

The Soto Law Group, Coastal Tower, Suite 400, 2400 East Commercial Boulevard, Fort Lauderdale, Florida 33308
www.sotolawgroup.com oscar@sotolawgroup.com (954) 567-1776

LEGAL INFORMATION FOR THE CONSTRUCTION INDUSTRY

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2008 Florida Legislative Update

The following bills were passed during the 2008 Legislative Session that ended Friday, May 2, 2008.

- **Building Standards, CS/HB 697:** This bill makes several revisions to the Florida Building Code and implements recommendations of the Florida Energy Commission.

Energy Provisions:

Condominiums - The bill provides that deed restrictions, covenants, declarations, or similar binding agreements may not prohibit solar collectors or other energy devices based on renewable resources from being installed on buildings covered by such restrictions, covenants, declarations or agreements. The owner of a condominium unit may not be denied permission to install renewable energy resources within the boundaries of the unit.

Florida Building Code and Florida Energy Efficiency Code for Building Construction - The bill provides that the Florida Building Commission (commission) must select the most current version of the International Energy Conservation Code (IECC) as a foundation code so long as the IECC is modified by the commission to maintain the efficiencies of the Florida Energy Efficiency Code for Building Construction adopted and amended pursuant to s. 553.901, F.S.

Florida Building Code Provisions:

Roofing contractor - The bill amends the definition of "roofing contractor" in s. 489.105, F.S., to provide that the scope of work of a roofing contractor also includes the required roof-deck attachments and any repair or replacement of wood roof sheathing or fascia as needed during roof repair or replacement.

Windstorm loss mitigation - The bill provides that the criteria developed and adopted by the commission relating to secondary water barriers may not be limited to one method or material.

Carbon monoxide alarms - The bill provides that for a new hospital, an inpatient hospice facility, or a nursing home facility, an approved operational carbon monoxide detector must be installed inside or directly outside of each room or area within the hospital or facility where a fossil-fuel burning heater, engine, or appliance is located. The detector must be connected to the fire-alarm system of the hospital or facility as a supervisory signal.



Subject to Governor's veto powers, effective date July 1, 2008.

- **Educational Facilities Construction, CS/CS/SB 1276:** The bill increases the threshold for day-labor contracts from \$200,000 to \$280,000 for the construction, renovation, remodeling, or maintenance of educational facilities and requires, beginning January 2009, that the amount shall be adjusted annually based upon changes in the Consumer Price Index. This provision applies to district school boards, community college boards of trustees, university boards of trustees, and the Board of Trustees for the Florida School for the Deaf and the Blind.

Subject to the Governor's veto powers, effective date July 1, 2008.

- **Homeowners' Associations/Lien Claims, SB 1986:** The bill provides that the lien of a homeowners' association has priority as of the date of the filing of the covenants and restrictions. However, the lien of the association is subordinate to that of a first mortgage that was recorded prior to the filing of a notice of lien.

Some key provisions of the bill are as follows:

- The bill provides a form to record a notice requiring a homeowners' association to enforce a recorded claim of lien against a parcel within 90 days or the lien is void.
- Homeowners' associations are authorized to bring an action to foreclose a lien for assessments and to recover a money judgment for unpaid assessments, including reasonable attorney's fees.
- A court may order a parcel owner, who remains in possession following a foreclosure judgment, to pay a reasonable rent.
- A homeowner's association is entitled to the appointment of a receiver to collect the rent during the pendency of a foreclosure proceeding.
- This bill limits the liability of a first mortgagee, or its successor or assignee, for unpaid homeowner's association assessments when title to a parcel is acquired by foreclosure or a deed

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- It clarifies there is a 45-day window after the notice or demand for unpaid assessments is mailed for a parcel owner to pay in full and an additional 45 days must follow an association's notice of its intent to foreclose and collect the unpaid amount.

Subject to Governor's veto powers, these provisions take effect July 1, 2008.

- **Underground Utilities/Excavations and Demolitions, CS/SB 794:** The bill amends s. 556.105, F.S., to prohibit an excavator or an underground facilities operator from charging expenses associated with compliance with the Florida One-Call notice requirements after the effective date of the act. It also provides that this prohibition does not excuse a facilities operator or excavator from liability for any damage or injury for which it would be responsible under applicable law.
- **Secondary Metals Recyclers, CS/CS/HB 105:** The bill amends ch. 538, F.S., to address the regulation of Secondary Metals Recyclers in the following ways:
 - Expands the types of transaction records secondary metals recyclers must maintain, to include detailed descriptions of and related personal information from persons from whom metals were acquired with exceptions;

If approved by the Governor, these provisions take effect October 1, 2008

- **Theft of Copper or Other Nonferrous Metals, CS/HB 799:** The bill creates s. 812.145, F.S., to make it a first degree felony for a person to knowingly and intentionally take copper or other nonferrous metals from a utility or communications services provider (as defined in the bill), and thereby:
 - Cause damage to the facilities of a utility or communications services provider,
 - Interrupt or interfere with communications services or utility service, or
 - Interfere with the ability of a utility or communications services provider to provide service.

If approved by the Governor, these provisions take effect October 1, 2008.

- **Firesafety/Structure Markings, CS/HB 727:** This bill provides that the act may be cited as the "Aldridge/Benge Firefighter Safety Act."

Some key provisions of the bill are as follows:

- Requires that structures using light-frame truss-type construction must be marked to warn persons conducting fire control and other emergency operations of the existence of such construction, due to danger of collapse.
- The State Fire Marshal is provided with rulemaking authority, and local fire officials and the State Fire Marshal are authorized to enforce the signage provision.

If approved by the Governor, these provisions take effect July 1, 2008.

- **Foreclosure Fraud, CS/HB 643:** With the increasing

allegedly designed to rescue or save a homeowner from foreclosure. Unscrupulous businesses have targeted and defrauded homeowners of the equity in their homes. Often the specific details of these arrangements are not explained or adequately disclosed to the homeowner. The bill provides additional protections to such homeowners facing foreclosure. The bill defines and addresses transactions involving foreclosure-rescue consultants and equity purchasers-two of the main types of foreclosure-rescue schemes.

Approved by the Governor, the above provisions take effect October 1, 2008.

- **Unemployment Compensation/Day Laborer, CS/CS/SB 854:**
- This bill includes day laborers employed by labor pools in the definition of "temporary employee" in s. 443.101(10), F.S., thereby making the current provisions relating to unemployment compensation for temporary employees applicable to day laborers.

If approved by the Governor, these provisions take effect July 1, 2008.

- **Right to Keep and Bear Arms in Motor Vehicles, CS/HB 503:** This bill creates the "Preservation and Protection of the Right to Keep and Bear Arms in Motor Vehicles Act of 2008," which will codify legislative policy regarding statutory rights of lawful firearm owners and carriers as contrasted with the statutory rights of public or private employers.

The bill provides the following definitions:

- "Parking lot" means any property that is used for parking motor vehicles and is available to customers, employees, or invitees for temporary or long-term parking or storage of motor vehicles.
- "Motor vehicle" means any automobile, truck, minivan, sports utility vehicle, motor home, recreational vehicle, motorcycle, motor scooter, or any other vehicle operated on the roads of this state and required to be registered under state law.
- "Employee" means any person who possesses a valid concealed weapon or firearm license and who Works for salary, wages, or other remuneration; is an independent contractor; or is a volunteer, intern, or other similar individual for an employer.
- "Employer" means any business that is a sole proprietorship, partnership, corporation, limited liability company, professional association, cooperative, joint venture, trust, firm, institution, or association, or public-sector entity, that has employees.
- "Invitee" means any business invitee, including a customer or visitor, who is lawfully on the premises of an entity.
- "Firearm" includes ammunition and accouterments attendant to the lawful possession and use of a firearm.

This bill prohibits employers from violating what are called the "constitutional rights" of a customer, employee, or invitee in the following ways:

- Prohibiting the lawful possession of properly secured firearms within or upon a private motor vehicle in the employer's parking lot;
- Inquiring, verbally or in written form, as to the presence of a firearm or by conducting a search of a vehicle for a firearm. Searches are limited to those lawfully conducted by on-duty law enforcement personnel;

- Conditioning employment upon the employee holding or not holding a valid concealed weapon or firearm license, or upon an agreement to not keep a firearm in a motor vehicle;
- Limiting access to the employer's parking lot based upon whether there is a firearm within the vehicle; and
- Discriminating or terminating employment or expelling a customer or invitee because he or she exercises the right to keep and bear arms or lawfully defend oneself.

The prohibitions listed above do not apply, under the bill, to:

- School property as defined in s. 790.115, F.S.;
- Any correctional institution regulated under s. 944.47, F.S., or ch. 957, F.S.;
- Property where substantial activities involving national defense, aerospace, or domestic security are conducted;
- Property where a nuclear-powered electricity generation facility is located; are manufactured, used, stored, or transported;

- A motor vehicle owned, leased, or rented by an employer or his landlord; and
- Any other property where possession of a firearm is prohibited by any federal contract, federal law, or general law of this state.

The bill declares that, except for those employers listed above, other public or private employers are relieved of a duty of care insofar as it relates to the actions that they are prohibited from engaging in by the bill. The bill also provides immunity from civil liability to public or private employers based on actions or inactions taken in compliance with the bill. Lastly, this immunity does not apply to civil actions based on the actions or inactions of employers that are unrelated to compliance with the bill.

These provisions were approved by the Governor and take effect July 1, 2008, and shall apply to causes of action accruing on or after that date.

If you have any questions, please feel free to contact one of our lawyers:

Oscar E. Soto, Esquire

oscar@sotolawgroup.com

Alex O. Soto, Esquire

alex@sotolawgroup.com

Felena R. Talbott, Esquire

felena@sotolawgroup.com

Kimberly A. Gessner, Esquire

kim@sotolawgroup.com

Brendan A. Sweeney, Esquire

Brendan@sotolawgroup.com

Prepared By:

Brendan A. Sweeney, Esq.
The Soto Law Group, P.A.
Coastal Tower, Suite 400
2400 E. Commercial Blvd.
Fort Lauderdale, FL 33308
Telephone: 954-567-1776
Facsimile: 954-567-1778
www.sotolawgroup.com

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