

## **PROFESSIONS**

### **CS/SB 1012 — Professions Regulated by DBPR**

by Regulated Industries Committee and Senator Argenziano

This bill amends s. 455.271, F.S., to establish a procedure for reinstatement of professional licenses issued by the Department of Business and Professional Regulation, or any of the professional boards within the department that have become void. The department or board, at its discretion, may reinstate the license if an individual who, because of illness or unusual hardship, has failed to comply with the renewal requirements, but has made a good-faith effort to comply with requirements for reinstatement of a delinquent license. The bill exempts certified public accountants.

This bill provides the boards and the department with rulemaking authority to prescribe the procedure for applying for reinstatement, including the setting of the applicable reinstatement fee. In addition, an applicant for reinstatement must meet all continuing education requirements prescribed by law, and must be otherwise eligible for renewal of licensure.

If approved by the Governor, these provisions take effect July 1, 2005.

*Vote: Senate 39-0; House 113-0*

### **CS/CS/CS/SB 1784 — Professional Services Acquisition**

by General Government Appropriations Committee; Governmental Oversight and Productivity Committee; Regulated Industries Committee; and Senators Clary and Crist

The bill amends the Consultants' Competitive Negotiations Act (CCNA) in s. 287.055, F.S., to revise certain definitions for acquisition of the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper.

The bill amends the definition of "compensation" to provide that the term means the amount, instead of the total amount, paid by the agency for the professional services regardless of whether stated as compensation or stated as hourly rates, overhead rates, or other figures or formulas from which compensation can be calculated. It amends the definition of "continuing contract" to provide that firms providing professional services under continuing contracts shall not be required to bid against one another.

The bill defines the term "negotiate" to mean to conduct legitimate, arms length discussions and conferences to reach an agreement on a term or price. It excludes from this definition the presentation of flat-fee schedules with no alternative or discussion. The bill amends the bid

selection process to require that each agency provide a good faith estimate in determining whether the proposed activity meets the threshold amounts in the CCNA.

The bill requires that, if an agency is using a non-negotiation procurement process and the average compensation proposed by the firms is in excess of the appropriate threshold amount proposed by the act, then the agency must reject all proposals and reinitiate the procurement pursuant to the CCNA.

The bill also amends s. 287.17(6), F.S., relating to the use of state vehicles and aircraft, to permit the spouse and immediate family members of designated state officials to accompany a state official, with the payment of transportation costs, when traveling by aircraft for official state business and the aircraft has available seats.

If approved by the Governor, these provisions take effect July 1, 2005.

*Vote: Senate 40-0; House 116-2*

### **HB 213 — Construction Professions**

by Rep. Evers and others (SB 792 by Senators Haridopolos and Crist and CS/SB 1608 by Regulated Industries Committee and Senators Clary, Diaz de la Portilla, Crist, and Bennett)

The bill (Chapter 2005-30, L.O.F.) provides the Department of Business and Professional Regulation's Board of Architecture and Interior Design and Board of Landscape Architecture with the authority to prescribe by rule the authority to electronically sign, seal, or send the final plans, specifications, or reports prepared or issued by a registered architect, interior designer, and landscape architect. The bill makes it unlawful to sign and seal any final plan, specification, or report if the certificate of registration is expired, suspended, or revoked.

The bill provides that persons who perform the work of servicing, repairing, recharging, hydrotesting, installing, or inspecting all types of pre-engineered fire extinguishing systems are exempt from regulation under Part I of ch. 489, F.S.

The bill also amends the definitions of the terms "class A air conditioning contractor" and "class B air conditioning contractor" to allow them to disconnect or reconnect liquefied petroleum or natural gas appliances. The definition of "mechanical contractors" is also amended to allow them to perform work relating to liquefied petroleum gas lines within buildings and the definition of "plumbing contractors" is amended to allow for the installation of liquefied petroleum gas and related venting lines.

These provisions were approved by the Governor and take effect July 1, 2005.

*Vote: Senate 40-0; House 113-0*

## **HB 315 — Building Remediation and Assessment**

by Rep. Allen and others (CS/SB 1830 by Regulated Industries Committee and Senators Argenziano and Crist)

This bill creates ss. 501.933 and 501.934, F.S. to provide requirements for mold assessors and mold remediators and s. 501.935, F.S., to provide requirements for home inspectors.

### **Home Inspectors**

It provides that home inspectors are not regulated by any state agency, but violations of the section may be actionable as an unfair and deceptive trade practice under ch. 501, part II, F.S.

It provides for:

- Exemptions to the section for certain licensed and regulated professionals.
- Criminal penalties for certain violations of the section.
- A requirement to maintain commercial general liability insurance in the amount not less than \$300,000.

The statute of limitations as provided in ch. 95, F.S., governs actions to enforce an obligation, duty, or right arising under the section.

It provides that home inspectors are not required to provide estimates related to the cost of repair of an inspected property.

### **Mold Assessment and Mold Remediation**

The bill creates ss. 501.933 and 501.934, F.S., to require certification in mold assessment or mold remediation, depending on the field in which a person or business practices. This certification requirement may come from a nonprofit organization that focuses on indoor air quality or industrial hygiene or from a community college or university that provides training or education in mold assessment or mold remediation. Provisions for noncontracting mold remediation allow for the removal, cleaning, sanitizing, demolition, or other treatment of mold as long as the work does not require a license under ch. 489, F.S., relating to construction and other contracting.

Exemptions to the certification requirement are provided to specified groups. These groups include residential property owners, an owner or tenant, or a managing agent or employee of an owner or tenant, who performs mold assessment on the owned or leased property, an employee of a licensee who is under the direct supervision of the mold assessor performs mold assessment or remediation. The bill also exempts engineers, architects, interior designers, landscape

architects Division I and Division II contractors licensed under ch. 489, F.S., insurance adjusters, and individuals in the manufactured housing industry who are licensed under ch. 320, F.S. The bill also exempts authorized employees of the United States, state, city and county governments performing mold assessment or mold remediation within the scope of their employment.

Mold assessors are required to maintain a mold-specific insurance policy not less than \$1 million, and noncontracting mold remediators are required to maintain a liability insurance policy with a mold pollution rider not less than \$1 million.

The bill also provides civil and criminal penalties for violations of the provisions relating to mold assessment and mold remediation.

If approved by the Governor, these provisions take effect January 1, 2006.

*Vote: Senate 39-0; House 115-2*

### **HB 699 — Architecture, Landscape Architecture, and Interior Design**

by Rep. Altman and others (CS/SB 1608 by Regulated Industries Committee and Senators Clary, Diaz de la Portilla, Crist, and Bennett)

The bill expands the authority to practice architecture or interior design by licensees through a corporation or partnership to include limited liability companies. The bill corrects cross-references to include limited liability companies throughout the bill.

The bill requires the qualifier of a corporation, partnership, or limited liability company to assure responsible supervising control of projects by specifying that any registered architect or interior designer who qualifies the corporation, limited liability company, or partnership is responsible for ensuring responsible supervising control of the entity's projects.

The bill authorizes the Board of Architecture and Interior Design and the Board of Landscape Architecture to adopt rules to allow respective practitioners to electronically sign and seal plans and documents. The changes track current authorization language for engineers, surveyors, and mappers. It authorizes architects and interior designers to transmit final plans, specifications and reports electronically.

The bill authorizes the Board of Architecture and Interior Design to adopt rules to specify that an architect commits an act subject to disciplinary proceedings if the architect allows the preparation of any architectural studies, plans, or other instruments of service in an office where a full-time Florida registered architect is not assigned or fails to ensure the responsible supervising control of services or projects.

The bill requires architects, interior designers, and landscape architects to surrender their seal within 30 days after the effective date of any suspension or revocation to their certification or registration.

If approved by the Governor, these provisions take effect upon becoming law.

*Vote: Senate 37-0; House 116-0*

## **HB 1417 — Land Surveying and Mapping**

by Rep. Murzin and others (CS/SB 2050 by Judiciary Committee and Senators Aronberg and Wilson)

The bill provides that an applicant shall be entitled to take the licensure examination if the applicant received a degree in surveying and mapping of four years or more in a surveying and mapping degree program from a college or university recognized by the board. The applicant must also have a specific experience record of four or more years as a subordinate to a professional surveyor and mapper in the active practice of surveying and mapping.

It requires surveyors and mappers taking the licensure exam in Florida to complete a minimum of 25 semester hours from a college or university approved by the Board of Professional Surveyors and Mappers (board).

It allows photogrammetrists (surveyors who make maps from aerial photographs) to qualify for licensure as a surveyor and mapper in Florida if they meet certain educational criteria approved by the board. It requires that the applicant must have applied to the Department of Business and Professional Regulation (department) for licensure on or before July 1, 2007.

It revises liability of surveyor and mapper partnership and partners providing that they shall be jointly and severally liable for the negligence, misconduct, or wrongful acts committed by their agents, employees, or partners while acting in a professional capacity.

It provides that business entities other than a partnership shall be personally liable and accountable only for negligent acts, wrongful acts, or misconduct committed by an employee under their direct supervision and control while rendering professional services on behalf of the business organization.

It provides that the personal liability of a shareholder or owner of a business organization, in their capacity as a shareholder or owner, shall be no greater than that of a shareholder-employee of a corporation.

It provides that a business organization shall be liable up to the full value of its property for any negligent acts, wrongful acts, or misconduct committed by any of its officers, agents, or employees while they are engaged on its behalf in the rendering of professional services.

It deletes the provision that a corporation and stockholders, who are surveyors and mappers, or partnerships, and all partners, shall be jointly and severally liable for the negligence, misconduct, or wrongful acts committed by their agents, employees, officers, or partners while acting in a professional capacity.

It conforms the chapter terminology to “photogrammetrist,” which is the latest terminology for a photogrammetric mapper.

If approved by the Governor, these provisions take effect July 1, 2005.

*Vote: Senate 38-0; House 115-0*

## **ALCOHOLIC BEVERAGES AND TOBACCO**

### **CS/CS/SB 1114 — Restaurants/Resealed Wine Containers**

by Transportation Committee; Regulated Industries Committee; and Senator King

The bill provides that restaurants licensed to sell wine on the premises may permit a restaurant’s patrons to remove one unsealed bottle of wine for consumption off the licensed premises, provided the patron purchased a full-course meal and consumed a portion of the bottle of wine with the meal.

The bill defines a full course meal as consisting of a salad or vegetable, entrée, a beverage, and bread. The bill would require that the partially consumed bottle of wine must be securely resealed by the licensee, or the licensee’s employee, and placed in a bag or other container secured in such a manner that it is visibly apparent if the container has been opened or tampered with after having been sealed. A dated receipt for the wine and meal must be attached to the container. If transported in a motor vehicle, the container must be placed in a locked glove compartment, locked trunk, or in the area behind the last upright seat of a motor vehicle that is not equipped with a trunk.

The bill also amends s. 316.1936, F.S., to clarify that a resealed wine container in a motor vehicle is not an open container if the partially consumed bottle of wine is resealed and transported in the manner required by the bill.

If approved by the Governor, these provisions take effect July 1, 2005.

*Vote: Senate 38-1; House 112-4*

## **CS/CS/SB 1348 — Indoor Smoking Places**

by Commerce and Consumer Services Committee; Regulated Industries Committee; and Senator Geller

The bill amends provisions of the Florida Clean Indoor Air Act (Act), which implements the tobacco smoking ban in s. 20, Art. X, Florida Constitution. It permits a stand-alone bar that is located in a building that is individually listed on the National Register of Historic Places (NRHP) to qualify for the stand-alone bar exception to the smoking ban in the Act if the business derives no more than 20 percent of its gross revenue from the sale of food for consumption on the premises. However, to qualify for the exception, the stand-alone bar must have submitted a completed application to the Department of State on or before 90 days after the effective date of this act to be listed in the NRHP.

The bill also requires that all stand-alone bars, to maintain a designation as a stand-alone bar, cannot offer a children's menu or include in the menu items or food portion sizes that are identified as being specifically for children.

The bill provides that a proprietor or other person in charge of an enclosed indoor workplace may not permit another person to smoke in the workplace. It defines the term "person" to have the same meaning as in the rule of statutory construction in s. 1.01, F.S. The bill applies the penalty provisions for stand-alone bars to alcoholic beverage vendors who permit smoking in alcoholic beverage licensed establishments. Under current law these penalties only apply to alcoholic beverage vendors who have received a stand-alone bar designation from the Division of Alcoholic Beverages and Tobacco (DABT or division) within the Department of Business and Professional Regulation.

The bill also provides that a law enforcement officer may issue a citation to any person who violates the provisions of the Act. The bill specifies the minimum information that a citation must contain. The bill provides that if any person refuses to comply with a proprietor's request to stop smoking, a law enforcement officer may remove the violator from the premises.

The bill provides that an alcoholic beverage licensee is subject to revocation or suspension of its alcoholic beverage license under s. 561.29, F.S., if the licensee knowingly makes a false statement on the annual affidavit required by s. 561.695, F.S. It also repeals the requirement that designated stand-alone bars must file with DABT an agreed upon procedures report signed by a certified public accountant every three years after their initial designation.

The bill also deletes subsection (1) of s. 386.206, F.S., which expires on July 1, 2005, that requires that any person in charge of an enclosed indoor workplace who was required before the adoption of the smoking ban in the State Constitution to conspicuously post a sign wherever smoking is permitted.

If approved by the Governor, these provisions take effect July 1, 2005.

*Vote: Senate 27-10; House 60-50*

## **HB 205 — Contraband and Counterfeit Cigarettes**

by Rep. Altman and others (CS/CS/SB 816 by General Government Appropriations Committee; Regulated Industries Committee; and Senators Haridopolos, Dockery, Lynn, and Posey)

The bill requires that manufacturers and importers of cigarettes must obtain a permit from the Division of Alcoholic Beverages and Tobacco (division), within the Department of Business and Professional Regulation (DBPR or department). A separate permit would be required for each place of business in Florida of a manufacturer, importer, exporter, distributing agent, and wholesaler.

The bill requires that all persons shipping unstamped cigarettes into the state must file a notice of shipment with the division, unless the cigarettes are shipped to a wholesale dealer or importer holding a current, valid permit, or the shipper uses electronic shipping documents in its ordinary course of business. The bill requires wholesale dealers in Florida to affix tax stamps to cigarette packages within ten days after receipt of the cigarettes and requires out-of-state dealers to affix the stamps before making a shipment of the cigarettes into Florida.

The bill requires that a manufacturer, importer, or distributing agent representing a manufacturer or importer may only sell or distribute cigarettes to licensed wholesale dealers and importers. It provides that a distributing agent may only accept cigarettes from a manufacturer or importer with a valid, current permit for transfer to a dealer with a valid, current permit, and prohibits a distributing agent from owning or selling cigarettes.

The bill limits a wholesale dealer to obtaining cigarettes from a manufacturer, importer, distributing agent, or dealer with a valid, current permit, and limits a wholesale dealer to selling or distributing cigarettes only to other wholesalers or to retail dealers with a valid, current permit. It also limits retailers to receiving cigarettes only from a wholesale dealer with a valid, current permit.

The bill prohibits any person from possessing unstamped cigarettes, except under certain circumstances, and requires that wholesale dealers store unstamped cigarettes separately from stamped cigarettes. The bill extends the division's authority to seize and forfeit cigarettes without tax stamps, and permits the division, under certain circumstances, to seize and forfeit the fixtures, equipment, and other personal property of a wholesale dealer or retail dealer violating the cigarette tax laws. It requires that the division destroy the confiscated cigarettes.

The bill allows the division or any law enforcement officer to stop and search a vehicle for contraband cigarettes if there is probable cause to believe that the vehicle is illegally transporting cigarettes. The bill also enhances and broadens the application of criminal penalties for

violations of the cigarette tax law and authorizes additional civil penalties. The bill requires that state law enforcement officers report the seizure of unstamped cigarettes to the division. It requires that the division maintain records of the number of seizures and number of seized cigarettes.

The bill requires that a dealer or agent must remit the cigarette taxes imposed by ch. 210, F.S., by certified check or electronic funds transfer during the dealer or agent's initial period of licensure or appointment, but not to exceed 12 months. The bill authorizes the division to adopt rules to administer this provision. The bill sets the amount for the surety bond, certificate of deposit, or revocable letter of credit that must be filed with the division for payment of taxes at 110 percent of the estimated tax liability for 30 days, but not less than \$2000.

If approved by the Governor, these provisions take effect October 1, 2005.

*Vote: Senate 38-0; House 113-2*

## **LIENS**

### **HB 113 — Construction Contracting**

by Rep. Dean and others (CS/CS/SB 1016 by Government Oversight and Productivity Committee; Regulated Industries Committee; and Senator Argenziano)

The bill provides substantive and technical revisions to the state's construction lien law. Specifically, the bill provides the following revisions:

- Makes a payment bond for a public works project unenforceable if it restricts the classes or persons as defined in s. 713.01, F.S., protected by a construction bond or restricts the venue of any proceeding related to the bond.
- Increases the maximum administrative fine for violations that the Construction Industry Licensing Board and the Electrical Contractors' Licensing Board may assess a licensee from \$5,000 to \$10,000.
- Reduces the type size for new residential construction contract lien warnings from 18 to 14 point and clarifies the rights associated with the notice.
- Copies unlicensed contracting provisions under ch. 489, F.S., to ch. 713, F.S., to preserve the lien rights of suppliers and other properly licensed subcontractors on the same project.
- Extends a proper payment defense to owners who contract for subdivision improvements and addresses service of notice required for subcontractors and suppliers to preserve their lien rights.

- Requires lien service on the property owner.
- Allows building departments to utilize email, facsimile, or personal delivery for required service of lien information.
- Provides clarification of time period in which to commence an action to enforce a claim against a payment bond.
- Clarifies provisions relating to lien transfer bonds.
- Provides that circuit court jurisdiction to hear lien law cases is not exclusive where the dollar amount would allow a county court to hear the case.
- Restructures the penalty provisions for misapplication of construction funds.
- Clarifies notice procedure for lenders who are required to serve a notice to an owner when the lender disburses funds to the owner.

If approved by the Governor, these provisions take effect October 1, 2005.

*Vote: Senate 39-0; House 115-0*

### **HB 1459 — Commercial Real Estate Liens**

by Rep. Brown and others (CS/SB 2036 by Regulated Industries Committee and Senators Posey and Klein)

The bill creates parts III and IV of ch. 475, F.S., to create the “Commercial Real Estate Sales Lien Act” and the “Commercial Real Estate Leasing Commission Lien Act,” respectively.

The Commercial Real Estate Sales Lien Act creates a lien for a broker’s commission upon the real estate owner’s net proceeds from the disposition of commercial real estate. This lien does not attach to the any interest in the real property.

The “Commercial Real Estate Leasing Commission Lien Act,” creates a lien for a broker’s commission upon the real estate owner’s interest in commercial real estate for any commission earned by the broker pursuant to a brokerage agreement with respect to a lease on commercial real estate.

The bill requires that the broker disclose the lien at or before the owner executes the brokerage agreement for sale or lease of commercial real estate. The broker may not enforce a lien for a commission unless the disclosure is made. The bill provides the form for the sales and leasing commission disclosures.

The broker is also required to provide the owner of the commercial real estate with a notice that states the amount of the claimed sales or leasing commission. This notice must be signed and sworn to or affirmed by the broker under penalty of perjury before a notary public. The bill also specifies the information that must be contained in the notice and the statements that must be provided in the notice. The bill also provides a form for the required commission notice.

The Commercial Real Estate Sales Commission Lien Act also provides:

- That the broker may record the commission notice in the county or counties where the commercial real estate is located.
- A notice of a real estate sales commission expires one year after the date of recording, unless a one-year extension is filed within the last sixty days before expiration.
- The closing agent must reserve from the owner's net proceeds an amount equal to the commission claimed by the broker in the commission notice.
- The closing agent is required to seek adjudication of the rights of the parties with respect to disputed proceeds held in escrow, and may reserve any costs incurred, including attorney's fees.
- The broker or owner may file a civil action in the county or circuit court if there is a dispute over the commission.
- A prevailing party of such a court action is entitled to costs and reasonable attorneys' fees of the owner and the closing agent.
- A buyer's broker is not entitled to a lien against the owner's net proceeds, unless a contract provides for a buyer's broker to receive a fee.

The Commercial Real Estate Leasing Commission Lien Act also provides:

- If the commission is to be paid in installments, the lien notice is valid only to the extent that any commission remains unpaid to the broker.
- A lien expires two years after recording unless the broker commences a foreclosure action.
- If the broker claims an automatic renewal commission, then the lien notice expires ten years after recording unless the broker commences a foreclosure action. The lien notice may be extended for successive 10-year periods. However, an owner may attempt to shorten the time by filing a notice of contest of the broker's lien.

- A broker may enforce a lien for a leasing commission through a foreclosure suit in the same manner as if the lien notice were a mortgage recorded against the commercial real estate.
- If an owner disputes the commission, then the owner may file a civil action to discharge the lien.
- The prevailing party in a foreclosure or civil action is entitled to costs and reasonable attorney's fees.
- A lien that has been recorded may be transferred to a security by filing a sum with the clerk of the court or filing a bond with the clerk in an amount equal to the amount claimed and a certain sum to cover attorneys' fees.
- An owner may also subordinate, with or without the broker's consent, a lien claimed by the broker for an automatic renewal commission in favor of the holder of a subsequent mortgage.

If approved by the Governor, these provisions take effect October 1, 2005.

*Vote: Senate 38-0; House 115-0*

## **GAMING**

### **HB 181 — Pari-mutuel Permitholders**

by Rep. Cretul (SB 342 by Senator Argenziano)

The bill revises the definition of "full schedule of live racing or games" by reducing the number of required live performances from 100 to 40 for any jai alai permitholder whose total wagers received was less than \$4 million per year for at least two consecutive years. A jai alai permitholder who conducts slot machine gambling at its facility must conduct a combination of at least 150 live performances during the preceding year.

The bill requires those jai alai permitholders conducting fewer than 100 live performances in any calendar year to pay the state the same aggregate amount of daily license fees on live jai alai games, admissions tax, and tax on live handle as that permitholder paid to the state during the most recent prior calendar year in which the jai alai permitholder conducted at least 100 live performances.

This bill deletes the provision that permitted an extraordinary vote of the board of county commissioners in a county to allow quarter horse racing.

It prohibits thoroughbred racing from being substituted at a quarter horse permitholder track. But it allows for the substitution of races of thoroughbreds registered with the Jockey Club for no more than 50 percent of the quarter horse races daily as long as written consent is given by the greyhound, harness, and thoroughbred permitholder whose facilities are located within 50 air miles of the quarter horse facility.

It deletes the prohibition for thoroughbred racing at quarter horse tracks from September 1 through January 5 of each year in any county where there are one or more licensed dog tracks conducting race meets.

It provides that in order for a quarter horse permitholder to conduct intertrack wagering, written consent must be given by all greyhound, harness, and thoroughbred permitholders within 50 air miles of the quarter horse facility. The bill deletes the current provision that provides intertrack wagering can take place within 50 miles of an existing greyhound track as long as the quarter horse permitholder has incurred a minimum capital expenditure of at least \$7.5 million.

It deletes the provision that cardroom licenses are not transferable. It provides that no referendum is needed for relocation of a cardroom license for a permitholder that has relocated its license under ch. 550, F.S.

If approved by the Governor, these provisions take effect July 1, 2005.

*Vote: Senate 34-6; House 99-12*

### **HB 841 — State Lottery**

by Rep. Attkisson and others (CS/SB 482 by Government Efficiency Appropriations Committee and Senators Clary, Lynn, and Crist)

The bill directs 80 percent of all unclaimed lottery prize money from lottery games to be deposited in the Educational Enhancement Trust Fund (EETF), and provides that the remaining 20 percent will be added to the prize pool to provide for future prizes or special prize promotions. Currently, all unclaimed prize money from on-line games is added to the prize pool to provide for future prizes or special prize promotions.

The bill authorizes the Department of Lottery (department) to establish variable percentages for on-line games prize payouts and transfers to the EETF. Currently, as nearly as practical, at least 50 percent is returned to the public in the form of prizes and at least 39 percent of the gross revenue from on-line ticket sales is deposited in the EETF. The department was given authority in 2002 to establish variable percentages for instant ticket prize payouts and EETF transfers and that change has been credited with doubling instant ticket sales.

If approved by the Governor, these provisions take effect July 1, 2005.

*Vote: Senate 38-0; House 116-0*

## **CONDOMINIUMS AND MOBILE HOMES**

### **HB 291 — Condominiums/Administration Board**

by Rep. Evers and others (CS/SB 1492 by Regulated Industries Committee and Senator Clary)

The bill provides that prior to the developer relinquishing control of the association, actions taken by condominium association board members appointed by the developer are considered actions of the developer, and the developer is responsible to the association and its members for all such actions. Further, the bill requires that any claim by an association against a developer that alleges certain defects, such as design or construction defects, must be examined and certified by an appropriately licensed professional, such as an engineer or architect.

If approved by the Governor, these provisions take effect July 1, 2005.

*Vote: Senate 40-0; House 116-0*

### **HB 565 — Mobile Homes**

by Rep. Farkas and others (CS/SB 1124 by Regulated Industries Committee and Senators Haridopolos, Fasano, Lynn, and Posey)

The bill states that the requirement for the committee, which is already established under law, to disclose rents charged by comparable parks is to encourage a dialogue concerning the reasons for the rent increase and to encourage the home owners to evaluate and discuss the reasons with the park owner. The bill specifies as an additional statutory purpose and intent that the current provisions are not intended to be enforced by civil or administrative action and that the meetings are intended to be conducted as settlement discussions prior to mediation or litigation. The bill specifically allows the park owner and the home owners to exchange new or additional information during the discussion process or to change positions relating to the rent increase. However, it prohibits the park owner and home owners from changing any information that was initially provided at the meetings.

The bill prohibits compensation to be paid out of the Mobile Home Relocation Trust Fund to a home owner who is under an eviction action for nonpayment of rent. The action for nonpayment of rent must have been initiated by the park owner prior to issuing the notice of intent to change the use of the mobile home park. The bill allows for the payment of reasonable attorney's fees and costs to the prevailing party in an action to enforce payment from the Mobile Home Relocation Trust Fund.

The bill designates the Florida Mobile Home Relocation Corporation as an agency of the state and employees and directors as officers, employees, or agents of the state for purposes of the application of sovereign immunity provisions.

If approved by the Governor, these provisions take effect upon becoming law.

*Vote: Senate 38-0; House 114-0*

## **FUNERAL AND CEMETERY**

### **HB 529 — Funeral and Cemetery Industry**

by Rep. Kreegel and others (CS/CS/CS/SB 2346 by Criminal Justice Committee; Banking and Insurance Committee; Regulated Industries Committee; and Senator Haridopolos)

The bill amends ch. 497, F.S., as amended by ch. 2004-301, L.O.F., relating to the funeral and cemetery industry. Chapter 2004-301, L.O.F., created the Board of Funeral, Cemetery and Consumer Services (board) within the Department of Financial Services to enforce the provisions of ch. 497, F.S., which relates to the regulation of funeral directors, embalming, cremation, cemeteries, cremation services, cemetery companies, and preneed contracts for funeral merchandise or services. Chapter 2004-301, L.O.F., and this bill have an effective date of October 1, 2005.

The bill provides the following changes to ch. 497, F.S.:

- It creates the monument builder and monument dealer licensure categories.
- It provides that the monument establishment representative on the board shall be a licensed monument builder.
- It conforms the fingerprint, criminal records and application signature requirements across licensees.
- It differentiates the application and renewal fees for monument establishments based on whether they have preneed licenses.
- It requires certain disclosure of consumer information by preneed licensees.
- It revises the requirements for the identification of human remains.
- It clarifies requirements for notices of change in ownership or location of licensees.
- It authorizes rulemaking by the department or licensing authority with respect to many areas of regulation, including applications, criminal background checks and fingerprint

cards, inspections, license fees, the identification of human remains, the investment of trust funds, preneed licensee net worth requirements, and chemical cremation.

- It increases the maximum amount of the renewal fee for a funeral director, embalmer, and direct disposer license from \$250 to \$500, and increases the maximum amount of the renewal fee for a funeral establishment, and each branch licensee of a preneed licensee from \$300 to \$500.
- It provides for licensure and appointment of preneed licensees and sales agents.
- It authorizes a \$10,000 penalty for violations of ch. 497, F.S., by unlicensed persons and creates authority for a fee of up to \$250 for the renewal of monument establishment sales agents.

The bill requires that all non-law enforcement funeral escort vehicles and funeral lead vehicles to be equipped with at least one circulating lamp of amber or purple light, which may only be used in a funeral procession.

The bill also increases the policy coverage limit from \$7,500 to \$12,500 for insurance policies that funeral directors, direct disposers, or employees of a funeral establishment may sell.

If approved by the Governor, these provisions take effect October 1, 2005.

*Vote: Senate 38-0; House 118-0*

## **HB 1469 — Funeral, Cemetery, and Consumer Services**

by Rep. Kreegel and others (CS/SB 2344 by Government Oversight and Productivity Committee and Senator Haridopolos)

In 2004, the Legislature enacted the Florida Funeral, Cemetery, and Consumer Services Act (act), effective October 1, 2005. (Ch. 2004-301, L.O.F.) This act merged funeral and cemetery regulation by the Board of Funeral and Cemetery Services within the Department of Financial Services (DFS) and the Board of Funeral Directors and Embalmers within the Department of Business and Professional Regulation into one board, the Board of Funeral, Cemetery, and Consumer Services (board). The act also establishes the Division of Funeral, Cemetery, and Consumer Services. The act consolidated the regulation of the Funeral and Cemetery industries into ch. 497, F.S.

This bill provides the new board and the department with public records or meeting exemptions. The bill makes exempt from s. 286.011, F.S., and s. 24(b), Art. I, State Constitution, those portions of meetings of the board at which licensure examination questions or answers under the chapter are discussed. Further, it exempts meetings of the probable cause panel of the board

pursuant to s. 497.153, F.S., and records of those panel meetings until 10 days after a determination regarding probable cause is made.

Further, the bill makes information held by the department pursuant to a financial examination or an inspection confidential and exempt from s. 119.07(1), F.S., and s. 24(b), Art. I, State Constitution, until the examination or inspection is completed or ceases to be active. The bill also makes information held pursuant to an investigation confidential and exempt until the investigation is completed or ceases to be active or until 10 days after a determination regarding probable cause is made.

The bill provides exceptions that permit the DFS to share confidential information with a law enforcement agency or other government agency to further an investigation of matters within its jurisdiction. The bill also exempts information from disclosure if the disclosure would jeopardize the integrity of another active investigation or examination, if disclosure would reveal the identity of a confidential source, or if disclosure would reveal investigative or examination techniques or procedures that the department has a reasonable good-faith belief will be used in future investigations or examinations.

The bill provides for review and repeal of the exemption on October 2, 2010, and provides a statement of public necessity.

If approved by the Governor, these provisions take effect October 1, 2005.

*Vote: Senate 39-0; House 79-39*