

By Senator Grant

13-221-98

1 A bill to be entitled
2 An act relating to business brokers; providing
3 for the regulation of business brokers and
4 business salespersons; creating the Florida
5 Business Brokerage Board; providing for the
6 appointment and confirmation of board members;
7 providing for licensure and renewal of licenses
8 by the Department of Business and Professional
9 Regulation; providing for qualifications and
10 education and experience requirements for
11 licensure; providing for examination and
12 continuing education requirements; providing
13 for the inactive status of licenses; providing
14 for registration of office locations; requiring
15 compliance with professional standards;
16 providing for discipline; providing for
17 violations and penalties; providing for final
18 orders; providing for business broker course
19 instructors; providing for retention of
20 records; providing for temporary practice;
21 providing an effective date.

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

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25 Section 1. Purpose.--The Legislature finds that
26 competence in the marketing, purchase, and sale of business
27 enterprises requires skills, experience, and education that
28 exceed the basic requirements for licensure under Part I of
29 chapter 475, Florida Statutes. Therefore, the Legislature
30 deems it necessary in the interest of the public welfare to
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1 regulate brokers and salespersons who are engaged in the
2 marketing, purchase, and sale of business enterprises.

3 Section 2. Definitions.--

4 (1) As used in this act, the term:

5 (a) "Business enterprise" means all or any part of any
6 business entity, active, inactive, or proposed; business
7 assets, tangible or intangible, in this state or elsewhere;
8 business rights; shares of stock in an entity owning business
9 assets; and franchises, licenses, and covenants. The term does
10 not include the sale of stock in a public offering.

11 (b) "Business broker" means a person who is a licensed
12 real estate broker and who is also licensed under this act,
13 and who, for a fee, commission, or any other valuable
14 consideration, or with the intent or expectation of receiving
15 a fee, commission, or any other valuable consideration from
16 another, negotiates or attempts to negotiate or procure
17 prospects for the listing, sale, purchase, leasing, exchange,
18 appraisal, auctioning, or option of any business enterprise or
19 part thereof.

20 (c) "Business salesperson" means a person who is a
21 licensed real estate salesperson and who is also licensed
22 under this act, and who performs acts specifically within the
23 definition of business broker, but who performs those acts
24 under the direction, control, or management of a business
25 broker.

26 (d) "Board" means the Florida Business Brokerage Board
27 created by this act.

28 (e) "Department" means the Department of Business and
29 Professional Regulation.

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1 (f) "Uniform Standards of Professional Business
2 Brokers Practice" means the most recent standards approved and
3 adopted by the Florida Business Brokerage Board.

4 (2) The terms defined in section 475.01, Florida
5 Statutes, apply to this act.

6 Section 3. Licensure required.--A person may not use
7 the title "licensed business broker" or "licensed business
8 salesperson" or any abbreviation or words signifying this
9 occupation, or engage in the professional practice of business
10 brokerage, unless the person is licensed by the department
11 under this act.

12 Section 4. Florida Business Brokerage Board.--

13 (1) There is created the Florida Business Brokerage
14 Board, which shall consist of seven members appointed by the
15 Governor, subject to confirmation by the Senate. Four members
16 of the board must be business brokers who have been engaged in
17 the general practice of business brokerage in this state for
18 at least 5 years immediately preceding appointment. In
19 appointing business brokers to the board, while not excluding
20 other licensed real estate brokers, the Governor shall give
21 preference to business brokers who have been primarily engaged
22 in business brokerage activities. One member of the Board must
23 have been principally engaged in the general practice of real
24 estate brokerage for the last 5 years immediately preceding
25 appointment. Two members of the board must be representatives
26 of the general public and must not be connected in any way
27 with the practice of business brokerage or real estate
28 brokerage. The business broker members must be as
29 representative of the entire industry as possible. Membership
30 in a nationally recognized or state-recognized business
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1 brokerage organization, while desirable, is not a prerequisite
2 to membership on the board.

3 (a) Initially, four members of the board shall be
4 appointed for 3-year terms, and three members shall be
5 appointed for 4-year terms. Thereafter, all members shall be
6 appointed for 4-year terms. Any vacancy occurring in the
7 membership of the board shall be filled by appointment by the
8 Governor for the unexpired term. Upon expiration of a term, a
9 member of the board shall continue to hold office until the
10 appointment and qualification of a successor. A member may not
11 be appointed for more than two consecutive terms. The Governor
12 may remove any member for cause.

13 (b) The headquarters for the board shall be in
14 Orlando.

15 (c) The board shall meet at least once each calendar
16 quarter to conduct its business.

17 (d) The members of the board shall elect a chairperson
18 at the first meeting each year.

19 (e) Each member of the board is entitled to per diem
20 and travel expenses as set by legislative appropriation for
21 each day that the member engages in the business of the board.

22 (2) The board shall have, through its rules, full
23 power to regulate the issuance of licenses; to establish
24 standards for business brokerage; to regulate approved
25 courses; to establish qualifications for licenses consistent
26 with this act; and to discipline business brokers in any
27 manner permitted under this act.

28 Section 5. Power of board to enact rules and decide
29 questions of practice.--The board may adopt rules for its own
30 governance and rules in the exercise of its powers, which
31 rules may not be in conflict with the Constitution or laws of

1 the United States or this state. The board may decide
2 questions of practice arising in the proceedings before it.

3 Section 6. Qualifications for licensure.--

4 (1) Any person desiring to act as a licensed business
5 broker must make application in writing to the department in
6 such form and detail as the board may prescribe. Each
7 applicant must be at least 18 years of age and hold a high
8 school diploma or its equivalent. At the time of application,
9 a person must furnish evidence of licensure in good standing
10 as a Florida real estate broker and successful completion of
11 required education or evidence of required experience for
12 licensure under subsection (3) of this section.

13 (2) Any person desiring to act as a licensed business
14 salesperson must make application in writing to the department
15 in such form and detail as the board may prescribe. Each
16 applicant must be at least 18 years of age and hold a high
17 school diploma or its equivalent. At the time of application,
18 a person must furnish evidence of licensure in good standing
19 as a Florida real estate salesperson or broker/salesperson and
20 successful completion of required education or evidence of
21 required experience for licensure under subsection (3) of this
22 section.

23 (3) Until July 1, 1999, the board is authorized to
24 waive or modify any education, experience, or examination
25 requirements established in this section provided that the
26 applicant must have been primarily and actively engaged in
27 business brokerage in Florida during 24 of the 48 months next
28 preceding application.

29 (4) Each applicant must furnish, under oath, a
30 detailed statement of experience for each year that he or she
31 has spent actively engaged in the business brokerage industry.

1 (5) Appropriate fees, as set forth in the rules of the
2 board, must accompany all applications for licensure.

3 (6) At the time of filing a notarized application for
4 licensure, the applicant must sign a pledge to comply with the
5 Uniform Standards of Professional Business Brokers Practice
6 upon licensure, and must indicate in writing that she or he
7 understands the types of misconduct for which disciplinary
8 proceedings may be initiated. The application expires 1 year
9 from the date received, if the applicant for licensure fails
10 to take the appropriate examination.

11 (7) All applicants must be competent and qualified to
12 conduct business enterprise transactions in a professional
13 manner with those with whom they may undertake a relationship
14 of trust and confidence and with the general public. If any
15 applicant has been denied registration, licensure, or
16 certification, or has been disbarred, or her or his license to
17 practice or conduct any regulated profession, business, or
18 vocation has been revoked or suspended by this or any other
19 state, any nation, or any possession or district of the United
20 States, or any court or lawful agency thereof, because of any
21 conduct or practices that would have warranted a like result
22 under this section, or if the applicant has been guilty of
23 conduct or practices in this state or elsewhere which would
24 have been grounds for disciplining her or his license under
25 this section had the applicant then been licensed, the
26 applicant is deemed not to be qualified unless, because of
27 lapse of time and subsequent good conduct and reputation, or
28 other reason deemed sufficient, it appears to the board that
29 the interest of the public is not likely to be endangered by
30 the granting of licensure.

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1 (8) An applicant seeking to become licensed under this
2 section may not be rejected solely by virtue of membership or
3 lack of membership in any particular business brokerage
4 organization.

5 Section 7. Corporations and partnerships ineligible
6 for licensure.--

7 (1) A license may not be issued under this act to a
8 corporation, partnership, limited partnership, firm, or group.
9 However, a business broker or business salesperson licensed
10 under this act may function or perform brokerage activities
11 for or on behalf of a corporation, partnership, limited
12 partnership, firm, or group.

13 (2) The term "state-licensed business broker" or
14 "state-licensed business salesperson" may be used to refer
15 only to an individual who is licensed under this act and may
16 not be used following or immediately in connection with the
17 name or signature of a corporation, partnership, limited
18 partnership, firm, or group, or in such manner that it could
19 be interpreted as implying licensure under this act of a
20 corporation, partnership, limited partnership, firm, or group,
21 or anyone other than the licensed individual business broker
22 or the licensed individual business salesperson. Corporations,
23 partnerships, limited partnerships, firms, or groups that
24 employ licensed business brokers or business salespersons who
25 provide business brokerage services may represent to the
26 public and advertise that they offer such services.

27 Section 8. Education and experience requirements.--

28 (1) To be licensed as a business broker, an applicant
29 must present evidence satisfactory to the board that the
30 applicant:

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1 (a) Has successfully completed up to 60 hours,
2 inclusive of examination, of approved academic courses in
3 subjects related to business brokerage procedures and
4 accounting practices, which shall include coverage of the
5 Uniform Standards of Professional Business Brokers Practice
6 from a state-approved business brokerage instruction
7 organization, area vocational or technical center, accredited
8 community college, college, university, or proprietary real
9 estate school that offers such courses and that holds a permit
10 under section 475.451, Florida Statutes. A classroom hour is
11 defined as 50 minutes out of each 60-minute segment. Past
12 courses may be approved on an hour-for-hour basis.

13 (b) Has a valid real estate broker license.

14 (2) To be licensed as a business salesperson, an
15 applicant must present evidence satisfactory to the board that
16 the applicant:

17 (a) Has successfully completed up to 40 hours,
18 inclusive of examination, of approved academic courses in
19 subjects related to business brokerage procedures and
20 accounting practices, which shall include coverage of the
21 Uniform Standards of Professional Business Brokers Practice
22 from a state-approved business brokerage instruction
23 organization, area vocational or technical center, accredited
24 community college, college, university, or proprietary real
25 estate school that offers such courses and that holds a permit
26 under section 475.451, Florida Statutes. A classroom hour is
27 defined as 50 minutes out of each 60-minute segment. Past
28 courses may be approved on an hour-for-hour basis.

29 (b) Has a valid real estate salesperson's license.

30 Section 9. Examination requirements.--To be licensed
31 as a business broker or business salesperson, the applicant

1 must demonstrate, by passing a board-approved written
2 examination, that the applicant possesses:

3 (1) A knowledge of technical terms commonly used in
4 business enterprise transactions.

5 (2) An understanding of accounting; brokerage;
6 business; evaluation of businesses; sources of business data;
7 problems likely to be encountered in the negotiation, sale,
8 and closing of businesses; and knowledge of listing documents,
9 confidentiality agreements, sales contracts, and closing
10 documents commonly used in business brokerage.

11 (3) An understanding of the standards involved in the
12 negotiation, sale, and closure of business transactions.

13 (4) An understanding of the types of misconduct for
14 which disciplinary proceedings may be initiated against a
15 licensed business broker or business salesperson, as set forth
16 in this act.

17 (5) Knowledge of the theories of depreciation,
18 estimating, methods of capitalization, and the mathematics of
19 businesses that are appropriate for the licensure for which
20 application is made.

21 Section 10. Renewal of license or instructor permit;
22 continuing education.--

23 (1) The department shall renew a license or instructor
24 permit upon receipt of the renewal application and proper fee.
25 The application must include proof satisfactory to the board
26 that the individual has satisfactorily completed any
27 continuing education that has been prescribed by the board.

28 (2) The department shall adopt rules establishing a
29 procedure for the renewal of licenses and instructor permits
30 at least every 4 years.

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1 (3) Any license or instructor permit that is not
2 renewed at the end of the license or instructor permit period
3 prescribed by the department automatically reverts to inactive
4 status.

5 (4) At least 60 days prior to the end of the license
6 or instructor permit period, the department shall mail a
7 notice of renewal and possible inactive status reversion to
8 the last known address of the licensee or permitholder.

9 Section 11. Inactive status.--

10 (1) A license that has become inactive may be renewed
11 upon application to the department. The board shall prescribe
12 by rule continuing education requirements, for each year the
13 license was inactive, as a condition of renewing an inactive
14 license.

15 (2) Any license that has been inactive for more than 4
16 years automatically expires. Once a license expires, it
17 becomes null and void without any further action by the board
18 or department. Two years prior to the expiration of the
19 license, the department shall give notice by mail to the
20 licensee at her or his last known address. The board shall
21 prescribe by rule a fee not to exceed \$200 for the late
22 renewal of an inactive license. The department shall collect
23 the current renewal fee for each renewal period in which the
24 license was inactive, in addition to any applicable late
25 renewal fee.

26 (3) The board shall adopt rules relating to inactive
27 licenses and for the renewal of such licenses.

28 Section 12. Registration of office location.--Each
29 business broker or business salesperson licensed under this
30 act shall furnish in writing to the department each business
31 address from which she or he operates in the performance of

1 business brokerage services. Each business broker or business
2 salesperson must notify the department of any change of
3 address within 10 days on a form provided by the department. A
4 copy of the license issued to each business broker or business
5 salesperson operating from each location must be prominently
6 displayed at the location.

7 Section 13. Professional standards for licensed
8 business brokers and business salespersons.--Each business
9 broker or business salesperson licensed under this act shall
10 comply with the Uniform Standards of Professional Business
11 Brokers Practice.

12 Section 14. Discipline.--The board may deny an
13 application for licensure; investigate the actions of any
14 business broker or business salesperson licensed under this
15 section; and reprimand, fine, and revoke or suspend, for a
16 period not to exceed 10 years, the license of any business
17 broker or business salesperson, or place any business broker
18 or business salesperson on probation, if it finds that the
19 licensee:

20 (1) Has violated any provisions of this act or of
21 section 455.227(1), Florida Statutes;

22 (2) Has been guilty of fraud, misrepresentation,
23 concealment, false promises, false pretenses, dishonest
24 conduct, culpable negligence, or breach of trust in any
25 business transaction in this state or any other state, nation,
26 or territory; has violated a duty imposed upon her or him by
27 law or by the terms of a contract, whether written, oral,
28 express, or implied; has aided, assisted, or conspired with
29 any other person engaged in any such misconduct and in
30 furtherance thereof; or has formed an intent, design, or
31 scheme to engage in such misconduct and committed an overt act

1 in furtherance of such intent, design, or scheme. It is
2 immaterial to the guilt of the licensee that the victim or
3 intended victim of the misconduct has sustained no damage or
4 loss; that the damage or loss has been settled and paid after
5 discovery of the misconduct; or that the victim or intended
6 victim was a customer or a person in confidential relationship
7 with the licensee or was an identified member of the general
8 public;

9 (3) Has advertised services in a manner that is
10 fraudulent, false, deceptive, or misleading in form or
11 content;

12 (4) Has violated any of the provisions of this act or
13 any lawful order or rule issued under this act or under
14 chapter 455, Florida Statutes;

15 (5) Has been convicted or found guilty of, or entered
16 a plea of nolo contendere to, regardless of adjudication, a
17 crime in any jurisdiction which directly relates to the
18 activities of a licensed business broker or business
19 salesperson, or which involves fraudulent or dishonest
20 conduct. The record of a conviction certified or authenticated
21 in such form as is admissible in evidence under the laws of
22 this state is admissible as prima facie evidence of such
23 guilt;

24 (6) Has had a license as a business broker or business
25 salesperson revoked, suspended, or otherwise acted against, or
26 has been disbarred, or has had her or his registration,
27 license, or certificate to practice or conduct any regulated
28 profession, business, or vocation revoked or suspended by this
29 or any other state, any nation, or any possession or district
30 of the United States, or has had an application for such
31 registration, licensure, or certification to practice or

1 conduct any regulated profession, business, or vocation denied
2 by this or any other state, any nation, or any possession or
3 district of the United States;

4 (7) Has become temporarily incapacitated from acting
5 as a business broker or business salesperson because of
6 drunkenness, use of drugs, or temporary mental derangement;
7 however, suspension of a license in such cases shall be only
8 for the period of the incapacity;

9 (8) Is confined in any county jail, postadjudication;
10 is confined in any state or federal prison or mental
11 institution; or, through mental disease or deterioration, can
12 no longer safely be entrusted to deal with the public or in a
13 confidential capacity;

14 (9) Has failed to inform the board in writing within
15 30 days after pleading guilty or nolo contendere to, or being
16 convicted or found guilty of, any criminal act;

17 (10) Has been found guilty, for a second time, of any
18 misconduct that warrants disciplinary action, or has been
19 found guilty of a course of conduct or practice that shows
20 that she or he is incompetent, negligent, dishonest, or
21 untruthful;

22 (11) Has made or filed a report or record, either
23 written or oral, that the licensee knows to be false; has
24 willfully failed to file a report or record required by state
25 or federal law; or has willfully impeded or obstructed such
26 filing, or induced another person to impede or obstruct such
27 filing. However, the reports or records include only those
28 that are signed or presented in the capacity of a licensed
29 business broker or business salesperson;

30 (12) Has obtained or attempted to obtain a license by
31 means of knowingly making a false statement, submitting false

1 information, refusing to provide complete information in
2 response to an application question, or engaging in fraud,
3 misrepresentation, or concealment;

4 (13) Has paid money or offered to pay money or other
5 valuable consideration, except as required by this act, to any
6 member or employee of the board to obtain a license under this
7 act;

8 (14) Has violated any standard or other provision of
9 the Uniform Standards of Professional Business Brokers
10 Practice;

11 (15) Has failed or refused to exercise reasonable
12 diligence in rendering business brokerage services; or

13 (16) Has failed to timely notify the department of any
14 change in business location, or has failed to fully disclose
15 all business locations from which she or he operates as a
16 licensed business broker or business salesperson.

17 Section 15. Violations and penalties.--

18 (1) VIOLATIONS.--

19 (a) A person may not operate or attempt to operate as
20 a licensed business broker or business salesperson without
21 being the holder of a valid and current license.

22 (b) A person may not violate any lawful order or rule
23 of the board which is binding upon her or him.

24 (c) A person may not commit any conduct or practice
25 set forth in section 14 of this act.

26 (d) A person may not make any false affidavit or
27 affirmation intended for use as evidence by or before the
28 board or any member thereof, or by any of its authorized
29 representatives, nor may any person give false testimony under
30 oath or affirmation to or before the board or any member
31 thereof in any proceeding authorized by this act.

1 (e) A person may not fail or refuse to appear at the
2 time and place designated in a subpoena issued with respect to
3 a violation of this act, unless the failure to appear is the
4 result of facts or circumstances that are sufficient to excuse
5 appearance in response to a subpoena from the circuit court;
6 nor shall a person who is present before the board or a member
7 thereof or one of its authorized representatives acting under
8 authority of this act refuse to be sworn or to affirm or fail
9 or refuse to answer fully any question propounded by the
10 board, the member, or the representative, or by any person by
11 the authority of the officer or appointee.

12 (f) A person may not obstruct or hinder in any manner
13 the enforcement of this act or the performance of any lawful
14 duty by any person acting under the authority of this act, or
15 interfere with, intimidate, or offer any bribe to any member
16 of the board or any of its employees or any person who is, or
17 is expected to be, a witness in any investigation or
18 proceeding relating to a violation of this act.

19 (g) A person may not knowingly conceal any information
20 relating to violations of this act.

21 (2) PENALTIES.--Any person who violates any of the
22 provisions of subsection (1) is guilty of a misdemeanor of the
23 second degree, punishable as provided in s. 775.082, Florida
24 Statutes, or s. 775.083, Florida Statutes, except when a
25 different punishment is prescribed by this act. Nothing in
26 this section prohibits the prosecution under any other
27 criminal statute of this state of any person for an act or
28 conduct prohibited by this section; however, in such cases,
29 the state may prosecute under this section or under the other
30 statute, or may charge both offenses in one prosecution, but
31 the sentence imposed may not be a greater fine or longer

1 sentence than that prescribed for the offense that carries the
2 more severe penalties. A civil case, a criminal case, or a
3 denial, revocation, or suspension proceeding may arise out of
4 the same state of alleged facts, and the pendency or result of
5 one such case or proceeding does not stay or control the
6 result of any of the others.

7 Section 16. Final orders.--The board may publish and
8 distribute, in such manner and form as it may prescribe, any
9 of its final orders or decisions made under this act, after
10 they become final by lapse of time or upon affirmance on
11 appeal. The board may also publish or withhold from
12 publication the names and addresses of any parties concerned.
13 This section may not be construed to affect compliance with
14 chapter 119, Florida Statutes.

15 Section 17. Business broker course instructors.--

16 (1) Whether the course or courses to be taught are
17 prescribed by the board or approved before licensure or
18 renewal of licensure as a licensed business broker or business
19 salesperson, before commencing to instruct noncredit college
20 courses in a college, university, or accredited community
21 college, or courses in an area vocational or technical center,
22 a state-approved business brokerage instruction organization,
23 or a proprietary real estate school, a person must certify her
24 or his competency by meeting one of the following
25 requirements:

26 (a) Hold a valid certification as a licensed business
27 broker in this or any other state.

28 (b) Pass a business brokers instructor's examination
29 that tests knowledge of business brokerage topics.

30 (2) Possession of a permit to teach prescribed or
31 approved business brokerage courses does not entitle the

1 permitholder to teach any courses outside the scope of the
2 permit.

3 Section 18. Retention of records.--A business broker
4 licensed under this act shall retain, for at least 5 years,
5 original or true copies of any written contracts engaging the
6 business broker. These records must be made available by the
7 business broker for inspection and copying by the department
8 on reasonable notice to the business broker. If a business
9 broker contract has been the subject of or has served as
10 evidence for litigation, reports and records must be retained
11 for at least 2 years after the trial.

12 Section 19. Temporary practice.--

13 (1) The board shall recognize, on a temporary basis,
14 the license or certification of a person licensed to act as a
15 "business broker" by another state, if:

16 (a) The business broker's business in this state is of
17 a temporary nature;

18 (b) The business broker registers with the board; and

19 (c) The person requesting recognition of a license as
20 a business broker issued by another state is a nonresident of
21 Florida.

22 (2) In order to register with the board, the business
23 broker must:

24 (a) Pay any required fee as established by rule.

25 (b) Provide, or cause the state where the applicant
26 may be licensed or certified to provide, proof of licensure or
27 certification along with the copies of the records of any
28 disciplinary actions taken against the applicant's license or
29 certification in that or other jurisdictions.

30 (c) Agree in writing to cooperate with any
31 investigation initiated under this act by promptly supplying

1 documents requested by any authorized representative of the
2 department. If the department sends a notice by certified mail
3 to the last known address of a nonresident business broker to
4 produce documents or to appear in conjunction with an
5 investigation and the nonresident business broker fails to
6 comply with that request, the board may impose on that
7 nonresident business broker any disciplinary action or penalty
8 authorized under this act.

9 (d) Sign a notarized statement that the applicant has
10 read this act and all applicable rules and agrees to abide by
11 these provisions in all business broker activities.

12 Section 20. This act shall take effect upon becoming a
13 law.

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16 SENATE SUMMARY

17 Creates the Florida Business Brokerage Board and provides
18 for its rulemaking authority. Authorizes the board to
19 regulate business brokers and business salespersons
20 through licensing by the Department of Business and
21 Professional Regulation. Establishes requirements for:
22 licensing, discipline, violations and penalties, final
23 orders, continuing education, course instructors,
24 retention of records, and temporary practice.
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