

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

REGULATED INDUSTRIES
Senator Stargel, Chair
Senator Braynon, Vice Chair

MEETING DATE: Thursday, March 13, 2014

TIME: 9:00 —11:00 a.m.

PLACE: 301 Senate Office Building

MEMBERS: Senator Stargel, Chair; Senator Braynon, Vice Chair; Senators Detert, Flores, Galvano, Gibson, Legg, Sachs, Sobel, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 702 Bean (Similar H 745)	Pharmacy Audits; Enumerating the rights of pharmacies relating to audits of pharmaceutical services which are conducted by certain entities; exempting audits in which fraudulent activity is suspected or which are related to Medicaid claims; establishing a claim for civil damages if the pharmacy's rights are violated, etc. HP 02/11/2014 Favorable RI 03/06/2014 Temporarily Postponed RI 03/13/2014 Fav/CS JU	Fav/CS Yeas 9 Nays 0
2	SB 796 Latvala (Similar H 725)	Public Accountancy; Revising course requirement for certified public accountant license applicant to take the licensure examination; requiring an applicant to be of good moral character in order to take the licensure examination; requiring the Board of Accountancy, when refusing to allow an applicant to take the examination because of a lack of good moral character, to make certain findings and furnish certain evidence and notices to the applicant, etc. RI 03/13/2014 Favorable RC	Favorable Yeas 9 Nays 0
3	SB 1450 Simpson	Homeowners' Association Board Meetings; Requiring meetings to be held at locations accessible to physically handicapped persons, etc. RI 03/13/2014 Fav/CS CA	Fav/CS Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Regulated Industries

Thursday, March 13, 2014, 9:00 —11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 662 Health Policy (Similar H 7077)	Nonresident Pharmacies; Deleting a requirement that the Board of Pharmacy refer regulatory issues affecting a nonresident pharmacy to the state where the pharmacy is located; requiring registered nonresident pharmacies to obtain a permit in order to ship, mail, deliver, or dispense compounded sterile products into this state; authorizing the Department of Health to inspect registered nonresident pharmacies, etc. RI 03/13/2014 Fav/CS AHS AP	Fav/CS Yeas 9 Nays 0
5	SB 512 Flores (Similar H 423)	Cemeteries; Revising the exemptions relating to cemeteries to include certain religious-institution-owned cemeteries, etc. RI 03/13/2014 Fav/CS BI	Fav/CS Yeas 8 Nays 1
6	SB 810 Galvano (Identical H 773, Compare H 775, Link S 808)	Pugilistic Exhibitions; Revising the duties and responsibilities of the executive director of the Florida State Boxing Commission; deleting a provision requiring the electronic recording of commission proceedings; repealing provisions relating to the authority of the commission to require a concessionaire to file a form of security with the commission; providing for immediate license suspension and other disciplinary action if a participant fails or refuses to provide a urine sample or tests positive for specified prohibited substances; authorizing the commission and the Department of Business and Professional Regulation to audit specified records retained by a promoter, etc. RI 03/13/2014 Fav/CS GO JU RC	Fav/CS Yeas 9 Nays 0
7	SB 808 Galvano (Identical H 775, Compare H 773, Link S 810)	Public Records/Florida State Boxing Commission; Providing an exemption from public records requirements for the information in the reports required to be submitted to the Florida State Boxing Commission by a promoter; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. RI 03/13/2014 Fav/CS GO RC	Fav/CS Yeas 8 Nays 1

Other Related Meeting Documents

COMMITTEE MEETING EXPANDED AGENDA

Regulated Industries

Thursday, March 13, 2014, 9:00 —11:00 a.m.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 702

INTRODUCER: Regulated Industries Committee and Senators Bean and Sobel

SUBJECT: Pharmacy Audits

DATE: March 13, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Petersen	Stovall	HP	Favorable
2.	Pringle	Imhof	RI	Fav/CS
3.			JU	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 702 establishes the rights of a pharmacy when it is audited directly or indirectly by a managed care company, insurance company, third-party payor, pharmacy benefit manager, or an entity that represents responsible parties, such as companies or groups that self-insure. The rights created are largely the same as the requirements currently applicable to Medicaid audits of pharmacies. The rights do not apply to audits based on a suspicion of fraud or audits of Medicaid fee-for-service claims.

The bill requires the Office of Insurance Regulation to investigate a complaint from a pharmacy that alleges a willful violation provisions of the bill by an entity regulated by the office. It provides for the complaint procedure and that a violation is an unfair claim settlement practice under s. 641.3903(5)(c)1. and 4., F.S., and enforceable as provided in part I, ch. 641, F.S., and s. 626.9521, F.S.

II. Present Situation:

Pharmacy Regulation

Pharmacies and pharmacists are regulated under the Florida Pharmacy Act (the Act) found in ch. 465, F.S.¹ The Board of Pharmacy (the board) is created within the department to adopt rules to implement provisions of the Act and take other actions according to duties conferred on it in the Act.²

¹ Other pharmacy paraprofessionals, including pharmacy interns and pharmacy technicians, are also regulated under the Act.

² Section 465.005, F.S.

Several pharmacy types are specified in law and are required to be permitted or registered under the Act:

- Community pharmacy – a location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis.
- Institutional pharmacy – a location in a hospital, clinic, nursing home, dispensary, sanitarium, extended care facility, or other facility where medical drugs are compounded, dispensed, stored, or sold. The Act further classifies institutional pharmacies according to the type of facility or activities with respect to the handling of drugs within the facility.
- Nuclear pharmacy – a location where radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored, or sold, excluding hospitals or the nuclear medicine facilities of such hospitals.
- Internet pharmacy – a location not otherwise permitted under the Act, whether within or outside the state, which uses the internet to communicate with or obtain information from consumers in this state in order to fill or refill prescriptions or to dispense, distribute, or otherwise engage in the practice of pharmacy in this state.
- Non-resident pharmacy – a location outside this state which ships, mails, or delivers, in any manner, a dispensed drug into this state.
- Special pharmacy – a location where medicinal drugs are compounded, dispensed, stored, or sold if such location is not otherwise defined which provides miscellaneous specialized pharmacy service functions.

Each pharmacy is subject to inspection by the Department of Health and discipline for violations of applicable state or federal law relating to pharmacy. Any pharmacy located outside this state which ships, mails, or delivers, in any manner, a dispensed drug into this state is considered a nonresident pharmacy, and must register with the board as a nonresident pharmacy.^{3,4}

Pharmacy Audits

Advances in pharmaceuticals have transformed health care over the last several decades. Many health care problems are prevented, cured, or managed effectively for years through the use of prescription drugs. As a result, national expenditures for retail prescription drugs have grown from \$120.9 billion in 2000 to 263.3 billion in 2012.⁵ Health plan sponsors, which include commercial insurers, private employers, and government plans, such as Medicaid and Medicare, spent \$216.5 billion on prescription drugs in 2012 and consumers paid \$46.8 billion out of pocket for prescription drugs that year.⁶

As expenditures for drugs have increased, health plan sponsors have looked for ways to control that spending. Among other things, they have turned to pharmacy benefit managers (PBMs),

³ Section 465.0156, F.S.

⁴ However, the board may grant an exemption from the registration requirements to any nonresident pharmacy which confines its dispensing activity to isolated transactions. *See* s. 465.0156(2), F.S.

⁵ Centers for Medicare and Medicaid Services, *National Health Expenditures Web Tables, Table 16, Retail Prescription Drugs Aggregate, Percent Change, and Percent Distribution, by Source of Funds: Selected Calendar Years 1970-2012*, available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/downloads/tables.pdf> (last visited Feb. 6, 2014).

⁶ *Id.*

which are third party administrators of prescription drug programs. PBMs initially emerged in the 1980s as prescription drug claims processors. PBMs now provide a range of services including developing and managing pharmacy networks, developing drug formularies, providing mail order services, and processing and auditing claims.

In 2007, there were approximately 70 PBMs operating in the United States and managing prescription drug benefits for an estimated 95 percent of health beneficiaries nationwide.⁷ Industry mergers in recent years have cut the number of large PBMs to two which together control 60 percent of the market and provide benefits for approximately 240 million people.⁸

The audit process is one means used by PBMs and health plan sponsors to review pharmacy programs. The audits are designed to ensure that procedures and reimbursement mechanisms are consistent with contractual and regulatory requirements. Over the years, different types of audits have been developed to address changes in benefit and billing processes. A concurrent daily review audit is intended to make immediate changes to a claim before payment is made and is triggered when a PBM or health plan sponsor's computer systems identify an unusual prescription, e.g. by volume dispensed, number of days supplied. A retrospective audit may be conducted as a desk top audit or an in-pharmacy audit. PBM or health plan sponsor staff conduct a desk audit remotely by contacting pharmacies to obtain supporting documentation, such as the written prescription, for a claim the staff are reviewing. An in-pharmacy audit is the most extensive and can last for days or weeks. During an in-pharmacy audit, audit staff require pharmacies to provide documentation for prescriptions dispensed during a specified time period. When the auditors identify errors or lack of documentation to support the claim, they notify the pharmacy and request repayment of all or a portion of the prescription cost. The last form of audit is an investigative audit which occurs where there is a suspicion of fraud or abuse.

Pharmacies have increasingly complained about the onerous and burdensome nature of these audits. A 2011 survey conducted among members of the National Community Pharmacists Association found that pharmacy audits were focusing on trivial errors (misspelling patient names or incorrect data) rather than intentional, fraudulent acts.⁹

Organizations such as the National Community Pharmacists Association,¹⁰ which represents independent pharmacies, have been advocating for legislation at the federal and state levels to address what they perceive as predatory practices by pharmacy benefit managers. As of 2013, 29

⁷ Office of Program Policy Analysis & Government Accountability, *Legislature Could Consider Options to Address Pharmacy Benefit Manager Business Practices*, Report No. 07-08 (Feb. 2007), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0708rpt.pdf> (last visited Feb. 6, 2014).

⁸ Office of Program Policy Analysis & Government Accountability, *Research memorandum: Pharmacy Benefit Managers* (December 2, 2013) (on file with the Senate Health Policy Committee).

⁹ National Community Pharmacists Association, *New Survey Reveals Pharmacists are Increasingly Struggling to Care for Patients Amid Predatory Audits, Unfair Reimbursement Practices*, <http://www.ncpanet.org/index.php/news-releases/1062-new-survey-reveals-pharmacists-are-increasingly-struggling-to-care-for-patients-amid-predatory-audits-unfair-reimbursement-practices> (last visited Feb. 6, 2014).

¹⁰ National Community Pharmacists Association, *NCPA to Medicare: Rein in Egregious Pharmacy Audits; Reform Preferred Networks; and Curb Mail Order Waste in 2014 Prescription Drug Plans*. Found at: <http://www.ncpanet.org/index.php/news-releases/1593-ncpa-to-medicare-rein-in-egregious-pharmacy-audits-reform-preferred-networks-and-curb-mail-order-waste-in-2014-prescription-drug-plans> (last visited Feb. 6, 2014).

states¹¹ have passed fair and uniform pharmacy audit laws that regulate PBM pharmacy audit practices. Elements of these laws typically include:

- Prior notification.
- Limiting the audit timeframe to not more than 24 months.
- Recoupment based on direct evidence and not extrapolation.
- Prohibiting recoupment or penalties for clerical errors.
- Requiring the availability of a consulting pharmacist if the audit involves clinical judgment.
- Providing a timeframe for receiving results and the opportunity to appeal.
- Exempting audits based on a suspicion of fraud from the auditing criteria.¹²

Medicaid Pharmacy Audits

In 2003, the Legislature established requirements for Medicaid audits of pharmacies. The requirements are as follows:

- The agency conducting the audit must give the pharmacist at least one week's prior notice of the initial audit for each audit cycle.
- An audit must be conducted by a pharmacist licensed in Florida.
- Any clerical or recordkeeping error, such as a typographical error, scrivener's error, or computer error regarding a document or record required under the Medicaid program does not constitute a willful violation and is not subject to criminal penalties without proof of intent to commit fraud.
- A pharmacist may use the physician's record or other order for drugs or medicinal supplies written or transmitted by any means of communication for purposes of validating the pharmacy record with respect to orders or refills of a legend or narcotic drug.
- A finding of an overpayment or underpayment must be based on the actual overpayment or underpayment and may not be a projection based on the number of patients served having a similar diagnosis or on the number of similar orders or refills for similar drugs.
- Each pharmacy shall be audited under the same standards and parameters.
- A pharmacist must be allowed at least 10 days in which to produce documentation to address any discrepancy found during an audit.
- The period covered by an audit may not exceed one calendar year.
- An audit may not be scheduled during the first 5 days of any month due to the high volume of prescriptions filled during that time.
- The audit report must be delivered to the pharmacist within 90 days after conclusion of the audit. A final audit report must be delivered to the pharmacist within 6 months after receipt of the preliminary audit report or final appeal, whichever is later.
- The agency conducting the audit may not use the accounting practice of extrapolation in calculating penalties for Medicaid audits.¹³

The law requires the Agency for Health Care Administration (AHCA) to establish a process that allows a pharmacist to obtain a preliminary review of an audit report and the ability to appeal an

¹¹ Alabama, Arizona, California, Colorado, Florida (Medicaid, only), Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, and Vermont.

¹² Office of Program Policy Analysis & Government Accountability, *supra* note 8.

¹³ Section 465.188, F.S.

unfavorable audit report without the necessity of obtaining legal counsel. The preliminary review and appeal may be conducted by an ad hoc peer review panel, appointed by the AHCA, which consists of pharmacists who maintain an active practice. If, following the preliminary review, the AHCA or the review panel finds that an unfavorable audit report is unsubstantiated, the AHCA must dismiss the audit report without the necessity of any further proceedings.

These requirements do not apply to investigative audits conducted by the Medicaid Fraud Control Unit of the Department of Legal Affairs or to investigative audits conducted by the AHCA when there is reliable evidence that the claim which is the subject of the audit involves fraud, willful misrepresentation, or abuse under the Medicaid program.

III. Effect of Proposed Changes:

Section 1 establishes the rights of a pharmacy when it is audited directly or indirectly by a managed care company, insurance company, third-party payor, pharmacy benefit manager, or an entity that represents responsible parties such as companies or groups, referred to in the bill as “entity.” The rights include:

- To have at least 7 days prior notice of each initial on-site audit;
- To have an on-site audit scheduled during the first 5 days of the month, only by consent of the pharmacist;
- To limit the audit period to 24 months after the date a claim is submitted to or adjudicated by the entity;
- To have an audit that requires clinical or professional judgment conducted by or in consultation with a pharmacist;
- To use the records of a hospital, physician, or other authorized practitioner to validate the pharmacy records in accordance with state and federal law;
- To be reimbursed for a claim that was retroactively denied for a clerical, typographical, scrivener’s, or computer error, if the prescription was properly dispensed, unless the pharmacy has a pattern of such errors or fraudulent billing is alleged or the error results in actual financial loss to the entity;
- To receive the preliminary audit report within 120 days after the audit is concluded and the final audit report within 6 months after receiving the preliminary report;
- To have 10 days after the preliminary audit report is delivered in which to produce documentation to address a discrepancy or audit finding; and
- To have recoupment or penalties based on actual overpayments, not extrapolation.¹⁴

The rights do not apply to audits that are based on a suspicion of fraud or audits for Medicaid fee-for-service claims. The Office of Insurance Regulation is required to investigate a complaint from a pharmacy that alleges a willful violation of the bill by an entity conducting an audit of the pharmacy on behalf of a managed care company or insurance company regulated by the office. The complaint must be in writing, signed by the authorized pharmacy representative and contain facts that demonstrate a violation of the bill’s provisions.

¹⁴ Extrapolation is a process whereby statistical sampling is used to calculate and project the amount of overpayment made on claims.

A violation is an unfair claim settlement practice under s. 641.3903(5)(c)1. and 4., F.S., and is enforceable against the entity as provided in part I, ch. 641, F.S., and s. 626.9521, F.S.

Section 2 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 702 will have an indeterminate fiscal impact on the private health sponsors through potential modifications in pharmacy auditing methodologies and limitations on recoupment of claims.

The prior notification requirement and limitation on audits during the first 5 days of the month may allow pharmacies to manage workload more efficiently.

C. Government Sector Impact:

CS/SB 702 will have an indeterminate, but likely insignificant, fiscal impact on government pharmacies, e.g. public health departments. These pharmacies may file claims from time-to-time with private health sponsors and are subject to random audits, but the substantial majority of their claims are paid by Medicaid.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the Agency for Health Care Administration, the bill will not have a direct impact on the Medicaid Program Integrity Office within the Agency for Health Care Administration.

Under the Statewide Medicaid Managed Care program, the Medicaid Program Integrity Office will not directly audit pharmacy claims of those providers that contract with Florida Managed Medical Assistance plans. The plans will submit pharmacy encounter data to the agency and the agency will have a third party contractor analyze the claims. This process is not affected by the bill.

The agency noted that under the bill, fee-for-service Medicaid audits or investigation of potential fraudulent claims by the agency is specifically exempted. There is a remaining question as to whether the agency's ability to look at potential abuse is affected by this bill. Agency staff is reviewing this further.

VIII. Statutes Affected:

This bill creates section 465.1885 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries Committee on March 13, 2014

The CS provides that the additional records used to validate the pharmacy's records will be in accordance with state and federal law.

The CS provides that a pharmacy will not be reimbursed for an erroneous claim if it causes actual loss to an entity covered by the bill. It also defines what a "properly and dispensed" prescription means.

The CS changes the timeframe for a pharmacy to receive the preliminary audit report from 90 to 120 days.

The CS provides that the Office of Insurance Regulation must investigate a complaint from a pharmacy which alleges a willful violation of the provisions of the bill by an entity regulated by the office. It provides for the complaint procedure and that a violation is an unfair claim settlement practice under s. 641.3903(5)(c)1. and 4., F.S., and enforceable as provided in part I, ch. 641, F.S., and s. 626.9521, F.S.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2014	.	
	.	
	.	
	.	

The Committee on Regulated Industries (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete lines 32 - 55
and insert:

(e) To use the records of a hospital, physician, or other authorized practitioner, which are transmitted by any means of communication, to validate the pharmacy records in accordance with state and federal law.

(f) To be reimbursed for a claim that was retroactively denied for a clerical error, typographical error, scrivener's



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11 error, or computer error if the prescription was properly and
12 correctly dispensed, unless a pattern of such errors exists,
13 fraudulent billing is alleged, or the error results in actual
14 financial loss to the entity. For the purposes of this section,
15 a prescription is properly and correctly dispensed if the
16 pharmacy dispenses the correct drug to the correct patient with
17 the correct issuing directions.

18 (g) To receive the preliminary audit report within 120 days
19 after the conclusion of the audit.

20 (h) To produce documentation to address a discrepancy or
21 audit finding within 10 business days after the preliminary
22 audit report is delivered to the pharmacy.

23 (i) To receive the final audit report within 6 months after
24 receiving the preliminary audit report.

25 (j) To have recoupment or penalties based on actual
26 overpayments and not according to the accounting practice of
27 extrapolation.

28 (2) The Office of Insurance Regulation shall investigate a
29 complaint received from a pharmacy which alleges a willful
30 violation of this section by an entity conducting an audit of
31 the pharmacy on behalf of a managed care company or insurance
32 company regulated by the office. Such complaint must be in
33 writing, signed by an authorized representative of the affected
34 pharmacy, and contain ultimate facts that demonstrate a
35 violation of this section. A violation of this section is an
36 unfair claim settlement practice as described in s.
37 641.3903(5)(c)1. and 4., enforceable against the entity as
38 provided in part I of chapter 641 and s. 626.9521.

39 (3) The rights contained in this section do not apply to



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40 audits in which fraudulent activity is suspected or to audits
41 related to fee-for-service claims under the Medicaid program.

42
43 ===== T I T L E A M E N D M E N T =====

44 And the title is amended as follows:

45 Delete lines 5 - 8

46 and insert:

47 are conducted by certain entities; requiring the
48 office to investigate complaints alleging a violation
49 of pharmacy rights; providing that a willful violation
50 of such rights is an unfair claim settlement practice;
51 exempting audits in which fraudulent activity is
52 suspected or which are related to Medicaid claims;

By Senator Bean

4-01182-14

2014702__

1 A bill to be entitled
 2 An act relating to pharmacy audits; creating s.
 3 465.1885, F.S.; enumerating the rights of pharmacies
 4 relating to audits of pharmaceutical services which
 5 are conducted by certain entities; exempting audits in
 6 which fraudulent activity is suspected or which are
 7 related to Medicaid claims; establishing a claim for
 8 civil damages if the pharmacy's rights are violated;
 9 providing an effective date.
 10
 11 Be It Enacted by the Legislature of the State of Florida:
 12
 13 Section 1. Section 465.1885, Florida Statutes, is created
 14 to read:
 15 465.1885 Pharmacy audits; rights.—
 16 (1) If an audit of the records of a pharmacy licensed under
 17 this chapter is conducted directly or indirectly by a managed
 18 care company, an insurance company, a third-party payor, a
 19 pharmacy benefit manager, or an entity that represents
 20 responsible parties such as companies or groups, referred to as
 21 an "entity" in this section, the pharmacy has the following
 22 rights:
 23 (a) To be notified at least 7 calendar days before the
 24 initial on-site audit for each audit cycle.
 25 (b) To have the on-site audit scheduled after the first 5
 26 calendar days of a month unless the pharmacist consents
 27 otherwise.
 28 (c) To have the audit period limited to 24 months after the
 29 date a claim is submitted to or adjudicated by the entity.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

4-01182-14

2014702__

30 (d) To have an audit that requires clinical or professional
 31 judgment conducted by or in consultation with a pharmacist.
 32 (e) To use the records of a hospital, physician, or other
 33 authorized practitioner, which are transmitted by any means of
 34 communication, to validate the pharmacy records.
 35 (f) To be reimbursed for a claim that was retroactively
 36 denied for a clerical error, typographical error, scrivener's
 37 error, or computer error if the prescription was properly and
 38 correctly dispensed, unless a pattern of such errors exists or
 39 fraudulent billing is alleged.
 40 (g) To receive the preliminary audit report within 90 days
 41 after the conclusion of the audit.
 42 (h) To produce documentation to address a discrepancy or
 43 audit finding within 10 business days after the preliminary
 44 audit report is delivered to the pharmacy.
 45 (i) To receive the final audit report within 6 months after
 46 receiving the preliminary audit report.
 47 (j) To have recoupment or penalties based on actual
 48 overpayments and not according to the accounting practice of
 49 extrapolation.
 50 (2) The rights contained in this section do not apply to
 51 audits in which fraudulent activity is suspected or to audits
 52 related to fee-for-service claims under the Medicaid program.
 53 (3) A pharmacy injured as a result of a willful violation
 54 of this section shall have a civil cause of action for treble
 55 damages, reasonable attorney fees, and costs.
 56 Section 2. This act shall take effect July 1, 2014.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability

SELECT COMMITTEE:

Select Committee on Patient Protection
and Affordable Care Act

SENATOR AARON BEAN

4th District

February 12, 2014

The Honorable Kelli Stargel
Chair, Regulated Industries Committee
324 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Stargel:

This letter is to request to have my bill *SB 702 relating Pharmacy Audits* be heard at the next possible committee meeting. If there is any other information needed please do not hesitate to contact me. Thank you for your consideration.

Respectfully,

A handwritten signature in blue ink that reads "Aaron Bean".

Aaron Bean
State Senator, 4th District

Cc: Patrick "Booter" Imhof, Staff Director
Lynn Koon, Committee Administrative Assistant

/jk

REPLY TO:

- 1919 Atlantic Boulevard, Jacksonville, Florida 32207 (904) 346-5039 FAX: (888) 263-1578
- 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5004 FAX: (850) 410-4805

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date _____

Topic Pharmacy Audits Bill Number SB 702
Name Larry Gonzalez Amendment Barcode _____ (if applicable)
Job Title General Counsel, FSNP (if applicable)
Address 223 S. Gadsden St Phone 850 222-_____
Street
Tallahassee FL 32301 E-mail lawgonz@earthlink.net
City State Zip

Speaking: For Against Information
Representing Florida Society of Health-System Pharmacists
Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.
This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/13/14
Meeting Date

Topic PHARMACY AUDITS

Bill Number SB 702
(if applicable)

Name LARRY WILLIAMS

Amendment Barcode _____
(if applicable)

Job Title ATTORNEY

Address 215 SOUTH MUNROE SUITE 601
Street

Phone (850) 521-1980

TALLAHASSEE FL 32301
City State Zip

E-mail LWILLIAMS@GUNSTER.COM

Speaking: For Against Information

Representing AMERICAN PHARMACY COOPERATIVE INC

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/13/2014

Meeting Date

Topic PHARMACY AUDITS

Bill Number 702
(if applicable)

Name MICHAEL JACKSON

Amendment Barcode _____
(if applicable)

Job Title EXECUTIVE VICE PRESIDENT & CEO

Address 610 N. ADAMS ST

Phone (850) 222-2400

Street

TALLAHASSEE

City

FL

State

32301

Zip

E-mail MJACKSON@PHARMUTW.COM

Speaking: For Against Information

Representing FLORIDA PHARMACY ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/13/2014

Meeting Date

Topic Pharmacy Audits

Bill Number 702
(if applicable)

Name Jorge Chamizo

Amendment Barcode -
(if applicable)

Job Title Attorney

Address 108 South Monroe Street

Phone (850) 681-0024

Street
Tallahassee FL 32301
City State Zip

E-mail jorge@flapartners.com

Speaking: For Against Information

Representing Independent Pharmacy Cooperative

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-13-14

Meeting Date

Topic Amendment to SB 702

Bill Number 702
(if applicable)

Name Audrey Brown

Amendment Barcode 694642
(if applicable)

Job Title President + CEO

Address _____
Street

Phone _____

City

State

Zip

E-mail audrey@fahp.net

Speaking: For Against Information

Representing Florida Assoc. of Health Plans

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/13

Meeting Date

Topic Pharmacy Audit

Bill Number 702
(if applicable)

Name Cynthia Henderson

Amendment Barcode _____
(if applicable)

Job Title _____

Address 108 E. Jefferson St

Phone _____

Street

Tallahassee FL 32301

E-mail cynthenderson@me.com

City

State

Zip

Speaking: For Against Information

Representing EPIC Rx

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-13-14
Meeting Date

Topic Pharmacy Audit

Bill Number SB 702
(if applicable)

Name Joy Ryan

Amendment Barcode _____
(if applicable)

Job Title _____

Address 310 W. College
Street

Phone 425-41000

Tally 32301
City State Zip

E-mail joy@merenew.com
firm.com

Speaking: For Against Information

Representing Prime Therapeutics

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/13/14

Meeting Date

Topic Pharmacy Audits

Bill Number 702
(if applicable)

Name Sally West

Amendment Barcode _____
(if applicable)

Job Title Director, Government Relations

Address _____
Street

Phone 850-210-2461

City _____ State _____ Zip _____

E-mail sally.west@walgreens

Speaking: For Against Information

Representing Walgreens

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 796

INTRODUCER: Senator Latvala

SUBJECT: Public Accountancy

DATE: March 13, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 796 increases the number of quarter hours required to sit for the examination for licensure as a certified public accountant from 160 quarter hours to 180 quarter hours, which is equivalent to the alternative 120 semester hours required to sit for the examination.

The bill requires that persons who apply to sit for the license examination must show that he or she has good moral character, and the Board of Accountancy within the Department of Business and Professional Regulation must deny an applicant that fails to show good moral character. Good moral character means a personal history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation.

The bill provides a process for reactivation of CPA licenses that have become inactive due to failure to complete the continuing education requirements. It extends the deadlines in the process for reactivation of licenses that have become inactive due to failure to complete the continuing education requirements. The bill extends, from June 30, 2012 to June 30, 2014, the date by which a person must have been inactive or delinquent for failure to complete the continuing education requirement. The bill extends, from June 30, 2014 to June 30, 2016, the deadline to complete the reactivation of the license. To reactivate the license, the person must complete 120 hours of continuing education.

The bill provides an effective date of July 1, 2014.

II. Present Situation:

The Board of Accountancy (board) within the Department of Business and Professional Regulation (department) is the agency charged with regulating the practice of public accountancy.¹ The Division of Certified Public Accounting performs for the board all services

¹ Section 473.303, F.S.

concerning the enforcement of ch. 473, F.S., including, but not limited to, recordkeeping services, examination services, legal services, and investigative services, and those services in ch. 455, F.S., necessary to perform the board's duties under the chapter. The office of the division is located in Gainesville.²

Section 473.302(4), F.S., defines a "certified public accountant" (CPA) to mean a person who holds a license to practice public accounting in this state under the authority of ch. 473, F.S.

Section 473.302(8), F.S., defines the "practice of," "practicing public accountancy," or "public accounting" to mean:

(a) Offering to perform or performing for the public one or more types of services involving the expression of an opinion on financial statements, the attestation as an expert in accountancy to the reliability or fairness of presentation of financial information, the utilization of any form of opinion or financial statements that provide a level of assurance, the utilization of any form of disclaimer of opinion which conveys an assurance of reliability as to matters not specifically disclaimed, or the expression of an opinion on the reliability of an assertion by one party for the use by a third party;

(b) Offering to perform or performing for the public one or more types of services involving the use of accounting skills, or one or more types of tax, management advisory, or consulting services, by any person who is a certified public accountant who holds an active license, including the performance of such services by a certified public accountant in the employ of a person or firm; or

(c) Offering to perform or performing for the public one or more types of service involving the preparation of financial statements not included within paragraph (a), by a certified public accountant who holds an active license, a firm of certified public accountants, or a firm in which a certified public accountant has an ownership interest, including the performance of such services in the employ of another person. The board shall adopt rules establishing standards of practice for such reports and financial statements; provided, however, that nothing in this paragraph shall be construed to permit the board to adopt rules that have the result of prohibiting licensees employed by unlicensed firms from preparing financial statements as authorized by this paragraph.

However, these terms [of practice] shall not include services provided by the American Institute of Certified Public Accountants or the Florida Institute of Certified Public Accountants, or any full service association of certified public accounting firms whose plans of administration have been approved by the board, to their members or services performed by these entities in reviewing the services provided to the public by members of these entities.

² See s. 20.165(2)(c)2., F.S.

Section 473.302(5), F.S., defines the term “firm” to mean “any entity that is engaged in the practice of public accounting.”

Section 473.3101(1)(a), F.S., requires that firms must hold a license if the firm:

- Uses the title “CPA,” “CPA firm,” or any other title, designation, words, letters, abbreviations, or device tending to indicate that the firm practices public accounting; or
- Does not have an office in this state but performs the services described in s. 473.3141(4), F.S.,³ for a client having its home office in this state, as defined by rule of the board.

License Examination

Section 473.306(2), F.S., requires an applicant to sit for the CPA examination must have completed of 120 semester hours or 160 quarter hours from an accredited college or university with a concentration in accounting and business courses as specified by the board by rule. According to a representative for the Florida Institute of Certified Public Accountants, 160 quarter hours is not equivalent to 120 semester hours. The equivalent number of quarter hours is 180 hours.

Section 473.308(5)(b), F.S., authorizes the board to deny an application for licensure on the basis of lack of good moral character.

Section 473.308(6)(a), F.S., defines the term “good moral character” to means a personal history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation.

However, good moral character is not a basis for the board to deny an application to sit for the license examination.

Continuing Education

Certified public accountants, as part of the license renewal procedure, are required to submit proof satisfactory to the board that, during the two years prior to their application for renewal, they have successfully completed not less than 48 or more than 80 hours of continuing professional education programs in public accounting subjects approved by the board.⁴ The board has the authority to prescribe by rule additional continuing professional education hours, not to exceed 25 percent of the total hours required, for failure to complete the hours required for renewal by the end of the reestablishment period. At least 25 percent of the total hours required by the board must be in accounting-related and auditing-related subjects, as distinguished from federal and local taxation matters and management services.⁵ Five percent of the total hours required by the board must be in ethics applicable to the practice of public accounting.⁶

³ Section 473.3141, F.S., provides the practice requirements for CPA’s from out-of-state.

⁴ Section 473.312(1)(a), F.S.

⁵ Section 473.312(1)(b), F.S.

⁶ Section 473.312(1)(c), F.S.

Inactive Licenses

Section 473.313(1), F.S., permits Florida-licensed CPA's to request that their license be placed on inactive status. Section 473.313(2), F.S., authorizes the board to provide that the minimum requirements for placing a license on inactive status, renewing an inactive license, and reactivating the inactive license.

Section 473.313(2), F.S., provides that a CPA who holds an inactive license due to failure to complete the continuing education requirements in s. 473.312, F.S., may be reactivated under s. 473.311, F.S.,⁷ upon application to the department. The minimum continuing education requirements are those required by board rule, the most recent biennium reporting period, and one-half of the requirements under s. 473.312, F.S.⁸

Section 473.313(3), F.S., permits a license that has become inactive due to failure to meet the continuing education requirements to be renewed upon the licensee applying to the department with payment of a fee as determined by the department.⁹ The applicant must submit proof of satisfactorily completing the continuing education requirement. The applicant must also submit the completed application to the board by March 15 immediately following the inactive period.

Section 473.303(2), F.S., provides the number of hours of continuing education required for applicants to reactivate an inactive license if the license was inactive or delinquent on June 30, 2012. To reactivate, the person must have completed 120 hours of continuing education, including at least 30 hours in accounting-related and auditing-related subjects, not more than 30 hours in behavioral subjects, and a minimum of 8 hours in ethics subjects approved by the board. To reactivate, the CPA must also have notified the board by December 31, 2012, of his or her intention to reactivate such a license and have completed such reactivation by June 30, 2014.

The department noted that the last time amnesty was offered in 2012, the division notified approximately 3,437 inactive licensees of the amnesty provision. Four hundred and twelve licensees submitted letters of intent to reactivate under the amnesty program and only 143 actually completed the reactivation process under that provision.

Rule 61H1-33.006, F.A.C., provides that licenses that have been inactive for no more than two reporting periods may be reactivated upon the completion of the most recent 2-year continuing education requirement plus a minimum of 120 hours of continuing education. The required additional continuing education hours increase to 200 hours if the CPA has been inactive for three or more reporting periods, and 280 hours if the CPA has been inactive for three or more reporting periods.

⁷ Section 473.311, F.S., provides for the renewal of licenses upon the satisfaction of continuing education requirements.

⁸ Section 473.312(1), F.S., requires that at least 48, but not more than 80 hours, of continuing education must be completed within 2 years prior to the application for renewal.

⁹ Section 473.305, F.S., authorizes the board to establish, by rule, a reactivation fee, and a delinquency fee not to exceed \$50 for continuing professional education reporting forms. This section also provides that the board must "establish fees which are adequate to ensure the continued operation of the board and to fund the proportionate expenses incurred by the department which are allocated to the regulation of public accountants." The fees established by the board must be based on department estimates of the revenue required to implement ch. 473, F.S., and the provisions of law with respect to the regulation of certified public accountants.

III. Effect of Proposed Changes:

License Examination

The bill creates s. 473.306(2)(a), F.S., to increase the number of quarter hours required to sit for the CPA license examination from 160 quarter hours to 180 quarter hours, which is equivalent to the alternative 120 semester hours required to sit for the examination.

The bill creates s. 473.306(2)(b), F.S., to require that persons who apply to sit for the CPA license examination show that he or she has good moral character.

The bill defines good moral character as having the same meaning as in s. 473.308(6)(a), F.S.

The bill requires that the board refuse to allow an applicant to take the CPA license examination, if the board finds a reasonable relationship between the applicant's lack of good moral character and the professional responsibilities of a CPA. The board's finding of a lack of good moral character must be supported by competent substantial evidence.¹⁰

If the board finds that the applicant is unqualified to take the license examination because of a lack of good moral character, the board is required to furnish the applicant with a statement containing the findings of the board, a complete record of the evidence upon which the determination was based, and a notice of the rights of the applicant to a hearing and appeal.¹¹

Inactive Licenses

The bill amends s. 473.313(2), F.S., to extend the deadlines in the process for reactivation of licenses that have become inactive due to failure to complete the continuing education requirements. The bill extends, from June 30, 2012 to June 30, 2014, the date by which a person must have been inactive or delinquent for failure to complete the continuing education requirement. The bill extends, from June 30, 2014 to June 30, 2016, the deadline to complete the reactivation of the license.

Reactivation of an inactive or delinquent licenses requires payment of a \$250.00 application fee.¹²

Effective Date

The bill provides an effective date of July 1, 2014.

¹⁰ Agency action must be based on findings of fact that are supported by competent, substantial evidence in the record of a hearing conducted pursuant to ss. 120.569 and 120.57, F.S. See s. 120.68(7)(b), F.S. Competent substantial evidence is evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. It is relevant evidence as a reasonable mind would accept as adequate to support a conclusion. See *Verizon Florida, Inc., v. Jabor*, 889 So.2d 712, 714 (Fla. 2004), citing *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957).

¹¹ Sections 120.569 and 120.57, F.S., provide the administrative procedures for persons whose substantial interests have been determined by an agency. The administrative rights include a hearing before the agency or before an administrative law judge of the Division of Administrative Hearing. Section 120.60, F.S., provides that a party who is adversely affected by final agency action is entitled to judicial review.

¹² Rule 61H1-31.006, F.A.C.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who apply to reactivate an inactive or delinquent license would be required payment of a \$250.00 application fee.

C. Government Sector Impact:

According to the department, it anticipates revenues from the reactivation of delinquent or inactive license to range from \$60,000 to \$81,000. It also anticipates a corresponding increase in General Revenue of 8% of the additional license and application fees (\$4,800 to \$6,480).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 473.306 and 473.313 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Latvala

20-01005A-14

2014796__

1 A bill to be entitled
 2 An act relating to public accountancy; amending s.
 3 473.306, F.S.; revising course requirement for
 4 certified public accountant license applicant to take
 5 the licensure examination; requiring an applicant to
 6 be of good moral character in order to take the
 7 licensure examination; requiring the Board of
 8 Accountancy, when refusing to allow an applicant to
 9 take the examination because of a lack of good moral
 10 character, to make certain findings and furnish
 11 certain evidence and notices to the applicant;
 12 amending s. 473.313, F.S.; revising certain deadlines
 13 for license reactivation; providing an effective date.

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

16 Section 1. Subsection (2) of section 473.306, Florida
 17 Statutes, is amended to read:

18 473.306 Examinations.—

19 (2) An applicant is entitled to take the licensure
 20 examination to practice in this state as a certified public
 21 accountant if:

22 (a) The applicant has completed 120 semester hours or 180
 23 160 quarter hours from an accredited college or university with
 24 a concentration in accounting and business courses as specified
 25 by the board by rule; and

26 (b) The applicant shows that she or he has good moral
 27 character. For purposes of this paragraph, the term "good moral
 28 character" has the same meaning as provided in s. 473.308(6)(a).
 29

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

20-01005A-14

2014796__

30 The board may refuse to allow an applicant to take the licensure
 31 examination for failure to satisfy this requirement if:

32 1. The board finds a reasonable relationship between the
 33 lack of good moral character of the applicant and the
 34 professional responsibilities of a certified public accountant;
 35 and

36 2. The finding by the board of lack of good moral character
 37 is supported by competent substantial evidence.
 38

39 If an applicant is found pursuant to this paragraph to be
 40 unqualified to take the licensure examination because of a lack
 41 of good moral character, the board shall furnish to the
 42 applicant a statement containing the findings of the board, a
 43 complete record of the evidence upon which the determination was
 44 based, and a notice of the rights of the applicant to a
 45 rehearing and appeal.

46 Section 2. Subsection (2) of section 473.313, Florida
 47 Statutes, is amended to read:

48 473.313 Inactive status.—

49 (2) A license that has become inactive under subsection (1)
 50 or for failure to complete the requirements in s. 473.312 may be
 51 reactivated under s. 473.311 upon application to the department.
 52 The board may prescribe by rule continuing education
 53 requirements as a condition of reactivating a license. The
 54 minimum continuing education requirements for reactivating a
 55 license ~~are shall be~~ those prescribed by board rule and those of
 56 the most recent biennium plus one-half of the requirements in s.
 57 473.312. Notwithstanding any other provision of this section,
 58 the continuing education requirements are 120 hours, including

Page 2 of 3

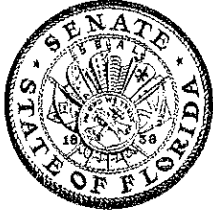
CODING: Words ~~stricken~~ are deletions; words underlined are additions.

20-01005A-14

2014796__

59 at least 30 hours in accounting-related and auditing-related
60 subjects, not more than 30 hours in behavioral subjects, and a
61 minimum of 8 hours in ethics subjects approved by the board, for
62 the reactivation of a license that is inactive or delinquent on
63 June 30, ~~2014 2012~~, if the Florida certified public accountant
64 notifies the Board of Accountancy by December 31, ~~2014 2012~~, of
65 an intention to reactivate such a license and completes such
66 reactivation by June 30, 2016 ~~2014~~.

67 Section 3. This act shall take effect July 1, 2014.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations
Appropriations Subcommittee on General
Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Community Affairs
Environmental Preservation and Conservation
Gaming
Judiciary
Rules

SENATOR JACK LATVALA
20th District

February 10, 2014

The Honorable Senator Kelli Stargel Chair
Senate Regulated Industries Committee
330 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Stargel:

I respectfully request that Senate Bill 796, public accountancy be placed on the agenda of the Senate Committee on Regulated Industries at your earliest convenience. This bill will make changes to Chapter 473, F.S. that are fully supported by the Florida Institute of Certified Public Accountants and the Florida Board of Accountancy.

I would greatly appreciate the opportunity to present this legislation to the Committee on Regulated Industries as soon as possible. If you have any questions regarding this legislation, please contact me. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Jack Latvala".

Jack Latvala
State Senator
District 20

Cc: Booter Imhof, Staff Director

REPLY TO:

26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date _____

Topic CPA REGULATION

Bill Number SB 796
(if applicable)

Name JENNIFER SWAN

Amendment Barcode _____
(if applicable)

Job Title _____

Address P.O. BOX 390

Phone _____

Street

TH FL 32302

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing FLORIDA INSTITUTE OF CPAs

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

3/13/14

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic Public Accountancy

Bill Number SB 796
(if applicable)

Name Deborah Curry

Amendment Barcode _____
(if applicable)

Job Title President / CEO

Address 325 W. College Ave

Phone 224-2727

Tallahassee FL 32303
City State Zip

E-mail curryd@ficpa.org

Speaking: For Against Information

Representing Florida Institute of CPA's

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Regulated Industries
ITEM: SB 796
FINAL ACTION: Favorable
MEETING DATE: Thursday, March 13, 2014
TIME: 9:00 —11:00 a.m.
PLACE: 301 Senate Office Building

FINAL VOTE		SENATORS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Detert						
X		Flores						
X		Galvano						
X		Gibson						
X		Legg						
		Sachs						
X		Sobel						
X		Thrasher						
X		Braynon, VICE CHAIR						
X		Stargel, CHAIR						
9	0							
Yea	Nay	TOTALS	Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 1450

INTRODUCER: Regulated Industries Committee and Senator Simpson

SUBJECT: Homeowners' Association Meetings

DATE: March 13, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CA</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1450 requires that meetings of the board of directors of a homeowners' association and meetings of the association's membership must be held at locations that are accessible to physically handicapped persons.

II. Present Situation:

Homeowners' Associations

Florida law provides statutory recognition to corporations that operate residential communities in this state and procedures for operating homeowners' associations, and protects the rights of association members without unduly impairing the ability of such associations to perform their functions.¹

A "homeowners' association" is defined as a:

Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.²

¹ See s. 720.302(1), F.S.

² Section 720.301(9), F.S.

Homeowners' associations are also governed by ch. 607, F.S., relating to for-profit corporations, or by ch. 617, F.S., relating to not-for-profit corporations.³

Section 720.301(4), F.S., defines the terms "declaration of covenants," or "declaration," to mean:

a recorded written instrument in the nature of covenants running with the land which subjects the land comprising the community to the jurisdiction and control of an association or associations in which the owners of the parcels, or their association representatives, must be members.

Section 720.301(8), F.S., defines the term "member" to mean "a member of an association, and may include, but is not limited to, a parcel owner or an association representing parcel owners or a combination thereof."

Section 720.301(10), F.S., defines the term "parcel owner" to mean the record owner of legal title to a parcel.

Section 720.301(11), F.S., defines the term "voting interest" to mean "the voting rights distributed to the members of the homeowners' association, pursuant to the governing documents."

Homeowners' associations are administered by a board of directors whose members are elected.⁴ The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include recorded declaration of covenants, bylaws, articles of incorporation, and duly adopted amendments to these documents.⁵ The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.⁶

Americans with Disabilities Protections

The Americans with Disabilities Act of 1990 (ADA or "act")⁷ protects Americans with disabilities from discrimination from employment, public services, and in access to, and enjoyment of, public accommodations. In regards to public accommodations, the act provides that:

no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

The act defines a disability to mean:

³ Section 720.302(5), F.S.

⁴ See ss. 720.303 and 720.307, F.S.

⁵ See ss. 720.301 and 720.303, F.S.

⁶ Section 720.303(1), F.S.

⁷ Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*

- A physical or mental impairment that substantially limits one or more major life activities of such individual;
- A record of such an impairment; or
- Being regarded as having such an impairment.⁸

In relevant part, the act provides:⁹

The following private entities are considered public accommodations for purposes of this subchapter, if the operations of such entities affect commerce

(A) an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(B) a restaurant, bar, or other establishment serving food or drink;

(C) a motion picture house, theater, concert hall, stadium, or other place of exhibition entertainment;

(D) an auditorium, convention center, lecture hall, or other place of public gathering;

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(F) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;

(G) a terminal, depot, or other station used for specified public transportation;

(H) a museum, library, gallery, or other place of public display or collection;

(I) a park, zoo, amusement park, or other place of recreation;

(J) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;

(K) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and

(L) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

Florida has adopted architectural accessibility requirements of the ADA in the Florida Building Code.¹⁰

State Regulation of Homeowners' Associations

Unlike condominium and cooperative associations,¹¹ which are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of

⁸ 42 U.S.C. 12102(1).

⁹ 42 U.S.C. 12181(7).

¹⁰ Section 553.503, F.S.

¹¹ See chs. 718 and 719, F.S., respectively.

Business and Professional Regulation (department), homeowners' associations are not regulated by a state agency.

Section 720.302(2), F.S., expresses the legislative intent regarding the regulation of homeowners' associations:

The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with s. 720.311, the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.407 are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

The number of homeowners' associations or persons living in homeowners' associations in Florida is unknown. Although homeowners' associations are required to file articles of incorporation with the Division of Corporations (division) in the Department of State, the division cannot identify corporations that are homeowners' associations under ch. 720, F.S.¹²

The division's authority is limited to arbitration of recall election disputes.¹³

Meetings of the Board

Section 720.303(2)(a), F.S., provides for the conduct of meetings of the board. It requires a quorum for a meeting of the board. All meetings of the board must be open to all members. However, meetings between the board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege are not required to be open to non-board members. The quorum and open meeting requirements apply to the meetings of any committee or other similar body when a final decision will be made regarding the expenditure of association funds. These requirements also apply to meetings of any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

Meetings of Members

Section 720.306, F.S., provides for meetings of the members of the homeowners' association. Section 720.306(1)(a), F.S., requires a quorum of 30 percent of the total voting interests, unless a

¹² Homeowners' Association Task Force, *Final Report of the Homeowners' Association Task Force*, February 2004, page 5. A copy of the report is available on the internet at <http://www.ccfj.net/DBPRTFfinalreport.pdf> (Last visited March 11, 2014).

¹³ See s. 720.303(10)(d), F.S.

lower number is provided in the bylaws. Section 720.306(2), F.S., requires that associations must hold an annual meeting of its members for the transaction of any and all proper business at a time, date, and place stated in, or fixed in accordance with, the bylaws. The election of directors, must be held at, or in conjunction with, the annual meeting, or as provided in the governing documents. Membership meetings to elect leaders, adopt and approve association financial statements, amend the governing documents, handle items of special business involving the membership, and to address other matters for the general welfare of the community.¹⁴

III. Effect of Proposed Changes:

The bill amends s. 720.303(2)(a), F.S., to require that meetings of the board of directors of a homeowners' association must be held at locations that are accessible to physically handicapped persons.

The bill also amends s. 720.306(1)(a), F.S., to require that meetings of the membership of the association must be held at locations that are accessible to physically handicapped persons.

The bill does not define the terms “physically handicapped.”

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

¹⁴ See Peter M. Dunbar and Charles F. Dudley, *The Law of Florida Homeowners Associations*, 9th ed. (2012-2013) s. 2.1.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 720.303 and 720.306.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries Committee on March 13, 2014:

The CS changes the title of the bill from an act relating to “Homeowners’ Association Board Meetings” to an act relating to “Homeowners’ Association Meetings.”

The CS amends s. 720.306(1)(a), F.S., to require that meetings of the membership of the association must be held at locations that are accessible to physically handicapped persons.

- B. **Amendments:**

None.



625154

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
	.	
	.	
	.	

The Committee on Regulated Industries (Galvano) recommended the following:

Senate Amendment (with title amendment)

Between lines 30 and 31

insert:

Section 2. Paragraph (a) of subsection (1) of section 720.306, Florida Statutes, is amended to read:

720.306 Meetings of members; voting and election procedures; amendments.—

(1) QUORUM; AMENDMENTS.—

(a) Unless a lower number is provided in the bylaws, the



625154

11 percentage of voting interests required to constitute a quorum
12 at a meeting of the members shall be 30 percent of the total
13 voting interests. Unless otherwise provided in this chapter or
14 in the articles of incorporation or bylaws, decisions that
15 require a vote of the members must be made by the concurrence of
16 at least a majority of the voting interests present, in person
17 or by proxy, at a meeting at which a quorum has been attained.
18 The meeting must be held at a location that is accessible to
19 physically handicapped persons.

20
21 ===== T I T L E A M E N D M E N T =====

22 And the title is amended as follows:

23 Delete lines 2 - 6

24 and insert:

25 An act relating to homeowners' association meetings;
26 amending s. 720.303, F.S.; requiring meetings to be
27 held at locations accessible to physically handicapped
28 persons; amending s.720.306; F.S., requiring meetings
29 to be held at locations accessible to physically
30 handicapped persons; providing an effective date.

31

By Senator Simpson

18-01497-14 20141450__

1 A bill to be entitled
 2 An act relating to homeowners' association board
 3 meetings; amending s. 720.303, F.S.; requiring
 4 meetings to be held at locations accessible to
 5 physically handicapped persons; providing an effective
 6 date.
 7
 8 Be It Enacted by the Legislature of the State of Florida:
 9
 10 Section 1. Paragraph (a) of subsection (2) of section
 11 720.303, Florida Statutes, is amended to read:
 12 720.303 Association powers and duties; meetings of board;
 13 official records; budgets; financial reporting; association
 14 funds; recalls.-
 15 (2) BOARD MEETINGS.-
 16 (a) A meeting of the board of directors of an association
 17 occurs whenever a quorum of the board gathers to conduct
 18 association business. ~~All~~ Meetings of the board must be open to
 19 all members, except for meetings between the board and its
 20 attorney with respect to proposed or pending litigation where
 21 the contents of the discussion would otherwise be governed by
 22 the attorney-client privilege, and must be held at locations
 23 that are accessible to physically handicapped persons. The
 24 provisions of this subsection shall also apply to the meetings
 25 of any committee or other similar body when a final decision
 26 will be made regarding the expenditure of association funds and
 27 to meetings of any body vested with the power to approve or
 28 disapprove architectural decisions with respect to a specific
 29 parcel of residential property owned by a member of the

18-01497-14 20141450__

30 community.
 31 Section 2. This act shall take effect July 1, 2014.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR WILTON SIMPSON

18th District

COMMITTEES:

Community Affairs, *Chair*
Appropriations Subcommittee on General
Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Commerce and Tourism
Communications, Energy, and Public Utilities
Environmental Preservation and Conservation

JOINT COMMITTEE:

Joint Legislative Auditing Committee

March 9, 2014

Senator Kelli Stargel, Chair
Regulated Industries Committee
404 S. Monroe Street
Tallahassee, FL 32399

Senator Stargel,

Please place Senate Bill 1450 relating to access to HOA meetings, on the next committee agenda.

Please contact my office with any questions.

A handwritten signature in black ink, appearing to read "Wilton Simpson".

Wilton Simpson
Senator, 18th District

REPLY TO:

- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
- Post Office Box 938, Brooksville, Florida 34605
- Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-13-14

Meeting Date

Topic Homeowner Associations

Bill Number 1450
(if applicable)

Name Richard Pinsky

Amendment Barcode _____
(if applicable)

Job Title _____

Address 106 E. College Ave #1200

Phone _____

Street

Tallahassee, FL 32301

E-mail _____

City

State

Zip

Speaking: For Against Information

Representing Cyber Citizens

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 662

INTRODUCER: Regulated Industries Committee and Health Policy Committee

SUBJECT: Nonresident Pharmacies

DATE: March 12, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Niles	Imhof	RI	Fav/CS
2.			AHS	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 662 requires a pharmacy located in another state (nonresident pharmacy) to obtain a nonresident pharmacy compounded sterile products permit prior to shipping, mailing, delivering, or dispensing a compounded sterile product into Florida. Any sterile compounded product that is sent into Florida must have been compounded in a manner that meets or exceeds the standards for sterile compounding.

The bill authorizes the Department of Health (department) or its agents to inspect any nonresident pharmacy that is registered with the department. The nonresident pharmacy is responsible for the cost of this inspection. The department is also authorized to take regulatory action against a nonresident pharmacy immediately, without waiting 180 days for the pharmacy's home state to act on alleged conduct that causes or could cause serious injury to a human or animal in this state.

The bill provides an effective date of October, 1 2014.

II. Present Situation:

Pharmacies and pharmacists are regulated under the Florida Pharmacy Act (the Act) found in ch. 465, F.S.¹ The Board of Pharmacy (the board) is created within the department to adopt rules

¹Other pharmacy paraprofessionals, including pharmacy interns and pharmacy technicians, are also regulated under the Act.

to implement provisions of the Act and take other actions according to duties conferred on it in the Act.²

Several pharmacy types are specified in law and are required to be permitted or registered under the Act:

- Community pharmacy – a location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis.
- Institutional pharmacy – a location in a hospital, clinic, nursing home, dispensary, sanitarium, extended care facility, or other facility where medical drugs are compounded, dispensed, stored, or sold. The Act further classifies institutional pharmacies according to the type of facility or activities with respect to the handling of drugs within the facility.
- Nuclear pharmacy – a location where radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored, or sold, excluding hospitals or the nuclear medicine facilities of such hospitals.
- Internet pharmacy – a location not otherwise permitted under the Act, whether within or outside the state, which uses the internet to communicate with or obtain information from consumers in this state in order to fill or refill prescriptions or to dispense, distribute, or otherwise engage in the practice of pharmacy in this state.
- Non-resident pharmacy – a location outside this state which ships, mails, or delivers, in any manner, a dispensed drug into this state.
- Special pharmacy – a location where medicinal drugs are compounded, dispensed, stored, or sold if such location is not otherwise defined which provides miscellaneous specialized pharmacy service functions. Seven special pharmacy permits are established in rule.³

Nonresident pharmacy

Any pharmacy located outside this state which ships, mails, or delivers, in any manner, a dispensed drug into this state is required to be registered with the board as a nonresident pharmacy.⁴ In order to register in this state, a nonresident pharmacy must submit an application fee of \$255 and a certified application⁵ that documents:

- The pharmacy maintains a valid, unexpired license, permit, or registration to operate the pharmacy in compliance with the laws of the state in which the dispensing facility is located and from which the drugs are dispensed;
- The identity of the principal corporate officers and the pharmacist who serves as the prescription department manager as well as the criminal and disciplinary history of each;
- The pharmacy complies with lawful directions and requests for information from applicable regulatory bodies;
- The pharmacy department manager's licensure status;

²Section 465.005, F.S.

³ Rule 64B16-28.800, F.A.C., establishes the following special permits: Special-Parenteral and Enteral, Special-Closed System Pharmacy, Special-Non Resident (Mail Service), Special-End Stage Renal Disease, Special-Parenteral/Enteral Extended Scope, Special-ALF, and Special Sterile Compounding.

⁴ Section 465.0156, F.S. However, the board may grant an exemption from the registration requirements to any nonresident pharmacy which confines its dispensing activity to isolated transactions. See s. 465.0156(2), F.S.

⁵ See Board of Pharmacy, *Non-Resident Pharmacy Application and Information*, (Nov. 2012), available at <http://www.floridaspharmacy.gov/Applications/app-non-resident-pharmacy.pdf> (last visited Dec. 16, 2013).

- The most recent pharmacy inspection report; and
- The availability of the pharmacist and patient records for a minimum of 40 hours per week, 6 days a week.

The board may deny, revoke, or suspend registration of, or fine or reprimand, a nonresident pharmacy for:

- Failure to comply with Florida's drug substitution provisions in s. 465.025, F.S.;
- Failure to comply with the registration requirements;
- Advertising the services of a nonresident pharmacy which has not registered, knowing the advertisement will likely induce members of the public in this state to use the pharmacy to fill prescriptions; or
- Conduct which causes serious bodily injury or serious psychological injury to a resident of Florida if the board has referred the matter to the regulatory or licensing agency in the state in which the pharmacy is located and the regulatory or licensing agency fails to act within 180 days of the referral.

Pharmaceutical Compounding

Compounding is the professional act by a pharmacist or other practitioner authorized by law, employing the science or art of any branch of the profession of pharmacy, incorporating prescription or non-prescription ingredients to create a finished product for dispensing to a patient or for administration by a practitioner or the practitioner's agent.⁶

Historically and continuing today, a practitioner might prescribe a compounded preparation when a patient requires a different dosage form, such as turning a pill into a liquid for a patient who cannot swallow pills or into a lollipop or flavored medication for children; a different dosage strength, such as for an infant; or allergen-free medication. Compounding and dispensing in this manner is typically patient-specific. More recently, the practice of compounding medications has evolved and expanded to include compounding for office use. "Office use" means the provision and administration of a compounded drug to a patient by a practitioner in the practitioner's office or by the practitioner in a health care facility or treatment setting, including a hospital, ambulatory surgical center, or pharmacy.⁷ Typically a drug compounded for office use is not prepared, labeled, and dispensed for a specific patient.

Under the board's rules, compounding includes the preparation of:

- Drugs or devices in anticipation of prescriptions based on routine, regularly observed prescribing patterns;
- Drugs or devices, pursuant to a prescription, which are not commercially available; or
- Commercially available products⁸ from bulk when the prescribing practitioner has prescribed the compounded product on a per prescription basis and the patient has been made aware that the compounded product will be prepared by the pharmacist. The reconstitution of commercially available products pursuant to the manufacturer's guidelines is permissible without notice to the practitioner.

⁶ See Rule 64B16-27.700, F.A.C.

⁷ *Id.*

⁸ The term "commercially available product" means any medicinal product that is legally distributed in Florida by a drug manufacturer or wholesaler. See Rule 64B16-27.700, F.A.C.

Compounded Products

Compounded products may be either sterile or non-sterile. A sterile preparation is defined in the board's rule⁹ as any dosage form devoid of viable microorganisms, but does not include commercially manufactured products that do not require compounding prior to dispensing.

Compounded sterile preparations include, but are not limited to:

- Injectables;
- Parenterals, including Total Parenteral Nutrition (TPN) solutions, parenteral analgesic drugs, parenteral antibiotics, parenteral antineoplastic agents, parenteral electrolytes, and parenteral vitamins;
- Irrigating fluids;
- Ophthalmic preparations; and
- Aqueous inhalant solutions for respiratory treatments.

The United States Pharmacopeia and the National Formulary (USP–NF) is a book containing standards for chemical and biological drug substances, dosage forms, and compounded preparations, excipients, medical devices, and dietary supplements. The federal Food Drug and Cosmetic Act (FDCA) designates the USP–NF as the official compendium for drugs marketed in the United States. A drug product in the U.S. market must conform to the USP–NF standards for strength, quality, purity, packaging, and labeling of medications to avoid possible charges of adulteration and misbranding.¹⁰ The USP–NF has five chapters specifically related to pharmaceutical compounding, two of which are USP Chapter 795, which addresses compounding for non-sterile preparations, and USP Chapter 797, which addresses compounding for sterile preparations. In addition, USP Chapter 797 requires the use of other general chapters as well.

Safety concerns of compounded drugs

Compounded drugs can pose both direct and indirect health risks. Direct health risks may result from poor compounding practices. The compounded drugs may be sub- or super-potent, contaminated, or otherwise adulterated. Indirect health risks include the possibility that patients will use ineffective compounded drugs instead of FDA-approved drugs that have been shown to be safe and effective. Not all pharmacists have the same level of skills and equipment to safely compound certain medications, and some drugs may be inappropriate for compounding. In some cases, compounders may lack sufficient controls (e.g., equipment, training, testing, or facilities) to ensure product quality or to compound complex drugs like sterile or extended-release drugs.

In 2012, the federal Centers for Disease Control and Prevention (CDC), in collaboration with state and local health departments and the Food and Drug Administration (FDA), began investigating a multistate outbreak of fungal meningitis and other infections among patients who received contaminated preservative-free methylprednisolone acetate (MPA) steroid injections from the New England Compounding Center (NECC).¹¹ As of October 23, 2013, 751 cases were

⁹ Rule 64B16-27.797, F.A.C.

¹⁰ For additional information on the USP-NP see <http://www.usp.org/usp-nf> (last visited Dec. 17, 2013).

¹¹ The Centers for Disease Control and Prevention Multistate Fungal Meningitis Outbreak Investigation, available at: <http://www.cdc.gov/hai/outbreaks/meningitis.html> (last visited Dec. 27, 2013).

reported nationwide, with 64 deaths attributed to contaminated injectables compounded in the Massachusetts pharmacy.¹² Florida reported 25 cases, with seven deaths related to persons receiving the medications from the contaminated lots.

The FDA continues to inform the public about recalls, inspections, and regulatory enforcement action related to compounded medications.¹³

State and Federal Oversight of Compounded Medications

Until recently, the regulation of compounded medications was without clear guidelines or oversight responsibility by the FDA or state agencies.¹⁴ The FDA traditionally regulated the manufacture of prescription drugs, which typically includes making drugs (preparation, deriving, compounding, propagation, processing, producing, or fabrication) on a large scale for marketing and distribution of the product for unidentified patients. State boards of pharmacy historically have regulated the compounding of medications by a pharmacy under the practice of pharmacy.¹⁵ However, compounding standards, inspector competency, and inspection frequency and resources, if existent in the states, vary considerably.¹⁶

On November 27, 2013, President Obama signed the Drug Quality and Security Act (DQSA),¹⁷ legislation to enhance the oversight of the compounding of human drugs. This law creates a new section 503B in the FDCA. Under section 503B, a compounder can become an “outsourcing facility.” An outsourcing facility is not required to also be a state-licensed pharmacy. An outsourcing facility will be able to qualify for exemptions from the FDA approval requirements for new drugs and the requirement to label products with adequate directions for use.

Outsourcing facilities:

- Must comply with current good manufacturing practices (CGMP) requirements;
- Will be inspected by FDA according to a risk-based schedule; and
- Must meet certain other conditions, such as reporting adverse events and providing FDA with certain information about the products they compound.

¹² The Centers for Disease Control and Prevention, Multistate Fungal Meningitis Outbreak Investigation, *available at* http://www.cdc.gov/hai/outbreaks/meningitis-map-large.html#casecount_table (last visited Dec. 27, 2013).

¹³ Federal Drug Administration, *Compounding: Inspections, Recalls, and other Actions*, (updated March 5, 2014) *available at* <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/ucm339771.htm> (last visited March 11, 2014).

¹⁴The U.S. Supreme Court had found certain provisions relating to the advertising and promotion of certain human compounded drugs in section 503A of the FDCA to be unconstitutional in 2002 and struck the entire section of law dealing with the remaining provisions related to compliance with current good manufacturing practices, labeling, and FDA approval prior to marketing. In subsequent opinions, lower courts split on whether the remaining provisions remained intact and enforceable. In some instances, the FDA was refused admittance to conduct an inspection of compounders, which necessitated obtaining an administrative warrant to gain access to the firm and make copies of the firm’s records. *See* <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/ucm347722.htm> (last visited Dec. 27, 2013).

¹⁵ *See generally* U.S. Food and Drug Administration, Regulatory Guidance for Compounded Drugs, *available at* <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/ucm339764.htm> (last visited Dec. 27, 2013).

¹⁶House Democrats Release Report on Flawed Compounding Pharmacy Oversight, April 15, 2013, *available at* <http://dingell.house.gov/press-release/house-democrats-release-report-flawed-compounding-pharmacy-oversight> (last visited Dec. 27, 2013).

¹⁷ H.R. 3204, 113th Congress.

This law provides that hospitals and other health care providers can lawfully provide their patients with drugs that were compounded in FDA registered outsourcing facilities that are subject to CGMP requirements and federal oversight.

A compounder that chooses not to register as an outsourcing facility and qualify for the exemptions under section 503B, may qualify for the exemptions under section 503A of the FDCA relating to traditional compounding for patient-specific medications. Otherwise, the compounder is subject to all of the requirements in the FDCA applicable to conventional manufacturers.

The FDA anticipates that state boards of pharmacy will continue their oversight and regulation of the practice of pharmacy, including traditional pharmacy compounding. The FDA has also indicated it intends to continue to cooperate with state authorities to address pharmacy compounding activities that may be in violation of the FDCA.¹⁸

In response to the nationwide fungal meningitis outbreak caused by contaminated compounded products, the Florida Board of Pharmacy adopted Emergency Rule 64B16ER12-1, Florida Administrative Code. This Emergency Rule required all Florida licensed pharmacy permit holders, including non-residents, to complete a mandatory survey to inform the board of their compounding activities. The goal of this mandatory survey was to determine the scope of sterile and non-sterile compounding within Florida licensed pharmacies, whether physically located in or out-of-state. Of the 8,981 permitted pharmacies, 8,294 (92 percent) responded. The board published the compounding survey results noted below in January 2013.¹⁹

Results relating to non-sterile compounding facilities:

- 55 percent (4,494) compound non-sterile products; 9 percent (382) of these are nonresident pharmacies.
- 54 percent (4,380) compound non-sterile products pursuant to a patient-specific prescription; 9 percent (373) of these are nonresident pharmacies.
- 6 percent (459) compound non-sterile products in bulk; 81 percent (373) of these are nonresident pharmacies.
- 1 percent (119) compound non-sterile products in bulk for office use; 50 percent (59) of these are nonresident pharmacies.
- 5 percent (382) ship compounded non-sterile products to other states; 80 percent (307) of these are nonresident pharmacies.

Key results relating to sterile compounding facilities:

- 12 percent (946) compound sterile products; 32 percent (301) of these are nonresident pharmacies. Some of these in-state pharmacies may hold other permit types as well, such as an institutional permit or a special permit that authorizes compounding.
- 11 percent (913) compound sterile products pursuant to a patient-specific prescription; 32 percent (289) of these are nonresident pharmacies.

¹⁸ *Supra*, 16.

¹⁹ Florida Board of Pharmacy compounding Survey Report, (January 23, 2013) *available at* <http://www.floridaspharmacy.gov/Forms/info-compounding-survey-report.pdf>, (last visited March 11, 2014).

- 4 percent (348) compound sterile products in bulk and/or in bulk for office use; 45 percent (155) of these are nonresident pharmacies. Eighty-three of these 348 pharmacies (22 in-state and 61 nonresident) compound greater than 100 doses from a single batch.
- 4 percent (307) ship compounded sterile products to other states; 177 of these are nonresident pharmacies that ship sterile compounded products to Florida.

Effective September 23, 2013, the board adopted a rule requiring most pharmacies that engage or intend to engage in the preparation of sterile compounded products within the state to obtain a Special Sterile Compounding permit.²⁰ Pharmacies required to obtain this permit must compound sterile products in strict compliance with the standards set forth in board rules.²¹ These rules address, among other things, compounding products for office use, including the quantity of the product that may be safely compounded for office use, execution of an agreement between the pharmacist and practitioner outlining responsibilities of the practitioner, and labeling. Compliance with additional standards based on the risk level for contamination in the practice of compounding sterile preparations is also required. The rule addressing standards of practice for compounding sterile preparations was first adopted in 2008 and amended in January of 2010. These standards apply to all sterile pharmaceuticals, regardless of the location of the patient, e.g., home, hospital, nursing home, hospice, or doctor's office.²²

There is no statutory authority to require nonresident pharmacies to register or obtain a separate sterile compounding permit in Florida.

Compounding Pharmacy Accreditation

The Pharmacy Compounding Accreditation Board (PCAB) is a nationally recognized organization that issues a voluntary quality accreditation designation for the compounding industry. Founders of the organization include the American College of Apothecaries, National Community Pharmacists Association, American Pharmacists Association, National Alliance of State Pharmacy Associations, International Academy of Compounding Pharmacists, National Association of Boards of Pharmacy, National Home Infusion Association, and United States Pharmacopeia.

The PCAB accreditation means the pharmacy has independent, outside validation that it meets nationally accepted quality assurance, quality control, and quality improvement standards. In order to demonstrate compliance with PCAB standards and earn PCAB accreditation, pharmacies participate in an off-site and on-site evaluation process that includes: Verification by PCAB that the pharmacy is not on probation for issues related to compounding quality, public safety or controlled substances; verification that the pharmacy is properly licensed in each state it does business in; and an extensive on-site evaluation by a PCAB surveyor, all of whom are compounding pharmacists trained in evaluating compliance with PCAB's quality standards. For example, this evaluation includes:

- An assessment of the pharmacy's system for assuring and maintaining staff competency;
- A review of facilities and equipment;

²⁰ Rule 64B16-28.100(8), F.A.C.

²¹ Rules 64B16-27.797 and 64B16-27.700, F.A.C.

²² Rule 64B16-27.700, F.A.C.

- A review of records and procedures required to prepare quality compounded medications;
- A verification that the pharmacy uses ingredients from FDA registered and or licensed sources.
- A review of the pharmacy's program for testing compounded preparations.²³

Currently, 187 pharmacies hold PCAB accreditation, 15 of which are located in Florida.²⁴

III. Effect of Proposed Changes:

Section 1 amends s. 465.003, F.S., to include the definitions of “compounding” and “outsourcing facility.” Outsourcing facility means a single physical location registered as an outsourcing facility under federal law at which sterile compounding of a product is conducted. Compounding means a practice in which a licensed pharmacist or, in the case of an outsourcing facility, a person acting under the supervision of a licensed pharmacist, combines, mixes, or alters ingredients of a drug or product to create another drug or product.

Section 2 amends s. 465.0156, F.S., to authorize the department to take regulatory action against a nonresident pharmacy immediately, without waiting 180 days for the pharmacy's home state to act, for:

- Failure to comply with record maintenance and disposal provisions under s. 465.017(2), F.S.;
- Failure to comply with permit provisions under created s. 465.0158, F.S.; or
- Alleged conduct that causes or could cause serious injury to a human or animal in this state. Authorized regulatory action is expanded to include conduct that could cause serious injury to a human or animal, without demonstrating that the conduct actually injured a person. Regulatory enforcement action may also occur for conduct that causes or could cause serious bodily injury to an animal in this state or for noncompliance with the requirements of the newly established nonresident pharmacy compounded sterile products permit.

The bill also provides that a nonresident pharmacy is subject to s. 456.0635, F.S., which sets out the conditions required to dispense medicinal drugs pursuant to a facsimile of a prescription.

Section 3 creates s. 465.0158, F.S., to establish the nonresident sterile compounding permit. A pharmacy located in another state is required to obtain a nonresident pharmacy compounded sterile products permit prior to shipping, mailing, delivering, or dispensing a compounded sterile product into this state. This permit is a supplemental permit to registration as a nonresident pharmacy.

The department is directed to adopt a permit and renewal fee not to exceed \$250, pursuant to s. 465.022(14), F.S.

An applicant for a permit must submit an application form for the initial permit and renewal, proof of registration as an outsourcing facility with the Secretary of the United States

²³ Pharmacy Compounding Accreditation Board, <http://www.pcab.org/prescribers>, (last visited March 11, 2014).

²⁴ Pharmacy Compounding Accreditation Board, *All Pharmacies*, available at <http://www.pcab.org/pharmacy> (last visited March 11, 2014).

Department of Health and Human Services if eligible under federal law, proof of registration as a nonresident pharmacy under s. 465.0156, F.S., unless the applicant is an outsourcing facility and not a pharmacy. If the applicant is an outsourcing facility, then the application must include proof of an active and unencumbered license, permit or registration issued by the state where the facility is located that allows the facility to engage in compounding and to dispense or transport a compounded sterile product into Florida.

The applicant must also submit written attestation of owners, officers, and a prescription department manager or pharmacist in charge that he or she understands:

- Florida's laws and rules governing sterile compounding;
- That any compounded sterile products sent into this state will comply with those standards; and
- That their compounded sterile products are in compliance with the laws of the state in which the applicant is located.

The applicant must submit its existing policies and procedures that comply with pharmaceutical standards in ch. 797 of the United States Pharmacopoeia and any standards for sterile compounding required by board rule or good manufacturing practices for an outsourcing facility.

The applicant must also submit a current inspection report by the licensing agency where the facility is located reflecting compliance with this section. An inspection report is current if it was completed within six months before the initial application and within one year before a renewal.

If the applicant is unable to submit a current inspection report due to acceptable circumstances established by rule, the department shall conduct or contract to have an inspection done at the cost of the applicant, accept an alternative satisfactory report from a board approved entity, or accept an inspection report from the FDA.

Any sterile compounded product that is sent into this state must have been compounded in a manner that meets or exceeds the standards for sterile compounding in Florida and comply with the laws of the state in which the permittee is located.

The board may deny, revoke, or suspend the permit of, fine, or reprimand a permittee for:

- Failure to comply with this section;
- A violation under ss. 456.0635, 456.065, or 456.072, F.S., except s. 456.072(1)(s) or (u), F.S.;
- A violation under s. 465.0156(5), F.S.; or
- A violation listed under s. 465.016, F.S.

A nonresident pharmacy registered under s. 465.0156, F.S., may continue to ship, mail, deliver, or dispense a compounded sterile product into this state if the product meets or exceeds the standards for sterile compounding in this state, the product conforms with the law or rules of the state where the pharmacy is located, and the pharmacy applies for and is issued a permit under this section on or before February 28, 2015.

If an applicant is not registered as a nonresident pharmacy by October 1, 2014, it must seek registration and obtain the nonresident pharmacy compounded sterile products permit prior to sending compounded sterile products to Florida.

The board is required to adopt rules to administer this section, including for:

- Submitting an application for a permit;
- Determining inspections of a non-resident sterile compounding permitted facility; and
- Evaluating what is a satisfactory inspection report in lieu of an on-site inspection by the department or another state.

Section 4 amends s. 465.017, F.S., to authorize the department or its agents to inspect any nonresident pharmacy that is registered with the department. The nonresident pharmacy is responsible for the actual costs incurred by the department for this inspection.

Section 5 provides an effective date of October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

A biennial permit fee in an amount not to exceed \$250 is authorized. According to the board's compounding survey results, 177 nonresident pharmacies ship sterile compounded products to Florida. If all of these nonresident pharmacies seek a permit to continue shipping sterile compounded products to Florida, the biennial revenue from the permit, plus the \$5 unlicensed activity fee,²⁵ is estimated at \$45,135.

B. Private Sector Impact:

CS/SB 662 enhances the regulation of pharmacies that are located in other states and provide medication to persons in this state. These pharmacies that compound sterile products for patients in Florida may experience increased costs related to additional permit fees as discussed above and compliance with greater compounding practice

²⁵ A \$5 unlicensed activity fee is required by s. 456.065(3), F.S.

standards, if the pharmacy is located in a state with lesser practice standards. All registered nonresident pharmacies may experience on-site inspections and regulatory enforcement for non-compliance with Florida-specific practice requirements.

Patients receiving compounded sterile products from other states might experience increased medication costs to offset any costs of compliance with safer compounding standards. The overall health care market might experience reduced utilization to the extent that adverse health consequences are minimized from safer compounded medications. The fiscal impact of these factors is indeterminate.

C. Government Sector Impact:

The department will incur additional costs related to rule adoption, permitting activities, and regulatory enforcement actions. An analysis from the department was not available; however, frequently the department indicates these costs can be absorbed within existing resources. Costs incurred for inspections of nonresident pharmacies will be reimbursed by the nonresident pharmacy.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 465.003, 465.0156, and 465.017.

This bill creates section 465.0158 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on March 13, 2014:

The CS adds definitions under s. 465.003, F.S., for “compounding” and “outsourcing facility.” It provides that the board may deny, revoke, or suspend registration of, or fine or reprimand, a nonresident pharmacy in accordance with ch. 465, F.S. for conduct in noncompliance with record keeping provisions or which causes or could cause serious bodily injury or psychological injury to a human, or could cause serious bodily injury to a non-human animal.

The CS provides that a nonresident pharmacy is subject to s. 456.0635, F.S. Section 465.0158, F.S., is created providing for a nonresident sterile compounding permit, not a

nonresident pharmacy compounded sterile products permit. The CS includes nonresident sterile outsourcing facilities in the requirement for a permit. The nonresident sterile compounding permit applicant must additionally attest that compounded products conform to the laws and rules of the state in which the applicant is located. The nonresident licensure requirement to lawfully send sterile compounded drugs into the state is expanded to include outsourcing facilities.

The CS specifies the permit application requirements which include licensure documentation for the location of the nonresident pharmacy or outsourcing facility and current inspection reports. It also provides rulemaking for alternate inspecting entities if the applicant cannot produce a current inspection report from the resident state's regulatory entity. Violations for which the board may take disciplinary action against a nonresident sterile compounding permittee are expanded. An applicant registering on or after October 1, 2014, under s. 465.0156, F.S. may not ship, mail, deliver, or dispense a compounded sterile product into this state until the applicant is registered as a nonresident pharmacy and is issued a permit under this section.

The CS does not provide a sunset provision under s. 465.0158, F.S.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2014	.	
	.	
	.	
	.	

The Committee on Regulated Industries (Galvano) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsections (18) and (19) are added to section
465.003, Florida Statutes, to read:

465.003 Definitions.—As used in this chapter, the term:
(18) "Compounding" means a practice in which a licensed
pharmacist or, in the case of an outsourcing facility, a person
acting under the supervision of a licensed pharmacist, combines,



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11 mixes, or alters ingredients of a drug or product to create
12 another drug or product.

13 (19) "Outsourcing facility" means a single physical
14 location registered as an outsourcing facility under the federal
15 Drug Quality and Security Act, Pub. L. No. 113-54, at which
16 sterile compounding of a product is conducted.

17 Section 2. Subsections (4) and (5) of section 465.0156,
18 Florida Statutes, are amended, present subsections (6) through
19 (8) of that section are redesignated as subsections (7) through
20 (9), respectively, and a new subsection (6) is added to that
21 section, to read:

22 465.0156 Registration of nonresident pharmacies.—

23 (4) The board may deny, revoke, or suspend registration of,
24 or fine or reprimand, a nonresident pharmacy for failure to
25 comply with s. 465.0158, s. 465.017(2), or s. 465.025, or with
26 any requirement of this section in accordance with ~~the~~
27 ~~provisions of this chapter.~~

28 (5) In addition to the prohibitions of subsection (4) the
29 board may deny, revoke, or suspend registration of, or fine or
30 reprimand, a nonresident pharmacy in accordance with ~~the~~
31 ~~provisions of this chapter~~ for conduct which causes or could
32 cause serious bodily injury or serious psychological injury to a
33 human or serious bodily injury to a nonhuman animal in resident
34 ~~of this state if the board has referred the matter to the~~
35 ~~regulatory or licensing agency in the state in which the~~
36 ~~pharmacy is located and the regulatory or licensing agency fails~~
37 ~~to investigate within 180 days of the referral.~~

38 (6) A nonresident pharmacy is subject to s. 456.0635.

39 Section 3. Section 465.0158, Florida Statutes, is created



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40 to read:

41 465.0158 Nonresident sterile compounding permit.-

42 (1) In order to ship, mail, deliver, or dispense, in any
43 manner, a compounded sterile product into this state, a
44 nonresident pharmacy registered under s. 465.0156, or an
45 outsourcing facility, must hold a nonresident sterile
46 compounding permit.

47 (2) An application for a nonresident sterile compounding
48 permit shall be submitted on a form furnished by the board. The
49 board may require such information as it deems reasonably
50 necessary to carry out the purposes of this section. The fee for
51 an initial permit and biennial renewal of the permit shall be
52 set by the board pursuant to s. 465.022(14).

53 (3) An applicant must submit the following to the board to
54 obtain an initial permit, or to the department to renew a
55 permit:

56 (a) Proof of registration as an outsourcing facility with
57 the Secretary of the United States Department of Health and
58 Human Services if the applicant is eligible for such
59 registration pursuant to the federal Drug Quality and Security
60 Act, Pub. L. No. 113-54.

61 (b) Proof of registration as a nonresident pharmacy,
62 pursuant to s. 465.0156, unless the applicant is an outsourcing
63 facility and not a pharmacy, in which case the application must
64 include proof of an active and unencumbered license, permit, or
65 registration issued by the state, territory, or district in
66 which the outsourcing facility is physically located which
67 allows the outsourcing facility to engage in compounding and to
68 ship, mail, deliver, or dispense a compounded sterile product



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69 into this state if required by the state, territory, or district
70 in which the outsourcing facility is physically located.

71 (c) Written attestation by an owner or officer of the
72 applicant, and by the applicant's prescription department
73 manager or pharmacist in charge, that:

74 1. The applicant has read and understands the laws and
75 rules governing sterile compounding in this state.

76 2. A compounded sterile product shipped, mailed, delivered,
77 or dispensed into this state meets or exceeds this state's
78 standards for sterile compounding.

79 3. A compounded sterile product shipped, mailed, delivered,
80 or dispensed into this state must not have been, and may not be,
81 compounded in violation of the laws and rules of the state in
82 which the applicant is located.

83 (d) The applicant's existing policies and procedures for
84 sterile compounding, which must comply with pharmaceutical
85 standards in chapter 797 of the United States Pharmacopoeia and
86 any standards for sterile compounding required by board rule or
87 current good manufacturing practices for an outsourcing
88 facility.

89 (e) A current inspection report from an inspection
90 conducted by the regulatory or licensing agency of the state,
91 territory, or district in which the applicant is located. The
92 inspection report must reflect compliance with this section. An
93 inspection report is current if the inspection was conducted
94 within 6 months before the date of submitting the application
95 for the initial permit or within 1 year before the date of
96 submitting an application for permit renewal. If the applicant
97 is unable to submit a current inspection report conducted by the



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98 regulatory or licensing agency of the state, territory, or
99 district in which the applicant is located due to acceptable
100 circumstances, as established by rule, the department shall:

101 1. Conduct, or contract with an entity approved by the
102 board to conduct, an onsite inspection for which all costs shall
103 be borne by the applicant;

104 2. Accept a current and satisfactory inspection report, as
105 determined by rule, from an entity approved by the board; or

106 3. Accept a current inspection report from the United
107 States Food and Drug Administration conducted pursuant to the
108 federal Drug Quality and Security Act, Pub. L. No. 113-54.

109 (4) A permittee may not ship, mail, deliver, or dispense a
110 compounded sterile product into this state if the product was
111 compounded in violation of the laws or rules of the state in
112 which the permittee is located or does not meet or exceed this
113 state's sterile compounding standards.

114 (5) In accordance with this chapter, the board may deny,
115 revoke, or suspend the permit of, fine, or reprimand a permittee
116 for:

117 (a) Failure to comply with this section;

118 (b) A violation listed under s. 456.0635, s. 456.065, or s.
119 456.072, except s. 456.072(1)(s) or (1)(u);

120 (c) A violation under s. 465.0156(5); or

121 (d) A violation listed under s. 465.016.

122 (6) A nonresident pharmacy registered under s. 465.0156
123 which ships, mails, delivers, or dispenses a compounded sterile
124 product into this state may continue to do so if the product
125 meets or exceeds the standards for sterile compounding in this
126 state, the product is not compounded in violation of any law or



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127 rule of the state where the pharmacy is located, and the
128 pharmacy applies for and is issued a permit under this section
129 on or before February 28, 2015.

130 (7) An applicant registering on or after October 1, 2014,
131 as a nonresident pharmacy under s. 465.0156 may not ship, mail,
132 deliver, or dispense a compounded sterile product into this
133 state until the applicant is registered as a nonresident
134 pharmacy and is issued a permit under this section.

135 (8) The board shall adopt rules as necessary to administer
136 this section, including rules for:

137 (a) Submitting an application for the permit required by
138 this section.

139 (b) Determining how, when, and under what circumstances an
140 inspection of a nonresident sterile compounding permittee must
141 be conducted.

142 (c) Evaluating and approving entities from which a
143 satisfactory inspection report will be accepted in lieu of an
144 onsite inspection by the department or an inspection by the
145 licensing or regulatory agency of the state, territory, or
146 district where the applicant is located.

147 Section 4. Section 465.017, Florida Statutes, is amended to
148 read:

149 465.017 Authority to inspect; disposal.-

150 (1) Duly authorized agents and employees of the department
151 ~~may shall have the power to~~ inspect in a lawful manner at all
152 reasonable hours any pharmacy, hospital, clinic, wholesale
153 establishment, manufacturer, physician's office, or any other
154 place in the state in which drugs and medical supplies are
155 compounded, manufactured, packed, packaged, made, stored, sold,



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156 offered for sale, exposed for sale, or kept for sale for the
157 purpose of:

158 (a) Determining if any provision ~~of the provisions~~ of this
159 chapter or any rule adopted ~~promulgated~~ under its authority is
160 being violated;

161 (b) Securing samples or specimens of any drug or medical
162 supply after paying or offering to pay for such sample or
163 specimen; or

164 (c) Securing such other evidence as may be needed for
165 prosecution under this chapter.

166 (2) Duly authorized agents and employees of the department
167 may inspect a nonresident pharmacy registered under s. 465.0156
168 or a nonresident sterile compounding permittee under s. 465.0158
169 pursuant to this section. The costs of such inspections shall be
170 borne by such pharmacy or permittee.

171 (3) ~~(2)(a)~~ Except as permitted by this chapter, and chapters
172 406, 409, 456, 499, and 893, records maintained in a pharmacy
173 relating to the filling of prescriptions and the dispensing of
174 medicinal drugs may ~~shall not~~ be furnished only to ~~any person~~
175 ~~other than~~ to the patient for whom the drugs were dispensed, or
176 her or his legal representative, or to the department pursuant
177 to existing law, or, if ~~in the event that~~ the patient is
178 incapacitated or unable to request such ~~said~~ records, her or his
179 spouse except upon the written authorization of such patient.

180 (a) Such records may be furnished in any civil or criminal
181 proceeding, upon the issuance of a subpoena from a court of
182 competent jurisdiction and proper notice to the patient or her
183 or his legal representative by the party seeking such records.

184 (b) The board shall adopt rules establishing ~~to establish~~



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185 practice guidelines for pharmacies to dispose of records
186 maintained in a pharmacy relating to the filling of
187 prescriptions and the dispensing of medicinal drugs. Such rules
188 must ~~shall~~ be consistent with the duty to preserve the
189 confidentiality of such records in accordance with applicable
190 state and federal law.

191 Section 5. This act shall take effect October 1, 2014.

192
193 ===== T I T L E A M E N D M E N T =====

194 And the title is amended as follows:

195 Delete everything before the enacting clause
196 and insert:

197 A bill to be entitled
198 An act relating to nonresident sterile compounding
199 permits; amending s. 465.003, F.S.; defining the terms
200 "compounding" and "outsourcing facility"; amending s.
201 465.0156, F.S.; conforming provisions to changes made
202 by the act; expanding penalties to apply to injury to
203 a nonhuman animal; deleting a requirement that the
204 Board of Pharmacy refer regulatory issues affecting a
205 nonresident pharmacy to the state where the pharmacy
206 is located; creating s. 465.0158, F.S.; requiring
207 registered nonresident pharmacies and outsourcing
208 facilities to obtain a permit in order to ship, mail,
209 deliver, or dispense compounded sterile products into
210 this state; requiring submission of an application and
211 a nonrefundable fee; specifying requirements;
212 authorizing the board to deny, revoke, or suspend a
213 permit, or impose a fine or reprimand for certain



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214 actions; providing dates by which certain nonresident
215 pharmacies must obtain a permit; authorizing the board
216 to adopt rules; amending s. 465.017, F.S.; authorizing
217 the department to inspect nonresident pharmacies and
218 nonresident sterile compounding permittees; requiring
219 such pharmacies and permittees to pay for the costs of
220 such inspections; providing an effective date.

By the Committee on Health Policy

588-01081-14

2014662__

1 A bill to be entitled
 2 An act relating to nonresident pharmacies; amending s.
 3 465.0156, F.S.; conforming provisions to changes made
 4 by the act; deleting a requirement that the Board of
 5 Pharmacy refer regulatory issues affecting a
 6 nonresident pharmacy to the state where the pharmacy
 7 is located; creating s. 465.0158, F.S.; requiring
 8 registered nonresident pharmacies to obtain a permit
 9 in order to ship, mail, deliver, or dispense
 10 compounded sterile products into this state; requiring
 11 submission of an application and a nonrefundable fee;
 12 specifying requirements; requiring the Department of
 13 Health to inform permittees of any law or rule
 14 changes; authorizing the board to deny, revoke, or
 15 suspend a permit for certain actions; providing dates
 16 by which certain registered and unregistered
 17 nonresident pharmacies must obtain a permit;
 18 authorizing the Board of Pharmacy to adopt rules;
 19 providing for future repeal; amending s. 465.017,
 20 F.S.; authorizing the department to inspect registered
 21 nonresident pharmacies; requiring nonresident
 22 pharmacies to pay for the costs of such inspections;
 23 providing an effective date.

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

27 Section 1. Subsections (4) and (5) of section 465.0156,
 28 Florida Statutes, are amended to read:
 29 465.0156 Registration of nonresident pharmacies.—

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 (4) The board may deny, revoke, or suspend registration of,
 31 or fine or reprimand, a nonresident pharmacy for failure to
 32 comply with s. 465.025, s. 465.0158, or ~~with~~ any requirement of
 33 this section in accordance with ~~the provisions of~~ this chapter.

34 (5) In addition to the prohibitions of subsection (4),
 35 board may deny, revoke, or suspend registration of, or fine or
 36 reprimand, a nonresident pharmacy in accordance with ~~the~~
 37 ~~provisions of~~ this chapter for conduct that which causes or
 38 could cause serious bodily injury or serious psychological
 39 injury to a human or animal in resident of this state ~~if the~~
 40 ~~board has referred the matter to the regulatory or licensing~~
 41 ~~agency in the state in which the pharmacy is located and the~~
 42 ~~regulatory or licensing agency fails to investigate within 180~~
 43 ~~days of the referral.~~

44 Section 2. Section 465.0158, Florida Statutes, is created
 45 to read:

46 465.0158 Nonresident pharmacy compounded sterile products
 47 permit.—A nonresident pharmacy registered under s. 465.0156 must
 48 also hold a compounded sterile products permit issued under this
 49 section in order to ship, mail, deliver, or dispense, in any
 50 manner, a compounded sterile product into this state.

51 (1) Application for a permit shall be submitted on a form
 52 furnished by the board, together with a nonrefundable permit fee
 53 as provided under s. 465.022(14). The board may require such
 54 information as it deems reasonably necessary to carry out the
 55 purposes of this section, including information pertaining to
 56 registration as an outsourcing facility with the Secretary of
 57 the United States Department of Health and Human Services.

58 (2) As a condition of initial permitting and permit

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59 renewal, the owners, officers, and prescription department
 60 manager or pharmacist in charge of the nonresident pharmacy must
 61 attest in writing that they have read and understand the laws
 62 and rules governing sterile compounding in this state and that
 63 any compounded sterile product shipped, mailed, delivered, or
 64 dispensed into this state will meet or exceed this state's
 65 standards for sterile compounding.

66 (a) The department shall notify all compounded sterile
 67 products permittees when state laws or rules affecting the
 68 standards for sterile compounding in this state are adopted or
 69 revised, along with the effective date of the law or rule.

70 (b) If the department fails to notify a permittee of a
 71 change in state laws or rules, or the permittee does not receive
 72 notification of applicable rules, the permittee remains legally
 73 obligated to meet or exceed this state's standards with respect
 74 to any compounded sterile product shipped, mailed, delivered, or
 75 dispensed into this state. The board may provide an exception to
 76 this requirement by rule if the sterile compounding laws and
 77 rules of the state in which the nonresident pharmacy is located
 78 directly conflict with a board rule for sterile compounding in
 79 this state but provide a comparable standard of product safety
 80 and integrity.

81 (3) A nonresident pharmacy may not ship, mail, deliver, or
 82 dispense any compounded sterile product into this state which:

83 (a) Was compounded in violation of the laws and rules of
 84 the state in which the nonresident pharmacy is located; or

85 (b) Does not meet or exceed this state's sterile
 86 compounding standards as provided in subsection (2).

87 (4) To the extent feasible, biennial permit renewal shall

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88 be timed to coincide with nonresident pharmacies' registration
 89 renewal under s. 465.0156.

90 (5) In accordance with this chapter, the board may deny,
 91 revoke, or suspend the permit of, or fine or reprimand, a
 92 nonresident pharmacy for:

93 (a) Failure to comply with the requirements of this
 94 section; or

95 (b) Conduct that causes or could cause serious bodily
 96 injury or serious psychological injury to a human or animal in
 97 this state.

98 (6) A registered nonresident pharmacy that is currently
 99 shipping, mailing, delivering, or dispensing compounded sterile
 100 products into this state may continue to do so if such products
 101 meet or exceed the standards for sterile compounding in this
 102 state and the pharmacy is issued a nonresident pharmacy
 103 compounded sterile products permit on or before January 31,
 104 2015.

105 (7) A nonresident pharmacy seeking registration in this
 106 state under s. 465.0156 on or after July 1, 2014, may not ship,
 107 mail, deliver, or dispense a compounded sterile product into
 108 this state until it has received the sterile compounded products
 109 permit required under this section.

110 (8) The board shall adopt rules necessary to administer
 111 this section.

112 (9) This section is repealed October 1, 2018, unless
 113 reenacted by the Legislature.

114 Section 3. Section 465.017, Florida Statutes, is amended to
 115 read:
 116 465.017 Authority to inspect; disposal.-

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117 (1) Duly authorized agents and employees of the department
 118 ~~may shall have the power to~~ inspect in a lawful manner at all
 119 reasonable hours any pharmacy, including a nonresident pharmacy
 120 registered under s. 465.0156, and any hospital, clinic,
 121 wholesale establishment, manufacturer, physician's office, or
 122 any other place in the state in which drugs and medical supplies
 123 are manufactured, packed, packaged, made, stored, sold, offered
 124 for sale, exposed for sale, or kept for sale for the purpose of:

125 (a) Determining if any provision ~~of the provisions~~ of this
 126 chapter or any rule adopted ~~promulgated~~ under its authority is
 127 being violated;

128 (b) Securing samples or specimens of any drug or medical
 129 supply after paying or offering to pay for such sample or
 130 specimen; or

131 (c) Securing such other evidence as may be needed for
 132 prosecution under this chapter.

133 (2) The cost for inspecting a nonresident pharmacy shall be
 134 reimbursed by the pharmacy. The cost to the pharmacy is limited
 135 to the actual costs incurred by the department.

136 ~~(3)(2)(a)~~ Except as permitted by this chapter, and chapters
 137 406, 409, 456, 499, and 893 or upon the written authorization of
 138 the patient, records maintained in a pharmacy relating to the
 139 filling of prescriptions and the dispensing of medicinal drugs
 140 ~~may shall not~~ be furnished only ~~to any person other than~~ to the
 141 patient for whom the drugs were dispensed, or her or his legal
 142 representative, ~~or~~ to the department pursuant to existing law,
 143 or ~~if, in the event that~~ the patient is incapacitated or unable
 144 to request such ~~said~~ records, her or his spouse ~~except upon the~~
 145 ~~written authorization of such patient.~~

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146 (a) Such records may be furnished in any civil or criminal
 147 proceeding, upon the issuance of a subpoena from a court of
 148 competent jurisdiction and proper notice to the patient or her
 149 or his legal representative by the party seeking such records.

150 (b) The board shall adopt rules ~~establishing to establish~~
 151 practice guidelines for pharmacies to dispose of records
 152 maintained in a pharmacy relating to the filling of
 153 prescriptions and the dispensing of medicinal drugs. Such rules
 154 ~~must shall~~ be consistent with the duty to preserve the
 155 confidentiality of such records in accordance with applicable
 156 state and federal law.

157 Section 4. This act shall take effect July 1, 2014.

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3/13/14
~~SB 662~~

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Topic Sterile Compounding

Bill Number SB 662
(if applicable)

Name Larry Gonzalez

Amendment Barcode _____
(if applicable)

Job Title General Counsel

Address 223 S. Gadsden ST

Phone 850-222-0465

Street
Tallahassee FL 32301
City State Zip

E-mail lgonz2@earthlink.net

Speaking: For Against Information

Representing Florida Society of Health-System Pharmacists

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/13/2014

Meeting Date

Topic NONRESIDENT PHARMACIES

Bill Number 662
(if applicable)

Name MICHAEL JACKSON

Amendment Barcode _____
(if applicable)

Job Title EXECUTIVE VICE PRESIDENT & CEO

Address 610 N. ADAMS ST

Phone (850) 222-2400

TALLAHASSEE FL 32301
City State Zip

E-mail MJACKSON@PHARMVIEW.COM

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Regulated Industries
ITEM: SB 662
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Thursday, March 13, 2014
TIME: 9:00 —11:00 a.m.
PLACE: 301 Senate Office Building

SENATORS	3/13/2014 ⁴ Motion to vote "YEA" after Roll Call		3/13/2014 ⁵ Motion to vote "YEA" after Roll Call		3/13/2014 ⁶ Motion to vote "YEA" after Roll Call			
	Detert		Legg		Braynon		Yea	Nay
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Detert								
Flores								
Galvano								
Gibson								
Legg								
Sachs								
Sobel								
Thrasher								
Braynon, VICE CHAIR								
Stargel, CHAIR								
TOTALS	FAV Yea	- Nay	FAV Yea	- Nay	FAV Yea	- Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 512

INTRODUCER: Regulated Industries Committee and Senator Flores

SUBJECT: Cemeteries

DATE: March 13, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>BI</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 512 provides an exemption from licensing and regulation by the Board of Funeral, Cemetery, and Consumer within the Department of Financial Services for religious-institution-owned cemeteries, including all associated columbaria and mausoleums. An exempted cemetery must be larger than 5 acres and not exceed 60 acres. The religious institution must limit burial rights within the cemetery to members of the religious institution and their families.

The bill provides that the religious institution must provide an annual certification to the department that it maintains funds in separate accounts. It requires that the funds must be sufficient to cover maintenance costs and preneed agreements, and must be maintained in a financial institution, as defined in s. 280.02, F.S., and must only be used for such purposes. The bill requires that the annual certification must be made under oath and identify the financial institution and the account number where the funds are maintained. The bill provides minimum balances that must be maintained in the accounts. A minimum balance of \$1 million is required for cemeteries that are larger than five acres but do not exceed 30 acres. A minimum balance of \$2 million is required for cemeteries that are larger than 30 acres but do not exceed 60 acres.

The bill also amends s. 497.452, F.S. to expand the existing exemption from preneed sales licensing and regulation, for the religious-institution-owned cemeteries. It deletes the current limitation that the exempted cemetery must have been located in a county with a population of at least 960,000 persons on July 1, 1996. It also deletes the requirement that the exempted cemetery must have engaged in the sale of preneed contracts prior to October 1, 1993.

The bill provides an effective date of July 1, 2014.

II. Present Situation:

The Board of Funeral, Cemetery, and Consumer within the Department of Financial Services (department) is the agency charged with regulating cemeteries, funeral directing, embalming, preneed sales, monument establishments, cremation, crematories, and direct disposition under ch. 497, F.S.¹ The Division of Funeral, Cemetery, and Consumer Services (division) within the department is the administers the provisions of ch. 497, F.S., on behalf of the board.

Part II of ch. 497, F.S., provides for the regulation of cemeteries. Section 497.263(1), F.S., prohibits the operation of a cemetery without first obtaining a license, unless specifically exempted from ch. 497, F.S.

Section 497.103(2)(d), F.S., authorizes the department to determine whether any application or other filing made under ch. 497, F.S., is incomplete and not subject to further processing until made complete. Section 497.103(2)(e), F.S., authorizes the department to initiate and prosecute administrative and judicial action, including taking final action, regarding activity by persons and entities not licensed under ch. 497, F.S., engaging in activity the department deems to be in violation of ch. 497, F.S.

Unlicensed Cemeteries

Section 497.260(1), F.S., exempts the following cemeteries from ch. 497, F.S., and the rules adopted pursuant to the chapter:

- (a) Religious institution cemeteries of less than 5 acres which provide only single-level ground burial.
- (b) County and municipal cemeteries.
- (c) Community and nonprofit association cemeteries which provide only single-level ground burial and do not sell burial spaces or burial merchandise.
- (d) Cemeteries owned and operated or dedicated by a religious institution prior to June 23, 1976.
- (e) Cemeteries beneficially owned and operated since July 1, 1915, by a fraternal organization or its corporate agent.
- (f) A columbarium consisting of less than one-half acre which is owned by and immediately contiguous to an existing religious institution facility and is subject to local government zoning. The religious institution establishing such a columbarium shall ensure that the columbarium is perpetually kept and maintained in a manner consistent with the intent of this chapter. If the religious institution relocates, the religious institution shall relocate all of the urns and remains placed in the columbarium which were placed therein during its use by the religious institution.
- (g) Family cemeteries of less than 2 acres which do not sell burial spaces or burial merchandise.

¹ Section 497.101, F.S.

(h) A mausoleum consisting of 2 acres or less which is owned by and immediately contiguous to an existing religious institution facility and is subject to local government zoning. The religious institution establishing such a mausoleum must ensure that the mausoleum is kept and maintained in a manner consistent with the intent of this chapter and limit its availability to members of the religious institution. The religious institution establishing such a mausoleum must have been incorporated for at least 25 years and must have sufficient funds in an endowment fund to cover the costs of construction of the mausoleum.

(i) A columbarium consisting of 5 acres or less which is located on the main campus of a state university as defined in s. 1000.21(6). The university or university direct-support organization, as defined in s. 1004.28(1), which establishes the columbarium shall ensure that the columbarium is constructed and perpetually kept and maintained in a manner consistent with subsection (2) and the intent of this chapter.

The Catholic Church has seven dioceses in Florida.² The Archdiocese of Miami, the Dioceses of Orlando, Palm Beach, Pensacola-Tallahassee, St. Augustine, St. Petersburg, and Venice.

The Archdiocese of Miami maintains two cemeteries, Our Lady of Mercy Cemetery in Miami-Dade and Our Lady Queen of Heaven Cemetery in Broward County.³ The cemeteries are approximately 125 acres each. Both cemeteries were consecrated in 1959.⁴ The Diocese of Palm Beach has one cemetery, Our Lady Queen of Peace in Royal Palm Beach.⁵ This cemetery was consecrated in 1974.⁶ These cemeteries are currently exempt under s. 497.260(1)(d), F.S.

The Diocese of St. Petersburg has one cemetery, Calvary Catholic Cemetery in Clearwater.⁷ The Diocese of St. Augustine has two cemeteries, San Lorenzo Cemetery in St. Augustine and St. Mary Cemetery in Korona near Bunnell.⁸ The Diocese of Pensacola-Tallahassee has two cemeteries, Holy Cross Cemetery in Pensacola and Calvary Cemetery in Sunny Hills.⁹

Regulation of Unlicensed Cemeteries

Section 497.260(2), F.S., provides that all cemeteries, including unlicensed cemeteries, in this state must comply with the following requirements:

- The burial records requirements in s. 497.276(1), F.S.;

² See <http://www.nccbuscc.org/about/bishops-and-dioceses/all-dioceses.cfm?zip=&specificstate=FL> (Last visited March 14, 2014).

³ See <http://www.catholichealthservices.org/catholic-cemeteries-media/catholic-health-services.aspx?nd=450&id=13> (Last visited March 14, 2014).

⁴ See <http://www.catholichealthservices.org/catholic-cemeteries/catholic-health-services.aspx?nd=310> (Last visited March 16, 2014).

⁵ See <http://www.ourqueen.org/default.htm> (Last visited March 14, 2014).

⁶ *Id.*

⁷ See <http://calvarycemetery.net/> (Last visited March 14, 2014).

⁸ See <http://www.nflcemeteries.org/> (Last visited March 14, 2014).

⁹ See <http://www.ptdiocese.org/index.cfm?load=page&page=421> (Las visited March 14, 2014).

- The prohibition against refusing to sell or issue a contract or provide services to any person because of the person's race, color, creed, marital status, sex, or national origin in s. 497.152(1)(d), F.S.;
- The regulation of the solicitation of sales of burial rights, merchandise, or services by licensees in s. 497.164, F.S.;
- The provision in s. 497.2765, F.S., that permits person to record with the clerk of the court a permanent record of the purchase of purchase of the burial right, belowground crypt, grave space, mausoleum, columbarium, ossuary, or scattering garden with the clerk of the court in the county where the burial right, belowground crypt, grave space, mausoleum, columbarium, ossuary, or scattering garden is located;
- The provisions related to the fees and the installation, including markers, for monuments in s. 497.278, F.S.;
- The provision of 497.280, F.S., which prohibits the tying of the purchase of any grave space to the purchase of a monument from or through the seller of any other designated person or corporation; and
- The provisions related to the maintenance of abandoned cemeteries by county or municipalities in s. 497.284, F.S.

Section 497.260(6), F.S., also requires that all cemeteries in this state may not deny burial space to any person because of race, creed, marital status, sex, national origin, or color. However, a cemetery may designate parts of cemeteries or burial grounds for the specific use of persons whose religious code requires isolation. Religious institution cemeteries may limit burials to members of the religious institution and their families. Section 497.260(6)(c), F.S., provides that any cemetery company or other legal entity which violates the provisions of this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.083, and each violation of this section constitutes a separate offense.¹⁰

Investigation and Mediation of Unlicensed Cemetery Complaints

Section 497.260(3), F.S., requires that all exempted cemeteries which are in excess of five acres must submit to the following investigation and mediation procedure by the department in the event of a consumer complaint:

- (a) The exempt cemetery shall make every effort to first resolve a consumer complaint;
- (b) If the complaint is not resolved, the exempt cemetery shall advise the consumer of the right to seek investigation and mediation by the department;
- (c) If the department receives a complaint, it shall attempt to resolve it telephonically with the parties involved;
- (d) If the complaint still is not resolved, the department shall conduct an investigation and mediate the complaint;
- (e) If the department conducts an onsite investigation and face-to-face mediation with the parties, it may charge the exempt cemetery a single investigation and mediation fee not to exceed \$300, which fee shall be set by rule and shall be calculated on an hourly basis; and

¹⁰ Section 775.083, F.S. provides that the penalty for misdemeanor of the second degree is punishable by a fine not to exceed \$500.

(f) If all attempts to resolve the consumer complaint fail, the cemetery shall be subject to proceedings for penalties and discipline under this chapter if it is determined in a proceeding complying with chapter 120 that the cemetery is guilty of fraud, deceit, theft, gross negligence, incompetence, unjustified failure to honor its contracts, or failure to adequately maintain its premises. The department may file and serve on the cemetery an administrative complaint and cause the matter to be prosecuted and may thereafter issue and enforce its final order in the matter pursuant to chapter 120.

According to the division, there are no funds to implement any investigations or mediation of unlicensed cemetery complaints.

Additional Requirements for Unlicensed Religious-Institution-Owned Cemeteries

Section 497.260(4), F.S., provides that any religious-institution-owned cemetery that is exempt under s. 497.206(1)(d), is located in a county with a population of at least 1.3 million persons on July 1, 1996, and was selling merchandise and services to the religious institution's members prior to October 1, 1993, may establish one additional exempt cemetery in such county after December 31, 2020.

Section 497.260(5), F.S., provides that any religious-institution-owned cemetery exempt under subsection 497.260(1), F.S., except those cemeteries qualifying under paragraph (1)(d), which becomes affiliated with a commercial enterprise must meet the requirements of s. 497.263, F.S., which provides for the licensure of cemeteries.

Preneed License Exemption for Religious Cemeteries

Section 497.452(4), F.S., provides that any religious-institution-owned cemetery that is exempt under s. 497.260(1)(d), F.S., is located in a county with a population of at least 1.3 million persons on July 1, 1996,¹¹ and was selling merchandise and services to the religious institution's members prior to October 1, 1993, may establish one additional exempt cemetery in such county after December 31, 2020.

Section 497.005(63), F.S. defines "religious institution" as:

an organization formed primarily for religious purposes that has qualified for exemption from federal income tax as an exempt organization under the provisions of s. 501(c)(3) of the Internal Revenue Code of 1986, as amended.

¹¹ Miami-Dade County had 1,449,300 persons on July 1, 1996. The next largest county was Broward County with 884,872 on that date. See *Countywide, Unincorporated, and Incorporated Total: 1972-2013*, Office of Economic & Demographic Research, the Florida Legislature at <http://edr.state.fl.us/Content/population-demographics/data/> (Last visited March 11, 2014).

Preneed Contracts

Part IV of ch. 497, F.S., provides for the regulation of preneed sales. Section 497.452(1), F.S., requires a license issued by the board before a person may sell, advertise to sell, or make an arrangement for a preneed contract.

Section 497.005(56), F.S., defines a “preneed contract” as “any arrangement or method, of which the provider of funeral merchandise or services has actual knowledge, whereby any person agrees to furnish funeral merchandise or service in the future.”

Section 497.452(4), F.S., exempts religious-institution-owned cemeteries, that are exempt under s. 497.260(1)(d), F.S., from preneed sales regulation if the cemetery is in a county with a population of at least 960,000 persons on July 1, 1996,¹² and if such cemetery has engaged in the sale of preneed contracts prior to October 1, 1993, and it maintains a positive net worth at the end of each fiscal year of the cemetery.

III. Effect of Proposed Changes:

The bill creates s. 497.260(1)(j), F.S., to provide an additional exemption from licensing and regulation for religious-institution-owned cemeteries, including all associated columbaria and mausoleums. An exempted cemetery must be larger than 5 acres and not exceed 60 acres.

In addition, the religious institution must limit burial rights within the cemetery to members of the religious institution and their families. The bill does not define the persons who would qualify as a family member of a member of the religious institution.

The bill requires that the religious institution must provide an annual certification to the department that it maintains certain funds in separate accounts. The funds must be sufficient to cover maintenance costs and preneed agreements, and must be maintained in a financial institution, as defined in s. 280.02, F.S.,¹³ and must only be used for such purposes. The bill requires that the annual certification must be made under oath and identify the financial institution and the account number where the funds are maintained.

The bill provides minimum balances that must be maintained in the accounts. A minimum balance of \$1 million is required for cemeteries that are larger than five acres but do not exceed 30 acres. A minimum balance of \$2 million is required for cemeteries that are larger than 30 acres but do not exceed 60 acres.

The requirement of an annual certification would subject the religious-institution-owned cemetery to the jurisdiction of the department in order for the department to determine whether a cemetery certified, or seeking certification, under s. 497.260(1)(j), F.S., is in compliance with all of the requirements of that provision, or would otherwise need to be licensed or cease operations.

¹² *Id.*

¹³ Section 280.02(13), F.S., defines the term “financial institution” to mean, “including, but not limited to, an association, bank, brokerage firm, credit union, industrial savings bank, savings and loan association, trust company, or other type of financial institution organized under the laws of this state or any other state of the United States and doing business in this state or any other state, in the general nature of the business conducted by banks and savings associations.”

The bill also amends s. 497.452, F.S. to expand an existing exemption from preneed sales licensing and regulation, for the religious-institution-owned cemeteries. It deletes the limitation the exempted cemetery must be located in a county with a population of at least 960,000 persons on July 1, 1996. It also deletes the requirement that the exempted cemetery has engaged in the sale of preneed contracts prior to October 1, 1993.

The board would not have the authority to enforce a religious institution's compliance with the provisions of s. 497.260(1)(j), F.S. The requirements of this exemption require self-enforcement by the religious institution. According to the division, the board does not have adequate resources or jurisdiction to perform the audits required to determine compliance. Performing audits would require the division to inspect the accounts, records, and business of the religious institution to the same extent as licensed cemeteries and preneed sellers. However, the bill exempts religious institution-owned cemeteries from such regulation.¹⁴

The bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill would require the department to process the annual certification required under s. 497.260(1)(j)2., F.S. The department may be required to investigate the certification in order determine if the religious-institution-owned cemetery is in compliance with the

¹⁴ 2014 Agency Bill Analysis for SB 512, Division of Funeral, Cemetery, and Consumer Services, Department of Financial Services, January 14, 2014.

requirements of s. 497.260(1)(j)2., F.S. The department may incur costs related to the processing and investigation of the certification. The bill does not require the payment of a fee with the annual certification.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the division, the ongoing expansion of U.S. Department of Veteran Affairs (VA) cemeteries is impacting licensed cemeteries because they draw business from licensed cemeteries, and further stresses sales and cash flows at licensed cemeteries. For example, the Florida National Cemetery in Bushnell opened in 1988 and is now the second busiest VA national cemetery in the country with 6,728 interments completed in fiscal year 2011. Of the VA's 131 cemeteries across the nation, Florida is home to six national cemeteries that rank among the top 32 busiest by interment workload. Three new national VA cemeteries have opened in Florida over the past five years: including Jacksonville National Cemetery (2009), Sarasota National Cemetery (2009) and South Florida National Cemetery (2007).

In November 2012, the VA announced that it had purchased land for two additional VA cemeteries in Florida: 250 acres in the Tallahassee area and 318 acres in the Daytona area. These new cemeteries will likely open in 2015.

The division also noted that there has been a decreasing demand for traditional burial spaces due to the increasing demand for cremation services.¹⁵

VIII. Statutes Affected:

This bill substantially amends sections 497.260 and 497.452 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries Committee on March 13, 2014:

The committee substitute (CS) amends 497.206(1)(j), F.S., to provide that the exempted cemetery must be larger than 5 acres and not exceed 60 acres.

The CS does not provide in s. 497.206(2)(j)2., F.S., that the exempt cemetery must maintain escrow funds sufficient to cover maintenance costs and preneed agreement. Instead, it provides in this subparagraph that the religious institution must provide an annual certification to the department that it maintains funds in separate accounts.

¹⁵ Id.

The CS requires that the funds must be sufficient to cover maintenance costs and preneed agreements, and must be maintained in a financial institution, as defined in s. 280.02, F.S., and must only be used for such purposes. The CS requires that the annual certification must be made under oath and identify the financial institution and the account number where the funds are maintained.

The CS provides minimum balances that must be maintained in the accounts. A minimum balance of \$1 million is required for cemeteries that are larger than five acres but do not exceed 30 acres. A minimum balance of \$2 million is required for cemeteries that are larger than 30 acres but do not exceed 60 acres.

B. Amendments:

None.



647114

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2014	.	
	.	
	.	
	.	

The Committee on Regulated Industries (Flores) recommended the following:

Senate Amendment

Delete lines 19 - 25
and insert:

(j) A cemetery, including all associated mausoleums and columbaria, which is larger than 5 acres but does not exceed 60 acres and which is owned by a religious institution, if the religious institution:

1. Limits burial rights in the cemetery to members of the religious institution and their families; and



647114

11 2. Provides an annual certification to the department that
12 it maintains funds in a separate account which are sufficient to
13 cover maintenance costs and preneed agreements. The separate
14 account must be maintained with a financial institution, as
15 defined in s. 280.02, and may only be used for such purposes.
16 The annual certification must be made under oath and identify
17 the financial institution and the account number where the funds
18 are maintained. The account must maintain the following minimum
19 balance:
20 a. For cemeteries that are larger than 5 acres but do not
21 exceed 30 acres, \$1 million.
22 b. For cemeteries that are larger than 30 acres but do not
23 exceed 60 acres, \$2 million.

By Senator Flores

37-00356-14

2014512__

1 A bill to be entitled
 2 An act relating to cemeteries; amending s. 497.260,
 3 F.S.; revising the exemptions to ch. 497, F.S.,
 4 relating to cemeteries, to include certain religious-
 5 institution-owned cemeteries; amending s. 497.452,
 6 F.S.; deleting obsolete provisions; conforming a
 7 provision to changes made by the act; providing an
 8 effective date.

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

11 Section 1. Paragraph (j) is added to subsection (1) of
 12 section 497.260, Florida Statutes, to read:

13 497.260 Cemeteries; exemption; investigation and
 14 mediation.-

15 (1) The provisions of this chapter relating to cemeteries
 16 and all rules adopted pursuant thereto shall apply to all
 17 cemeteries except for:

18 (j) A religious-institution-owned cemetery, including all
 19 associated columbaria and mausoleums, consisting of 50 acres or
 20 less if the religious institution:

21 1. Limits burial rights within the cemetery to members of
 22 the religious institution and their families; and

23 2. Maintains escrowed funds sufficient to cover maintenance
 24 costs and preneed agreements.

25 Section 2. Subsection (4) of section 497.452, Florida
 26 Statutes, is amended to read:

27 497.452 Preneed license required.-

28 (4) ~~The provisions of~~ This section does ~~de~~ not apply to
 29

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

37-00356-14

2014512__

30 religious-institution-owned cemeteries exempt under s.
 31 497.260(1)(d) or (j), ~~in counties with a population of at least~~
 32 ~~960,000 persons on July 1, 1996~~, with respect to the sale to the
 33 religious institution's members and their families of interment
 34 rights, mausoleums, crypts, cremation niches, cremation
 35 interment containers, vaults, liners, urns, memorials, vases,
 36 foundations, memorial bases, floral arrangements, monuments,
 37 markers, engraving, and the opening and closing of interment
 38 rights, mausoleums, crypts, cremation niches, and cremation
 39 interment containers, if such cemeteries ~~have engaged in the~~
 40 ~~sale of preneed contracts prior to October 1, 1993~~, and maintain
 41 a positive net worth at the end of each fiscal year of the
 42 cemetery.

43 Section 3. This act shall take effect July 1, 2014.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: December 26, 2013

I respectfully request that **Senate Bill #512**, relating to Cemeteries, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script that reads "Anitere Flores".

Senator Anitere Flores
Florida Senate, District 37

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

43-13-14

Meeting Date

Topic Cemeteries

Bill Number SB 512
(if applicable)

Name JAMES WYLIE

Amendment Barcode _____
(if applicable)

Job Title _____

Address 5359 Pembroke Pl.

Phone 850-567-1705

Street

TALLAHASSEE FL 32309

City

State

Zip

E-mail JAMESWYLIE@gmail.com

Speaking: For Against Information

Representing Florida Funeral & Cemeteries Consumer Advocacy

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/13/14

Meeting Date

Topic Cemetery legislation

Bill Number SR 512
(if applicable)

Name Michael Sheedy

Amendment Barcode _____
(if applicable)

Job Title Executive Director

Address 201 W. Park Ave.

Phone 850-222-3803

Street

Tallahassee FL 32301

E-mail msheedy@
flcatholic.org

City

State

Zip

Speaking: For Against Information

Representing Florida Conference of Catholic Bishops

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

3

THE FLORIDA SENATE APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-17-14
Meeting Date

Topic _____ Bill Number 512
(if applicable)

Name Lew Hall Amendment Barcode _____
(if applicable)

Job Title Independent Funeral Directors & Crematory FCCFA

Address 1727 Bastow Rd Phone 863 688-7679
Street

Lakeland FL 33801 E-mail _____
City State Zip

Speaking: For Against Information

Representing FCCFA Florida Cremation & Funeral Assoc

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

2

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/13/2014

Meeting Date

Topic _____

Bill Number 512
(if applicable)

Name Deb Gilmore

Amendment Barcode _____
(if applicable)

Job Title VP Administration Cmt/FH/ceno

Address 106 Knollwood Estates Drive

Phone 386-299-2116

Ormond Beach FL
Street City State Zip

E-mail Deb.Gilmore@NSMG.com

Speaking: For Against Information

Representing FCCFA Florida Cemetery Cemeter Funeral Assoc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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THE FLORIDA SENATE APPEARANCE RECORD

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3.13.14

Meeting Date

Topic Religious Cemetery Exemption

Bill Number SB 312
(if applicable)

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Amendment Barcode _____
(if applicable)

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Speaking: For Against Information

Representing FL Cemetery, Cremation + Funeral Assn.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 810

INTRODUCER: Regulated Industries Committee and Senator Galvano

SUBJECT: Pugilistic Exhibitions

DATE: March 13, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.			GO	
3.			JU	
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 810 relates to pugilistic exhibitions, such as boxing, kickboxing, and the martial arts, which are regulated by the Florida Boxing Commission within the Department of Business and Professional Regulation under ch. 548, F.S.

The bill provides a \$111,000 appropriation in recurring funds from the General Revenue Fund to the department for the implementation of this act during the 2013-2014 fiscal year.

The bill repeals the concessionaire license requirement, and eliminates requirements for concessionaires to report and pay taxes. It also repeals the license and tax reporting requirements for persons who have the right to telecast matches. It also repeals the license requirement for co-promoters.

The bill limits the amount of taxes that promoters' must report and pay based on 5 percent tax on gross receipts, including gross receipts derived from the gross price charged for the sale of broadcasting, television and motion picture rights, to a maximum of \$40,000 for a single event.

The bill also deletes the requirement that promoters report and pay the 5 percent tax on gross receipts based on the portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter.

The bill also:

- Revises current definitions and defines new terms;
- Clarifies the duties and responsibilities of the executive director of the commission;
- Deletes a duplicative requirement that the commission must electronically record of all its scheduled proceedings;
- Authorizes the commission to approve, suspend, or revoke its approval of amateur sanctioning organizations for mixed martial arts matches;
- Exempts several types of matches from regulation by the state, including amateur matches conducted by public postsecondary institutions, public secondary schools and the Florida National Guard and U.S. Armed Forces, and matches conducted by the International Olympic Committee, the Special Olympics, or the Junior Olympics, and professional or amateur martial arts activity;
- Provides that a participant's failure or refusal to provide a urine sample upon request results in the license being immediately suspended, and such failure is grounds for additional disciplinary action;
- Provides the commission's hearings related to the withholding of purses must be held pursuant to ch. 120, F.S., the Administrative Procedures Act;
- Permits promoters to deduct the face value of complimentary tickets issued, provided or given from the calculation of the tax on gross receipts. The promoters may deduct complimentary tickets, up to 5 percent of the seating designated for the match, from the calculation of gross receipts;
- Permits promoters to not include the face value of complimentary tickets, when calculating the gross receipts tax, for more than 5 percent of the seats designated for the match if the promoter obtains written authorization from the commission or the executive director, or his or her designee;
- Permits complimentary tickets that are provided to reserve of active members of the United States Armed Forces and the National Guard, military veterans, and not for profit organizations persons, would not be included in the calculation of the gross receipts tax if authorized by the commission;
- Requires promoters to keep specified records for one year;
- Requires audits to verify compliance with promoter reporting requirements;
- Requires the commission to establish by rule the procedure for auditing a promoter's records, and for resolving any inconsistencies revealed in an audit, and for imposing late fees if taxes are owed; and
- Provides the procedure for emergency license suspensions and requires the general counsel of the department to review the grounds for emergency suspension orders and to file an administrative complaint against the licensee within 21 days after issuance of the suspension order.

The bill would take effect on July 1, 2014.

II. Present Situation:

Florida State Boxing Commission

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing, and mixed martial arts by the Florida State Boxing Commission (commission) within the Department of Business and Professional Regulation (department).

Section 548.006(3), F.S., provides the commission with exclusive jurisdiction over every professional boxing match and professional mixed martial arts and kickboxing matches. Professional matches held in this state must meet the requirements for holding the match ch. 548, F.S., and the rules adopted by the commission.

The commission's jurisdiction over amateur matches is limited to the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for boxing and kickboxing matches held in the state.¹ Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.² This jurisdiction does not extend to amateur sanctioning organizations for mixed martial arts.

According to the department, the commission's primary duty is to ensure all matches comply with the laws and rules and the matches are competitive and physically safe for the participants. For the most recent period for which data is available, the commission licensed 1,224 professionals in FY 2011-12 and processed 51 live event permits.³ According to the department, it had 1,056 licensed professional and processed 39 live permits for FY 2012-2013.

In addition to its daily processing of applications for licensure and the approval or denial of live event permits, the commission coordinates live event schedules and evaluates proposed fight cards. It also evaluates the assignment of officials (referees, judges, physicians) and event staff (event coordinator, chief inspector, inspectors, and timekeeper).

A department representative or commission representative is assigned to attend each official weigh-in and live event. This person attends the official weigh-in during which the application is processed, license fees are collected, the results of participant medical examinations are verified, pre-fight physicals are conducted by physicians, the promoter/participant contracts are collected, participants' weights are recorded, officials' (referee, judges, and physicians) pay from the promoter are collected, and the required accidental death and health insurance for each of the participants is verified. The department or commission representative is also accompanied to the event by the department's OPS event staff, i.e., the event coordinator, timekeeper, and inspector. The OPS event staff and the representative from the department or commission also inspect the ring for safety standards, verify that emergency medical personnel and an ambulance are on-site, assign inspectors to each of the fighters, conduct match timekeeping, verify assigned officials are present, distribute officials' pay following the event, and conduct participant drug tests, if necessary.

¹ Section 548.006(3), F.S.

² Section 548.002(2), F.S.

³ See *Annual Report, Fiscal Year 2011-2012*, Florida State Boxing Commission, Department of Business and Professional Regulation. A copy is available at: <http://www.myfloridalicense.com/dbpr/os/documents/SBCAR2012v6.pdf> (Last visited March 8, 2014).

Definitions

Section 548.002(3), F.S., defines the term “boxing” to mean “to compete with the fists.”

Section 548.002(5), F.S., defines the term “concessionaire” to mean:

any person or business entity not licensed as a promoter which receives revenues or other compensation from the sale of tickets or from the sale of souvenirs, programs, broadcast rights, or any other concessions in conjunction with the promotion of a match.

Section 548.002(6), F.S., defines the term “contest” to mean “a boxing, kickboxing, or mixed martial arts engagement in which persons participating strive earnestly to win using, but not necessarily being limited to, strikes and blows to the head.”

Section 548.002(9), F.S., defines the term “exhibition” to mean:

a boxing, kickboxing, or mixed martial arts engagement in which persons participating show or display their skill without necessarily striving to win using, but not necessarily being limited to, strikes and blows to the head.

Section 548.002(12), F.S., defines the term “kickboxing” to mean to “compete with the fists, feet, legs, or any combination thereof, and includes “punchkick” and other similar competitions.”

Section 548.002(16), F.S., defines the term “mixed martial arts” to mean:

unarmed combat involving the use, subject to any applicable limitations set forth in this chapter, of a combination of techniques from different disciplines of the martial arts, including, but not limited to, grappling, kicking, and striking.

Section 548.006(17), F.S., defines a “participant” to mean “a professional competing in a boxing, kickboxing, or mixed martial arts match.”

Section 548.006(19), F.S., defines the term “professional” to

a person who has received or competed for any purse or other article of a value greater than \$50, either for the expenses of training or for participating in any match.

Section 548.002(20), F.S., defines the term “promoter” to mean:

any person, and includes any officer, director, employee, or stockholder of a corporate promoter, who produces, arranges, or stages any match involving a professional.

Section 548.002(21), F.S., defines the term “purse” to mean:

the financial guarantee or other remuneration for which a professional is participating in a match and includes the professional’s share of any payment received for radio broadcasting, television, and motion picture rights.

Executive Director

Section 548.004(1), F.S., requires the department, with the approval of the commission, to employ an executive director. The duties and responsibilities of the executive director include:

- Keeping a record of all proceedings of the commission;
- Preserving all books, papers, and documents pertaining to the business of the commission;
- Preparing any notices and papers required;
- Appointing judges, referees, and other officials as delegated by the commission and pursuant to ch. 548, F.S., and the rules of the commission; and
- Performing any other duties as the department or commission directs.

Recording of Commission Proceedings

Section 548.004(2), F.S., requires the commission to electronically record all of its scheduled proceedings. Section 455.203(7), F.S., also requires the department to electronically record all of its proceedings.

Licenses

Several professions are licensed by the commission. A license is required to be the promoter of a match.⁴ Before acting in any capacity in a match, a license is required to be a participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician, matchmaker, concessionaire, or booking agent or representative of a booking agent.⁵ Prior to working as the ringside physician, a physician must be licensed under ch. 458, F.S., or ch. 459, F.S., must maintain an unencumbered license in good standing, and must demonstrate satisfactory medical training or experience in boxing, or a combination of both, to the executive director. The commission also licenses the concessionaires.⁶

Exceptions

The commission’s jurisdiction does not extend to:

- A match conducted or sponsored by a bona fide non-profit school or education program whose primary purpose is instruction in martial arts, boxing, or kickboxing if the match is held in conjunction with the instruction, and is limited to amateur participants who are students of the school or instructional program;

⁴ See s. 548.012(1), F.S.

⁵ Section 548.017, F.S.

⁶ See 548.015, F.S.

- A match conducted or sponsored by any company or detachment of the Florida National Guard, if the match is limited to participants who are members of the Florida National Guard; or
- A match conducted or sponsored by the Fraternal Order of Police, if the match is limited to amateur participants and is held in conjunction with a charitable event.⁷

Revocation and Suspension of a License

Section 548.046(3)(c), F.S., provides that the failure or refusal to provide a urine sample, immediately upon request, results in the revocation of the participant's license.

Withholding of Purses

Section 548.054, F.S., provides the procedure for the withholding of prize purses. A member of the commission, a commission representative, or the referee may order a promoter to surrender any purse or other funds payable to a participant, or to withhold the share of any manager, if it appears that:

- The participant is not competing honestly, or is intentionally not competing to the best of his or her ability and skill in a match represented to be a contest; or
- The participant, his or her manager, or any of the participant's seconds has violated ch. 548, F.S.⁸

In the event a purse is withheld, the purse must be delivered to the commission by the promoter.⁹ Within ten days after the match, the person from whom the purse was withheld may apply, in writing, to the commission for a hearing.¹⁰ Upon receipt of the application, the commission must set the date for a hearing. Within ten days after the hearing or after ten days following the match, if no application for a hearing is filed, the commission is required to meet and determine the disposition of the withheld purse.¹¹ If the commission finds the charges sufficient, it may decide that all or a part of the funds be forfeited.¹² Conversely, if the commission does not find the charges sufficient, it must distribute the withheld funds immediately.¹³

Reporting and Tax Requirement

Within seventy-two hours after a match, the promoter of that match must file a written report with the commission.¹⁴ The report must include information about the number of tickets sold, the amount of gross receipts, and any other facts that the commission requires.¹⁵ Chapter 548, F.S., does not require the promoter to retain a copy of the written report.

The term "gross receipts" includes:

⁷ See s. 548.007, F.S.

⁸ Section 548.054(1), F.S.

⁹ Section 548.054(2), F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Section 548.06(1), F.S.

¹⁵ *Id.*

- The gross price charged for the sale or lease of broadcasting, television, and motion picture rights without any deductions for commissions, brokerage fees, distribution fees, advertising or other expenses or charges;
- The portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter;
- The face value of all tickets sold and complimentary tickets issued, provided, or given; and
- The face value of any seat or seating issued, provided, or given in exchange for advertising sponsorships, or anything of value to the promotion of an event.¹⁶

According to the department, the current definition of “gross receipts” has led to some confusion in the industry because licensees are not sure whether to include state and federal taxes within the face value of a ticket.

Promoters include persons who have rights to telecast a match or matches held in this state under the supervision of the Florida State Boxing Commission. Such persons must be licensed as a promoter, and must, within 72 hours after the sale, transfer, or extension of such rights in whole or in part, file with the commission a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.¹⁷

Concessionaire must also file with the commission, within 72 hours after the match, a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.¹⁸

Any written report that must be filed with the commission and postmarked within 72 hours after the conclusion of the match with an additional 5 days allowed for mailing.¹⁹ According to the department, the report is required to enable the commission to verify the accuracy of the post-event tax payment for both tickets sold and broadcasting/television rights.

Section 548.015, F.S., requires that a concessionaire must file a surety bond, cash deposit, or other security in an amount determined by the commission. The security is required before licensure, license renewal, or before a match.

These written reports must be accompanied with a tax payment in the amount of 5 percent of the total gross receipts exclusive of any federal taxes. The tax payment for the sale or lease of broadcasting, television, and motion picture rights cannot exceed \$40,000 for any single event.²⁰

Commission Hearings

Section 548.073, F.S., provides any member of the commission may conduct a hearing. Notwithstanding, the provisions of ch. 120, F.S., the Administrative Procedures Act, before any adjudication is rendered, a majority of the commission must examine the record and approve the adjudication and order.

¹⁶ Section 548.06(1), F.S.

¹⁷ Section 548.06(2), F.S.

¹⁸ Section 548.06(3), F.S.

¹⁹ Section 548.06(4), F.S.

²⁰ Section 548.06(5), F.S.

Emergency Suspensions

Section 120.60(6), F.S., permits agencies to order the emergency suspension, restriction, or limitation of a license upon a finding of immediate serious danger to the public health, safety, or welfare. The agency may take such action by any procedure that is fair under the circumstances if:

- (a) The procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution;
- (b) The agency takes only that action necessary to protect the public interest under the emergency procedure; and
- (c) The agency states in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The agency's findings of immediate danger, necessity, and procedural fairness are judicially reviewable. Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation proceeding pursuant to ss. 120.569 and 120.57 shall also be promptly instituted and acted upon.

III. Effect of Proposed Changes:

Section 1 – Definitions

The bill amends s. 548.002, F.S., to revise current definitions and to define new terms. Specifically, the bill:

- Amends the definition of the term “boxing” in s. 548.002(3), F.S., to mean the unarmed combat sport of fighting by striking with fists;
- Deletes the definition for the term “concessionaire” in s. 548.002(5), F.S.;
- Amends the definition of the terms “contest” and “exhibition” in ss. 548.002(5) and (8), F.S., to include the participants' use other full-contact maneuvers;
- Creates s. 548.002(11), F.S., to define the term “face value” to mean the dollar value which is equal to what the customer is required to pay, or would be required to pay, if it is a complimentary ticket. Taxes are not included in the face value if the ticket specifies the amount of admission charges attributable to state or federal taxes;
- Creates s. 548.002(13), F.S., to define the term “full contact” to mean the use of strikes and blows during a match in which the strikes and blows are intended to break the plane of the participant's body, are delivered to the head, face, neck, or body of the receiving participant's body, or cause the receiving participant to move in response to the strikes and blows;
- Deletes the definition for the term “foreign copromoter” in s. 548.002(10), F.S.;
- Amends the definition of the term “judge” in s. 548.002(11), F.S., to provide that the judge is licensed by the commission and scores a match using a designated scoring system;
- Amends the definition of the term “kickboxing” in s. 548.002(12), F.S., to include the act, activity, or sport of fighting with the use of fists, hands, feet, legs or any combination thereof

in a roped ring. It provides that the term does not include any form of ground fighting techniques;²¹

- Amends s. 548.002(16), F.S., to define the term “mixed martial arts” to mean the act, activity, or sport of unarmed combat involving the use of a combination of techniques, including, but not limited to, wrestling, grappling, kicking, and striking, and other techniques from different disciplines of the martial arts. The term may include, but is not limited to, boxing, kickboxing, Muay Thai,²² jujitsu, and wrestling in a roped square ring or a fenced –in area;
- Amends the definition of the term “physician” in s. 548.002(18), F.S., to mean a person licensed to practice medicine under ch. 458, F.S. or ch. 459, F.S., whose license is unencumbered and in good standing;
- Amends the definition of the term “promoter” in s. 548.002(20), F.S., to include “any entity” in addition to “any person” in current law. It also amends the definition to include the trustee or partner of a corporate partner or any promoter partnership. Current law does not reference promoter partnerships;
- Amends the definition of the term “purse” in s. 548.002(21), F.S., to include the professional’s share of any payment from pay-per-view or closed circuit. Current law is limited to payment from radio broadcasts and television; and
- Amends the definition of the term “second” or cornerman” in s. 548.002(22), F.S., to mean a person who assists a participant in preparing for a match and between rounds. Current law limits the definition to a person who assists the match participant between rounds.
- Creates a definition for the term “unarmed combat” in s. 548.002(24), F.S., to mean a form of competition in which a strike or blow is struck which may reasonable be expected to inflict injury.

Section 2 - Executive Director

The bill amends s. 548.004(1), F.S., to require the executive director or his or her designee to perform the duties or responsibilities set forth by the commission, including conducting the functions of the commission office, appointing event and commission officials, approving licenses, permits, and matches. It deletes the requirement that the executive director must keep a record of all proceedings of the commission, preserve all books, papers, and documents pertaining to the business of the commission, prepare any notices and papers required, appoint judges, referees, and other duties as the commission or department deem necessary to fulfill the duties of the position.

The bill also amends s. 548.004(1), F.S., to authorize the direct to issue subpoenas and administer oaths to witnesses, permitholders, record custodians, and licenses.

In addition, the bill deletes the requirement in s. 548.004(2), F.S., that the commission require electronic recording of all its scheduled proceedings. Under current law, s. 455.203(7), F.S., requires all proceedings conducted by the department be electronically recorded.

²¹ Ground fighting involves hand-to-hand combat with the combatants are on the ground. This type of combat generally involving grappling. *See* http://en.wikipedia.org/wiki/Ground_fighting [Last visited March 8, 2014].

²² Muay Thai is a combat sport from the muay martial arts of Thailand. *See* <http://www.wmcmuaythai.org/about> (Last visited March 18, 2013).

Section 3 - Jurisdiction of the Commission

The bill amends s. 548.006(3), F.S., to include, within the commission's authority, the approval and suspension or revocation of approval of amateur sanctioning organizations for mixed martial arts matches.

Section 4 - Exceptions

The bill amends s. 548.007(1), F.S., to exempt from regulation under ch. 548, F.S., matches that do not allow full contact if the match is limited to amateurs. The bill deletes the exemption in this subsection for matches conducted or sponsored by a bona fide non-profit school or education program whose primary purpose is instruction in martial arts, boxing, or kickboxing if the match is held in conjunction with the instruction, and is limited to amateur participants who are students of the school or instructional program.

The bill also provides the following additional exemptions from ch. 548, F.S.:

- Amateur matches conducted by public K-12 schools, as defined in s. 1000.04, F.S.;²³
- Amateur matches conducted by the Florida National Guard and U.S. Armed Forces involving its amateur members;
- Matches conducted by the International Olympic Committee, the Special Olympics, or the Junior Olympics; and

Each of these exemptions requires that the matches must be limited to amateurs who are members of the exempted organization.

The bill also exempts professional or amateur martial arts activity, which it defines as one of the traditional forms of self-defense or unarmed combat involving the use of physical skill and coordination including karate, aikido, judo, and kung fu. The term does not include mixed martial arts.

Section 5. Foreign Promoter License Requirement

The bill repeals s. 548.013, F.S., which provides the license requirement for foreign copromoters. The also deletes the definition for the term "foreign copromoter" in s. 548.002(10), F.S.

Section 6. Promoter and Foreign Copromoter Bond Requirements

The bill amends s. 548.014, F.S., to delete references to the term "foreign copromoters."

²³ Section 1000.04(1), F.S., defines "public K-12 schools" to "include charter schools and consist of kindergarten classes; elementary, middle, and high school grades and special classes; virtual instruction programs; workforce education; career centers; adult, part-time, and evening schools, courses, or classes, as authorized by law to be operated under the control of district school boards; and lab schools operated under the control of state universities."

Section 7. Concessionaires – Security

The bill repeals s. 548.015, F.S., which authorizes the commission to require that concessionaires file a surety bond as a condition for a license.

Section 8. Persons Required to be Licensed

The bill amends s. 548.017, F.S., to delete the requirement that concessionaires must be licensed by the commission.

Section 9. - Immediate Suspension

The bill amends s. 548.046(3)(c), F.S., to provide that a participant's failure or refusal to provide a urine sample is considered an immediate, serious danger to the health, safety, and welfare of the person's opponent and is grounds for immediate license suspension pursuant to s. 120.60(6), F.S. It authorizes the commission to suspend the participant's license and to subject the participant to additional disciplinary action.

The bill also amends s. 548.046(3)(c), F.S., to delete the provisions in this paragraph that provide that the loser of the match who subsequently does not provide a urine sample forfeits his or her share of the purse. The bill provides that the decision shall be changed to a no decision result, which under current law in this paragraph requires the distribution of the purse as though the participant who violated this subsection had lost the match.

The bill creates s. 548.046(3)(d), F.S., to provide that, if a participant tests positive for any substance prohibited by commission rule,²⁴ the participant shall be considered an immediate, serious danger to the health, safety, and welfare of the public and his or her opponent. The participants shall be immediate suspended under s. 120.60(6), F.S., and subject to additional disciplinary action.

Section 10. Payment of Advances by Promoter Regulated

The bill amends s. 548.052, F.S., to delete references to the term "foreign copromoter."

The bill also amends this section to permit the commission or the executive director, or his or her designee, to give prior written consent to a promoter to pay, lend, or give a participant an advance against her or his purse before a contest.

Section 11 - Withholding of Purses

The bill amends s. 548.054(2), F.S., to provide the commission must hold a hearing pursuant to s. 120.569, F.S., and s. 120.57, F.S., for hearings related to the withholding of purses. The hearing procedures in s. 120.569, F.S., relate to proceedings in which the substantial interests of a party are determined by an agency. The hearing procedures in s. 120.57, F.S., relate to proceedings that involve disputed material issues of fact before the Division of Administrative Hearings.

²⁴ See rule 61K1-1.0043, F.A.C.

Also, the bill deletes the requirement that the commission must fix a date for the hearing and meet to determine the disposition of the withheld purse within 10 days after the hearing.

Section 12 - Promoter Payments to the State and Recordkeeping Requirement

The bill amends s. 548.06(1)(a), F.S., to provide that promoters must report and pay the 5 percent tax on gross receipts within 72 hours after a match except as provided in s. 548.06(4), F.S. The bill also amends s. 548.06, F.S., to use the term “gross receipts” instead of “total gross receipts.”

The bill deletes the requirement in s. 548.06(1)(b), F.S., that the promoter report and pay the 5 percent tax on gross receipts based on the portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter.

The bill amends s. 548.06(1)(b), F.S., to provide that the gross receipts complimentary tickets above 5 percent of the seats in the house designated for use in the event and not authorized by the commission pursuant to subsection (2).

The bill creates s. 548.06(2), F.S., to provide for the authorization of complimentary tickets by the commission. It permits promoters to issue, provide, or give, complimentary tickets for up to 5 percent of the seats in the house designated for use in the event, equally distributed between or among the price categories for which they were issued, without the commission’s written authorization. Promoters do not have to include the face value of these complimentary tickets when calculating the gross receipts tax in s. 548.06(4), F.S. The bill permits a promoter to also not include the face value of complimentary tickets for more than 5 percent of the seats in the house when calculating the gross receipts tax if the promoter obtains written authorization from the commission or the executive director, or his or her designee.

The bill creates s. 548.06(2)(a), F.S., to provide that the commission may not consider the complimentary tickets that it authorizes as part of the gross receipts from admission fees.

The bill creates s. 548.06(2)(b), F.S., to permit a promoter to give complimentary tickets for more than 5 percent of the seats in the house without written authorization. However, the promoter must include the face value of such tickets when calculating the gross receipts tax.

The bill creates s. 548.06(2)(c), F.S., to provide the classes of persons that the commission may authorize promoters to give complimentary tickets. Complimentary tickets provided to these persons, if authorized by the commission, would not be included in the calculation of the gross receipts tax:

- Reserve of active members of the United States Armed Forces and the National Guard;
- Military veterans; and
- Not for profit organizations.

The bill creates s. 548.06(2)(d), F.S., to provide the process for promoters to follow to obtain the written authorization of the commission for giving complimentary tickets for more than 5 percent. Section 548.06(2)(d)1., F.S., requires the promoter to submit an application, on a form

adopted by the commission, no later than 2 business days before the date of the professional event. The bill requires that the application must include, at a minimum, the date, time, and location of the event, the number of complimentary tickets being requested, the percentage of total tickets issued for the seats in the house designated for use in the event being requested as complimentary tickets, and which individuals or entities will receive the complimentary tickets.

Section 548.06(2)(d)2., F.S., requires that the promoter maintain the documentation that evidences that the tickets were given to individuals or entities that fall into the categories listed in s. 548.06(2)(c), F.S., and provides that the commission may audit these records, as provided in s. 548.06(7), F.S.

Section 548.06(2)(e), F.S., requires that the commission, executive director, or his or her designee, must deny or approve the application. The commission, executive director, or his or her designee may set limitations on the approval and may approve all or a portion of the requested percentage above 5 percent. The bill's only criteria for the commission's authorization of complimentary tickets are the limitation that complimentary tickets may not exceed 5 percent of the seats in the house and the requirement that the complimentary tickets are specified in ss. 548.06(2))(a)-(c), F.S. The bill does not provide a clear delegation of authority, beyond the requirements of ss. 548.06(2))(a)-(c), F.S., for setting limits on complimentary tickets or determining which portion of the requested percentage above 5 percent it may authorize.

The bill requires that the commission, executive director, or his or her designee must provide the decision in writing to the promoter at least one business day before the start of the event, with an explanation for the denial or approval and an explanation for any limitation on the approval. The bill provides that the promoter remains responsible for complying with other reporting and taxation requirements as set forth in ch. 548, F.S.

The bill deletes the provision in s. 548.06(2), F.S., that classifies as promoters the persons who have rights to telecast a match or matches held in this state, that requires that they must be licensed as a promoter, and requires that they file with the commission a written report of the number of tickets sold, the amount of gross receipts within 72 hours after the sale, transfer, or extension of such rights in whole or in part.

The bill deletes the provision in s. 548.06(3), F.S., that requires concessionaires to file with the commission, within 72 hours after the match, a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.

The bill amends s. 548.06(4), F.S., to include pay-per-view rights in place of motion picture rights. It also limits the provision to matches occurring within the state. The bill provides that, if a promoter remits the maximum tax amount of \$40,000 for the sale or lease of broadcasting, television, or pay-per-view rights of any single event pursuant to this subsection, the promoter is only required to indicate that the amount of \$40,000 has been remitted for such taxes on a form provided by the commission. The bill provides that the promoter remains responsible for complying with other reporting and taxation requirements related to other gross receipts as set forth in this chapter.

The bill creates s. 548.06(6), F.S., to require the promoter to keep a copy of specified records for a period of one year, including records necessary to justify and support the reports submitted to the commission, copies of independently prepared ticket manifests, and records to verify compliance with the complimentary tickets requirements in s. 548.06(2), F.S. It is not clear if one year is sufficient for the commission to be able to conduct audits of the records. Current law does not require promoters to retain records relating to the reporting of gross receipts under s. 548.06, F.S.

The bill creates s. 548.06(7), F.S., to provide that compliance with the reporting requirements in s. 548.06, F.S., is subject to verification by department or commission audit. It provides the commission has the right to audit a promoter's books and records relating to the promoter's operations upon reasonable notice.

The bill creates s. 548.06(8), F.S., to direct the commission to adopt rules to establish a procedure for auditing a promoter's records, and for resolving any inconsistencies revealed in the audit, and to impose late fees if taxes are owed.²⁵

Section 13 - Emergency Suspension of License

The bill amends s. 548.07, F.S., to provide an emergency license suspension procedure. The bill authorizes the commission, any commissioner, the executive director or his or her designee, or any commission designee to issue an emergency suspension of a licensee's license when the licensee poses an immediate and serious danger to the health, safety, and welfare of the public, a licensee, or a participant.

In addition, the bill requires the general counsel of the department to review the grounds for the emergency suspension order and to file an administrative complaint against the licensee within 21 days after issuance of the suspension order. The bill deletes the current suspension procedure, including the requirement that the commission must hold a hearing within 10 days after the date on which the license or permit is suspended.

The disciplinary process would proceed under ch. 120, F.S., after the administrative complaint is served on the licensee as provided in s. 455.275, F.S.²⁶

Section 14 - Commission Hearings

The bill amends s. 548.073, F.S., to provide the hearing held under ch. 548, F.S., must be pursuant to ch. 120, F.S. The bill deletes the provision that any member of the commission may

²⁵ Section 548.075(1), F.S., authorizes the commission to impose a fine of not more than \$5,000 for any violation of ch. 548, F.S., in lieu of or in addition to any other punishment provided for such violation.

²⁶ Section 455.275, F.S., provides the procedure for service of a complaint on a licensee of the department. For administrative complaints, s. 455.275(3), F.S., the department is required to serve the licensee by regular mail to the licensee's last known address of record, by certified mail to the last known address of record, and, if possible, by e-mail. If the department is unable to serve the licensee by these methods, the department must call the last known telephone number of record and cause a short, plain notice to the licensee to be posted on the front page of the department's website and must also send notice via e-mail to all newspapers of general circulation and all news departments of broadcast network affiliates in the county of the licensee's last known address of record.

hold a hearing. It also deletes the requirement that, before any adjudication is rendered, a majority of the members of the commission shall examine the record and approve the adjudication and order.

Section 15 – Appropriation

The bill provides an appropriation of \$111,000 in recurring funds from the General Revenue Fund to the department for the implementation of this act during the 2014-2015 fiscal year.

Section 16 - Effective Date

The bill would take effect on July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section 548.06(2)(e), F.S., authorizes the commission, executive director, or his or her designee may set limitations on the approval and may approve all or a portion of the requested percentage above 5 percent. The bill's only criteria for the commission's authorization of complimentary tickets are the limitation that complimentary tickets may not exceed 5 percent of the seats in the house and the requirement that the complimentary tickets are specified in ss. 548.06(2))(a)-(c), F.S. The bill does not provide a clear delegation of authority, beyond the requirements of ss. 548.06(2))(a)-(c), F.S., for the sitting or limits on complimentary tickets or to determine which portion of the requested percentage above 5 percent it may authorize. To the extent that this paragraph authorizes the commission to set limitation on complimentary tickets or for the denial or approval of complimentary tickets beyond the reasons specified in ss. 548.06(2))(a)-(c), F.S., such authority may constitute an unconstitutional delegation of legislative authority.

An invalid delegation of authority violates the principal of separation of powers in Art. II, s. 3, Florida Constitution.²⁷ When assigning to an agency a regulatory responsibility, the legislature must provide the agency with adequate standards and guidelines when

²⁷ *Gallagher v. Motors Insurance Corp.*, 605 So.2d 62 (Fla. 1992).

delegating the duties.²⁸ The executive branch must be limited and guided by an appropriately detailed legislative statement of the standards and policies to be followed.²⁹ The bill may constitute an unconstitutional delegation of authority because it fails to provide the commission with any standards by which to judge the appropriateness of those minimum standards.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill deletes the licensure requirement for concessionaires. The current license fee for concessionaires is \$100. Concessionaires would also not be required to report and pay taxes on gross receipts.

The bill repeals the license requirement for persons who have the right to telecast matches.

C. Government Sector Impact:

The department collects \$600 annually from the licensure of concessionaires. The department estimates a reduction of approximately \$40,000 in post-event taxes for complimentary tickets and \$60,000 in post-event taxes from concessions.

The bill provides a \$111,000 appropriation from the General Revenue Fund.

VI. Technical Deficiencies

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 548.002, 548.004, 548.006, 548.007, 548.013, 548.014, 548.015, 548.017, 548.046, 548.052, 548.054, 548.06, 548.07, and 548.073.

²⁸ *Askew v. Cross Key Waterways*, 372 So.2d. 913 (Fla. 1978); *Florida East Coast Industries, Inc. v. Dept. of Community Affairs*, 677 So.2d 357 (Fla. 1st DCA 1996).

²⁹ *Florida Home Builders Association v. Division of Labor*, 367 So. 219 (Fla. 1979).

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on March 13, 2014:

The committee substitute (CS) differs from SB 810 as follows:

The CS does not amend the definition of the term “boxing” in s. 548.002(3), F.S., to mean the act, activity, or sport of fighting by striking with fists covered with approved padded gloves in a roped square ring, subject to ch. 548, F.S., and the rules adopted pursuant to this chapter. Instead, it amends the term to mean the unarmed combat sport of fighting by striking with fists.

The CS creates a definition for the term “unarmed combat” in s. 548.002(24), F.S., to mean a form of competition in which a strike or blow is struck which may reasonable be expected to inflict injury.

The CS amends s. 548.004(1), F.S., to reference “other duties as the commission or department deem necessary to fulfill the duties of the position” instead of “other duties as the commission or department deem necessary.” The bill also amends s. 548.004(1), F.S., to include permitholders and record custodians among the listing of persons to whom the executive director is authorized to issue subpoenas and administer oaths.

The CS amends the exemption in s. 548.007(2), F.S., to include the exemption for amateur matches that are limited to members of the United States Armed Forces in this subsection. It deletes the exemption for the United States Armed Forces in subsection (5) of the bill. It amends s. 548.007(4), F.S., to reference amateur matches conducted by public K-12 schools, as defined in s. 1000.04, F.S., instead of referencing public post-secondary education institutions or public secondary schools.

The CS repeals s. 548.013, F.S., which provides the license requirement for foreign copromoters.

The CS amends s. 548.014, F.S., to delete references to the term “foreign copromoters.”

The CS amends s. 548.046(3)(c), F.S., to provide a participant’s failure or refusal to provide a urine sample is grounds for immediate license suspension pursuant to s. 120.60(6), F.S., instead of revocation.

The CS does not amend s. 548.046(3)(c), F.S., to provide that participant’s failure or refusal to provide a urine sample results in the immediate revocation of the participant’s license. Instead, it amends this paragraph to provide that the failure to provide the urine sample is considered an immediate, serious danger to the health, safety, and welfare of the person’s opponent and is grounds for immediate license suspension pursuant to s. 120.60(6), F.S. The CS deletes the provisions in this paragraph that provide that the loser of the match who subsequently does not provide a urine sample forfeits his or her

share of the purse. Instead, the CS provides that the decision shall be changed to a no decision result, which under current law requires the distribution of the purse as though the participant who violated this subsection had lost the match.

The CS amends s. 548.046(3)(d), F.S., to provide that, if a participant tests positive for any substance prohibited by commission rule, the participant shall be considered an immediate, serious danger to the health, safety, and welfare of the public and his or her opponent.

The CS amends s. 548.052, F.S., to delete references to the term “foreign copromoter.” It also amends this section to permit the commission or the executive director, or his or her designee, to give prior written consent to a promoter to pay, lend, or give a participant an advance against her or his purse before a contest.

The CS does not amend s. 548.06(1)(b), F.S., to prohibit the promoter from issuing complimentary tickets for more than 5 percent of the seats in the house, equally distributed between or among the price categories for which they were issued, without the commission’s written authorization. Instead, it provides this requirement in s. 548.06(2), F.S. The bill permits a promoter to also not include the face value of complimentary tickets for more than 5 percent of the seats in the house when calculating the gross receipts tax if the promoter obtains written authorization from the commission or the executive director, or his or her designee.

The CS amends s. 548.06(1)(b), F.S., to include in the gross receipts the complimentary tickets above 5 percent of the seats in the house designated for use in the event and not authorized by the commission pursuant to subsection (2). It deletes the language that provides that prohibited the commission from considering complimentary tickets that it authorizes as part of the total gross receipts from admission.

The CS amends s. 548.06(2), F.S., to permit a promoter to not include the face value of complimentary tickets for more than 5 percent of the seats in the house when calculating the gross receipts tax if the promoter obtains written authorization from the commission or the executive director, or his or her designee.

The CS creates s. 548.06(2)(a), F.S., to prohibit the commission from consider the complimentary tickets that it authorizes as part of the gross receipts from admission fees.

The CS creates s. 548.06(2)(b), F.S., to permit a promoter to give complimentary tickets for more than 5 percent of the seats in the house without written authorization if the promoter includes the face value of such tickets when calculating the gross receipts tax.

The CS creates s. 548.06(2)(c), F.S., to provide the classes of persons for who the commission may authorize promoters to give additional complimentary tickets.

The CS creates s. 548.06(2)(d), F.S., to provide the process for promoters to follow to obtain the written authorization of the commission for giving complimentary tickets for

more than 5 percent of the house, including the application, the maintenance of records, and the auditing of such records.

The CS creates s. 548.06(2)(e), F.S., to require that the commission, executive director, or his or her designee, must deny or approve the application for complimentary tickets. It also provides that the commission, executive director, or his or her designee may set limitations on the approval and may approve all or a portion of the requested percentage above 5 percent.

The CS amends s. 548.06(4), F.S., to provide that, if a promoter remits the maximum tax amount of \$40,000 for the sale or lease of broadcasting, television, or pay-per-view rights of any single event pursuant to this subsection, the promoter is only required to indicate that the amount of \$40,000 has been remitted for such taxes on a form provided by the commission. The CS also provides that the promoter remains responsible for complying with other reporting and taxation requirements related to other gross receipts as set forth in this chapter.

The CS amends s. 548.06(6), F.S., to require the promoter to keep records to verify compliance with the complimentary tickets requirements in s. 548.06(2), F.S.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2014	.	
	.	
	.	
	.	

The Committee on Regulated Industries (Galvano) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 548.002, Florida Statutes, is amended to
read:

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

(1) "Amateur" means a person who has never received nor



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10 competed for any purse or other article of value, either for the
11 expenses of training or for participating in a match, other than
12 a prize of \$50 or less in value ~~or less~~.

13 (2) "Amateur sanctioning organization" means a ~~any~~ business
14 entity organized for sanctioning and supervising matches
15 involving amateurs.

16 (3) "Boxing" means the unarmed combat sport of fighting by
17 striking with fists ~~to compete with the fists~~.

18 (4) "Commission" means the Florida State Boxing Commission.

19 ~~(5) "Concessionaire" means any person or business entity~~
20 ~~not licensed as a promoter which receives revenues or other~~
21 ~~compensation from the sale of tickets or from the sale of~~
22 ~~souvenirs, programs, broadcast rights, or any other concessions~~
23 ~~in conjunction with the promotion of a match.~~

24 ~~(5)-(6)~~ "Contest" means a boxing, kickboxing, or mixed
25 martial arts engagement in which persons participating strive
26 earnestly to win using, ~~but not necessarily being limited to,~~
27 strikes and blows to the head or other full-contact maneuvers.

28 ~~(6)-(7)~~ "Department" means the Department of Business and
29 Professional Regulation.

30 ~~(7)-(8)~~ "Event" means one or more matches comprising a show.

31 ~~(8)-(9)~~ "Exhibition" means a boxing, kickboxing, or mixed
32 martial arts engagement in which persons participating show or
33 display their skill without necessarily striving to win using,
34 ~~but not necessarily being limited to,~~ strikes and blows to the
35 head or other full-contact maneuvers.

36 (9) "Face value" means the dollar value of a ticket equal
37 to the dollar amount that a customer is required to pay or, for
38 complimentary tickets, would have been required to pay to



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39 purchase a ticket with equivalent seating priority in order to
40 view the event. If the ticket specifies the amount of admission
41 charges attributable to state or federal taxes, such taxes are
42 not included in the face value.

43 (10) "Full contact" means the use of strikes and blows
44 during a match which:

45 (a) Are intended to break the plane of the receiving
46 participant or amateur's body;

47 (b) Are delivered to the head, face, neck, or body of the
48 receiving participant or amateur; and

49 (c) Cause the receiving participant or amateur to move in
50 response to the strike or blow.

51 ~~(10) "Foreign copromoter" means a promoter who has no place~~
52 ~~of business within this state.~~

53 (11) "Judge" means a person licensed by the commission who
54 evaluates and scores a match using a designated scoring system
55 ~~who has a vote in determining the winner of any contest.~~

56 (12) "Kickboxing" means the unarmed combat sport of
57 fighting by striking to compete with the fists, hands, feet,
58 legs, or any combination thereof, and includes "punchkick" and
59 ~~other similar competitions.~~ The term does not include any form
60 of ground fighting techniques.

61 (13) "Manager" means a any person who, directly or
62 indirectly, controls or administers the boxing, kickboxing, or
63 mixed martial arts affairs of a any participant.

64 (14) "Match" means a any contest or exhibition.

65 (15) "Matchmaker" means a person who brings together
66 professionals or arranges matches for professionals.

67 (16) "Mixed martial arts" means the unarmed combat sport



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68 involving the use, ~~subject to any applicable limitations set~~
69 ~~forth in this chapter,~~ of a combination of techniques,
70 including, but not limited to, grappling, kicking, striking, and
71 using techniques from different disciplines of the martial arts,
72 including, but not limited to, boxing, kickboxing, Muay Thai,
73 jujitsu, and wrestling ~~grappling, kicking, and striking.~~

74 (17) "Participant" means a professional competing in a
75 boxing, kickboxing, or mixed martial arts match.

76 (18) "Physician" means a person who is approved by the
77 commission, who is an individual licensed to practice medicine
78 under chapter 458 or chapter 459, and whose license is
79 unencumbered and in good standing ~~to practice medicine and~~
80 ~~surgery in this state.~~

81 (19) "Professional" means a person who has received or
82 competed for a ~~any~~ purse or other article of a value greater
83 than \$50, either for the expenses of training or for
84 participating in a ~~any~~ match.

85 (20) "Promoter" means a ~~any~~ person or entity, including an
86 ~~and includes any~~ officer, director, trustee, partner employee,
87 or owner stockholder of a corporate promoter or promoter
88 partnership, who produces, arranges, or stages a ~~any~~ match
89 involving a professional.

90 (21) "Purse" means the financial guarantee or other
91 remuneration for which a professional is participating in a
92 match and includes the professional's share of any payment
93 received for radio broadcasting and, television, including pay-
94 per-view or closed circuit ~~and motion picture rights.~~

95 (22) "Second" or "cornerman" means a person who assists a
96 ~~the match~~ participant in preparing for a match and between



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97 rounds, and who maintains the corner of a ~~the~~ participant during
98 a ~~the~~ match.

99 (23) "Secretary" means the Secretary of Business and
100 Professional Regulation.

101 (24) "Unarmed combat" means a form of competition in which
102 a strike or blow is struck which may reasonably be expected to
103 inflict injury.

104 Section 2. Section 548.004, Florida Statutes, is amended to
105 read:

106 548.004 Executive director; duties, compensation,
107 administrative support.-

108 (1) The department shall employ an executive director with
109 the approval of the commission. The executive director shall
110 serve at the pleasure of the secretary. The executive director
111 or his or her designee shall perform the duties specified by the
112 commission, including conducting the functions of the commission
113 office; appointing event and commission officials; approving
114 licenses, permits, and matches; and performing any ~~keep a record~~
115 ~~of all proceedings of the commission; shall preserve all books,~~
116 ~~papers, and documents pertaining to the business of the~~
117 ~~commission; shall prepare any notices and papers required; shall~~
118 ~~appoint judges, referees, and other officials as delegated by~~
119 ~~the commission and pursuant to this chapter and rules of the~~
120 ~~commission; and shall perform such other duties as the~~
121 department or commission deems necessary to fulfill the duties
122 of the position ~~directs~~. The executive director may issue
123 subpoenas and administer oaths to witnesses, permitholders,
124 record custodians, and licensees.

125 ~~(2) The commission shall require electronic recording of~~



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126 ~~all scheduled proceedings of the commission.~~

127 (2)~~(3)~~ The department shall provide assistance in budget
128 development and budget submission for state funding requests.
129 The department shall submit an annual balanced legislative
130 budget for the commission which is based upon anticipated
131 revenue. The department shall provide technical assistance and
132 administrative support, if requested or determined necessary
133 ~~needed~~, to the commission and its executive director on issues
134 relating to personnel, contracting, property management, or
135 other issues identified as important to performing the duties of
136 this chapter and to protecting the interests of the state.

137 Section 3. Section 548.006, Florida Statutes, is amended to
138 read:

139 548.006 Power of commission to control professional and
140 amateur boxing, kickboxing, and mixed martial arts matches
141 ~~pugilistic contests and exhibitions~~; certification of
142 competitiveness of professional mixed martial arts and
143 kickboxing matches.—

144 (1) The commission has exclusive jurisdiction over every
145 boxing, kickboxing, and mixed martial arts match held within the
146 state which involves a professional.

147 (2) As to professional mixed martial arts and kickboxing,
148 until a central repository of match records for each exists and
149 is approved by the commission, the matchmaker shall certify as
150 to the competitiveness of each match.

151 (3) The commission has exclusive jurisdiction over
152 approval, disapproval, suspension of approval, and revocation of
153 approval of all amateur sanctioning organizations for amateur
154 boxing, and kickboxing, and mixed martial arts matches held in



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155 this state.

156 (4) Professional and amateur matches shall be held in
157 accordance with this chapter and the rules adopted by the
158 commission.

159 Section 4. Section 548.007, Florida Statutes, is amended to
160 read:

161 548.007 Exemptions.~~This chapter does Applicability of~~
162 ~~provisions to amateur matches and certain other matches or~~
163 ~~events. Sections 548.001-548.079 do not apply to any of the~~
164 following:

165 (1) A match that does not allow full contact ~~conducted or~~
166 ~~sponsored by a bona fide nonprofit school or education program~~
167 ~~whose primary purpose is instruction in the martial arts,~~
168 ~~boxing, or kickboxing, if the match held in conjunction with the~~
169 ~~instruction is limited to amateur participants. who are students~~
170 ~~of the school or instructional program;~~

171 (2) A match conducted or sponsored by a any company or
172 detachment of the Florida National Guard or the United States
173 Armed Forces, if the match is limited to amateurs participants
174 who are members of a the company or detachment of the Florida
175 National Guard or United States Armed Forces.; ~~or~~

176 (3) A match conducted or sponsored by the Fraternal Order
177 of Police, if the match is limited to amateurs amateur
178 ~~participants~~ and is held in conjunction with a charitable event.

179 (4) A match conducted by or between public postsecondary
180 educational institutions or public K-12 schools, as defined in
181 s. 1000.04, if the match is limited to amateurs who are members
182 of a school-sponsored club or team.

183 (5) A match conducted by the International Olympic



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184 Committee, the International Paralympic Committee, the Special
185 Olympics, or the Junior Olympics, if the match is limited to
186 amateurs who are competing in or attempting to qualify for the
187 Olympics, Paralympics, Special Olympics, or Junior Olympics.

188 (6) A professional or amateur martial arts activity. As
189 used in this subsection, the term "martial arts" means one of
190 the traditional forms of self-defense or unarmed combat
191 involving the use of physical skill and coordination, including,
192 but not limited to, karate, aikido, judo, and kung fu. The term
193 does not include mixed martial arts.

194 Section 5. Section 548.013, Florida Statutes, is repealed.

195 Section 6. Subsections (1) and (2) of section 548.014,
196 Florida Statutes, are amended to read:

197 548.014 Promoters ~~and foreign copromoters~~; bonds or other
198 security.—

199 (1) (a) Before any license is issued or renewed to a
200 promoter ~~or foreign copromoter~~ and before any permit is issued
201 to a promoter ~~or foreign copromoter~~, she or he must file a
202 surety bond with the commission in such reasonable amount, but
203 not less than \$15,000, as the commission determines.

204 (b) All bonds must be upon forms approved and supplied by
205 the commission.

206 (c) The sufficiency of any surety is subject to approval of
207 the commission.

208 (d) The surety bond must be conditioned upon the faithful
209 performance by the promoter ~~or foreign copromoter~~ of her or his
210 obligations under this chapter and upon the fulfillment of her
211 or his contracts with any other licensees under this chapter.
212 However, the aggregate annual liability of the surety for all



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213 obligations and fees may not exceed the amount of the bond.

214 (2) In lieu of a surety bond, the promoter ~~or foreign~~
215 ~~copromoter~~ may deposit with the commission cash or a certified
216 check, in an equivalent amount and subject to the same
217 conditions as the bond. Such security may not be returned to the
218 promoter until 1 year after the date on which it was deposited
219 with the commission unless a surety bond is substituted for it.
220 If no claim against the deposit is outstanding, it shall be
221 returned to the depositor 1 year after the date it was
222 deposited.

223 Section 7. Section 548.015, Florida Statutes, is repealed.

224 Section 8. Subsection (1) of section 548.017, Florida
225 Statutes, is amended to read:

226 548.017 Participants, managers, and other persons required
227 to have licenses.—

228 (1) A participant, manager, trainer, second, timekeeper,
229 referee, judge, announcer, physician, matchmaker,
230 ~~concessionaire, or promoter must~~ booking agent or representative
231 ~~of a booking agent shall~~ be licensed before directly or
232 indirectly acting in such capacity in connection with any match
233 involving a participant. A physician approved by the commission
234 must be licensed pursuant to chapter 458 or chapter 459, must
235 maintain an unencumbered license in good standing, and must
236 demonstrate satisfactory medical training or experience in
237 boxing, or a combination of both, to the executive director
238 before ~~prior to~~ working as the ringside physician.

239 Section 9. Paragraph (c) of subsection (3) of section
240 548.046, Florida Statutes, is amended, and paragraph (d) is
241 added to that subsection, to read:



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242 548.046 Physician's attendance at match; examinations;
243 cancellation of match.-

244 (3)

245 (c) A participant who fails or refuses ~~Failure or refusal~~
246 to provide a urine sample immediately upon request shall be
247 considered an immediate, serious danger to the health, safety,
248 and welfare of the public and his or her opponent. If a
249 participant fails or refuses to provide a urine sample, his or
250 her license shall be immediately suspended pursuant to
251 s.120.60(6), and such failure or refusal is grounds for
252 additional disciplinary action ~~result in the revocation of the~~
253 ~~participant's license. Any participant who has been adjudged the~~
254 ~~loser of a match and who subsequently refuses to or is unable to~~
255 ~~provide a urine sample shall forfeit his or her share of the~~
256 ~~purse to the commission. A~~ Any participant who is adjudged the
257 winner of a match and who subsequently refuses to or is unable
258 to provide a urine sample forfeits ~~shall forfeit~~ the win and
259 ~~shall not be allowed to engage in any future match in the state.~~
260 The decision shall be changed to a no-decision result and shall
261 ~~be entered into the official record as the result of the match.~~
262 The purse shall be redistributed as though the participant found
263 to be in violation of this subsection had lost the match. ~~If~~
264 ~~redistribution of the purse is not necessary or after~~
265 ~~redistribution of the purse is completed, the participant found~~
266 ~~to be in violation of this subsection shall forfeit his or her~~
267 ~~share of the purse to the commission.~~

268 (d) If a participant tests positive for a prohibited
269 substance as specified by commission rule, the participant shall
270 be considered an immediate, serious danger to the health,



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271 safety, and welfare of the public and his or her opponent. The
272 participant's license shall be immediately suspended pursuant to
273 s. 120.60(6), and subject to additional disciplinary action.

274 Section 10. Section 548.052, Florida Statutes, is amended
275 to read:

276 548.052 Payment of advances by promoter ~~or foreign~~
277 ~~copromoter~~ regulated.—A promoter ~~or foreign copromoter~~ may not
278 pay, lend, or give a participant an advance against her or his
279 purse before a contest, except with the prior written permission
280 of the commission or the executive director, or his or her
281 designee ~~a commissioner~~; and, if permitted, such advance may be
282 made only for expenses for transportation and maintenance in
283 preparation for a contest.

284 Section 11. Subsection (2) of section 548.054, Florida
285 Statutes, is amended to read:

286 548.054 Withholding of purses; hearing; disposition of
287 withheld purse forfeiture.—

288 (2) Any purse so withheld shall be delivered by the
289 promoter to the commission upon demand. Within 10 days after the
290 match, the person from whom the sum was withheld may submit a
291 petition for a hearing to the commission pursuant to s. 120.569
292 ~~apply in writing to the commission for a hearing~~. Upon receipt
293 of the petition application, the commission shall hold ~~shall fix~~
294 ~~a date for~~ a hearing pursuant to ss. 120.569 and 120.57. ~~Within~~
295 ~~10 days after the hearing or after 10 days following the match,~~
296 If no petition application for a hearing is filed, the
297 commission shall meet and determine the disposition ~~to be made~~
298 of the withheld purse. If the commission finds the charges
299 sufficient, it may declare all or ~~any~~ part of the funds



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300 forfeited. If the commission finds the charges insufficient ~~not~~
301 ~~sufficient upon which to base a withholding order~~, it shall
302 immediately distribute the withheld funds to the appropriate
303 persons ~~entitled thereto~~.

304 Section 12. Section 548.06, Florida Statutes, is amended to
305 read:

306 548.06 Payments to state; exemptions; audit of records.—

307 (1) Except as provided in subsection (4), a promoter
308 holding a match shall, within 72 hours after the match, file
309 with the commission a written report that ~~which~~ includes the
310 number of tickets sold, the amount of gross receipts, and any
311 other facts the commission may require. For the purposes of this
312 chapter, ~~total~~ gross receipts include each of the following:

313 (a) The gross price charged for the sale or lease of
314 broadcasting, television, and pay-per-view ~~motion picture~~ rights
315 of any match occurring within the state without any deductions
316 for commissions, brokerage fees, distribution fees, advertising,
317 or other expenses or charges.†

318 ~~(b) The portion of the receipts from the sale of souvenirs,~~
319 ~~programs, and other concessions received by the promoter;~~

320 (b)(c) The face value of all tickets sold and complimentary
321 tickets issued, provided, or given above 5 percent of the seats
322 in the house designated for use in the event and not authorized
323 by the commission pursuant to subsection (2).† ~~and~~

324 (c)(d) The face value of any seat or seating issued,
325 provided, or given in exchange for advertising, sponsorships, or
326 anything of value to the promotion of an event.

327 (2) A promoter may issue, provide, or give complimentary
328 tickets for up to 5 percent of the seats in the house designated



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329 for use in the event, equally distributed between or among the
330 price categories for which complimentary tickets are issued,
331 without including the face value of such tickets issued,
332 provided, or given, in gross receipts, and without paying the
333 taxes required in subsection (4). If a promoter wishes to issue,
334 provide, or give complimentary tickets for more than 5 percent
335 of the seats in the house designated for use in the event
336 without including the face value of such tickets issued,
337 provided, or given, in gross receipts, the promoter must obtain
338 written authorization from the commission or the executive
339 director, or his or her designee ~~Where the rights to telecast a~~
340 ~~match or matches held in this state under the supervision of the~~
341 ~~Florida State Boxing Commission are in whole owned by, sold to,~~
342 ~~acquired by, or held by any person who intends to or~~
343 ~~subsequently sells or, in some other manner, extends such rights~~
344 ~~in part to another, such person is deemed to be a promoter and~~
345 ~~must be licensed as such in this state. Such person shall,~~
346 ~~within 72 hours after the sale, transfer, or extension of such~~
347 ~~rights in whole or in part, file with the commission a written~~
348 ~~report that includes the number of tickets sold, the amount of~~
349 ~~gross receipts, and any other facts the commission may require.~~

350 (a) The commission may not consider complimentary tickets
351 that it authorizes under this subsection as part of the total
352 gross receipts from admission fees.

353 (b) A promoter may issue, provide, or give complimentary
354 tickets for more than 5 percent of the seats in the house
355 designated for use in the event without obtaining written
356 authorization from the commission, the executive director, or
357 his or her designee if the promoter includes the face value of



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358 such tickets issued, provided, or given over 5 percent of the
359 seats in the house designated for use in the event in gross
360 receipts and pays the taxes as required in subsection (4).

361 (c) The commission, the executive director, or his or her
362 designee, may authorize more than 5 percent of the tickets to be
363 issued as complimentary tickets to the following:

364 1. Reserve or active members of the United States Armed
365 Forces or National Guard;

366 2. A veteran, as defined in s. 1.01(14). The veteran need
367 not have served during wartime periods of service as listed
368 under s. 1.01(14) or in a campaign or expedition for which a
369 campaign badge has been authorized; and

370 3. Not-for-profit organizations with tax-exempt status
371 pursuant to s. 501(c)(3) of the United States Internal Revenue
372 Code.

373 (d) A promoter who wishes to obtain authorization to issue
374 more than 5 percent complimentary tickets shall:

375 1. Submit an application adopted by the commission no later
376 than 2 business days before the date of the professional event.
377 The application must include, at a minimum, the date, time, and
378 location of the event, the number of complimentary tickets being
379 requested, the percentage of total tickets issued for the seats
380 in the house designated for use in the event being requested as
381 complimentary tickets, and what individuals or entities will
382 receive the complimentary tickets.

383 2. Maintain documentation evidencing that the tickets were
384 given to individuals or entities that fall into the categories
385 listed in paragraph (c). These documents are subject to auditing
386 requirements as set forth in subsection (7).



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387 (e) The commission, executive director, or his or her
388 designee shall deny or approve the application. The commission,
389 executive director, or his or her designee may set limitations
390 on the approval and may approve all or a portion of the
391 requested percentage above 5 percent. The commission, executive
392 director, or his or her designee shall provide the decision in
393 writing to the promoter at least 1 business day before the start
394 of the event, with an explanation for the denial or approval and
395 an explanation for any limitation on the approval. The promoter
396 remains responsible for complying with other reporting and
397 taxation requirements as set forth in this chapter.

398 ~~(3) A concessionaire shall, within 72 hours after the~~
399 ~~match, file with the commission a written report that includes~~
400 ~~the number of tickets sold, the amount of gross receipts, and~~
401 ~~any other facts the commission may require.~~

402 (3)(4) A Any written report required to be filed with the
403 commission under this section must shall be postmarked within 72
404 hours after the conclusion of the match, and an additional 5
405 days is shall be allowed for mailing.

406 (4)(5) Each the written report must shall be accompanied by
407 a tax payment in the amount of 5 percent of the total gross
408 receipts exclusive of any federal taxes, except that the tax
409 payment derived from the gross price charged for the sale or
410 lease of broadcasting, television, and pay-per-view motion
411 picture rights of any match occurring within the state may shall
412 not exceed \$40,000 for a any single event. If a promoter remits
413 the maximum tax amount of \$40,000 for the sale or lease of
414 broadcasting, television, or pay-per-view rights of any single
415 event pursuant to this subsection, the promoter is only required



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416 to indicate that the amount of \$40,000 has been remitted for
417 such taxes on a form provided by the commission. The promoter
418 remains responsible for complying with other reporting and
419 taxation requirements related to other gross receipts as set
420 forth in this chapter.

421 (5) ~~(6)~~ (a) A ~~Any~~ promoter who willfully makes a false and
422 fraudulent report under this section ~~commits is guilty of~~
423 perjury and, upon conviction, is subject to punishment as
424 provided by law. Such penalty ~~is shall be~~ in addition to any
425 other penalties imposed ~~under by~~ this chapter.

426 (b) A ~~Any~~ promoter who willfully fails, neglects, or
427 refuses to make a report or to pay the taxes as prescribed or
428 who refuses to allow the commission to examine the books,
429 papers, and records of a ~~any~~ promotion ~~commits is guilty of~~ a
430 misdemeanor of the second degree, punishable as provided in s.
431 775.082 or s. 775.083.

432 (6) A promoter shall retain a copy of the following records
433 for 1 year and provide a copy of the following records to the
434 commission upon request:

435 (a) Records necessary to support each report submitted to
436 the commission, including a copy of any report filed with the
437 commission.

438 (b) A copy of each independently prepared ticket manifest.

439 (c) Documentation verifying the issuance of complimentary
440 tickets approved by the commission pursuant to subsection (2) to
441 individuals or entities which meet the requirements as set forth
442 in paragraph (2) (c).

443 (7) Compliance with this section is subject to verification
444 by department or commission audit. The commission may, upon



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445 reasonable notice to the promoter, audit a promoter's books and
446 records relating to the promoter's operations under this
447 chapter.

448 (8) The commission shall adopt rules establishing a
449 procedure for auditing a promoter's records and resolving any
450 inconsistencies revealed by an audit and shall adopt a rule
451 imposing a late fee in the event of taxes owed.

452 Section 13. Section 548.07, Florida Statutes, is amended to
453 read:

454 548.07 Suspension of license or permit by commissioner;
455 hearing.-

456 (1) The commission or the executive director, or his or her
457 designee, may issue an emergency suspension order pursuant to s.
458 120.60(6), suspending the license of any person or entity
459 licensed under this chapter who poses an immediate, serious
460 danger to the health, safety, and welfare of the public or the
461 participants in a match.

462 (2) The department's Office of General Counsel shall review
463 the grounds for each emergency suspension order issued and, if
464 sufficient, shall file an administrative complaint against the
465 licensee within 21 days after the issuance of the emergency
466 suspension order.

467 (3) After service of the administrative complaint pursuant
468 to the procedure of s. 455.275, the disciplinary process shall
469 proceed pursuant to chapter 120. Notwithstanding any provision
470 of chapter 120, any member of the commission may, upon her or
471 his own motion or upon the verified written complaint of any
472 person charging a licensee or permittee with violating this
473 chapter, suspend any license or permit until final determination



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474 ~~by the commission if such action is necessary to protect the~~
475 ~~public welfare and the best interests of the sport. The~~
476 ~~commission shall hold a hearing within 10 days after the date on~~
477 ~~which the license or permit is suspended.~~

478 Section 14. Section 548.073, Florida Statutes, is amended
479 to read:

480 548.073 Commission hearings.—All hearings held under this
481 chapter shall be held in accordance with chapter 120.

482 ~~Notwithstanding the provisions of chapter 120, any member of the~~
483 ~~commission may conduct a hearing. Before any adjudication is~~
484 ~~rendered, a majority of the members of the commission shall~~
485 ~~examine the record and approve the adjudication and order.~~

486 Section 15. The sum of \$111,000 in recurring funds is
487 appropriated from the General Revenue Fund to the Department of
488 Business and Professional Regulation for the implementation of
489 this act by the Florida State Boxing Commission during the 2014-
490 2015 fiscal year.

491 Section 16. This act shall take effect July 1, 2014.

492
493 ===== T I T L E A M E N D M E N T =====

494 And the title is amended as follows:

495 Delete everything before the enacting clause
496 and insert:

497 A bill to be entitled
498 An act relating to pugilistic exhibitions; amending s.
499 548.002, F.S.; revising definitions; amending s.
500 548.004, F.S.; revising the duties and
501 responsibilities of the executive director of the
502 Florida State Boxing Commission; deleting a provision



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503 requiring the electronic recording of commission
504 proceedings; amending s. 548.006, F.S.; clarifying the
505 commission's exclusive jurisdiction over approval of
506 amateur and professional boxing, kickboxing, and mixed
507 martial arts matches; amending s. 548.007, F.S.;
508 revising applicability of ch. 548, F.S.; repealing s.
509 548.013, F.S.; relating to foreign copromoter license
510 requirement; amending s. 548.014, F.S.; deleting
511 references to foreign copromoters; repealing s.
512 548.015, F.S., relating to the authority of the
513 commission to require a concessionaire to file a form
514 of security with the commission; amending s. 548.017,
515 F.S.; deleting a requirement for the licensure of
516 concessionaires; amending s. 548.046, F.S.; providing
517 for immediate license suspension and other
518 disciplinary action if a participant fails or refuses
519 to provide a urine sample or tests positive for
520 specified prohibited substances; amending s. 548.052,
521 F.S.; deleting a reference to foreign copromoters;
522 amending s. 548.054, F.S.; revising procedures and
523 requirements for requesting a hearing following the
524 withholding of a purse; amending s. 548.06, F.S.;
525 specifying a circumstance under which a report is not
526 required to be filed with the commission; revising the
527 calculation of gross receipts that are required to be
528 filed in a report to the commission; requiring
529 promoters to retain specified documents and records;
530 authorizing the commission and the Department of
531 Business and Professional Regulation to audit



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532 specified records retained by a promoter; requiring
533 the commission to adopt rules; amending s. 548.07,
534 F.S.; revising the procedure for suspension of
535 licensure; amending s. 548.073, F.S.; requiring that
536 commission hearings be held in accordance with ch.
537 120, F.S.; providing an appropriation; providing an
538 effective date.

By Senator Galvano

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1 A bill to be entitled
 2 An act relating to pugilistic exhibitions; amending s.
 3 548.002, F.S.; revising definitions; amending s.
 4 548.004, F.S.; revising the duties and
 5 responsibilities of the executive director of the
 6 Florida State Boxing Commission; deleting a provision
 7 requiring the electronic recording of commission
 8 proceedings; amending s. 548.006, F.S.; providing the
 9 commission exclusive jurisdiction over approval of
 10 amateur mixed martial arts matches; amending s.
 11 548.007, F.S.; revising applicability of ch. 548,
 12 F.S.; repealing s. 548.015, F.S., relating to the
 13 authority of the commission to require a
 14 concessionaire to file a form of security with the
 15 commission; amending s. 548.017, F.S.; deleting a
 16 requirement for the licensure of concessionaires;
 17 amending s. 548.046, F.S.; providing for immediate
 18 license suspension and other disciplinary action if a
 19 participant fails or refuses to provide a urine sample
 20 or tests positive for specified prohibited substances;
 21 amending s. 548.054, F.S.; revising procedure and
 22 requirements for requesting a hearing following the
 23 withholding of a purse; amending s. 548.06, F.S.;
 24 specifying a circumstance under which a report is not
 25 required to be filed with the commission; revising the
 26 calculation of gross receipts that are required to be
 27 filed in a report to the commission; requiring
 28 promoters to retain specified documents and records;
 29 authorizing the commission and the Department of

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30 Business and Professional Regulation to audit
 31 specified records retained by a promoter; requiring
 32 the commission to adopt rules; amending s. 548.07,
 33 F.S.; revising the procedure for suspension of
 34 licensure; amending s. 548.073, F.S.; requiring that
 35 commission hearings be held in accordance with ch.
 36 120, F.S.; providing an appropriation; providing an
 37 effective date.

38
 39 Be It Enacted by the Legislature of the State of Florida:

40
 41 Section 1. Section 548.002, Florida Statutes, is amended to
 42 read:

43 548.002 Definitions.—As used in this chapter, the term:

44 (1) "Amateur" means a person who has never received nor
 45 competed for any purse or other article of value, either for the
 46 expenses of training or for participating in a match, other than
 47 a prize of \$50 or less in value ~~or less~~.

48 (2) "Amateur sanctioning organization" means a ~~any~~ business
 49 entity organized for sanctioning and supervising matches
 50 involving amateurs.

51 (3) "Boxing" means the act, activity, or sport of fighting
 52 by striking with fists covered with approved padded gloves in a
 53 roped square ring, subject to this chapter and any rules adopted
 54 pursuant thereto ~~to compete with the fists~~.

55 (4) "Commission" means the Florida State Boxing Commission.

56 ~~(5) "Concessionaire" means any person or business entity~~
 57 ~~not licensed as a promoter which receives revenues or other~~
 58 ~~compensation from the sale of tickets or from the sale of~~

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59 ~~souvenirs, programs, broadcast rights, or any other concessions~~
 60 ~~in conjunction with the promotion of a match.~~

61 ~~(5)(6)~~ "Contest" means a boxing, kickboxing, or mixed
 62 martial arts engagement in which participants ~~persons~~
 63 ~~participating~~ strive ~~earnestly~~ to win using, ~~but not necessarily~~
 64 ~~being limited to,~~ strikes and blows to the head or other full-
 65 contact maneuvers.

66 ~~(6)(7)~~ "Department" means the Department of Business and
 67 Professional Regulation.

68 ~~(7)(8)~~ "Event" means one or more matches comprising a show.

69 ~~(8)(9)~~ "Exhibition" means a boxing, kickboxing, or mixed
 70 martial arts engagement in which participants ~~persons~~
 71 ~~participating~~ show or display their skill without necessarily
 72 striving to win using, ~~but not necessarily being limited to,~~
 73 strikes and blows to the head or other full-contact maneuvers.

74 ~~(9)~~ "Face value" means the dollar value of a ticket equal
 75 to the dollar amount that a customer is required to pay or, for
 76 complimentary tickets, would have been required to pay to
 77 purchase a ticket with equivalent seating priority in order to
 78 view the event. If the ticket specifies the amount of admission
 79 charges attributable to state or federal taxes, such taxes are
 80 not included in the face value.

81 ~~(10)~~ "Full contact" means the use of strikes and blows
 82 during a match which:

83 (a) Are intended to break the plane of the receiving
 84 participant's body;

85 (b) Are delivered to the head, face, neck, or body of the
 86 receiving participant; and

87 (c) Cause the receiving participant to move in response to

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88 the strike or blow.

89 ~~(10)~~ "Foreign copromoter" means a promoter who has no place
 90 ~~of business within this state.~~

91 ~~(11)~~ "Judge" means a person licensed by the commission who
 92 evaluates and scores a match using a designated scoring system
 93 ~~who has a vote in determining the winner of any contest.~~

94 ~~(12)~~ "Kickboxing" means the act, activity, or sport of
 95 fighting by striking to compete with the fists, hands, feet,
 96 legs, or any combination thereof, in a roped square ring, ~~and~~
 97 ~~includes "punchkick" and other similar competitions. The term~~
 98 does not include any form of ground fighting techniques.

99 ~~(13)~~ "Manager" means a ~~any~~ person who, directly or
 100 indirectly, controls or administers the boxing, kickboxing, or
 101 mixed martial arts affairs of a ~~any~~ participant.

102 ~~(14)~~ "Match" means a ~~any~~ contest or exhibition.

103 ~~(15)~~ "Matchmaker" means a person who brings together
 104 professionals or arranges matches for professionals.

105 ~~(16)~~ "Mixed martial arts" means the act, activity, or sport
 106 of unarmed combat involving the use, subject to any applicable
 107 limitations set forth in this chapter, of a combination of
 108 techniques, including, but not limited to, grappling, kicking,
 109 and striking, and using techniques from different disciplines of
 110 the martial arts, including, but not limited to, boxing,
 111 kickboxing, Muay Thai, jujitsu, and wrestling, in either a roped
 112 square ring or a fenced-in fighting area ~~grappling, kicking, and~~
 113 ~~striking.~~

114 ~~(17)~~ "Participant" means a person ~~professional~~ competing in
 115 a boxing, kickboxing, or mixed martial arts match.

116 ~~(18)~~ "Physician" means a person who is approved by the

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117 ~~commission and an individual~~ licensed to practice medicine under
 118 ~~chapter 458 or chapter 459 and whose license is unencumbered and~~
 119 ~~in good standing to practice medicine and surgery in this state.~~

120 (19) "Professional" means a person who has received or
 121 competed for ~~a any~~ purse or other article of a value greater
 122 than \$50, either for the expenses of training or for
 123 participating in ~~a any~~ match.

124 (20) "Promoter" means ~~a any person or entity, including an~~
 125 ~~and includes any officer, director, trustee, partner employee,~~
 126 ~~or owner stockholder~~ of a corporate promoter ~~or promoter~~
 127 ~~partnership, who produces, arranges, or stages a any match~~
 128 ~~involving a professional.~~

129 (21) "Purse" means the financial guarantee or other
 130 remuneration for which a professional is participating in a
 131 match and includes the professional's share of any payment
 132 received for radio broadcasting ~~and,~~ television, ~~including pay-~~
 133 ~~per-view or closed circuit and motion picture rights.~~

134 (22) "Second" or "cornerman" means a person who assists ~~a~~
 135 ~~the match~~ participant ~~in preparing for a match and between~~
 136 ~~rounds, and who maintains the corner of a the~~ participant during
 137 ~~a the~~ match.

138 (23) "Secretary" means the Secretary of Business and
 139 Professional Regulation.

140 Section 2. Section 548.004, Florida Statutes, is amended to
 141 read:

142 548.004 Executive director; duties, compensation,
 143 administrative support.—

144 (1) The department shall employ an executive director with
 145 the approval of the commission. The executive director shall

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146 serve at the pleasure of the secretary. The executive director
 147 or his or her designee shall perform the duties specified by the
 148 commission, including conducting the functions of the commission
 149 office; appointing event and commission officials; approving
 150 licenses, permits, and matches; and performing any ~~keep a record~~
 151 ~~of all proceedings of the commission; shall preserve all books,~~
 152 ~~papers, and documents pertaining to the business of the~~
 153 ~~commission; shall prepare any notices and papers required; shall~~
 154 ~~appoint judges, referees, and other officials as delegated by~~
 155 ~~the commission and pursuant to this chapter and rules of the~~
 156 ~~commission; and shall perform such other duties as the~~
 157 department or commission deems necessary directs. The executive
 158 director may issue subpoenas and administer oaths to witnesses
 159 and licensees only.

160 ~~(2) The commission shall require electronic recording of~~
 161 ~~all scheduled proceedings of the commission.~~

162 (2)(3) The department shall provide assistance in budget
 163 development and budget submission for state funding requests.
 164 The department shall submit an annual balanced legislative
 165 budget for the commission which is based upon anticipated
 166 revenue. The department shall provide technical assistance and
 167 administrative support, if requested or determined necessary
 168 ~~needed~~, to the commission and its executive director on issues
 169 relating to personnel, contracting, property management, or
 170 other issues identified as important to performing the duties of
 171 this chapter and to protecting the interests of the state.

172 Section 3. Section 548.006, Florida Statutes, is amended to
 173 read:

174 548.006 Power of commission to control professional and

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175 amateur ~~boxing, kickboxing, and mixed martial arts matches~~
 176 ~~pugilistic contests and exhibitions~~; certification of
 177 competitiveness of professional mixed martial arts and
 178 kickboxing matches.-

179 (1) The commission has exclusive jurisdiction over every
 180 match held within the state which involves a professional.

181 (2) As to professional mixed martial arts and kickboxing,
 182 until a central repository of match records for each exists and
 183 is approved by the commission, the matchmaker shall certify as to
 184 the competitiveness of each match.

185 (3) The commission has exclusive jurisdiction over
 186 approval, disapproval, suspension of approval, and revocation of
 187 approval of all amateur sanctioning organizations for amateur
 188 boxing, ~~and~~ kickboxing, and mixed martial arts matches held in
 189 this state.

190 (4) Professional and amateur matches shall be held in
 191 accordance with this chapter and the rules adopted by the
 192 commission.

193 Section 4. Section 548.007, Florida Statutes, is amended to
 194 read:

195 548.007 Exemptions.-~~This chapter does~~ Applicability of
 196 provisions to amateur matches and certain other matches or
 197 events. Sections 548.001-548.079 do not apply to any of the
 198 following:

199 (1) An amateur A match that does not allow full contact.
 200 conducted or sponsored by a bona fide nonprofit school or
 201 education program whose primary purpose is instruction in the
 202 martial arts, boxing, or kickboxing, if the match held in
 203 conjunction with the instruction is limited to amateur

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204 ~~participants who are students of the school or instructional~~
 205 ~~program;~~

206 (2) A match conducted or sponsored by ~~a any~~ company or
 207 detachment of the Florida National Guard, if the match is
 208 limited to ~~amateurs participants~~ who are members of ~~a the~~
 209 company or detachment of the Florida National Guard, ~~or~~

210 (3) A match conducted or sponsored by the Fraternal Order
 211 of Police, if the match is limited to ~~amateurs amateur~~
 212 ~~participants~~ and is held in conjunction with a charitable event.

213 (4) A match conducted by or between public postsecondary
 214 educational institutions or public secondary schools, if the
 215 match is limited to amateurs who are members of a school-
 216 sponsored club or team.

217 (5) A match conducted by or between companies or
 218 detachments of a branch of the United States Armed Forces or
 219 National Guard, involving members thereof, if the match is
 220 limited to amateurs.

221 (6) A match conducted by the International Olympic
 222 Committee, the International Paralympic Committee, the Special
 223 Olympics, or the Junior Olympics, if the match is limited to
 224 amateurs who are competing in or attempting to qualify for the
 225 Olympics, Paralympics, Special Olympics, or Junior Olympics.

226 (7) A professional or amateur martial arts activity. As
 227 used in this subsection, the term "martial arts" means any one
 228 of the traditional forms of self-defense or unarmed combat
 229 involving the use of physical skill and coordination, including,
 230 but not limited to, karate, aikido, judo, and kung fu. The term
 231 does not include mixed martial arts.

232 Section 5. Section 548.015, Florida Statutes, is repealed.

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233 Section 6. Subsection (1) of section 548.017, Florida
234 Statutes, is amended to read:

235 548.017 Participants, managers, and other persons required
236 to have licenses.—

237 (1) A participant, manager, trainer, second, timekeeper,
238 referee, judge, announcer, physician, matchmaker,
239 ~~concessionaire, or promoter booking agent~~ or representative of a
240 promoter must booking agent shall be licensed before directly or
241 indirectly acting in such capacity in connection with any match
242 involving a participant. A physician approved by the commission
243 must be licensed pursuant to chapter 458 or chapter 459, must
244 maintain an unencumbered license in good standing, and must
245 demonstrate satisfactory medical training or experience in
246 boxing, or a combination of both, to the executive director
247 before prior to working as the ringside physician.

248 Section 7. Paragraph (c) of subsection (3) of section
249 548.046, Florida Statutes, is amended, and paragraph (d) is
250 added to that subsection, to read:

251 548.046 Physician's attendance at match; examinations;
252 cancellation of match.—

253 (3)

254 (c) The license of a participant who fails or refuses
255 ~~Failure or refusal~~ to provide a urine sample immediately upon
256 request shall be immediately revoked, and such failure or
257 refusal is grounds for additional disciplinary action result in
258 the revocation of the participant's license. A Any participant
259 who has been adjudged the loser of a match and who subsequently
260 refuses to or is unable to provide a urine sample is subject to
261 disciplinary action pursuant to this chapter and any rules

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262 adopted pursuant thereto shall forfeit his or her share of the
263 purse to the commission. A Any participant who is adjudged the
264 winner of a match and who subsequently refuses to or is unable
265 to provide a urine sample ~~forfeits shall forfeit~~ the win and
266 ~~shall not be allowed to engage in any future match in the state.~~
267 The decision shall be changed to a no-decision result and shall
268 be entered into the official record as the result of the match.
269 The purse shall be redistributed as though the participant found
270 to be in violation of this subsection had lost the match. ~~If~~
271 ~~redistribution of the purse is not necessary or after~~
272 ~~redistribution of the purse is completed, the participant found~~
273 ~~to be in violation of this subsection shall forfeit his or her~~
274 ~~share of the purse to the commission.~~

275 (d) The license of a participant who tests positive for a
276 prohibited substance as specified under commission rule shall be
277 immediately suspended, and the positive test result is grounds
278 for additional disciplinary action.

279 Section 8. Subsection (2) of section 548.054, Florida
280 Statutes, is amended to read:

281 548.054 Withholding of purses; hearing; disposition of
282 withheld purse forfeiture.—

283 (2) Any purse so withheld shall be delivered by the
284 promoter to the commission upon demand. Within 10 days after the
285 match, the person from whom the sum was withheld may submit a
286 petition for a hearing to the commission apply in writing to the
287 commission for a hearing. Upon receipt of the petition
288 application, the commission may hold shall fix a date for a
289 hearing pursuant to ss. 120.569 and 120.57. Within 10 days after
290 the hearing or after 10 days following the match, If no petition

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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291 ~~application~~ for a hearing is filed, the commission shall meet
 292 and determine the disposition ~~to be made~~ of the withheld purse.
 293 If the commission finds the charges sufficient, it may declare
 294 all or ~~any~~ part of the funds forfeited. If the commission finds
 295 the charges ~~insufficient not sufficient upon which to base a~~
 296 ~~withholding order~~, it shall immediately distribute the withheld
 297 funds to the appropriate persons ~~entitled thereto~~.

298 Section 9. Section 548.06, Florida Statutes, is amended to
 299 read:

300 548.06 Payments to state; exemptions; audit of records.-

301 (1) Unless the promoter pays the maximum tax amount
 302 specified under subsection (3), a promoter holding a match
 303 shall, within 72 hours after the match, file with the commission
 304 a written report that ~~which~~ includes the number of tickets sold,
 305 the amount of gross receipts, and any other facts the commission
 306 may require. For the purposes of this chapter, ~~total~~ gross
 307 receipts include each of the following:

308 (a) The gross price charged for the sale or lease of
 309 broadcasting, television, and pay-per-view motion picture rights
 310 of any match occurring within the state without any deductions
 311 for commissions, brokerage fees, distribution fees, advertising,
 312 or other expenses or charges.~~;~~

313 ~~(b) The portion of the receipts from the sale of souvenirs,~~
 314 ~~programs, and other concessions received by the promoter;~~

315 (b)(e) The face value of all tickets sold and complimentary
 316 tickets issued, provided, or given. A promoter may not issue
 317 complimentary tickets for more than 5 percent of the seats in
 318 the house, equally distributed between or among the price
 319 categories for which complimentary tickets are issued, without

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320 the commission's written authorization. The commission may not
 321 consider complimentary tickets that it authorizes under this
 322 section as part of the total gross receipts from admission
 323 fees. ~~and~~

324 ~~(c)(d)~~ The face value of any seat or seating issued,
 325 provided, or given in exchange for advertising, sponsorships, or
 326 anything of value to the promotion of an event.

327 ~~(2) Where the rights to telecast a match or matches held in~~
 328 ~~this state under the supervision of the Florida State Boxing~~
 329 ~~Commission are in whole owned by, sold to, acquired by, or held~~
 330 ~~by any person who intends to or subsequently sells or, in some~~
 331 ~~other manner, extends such rights in part to another, such~~
 332 ~~person is deemed to be a promoter and must be licensed as such~~
 333 ~~in this state. Such person shall, within 72 hours after the~~
 334 ~~sale, transfer, or extension of such rights in whole or in part,~~
 335 ~~file with the commission a written report that includes the~~
 336 ~~number of tickets sold, the amount of gross receipts, and any~~
 337 ~~other facts the commission may require.~~

338 ~~(3) A concessionaire shall, within 72 hours after the~~
 339 ~~match, file with the commission a written report that includes~~
 340 ~~the number of tickets sold, the amount of gross receipts, and~~
 341 ~~any other facts the commission may require.~~

342 (2)(4) A Any written report required to be filed with the
 343 commission under this section ~~must~~ shall be postmarked within 72
 344 hours after the conclusion of the match, and an additional 5
 345 days ~~is~~ shall be allowed for mailing.

346 (3)(5) Each the written report ~~must~~ shall be accompanied by
 347 a tax payment in the amount of 5 percent of the total gross
 348 receipts exclusive of any federal taxes, except that the tax

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349 payment derived from the gross price charged for the sale or
 350 lease of broadcasting, television, and ~~pay-per-view motion~~
 351 ~~picture rights of any match occurring within the state may shall~~
 352 not exceed \$40,000 for a ~~any~~ single event.

353 ~~(4)(6)~~ (a) ~~A Any~~ promoter who willfully makes a false and
 354 fraudulent report under this section ~~commits is guilty of~~
 355 perjury and, upon conviction, is subject to punishment as
 356 provided by law. Such penalty ~~is shall be~~ in addition to any
 357 other penalties imposed ~~under~~ by this chapter.

358 (b) ~~A Any~~ promoter who willfully fails, neglects, or
 359 refuses to make a report or to pay the taxes as prescribed or
 360 who refuses to allow the commission to examine the books,
 361 papers, and records of a ~~any~~ promotion ~~commits is guilty of~~ a
 362 misdemeanor of the second degree, punishable as provided in s.
 363 775.082 or s. 775.083.

364 (5) A promoter shall retain a copy of the following records
 365 for 1 year and provide a copy of such records to the commission
 366 upon request:

367 (a) Records necessary to support each report submitted to
 368 the commission, including a copy of any report filed with the
 369 commission.

370 (b) A copy of each independently prepared ticket manifest.

371 (6) Compliance with this section is subject to verification
 372 by department or commission audit. The commission may, upon
 373 reasonable notice to the promoter, audit a promoter's books and
 374 records relating to the promoter's operations under this
 375 chapter.

376 (7) The commission shall adopt rules establishing a
 377 procedure for auditing a promoter's records and resolving any

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378 inconsistencies revealed by an audit and shall adopt a rule
 379 imposing a late fee in the event of taxes owed.

380 Section 10. Section 548.07, Florida Statutes, is amended to
 381 read:

382 548.07 Suspension of license or permit by commissioner;
 383 hearing.-

384 (1) The commission, the commissioner, a commission
 385 designee, or the executive director or his or her designee may
 386 issue an emergency suspension-of-license order to any person
 387 licensed under this chapter who poses an immediate, serious
 388 danger to the health, safety, and welfare of the participants in
 389 a match and the general public.

390 (2) The department's Office of General Counsel shall review
 391 the grounds for each emergency suspension order issued and, if
 392 sufficient, shall file an administrative complaint against the
 393 licensee within 21 days after the issuance of the emergency
 394 suspension order.

395 (3) After service of the administrative complaint, pursuant
 396 to s. 455.275, the disciplinary process shall proceed pursuant
 397 to chapter 120. Notwithstanding any provision of chapter 120,
 398 any member of the commission may, upon her or his own motion or
 399 upon the verified written complaint of any person charging a
 400 licensee or permittee with violating this chapter, suspend any
 401 license or permit until final determination by the commission if
 402 such action is necessary to protect the public welfare and the
 403 best interests of the sport. The commission shall hold a hearing
 404 within 10 days after the date on which the license or permit is
 405 suspended.

406 Section 11. Section 548.073, Florida Statutes, is amended

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407 to read:

408 548.073 Commission hearings.—All hearings held under this
409 chapter shall be held in accordance with chapter 120
410 ~~Notwithstanding the provisions of chapter 120, any member of the~~
411 ~~commission may conduct a hearing. Before any adjudication is~~
412 ~~rendered, a majority of the members of the commission shall~~
413 ~~examine the record and approve the adjudication and order.~~

414 Section 12. The sum of \$111,000 in recurring funds is
415 appropriated from the General Revenue Fund to the Department of
416 Business and Professional Regulation for the implementation of
417 this act by the Florida State Boxing Commission during the 2014-
418 2015 fiscal year.

419 Section 13. This act shall take effect July 1, 2014.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Education, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health
and Human Services
Education
Gaming
Health Policy
Regulated Industries
Rules

SENATOR BILL GALVANO

26th District

February 6, 2014

Senator Kelli Stargel
330 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Madam Chair Stargel:

I respectfully request that SB 810, Pugilistic Exhibition, be scheduled for a hearing in the Committee on Regulated Industries at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in cursive script that reads "Bill".

Bill Galvano

cc: Patrick "Booter" Imhof
Lynn Koon

REPLY TO:

- 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

March 13, 2014
Meeting Date

810-908

Topic Pugilistic Exhibitions

Bill Number ~~773+775~~ (linked)
(if applicable)

Name Jeff Johnston

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address 21748 State Road 54, Suite 102
Street

Phone (813) 527-0172

Lutz FL 33549
City State Zip

E-mail jeff@corcoranfirm.com

Speaking: For Against Information

Representing UFC

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 808

INTRODUCER: Regulated Industries Committee and Senator Galvano

SUBJECT: Public Records/Florida State Boxing Commission

DATE: March 13, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 808 creates a public-records exemption for proprietary confidential business information held by the Florida State Boxing Commission. The exemption relates to information provided by promoters when reporting the tax on gross receipts provided in s. 548.06, F.S., or when the commission audits the promoter's books and records.

The bill makes the legislative finding that the disclosure of proprietary confidential business information would injure a promoter in the marketplace and the harm to a promoter in disclosing proprietary confidential business information significantly outweighs any public benefit derived from disclosure of the information.

Section 2 provides that this act shall take effect on the same date that SB 810 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. SB 810 by Senator Galvano relates to Pugilistic Exhibitions.

The Florida Constitution and the Florida Statutes ensures public access to documents received and maintained by government agencies as part of their official duties. However, the Legislature may exempt agency documents from public access. An exemption must be created by a general law specifically stating the public necessity justifying the exemption. Further, an exemption must be no broader than necessary to accomplish the stated purpose of the law.

CS/SB 808 requires a two-thirds vote of the membership of each house of the Legislature for passage under s. 24(c), Art. I, Florida State Constitution.

II. Present Situation:

Florida's Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909. In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level. Article I, s. 24(a), of the State Constitution provides:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created there under; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the Florida Constitution, the Public Records Law,¹ which predates the constitutional provisions, specifies conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. Section 119.07(1) (a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Unless specifically exempted, all agency² records are available for public inspection. The term "public records" is defined in s. 119.011(11), F.S., to include:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of the official business by any agency.

¹Chapter 119, F.S.

²The term "agency" is defined in s. 119.011(2), F.S., to mean "...any state, county district, authority, or municipal officer, department, division, board, bureau, commission or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

This definition of “public records” has been interpreted by the Florida Supreme Court to include all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.³ Unless these materials have been made exempt by the Legislature, they are open for public inspection, regardless of whether they are in final form.⁴

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.⁵ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.⁶

Only the Legislature is authorized to create exemptions to open government requirements.⁷ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁸ A bill enacting an exemption⁹ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹⁰

Proprietary Confidential Business Information

The term “proprietary confidential business information” is defined in several provisions in the Florida Statutes relating to public records exemptions.

Section 119.0713(4), F.S., provides a public records exemption for proprietary confidential business information, regardless of form or characteristics, held by an electric utility that is subject to the public records requirements of ch. 119, F.S., a government-owned utility. It provides:

(4)(a) Proprietary confidential business information means information, regardless of form or characteristics, which is held by an electric utility that is subject to chapter 119, is intended to be and is treated by the entity that provided the information to the electric utility as private in that the disclosure of the information would cause harm to the entity providing the information or its business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public. Proprietary confidential business information includes, but is not limited to:

³ *Shevin v. Byron, Harless, Schaffer, Reid, and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁴ *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

⁵ Attorney General Opinion 85-62.

⁶ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

⁷ Article I, s. 24(c), State Constitution.

⁸ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

⁹ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹⁰ Art. I, s. 24(c), State Constitution.

1. Trade secrets.
 2. Internal auditing controls and reports of internal auditors.
 3. Security measures, systems, or procedures.
 4. Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the electric utility to contract for goods or services on favorable terms.
 5. Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.
- (b) Proprietary confidential business information held by an electric utility that is subject to chapter 119 in conjunction with a due diligence review of an electric project as defined in s. 163.01(3)(d) or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
- (c) All proprietary confidential business information described in paragraph (b) shall be retained for 1 year after the due diligence review has been completed and the electric utility has decided whether or not to participate in the project.

Another example is s. 202.195, F.S., which provides a public records exemption for proprietary confidential business information obtained by local governments from a telecommunications company or franchised cable company for the purposes of imposing fees for occupying the public rights-of-way, assessing the local communications services tax pursuant to s. 202.19, F.S., or regulating the public rights-of-way, held by a local governmental entity. Section 202.195(2), F.S., provide the following definition for “proprietary confidential business information:”

For the purposes of this exemption, “proprietary confidential business information” includes maps, plans, billing and payment records, trade secrets, or other information relating to the provision of or facilities for communications service:

- (a) That is intended to be and is treated by the company as confidential;
- (b) The disclosure of which would be reasonably likely to be used by a competitor to harm the business interests of the company; and
- (c) That is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as requested by the local governmental entity.

Proprietary confidential business information does not include schematics indicating the location of facilities for a specific site that are provided in the normal course of the local governmental entity’s permitting process.

Another example of a comparable public records exemption for proprietary confidential business information includes s. 288.075(1), F.S., relating to economic development agencies such as the Department of Economic Opportunity, industrial development authorities created in accordance with part III of chapter 159 or by special law, and Space Florida created in part II of ch. 331, F.S.

Open Government Sunset Review Act

The Open Government Sunset Review Act (act), in s. 119.15, F.S., provides a process for the review, and repeal or reenactment of, public records exemptions.¹¹ Under Florida law, a new exemption or substantial amendment to an existing exemption shall be repealed on October 2nd of the 5th year after enactment, unless the Legislature acts to reenact the exemption.¹² By June 1 of each year, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives, the language and statutory citation of each exemption scheduled for repeal the following year.¹³

Florida State Boxing Commission

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing, and mixed martial arts by the Florida State Boxing Commission (commission) within the Department of Business and Professional Regulation (department).

Section 548.006(3), F.S., provides the commission with exclusive jurisdiction over every professional boxing match and professional mixed martial arts and kickboxing matches. Professional matches held in this state must meet the requirements for holding the match ch. 548, F.S., and the rules adopted by the commission.

The commission's jurisdiction over amateur matches is limited to the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for boxing and kickboxing matches held in the state.¹⁴ Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.¹⁵ This jurisdiction does not extend to amateur sanctioning organizations for mixed martial arts.

Section 548.002(20), F.S., defines the term "promoter" to mean:

any person, and includes any officer, director, employee, or stockholder of a corporate promoter, who produces, arranges, or stages any match involving a professional.

Reporting and Tax Requirement

Within seventy-two hours after a match, the promoter of that match must file a written report with the commission.¹⁶ The report must include information about the number of tickets sold, the amount of gross receipts, and any other facts that the commission requires.¹⁷ Chapter 548, F.S., does not require the promoter to retain a copy of the written report.

The term "gross receipts" includes:

¹¹ This act applies to exemptions from s. 24, Art. I, of the State Constitution and s. 119.07(1), F.S., or s. 286.011, F.S.

¹² Section 119.15(3), F.S.

¹³ Section 119.15(5)(a), F.S.

¹⁴ Section 548.006(3), F.S.

¹⁵ Section 548.002(2), F.S.

¹⁶ Section 548.06(1), F.S.

¹⁷ *Id.*

- The gross price charged for the sale or lease of broadcasting, television, and motion picture rights without any deductions for commissions, brokerage fees, distribution fees, advertising or other expenses or charges;
- The portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter;
- The face value of all tickets sold and complimentary tickets issued, provided, or given; and
- The face value of any seat or seating issued, provided, or given in exchange for advertising sponsorships, or anything of value to the promotion of an event.¹⁸

According to the department, the current definition of “gross receipts” has led to some confusion in the industry because licensees are not sure whether to include state and federal taxes within the face value of a ticket.

Promoters include persons who have rights to telecast a match or matches held in this state under the supervision of the Florida State Boxing Commission. Such persons must be licensed as a promoter, and must, within 72 hours after the sale, transfer, or extension of such rights in whole or in part, file with the commission a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.¹⁹

Concessionaire must also file with the commission, within 72 hours after the match, a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.²⁰

Any written report that must be filed with the commission and postmarked within 72 hours after the conclusion of the match with an additional 5 days allowed for mailing.²¹ According to the department, the report is required to enable the commission to verify the accuracy of the post-event tax payment for both tickets sold and broadcasting/television rights.

Section 548.015, F.S., requires that a concessionaire must file a surety bond, cash deposit, or other security in an amount determined by the commission. The security is required before licensure, license renewal, or before a match.

These written reports must be accompanied with a tax payment in the amount of 5 percent of the total gross receipts exclusive of any federal taxes. The tax payment for the sale or lease of broadcasting, television, and motion picture rights cannot exceed \$40,000 for any single event.²²

III. Effect of Proposed Changes:

The bill creates s. 548.062, F.S., to provide a public records exemption for proprietary confidential business information held by the commission and provided by a promoter in the post-match report required under s. 548.06, F.S., or obtained by the commission in an audit of the promoter’s books and records. The promoter must intend the information to be private in that

¹⁸ Section 548.06(1), F.S.

¹⁹ Section 548.06(2), F.S.

²⁰ Section 548.06(3), F.S.

²¹ Section 548.06(4), F.S.

²² Section 548.06(5), F.S.

the disclosure of the information would cause harm to the promoter or its business operations, and that has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public.

The bill provides that the term includes:

- (a) The number of ticket sales for a match.
- (b) The amount of gross receipts after a match.
- (c) Trade secrets.
- (d) Business plans.
- (e) Internal auditing controls and reports of internal auditors.
- (f) Security measures, systems, or procedures.
- (g) Information relating to competitive interests, the disclosure of which would impair the competitive business of the promoter providing the information.

Section 548.062(2), F.S., provides that the proprietary confidential business information provided in the written report required under s. 548.06, F.S., or obtained by the commission in an audit of the promoter's books and records, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The bill provides that information made confidential and exempt by this subsection may be disclosed to another governmental entity in the performance of its duties and responsibilities.

Section 548.062(3), F.S., provides that these exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and are repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 expresses the required Statement of Public Necessity for the public records exemption.

A number of findings are expressed in this section about the public necessity that proprietary confidential business information be protected from disclosure. Briefly, the Legislature finds that the exemption is necessary to prevent disclosure of proprietary confidential business information that could injure a promoter in the marketplace by giving the promoter's competitors insights into its financial status and business plan, thereby putting the promoter at a competitive disadvantage. The bill also provides that the Legislature's finding that the harm to a promoter in disclosing proprietary confidential business information significantly outweighs any public benefit derived from disclosure of the information.

Section 2 provides that this act shall take effect on the same date that SB 810 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. SB 810 by Senator Galvano relates to Pugilistic Exhibitions.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:**Vote Requirement**

Section 24(c), Art. I, of the State Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly created or expanded public-records or public-meetings exemption. Since SB 808 creates a new public-records exemption, it will require a two-thirds vote of each house of the Legislature for passage.

Statement of Public Necessity

Section 24(c), Art. I, of the State Constitution requires a statement of public necessity for a newly-created or expanded public-records or public-meetings exemption. Section 3 of this bill provides a statement of public necessity for the new public record exemptions proposed therein.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 548.062 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries Committee on March 13, 2014:

The committee substitute (CS) amends s. 548.062(1), F.S., to include proprietary confidential business information obtained by the commission in an audit of the promoter's books and records.

The CS amends s. 548.062(1), F.S., to provide that the term "proprietary confidential business information" only includes the information delineated in paragraphs (a) through (g) of that subsection.

The CS also amends the Statement of Public Necessity in section 2 of the bill to also include proprietary confidential business information obtained by the commission in an audit of the promoter's books and records.

The CS amends the contingent effective date to link the bill to SB 810.

- B. **Amendments:**

None.



101600

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2014	.	
	.	
	.	
	.	

The Committee on Regulated Industries (Galvano) recommended the following:

Senate Amendment

Delete line 25
and insert:
public. The term includes:



541346

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2014	.	
	.	
	.	
	.	

The Committee on Regulated Industries (Galvano) recommended the following:

Senate Amendment (with title amendment)

Delete lines 38 - 59
and insert:
after a match or obtained by the commission through an audit of the promoter's books and records pursuant to s. 548.06 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Information made confidential and exempt by this subsection may be disclosed to another governmental entity in the performance of its duties and



541346

11 responsibilities.

12 (3) This section is subject to the Open Government Sunset
13 Review Act in accordance with s. 119.15 and shall stand repealed
14 on October 2, 2019, unless reviewed and saved from repeal
15 through reenactment by the Legislature.

16 Section 2. The Legislature finds that it is a public
17 necessity that proprietary confidential business information be
18 protected from disclosure. The disclosure of proprietary
19 confidential business information could injure a promoter in the
20 marketplace by giving the promoter's competitors insights into
21 its financial status and business plan, thereby putting the
22 promoter at a competitive disadvantage. The Legislature also
23 finds that the harm to a promoter in disclosing proprietary
24 confidential business information significantly outweighs any
25 public benefit derived from disclosure of the information. For
26 these reasons, the Legislature declares that any proprietary
27 confidential business information provided in the written report
28 that is required to be filed with the commission after a match
29 or obtained by the commission through an audit of the promoter's
30 books and records

31
32 ===== T I T L E A M E N D M E N T =====

33 And the title is amended as follows:

34 Delete line 6

35 and insert:

36 Boxing Commission by a promoter or obtained by the
37 commission through audit of a promoter's records;
38 providing for future



569154

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2014	.	
	.	
	.	
	.	

The Committee on Regulated Industries (Galvano) recommended the following:

Senate Amendment

Delete line 64
and insert:
SB 810 or similar legislation takes effect, if such legislation

By Senator Galvano

26-01041-14

2014808__

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 548.062, F.S.; providing an exemption from public
 4 records requirements for the information in the
 5 reports required to be submitted to the Florida State
 6 Boxing Commission by a promoter; providing for future
 7 legislative review and repeal of the exemption;
 8 providing a statement of public necessity; providing a
 9 contingent effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Section 548.062, Florida Statutes, is created to
 14 read:

15 548.062 Public records exemption.—

16 (1) As used in this section, the term "proprietary
 17 confidential business information" means information that is
 18 held by the commission which is intended to be and is treated by
 19 the promoter providing such information as private in that the
 20 disclosure of the information would cause harm to the promoter
 21 or its business operations, and that has not been disclosed
 22 unless disclosed pursuant to a statutory provision, an order of
 23 a court or administrative body, or a private agreement that
 24 provides that the information will not be released to the
 25 public. The term includes, but is not limited to:

26 (a) The number of ticket sales for a match.

27 (b) The amount of gross receipts after a match.

28 (c) Trade secrets.

29 (d) Business plans.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 (e) Internal auditing controls and reports of internal
 31 auditors.
 32 (f) Security measures, systems, or procedures.
 33 (g) Information relating to competitive interests, the
 34 disclosure of which would impair the competitive business of the
 35 promoter providing the information.
 36 (2) Proprietary confidential business information provided
 37 in the written report required to be filed with the commission
 38 after a match pursuant to s. 548.06 is confidential and exempt
 39 from s. 119.07(1) and s. 24(a), Art. I of the State
 40 Constitution. Information made confidential and exempt by this
 41 subsection may be disclosed to another governmental entity in
 42 the performance of its duties and responsibilities.
 43 (3) This section is subject to the Open Government Sunset
 44 Review Act in accordance with s. 119.15 and shall stand repealed
 45 on October 2, 2019, unless reviewed and saved from repeal
 46 through reenactment by the Legislature.
 47 Section 2. The Legislature finds that it is a public
 48 necessity that proprietary confidential business information be
 49 protected from disclosure. The disclosure of proprietary
 50 confidential business information could injure a promoter in the
 51 marketplace by giving the promoter's competitors insights into
 52 its financial status and business plan, thereby putting the
 53 promoter at a competitive disadvantage. The Legislature also
 54 finds that the harm to a promoter in disclosing proprietary
 55 confidential business information significantly outweighs any
 56 public benefit derived from disclosure of the information. For
 57 these reasons, the Legislature declares that any proprietary
 58 confidential business information provided in the written report

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59 that is required to be filed with the commission after a match
60 pursuant to s. 548.06, Florida Statutes, is confidential and
61 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
62 Article I of the State Constitution.

63 Section 3. This act shall take effect on the same date that
64 SB __ or similar legislation takes effect, if such legislation
65 is adopted in the same legislative session or an extension
66 thereof and becomes law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Education, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health
and Human Services
Education
Gaming
Health Policy
Regulated Industries
Rules

SENATOR BILL GALVANO
26th District

February 18, 2014

Senator Kelli Stargel
330 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Madam Chair Stargel:

I respectfully request that SB 808, Public Records/Florida State Boxing Commission, be scheduled for a hearing in the Committee on Regulated Industries at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Galvano", with a large, stylized initial "B" and a horizontal stroke.

cc: Patrick "Booter" Imhof
Lynn Koon

REPLY TO:

- 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

March 13, 2014
Meeting Date

810-908

Topic Pugilistic Exhibitions

Bill Number ~~773+775~~ (linked)
(if applicable)

Name Jeff Johnston

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address 21748 State Road 54, Suite 102
Street

Phone (813) 527-0172

Lutz FL 33549
City State Zip

E-mail jeff@corcoranfirm.com

Speaking: For Against Information

Representing UFC

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



THE FLORIDA SENATE

Senator Maria Lorts Sachs
Minority Leader Pro Tempore
District 34

Committees:

Gaming
Vice Chair

Agriculture

Education

Appropriations
Subcommittee on
Education

Appropriations
Subcommittee on
Finance and Tax

Military Affairs, Space,
and Domestic Security

Regulated Industries

STAFF:

Joshua Freeman
Legislative Assistant

Matthew Damsky
Legislative Assistant

Laura Jiménez
Legislative Assistant

March 12, 2014

The Honorable Kelli Stargel
324 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Stargel,

I will not be able to attend the Committee on Regulated Industries meeting taking place at 9:00AM on March 13, 2014, as I have a previously scheduled conflict in my district.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Maria Lorts Sachs".

State Senator Maria Sachs
District 34

CC: Patrick "Booter" Imhof,
Staff Director

100 NW 1st Avenue, Delray Beach, Florida 33444 (561) 279-1427
216 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5091

Senate's Website: www.flsenate.gov

Don Gaetz
President of the Senate

Garrett Richter
President Pro Tempore