

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 517 (CS/CS/SB 762)	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Economic Affairs Committee; Grant; and others (Budget Subcommittee on General Government Appropriations; Criminal Justice; Hays)	88 Y's	29 N's
COMPANION BILLS:	CS/CS/SB 762	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/HB 517 passed the House on February 3, 2012. The bill was amended by the Senate on March 8, 2012, and subsequently passed the House on March 8, 2012. The bill includes portions of CS/CS/CS/HB 319, CS/CS/HB 751, CS/CS/HB 887, CS/CS/HB 1419.

The bill reduces regulatory requirements for professions and businesses, and streamlines regulatory functions primarily for programs under the Department of Business and Professional Regulation relating to construction contracting, the Florida Building Code, and the distribution of prescription drugs.

Specifically, the bill:

- Waives initial licensure fees for recently discharged military veterans.
- Reduces the required continuing education requirements to reactivate an inactive license to only one cycle of hours required, instead of the hours required for the years the license was inactive.
- Decriminalizes specified violations of several professional boards' rules and administrative requirements that currently carry second-degree misdemeanor fines and penalties.
- Amends appraisal regulations and deletes references to Uniform Standards of Professional Appraisal Practice and provides that the professional standards be adopted by board rule.
- Allows greater reciprocity of architect licensees and modifies the internship requirements to make Florida consistent with other states to improve licensing mobility for architects.
- Removes duplication of regulation where natural gas utilities are subject to federal and state regulations.
- Excludes landscape architecture from the licensure and regulation requirements as a mold assessor.
- Allows real estate continuing education instructors to complete their continuing education through distance learning and permits real estate schools to offer any course through distance learning.
- Allows distilled spirits that are greater than 153 proof to be distilled, bottled, packaged, or processed for export or sale outside of the state.
- Extends the time period for classification as a bulk assignee or buyer of condominiums to July 1, 2015, from July 1, 2012.
- Establishes three new exemptions from the permitting process for distribution of prescription drugs and active pharmaceutical ingredients within the state.

The bill may have an insignificant negative fiscal impact on state funds related to the reduction in fees, fines, and penalties.

The bill was approved by the Governor on April 6, 2012, ch. 2012-61, Laws of Florida. The effective date of the bill is July 1, 2012.

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

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I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Retired Armed Services Personnel Licensure

Present situation

Currently, s. 455.02, F.S., applies to licensees who are members of the armed forces on active duty who are absent from the state and not practicing their profession in the private sector. The armed forces member/licensee is exempted from license renewal requirements for the duration of active duty while absent from the state of Florida, and for a period of six months after discharge or return to the state, but not practicing the profession. This statute applies to numerous professions regulated by the DBPR.

Section 455.213, F.S., provides the general provisions for issuance of professional licensure by the DBPR. The current statute does not allow the DBPR to distinguish applicants based on their military service. Former members of the United States Armed Forces are required to meet all licensure requirements and pay all licensure fees despite their service to the United States military.

Effect of changes

The bill amends s. 455.213, F.S., to require the DBPR to waive the initial licensing fee, the initial application fee and initial unlicensed activity fee for military veterans who have been honorably discharged from the United States Armed Forces within 24 months prior to applying for licensure.

Continuing Education

Present situation

A licensee may practice a profession with an active status license. Generally, a licensee with an inactive license may choose at any time to change to an active status, but must meet all the requirements for an active license, pay any additional fees including applicable reactivation fees, and must complete enough continuing education to fulfill the continuing education requirement for each licensure cycle during which the license was inactive.

Effect of changes

The bill amends ss. 455.271(10),¹ 468.4338,² 468.8317,³ 468.8417,⁴ 477.0212,⁵ 481.217,⁶ 481.315,⁷ 489.116,⁸ and 489.519,⁹ F.S., reducing the amount of continuing education a licensee must complete to the equivalent of one renewal cycle before reactivating an inactive licensee.

Decriminalization of Rule Violations

¹ General requirements for reactivating an inactive or delinquent license.

² Reactivation requirements for a community association manager license.

³ Reactivation requirements for a home inspector license.

⁴ Reactivation requirements for a mold assessor or remediator license.

⁵ Reactivation requirements for a cosmetologist license.

⁶ Reactivation requirements for an architect or interior designer license.

⁷ Reactivation requirements for a landscape architect license.

⁸ Reactivation requirements for a contractor license.

⁹ Reactivation requirements for an electrical contractor license.

Present situation

Currently, Florida Statutes criminalize violations of rules and orders of several professions under the oversight of the department, including auctioneers, real estate professionals, real property appraisers, barbers, and cosmetologists.

As a result, a licensee is subject to criminal sanctions for specified violations, including minor rule infractions. In addition, violations are subject to imposition of administrative fines that can range from \$500-\$5,000 per occurrence, depending on which practice act is violated, as well as the suspension or revocation of the license.

Effect of changes

The bill decriminalizes violations of administrative rules and certain statutes by amending the criminal penalty provisions of specific practice acts. State attorneys may still file criminal charges against a licensee for more serious violations. The applicable regulatory board will still be able to impose administrative discipline against a licensee for violating administrative rules, under the following statutes:

- Florida Board of Auctioneers, under s. 468.389(1)(j), F.S.
- Florida Real Estate Commission, under s. 475.25(1)(e), F.S.
- Amends s. 475.626, F.S., to delete criminal penalties for persons who violate orders or rules of the Florida Real Estate Appraisal Board or related grounds for disciplinary action.
- Amends ss. 476.194 and 477.0265, F.S., to delete criminal penalties for persons who commit certain violations relating to barbering and cosmetology.

Appraisal Regulations

Present situation

State-licensed or state-certified appraisers must be used in the performance of an appraisal for any federally-related transaction, and those appraisals must comply with the Uniform Standards of Professional Appraisal Practice (USPAP). A federally-related transaction is defined as any real estate related financial transaction which:

- involves the transfer of an interest in real property, the financing or refinancing of a transfer of an interest in real property, or the use of an interest in real property as security for a loan or for mortgage-backed securities; or
- involves a federal financial regulatory agency or one of the specific agencies named in Title XI of the U.S.C. that require the services of a state-licensed or state-certified appraiser.

Part II of ch. 475, F.S., (the Real Estate Appraisal Act), specifically incorporates, references, and requires compliance with the USPAP standards by all registered, licensed, or certified Florida real estate appraisers.¹⁰ These standards apply to real estate appraisal connected with federally-related financial transactions. Although the federal authorities have changed the USPAP guidelines several times since Florida first adopted the Act in 1991,¹¹ the Florida Statutes have not reincorporated the USPAP since 1998.¹² Under the doctrine of recent appellate and DOAH rulings, the 1998 version of

¹⁰ Section 475.628, F.S.

¹¹ Chapter 91-89, F.S.

¹² Section 35, Chapter 98-250, Laws of Florida, amended and readopted s. 475.628, F.S.

USPAP is applicable in Florida as the last version specifically incorporated into Florida law.^{13 14} The current USPAP is version 2010-2011.

Effect of changes

The bill amends various references to appraisal regulations and deletes certain references to the Uniform Standards of Professional Appraisal Practice. The bill provides that the professional standards be adopted by applicable board rule. These sections of part II of chapter 475, F.S., include: 475.615, 475.617, 475.6175, 475.6235, 475.25, 475.624, 475.6245, 475.628, and 373.461 (relating to the restoration of water resources in the Lake Apopka Basin), F.S.

The bill amends s. 475.6235(1), F.S., to delete the prohibition against persons or businesses using the titles of “appraisal management company,” “appraiser cooperative,” “appraiser portal,” or “mortgage technology company, unless the person or business is registered with the DBPR as an appraisal management company. The bill maintains that only a registered “appraisal management company,” or an employee of an “appraisal management company” may engage in appraisal services for compensation.

The bill amends ss. 475.615 and 475.6235(4), F.S., which relates to the registration of appraisal management companies, to reference standards of professional practice adopted by rule of the Florida Real Estate Appraisal Board, including standards for the development or communication of real estate appraisal, instead of referencing the Uniform Standards of Professional Appraisal Practices.

The bill also creates s. 475.6235(9), F.S., to exempt a financial institution from the provisions of this section if the financial institution owns or operates an internal appraiser office, business, unit, or department, or an appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a federal agency. This change conforms to the exemption from state regulation provided for bank-owned appraisal management companies as provided by federal law.

The bill amends s. 475.6171(4), F.S., to repeal the provision that no certification as an appraiser be issued based upon the results of national examinations that are obtained more than 24 months after the date of the examination.

Asbestos Consultants and Contractors

Present situation

An "Asbestos Contractor" is a person who removes, encapsulates, or encloses asbestos-containing materials or disposes of asbestos-containing waste in the course of activities including, but not limited to, construction, renovation, maintenance, or demolition.

Effect of changes

The bill amends s. 469.002, F.S., to provide an exemption from licensure as an asbestos consultant or contractor for asbestos related activities involving pipe or conduit used for gas service.

Real Estate Schools-Distance Learning

¹³ *Abbott Laboratories v. Mylan Pharmaceuticals, Inc.*, 15 So. 3d 642, 655 (Fla. 1st DCA 2009); *Department of Business and Professional Regulation v. Lester*, Agency Case No. 2008001566, Final Order dated May 17, 2010, adopting *in toto* Recommended Final Order rendered by DOAH in Case No. 09-0642PL, 2009 WL 4099146 (November 24, 2009).

¹⁴ By rule the Florida Real Estate Appraisal Board presently applies the 2008-2009 version of the USPAP. Rule 61J-1.9001, Florida Administrative Code. The doctrine stated in *Abbott Laboratories* calls into question whether the Board has authority to adopt such a rule.

Present situation

Section 475.17(2)(a)2., F.S., authorizes the Florida Real Estate Commission to approve distance learning courses as an option to classroom hours as satisfactory completion of continuing education requirements. Real estate schools have the option of providing classroom courses, distance learning courses, or both. A satisfactory completion of a distance learning course must require the satisfactory completion of a timed distance learning course examination. Such examination does not need to be monitored or given at a centralized location.

Effect of changes

The bill allows the DBPR to offer continuing education courses to real estate instructors through distance education instruction.

Architects

Present situation

Architects are regulated by the Board of Architecture and Interior Design within the Department of Business and Professional Regulation (DBPR).

Architecture is defined as services in connection with the design and construction of a structure or group of structures which have as their principal purpose human habitation or use, and the utilization of space within and surrounding structures. Services include planning, providing preliminary study designs, drawings and specifications, job-site inspection, and administration of construction contracts.

Section 481.209, F.S., requires that any person, desiring to be licensed as a registered architect, must apply to the department to take the licensure examination. The department administers the examination to an applicant certified by the board who:

- has completed the application form and remitted a nonrefundable application fee and an examination fee; and
- is a graduate of a school or college of architecture accredited by the National Architectural Accreditation Board or is a graduate of an approved architectural curriculum, evidenced by a degree from an unaccredited school or college of architecture approved by the board, and has completed, prior to examination, one year of the internship experience required by s. 481.211(1), F.S.

Section 481.211, F.S., requires any applicant for licensure as a registered architect to complete, prior to licensure, an internship of diversified architectural experience approved by the board in the design and construction of structures which have as their principal purpose human habitation or use. The internship includes:

- three years for an applicant holding the degree of Bachelor of Architecture; or
- two years for an applicant holding the professional degree of Master of Architecture.

Section 481.213, F.S., requires the board to certify applicants qualified for a license by endorsement as an architect who:

- qualifies to take the examination, and has passed the examination or a substantially equivalent examination in another jurisdiction;
- has satisfied the internship requirements;

- holds a valid license to practice architecture issued by another jurisdiction of the United States, if the criteria for issuance of the license is substantially equivalent to the criteria that existed in this state at the time the license was issued; or
- has passed the prescribed licensure examination and holds a valid certificate issued by the National Council of Architectural Registration Boards, and holds a valid license to practice architecture issued by another state or jurisdiction of the United States.

In addition, any applicant licensed in another state or jurisdiction after June 30, 1984, must also hold a degree in architecture that is equivalent to the requirements of s. 481.209(1)(b), F.S. Further, any applicant licensed in another state or jurisdiction after June 30, 1985, must have completed an internship equivalent to that required by s. 481.211, F.S.

Effect of changes

The bill amends s. 481.209, F.S., to allow greater reciprocity of licensees' requirements to make Florida consistent with other states to improve licensing mobility for architects. The bill also amends s. 481.211, F.S., to modify the internship experience requirements and allow the standards for experience to be adopted by board rule.

The bill amends s. 481.213, F.S., to allow licensure by endorsement for an applicant who has passed the state prescribed licensure examination and holds a valid license to practice architecture issued by another state, but who does not hold a certificate, may be licensed if he or she:

- Holds a minimum four-year degree.
- Has maintained an architect license in good standing for a minimum of 10 years.
- Has been a continuous resident of this state for a minimum of 10 years.
- Presents evidence of satisfactory completion of the continuing education requirements for renewal of an architect license for the biennium ending February 2013. This exception to the requirement that an applicant hold a valid certificate issued by the National Council of Architectural Registration Boards expires March 1, 2013.

Distilled spirits

Present situation

Section 565.07, F.S., prohibits the processing, sale or consumption of distilled spirits that are greater than 153 proof.

Effect of changes

The bill repeals the prohibition against the processing of distilled spirits that are greater than 153 proof for export or sale outside of the state. The bill maintains the current prohibition against the sale or consumption of a distilled spirit that is greater than 153 proof.

Bulk Assignees and Bulk Buyers

Present situation

In 2010, the Legislature passed the Distressed Condominium Relief Act in order to relieve developers, lenders, unit owners, and condominium associations from certain provisions of the Florida Condominium Act. The Act was intended to relieve specific parties from certain liabilities, so as to enable economic opportunities for successor purchasers of distressed condominiums.

Specifically, the Act created categories of "bulk buyers" and "bulk assignees." A bulk assignee is a person who acquires more than seven condominium parcels as provided in s. 718.703, F.S., and

receives an assignment of some or all of the rights of the developer under specified recording documents. Similarly, a bulk buyer is a person who acquires more than seven condominium parcels, but who does not receive an assignment of developer rights, other than the right to conduct sales, leasing, and marketing activities, within the condominium. Bulk buyers are exempt from payment of working capital contributions and from rights of first refusal.

Effect of changes

The bill amends s. 718.707, F.S., to extend the period to be classified as a bulk buyer or bulk assignee for the purposes of the Distressed Condominium Relief Act from July 1, 2012, to July 1, 2015.

Prescription Drug Regulation

Present situation

Part I of ch. 499, F.S., requires the DBPR to regulate drugs, devices, and cosmetics. A significant majority of the regulations relate to the distribution of prescription drugs into and within Florida. In particular, the regulations require licensure of various entities in the distribution chain, such as prescription drug manufacturers and prescription drug wholesale distributors.

Effect of changes

The bill establishes three new exemptions from the permitting process for distribution of prescription drugs and active pharmaceutical ingredients within the state. First, an establishment located in the U.S. may distribute an active pharmaceutical ingredient (API), without a permit, to a Florida-licensed manufacturer for the purpose of manufacturing a prescription drug product approved by the U.S. Food and Drug Administration. Second, an establishment located within the U.S. may distribute limited quantities of non-repackaged prescription drugs to a Florida-licensed manufacturer for research and development. The bill allows the holder of a letter of exemption from DBPR to receive limited quantities of prescription drugs from an establishment in the U.S. for research and development, teaching, or testing. Third, the bill allows the holder of a restricted prescription drug distributor permit to repackage prescription drugs for distribution to a hospital or other health care entity under common control without obtaining a prescription drug repackager permit.

The bill revises the definition of “drug” in s. 499.03(19), F.S., to exclude the non-drug components of a device regulated under chapter 499.

The bill removes the requirement that contractors or subcontractors who participate in the federal indigent care pharmaceutical program maintain a separate inventory of prescription drugs designated for use in the program from the remaining inventory of prescription drugs kept by the contractor or subcontractor.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an insignificant negative fiscal impact on state funds as a result of the reduction in fees, fines, and penalties related to various provisions of the bill.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on the private sector as a result of the reduction in fees, fines, and penalties related to various provisions of the bill.

D. FISCAL COMMENTS:

None.