

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

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|-----------------------------|--|----------------------------------|----------|
| BILL #: | HB 693 (CS/SB 1120) | FINAL HOUSE FLOOR ACTION: | |
| SPONSOR(S): | Ingram (Budget Subcommittee on General Government Appropriations; Jones) | 118 Y's | 0 N's |
| COMPANION BILLS: | CS/SB 1120 | GOVERNOR'S ACTION: | Approved |

SUMMARY ANALYSIS

HB 693 passed the House on February 3, 2012. The bill was amended by the Senate to combine several bills that repeal DBPR licensure requirements on March 9, 2012, and subsequently passed the House on March 9, 2012. The bill includes portions of CS/HB 517, HB 4043, HB 4045, HB 4097, HB 4115, and HB 4153.

The bill repeals:

- a restriction on placing professional licenses in inactive status;
- a requirement that liquor licenses be issued in duplicate;
- the prohibition on producing distilled spirits greater than 153 proof;
- licensure requirements for chief administrators of real estate schools;
- a requirement that non-resident real estate applicants file irrevocable written consent to service of process with the DBPR;
- duplicative requirements to sit for the barbering exam;
- provisions relating to the use of stamp insignia metering machines for cigarette tax stamps; and
- provisions relating to identification requirements for cigarette vending machines owned by wholesale dealers.

The bill is expected to have an insignificant fiscal impact on state funds.

The bill was approved by the Governor on May 4, 2012, ch. 2012-208, Laws of Florida. The effective date of the bill is upon becoming law.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present situation

The Department of Business and Professional Regulation (DBPR) licenses and regulates businesses and professionals in Florida. It is structured to include separate divisions and various boards responsible for carrying out the DBPR's mission to license efficiently and regulate fairly. The Division of Professions is responsible for the licensing of more than 405,000 professionals. The division administers 14 professional boards, 6 department-regulated programs and one council. The DBPR also houses the Divisions of Regulation; Technology; Service Operations; Alcoholic Beverages and Tobacco; Certified Public Accounting; Condominiums, Timeshares, and Mobile Homes; Hotels and Restaurants; Pari-mutuel Wagering; and Real Estate.

Inactive licenses

Chapter 455, F.S., provides the general powers of the DBPR and sets forth the procedural and administrative framework for the department and its professional boards.

DBPR licensees may only practice their profession if their license is in an active status. DBPR licensees may choose to place their license in an inactive status when applying for renewal; however, if licensees choose to change from inactive to active status, they may not revert back to inactive status until they complete a licensure cycle in active status.¹

Liquor licenses

In administering Florida's Beverage Law, the Division of Alcoholic Beverages and Tobacco (ABT) within the DBPR licenses anyone dealing with the manufacturing, bottling, distributing, or selling of alcoholic beverages.² The division issues annual licenses provided applicants meet applicable licensure requirements and pay the requisite fees. Currently, s. 561.23, F.S., requires the division issue such licenses in duplicate. The division retains one copy and delivers the other to the licensee.

Distilled spirits

Section 565.07, F.S., prohibits the production, sale or consumption of distilled spirits that are greater than 153 proof.

Real estate school administrators

Institutions seeking to offer courses of study in real estate, and individuals teaching such courses, must be licensed by the Division of Real Estate within the Department of Business and Professional Regulation.

In addition, the person responsible for the administration of the overall policies and practices of the real estate school must be licensed by the division as a chief administrator. If a chief administrator also teaches courses, he or she must also be licensed as an instructor.

To be licensed as a chief administrator, the applicant must be at least 18 years old; possess a high school diploma or its equivalent; possess a social security number to apply; and must pass a criminal background screening.

¹ Section 455.271, F.S.

² Section 561.02, F.S.

Applicants for chief administrator license must provide the division with identifying information, submit to a background check and pay a biennial application fee of \$85. There are no pre, post or continuing education requirements for this type of license.

The DBPR reports:

Currently a real estate school has the option of designating a “Chief Administrator,” but the license is not required for the operation of a school. The Chief Administrator does not have continuing education requirements and simply pays a fee for renewal. The actual permit to operate a real estate school is issued to the permit holder of the school. Section 475.451(2)(a), Florida Statutes, defines school permit holder as the individual who is responsible for directing the overall operation of a proprietary real estate school. The language of the definition makes it clear that responsibility for the operation of the school rests with the permit holder, not the Chief Administrator.

Nonresident real estate professionals

Out-of-state applicants for licensure as real estate brokers, sales associates and appraisers must file a notarized, irrevocable written consent to service of process with DBPR. The consent must provide that any suit or action may be commenced in any county of Florida in which a plaintiff resides, and that service of process or pleading may be made by delivering the process or pleading to the director of the Division of Real Estate.

This process lengthens the approval process of non-resident applicants and has been a barrier to the DBPR’s transition to online applications. Real estate is the only industry profession overseen by DBPR that requires the irrevocable consent to service.

Barbering

Currently, there are two statutory provisions providing requirements for barbering licensure. While the main requirements are set forth in s. 476.114, F.S., duplicative requirements are listed in s. 476.124, F.S.

Stamp Insignia Metering Machines

Section 210.02, F.S., levies an excise tax upon the sale, receipt, purchase, possession, consumption, handling, distribution, and use of cigarettes in the state. To show the tax has been paid, approved cigarette wholesale dealers must affix a stamp or a stamp insignia through a metering machine device to every package of cigarettes, prior to being sold in the state.³

Currently, approved wholesale dealers only affix stamps to the packages; the use of metering machines to place tax indicia on the packages is no longer used.

Cigarette Vending Machines

Wholesale or retail cigarette dealers that own, lease, or operate cigarette vending machines must affix a division-authorized identification sticker on each machine.⁴ However, division rule stipulates that these vending machines may only be operated by retail dealers.⁵

Effect of changes

The bill repeals provisions relating to various DBPR licensing restrictions and requirements, as follows.

³ Section 210.05, F.S.

⁴ Section 210.07(3), F.S.

⁵ F.A.C. 61A-10.020

Inactive licenses

The bill repeals the restriction on placing licenses in an inactive status. This will allow a licensee to change licensure status, active/inactive, at any time during the renewal cycle.

Liquor licensees

The bill removes the requirement that the ABT issue liquor licenses in duplicate. The ABT will be able to maintain a copy of the license, but will no longer be required to maintain a hard copy.

Distilled spirits

The bill repeals the prohibition on producing distilled spirits greater than 153 proof. It provides that such spirits may be distilled, bottled, packaged or processed for export or sale outside the state by ABT licensees; the sale or consumption of such spirits remain prohibited.

Real estate school administrators

The bill repeals the licensure requirements for chief administrators of real estate schools.

Nonresident real estate professionals

The bill repeals the requirement that non-resident real estate applicants must file an irrevocable written consent to service of process. Thus, the plaintiff in a suit against a licensee would file notice of service directly to the defendant and would otherwise follow normal court filing proceedings.

Barbering

The bill repeals duplicative requirements to sit for the barbering exam.

Stamp Insignia Metering Machines

The bill repeals provisions relating to the use of metering machines. Wholesale dealers may only affix an adhesive stamp in order to evidence excise tax payments.

Cigarette Vending Machines

The bill eliminates the requirement that wholesale dealers affix identification stickers to their cigarette vending machines. Retail dealers are still required to affix the identification stickers to their machines.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The DBPR expects a small reduction in revenues from no longer collecting biennial application fees associated with 73 currently licensed chief administrators of real estate schools.

| REVENUE | | | |
|--------------------------|--------------|----------------|--------------|
| | FY 2012-13 | FY 2013-14 | FY 2014-15 |
| License Fees: | (400) | (4,400) | (400) |
| Application Fees: | (100) | (100) | (100) |
| Taxes: | | | |
| Unlicensed Activity Fee: | (25) | (275) | (25) |
| TOTAL: | (525) | (4,775) | (525) |

2. Expenditures:

To the extent that the division no longer prints and maintains hard copies of liquor licenses, its costs could be reduced. Any impact is expected to be insignificant.

The Division expects a small reduction in expenditures from no longer processing chief administrator of real estate school biennial applications.

| Non-Operating Expenditures | FY 2012-13 | FY 2013-14 | FY 2014-15 |
|---|--------------|----------------|--------------|
| Service Charge to GR (8% of revenue) | (42) | (382) | (42) |
| Indirect Costs (DBPR Administrative Overhead) | 0 | 0 | 0 |
| Other/Transfers | 0 | 0 | 0 |
| Subtotal | 0 | 0 | 0 |
| Net Revenue Over/(Under) Expenditures | (483) | (4,393) | (483) |

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Chief administrators of real estate schools would no longer be required to pay an \$85 licensure fee.

D. FISCAL COMMENTS:

None.