

**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 Transportation Committee

BILL: CS/SB 1824

INTRODUCER: Regulated Industries Committee and Senator Hays

SUBJECT: Regulated Professions and Occupations

DATE: April 1, 2011 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	<b>Fav/CS</b>
2.	Eichin	Spalla	TC	<b>Pre-meeting</b>
3.			BC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The Committee Substitute (CS) amends provisions related to the regulation of professions under the Department of Business and Professional Regulation (department). The CS authorizes the Department of Highway Safety and Motor Vehicles to release photographs to the department to identify suspects involved in unlicensed activity investigations. The CS provides that the department can waive renewal fees on a case-by-case basis for financial hardship or an error caused by the department. The CS 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 CS decriminalizes violations of board rules for cosmetology related professions and real estate professions.

The CS amends appraisal regulations and deletes references to Uniform Standards of Professional Appraisal Practice. Instead, the CS provides that the professional standards will be adopted by board rule.

The CS provides that matters related to the nutritional content and marketing of foods offered in public food service establishments are preempted to the state. In addition, the CS provides that mandatory completion of a remedial educational program administered by a food safety training program provider may be imposed by the Division of Hotels and Restaurants on any public lodging establishment or public food service establishment that has operated in violation of ch. 509, F.S., or a rule of the division.

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

This CS substantially amends the following sections of the Florida Statutes: 322.142, 455.213, 455.271, 475.42, 477.0212, 477.0265, 481.217, 481.315, 489.116, 489.519, 475.611, 475.656, 475.624, 475.628, 509.032, and 509.261.

## **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.<sup>1</sup> 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.

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<sup>1</sup> Chapter 93-220, L.O.F.

- 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.

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,<sup>2</sup> the Pilot Rate Review Board,<sup>3</sup> 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.

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<sup>2</sup>Section 548.003, F.S.

<sup>3</sup> *Id.*

### **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,<sup>4</sup> 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 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.

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<sup>4</sup> Licenses are renewed on a two-year cycle.

### **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.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup>

### **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.<sup>8</sup> 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.

### **Division of Hotels and Restaurants**

The Division of Hotels and Restaurants (division) within the department is the state agency charged with enforcing the provisions of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare. According to the department, there are over 37,273 licensed public lodging establishments, including hotels, motels, nontransient and transient rooming houses, and resort condominiums and dwellings.<sup>9</sup>

The division is responsible for inspecting public food service establishments to ensure that they meet the requirements of ch. 509, F.S., and division rules.<sup>10</sup> Each public food service establishment must obtain a license and meet the standards set by the division to maintain that license.<sup>11</sup>

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<sup>5</sup> 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.

<sup>6</sup> A misdemeanor of the second degree.

<sup>7</sup> *Id.*

<sup>8</sup> Public Law 111-203.

<sup>9</sup> See *Annual Report, Fiscal Year 2009-2010*, Division of Hotels and Restaurants, Department of Business and Professional Regulation. A copy is available at: [http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2009\\_10.pdf](http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2009_10.pdf) (Last visited March 1, 2011).

<sup>10</sup> Section 509.032, F.S.

<sup>11</sup> Section 509.241, F.S.

Any public food service establishment or public lodging establishment that has operated or is operating in violation of ch. 509, F.S., or the rules of the division, operating without a license, or operating with a suspended or revoked license may be subject by the division to:

- Fines not to exceed \$1,000 per offense;
- Mandatory attendance, at personal expense, at an educational program sponsored by the Hospitality Education Program;<sup>12</sup> and
- The suspension, revocation, or refusal of a license issued pursuant to ch. 509, F.S.

### **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 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(10), F.S., to provide that a licensee, except a person licensed under chs. 473 or 475, F.S.,<sup>13</sup> shall only be required to complete one renewal cycle of continuing education to reactive a license.

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

**Section 5.** 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.

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<sup>12</sup> Section 509.302, F.S. This program was not funded in FY 2010-2011.

<sup>13</sup> Chapter 473, F.S., pertains to public accountancy. Chapter 475, F.S., pertains to real estate brokers, sales associates, appraisers, and schools.

**Section 6.** Eliminates rule violations of the Board of Cosmetology from the list of violations which may result in a criminal penalty.

**Sections 7-10.** 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 11.** Provides that paragraph (v) of subsection (1) of s. 475.611, F.S., as amended by ch. 2010-84, L.O.F., is repealed, effective July 1, 2014.<sup>14</sup> This paragraph provided the definition of “Uniform Standards of Professional Appraisal Practice.”

**Section 12.** Provides that paragraphs (b) and (c) of subsection (1) of s. 475.626, F.S., as amended by ch. 2010-84, L.O.F., are repealed.<sup>15</sup> These paragraphs criminalized rule violations of the Florida Real Estate Appraisal Board.

**Section 13.** Amends subsection (14) of s. 475.624, F.S., as amended by ch. 2010-84, L.O.F., to remove references to the Uniform Standards of Professional Appraisal Practice. Instead, the CS provides that the standards of professional practice will be established by board rule.

**Section 14.** Amends s. 475.628, F.S., to remove references to the Uniform Standards of Professional Appraisal Practice. Instead, the CS provides that the standards of professional practice will be established by board rule.

**Section 15.** Amends s. 509.032, F.S., to provide that matters related to the nutritional content and marketing of foods offered in public food service establishments are preempted to the state.

**Section 16.** Amends s. 509.261, F.S., to provide that a public lodging establishment or public food service establishment that has violated ch. 509, F.S., or a rule of the Division of Hotels and Restaurants, may be subject to mandatory completion of a remedial education program administered by a food safety training program provider whose program has been approved by the division.

**Section 17.** Changes the effective date for the regulation of appraisal management companies to July 1, 2014.

**Section 18.** 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.

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<sup>14</sup> The referenced provision is not effective until July 1, 2011.

<sup>15</sup> *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

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

B. Private Sector Impact:

The CS 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 CS 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:**

None.

**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.)

**CS by Regulated Industries on March 29, 2011:**

The CS removes references to criminal investigations and instead provides that the Department of Highway Safety and Motor Vehicles may provide copies of drivers' licenses for the purpose of identifying subjects who are under investigation by the department for unlicensed activities. The CS adds that the board, or the department when there is no board, shall only require one cycle of continuing education courses, except for licensees under chs. 473 and 475, F.S. The CS amends the appraisal regulations and deletes the references to Uniform Standards of Professional Appraisal Practice. Instead, the CS provides that the professional standards will be adopted by board rule. The CS

provides that matters related to the nutritional content and marketing of foods offered in public food service establishments are preempted to the state. In addition, the CS provides that mandatory completion of a remedial educational program administered by a food safety training program provider may be imposed by the Division of Hotels and Restaurants on any public lodging establishment or public food service establishment that has operated in violation of ch. 509, F.S., or a rule of the division.

**B. Amendments:**

None.

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

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