

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 1252

INTRODUCER: Senator Jones

SUBJECT: Business and Professional Regulation

DATE: January 23, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Pre-meeting
2.			CJ	
3.			Bu	
4.				
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6.				

I. Summary:

This bill relates to the Department of Business and Professional Regulation. It includes the Florida Boxing Commission as a division within the department. It also establishes the Child Labor Program and the Farm Labor Program within the department’s Division of Regulation.

The bill revises the following provisions related to the department’s licensing processes and the requirements for the professions licensed by the department. The bill:

- Waives the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for military veterans who apply to the department for a license within 24 months of being honorably discharged from service;
- Authorizes the department to approve continuing education providers and courses without a review by the appropriate board if the provider or course application does not require expert review or denial;
- Authorizes the department, in lieu of a board, to approve applications for reinstatement of a void license if the department determines that the individual failed to comply due to illness or economic hardship;
- Permits continuing education instructors to complete their continuing education through distance learning;
- Revises the provisions related to the regulation of appraisal management companies banks, credit unions, or other lending institutions that own and operate an internal appraisal office, business unit, or department. This is consistent with the federal Dodd

- Frank Act, which exempts from state regulation appraisal management services provided for bank-owned appraisal management companies;
- Permits applicants for a real estate appraiser's certification to the results of national examinations required for the license that were obtained more than 24 month after the date of the examination;
 - Prohibits appraisal management companies from requiring that appraisers agree to an indemnity agreement;
 - Permits barbers to provide barbering services outside of a licensed barbershop, include a consumer's place of employment.
 - Deletes the requirement that limits the ability of barbers to provide barbering services at a residence to only when the client is in ill health and unable to go to the barbershop;
 - Provides that a cosmetology license is not required to provide makeup services to the general public;
 - Permits applicants for licensure by endorsement as a cosmetologist to substitute work experience for educational hours when applying for a licensure as provided by rule of the Board of Cosmetology;
 - Permits cosmetologists and specialists to perform cosmetology and specialty services at special events held outside of salons if they are employed by a licensed salon and appointments for such services are made through a licensed salon;
 - Extends, from November 1, 2005 to November 1, 2014, the period for registered contractors, who are limited to practicing within the county or counties in which they are registered, to qualify for state-wide certification.
 - Authorizes the Florida State Boxing Commission to exercise exclusive jurisdiction over all amateur mixed martial arts sanctioning organizations;
 - Increases the penalty for persons who participate in a prohibited pugilistic match from a misdemeanor of the second degree to a felony of the third degree.

The bill provides an effective date of October 1, 2012.

This bill substantially amends the following sections of the Florida Statutes: 20.165, 455.01, 455.213, 455.2179, 455.271, 455.273, 455.275, 475.451, 475.611, 475.6171, 475.6235, 475.6245, 476.188, 477.0135, 477.019, 477.0263, 489.118, 548.006, 548.0065, 548.008.

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.

¹ Chapter 93-220, L.O.F.

- 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.

The Pilot Rate Review Committee is established under the Board of Pilot Commissioners.² 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 Commission³ and the Regulatory Council of Community Managers⁴ are also housed within the department.

² Section 310.151, F.S.

³ Section 548.003, F.S.

⁴ Section 468.4315, F.S.

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, F.S.

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.

Continuing Education Providers

Section 455.2179, F.S., provides for the approval of continuing education providers by the boards, or the department if there is no board. The department must forward applications for continuing education providers and courses to the appropriate licensing board. Current law does not permit the department to approve providers or courses without board review.

Inactive and Delinquent Status

Section 455.271, F.S., permits the boards, or the department if there is no board, to reinstate a voided license if the licensee has made a good faith effort to comply with licensure requirements and was unable to comply because of illness or unusual hardship. According to the department, the most common basis for requesting reinstatement of a void license is economic hardship.

Renewal and Cancellation Notices

Section 455.273, F.S., requires the department to mail renewal and cancellation notices to licensees' last known addresses of record at least 90 days prior to expiration or cancellation of the license. Section 455.273(2), F.S., requires the department to include a conspicuous statement in each renewal and cancellation notice stating that, if a licensee remains on inactive status for more than two consecutive licensure cycles, the licensee may be required to sit for a special purpose examination or other reactivation requirements prior to reactivation of their license.

Section 455.275, F.S., requires licensees to provide the department with written notification of their current mailing address and place of practice. The department must mail, to the licensee's last known address of record, notices and official communications to the licensees, except where service of process is required for disciplinary proceeding pursuant to s. 455.225, F.S.

Real Estate Schools-Distance Learning

Section 475.17(2)(a)2., F.S., authorizes the Florida Real Estate Commission to approve distance learning courses as an option to classroom hours as satisfactory completion continuing education requirements. Real estate schools have the option of providing classroom courses, distance learning courses, or both. A satisfactory completion of a distance learning course must require the satisfactory completion of a timed distance learning course examination. Such examination does not need to be monitored or given at a centralized location.

Appraisal Management Companies

Individual real estate appraisers are regulated under part II of ch. 475, F.S., by the Florida Real Estate Appraisal Board within the department. Section 475.6235, F.S., requires the registration of Appraisal Management Companies.

“Appraisal management company,” is defined in s. 475.611(1)(c), F.S., to mean a person⁵ who performs appraisal management services.

The term “appraisal management services” is defined in s.475.611(1)(d), F.S., to mean the coordination or management of appraisal services for compensation by:

1. Employing, contracting with, or otherwise retaining one or more appraisers to perform appraisal services for a client; or
2. Acting as a broker or intermediary between a client and one or more appraisers to facilitate the client’s employing, contracting with, or otherwise retaining the appraisers.

Section 475.6235(1), F.S., provides that a person may not engage in appraisal services for compensation or advertise themselves as an appraisal management company or use the titles “appraisal management company,” “appraiser cooperative,” “appraiser portal,” or “mortgage technology company,” or any abbreviation or words to that effect, unless the person is registered with the department as an appraisal management. A person may not engage in appraisal management services for compensation in this state, advertise or represent herself or himself as an appraisal management company, or company under this section.

Employees of the appraisal management company are not required to obtain a separate registration.

The “Dodd-Frank Wall Street Reform and Consumer Protection Act (Frank-Dodd Act)”⁶ permits states to regulate appraisal management companies. However, an appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a federal financial institution regulatory agency is not be required to register with a state.⁷

Barbering

Section 476.188(1), F.S., provides that barbering services can be performed only in a registered barbershop, except when such services are performed in a nursing home, hospital, or residence due to a client’s illness.

Cosmetology

Section 477.013(4), F.S., defines the term “cosmetology” to mean:

⁵ Section 1.01(3), F.S., defines the word “person” to include “individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.”

⁶ “Dodd-Frank Wall Street Reform and Consumer Protection Act” Pub. L. 111-203 (2010).

⁷ *Id.* at s. 1473.

the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services.

Section 477.0135(5), F.S., provides that a cosmetology “license is not required of any individual providing makeup, special effects, or cosmetology services to an actor, stunt person, musician, extra, or other talent during a production recognized by the Office of Film and Entertainment as a qualified production” as defined in s. 288.1254(1), F.S. These services are not required to be performed in a licensed salon. However, these persons may not provide such services to the general public without a license. Section 477.0135(6), F.S., also provides a license exemption for makeup or special effects services provided in a theme park or entertainment complex, as defined in s. 509.013(9), F.S., to an actor, stunt person, musician, extra, or other talent, or providing makeup or special effects services to the general public. It appears that the exemption for makeup or special effects services to the general public is limited to those provided in the theme parks.

Section 477.019, F.S., permits cosmetologists who are licensed in another state to receive a Florida license if the license qualifications in the other state are similar to, equivalent to, or greater than the qualifications required in this state. The Florida qualifications include proof of passing a written examination; and completion of 1200 educational hours.⁸ According to the department, individuals who have been practicing cosmetology services in another state for many years have difficulty providing proof of the completion of the 1200 educational hours. Many times this is because the other state does not retain the records for an extended period of time. In Florida, the Department of State Division of Library Services is in charge of the preservation of public records.⁹ The division is authorized to adopt rules for the retention and disposal of public records.¹⁰

Section 477.0263, F.S., provides that all cosmetology services must be performed in a licensed salon, except when services are performed in a residence, nursing home or hospital because the client is too ill to travel to a licensed salon, or when services are provided in connection with the motion picture, fashion photography, theatrical, or television industry; or at a photography studio salon, manufacturer’s trade show demonstration; or an educational seminar.

Construction Contracting

The Construction Industry Licensing Board (CILB) is responsible for the licensure and regulation under part I of ch. 489, F.S., of construction contractors. Construction contractors in Florida must be certified or registered before commencing business as a contractor.¹¹

Certification means that the contractor is licensed by the state to contract statewide.¹²

Alternatively, a contractor may register with the state to perform construction services only

⁸ See s. 477.019, F.S.

⁹ See s. 257.35, F.S.

¹⁰ See s. 257.36(6), F.S.

¹¹ Section 489.113(2), F.S.

¹² Section 489.113(1), F.S.

within the limited geographic confines of the local jurisdiction in which the registered contractor has been licensed by the local jurisdiction.¹³

A state certification or registration is required for persons who perform the following categories of construction services: general contractors, building contractors, residential contractors, sheet metal contractors, roofing contractors, air-conditioning contractors, mechanical contractors, swimming pool/spa, plumbing contractors, underground utility and excavation contractors, solar contractors, pollutant storage systems contractors, and glass and glazing contractors.¹⁴

Section 489.118, F.S., permits registered contractors to receive a state-wide certification without taking the state licensure examination if they meet the specified criteria, including holding a current, valid registration, passing a written examination that the board finds is substantially similar to the examination required to be licensed as a certified contractor, has at least five years of experience, has not had a contractor's license revoked, and is in compliance with the insurance and financial responsibility requirements in s. 489.115(5), F.S. To qualify for certification, registered contractors must have applied to the department by November 1, 2005.

Boxing

Chapter 548, F.S., provides for the licensure and regulation of professional and amateur boxing, kickboxing, and mixed martial arts by the Florida State Boxing Commission. Section 548.006(3), F.S., provides the Florida State Boxing Commission exclusive jurisdiction for the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for boxing and kickboxing matches held in the state. This jurisdiction does not extend to amateur sanctioning organizations for mixed martial arts.

Section 548.0065, F.S., requires amateur sanctioning organizations to notify the department of upcoming amateur matches held in the state.

Section 548.008(1), F.S., prohibits matches involving amateurs that utilize, but are not necessarily limited to, strikes or blows to the head unless the match is sanctioned and supervised by an amateur sanctioning organization approved by the Florida State Boxing Commission.

Section 548.008(2), F.S., provides that no professional match may be held in this state unless it meets the requirements for holding the match as provided in ch. 548, F.S., and the rules adopted by the Florida State Boxing Commission.

Section 548.008(3)(a), F.S., provides that any person who participates in a match prohibited under this section, knowing the match is prohibited, commits a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.¹⁵

¹³ Section 489.117(1), F.S.

¹⁴ See s. 489.105(3)(a)-(q), F.S.

¹⁵ Section 775.082, F.S., provides that the penalty for misdemeanor of the second degree is punishable by a term of imprisonment not exceeding 60 days. Section 775.083, F.S. provides that the penalty for misdemeanor of the second degree is punishable by a fine not to exceed \$500.

Section 548.008(3)(b), F.S., provides that any person who holds, promotes, or sponsors a match prohibited under this section, commits a felony of the third degree, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.¹⁶

III. Effect of Proposed Changes:

Department of Business and Professional Regulation

The bill amends s. 20.165(2), F.S., to create the Florida State Boxing Commission as a division within the Department of Business and Professional Regulation.

The bill also amends s. 20.165(4), F.S., to provide that the Child Labor Program and the Farm Labor Program are established under the Division of Regulation.

The bill amends s. 455.01, F.S., which defines the term “profession” to include activities or occupations regulated by the Florida State Boxing Commission.

Military Veterans-Fee Waiver

The bill creates s. 455.213(12), F.S., to waive the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for a military veteran who applies to the department for a license within 24 months of being honorably discharged.

Continuing Education Providers

The bill amends s. 455.2179, F.S., to allow the department to approve continuing education providers and courses without board review if the provider or course application does not require expert review or denial. Any application that requires expert review by a board must be sent to the appropriate board for review and approval or denial determination. The bill also provides that only the department can determine the content of applications and supporting documents that are submitted for approval.

Inactive and Delinquent Status

The bill amends s. 455.271(6)(b), F. S., to department, in its discretion, the authority to approve applications for reinstatement of a void license if the department determines that the individual failed to comply due to illness or economic hardship. It deletes references to the department’s boards to, in effect, place this authority exclusively with the department. This provision is also amended to replace the reference to “unusual hardship” hardship with the term “economic hardship.”

Renewal and Cancellation Notices

The bill amends s. 455.273, F.S., to permit the department to forward renewal and cancellation notices to a licensee’s email address of record.

The bill amends s. 455.273, F.S., to repeal the requirement that each licensure renewal and cancellation notification must provide a conspicuous statement that a licensee may be required to

¹⁶ Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not exceeding five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not exceeding \$5,000. Section 775.084, F.S., provides increased penalties for habitual offenders.

complete a special purposes examination or other reactivation requirement prior to activating a license.

The bill amends s. 455.275, F. S., to require licensees to update the department with their available email address in addition to their mailing address and place of employment. It permits the department to serve required notices by email, except where service of process is required for disciplinary proceeding pursuant to s. 455.225, F.S.

Real Estate Schools-Distance Learning

The bill amends s. 475.451, F.S., to permit continuing education instructors to complete their continuing education through either classroom or distance learning. It also provides that real estate schools may offer any continuing education course through distance learning if the course complies with s. 475.17(2), F.S., which authorizes the Florida Real Estate Commission to approve distance learning courses.

Appraisers and Appraisal Management Company

The bill amends s. 475.611(1)(c), F.S., to revise the definition of “appraisal management company” by incorporating the provision from s. 475.6235(1), F.S., which prohibits the use of the titles “appraisal management company,” “appraiser cooperative,” “appraiser portal,” or “mortgage technology company,” or other terms unless the person is registered with the department as an appraisal management company.

The bill also amends s. 475.611(1)(d), F.S., to reference “licensed or certified appraisers” instead of “appraisers.”

The bill amends s. 475.6171(4), F.S., to repeal the provision that no certifications as an appraiser shall be issued based upon the results of national examinations that are obtained more than 24 month after the date of the examination.

The bill amends s. 475.6235(1), F.S., to delete the prohibition against the use of the titles “appraisal management company,” “appraiser cooperative,” “appraiser portal,” or “mortgage technology company,” or other terms unless the person is registered with the department as an appraisal management company. This prohibition is added by the bill to the definition of the term “appraisal management company” in s. 475.611(1)(c), F.S.

The bill also creates s. 475.6235(9), F.S., to provide an exemption from the definition of “appraisal management company” for banks, credit unions, or other lending institutions that own and operate an internal appraisal office, business unit, or department. This would conform the provision to the exemption from state regulation provided for bank-owned appraisal management companies as provided by the Dodd Frank Act.

The bill amends s. 475.6245, F.S., to prohibit appraisal management companies from requiring that appraisers agree to hold harmless from the liability the appraisal management company or its owners, agents, employees, or independent contractors for services performed by the management company and not the appraiser.

Barbering

The bill amends s. 476.188, F. S., to permit licensed barbers to provide barbering services outside of a licensed barbershop, to include a consumer's place of employment. It also permits barbers to provide barbering services at a residence. It deletes the condition that limits barbers from providing barbering service in a residence to when a client for reasons of ill health is unable to go to the registered barbershop.

Cosmetology

The bill creates s. 477.0135(7), F. S., to provide that a cosmetology license is not required to provide makeup services to the general public.

The bill amends s. 477.019, F.S., to permit applicants for licensure by endorsement to substitute work experience for educational hours when applying for a licensure. The amount and manner by which the required educational hours that could be substituted for work experience would be provided by rule of the Board of Cosmetology.

The bill amends s. 477.0263, F. S., to provide an exception from the requirement that all cosmetology services be performed in a licensed salon. The bill permits licensed cosmetologists and specialists to perform cosmetology and specialty services at special events held outside of salons if they are employed by a licensed salon and appointments for such services are made through a licensed salon. The term "special events" is not defined.

Construction Contracting

The bill amends s. 489.118, F. S., to extend the grandfather period for registered contractors to qualify for certification from November 1, 2005 to November 1, 2014.

Boxing

The bill amends s. 548.006 (3), F.S., to authorize the Florida State Boxing Commission to exercise exclusive jurisdiction over approval, disapproval, suspension of approval, and revocation of approval of all amateur mixed martial arts sanctioning organizations.

The bill amends s. 548.0065, F.S., to require amateur sanctioning organizations to file with the Florida State Boxing Commission advance notice of the location, date, and time of amateur matches at least 10 days prior to the date of the match.

The bill amends s. 548.008(3) (a), F.S., to increase the penalty of any person participating in a prohibited match from a second degree misdemeanor to a felony of the third degree.

Effective Date

The bill provides an effective date of October 1, 2012.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:**C. Government Sector Impact:**

The department estimates that it will receive an additional 1,401 applications in FY 2012-13, 701 in FY 2013-14 and 1,401 in FY 2014-15, due to the extension of the period for registered contractors to qualify for state-wide certification. This equals estimated revenues of \$573,091 in FY 2012-2013, \$286,545 in FY 2013-2014, and \$573,091 in FY 2014-2015. According to the department, to process the new applications will require an additional FTE for a Regulatory Specialist II. This is a non-recurring expense cost of \$3,870 and a recurring cost of \$48,813.

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.)

None.

B. Amendments:

None.