

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 Regulated Industries Committee

BILL: SB 1824

INTRODUCER: Senator Hays

SUBJECT: Regulated Professions and Occupations

DATE: March 23, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	Pre-meeting
2.			TC	
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill amends provisions related to the regulation of professions under the Department of Business and Professional Regulation (department). The bill authorizes the Department of Highway Safety and Motor Vehicles to release photographs to the department to identify suspects involved in unlicensed activity investigations. The bill provides that the department can waive renewal fees on a case-by-case basis for financial hardship. The bill provides that licensees who are required to obtain continuing education prior to license renewal need only complete one licensure cycle of continuing education to reactivate an inactive license.

The bill decriminalizes violations of board rules for cosmetology related professions and real estate professions.

In addition, the bill delays the implementation of the regulation of appraisal management companies, from July 1, 2011 to July 1, 2014.

This bill substantially amends the following sections of the Florida Statutes: 322.142, 455.213, 455.271, 475.42, 475.626, 477.0212, 477.0265, 481.217, 481.315, 489.116, and 489.519.

II. Present Situation:

Department of Business and Professional Regulation

The Department of Business and Professional Regulation (department) was established in 1993 with the merger of the Department of Business Regulation and the Department of Professional

Regulation.¹ The department is created in s. 20.165, F.S. Section 20.165(2), F.S., creates the following eleven divisions within the department:

- Division of Administration.
- Division of Alcoholic Beverages and Tobacco.
- Division of Certified Public Accounting.
- Division of Florida Condominiums, Timeshares, and Mobile Homes.
- Division of Hotels and Restaurants.
- Division of Pari-mutuel Wagering.
- Division of Professions.
- Division of Real Estate.
- Division of Regulation.
- Division of Technology.
- Division of Service Operations.

Professional Boards

Section 20.165(4)(a), F.S., establishes the following boards and professions within the Division of Professions:

- Board of Architecture and Interior Design, created under part I of ch. 481, F.S.
- Florida Board of Auctioneers, created under part VI of ch. 468, F.S.
- Barbers' Board, created under ch. 476, F.S.
- Florida Building Code Administrators and Inspectors Board, created under part XII of ch. 468, F.S.
- Construction Industry Licensing Board, created under part I of ch. 489, F.S.
- Board of Cosmetology, created under ch. 477, F.S.
- Electrical Contractors' Licensing Board, created under part II of ch. 489, F.S.
- Board of Employee Leasing Companies, created under part XI of ch. 468, F.S.
- Board of Landscape Architecture, created under part II of ch. 481, F.S.
- Board of Pilot Commissioners, created under ch. 310, F.S.
- Board of Professional Engineers, created under ch. 471, F.S.
- Board of Professional Geologists, created under ch. 492, F.S.
- Board of Veterinary Medicine, created under ch. 474, F.S.
- Home Inspection Services Licensing Program, created under part XV of ch. 468, F.S.
- Mold-Related Services Licensing Program, created under part XVI of ch. 468, F.S.

Section 20.165(4)(b), F.S., establishes the following board and commission within the Division of Real Estate:

- Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S.
- Florida Real Estate Commission, created under part I of ch. 475, F.S.

¹ Chapter 93-220, L.O.F.

Section 20.165(4)(c), F.S., establishes the Board of Accountancy, created under ch. 473, F.S., within the Division of Certified Public Accounting.

The Florida State Boxing Commission,² the Pilot Rate Review Board,³ and the Regulatory Council of Community Managers are also housed within the department. The department also has regulatory oversight responsibilities over the following professions:

- Child labor under part I of ch. 450, F.S.
- Farm labor contractors under part III of ch. 450, F.S.
- Talent agencies under part VII of ch. 468.

In addition to administering the professional boards, the department processes applications for licensure and license renewal. The department also receives and investigates complaints made against licensees and, if necessary, brings administrative charges.

Chapter 455, F.S., provides the general powers of the department and sets forth the procedural and administrative frame-work for all of the professional boards housed under the department, the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

Fees

Section 455.213, F.S., establishes general licensing provisions for the department, including the authority to charge licensing fees.

Continuing Education

Section 455.271(4), F.S., provides that an inactive licensee may change his or her status to active provided the licensee meets all requirements for active status, pays the appropriate fees, and meets all continuing education requirements.

Cosmetology

Section 477.019(7)(a), F.S., requires the Board of Cosmetology to prescribe by rule continuing education requirements, not to exceed 16 hours biennially,⁴ as a condition for renewal of a license or registration as a specialist. Section 477.0212, F.S., provides that a cosmetologist's license that has become inactive may be reactivated upon application to the department, which would require the inactive licensee to complete 16 hours of continuing education coursework for each cycle he or she was inactive.

Architecture and Interior Design

Section 481.215, F.S., provides that the continuing education requirements for renewal of architect and interior designer licenses shall be no less than 20 hours per license cycle. Section

²Section 548.003, F.S.

³ *Id.*

⁴ Licenses are renewed on a two-year cycle.

481.217(1), F.S., provides that the continuing education requirement for reactivating an architect's license may not exceed 12 hours for each year the license was inactive. The statute provides that the minimum continuing education requirement for reactivating an interior designer's license shall be the number of hours required for the most recent license cycle plus half of the requirements for each year or part in which the license was inactive.

Landscape Architecture

Section 481.315(1), F.S., provides that continuing education requirements for renewing an inactive landscape architect's license may not exceed 12 hours for each year the license was inactive.

Construction

Section 489.115, F.S., provides that the continuing education requirement for renewal of a construction contractor's license shall be at least 14 hours per license cycle. Section 489.116(6), F.S., provides that an inactive licensee shall comply with the same continuing education requirements that are imposed on an active licensee.

Electrical or Alarm Contracting

Section 489.517(3), F.S., provides that the continuing education requirement for renewal of an electrical or alarm contractor's license shall be at least 14 hours per license cycle. Section 489.519(1), F.S., provides that the continuing education requirements for reactivating a license may not exceed 12 classroom hours for each year the certificate or registration was inactive.

Appraisal Management Companies

Chapter 2010-84, L.O.F., created the regulation of a new license type for Appraisal Management Companies. The new regulations are to take effect on July 1, 2011. Since passage of the state legislation, the United State Congress passed H.R. 4173, also known as the Frank-Dodd Wall Street Reform and Consumer Protection Act, which was enacted into law on July 21, 2010.⁵ The new federal law requires states to regulate Appraisal Management Companies; however, according to the division, because final regulatory requirements have not been set by rule at this time, there remains uncertainty about how to proceed to ensure consistencies with the requirements of the federal law.

Criminalization of Rule Violations

Section 477.0265(1)(c), F.S., provides that it is unlawful for any person licensed or registered under ch. 477, F.S., to engage in willful or repeated violations of ch. 477, F.S., or any rule adopted by the Board of Cosmetology. Section 477.0265(2), F.S., provides that any person who violates any provision of s. 477.0265, F.S., commits a misdemeanor of the second degree.⁶

⁵ Public Law 111-203.

⁶ A misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days or a fine not to exceed \$500.

Section 475.42(1)(e), F.S., makes any violation of a lawful rule of the Florida Real Estate Commission a disciplinary action. Section 475.42(2), F.S., subjects the licensee to criminal sanctions for a rule violation.⁷ In addition, s. 475.626(2), F.S., makes it a crime to violate any rule of the Florida Real Estate Appraisal Board. Criminal sanctions may be imposed no matter how minor the rule violation.⁸

Driver's Licenses

Section 322.142, F.S., provides that reproduction of a driver's license digital image and signature from the file or record of the Department of Highway Safety and Motor Vehicles are exempt from the open records provisions in s. 119.07(1), F.S., except for specified departmental purposes. The Department of Highway Safety and Motor Vehicles may provide copies of licenses to the department pursuant to an interagency agreement for the purpose of accessing digital images for reproduction of licenses issued by the department.

The department is currently not authorized to access the digital images for the purpose of identifying subjects who are under investigation for unlicensed activity.

III. Effect of Proposed Changes:

Section 1. Provides that the Department of Highway Safety and Motor Vehicles may reproduce color photographic or digital imaged licenses and signatures of licensees to the Department of Business and Professional Regulation for the purpose of identifying subjects who are under criminal investigation for unlicensed activity.

Section 2. Creates subsection (12) of s. 455.213, F.S., to provide that the department may grant a fee waiver for a license renewal on a case-by-case basis due to financial hardship or an error caused by the department.

Section 3. Amends s. 455.271(4), F.S., to provide that a licensee, except a person licensed under ch. 475, F.S.,⁹ shall only be required to complete one renewal cycle of continuing education to reactive a license.

Sections 4 and 5. Eliminates rule violations of the Florida Real Estate Commission and Florida Real Estate Appraisers Board from the list of violations which may result in criminal penalties.

Section 6. Amends s. 477.0212(2), F.S., to provide that the Board of Cosmetology shall require a licensee to complete one renewal cycle of continuing education requirements prior to renewing an inactive license.

Section 7. Eliminates rule violations of the Board of Cosmetology from the list of violations which may result in a criminal penalty.

⁷ A misdemeanor of the second degree.

⁸ *Id.*

⁹ Chapter 475, F.S., pertains to real estate brokers, sales associates, appraisers, and schools.

Sections 8-11. Provides that architects, interior designers, landscape architects, construction contractors, electrical contractors, and alarm contractor licensees shall only be required to complete one renewal cycle of continuing education to reactive a license.

Section 12. Changes the effective date for the regulation of appraisal management companies to July 1, 2014.

Section 13. Provides that except as expressly provided in this act, the act shall take effect July 1, 2011.

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:

The bill authorizes the department to waive renewal fees on a case-by-case basis.

B. Private Sector Impact:

The bill provides a reduction in the continuing education requirements for activating an inactive license. The reduction in requirements and potential for fee waivers would decrease costs to licensees.

C. Government Sector Impact:

The bill authorizes the department to waive fees due to financial hardship or fault of the department on a case-by-case basis. Because of this provision, there may be a reduction in department revenues, although the department anticipates that any reduction would be insignificant.

VI. Technical Deficiencies:

Lines 50-52 of the bill provides that the Department of Highway Safety and Motor Vehicles may allow the department to access a digital record of a driver's license for the purpose of identifying subjects who are under criminal investigation for unlicensed activity. The referenced section, s. 455.228, F.S., does not impose criminal sanctions on unlicensed conduct or authorize the

department to conduct criminal investigations. Instead, the department refers unlicensed activity violations to the proper state attorneys' offices as required under s. 455.2277, F.S. As a result, the word "criminal" should be deleted from line 51 of the bill. The committee has been advised that an amendment will be submitted to address this issue.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.