

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 511 Insulation Products

SPONSOR(S): Fine

TIED BILLS: **IDEN./SIM. BILLS:** SB 732

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Brackett	Anstead
2) Government Operations & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Federal laws regulate the manufacture, sale and advertising of residential insulation products. The Federal Trade Commission (FTC) has jurisdiction over the testing, manufacturing, sale, and advertising of residential insulation products. The FTC requires residential insulation products to be tested in accordance with the tests designed by ASTM International (ASTM). States are permitted to enact laws that are not inconsistent and do not frustrate the FTC's regulations.

The bill provides that any person who advertises, sells, offers, provides, markets, or distributes interior envelope insulation products without a valid ATSM report stating the product complies with the Florida Building Code and the corresponding ASTM standard, is subject to a Florida Deceptive and Unfair Trade Practices Act action brought by an enforcing authority. Such report must come from a Florida Building Commission approved testing laboratory, and must be provided to a building official upon request.

The bill does not have a fiscal impact on state and local governments.

The bill provides for an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Federal Trade Commission

The Federal Trade Commission Act grants the FTC the authority to:¹

- Prevent unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce;
- Seek monetary redress and other relief for conduct injurious to consumers;
- Prescribe rules defining with specificity acts or practices that are unfair and deceptive, and establish requirements designed to prevent such acts or practices;
- Gather and compile information and conduct investigations relating to the organization, business, practices, and management of entities engaged in commerce; and
- Make reports and legislative recommendations to Congress and the public.

The FTC regulates home insulation products as part of its job to prevent unfair or deceptive acts or practices in or affecting commerce. The FTC started regulating home insulation products in 1979 to address the failure of the home insulation market to provide consumers with essential pre-purchase information about home insulation products, specifically an insulation product's R-value.² R-value measures resistance to heat flow. The higher the R-value, the greater the effectiveness of the insulation.³

Home insulation is insulation that is used in old or new homes, condominiums, cooperatives, apartments, modular homes, or mobile homes. It does not include pipe insulation⁴ or any kind of duct insulation except for duct wrap.⁵ The FTC defines "insulation" as any material mainly used to slow down heat flow. It may be mineral or organic, fibrous, cellular, or reflective.⁶

On May 13, 2019, the FTC published notice that effective May 13, 2020, home insulation will also include insulation developed and marketed for commercial use that is also marketed for and used in residential buildings.⁷

Any violation of the regulations for home insulation products is an unfair and deceptive act or practice or an unfair method of competition under the Federal Trade Commission Act, and can result in a heavy fine. A person may be fined up to \$10,000 for each violation.⁸

All types of home insulation products must be tested by laboratories to determine their R-Value. The tests to determine the R-value of home insulation products must be done in accordance with the tests designed by ASTM International (ASTM).⁹

¹ See 15 U.S.C. § 41-58; Federal Trade Commission, *Federal Trade Commission Act*, <https://www.ftc.gov/enforcement/statutes/federal-trade-commission-act> (last visited Nov. 24, 2019).

² 84 Fed. Reg. 20788 (May 13, 2019).

³ 16 C.F.R. 460.5 & 12.

⁴ The FTC chose not to regulate pipe insulation because it is primarily used to prevent moisture condensation on low temperature lines and not for energy conservation. 64 Fed. Reg. 48027 (Sep. 1, 1999).

⁵ The FTC chose not to regulate duct insulation except for duct wrap because only duct wrap is used extensively in residential properties. *Id.*

⁶ 16 C.F.R. § 460.1-2.

⁷ 84 Fed. *supra* note 3.

⁸ 15 U.S.C. § 45(m).

⁹ 16 C.F.R. § 460.5. ASTM is an international testing organization that develops and publishes technical standards that are arrived at through consensus and used on a voluntary basis for a wide variety of products, materials, systems and services. ASTM International, *Detailed Overview*, https://www.astm.org/ABOUT/full_overview.html (last visited Nov. 25, 2019).

All manufacturers of home insulation products and laboratories that test home insulation products must keep records of each test for at least three years.¹⁰

Manufacturers must also label every package of their home insulation products and provide fact sheets to retailers and installers. The labels must contain:

- The type of insulation product in the package.
- A chart that includes the product's information including the R-value, which must be rounded to the nearest tenth except for products with R-values of 10 or more which may be rounded to the nearest whole number.
- A statement saying that R means resistance to heat flow. The higher the R-value, the greater the insulating power, and in order to get the marked R-value the product must be installed correctly.¹¹

The fact sheet must include:

- The name and address of the manufacturer;
- The type of insulation product in the package;
- A chart that includes the product's information including the R-value, which must be rounded to the nearest tenth except for products with R-values of 10 or more which may be rounded to the nearest whole number.
- A statement saying that, R means resistance to heat flow. The higher the R-value, the greater the insulating power, in order to get the marked R-value the product must be installed correctly, and the amount of insulation a person needs depends on the climate they live in along with the size and type of their house, the amount of insulation already in their house, and the fuel use of their family.¹²

Home insulation product retailers must make the fact sheets for their products available to their customers. Retailers must ensure that the fact sheets are in an area that a customer will notice them. New home sellers must ensure their sales contracts include the information, including the R-value, of each type of insulation product that has been installed in a home.¹³ Home installation installers have similar notice requirements.¹⁴

Manufacturers must ensure that any advertisement for their home insulation product, which includes a price for the product in the ad, includes the product's information, including R-value, and a statement saying, "The higher the R-value, the greater the insulating power. Ask your seller for the fact sheet on R-values."¹⁵ Manufacturers must also ensure that any advertisement for their home insulation products, which states or implies the product can cut energy costs or usage, is supported by a reasonable basis for the claim, and includes a statement saying, "Savings vary. Find out why in the seller's fact sheet on R-values. Higher R-values mean greater insulating power."¹⁶

The FTC does not require manufacturers, retailers, or installers to provide any information about a home insulation product to a local building official.

Any state and local laws and regulations that are inconsistent with, or frustrate the purposes of, the FTC's regulations are preempted. However, a State or local government may petition the Commission, for good cause, to permit the enforcement of any part of a State or local law or regulation that would be preempted by this section.¹⁷

The Florida Building Code

¹⁰ 16 C.F.R. § 460.9.

¹¹ 16 C.F.R. § 460.11-13.

¹² *Id.*

¹³ 16 C.F.R. § 460.14 & 16.

¹⁴ 16 C.F.R. § 460.15 & 17.

¹⁵ 16 C.F.R. § 460.18-19.

¹⁶ *Id.*

¹⁷ 16 C.F.R. § 460.23.

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.¹⁸

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.¹⁹ The current edition of the Building Code is the sixth edition, which is referred to as the 2017 Florida Building Code.²⁰

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act" (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.²¹

The Florida Building Commission (Commission) implements the Building Code. The Commission, which is housed within the Department of Business and Professional Regulation, is a 27-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code.²² The Commission reviews several International Codes published by the International Code Council, the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.²³

Enforcement of the Florida Building Code

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.²⁴

Every local government must enforce the Building Code and issue building permits.²⁵ It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.²⁶

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.²⁷ A building official is a local government employee or a person contracted by a local government who supervises Building Code activities, including plan review, enforcement, and inspection.²⁸ Any construction work that requires a building permit also requires plans and inspections by the local building official to ensure the work complies with the Building Code.²⁹

¹⁸ The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, available at http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Nov. 11, 2019).

¹⁹ *Id.*

²⁰ Florida Building Commission Homepage <https://floridabuilding.org/c/default.aspx> (last visited Nov. 11, 2019).

²¹ See s. 553.72(1), F.S.

²² S. 553.74, F.S.

²³ S. 553.73, F.S.

²⁴ S. 553.72, F.S.

²⁵ Ss. 125.01(1)(bb), 125.56(1), & 553.80(1), F.S.

²⁶ See Ss. 125.56(4)(a) & 553.79(1), F.S.

²⁷ S. 202 of the Building Code (Building), Sixth Edition.

²⁸ S. 468.603(2), F.S.

²⁹ Ss. 107 & 110 of the Building Code (Building), Sixth Edition.

Insulation Requirements for a Building's Thermal Envelope

The Building Code defines “building thermal envelope” as a building’s basement, walls, exterior walls, floor, roof, and any other building elements that enclose an area that is directly or indirectly heated or cooled. The building thermal envelope also includes the boundary between a conditioned space and an unconditioned space.³⁰

The Building Code requires certain types of insulation for a building’s thermal envelope depending on where the insulation is located. The Building Code requires insulation to have a certain type of R-value depending on where the insulation is located. For example, the Building Code requires insulation for ceilings to have a different R-value than the insulation required for walls. R-value measures resistance to heat flow. The higher the R-value, the greater the effectiveness of the insulation.³¹

Product Evaluation and Approval

Current law requires the Commission to develop and implement an approval of products for statewide use. The Commission has created a product approval system for products and systems that make up the building envelope and structural frame of a building.³² The Commission does not approve products for the interior of a building, including interior insulation products.³³ The Commission approves the products in the following categories for statewide use:³⁴

- Panel Walls;
- Exterior Doors;
- Roofing Products;
- Skylights;
- Windows;
- Shutters;
- Structural Components; and
- Impact Protective Systems.

To obtain state approval, a manufacturer must demonstrate a product complies with the applicable standards and provisions of the Building Code by submitting one of the following reports:

- A certification mark or listing of an approved certification agency;
- A test report from an approved testing laboratory;
- A product evaluation report developed, signed and sealed by a Florida licensed engineer or architect; or
- A product evaluation report from one of the following evaluation entities:
 - The National Evaluation Service;
 - The International Association of Plumbing and Mechanical Officials Evaluation Service;
 - The International Code Council Evaluation Services;
 - Underwriters Laboratories, LLC;
 - The International Conference of Building Officials;
 - SBCCI Public Safety Testing and Evaluation Services, Inc.;
 - Intertek Testing Services NA, Inc.; or
 - The Miami-Dade County Building Code Compliance Office Product Control Division.³⁵

Approved Testing Laboratories

³⁰ S. 202 of the Building Code (Energy Conservation), Sixth Edition.

³¹ Ss. 202 & 402 of the Building Code (Energy Conservation), Sixth Edition; Department of Energy, *Insulation*, <https://www.energy.gov/energysaver/weatherize/insulation> (last visited Nov. 25, 2019).

³² S. 553.842(1), F.S.; R. 61G20-3.001, F.A.C.

³³ Email from Colton Madill, Deputy Legislative Affairs Director, Department of Business & Professional Regulation, HB 511 Question (Nov. 18, 2019).

³⁴ R. 61G20-3.001, F.A.C.

³⁵ S. 553.842, F.S.; DBPR, Product Evaluation Entity List, https://www.floridabuilding.org/pr/pr_org_lst.aspx (last visited Nov. 11, 2019).

The Commission must approve an entity as an approved testing laboratory if it receives accreditation indicating that it meets the Commission's approved standards for testing laboratories, and it receives a certification of independence.³⁶

An entity may receive accreditation from one of the following bodies:³⁷

- The American Association for Laboratory Accreditation;
- The National Voluntary Laboratory Accreditation Program;
- One of the approved evaluation entities; or
- Any other approved accreditation bodies that meet the Commission's approved standards.

The Commission must issue a certificate of independence to a testing laboratory if an officer who is responsible for operation of the laboratory attests that the laboratory:³⁸

- Does not have, nor does it intend to acquire or will it acquire, a financial interest in any company manufacturing or distributing products tested or labeled by the laboratory.
- Is not owned, operated or controlled by any company manufacturing or distributing products it tests or labels.

Florida Deceptive and Unfair Trade Practices Act

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) declares that any unfair or deceptive acts or practices committed in the conduct of any trade or commerce is unlawful.³⁹ The purpose of FDUTPA is to:⁴⁰

- Simplify, clarify, and modernize the law governing consumer protection, unfair methods of competition, and unconscionable, deceptive, and unfair trade practices.
- Protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.
- Make state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.

Investigative and enforcement authority under FDUTPA is given to enforcing authorities. A state attorney is an enforcing authority if a violation occurs in or affects the judicial circuit under the office's jurisdiction. The Department of Legal Affairs within the Florida Office of the Attorney General (Department) is also an enforcing authority, and has investigate and enforcement authority if a violation occurs in or affects more than one judicial circuit or if the state attorney defers to the Department.⁴¹

These enforcing authorities may, within 4 years after the occurrence of a violation or within 2 years after the last payment in a transaction involved in a violation, bring an action:

- To obtain a declaratory judgment that an act or practice violates FDUTPA;
- To enjoin any person who has violated, is violating, or is otherwise likely to violate FDUTPA; or
- On behalf of one or more consumers or governmental entities for the actual damages caused by an act or practice in violation of FDUTPA.⁴²

Enforcing authorities may collect a civil penalty of up to \$10,000 per violation plus reasonable attorney's fees and costs for willful violations of FDUTPA and up to \$15,000 plus reasonable attorney's fees and costs for willful violations of FDUTPA involving a senior citizen, a person who has a disability, a military

³⁶ The Commission's approved standards for test laboratories is the International Organization for Standardization/International Electrotechnical Commission Guide 17025: General Requirements for the Competence of Calibration and Testing Laboratories, any standards referenced by the Building Code, or any standards that meet or exceed the first edition of the Building Code, which is referred to as the 2001 edition of the Building Code. R. 61G20-3.008(3), F.A.C.; R. 61G20-3.015, F.A.C.; R. 61G20-3.009, F.A.C.

³⁷ S. 553.842(8)(b), F.S.; R. 61G20-3.008(3).

³⁸ R. 61G20-3.009, F.A.C.

³⁹ See Ch. 501, part II, F.S.

⁴⁰ S. 501.202, F.S.

⁴¹ Ss. 501.203(2), 501.206, & 501.207, F.S.

⁴² Ss. 501.207(1) & (5), F.S.

service member, or the spouse or dependent child of a military service member.⁴³ The Department also has authority to issue a cease and desist order if it would be in the interest of the public.⁴⁴

If an enforcing authority receives a complaint regarding a person who is subject to other supervision in the state, such enforcing authority must inform the supervising agency.⁴⁵

Current law provides that an enforcing authority bring an action against any person who advertises, sells, offers, provides, distributes, or markets a product as hurricane, windstorm, or impact protection from wind-borne debris without approval by the Commission.⁴⁶

FDUTPA also provides a private cause of action for anyone aggrieved by a violation of FDUTPA to:

- Obtain a declaratory judgement that an act or practice violates FDUTPA;
- Enjoin a person who has violated, is violating, or is otherwise likely to violate FDUTPA; and
- Recover actual damages plus reasonable attorney's fees and costs.⁴⁷

Effect of the Bill

The bill provides that any person who advertises, sells, offers, provides, markets, or distributes interior envelope insulation products without a valid ATSM report stating the product complies with the Building Code and the corresponding ASTM standard, is subject to a FDUTPA action brought by an enforcing authority. Such report must come from a Commission approved testing laboratory, and the report must be provided to a building official upon request.

B. SECTION DIRECTORY:

Section 1. Creates s. 553.843, F.S., providing requirements for providing interior insulation products and providing a cause of action.

Section 2. Provides an effective date of July 1, 2020.

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:

⁴³ Ss. 501.2075, 501.2077, & 501.2105, F.S.

⁴⁴ S. 501.208(1), F.S.

⁴⁵ S. 501.209, F.S.

⁴⁶ S. 553.842(5), F.S.

⁴⁷ Ss. 501.2105 and 501.211, F.S.

The bill may have a positive impact on the private sector by ensuring that local building officials know whether insulation products meet the applicable standards of the Building Code.

D. FISCAL COMMENTS:

Ensuring that local building officials know whether insulation products meet the applicable standards of the Building Code may result in a reduction in energy costs for consumers.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not appear to be inconsistent with or frustrate the FTC's regulations for home insulation products.

The bill provides that sellers of interior envelope insulation products must have a valid ATSM report stating the product complies with the Building Code and the report must provide the corresponding ASTM standard. However, the bill does not indicate what the corresponding ASTM standard is. The sponsor most likely meant that the corresponding ASTM standard is the ASTM testing standard that the FTC requires. It is recommended that the bill be amended to state that the product must comply with the ASTM standard required by the FTC.

The bill applies to all types of interior insulation products including commercial and residential. However, the FTC only regulates residential insulation products, and the FTC does not provide ASTM testing standards for commercial insulation products. The sponsor may want to limit the bill to residential insulation products.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES