

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/CS/HB 425 Department of Business and Professional Regulation
SPONSOR(S): Government Operations Appropriations Committee; General Government Policy Council, Insurance, Business & Financial Affairs Policy Committee; Plakon and others
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee	19 Y, 0 N, As CS	Livingston	Cooper
2)	General Government Policy Council	15 Y, 0 N, As CS	Livingston	Hamby
3)	Government Operations Appropriations Committee	6 Y, 0 N, As CS	Topp	Topp
4)	Full Appropriations Council on General Government & Health Care			
5)				

SUMMARY ANALYSIS

The bill contains numerous modifications relating to several programs under the Department of Business and Professional Regulation (DBPR). The bill:

- deletes the general requirement that an application for licensure include a notarized signature of the applicant in order to facilitate electronic correspondence;
- adds to the list of grounds for discipline of a licensee to include failure to report to the DBPR any prosecution in a court of law and failure to complete a treatment program by an impaired practitioner;
- specifies that a DBPR representative may voluntarily appear in a criminal proceeding against a licensee in order to provide pertinent information;
- removes the allowance for a practical part of a barber's examination and requires that the barber's examination include a written test only;
- addresses several requirements for talent agencies relating to records management and increases the penalty for violations from \$1,000 to \$5,000;
- reorganizes and expands the parameters of the existing disclosure document for property owners acting as their own contractor;
- removes the requirement that applicants for registered construction contractor and registered electrical contractor licenses provide a copy of a local occupational license;
- removes the requirement that an applicant obtain a certificate of authority for a business organization when the applicant proposes to engage in construction contracting under a business organization structure and requires an applicant for a contractor's license to apply to the DBPR to act as the qualifying agent of the business organization as a part of the licensure requirement for registration or certification as a contractor;
- authorizes the Electrical Contractors Licensing Board to adopt rules to allow applicants alternatives to demonstrate financial responsibility to include providing minimum credit scores or bonds;
- specifies that the Florida State Boxing Commission must approve the sanctioning organization for amateur mixed martial arts events;
- deletes the requirements that certain public lodging establishments post rate schedules in each rentable unit and deletes certain limitations on the ability of public lodging establishments to advertise room rates; and
- removes reference to a 3 year pilot program and establishes procedures that give a restaurant owner the discretion, with local approval by ordinance, to allow patrons to bring their dogs onto outside patio eating areas.

The bill will result in a minimal cost savings related to barber examinations.

The effective date of the bill is October 1, 2009.

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

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HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 20.165, F.S., establishes the organizational structure of the DBPR and includes the Division of Professions. It also establishes other divisions to include the divisions of: Administration; Alcoholic Beverages and Tobacco; Certified Public Accounting; Florida Land Sales, Condominiums, and Mobile Homes; Hotels and Restaurants; Pari-mutuel Wagering; Real Estate; Regulation; and Technology, Licensure, and Testing. This section also establishes the authority and structure of the various boards within the DBPR. The Florida State Boxing Commission is also housed within the DBPR pursuant to s. 548.003, F.S.

Chapter 455, F.S., specifies the general powers of the DBPR. Each profession is administered either directly by the DBPR or through a separately appointed board, council, or commission. Section 455.01, F.S., defines the term "profession" to mean:

"any activity, occupation, profession, or vocation regulated by the department in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation."

The bill contains numerous modifications relating to several programs under the DBPR.

See below, section directory portion of this analysis.

B. SECTION DIRECTORY:

The following includes the Present Situation and Effect of Proposed Changes.

General Licensing

Chapter 455, F.S., provides general licensing provisions for the DBPR. Under s. 455.213, F.S., the DBPR may allow submissions and other communications be provided by electronic means.

The bill amends s. 455.213(11), F.S., to remove the general requirement in chapter 455, F.S. that an application for licensure include a notarized signature of the applicant on the application document. This change is designed to facilitate computerization and e-processing by the DBPR and the e-submission of information by an applicant.

The bill also specifies that, for purposes of compliance with the timelines under the Administrative Procedures Act, chapter 120, F.S., an application is considered received by the DBPR when documents are received in a DBPR approved format and all applicable fees are paid.

Discipline

Currently, s. 455.227, F.S., specifies grounds for disciplinary action by a board or the DBPR. These provisions include, among others, violating any provision of this chapter, the applicable professional practice act, a rule of the DBPR or a board; having a license or the authority to practice the regulated profession revoked, suspended, or otherwise acted against by the licensing authority of “any” jurisdiction for a violation that would constitute a violation under Florida law; and being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in “any” jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.

The DBPR points out that “currently, there is no duty on the part of a licensee to report a plea of nolo contendere to a crime or conviction of a crime” to the DBPR.¹

Currently, s. 456.076, F.S., specifies in part for health care practitioners:

“professions that do not have impaired practitioner programs provided for in their practice acts, the department [of health] shall, by rule, designate approved impaired practitioner programs under this section. The department may adopt rules setting forth appropriate criteria for approval of treatment providers.”

Department is defined as the Department of Health. Similar authority for the treatment of impaired practitioners licensed by the DBPR is specified under s. 455.227(2)(f), F.S., to provide a penalty that may include:

“placement of the licensee on probation for a period of time and subject to such conditions as the board, or the department when there is no board, may specify. Those conditions may include, but are not limited to, requiring the licensee to undergo treatment...”

The bill adds to the list of grounds for discipline under s. 455.227(1), F.S., to include:

- failure for the licensee to report the plea to a crime or conviction of a crime to the board or if there is no board, to the department, within 30 days after conviction or entry of a plea to a crime in “any” jurisdiction; and
- termination from a treatment program for impaired practitioners for failure to comply, without good cause, with the terms for monitoring rehabilitation progress or success.

Criminal Proceedings

Currently, s. 455.2273, F.S., establishes the authority for disciplinary guidelines that may be imposed against professions and provides, in part:

“that each board, or the DBPR when there is no board, adopt, by rule, the disciplinary guidelines applicable to each ground for disciplinary action which may be imposed by the board or the DBPR pursuant to this chapter, the respective practice acts, and any rule of the board or the DBPR.”

Section 455.2277, F.S., addresses criminal violations and provides:

“the DBPR or the appropriate board shall report any criminal violation of any statute relating to the practice of a profession regulated by the DBPR or appropriate board to the proper prosecuting authority for prompt prosecution.”

¹ DBPR Office of Legislative Affairs, HB 425, 2009 Legislative Analysis Form, dated January 21, 2009, on file with the Insurance, Business, & Financial Affairs Committee.

The bill creates s. 455.2274, F.S., to specify that a DBPR representative may voluntarily appear in a criminal proceeding against a licensee in order to provide pertinent information about the licensee, make recommendations for probation, or provide other assistance. Additionally, the bill specifies that the court is authorized to order a DBPR representative to testify in a criminal proceeding related to the license regulated by the DBPR.

Talent Agencies

Under s. 468.401, F.S., a "talent agency" is defined as "any person who, for compensation, engages in the occupation or business of procuring or attempting to procure engagement for an artist." An "artist" is defined as a "person performing on the professional stage or in the production of television, radio, or motion pictures; a musician or group of musicians; or a model." Talent agencies are regulated by the DBPR. This regulation is of an industry, not a profession. There is no required testing for licensure, no continuing education requirement, and no professional regulatory board.

The bill addresses several requirements for talent agencies relating to records management and increases the penalty for violations from \$1,000 to \$5,000.

Building Code Training

The Florida Building Code Compliance and Mitigation Program was created to develop, coordinate, and maintain education and outreach to persons required to comply with the Florida Building Code and ensure consistent education, training, and communication of the code's requirements. A private, nonprofit corporation under contract with the Department of Community Affairs was created to provide these services. The service provider includes trade and professional organizations whose members consist primarily of persons and entities that are required to comply with the Florida Building Code and that are licensed under part XII of chapter 468, chapter 471, chapter 481, or chapter 489. The program was activated in 2001 when the Florida Building Code was adopted.

The bill removes reference to the licensure examination requirement that includes the successful completion of the building code core curriculum.

Public Accounting Examinations

The DBPR processes applications for licensure and license renewal. Section 455.217, F.S., allows a board, or the DBPR, pursuant to the general powers of s. 455.217, F.S., if there is no board, to require the successful passage of questions relating to state laws and rules as a part of the examination for licensure. These questions are required to be related to the practice of the profession regulated by the respective board or by the DBPR.

A certified public accountant (CPA) is regulated under the jurisdiction of the Board of Accountancy, Division of Certified Public Accountants, within the DBPR. Qualifications for "licensure" include meeting the requirements for good moral character, formal education, and successful completion of a comprehensive licensure examination. The Board of Accountancy requires a state law and rule portion of the CPA examination.

The bill removes the reference to law and rule examinations for CPA's.

Real Estate Brokers and Sales Associates – Continuing Education

Chapter 475, part I, F.S., regulates real estate brokers and sales associates [and real estate schools]. The DBPR is required to renew a license upon the receipt of the renewal application and fee. The renewal application is required to show proof satisfactory to the Florida Real Estate Commission that the applicant has completed continuing education hours as prescribed by rule of the Florida Real Estate Commission.

Section 475.451, F.S., provides that the continuing education requirements of this chapter do not apply to an “attorney” who is otherwise qualified under this chapter to conduct real estate related activities.

The bill further specifies by statute that to be exempt from the continuing education requirements the attorney must be “a member in good standing by the Florida Bar.”

Barbers Practical Examination

In order to practice barbering services for compensation, an individual must have a barber license or restricted barber license approved by the Barbers’ board and issued by the DBPR. A person holding a restricted barber’s licenses is not permitted to provide services involving chemicals.

An individual can sit for the barber licensing examination after completing 1,000 school hours provided the individual meets other requirements for licensure. If the applicant fails to achieve a passing grade on either or both parts of the licensure examination, the applicant is required to complete an additional 200 school hours prior to retaking the examination.

Currently, section 476.134, F.S., authorizes the Barbers’ board to adopt rules that may require practical demonstration by an applicant in addition to a written examination.

The DBPR notes that:

“An applicant for a barber’s license must pass a written and a practical demonstration examination for licensure. Cosmetologists take only a written examination. The bill seeks to eliminate the practical examination for barbers. The practical exam is only once a month rotating between 3 locations and a candidate must bring a live model. The written exam is offered computer based at 22 sites across the state and can be taken when the candidate chooses.”²

The bill removes the allowance for a practical part of a barber’s examination and requires that the barber’s examination include a written test only.

Registration – Local Occupational License

Chapter 489, F.S., requires that all individuals who practice construction contracting and electrical contracting in Florida must either be “certified” or “registered.” Certified contractors are authorized to engage in contracting on a statewide basis. “Registration” allows an individual to practice contracting only in the jurisdiction that issues that individual’s local license. This registration is issued by the DBPR upon proof of local licensure. Such proof consists of an occupational license issued by the local jurisdiction, and evidence of compliance with local licensing requirements, if a local licensing requirement exists. Some local jurisdictions have rigorous standards for license issuance, such as experience and insurance requirements, and passage of an examination. Other local jurisdictions will issue a license for a nominal fee and may have little or no experience or examination requirements.

Local governments can also require local licenses for activities not regulated at the state level, such as lawn maintenance contractors, painters, carpenters, etc.

The bill clarifies the difference between a state “specialty contractor” issued by the DBPR and a local “specialty” license issued by local governments and removes the requirement that applicants for registered construction contractor licenses provide a copy of a local occupational license. Unlike the local contractor’s license which must also be registered with the DBPR, the local occupational license does not demonstrate an applicant’s qualifications to practice contracting.

Property Owners Construction Exemption

² Id.

Construction contracting essentially means building or altering a structure, for compensation. Several specific contracting activities are set forth in the chapter, each with a license that may be obtained for that activity, such as for roofing, plumbing, etc. Currently, s. 489.103(7), F.S., provides, in part, for an exemption from licensure as a construction contractor for persons who comply with statutorily specified requirements and who are

owners of property....when building or improving farm outbuildings or one-family or two family residences on such property for the occupancy or use of such owners and not offered for sale or lease, or building or improving commercial buildings, at a cost not to exceed \$75,000, on such property for the occupancy or use of such owner and not offered for sale or lease....

This section requires the property owner to satisfy any applicable local permitting agency requirements demonstrating that the owner has an understanding of the owner's responsibilities and obligations under the construction statutes. If a person violates the exemption requirements, the local permitting agency is required to withhold final approval of the project, revoke the building permit, or pursue any action or remedy for unlicensed activity. The statute specifies the contents of a disclosure statement which must be provided to the property owner by the local agency. It provides, in part:

Any person working on your building who is not licensed must work under your direct supervision and must be employed by you, which means that you must deduct F.I.C.A. and withholding tax and provide workers' compensation for that employee, all as prescribed by law. Your construction must comply with all applicable laws, ordinances, building codes, and zoning regulations.

The residential exemption allows an unlimited cost of construction for residential property and the commercial exemption caps commercial costs at \$75,000.

The bill reorganizes and expands the parameters of the existing disclosure document for property owners acting as their own contractor.

Construction Business Organizations – Certificate of Authority

As noted above, parts I, construction contracting, and II, electrical contracting, of chapter 489, F.S., require the certification or registration of contractors. Certified contractors are authorized to engage in contracting on a statewide basis, whereas registered contractors are limited to contracting within those counties in which they meet local, building department competency requirements.

Section 489.119 of part I and section 489.521 of part II of chapter 489, F.S., provide that when an individual engages in construction or electrical contracting in the individual's own name or a fictitious name where the individual is doing business as a sole proprietorship, certification or registration may be issued only to that individual.

However, if the applicant proposes to engage in contracting in any other type of business organization, such as a corporation or partnership, the business organization must apply for a certificate of authority through a licensed contractor acting as the organization's qualifying agent. As such, the qualifying agent must have a license reflecting that he or she is the qualifying agent of the business, and the business must possess a certificate of authority. Both the license and the certificate of authority are issued by the DBPR.

In actual practice the DBPR and industry practitioners refer to the "certificate of authority" of a business entity by the acronym "QB" license, **Q**ualified **B**usiness license. The terms are synonymous.

Current law provides that the primary qualifying agent is responsible for the business organization's construction work and business practices.

The bill removes the requirement that an applicant obtain a certificate of authority for a business organization when the applicant proposes to engage in contracting under a business organization structure. The bill requires an applicant for a contractor's license to apply to the DBPR to act as the qualifying agent of the business organization as a part of the licensure requirement for a registration or certification as a contractor.

Business Tax Receipt

The term "occupational license" was removed by the 2006 Legislature in the "Local Business Tax Act," (Ch. 2006-152, L.O.F.). This term was replaced with the reference to the term "business tax receipt."

The bill makes conforming statutory changes to chapter 489, F.S., by replacing the term occupational license with the term "business tax receipt."

Restaurants/Dogs

The Division of Hotels and Restaurants (the "Division") of the DBPR is authorized to administer laws and rules relating to the inspection and regulation of food service establishments for the purpose of safeguarding the public health, safety and welfare. Section 509.032(7), F.S., expressly limits the general home rule powers of a local government as it relates to the regulation of such businesses.

Pursuant to its rulemaking authority, the Division has adopted the 2001 Food Code published by the U.S. Food and Drug Administration (FDA). The Food Code is a reference document that "provides practical, science-based guidance and manageable, enforceable provisions for mitigating risk factors known to cause foodborne illness."³ Section 6-501.115 of the Code generally prohibits live animals on the premises of food service establishments. "Premises" is defined to mean "[t]he physical facility, its contents, and the contiguous land or property...."⁴ There are limited exceptions to this prohibition including those for patrol dogs accompanying police or security officers and service animals controlled by disabled persons.⁵

Section 509.233, F.S., provides for a three-year pilot program that allows patrons' dogs within designated outdoor areas of food service establishments. This section grants municipalities the authority to establish a local exemption procedure, by ordinance, to current Division rules that prohibit dogs on the premises of food service establishments. Interested establishments are required to apply for and receive a permit from the governing body of their municipality. Minimum requirements for the information supplied in the application process are outlined. Municipalities are authorized to include additional regulations and limitations to protect the health, safety and general welfare of the public.

This section had an effective date of July 1, 2006, and expires on July 1, 2009, unless reenacted by the legislature.

The bill removes the automatic repeal date, deletes reference to the pilot program, and reenacts the provisions of this section on an ongoing basis.

Florida State Boxing Commission

Chapter 548, F.S., governs pugilistic matches in the state, which include boxing, kickboxing, and mixed martial arts. The Florida State Boxing Commission is authorized to administer the provisions of the chapter. By definition, "boxing" means to compete with the fists; "kickboxing" means to compete with fist, feet, legs, or any combination thereof; and "mixed martial arts" means unarmed combat involving the use, of a combination of techniques from different disciplines of the martial arts, including, but not limited to, grappling, kicking, and striking.

³ See, the FDA's introduction to the Food Code at <http://www.cfsan.fda.gov/~dms/foodcode.html>, last viewed on March 14, 2009.

⁴ See, s. 1-201.10(b)(67) at <http://www.cfsan.fda.gov/~acrobat/fc05-1.pdf>, last viewed on March 14, 2009.

⁵ See, s. 6-501.115 at <http://www.cfsan.fda.gov/~dms/fc01-6.html#6-5>, last viewed on March 14, 2009.

Section 548.0065, F.S., provides that no boxing or kickboxing match involving amateurs may be held in Florida unless it is sanctioned and supervised by an amateur sanctioning organization approved by the commission. Provisions of chapter 548, F.S., provide for amateur mixed martial arts events in Florida to be sanctioned and supervised by amateur sanctioning organizations approved by the Florida State Boxing Commission.

Section 548.008, F.S., prohibits certain amateur matches unless sanctioned and supervised by an approved amateur sanctioning organization, any amateur mixed martial arts match, and any professional match from being held unless it meets the requirements of law and rules.

Currently, “match” is defined as “any contest or exhibition.”

The bill specifies that the commission must approve the sanctioning organization for amateur mixed martial arts events.

Division of Hotels and Restaurants

Section 509.201, F.S., requires public lodging establishments renting by the day or week to post rate schedules in each rentable unit, showing the maximum amount charged for the unit rented, the amount charged for extra conveniences and the dates during the year when the maximum charges prevail. The rate schedules, along with any changes, must also be submitted to the division. The section also limits the ability of public lodging establishments to advertise their room rates: such advertisements must include additional information, including the number of rental units, the rates of each, whether the rates listed are for single or multiple occupancy, and the dates the rates are in effect. There is an exception for advertisements in guides or directories published by nonprofit organizations and for advertisements in classified sections of newspapers and other publications.

Violations of the notification requirements constitute a second degree misdemeanor. The division may also suspend or revoke the operator’s license and impose fines for violations.

The bill repeals the rate notification and advertisement requirements and related enforcement penalties for public lodging establishments.

Effective date

The bill provides a retroactive application of the changes to ss. 489.128 and 489.532, F.S., regarding local licenses.

The bill has an effective date of October 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DBPR estimates that the bill will reduce revenues related to barber examinations by \$28,080. However, the department will also be able to reduce barber examination expenditures by \$28,917 – resulting in projected net savings of \$837.

2. Expenditures:

See Revenues above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Not anticipated to be significant.

2. Expenditures:

Not anticipated to be significant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The private sector may realize a cost savings related to Barber Practical Examinations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 10, 2009, the Insurance, Business, & Financial Affairs Policy Committee took up the bill, adopted several amendments, and passed the bill by a unanimous vote as a Committee Substitute.

The CS differs from the bill as filed in the following areas:

- removes changes to the recently adopted one year work experience requirement for CPA licensure. The CS keeps current law;
- removes provisions of the bill which would have changed the financial responsibility requirements for electrical contractors and the CS keeps current law;
- adds reference to the sanctioning of amateur mixed martial arts events to be consistent with safety standards for amateur boxing and amateur kickboxing;
- reduces and transfers the business organization fee for a “certificate of authority” to be included in the application process for an individual contractor rather than removing the fee [this change reduces the savings resulting from fee reductions from \$3m to \$72,800];
- establishes procedures that gives a restaurant owner the discretion, with local approval by ordinance, to allow patrons to bring their dogs onto outside patio eating areas; and
- changes the title since the bill addresses activities that are not strictly defined as “professions” by the DBPR.

On March 17, 2009, the General Government Policy Council took up the CS, adopted several amendments, and passed the CS by a unanimous vote as a Council Substitute for the Committee Substitute.

The CS/CS differs from the CS in the following areas:

- removes reference to the licensure examination requirement for several professions that includes the successful completion of the building code core curriculum;
- clarifies the difference between a state “specialty contractor” issued by the DBPR and a local “specialty” license issued by local governments; and
- makes conforming statutory changes to chapter 489, F.S., by replacing the term occupational license with the term “business tax receipt.”

On April 13, 2009, the Governmental Operations Appropriations Committee took up the CS/CS, adopted several amendments, and passed the CS/CS by a unanimous vote as a Committee Substitute for the Council Substitute for the Committee Substitute.

The CS/CS/CS differs from the CS/CS in the following areas:

- removes reference to the unlicensed activity fee - current law would apply;
- addresses several requirements for talent agencies relating to records management and increases the penalty for violations from \$1,000 to \$5,000; and
- reorganizes and expands the parameters of the existing disclosure document for property owners acting as their own contractor.