ensure the safety and reliability of bicycle sharing services within the state.

(2) DEFINITIONS.-As used in this section:

(a) "Bicycle sharing company" means an entity that makes dockless bicycles available for private use by reservation through an online application, software, or website.

(b) "Dockless bicycle" means a bicycle, including an

26 electric bicycle, that is self-locking and that is not connected  
 27 to a docking station.

28 (c) "Local governmental entity" means a county,  
 29 municipality, special district, airport authority, port  
 30 authority, or other local governmental entity or subdivision.

31 (d) "User" means a person who reserves a dockless bicycle  
 32 through a bicycle sharing company's online application,  
 33 software, or website.

34 (3) INSURANCE REQUIRED.—A person or entity may not operate  
 35 a bicycle sharing company in this state unless the person or  
 36 entity maintains a current and valid combined single-limit  
 37 policy of commercial general liability insurance coverage in the  
 38 amount of at least \$500,000 per occurrence for bodily injury and  
 39 property damage.

40 (4) BICYCLE REQUIREMENTS.—Each dockless bicycle made  
 41 available for reservation by a bicycle sharing company must:

42 (a) Meet the requirements for bicycles set forth in 16  
 43 C.F.R. part 1512.

44 (b) Be available for reservation 24 hours a day, 7 days a  
 45 week.

46 (c) Prominently display the bicycle company's trade dress.

47 (d) Display an e-mail address and telephone number at  
 48 which a user may contact the bicycle sharing company for  
 49 customer support.

50 (e) Be lawfully parked when not in use.

51 (5) COMPANY RESPONSIBILITIES.-

52 (a) A bicycle sharing company must provide through its  
 53 online application, software, or website:

54 1. Notification that a rider of a dockless bicycle must  
 55 operate the dockless bicycle in compliance with state and local  
 56 law.

57 2. An interface that enables a user to notify the bicycle  
 58 sharing company of an issue relating to the safety or  
 59 maintenance of a dockless bicycle.

60 (b) A bicycle sharing company is responsible for the  
 61 maintenance and rebalancing of each dockless bicycle made  
 62 available for reservation and for the removal of any such  
 63 dockless bicycle that is for any reason inoperable.

64 (6) PREEMPTION.-

65 (a) It is the intent of the Legislature to provide for  
 66 uniformity of laws governing dockless bicycles and bicycle  
 67 sharing companies throughout the state. Dockless bicycles and  
 68 bicycle sharing companies shall be governed exclusively by state  
 69 law. A local governmental entity may not:

70 1. Impose a tax on, or require a license for, a dockless  
 71 bicycle or a bicycle sharing company relating to reserving a  
 72 dockless bicycle;

73 2. Subject a dockless bicycle or a bicycle sharing company  
 74 to any rate, entry, operation, or other requirement of the local  
 75 governmental entity;



76        3. Require a bicycle sharing company to obtain a business  
77 license or any other type of authorization to operate within the  
78 jurisdiction of the local governmental entity; or

79        4. Enter into a private agreement containing a provision  
80 that prohibits a bicycle sharing company from operating within  
81 the jurisdiction of the local governmental entity or that limits  
82 the operation of a bicycle sharing company within such  
83 jurisdiction. To the extent that a local governmental entity  
84 entered into an agreement containing such a provision before  
85 July 1, 2018, such provision is unenforceable.

86        (b) This subsection does not prohibit an airport or  
87 seaport from designating locations for staging, pickup, and  
88 other similar operations relating to dockless bicycles at the  
89 airport or seaport.

90        Section 2. This act shall take effect July 1, 2018.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 6037 Fireworks  
**SPONSOR(S):** Grant  
**TIED BILLS:** IDEN./SIM. BILLS: CS/SB 198

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee		Brackett <i>DB</i>	Anstead <i>Ja</i>
2) Commerce Committee			

**SUMMARY ANALYSIS**

In Florida, the sale and use of fireworks is prohibited unless:

- The seller has registered as a distributor, manufacturer, retailer, seasonal retailer, or wholesaler with the State Fire Marshal;
- The seller is selling the fireworks to:
  - Another registered distributor, manufacturer, retailer, seasonal retailer, or wholesaler;
  - A buyer who is allowed to buy fireworks under ch. 791, F.S.
- A buyer has obtained a permit from a municipality for a public display of fireworks and has been determined to be a competent supervisor;
- A buyer has obtained a permit from a board of county commissioners for a public display of fireworks and has obtained a bond; or
- A buyer is using the fireworks to scare birds away from agricultural works or fish hatcheries.

Federal laws regulate the manufacture, sale and use of fireworks. Federal laws provide penalties, including fines, imprisonment, and civil penalties, for anyone who imports, distributes, or sells illegal fireworks.

The bill repeals prohibitions and regulations related to fireworks and sparklers.

The bill specifically repeals the:

- Provisions prohibiting the sale and use of fireworks in Florida;
- Requirement that sparklers must be tested and approved by the State Fire Marshal;
- Criminal penalty for altering a sparkler and selling it or fraudulently selling a product as a sparkler;
- Provision that only registered distributors, manufacturers, retailers, seasonal retailers, and wholesalers may sell fireworks or sparklers;
- Provision that a person performing a public display of fireworks in a municipality must be a competent supervisor;
- Provision that a person performing a public display of fireworks in a county must obtain a bond; and
- Provision allowing counties and municipalities to adopt reasonable rules and regulations for adopting permits for the public display of fireworks.

The bill is expected to have a negative fiscal impact on state government annually in the amount of \$275,000, but may have a positive impact on state government from an indeterminate increase in sales taxes. The bill has an indeterminate impact on local government.

The bill takes effect upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Florida regulates the sale and use of fireworks pursuant to Chapter 791, F.S. No person may offer for sale, sell at retail, or use or explode any fireworks, unless authorized pursuant to ch. 791, F.S.<sup>1</sup>

Fireworks are defined to mean and include, "any combustible or explosive composition or substance or combination of substances or, except as hereinafter provided, any article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation." Fireworks include:

- Blank cartridges and toy cannons in which explosives are used;
- Balloons which require fire underneath to propel them;
- Firecrackers;
- Torpedoes;
- Skyrockets;
- Roman candles;
- Dago bombs; and
- Any fireworks containing any explosives or flammable compound or any tablets or other device containing any explosive substance.<sup>2</sup>

Fireworks do not include the following, which the sale and use of is permitted at all times:

- Sparklers approved by the State Fire Marshal;
- Toy pistols, toy canes, toy guns, or other devices in which paper caps containing twenty-five hundredths grains or less of explosive compound are used, providing that a person's hand cannot come into contact with the cap when in place for the explosion;
- Toy pistol paper caps which contain less than twenty hundredths grains of explosive mixture; and
- A trick noisemaker, which is a device that produces a small report intended to surprise a user, including a:
  - Party popper;
  - Booby trap;
  - Snapper;
  - Trick match;
  - Cigarette load; and
  - Auto burglar alarm.
- The following novelties;
  - A snake or glow worm, which is a pressed pellet of not more than 10 grams of pyrotechnic composition that produces a large, snakelike ash which expands in length as the pellet burns and that does not contain mercuric thiocyanate; and
  - A smoke device, which is a tube or sphere containing not more than 10 grams of pyrotechnic composition that, upon burning, produces white or colored smoke as the primary effect.<sup>3</sup>

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<sup>1</sup> See ch. 791, F.S.

<sup>2</sup> s. 791.01(4)(a), F.S.

<sup>3</sup> s. 791.01(4)(b) & (c), F.S.

Pursuant to Section 791.012, F.S, the outdoor display of fireworks is governed by the National Fire Protection Association (NFPA) 1121, Code for Fireworks Display, 1995 Edition, approved by the American National Standards Institute.<sup>4</sup> Any state, county, or municipal law, rule, or ordinance may provide for more stringent regulations, but in no event may any such law, rule, or ordinance provide for less stringent regulations for the outdoor display of fireworks. However, the Code for Fireworks Display does not govern the display of any fireworks on private residential property.<sup>5</sup>

### *Federal Regulation of Fireworks*

Fireworks are defined under the Federal Explosives Laws, which is enforced by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). The law defines fireworks into display fireworks, consumer fireworks, and articles pyrotechnic.<sup>6</sup>

“Display fireworks” are defined as “large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation.” Display fireworks include but are not limited to:

- Aerial shells containing more than 2 grains of explosive materials;
- Aerial shells containing more than 40 grams of pyrotechnic compositions;
- Other display pieces that exceed the limits of explosive materials for consumer fireworks; and
- Fused set pieces containing components which together exceed 50 milligrams of salute powder.<sup>7</sup>

The ATF regulates display fireworks by requiring anyone engaging in the business of manufacturing, importing, or dealing in display fireworks to have an ATF explosive license, and requiring anyone importing for their own use or receiving or transporting display fireworks to have an ATF permit.<sup>8</sup>

“Consumer fireworks” are defined as “any small firework device designed to produce visible effects by combustion and which must comply with the construction, chemical composition, and labeling regulations of the U.S. Consumer Product Safety Commission.” The definition also includes “some small devices designed to produce audible effects...such as whistling devices, ground devices containing 50 mg or less of explosive materials, and aerial devices containing 130 mg or less of explosive materials.”<sup>9</sup>

“Articles pyrotechnic” are defined as “pyrotechnic devices for professional use similar to consumer fireworks in chemical composition and construction but not intended for consumer use.”<sup>10</sup>

The ATF generally does not regulate the importation, distribution, and storage of consumer fireworks. However, a manufacturer of consumer fireworks or articles pyrotechnics must have an ATF manufacturer’s license because consumer fireworks contain pyrotechnic compositions, which are classified as explosive materials.<sup>11</sup>

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<sup>4</sup> The National Fire Protection Association was founded in 1896 and delivers information and knowledge through more than 300 consensus codes and standards, research, training, education, outreach and advocacy; and by partnering with others who share an interest in furthering the mission. The American National Standards Institute is a non-profit organization that aims to strengthen the U.S. market place, protect the environment, and assure the safety and health of consumers by creating and promulgating thousands of standards and guidelines.

<sup>5</sup> s. 791.012, F.S.

<sup>6</sup> 27 U.S.C. § 555 (2017) & 27 U.S.C. § 555.11 (2017).

<sup>7</sup> 27 U.S.C. § 555.11 (2017).

<sup>8</sup> 27 U.S.C. § 555.26 (2017) & 27 U.S.C. § 555.41 (2017).

<sup>9</sup> 27 U.S.C. § 555.11 (2017).

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

<sup>11</sup> 27 U.S.C. § 555.11 (2017); 27 U.S.C. § 555.141 (2017); ATF Bureau of Alcohol, Tobacco, Firearms, and Explosives, *Are ‘consumer fireworks’ subject to regulation under the Federal explosive laws?*, <https://www.atf.gov/explosives/qa/are-%E2%80%9Cconsumer-fireworks%E2%80%9D-subject-regulation-under-federal-explosives-laws> (last visited on Jan. 10, 2018); ATF Bureau of Alcohol, Tobacco, Firearms, and Explosives, *Are ‘Articles Pyrotechnic’ subject to the requirements of the Federal*

The U.S. Consumer Product Safety Commission (CPSC) also regulates the use of consumer fireworks under the Federal Hazardous Substances Act (FHSA).<sup>12</sup> The FHSA prohibits the sale to consumers of the most dangerous types of fireworks including:

- Large reloadable mortar shells;
- Cherry bombs;
- Aerial bombs;
- M-80 aerials; and
- Larger firecrackers containing more than 2 grains of explosive materials.<sup>13</sup>

Any person who imports, distributes, or sells a prohibited firework under the FHSA to a consumer is guilty of a misdemeanor and subject to a fine of not more than \$500 and/or imprisonment for not more than 90 days. For second or subsequent offenses, or if the person intended to defraud or mislead, the person is subject to a fine of up to \$250,000 and/or imprisonment for not more than 5 years. Any person who imports, distributes, or sells a prohibited firework under the FHSA to a consumer may also be subject to a civil penalty up to \$100,000 for each violation and up to \$15,000,000 for any series of violations.<sup>14</sup>

The CPSC provides an annual report on the number of non-occupational, fireworks-related deaths and injuries in the U.S. during the previous year. The CPSC reported that in 2016 there were an estimated 11,100 injuries involving fireworks in the U.S. The CPSC also reported that there were at least 4 deaths including a 42 year old male in Florida who died from a malfunctioning firework.<sup>15</sup>

#### *Public Displays of Fireworks*

Chapter 791, F.S., allows the public display of fireworks in municipalities if the display is done by a competent supervisor, and the display does not endanger any person or is hazardous to property. The chiefs of police and firefighters determine whether a supervisor is competent, and the chief of firefighters determines whether a display is hazardous to property or may endanger any person.<sup>16</sup>

Chapter 791, F.S., also allows the supervised public display of fireworks outside municipalities by fair associations, amusement parks, and other organizations or groups of individuals if the person doing the display obtains a bond of not less than \$500. The bond will be for the payment of damages that may be caused to a person or property by the fireworks display, any acts of the person doing the display, his or her agents, employees, or subcontractors.<sup>17</sup>

Municipalities and the boards of county commissioners have the power to adopt reasonable rules and regulations for the granting of permits for supervised public displays of fireworks. Application for a permit must be made in writing at least 15 days in advance of the display. Upon obtaining a permit a person may engage in the lawful sale, possession, and use, and distribution of fireworks for the display. Permits may not be transferred.<sup>18</sup>

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*explosive regulations?*, <https://www.atf.gov/explosives/qa/are-%E2%80%9CArticles-pyrotechnic%E2%80%9D-subject-requirements-federal-explosives-regulations>.

<sup>12</sup> 15 U.S.C. § 1261 (2017).

<sup>13</sup> 16 U.S.C. § 1500 (2017).

<sup>14</sup> See 15 U.S.C. § 1263 (2017); 15 U.S.C. § 1264 (2017); 18 U.S.C. § 3571 (2017).

<sup>15</sup> Tu, Yongling, *2016 Fireworks Annual Report: Fireworks-Related Deaths and Emergency Department-Treated Injuries During 2016*, 1 & 8 (June 2017).

<sup>16</sup> s. 791.02(1), F.S.

<sup>17</sup> *Id.* & s. 791.03, F.S.

<sup>18</sup> s. 791.02(1), F.S.

## *State Fire Marshal*

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety and has the responsibility to minimize the loss of life and property in this state due to fire. Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and fire safety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts fire safety inspections of state property; and operates the Florida State Fire College.<sup>19</sup>

In addition to these duties, the State Fire Marshal adopts by rule the Florida Fire Prevention Code (FFPC), which contains all fire safety rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules, at ch. 69A-60, F.A.C. The State Fire Marshal adopts a new edition of the FFPC every three years. The FFPC includes national fire safety and life safety standards set forth by the NFPA, including the NFPA's Fire Code (1), Life Safety Code (101) and Guide on Alternative Approaches to Life Safety (101A).<sup>20</sup>

### *Sparklers*

Sparklers are hand-held or ground-based devices that emit showers of sparks when they are burned. Sparklers do not explode, detonate, contain explosive compounds, are not self-propelled, and have a limited number of combustible chemicals.<sup>21</sup>

All sparklers must be approved by the State Fire Marshal. Sparklers not approved by the State Fire Marshal are considered fireworks. Any person wishing to sell a product as a sparkler in Florida must first submit the product to the State Fire Marshal for testing to determine if the product meets the definition of a sparkler. On February 1 of each year, the State Fire Marshal must publish a list of the approved sparklers. All approved sparklers may be sold until January 31<sup>st</sup> of the following year.<sup>22</sup>

Any person who alters an approved sparkler, so that it is no longer a sparkler, and subsequently sells the altered sparkler as an approved sparkler commits a first-degree misdemeanor. Any person who fraudulently represents a product that is not an approved sparkler as an approved sparkler commits a first-degree misdemeanor.<sup>23</sup>

### *Distributors, Manufacturers, Wholesalers, and Retailers*

A distributor is defined as any person who sells sparklers to a wholesaler. A manufacturer is defined as any person engaged in the manufacture or construction of sparklers in Florida. A wholesaler is defined as any person engaged in the business of selling sparklers to a retailer.<sup>24</sup>

There are two types of retailers in Florida:

- A retailer, who is any person at a fixed place of business who sells sparklers to consumers at retail; and
- A seasonal retailer, who is any person engaged in the business of selling sparklers to consumers at retail from June 20<sup>th</sup> through July 5<sup>th</sup> and December 10<sup>th</sup> through January 2<sup>nd</sup>.<sup>25</sup>

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<sup>19</sup> s. 633.104, F.S.

<sup>20</sup> s. 633.202(2), F.S.

<sup>21</sup> s. 791.01(8), F.S.

<sup>22</sup> s. 791.013(1), F.S.

<sup>23</sup> s. 791.013(2), F.S.

<sup>24</sup> s. 791.01(1), (5), & (9), F.S.

<sup>25</sup> s. 791.01(6) & (7), F.S.

In order to be a retailer, manufacturer, wholesaler, or distributor a person must register annually with the State Fire Marshal. A retailer who sells sparklers at multiple locations may submit one registration form as long as the retailer lists every location on the registration form.<sup>26</sup>

The registration form must include the business name, address, telephone number, corporate officers (if a corporation), and a contact person. Annual registration fees are:

- \$1,000 for registration as a manufacturer, distributor, or wholesaler;
- \$200 for registration as a seasonal retailer; and
- \$15 for each location registered by a non-seasonal retailer.<sup>27</sup>

In addition to being able to sell, manufacture, construct, or sell sparklers depending on the registration, wholesalers, distributors, manufacturers, and retailers may:

- Sell fireworks to other registered wholesalers, manufacturers, and distributors;
- Sell fireworks that are to be shipped out of Florida;
- Sell fireworks to anyone holding a public firework display permit from a board of county commissioners.<sup>28</sup>

Retailers and seasonal retailers may not sell sparklers, fireworks, or any other product authorized for sale by Chapter 791, F.S., unless the retailer or seasonal retailer obtained the product from a registered manufacturer, distributor, or wholesaler. Retailers and seasonal retailers are also required to keep, at every location where sparklers are sold, evidence of purchases from manufacturers, distributors, or wholesalers. The evidence must have the manufacturer, distributor, or wholesaler's registration number, and the specific items purchased by the retailer or seasonal retailer. Each seasonal retailer must also display a copy of his or her registration at each seasonal location.<sup>29</sup>

#### *Consumer Fireworks Task Force/Limits on Retail Sales Facilities*

In 2007, the Legislature found that:

- The state regulation of consumer fireworks in Florida provides an insufficient definition of consumer fireworks and related products used by consumers;
- There is a need for better training and education concerning the safe use of consumer fireworks;
- There should be a mechanism to help local governments fund the clean up following the use of consumer fireworks on public property;
- Local government regulation of the agricultural uses authorized s. 791.07, F.S., may be inconsistent with legitimate agricultural purposes;
- There is a need for consumer education relating to safety standards in the use of consumer fireworks; and
- There is need for standards concerning tents and other temporary retail facilities selling consumer fireworks; and
- The state would benefit from additional funding for the training and education of fire officials.<sup>30</sup>

As a result, the Legislature established the Consumer Fireworks Task Force (Task Force), housed within DACS, for the purpose of studying issues concerning consumer fireworks, including the:

- Proper use of consumer fireworks;
- The regulation of sales and temporary sale facilities;
- Regulation of the hours and location of use;

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<sup>26</sup> s. 791.015(1), F.S.

<sup>27</sup> s. 791.015(3), F.S. & Rule 69A-50.005, F.A.C.

<sup>28</sup> s. 791.04, F.S.

<sup>29</sup> s. 791.02(2), F.S.

<sup>30</sup> ch. 2007-67, Laws of Fla.



- Property zoning classifications for sale facilities;
- Funding options for fire official training and education; and
- Funding options for cleanup of expended consumer fireworks products.<sup>31</sup>

The Legislature enacted limits on retail sales facilities for consumer fireworks pending the Legislature's review of the Task Force's report and to ensure uniformity of fire prevention and safety standards. The limits provided that:

- A new permanent retail sales facility engaged in sales permitted under s. 791.07, F.S., may not be opened in Florida after March 8, 2007, unless construction for the permanent retail sales facility received site plan approval and construction began on or before March 8, 2007; and
- The number of permits for temporary retail sales facilities, such as tents, engaged in sales otherwise permitted by s. 791.07, F.S., issued after March 8, 2007, by a county, municipality, or other unit of local government, may not exceed the number of permits the governmental entity issued for such facilities during the 2006 calendar year.<sup>32</sup>

The Task Force completed its report, but the Legislature never reviewed the report or removed the limitations. As a result, the Florida Office of the Attorney General determined in an advisory legal opinion that local governments are prohibited from allowing new facilities to be opened for the sale of fireworks, and local governments may only issue as many permits allowing temporary facilities for the sale of fireworks as they had issued in 2006.<sup>33</sup>

#### *Agricultural Works and Fish Hatcheries*

Pursuant to Section 791.07, F.S., the importation, purchase, sale, or use of fireworks to be used solely and exclusively to scare birds from agricultural works and fish hatcheries. Such use is governed by rules prescribed by the Department of Agriculture and Consumer Services (DACS).

DACS has adopted a rule that requires any person who wishes to use firecrackers to scare birds must first file a written statement, with the sheriff in the county where the agricultural work or fish hatchery is located, attesting that he or she intends to use the firecrackers solely for the purpose of scaring birds.<sup>34</sup> A person may purchase firecrackers from an authorized seller upon presenting the seller a copy of the written statement he or she has filed with the sheriff.<sup>35</sup>

On October 11, 2017, Senator Stuebe testified during the regular meeting of the Florida Senate's Regulated Industries Committee that many Floridians sign forms attesting that they are purchasing fireworks to scare birds from agricultural works and fish hatcheries in order to purchase fireworks to celebrate holidays such as July 4th and New Year's.<sup>36</sup> Local news stations have also reported on the "loophole" that a person must sign a form attesting he or she is purchasing fireworks to scare birds from agricultural works or fish hatcheries, in order to purchase fireworks in Florida.<sup>37</sup> According to the Senator Stuebe, he is not aware of anyone who has ever been penalized for fraudulently purchasing and using fireworks.<sup>38</sup> Additionally, the Third District Court of Appeals has held that it is not the responsibility of a seller to check the veracity of a buyer's form attesting he or she is purchasing fireworks to scare birds.<sup>39</sup>

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> 2016-05 Fla. Op. Att'y Gen. 37 (2016).

<sup>34</sup> Rule 5A-3.001, F.A.C.

<sup>35</sup> Rule 5A-3.002, F.A.C.

<sup>36</sup> See The Florida Channel, *10/11/2017 Regulated Industries Committee*,

[http://www.flsenate.gov/media/videoplayer?EventID=2443575804\\_2017101106&Redirect=true](http://www.flsenate.gov/media/videoplayer?EventID=2443575804_2017101106&Redirect=true) (last visited on Jan. 18, 2018).

<sup>37</sup> Jenna Bourne, *Fireworks in Florida: What's legal, what's not*, Action News Jax (Jul. 3, 2017),

<http://www.actionnewsjax.com/news/local/fireworks-in-florida-whats-legal-whats-not/548729275> & Kathryn Marsh, *Legal Loophole for Florida Fireworks*, Fox4 (Jun. 28, 2017), <https://www.fox4now.com/news/local-news/legal-loophole-for-florida-fireworks>.

<sup>38</sup> *Id.*

<sup>39</sup> See *State v. Miketa*, 824 So. 2d 970 (Fla. 3d DCA 2002).

## **Effect of the Bill**

The bill removes the regulations that require a person to register with the State Fire Marshal in order to manufacture, sell, or distribute fireworks in Florida. The bill also removes the provision prohibiting a person from buying and using fireworks unless the person is exempt under statute. Anyone who manufactures, sells, or uses fireworks must still comply with federal laws and regulations. Additionally, the NFPA 1121, Code for Fireworks Display, 1995 Edition still governs the outdoor display of fireworks that are not on private residential property, and counties and municipalities may provide more stringent regulations than the NFPA 1121, Code for Fireworks Display, 1995 Edition.

### *Sparklers*

The bill repeals the definition of sparklers and the requirement that the State Fire Marshal must approve all sparklers sold in Florida.

The bill repeals the provision that any person who alters a sparkler, so that it is no longer a sparkler, and subsequently sells the altered sparkler as an approved sparkler commits a first-degree misdemeanor. The bill also repeals the provision that any person who fraudulently represents a device that is not an approved sparkler as an approved sparkler commits a first-degree misdemeanor.

### *Wholesalers, Distributors, Manufacturers, and Retailers*

The bill repeals the definition of distributors, manufacturers, retailers, and seasonal retailers. The bill repeals the provision that distributors, manufacturers, retailers, and seasonal retailers must register annually with the State Fire Marshal.

The bill repeals the provisions that allow manufacturers, distributors, and wholesalers to sell fireworks:

- To other registered manufacturers, distributors, and wholesalers;
- That are being shipped out of Florida; and
- To anyone holding a public firework display permit from a board of county commissioners.

The bill repeals the provision that requires:

- All retailers and seasonal retailers to buy sparklers, fireworks, or other products authorized for sale under Chapter 791, F.S. from a registered manufacturer, distributor, or wholesaler;
- All retailers and seasonal retailers to maintain evidence of every purchase of products from manufacturers, distributors, and wholesalers; and
- All seasonal retailers to display their registration at every seasonal retailer location.

### *Public Displays of Fireworks*

The bill repeals the provision that requires that public displays of fireworks in municipalities must not endanger any person or be hazardous to property, and must be done by a competent supervisor who is supervised by the chiefs of police and firefighters.

The bill repeals the provision that a person doing a public display of fireworks outside of a municipality must obtain a bond, in the amount of no less than \$500, for the payment of damages that may be caused either to a person or property by the display, any acts by the person doing the display, his or her agents, employees, or subcontractors.

The bill repeals the provision that provides that municipalities and boards of county commissioners may adopt reasonable rules and regulations for the granting of permits for supervised public display of fireworks.

B. SECTION DIRECTORY:

- Section 1.** Repeals ss. 791.013, 791.015, 791.02, & 791.03, F.S., related to the regulation of fireworks and sparklers.
- Section 2.** Amends s. 791.01, F.S., repeals the definitions of distributor, manufacturer, retailer, seasonal retailer, and wholesaler, and amends the definition of fireworks.
- Section 3.** Amends s. 791.012, F.S., conforming language.
- Section 4.** Amends s. 791.04, F.S., repealing the provision that allows distributors, manufacturers, and wholesalers to sell fireworks under certain conditions.

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

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:  
*See Fiscal Comments.*
2. Expenditures:  
*See Fiscal Comments.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:  
Unknown.
2. Expenditures:

According to DFS, "Fiscal impacts on local governments may increase due to total regulation of the sparkler industry, as well as the need to respond to more injury calls. According to the National Fire Protection Association (NFPA), fireworks cause more than 18,500 fires each year and U.S. hospital emergency rooms saw an estimated 10,500 people for fireworks injuries in 2014."<sup>40</sup>

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private entities wishing to sell sparklers and fireworks will no longer have to register with the State Fire Marshal or send sparklers to the State Fire Marshal for approval.<sup>41</sup>

D. FISCAL COMMENTS:

According to DFS, the State Fire Marshal issues approximately 4,500 annual registrations for the sale of sparklers, which amounts to an estimated \$275,000 in revenue from annual registration fees. The bill will cause a net annual reduction of \$275,000 in revenue collected by the State.<sup>42</sup>

With new products being offered to consumers, the state should expect an increase in sales taxes. The tax impact is indeterminable at this time.

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<sup>40</sup> Florida Department of Financial Services, Agency Analysis of 2018 House Bill 6037, p. 2 (Nov. 15, 2017).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

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

Not Applicable. This bill does not appear to affect county or municipal governments.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled  
 2 An act relating to fireworks; repealing ss. 791.013  
 3 and 791.015, F.S., relating to the testing and  
 4 approval of sparklers and the registration of  
 5 manufacturers, distributors, wholesalers, and  
 6 retailers of sparklers, respectively; repealing s.  
 7 791.02, F.S., relating to the sale and use of  
 8 fireworks; repealing s. 791.03, F.S., relating to the  
 9 bond of licensees; amending ss. 791.01, 791.012, and  
 10 791.04, F.S.; conforming provisions to changes made by  
 11 the act; providing an effective date.

12  
 13 Be It Enacted by the Legislature of the State of Florida:

14  
 15 Section 1. Sections 791.013, 791.015, 791.02, and 791.03,  
 16 Florida Statutes, are repealed.

17 Section 2. Section 791.01, Florida Statutes, is amended to  
 18 read:

19 791.01 Definitions.—As used in this chapter, the term:

20 ~~(1) "Distributor" means any person engaged in the business~~  
 21 ~~of selling sparklers to a wholesaler.~~

22 (1)(2) "Division" means the Division of the State Fire  
 23 Marshal of the Department of Financial Services.

24 (2)(3) "Explosive compound" means any chemical compound,  
 25 mixture, or device the primary or common purpose of which is to

26 function by the substantially instantaneous release of gas and  
 27 heat.

28       (3)~~(4)~~(a) "Fireworks" means and includes any combustible  
 29 or explosive composition or substance or combination of  
 30 substances or, except as hereinafter provided, any article  
 31 prepared for the purpose of producing a visible or audible  
 32 effect by combustion, explosion, deflagration, or detonation.  
 33 The term includes blank cartridges and toy cannons in which  
 34 explosives are used, the type of balloons which require fire  
 35 underneath to propel them, firecrackers, torpedoes, skyrockets,  
 36 roman candles, dago bombs, and any fireworks containing any  
 37 explosives or flammable compound or any tablets or other device  
 38 containing any explosive substance.

39       (b) "Fireworks" does not include sparklers ~~approved by the~~  
 40 ~~division pursuant to s. 791.013~~; toy pistols, toy canes, toy  
 41 guns, or other devices in which paper caps containing twenty-  
 42 five hundredths grains or less of explosive compound are used,  
 43 providing they are so constructed that the hand cannot come in  
 44 contact with the cap when in place for the explosion; and toy  
 45 pistol paper caps which contain less than twenty hundredths  
 46 grains of explosive mixture, the sale and use of which shall be  
 47 permitted at all times.

48       (c) "Fireworks" also does not include the following  
 49 novelties and trick noisemakers:

- 50       1. A snake or glow worm, which is a pressed pellet of not

51 | more than 10 grams of pyrotechnic composition that produces a  
52 | large, snakelike ash which expands in length as the pellet burns  
53 | and that does not contain mercuric thiocyanate.

54 |         2. A smoke device, which is a tube or sphere containing  
55 | not more than 10 grams of pyrotechnic composition that, upon  
56 | burning, produces white or colored smoke as the primary effect.

57 |         3. A trick noisemaker, which is a device that produces a  
58 | small report intended to surprise the user and which includes:

59 |             a. A party popper, which is a small plastic or paper  
60 | device containing not more than 16 milligrams of explosive  
61 | composition that is friction sensitive, which is ignited by  
62 | pulling a string protruding from the device, and which expels a  
63 | paper streamer and produces a small report.

64 |             b. A booby trap, which is a small tube with a string  
65 | protruding from both ends containing not more than 16 milligrams  
66 | of explosive compound, which is ignited by pulling the ends of  
67 | the string, and which produces a small report.

68 |             c. A snapper, which is a small, paper-wrapped device  
69 | containing not more than four milligrams of explosive  
70 | composition coated on small bits of sand, and which, when  
71 | dropped, explodes, producing a small report. A snapper may not  
72 | contain more than 250 milligrams of total sand and explosive  
73 | composition.

74 |             d. A trick match, which is a kitchen or book match which  
75 | is coated with not more than 16 milligrams of explosive or

76 pyrotechnic composition and which, upon ignition, produces a  
 77 small report or shower of sparks.

78 e. A cigarette load, which is a small wooden peg that has  
 79 been coated with not more than 16 milligrams of explosive  
 80 composition and which produces, upon ignition of a cigarette  
 81 containing one of the pegs, a small report.

82 f. An auto burglar alarm, which is a tube which contains  
 83 not more than 10 grams of pyrotechnic composition that produces  
 84 a loud whistle or smoke when ignited and which is ignited by use  
 85 of a squib. A small quantity of explosive, not exceeding 50  
 86 milligrams, may also be used to produce a small report.

87

88 The sale and use of items listed in this paragraph are permitted  
 89 at all times.

90 ~~(5) "Manufacturer" means any person engaged in the~~  
 91 ~~manufacture or construction of sparklers in this state.~~

92 ~~(6) "Retailer" means any person who, at a fixed place of~~  
 93 ~~business, is engaged in selling sparklers to consumers at~~  
 94 ~~retail.~~

95 ~~(7) "Seasonal retailer" means any person engaged in the~~  
 96 ~~business of selling sparklers at retail in this state from June~~  
 97 ~~20 through July 5 and from December 10 through January 2 of each~~  
 98 ~~year.~~

99 (4) ~~(8)~~ "Sparkler" means a device which emits showers of  
 100 sparks upon burning, does not contain any explosive compounds,



101 does not detonate or explode, is handheld or ground based,  
 102 cannot propel itself through the air, and contains not more than  
 103 100 grams of the chemical compound which produces sparks upon  
 104 burning. Any sparkler that is not approved by the division is  
 105 classified as fireworks.

106 ~~(9) "Wholesaler" means any person engaged in the business~~  
 107 ~~of selling sparklers to a retailer.~~

108 Section 3. Section 791.012, Florida Statutes, is amended  
 109 to read:

110 791.012 Minimum fireworks safety standards.—The outdoor  
 111 display of fireworks in this state shall be governed by the  
 112 National Fire Protection Association (NFPA) 1123, Code for  
 113 Fireworks Display, 1995 Edition, approved by the American  
 114 National Standards Institute. Any state, county, or municipal  
 115 law, rule, or ordinance may provide for more stringent  
 116 regulations for the outdoor display of fireworks, but in no  
 117 event may any such law, rule, or ordinance provide for less  
 118 stringent regulations for the outdoor display of fireworks. The  
 119 division shall promulgate rules to carry out the provisions of  
 120 this section. The Code for Fireworks Display shall not govern  
 121 the display of any fireworks on private, residential property  
 122 and shall not govern the display of those items included under  
 123 s. 791.01(3)(b) and (c) ~~s. 791.01(4)(b) and (c)~~ and authorized  
 124 for sale thereunder.

125 Section 4. Section 791.04, Florida Statutes, is amended to

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read:  
     791.04 Exemptions ~~Sale at wholesale, etc., exempted.-~~  
 Nothing in this chapter shall be construed to ~~prohibit any~~  
~~manufacturer, distributor, or wholesaler who has registered with~~  
~~the division pursuant to s. 791.015 to sell at wholesale such~~  
~~fireworks as are not herein prohibited; to prohibit the sale of~~  
~~any kind of fireworks at wholesale between manufacturers,~~  
~~distributors, and wholesalers who have registered with the~~  
~~division pursuant to s. 791.015; to prohibit the sale of any~~  
~~kind of fireworks provided the same are to be shipped directly~~  
~~out of state by such manufacturer, distributor, or wholesaler;~~  
~~to prohibit the sale of fireworks to be used by a person holding~~  
~~a permit from any board of county commissioners at the display~~  
~~covered by such permit; or to prohibit the use of fireworks by~~  
 railroads or other transportation agencies for signal purposes  
 or illumination or when used in quarrying or for blasting or  
 other industrial use, or the sale or use of blank cartridges for  
 a show or theater, or for signal or ceremonial purposes in  
 athletics or sports, or for use by military organizations, or  
 organizations composed of the Armed Forces of the United States;  
 provided, nothing in this chapter shall be construed as barring  
 the operations of manufacturers, duly licensed, from  
 manufacturing, experimenting, exploding, and storing such  
 fireworks in their compounds or proving grounds.  
     Section 5. This act shall take effect upon becoming a law.