

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 Budget Subcommittee on General Government Appropriations

BILL: CS/CS/SB 762

INTRODUCER: Budget Subcommittee on General Government Appropriations; Criminal Justice Committee and Senator Hays

SUBJECT: Practice of Professions Regulated by Department of Business and Professional Regulation

DATE: February 28, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Favorable
2.	Clodfelter	Cannon	CJ	Fav/CS
3.	Howard	DeLoach	BGA	Fav/CS
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 bill revises references to the professional standards with which registered, licensed, and certified appraisers are required to comply. It requires the Florida Real Estate Appraisal Board to adopt rules that establish standards of professional practice that meet or exceed nationally recognized standards of appraisal practice, including standards adopted by the Appraisal Standards Board of the Appraisal Foundation. It requires these standards to be used in the purchase of lands for the Lake Apopka Improvement program.

The bill also reduces the continuing education hours required to reactivate an inactive license to only one renewal cycle of hours, instead of the hours required for each year the license was inactive, for the following professions: community association managers, home inspectors, providers of mold-related services, cosmetologists, architects, landscape architects, construction contractors, and electrical and alarm system contractors. The bill exempts certified public accountants licensed under ch. 473, F.S., and real estate brokers, sales associates, real estate schools, and appraisers licensed under ch. 474, F.S. These professionals would continue to be required to complete the continuing education required for each two-year period of licensure in

order to reactivate an inactive license. The bill also clarifies that the Board of Architecture and Interior Design may only approve continuing education for an interior designer that builds upon the basic knowledge of interior design.

The bill repeals provisions that provide criminal penalties for violations of agency rules and the chapters of the Florida Statutes that govern the specified professions. Under the bill the following professions would not be subject to criminal penalties for such violations: auctioneers, real estate professionals, barbers, and cosmetologists. However, the bill limits the application of criminal penalties for specified violations by auctioneers that relate to financial dishonesty or malfeasance.

The bill revises the provisions related to the regulation of appraisal management company's 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, financial institutions that own or operate an internal appraiser office, business, unit, or department and appraisal management companies that are owned and controlled by a subsidiary of a financial institution.

In addition, 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;
- Provide that a limited service veterinary medical practice operates under rules set by the Board of Veterinary Medicine in place of the provision that the practice operates for a limited time;
- Authorizes filing of a lien for collection services expenses that are reasonably related to the collection of a delinquent account rendered by a community association manager or management firm on behalf of a community association;
- Permits applicants for a real estate appraiser's certification to use the results of national examinations required for the license that were obtained more than 24 months after the date of the examination;
- Permits real estate continuing education instructors to complete their continuing education through distance learning and permits real estate schools to offer any course through distance learning;
- Allows greater reciprocity of architect licensees and modifies the internship requirements to make Florida consistent with other states to improve licensing mobility for architects;
- Conforms with exemptions for other utilities by removing a requirement for persons repairing, maintaining, removing, or disposing of asbestos-containing pipe or conduit used for gas service to be licensed as an asbestos consultant or contractor; and
- Expands exemptions regarding mold-related services to include landscape architects if they are not holding themselves out for hire to the public using names implying that they perform mold assessment services or stating or implying licensure under Part XVI.
- The bill modifies definitions used in part I of ch. 499, F.S., the Florida Drug and Cosmetic Act (act), and organizes various exceptions to the permit requirements into a single subsection. It eases existing restrictions on the limited distribution of active pharmaceutical

ingredients to Florida permitted prescription drug manufacturers and restrictions on prescription drug distributions to permitted prescription drug manufacturers and researchers. The bill provides an exemption from the prescription drug re-packager permit requirement and the product registration requirements for a restricted prescription drug distributor permitholder that is a health care entity that re-packages prescription drugs in this state for its own use or distributes prescription drugs to a hospital or other health care entity in the state for its own use if it meets certain conditions.

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

This bill substantially amends the following sections of the Florida Statutes: 373.461, 455.213, 455.271, 468.391, 468.4338, 468.439, 468.8317, 468.841, 468.8417, 469.002, 474.202, 475.25, 475.42, 475.451, 475.611, 475.615, 475.617, 475.6171, 475.6175, 475.6235, 475.624, 475.6245, 475.626, 475.628, 476.194, 477.0212, 477.0265, 481.217, 481.209, 481.211, 481.213, 481.315, 489.116, 489.519, 499.003, and 499.01.

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.

¹ 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.

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. 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.

² Section 310.151, F.S.

³ Section 548.003, F.S.

⁴ Section 468.4315, F.S.

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.

Community Association Managers

Section 468.4338, F.S., requires the Regulatory Council of Community Association Managers to prescribe by rule continuing education requirements for reactivating a license. The continuing education requirements for reactivating a license may not exceed 10 classroom hours for each year the license was inactive.

Home Inspectors

Section 468.8317(2), F.S., provides that the department may prescribe rules that require continuing education requirements as a condition to reactivate an inactive license. The continuing education requirements for reactivating a license may not exceed 14 hours for each year the license was inactive.

Mold-Related Services

Section 468.8417(2), F.S., provides that the department may prescribe rules that require continuing education requirements as a condition to reactivate an inactive license. The continuing education requirements for reactivating a license may not exceed 14 hours for each year the license was inactive. Section 468.841, F.S., provides exemptions from Part XVI of ch. 468, F.S., which concerns mold-related services.

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,⁵ as a condition for renewal of a license or registration. 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.

⁵ Licenses are renewed on a two-year cycle.

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.

Community Association Managers

Section 468.432, F.S., requires licensing of community association managers and community association management firms. "Community association" is defined in s. 468.431(1), F.S., as a:

“. . . residential homeowners' association in which membership is a condition of ownership of a unit in a planned unit development, or of a lot for a home or a mobile home, or of a townhouse, villa, condominium, cooperative, or other residential unit which is part of a residential development scheme and which is authorized to impose a fee which may become a lien on the parcel.”

Exemptions from Requirements Concerning Mold-Related Services

Section 468.841(d), F.S., exempts certain licensed persons or businesses from complying with requirements in Part XVI of ch. 468, F.S., relating to mold assessment. The exemption applies if the licensed person or business is not holding itself out for hire to the public using names implying that they perform mold assessment services or stating or implying licensure under Part XVI.

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 of 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 person⁶ 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)”⁷ 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 required to register with a state.⁸

Criminalization of Rule Violations

The practice acts for several professions provide criminal penalties for violations of agency rules and the chapters of the Florida Statutes that govern the specified professions. The following professions are subject to criminal penalties for such violations:

- Auctioneers in s. 468.391, F.S.;
- Real estate professionals in s. 475.42(1)(e), F.S.;
- Barbers in s. 476.194(1)(b), F.S.; and
- Cosmetologists in s. 477.0265(1)(c), F.S.

For each of these professions, a violation of an agency rule of the governing chapter would be punishable as a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. If the violation is by a corporation licensed by the Florida Real Estate Commission, the corporation may be subject to a misdemeanor of the second degree, punishable as provided in s. 775.083, F.S.

⁶ 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.”

⁷ “Dodd-Frank Wall Street Reform and Consumer Protection Act” Pub. L. 111-203 (2010).

⁸ *Id.* at s. 1473.

Section 775.082, F.S., provides that a second degree misdemeanor is punishable by incarceration for not longer than 60 days in jail.⁹ Section 775.083, F.S., provides that a second degree misdemeanor can also be punishable by a fine of not more than \$500.¹⁰

Florida Drug and Cosmetic Act

One purpose of the act is to safeguard the public health and promote the public welfare by protecting the public from injury by product use and by merchandising deceit involving drugs, devices, and cosmetics. Another purpose of the act is to promote uniformity between state and federal laws and their administration and enforcement, throughout the United States.

In 2003, the Legislature enacted the Prescription Drug Protection Act,¹¹ which put in place additional safeguards for the distribution of prescription drugs within, into, and from this state. This legislation was predicated on the findings and recommendations of the report of the Seventeenth Statewide Grand Jury in its First Interim Report to the Legislature.¹² That grand jury was called to examine, among other matters, the safety of prescription drugs in Florida. In particular, they examined the situation concerning the sale and re-sale of prescription drugs in the wholesale market.

Section 499.003, F.S., defines terms that are used in the act. The bill amends the following terms in s. 499.003, F.S.: “distribute” or “distribution,” “drug,” “establishment,” “prescription drug,” and “wholesale distribution.”

Section 499.01, F.S., requires a variety of manufacturers, distributors, and other business entities involved in the preparation, manufacture, repackaging, or distribution of drugs, devices, and cosmetics to obtain a permit prior to operating. Permits that are addressed in the bill include:

- *Nonresident prescription drug manufacturer permit*, which is required for any person that is a manufacturer of prescription drugs, unless permitted as a third party logistics provider, located outside of this state or outside the United States and that engages in the wholesale distribution in this state of such prescription drugs;
- *Out-of-state prescription drug wholesale distributor permit*, which is required for a wholesale distributor located outside this state which engages in the wholesale distribution of prescription drugs into this state; and
- *Health care clinic establishment permit*, which is required for the purchase of a prescription drug by a place of business at one general physical location that provides health care or veterinary services, which is owned and operated by a business entity that has been issued a federal employer tax identification number.

Section 499.012(8), F.S., sets forth the application requirements for an out-of-state prescription drug wholesale distributor. Generally, the applicant must identify the business (name and trade names, address, and telephone number); and provide information about the ownership,

⁹ See s. 775.082(4)(b), F.S.

¹⁰ See s. 775.083(1)(e), F.S.

¹¹ See ch. 2003-155, L.O.F.

¹² The report is available at: <<http://myfloridalegal.com/pages.nsf/Main/09558F82389E020785256CDA006DB01A>> (Last visited on February 6, 2012).

operations and affiliated groups,¹³ including the name and address of each shareholder of a corporation that owns 5 percent or more of the corporation; a background statement and fingerprint card for affiliated persons;¹⁴ the estimated or actual annual dollar volume of certain activities pertaining to prescription drugs by the applicant; a copy of the deed or lease for the business property; a list of all licenses and permits issued to the applicant by any other state which authorize the applicant to purchase or possess prescription drugs; and documentation of the credentialing policies and procedures for customers if the applicant intends to sell Schedule II or Schedule III controlled substances to physicians in Florida.¹⁵

Effective October 1, 2011, all of the statutory powers, duties, and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds for the administration of ch. 499, F.S., relating to drugs, devices, cosmetics, and household products were transferred from the Department of Health to the Department of Business and Professional Regulation (DBPR).¹⁶

Limited Service Veterinary Medical Practice

Section 474.202(6), F.S., defines the term “limited-service veterinary medical practice” to mean:

offering or providing veterinary services at a location that has a primary purpose other than that of providing veterinary medical services at a permanent or mobile establishment permitted by the Board of Veterinary Medicine; provides veterinary medical services for privately owned animals that do not reside at that location; operates for a limited time; and provides limited types of veterinary medical services.

Section 474.202(9), F.S., defines the term “practice of veterinary medicine” to mean:

diagnosing the medical condition of animals and prescribing, dispensing, or administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease thereof; performing any manual procedure for the diagnosis of or treatment for pregnancy or fertility or infertility of animals; or representing oneself by the use of titles or words, or undertaking, offering, or holding oneself out, as performing any of these functions. The term includes the determination of the health, fitness, or soundness of an animal.

¹³ “Affiliated group” is defined in s. 499.003(2), F.S., to mean an affiliated group as defined by s. 1504 of the Internal Revenue Code of 1986, as amended, which is composed of chain drug entities, including at least 50 retail pharmacies, warehouses, or repackagers, which are members of the same affiliated group. The affiliated group must disclose the names of all its members to the department.

¹⁴ “Affiliated party” is defined in s. 499.003(3), F.S. In summary, it means a director, officer, trustee, partner, or committee member or a subsidiary or service corporation of the permittee or applicant; a person who, directly or indirectly, manages, controls, or oversees the operation of a permittee or applicant; and the five largest natural shareholders that own at least five percent of the permittee or applicant.

¹⁵ The specific application requirement is for documentation of the credentialing policies and procedures requirements by s. 499.0121(14), F.S. However, that subsection addresses reporting requirements. Subsection (15) addresses credentialing requirements for physician-customers for certain controlled substances.

¹⁶ See s. 27, ch. 2010-161, L.O.F.

Section 474.215(7), F.S., requires the board to establish by rule minimum standards for limited-service veterinary medical practices. The rules cannot restrict limited service veterinary medical practices and must be consistent with the type of limited veterinary medical service provided. The board has defined by rule minimum standards to include vaccinations, immunizations and preventative procedures for parasitic control¹⁷ on multiple animals at a temporary location and for a limited time.¹⁸ The rule defines the term “limited time” as no more than once every two weeks and no more than four hours in any one day for any single location where a clinic is held.¹⁹

According to the department, anyone, such as a retailer, may obtain a permit for limited service veterinary medical permit, but a licensed veterinarian must perform the services. These limited service clinics are inspected on a random basis. There has been an issue with these clinics not notifying the department before the clinic is conducted.

According to the department, it has not received any substantiated complaints about the care administered at limited service clinics. The complaints it has received about the clinics have been limited to paperwork violations, such as failure to properly register the clinics.

Mobile veterinarian clinics are licensed, must have a premises permit for the mobile unit, and must be inspected prior to providing veterinarian services. A “mobile veterinary establishment” and “mobile clinic” is:

a mobile unit which contains the same treatment facilities as are required of a permanent veterinary establishment or which has entered into a written agreement with another veterinary establishment to provide any required facilities not available in the mobile unit. The terms do not refer to the use of a car, truck, or other motor vehicle by a veterinarian making a house call.²⁰

III. Effect of Proposed Changes:

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.

Lien for Collection Service Expenses of Community Associations

The bill creates s. 468.439, F.S., in Part VIII (Community Association Management) of ch. 468, F.S. This new section authorizes the filing of a lien for collection services expenses that are reasonably related to the collection of a delinquent account rendered by a community association manager or a community association management firm on behalf of a community association. The collection expenses may be secured by filing a claim of lien if the collection services

¹⁷ According to the department, preventive services for parasitic control may require a prescription and testing to determine the health status of an animal.

¹⁸ Rule 61G18-15.007, F.A.C.

¹⁹ Rule 61G18-15.007(1), F.A.C.

²⁰ Section 474.202(7), F.S.

expense is: (1) specified by amount in a written agreement with the community association manager or management firm; and (2) payable to the community association manager or management firm as a liquidated sum.

The new section applies to collection expenses for delinquent accounts owed to community associations governed by chs. 718 (condominiums), 719 (cooperatives), and 720 (homeowner's associations).

It is not clear whether a separate lien would have to be filed for collection expenses which the community association manager or management firm has incurred on behalf of the association. For example, there are currently liens created in s. 718.116(5)(a), F.S.,²¹ on condominium parcels, in s. 719.108(4), F.S.,²² on cooperative parcels, and s. 720.3085(1), F.S., on parcels in homeowners' associations.

This provision does not specify whether the lien is subject to the lien requirements and restrictions in chs. 718, 719, and 720, F.S. To the extent that this lien is not subject to those requirements and restrictions, as further discussed below, this provision may conflict with the lien provisions in chs. 718, 719, and 720, F.S.

For example, it is not clear whether such lien is subject to the conditions provided for existing liens as noted above. Homeowners' associations have a lien on each parcel to secure the payment of assessments and other amounts if the lien is authorized by the governing documents of the association.²³ The bill may conflict with this provision to the extent that it permits a lien that is not authorized by the governing documents of the homeowners' association.

It is unclear whether the lien created by the bill effective for one year unless an enforcement action is commenced within that period or an automatic stay is issued by the filing of a bankruptcy petition as provided in s. 718.116(5)(b), F.S.²⁴ It is uncertain whether the unit owner required to comply with the notice provisions in s. 718.116(5)(c), F.S., for contesting a claim of lien.²⁵ Furthermore, it is not provided whether the association is required to file an action to enforce the lien within 90 days after the unit owner files the notice to contest the lien as required by s. 718.116(5)(c), F.S.²⁶

It is not clear whether the lien created by this section is subject to the provisions which require that the homeowner must be given an opportunity to satisfy the debt. A condominium owner must be given an opportunity to pay the debt before a judgment of foreclosure may be entered.²⁷ A lien on a cooperative parcel cannot be filed unless the parcel owner is given at least 30-days

²¹ Section 718.116(5)(a), F.S., creates a lien on each condominium parcel on behalf of condominium associations to secure payment of assessments.

²² Section 719.108(4), F.S., creates a lien on cooperative parcels to secure unpaid rents, assessments and interest, authorized late fees, and attorney's fees incurred by the association to incident to the collection of rents and assessments or to enforce the lien.

²³ Section 720.3085(1).

²⁴ Section 719.108(4), F.S., provides a similar requirement for cooperatives.

²⁵ Section 720.3085(1)(b), F.S., provides a similar requirement for homeowners' associations.

²⁶ *Id.*

²⁷ Section 718.116(6)(b), F.S.

notice of the intent to file the lien.²⁸ A lien on a parcel in a homeowners' association may not be recorded unless the homeowner is given at least 45 days to pay all amounts due, including attorney's fees and the actual costs associated with the preparation of the written demand for payment of the unpaid amount.

The bill requires that the collection services expenses must be payable to the community association manager or management firm as a liquidated sum. This may conflict with provisions that direct how community associations are to distribute payments that they receive. Section 718.116(3), F.S., requires that any payment received by the association must be applied first to the interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment.²⁹

The bill provides that the claim of lien may be filed if the collection services expense is payable to the community association manager or management firm as a liquidated sum. It is not clear whether this provision is a condition precedent to the filing of the claim of lien, i.e., whether the association's written agreement with the community association manager or management firm must provide that the collection service expense is payable to them as a liquidated sum. Alternatively, this provision may require that the community association manager or management firm is entitled to the funds collected through enforcement of the lien before the association is entitled to such funds.

The provision does not define the term "delinquent amount", e.g., whether the term includes amounts due as a result of fines in addition to unpaid regular or special assessments.

Exemption from Licensing As Asbestos Consultant or Contractor

Section 469.002, F.S., is amended to remove a requirement that persons repairing, maintaining, removing, or disposing of asbestos-containing pipe or conduit used for gas service must be licensed as an asbestos consultant or contractor. This removes duplication of regulation where natural gas utilities are subject to federal and state regulations. The statute already includes such an exemption for pipe or conduit that is used for electrical, electronic, communications, sewer, or water service.

Limited Service Veterinary Medical Practice

The bill amends s. 474.202(6), F.S., to provide that the limited service veterinary medical practice operates under rules set by the Board of Veterinary Medicine. It deletes the provision that the practice operates for a limited time.

Professional Practice Standards for Appraisers

The bill amends s. 373.461(5)(c), F.S., to replace references to the Uniform Standards of Professional Appraisal Practice with the Standards of professional practice established by rule of the Florida Real Estate Appraisal Board, including standards for the development or

²⁸ Section 719.108(4), F.S.

²⁹ A similar provision for the allocation of payments is provided in s. 719.108(3), F.S., for cooperatives, and in s. 720.3085(3)(b), F.S.

communication of a real estate appraisal as it relates to Lake Apopka improvement and management and the purchase of agricultural lands.

The bill amends s. 475.25(1), F.S., which provides the disciplinary provisions for real estate brokers, sales associates, and real estate schools to replace references to the Uniform Standards of Professional Appraisal Practice with the standards of professional practice adopted by rule of the Florida Real Estate Appraisal Board.

The bill amends s. 475.611, F.S., as follows:

- Section 475.611(1)(c), F.S., is amended 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.
- Section 475.611(1)(d), F.S., is amended to reference “licensed or certified appraisers” instead of “appraisers.”
- Section 475.611(1)(t), F.S., is created to define the term “subsidiary” to mean an organization that is controlled by a financial institution that is regulated by a federal agency. (Section 31).

The bill amends s. 475.615, F.S., to replace references to the Uniform Standards of Professional Appraisal Practice with the standards of professional practice, including standards for the development or communication of real estate appraisal, adopted by rule of the Florida Real Estate Appraisal Board with which an applicant must pledge that he or she will comply.

The bill amends ss. 475.617 and 475.6175(1), F.S., which provides the pre-licensure and post-licensure education requirements for registered trainee appraisers, respectively, to include rules of the Florida Real Estate Appraisal Board that are equivalent to the Uniform Standards of Professional Appraisal Practice.

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 months 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 amends s. 475.6235(4), F.S., which relates to the registration of appraisal management companies, to reference standards of professional practice adopted by rule of the Florida Real Estate Appraisal Board, including standards for the development or communication of real estate appraisal, instead of referencing the Uniform Standards of Professional Appraisal Practices with which the officers, managers, or owners must pledge they will comply.

The bill also creates s. 475.6235(9), F.S., to exempt a financial institution, as defined in s. 655.005, F.S., from the provisions of this section if the financial institution owns or operates an internal appraiser office, business, unit, or department, or an appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a Federal agency. 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.³⁰

The bill amends s. 475.624(14), F.S., which provides the disciplinary provisions for appraisers, to reference standards of professional practice adopted by rule of the Florida Real Estate Appraisal Board.

The bill amends s. 475.6245(1), F.S., which provides the disciplinary provisions for appraisal management companies, to reference standards of professional practice adopted by rule of the Florida Real Estate Appraisal Board.

The bill amends s. 475.628, F.S., which specifies the professional standards with which registered, licensed, and certified appraisers are required to comply, to require the Florida Real Estate Appraisal Board to adopt rules that establish standards of professional practice that meet or exceed nationally recognized standards of appraisal practice, including standards adopted by the Appraisal Standards Board of the Appraisal Foundation.³¹ It also references the standards of professional practice adopted by rule of the Florida Real Estate Appraisal Board.

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, F.S., which authorizes the Florida Real Estate Commission to approve distance learning courses.

Architects

The bill amends s. 481.209, F.S., to allow greater reciprocity of licensees' requirements to make Florida consistent with other states to improve licensing mobility for architects. It also amends ss. 481.211 and 481.213, F.S., to modify the internship requirements to make Florida consistent with other states to improve licensing mobility for architects.

Continuing Education for Inactive and Delinquent Licenses

The bill amends s. 455.271(10), F.S., to require only one renewal cycle of continuing education to reactivate a license for the professions regulated by a board of the department, or by the department if there is no board. It reduces the continuing education requirements for renewal of an inactive license to only one renewal cycle of hours, instead of the hours required for each year or two-year period that the license was inactive. The bill exempts certified public accountants

³⁰ *Supra* at n. 6.

³¹ Established in 1986, the Appraisal Foundation is composed of professional appraisal organizations in the United States and Canada. Its mission is to establish generally accepted standards of professional practice, i.e., the Uniform Standards of Professional Appraisal Practice (USPAP). The Appraisal Standards Board sets forth the rules for developing and reporting its results. It also promotes the use, understanding and enforcement of the USPAP. Information about the Appraisal Foundation is available at: <http://www.appraisalfoundation.org/> (Last visited February 6, 2012).

licensed under ch. 473, F.S., and real estate brokers, sales associates, real estate schools, and appraisers licensed under ch. 474, F.S. These professionals would have to complete the continuing education required for each two-year period of licensure.

The bill also reduces the continuing education hours required to reactivate an inactive license to only one renewal cycle of hours, instead of the hours required for each year the license was inactive, for the following professions:

- Community association managers in s. 468.4338, F.S.;
- Home inspectors in s. 468.8317, F.S.;
- Mold-related services in s. 468.8417, F.S.;
- Cosmetology in s. 477.0212(2), F.S.;
- Architecture and interior design in s. 481.217(1), F.S.;
- Landscape architecture in s. 481.315(1), F.S.;
- Construction contracting in s. 489.116(6), F.S.; and
- Electrical and alarm system contracting in s. 489.519(1), F.S.

The bill also amends s. 481.217(1), F.S., to clarify that the Board of Architecture and Interior Design may only approve continuing education that builds upon the basic knowledge of interior design.

Repeal of Criminal Penalties

The bill amends s. 468.391, F.S., to limit the application of criminal penalties relating to auctioneering. The criminal penalties would not apply to violations of rules of the Florida Board of Auctioneers or violations of part VI of ch. 468, F.S. The bill limits the application of criminal penalties to the violations related to the following paragraphs in s. 468.389(1), F.S.:

- (c) Failure to account for or to pay or return, within a reasonable time not to exceed 30 days, money or property belonging to another which has come into the control of an auctioneer or auction business through an auction.
- (e) Any conduct in connection with a sales transaction which demonstrates bad faith or dishonesty.
- (f) Using or permitting the use of false bidders, cappers, or shills.
- (h) Commingling money or property of another person with his or her own. Every auctioneer and auction business shall maintain a separate trust or escrow account in an insured bank or savings and loan association located in this state in which shall be deposited all proceeds received for another person through an auction sale.
- (i) Refusal or neglect of any auctioneer or other receiver of public moneys to pay the moneys so received into the State Treasury at the times and under the regulations prescribed by law.

The bill also repeals the following provisions that provide criminal penalties for violations of agency rules and the chapters of the Florida Statutes that govern the specified professions:

- Section 475.42(1)(e), F.S., relating to violations of rules of the Florida Real Estate Commission and violations of ch. 475, F.S.;
- Section 476.194(1)(b), F.S., relating to violations of rules of the Barbers' Board, and violations of ch. 476, F.S.; and
- Section 477.0265(1)(c), F.S., relating to violations of the Board of Cosmetology and ch. 477, F.S.

Exemptions from Requirements Concerning Mold-Related Services

The bill amends s. 468.841(d), F.S., to exempt persons and businesses licensed as Landscape Architects under Part 2 of ch. 481., F.S., from complying with requirements in Part XVI of ch. 468, F.S., relating to mold assessment if they are not holding themselves out for hire to the public using names that imply that they perform mold assessment services, or stating or implying that they are licensed under Part XVI. The statute's current exemptions include persons and businesses licensed as architects or interior designers under Part I of ch. 481, F.S.

Repeal of Redundant Penalties

The bill repeals paragraphs (b) and (c) of s. 475.626(1), F.S., which provide violations and penalties for real estate appraisers. These provisions are redundant of other provisions in this section. Section 475.626(1)(b), F.S., which prohibits violating any lawful order or rule of the board which is binding on him or her, is addressed in s. 475.624(4), F.S. Section 475.626(1)(c), F.S., which provides that a trainee appraiser or a licensed or certified appraiser may not commit any conduct set forth in s. 475.624, F.S., is addressed by s. 475.624, F.S., which contains prohibitions that apply to trainee appraisers, and licensed or certified appraisers.

Florida Drug and Cosmetic Act

The bill amends s. 499.003, F.S., which provides definitions for the Florida Drug and Cosmetic Act.

The bill amends the definition of "distribute" or "distribution" to specify that the term does not include the billing and invoicing activities that commonly follow a wholesale distribution transaction. Under s. 499.003(54), F.S., "wholesale distribution" is defined as "distribution of prescription drugs to persons other than a consumer or patient," with certain specified exceptions. References in the law that require wholesale distributions to be backed-up using documents that show each transaction from the manufacture of the drug through each distribution may conflict with the change in the definition of "distribution."

Specifically, s 499.0121(6), F.S., requires wholesale distributors to establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs. These records must provide a complete audit trail from receipt to sale or other disposition. One component of the required records is any financial documentation supporting the transaction.³² The change in the definition of "distribution" appears to have the effect of no longer requiring wholesale distributors to comply with the requirement to keep financial documentation available for inspection by the department.

³² See s. 499.0121(6)(a)5., F.S.

Section 499.01212, F.S., requires each person engaged in the wholesale distribution of a prescription drug to provide a pedigree paper to the person receiving the drug prior to or simultaneous with the distribution. The wholesale distributor must also maintain and make available to the department, upon request, the invoice numbers from the manufacturer. Pedigrees have to be authenticated in accordance with rule 64F-12.013(5)(d), F.A.C., using invoices and shipping documents. If a wholesale distribution does not include billing and invoicing activities, the pedigrees, which have to be authenticated using shipping documents and invoices, cannot be authenticated.

The bill amends the definition of “drug” to specifically include active pharmaceutical ingredient as a component of a drug. The bill defines “active pharmaceutical ingredient,” for purposes of the definition of “drug,” to include any substance or mixture of substances intended, represented, or labeled for use in drug manufacturing that furnishes or is intended to furnish, in a finished dosage form, any pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, therapy, or prevention of disease in humans or other animals, or to affect the structure or any function of the body of humans or other animals.

The definition of “establishment” is amended to modify the meaning of “one physical location,” at which the place of business is located, to clarify that the location may extend to one or more contiguous suites, units, floors, or buildings operated and controlled exclusively by entities under common operation and control. Where multiple buildings are under common exclusive ownership, operation, and control, an intervening thoroughfare does not affect the contiguous nature of the buildings. For purposes of permitting, each suite, unit, floor, or building must be identified in the most recent permit application.

The bill amends the definition of “prescription drug” to specify that an active *pharmaceutical* ingredient is a prescription drug only if substantially all finished dosage forms in which it may be lawfully dispensed or administered in Florida are also prescription drugs. The U.S. Food and Drug Administration determines the classification of drugs, whether prescription or not, and this definition may not be consistent with the federal classification.

The bill deletes s. 499.01(2)(c)3., F.S., the exemption from obtaining a nonresident prescription drug manufacturer permit for a manufacturer to distribute a prescription drug active pharmaceutical ingredient that it manufactures to a prescription drug manufacturer that is permitted in this state if it is in limited quantities intended for research and development and not for resale, or human use other than authorized clinical trials and biostudies authorized and regulated by federal law.

The bill also deletes the exemption from obtaining an out-of-state prescription drug wholesale distributor permit for an intracompany sale or transfer of a prescription drug from an out-of-state establishment that is licensed as a prescription drug wholesale distributor in its state of residence to a licensed prescription drug wholesale distributor in Florida, if both wholesale distributors conduct wholesale distributions of prescription drugs under the same business name.

The bill creates a new subsection (3) to provide exemptions from required permits. A permit is not required:

- To distribute prescription drug active pharmaceutical ingredient from an establishment located in the United States to an establishment that is located in Florida and permitted as a prescription drug manufacturer under the following conditions:
 - The active pharmaceutical ingredient is for use by the prescription drug manufacturer in preparing, deriving, processing, producing, or fabricating a prescription drug finished dosage form at the establishment in Florida where the product is received.
 - The manufacturing must be under an approved and otherwise valid New Drug Approval, Abbreviated New Drug Approval, New Animal Drug Approval, or Therapeutic Biologic Application.
 - The application, active pharmaceutical ingredient, or finished dosage form must not have been withdrawn or removed from the U.S. market for public health reasons.
 - The distributor claiming an exemption must maintain a license, permit or registration to engage in the wholesale distribution of prescription drugs under the laws of the state from which the product is distributed.
 - The distributor claiming an exemption and the prescription drug manufacturer purchasing and receiving the active pharmaceutical ingredient must comply with recordkeeping requirements, but not the pedigree paper requirements.
- To distribute limited quantities of a prescription drug that has not been repackaged from an establishment located in the United States to an establishment located in this state that is permitted as a prescription drug manufacturer for research and development or to a holder of a letter of exemption issued by the department for research, teaching, or testing.
 - The department must define “limited quantities” by rule, and may include the allowable number of transactions within a given period of time and the amounts of prescription drugs distributed into the state for purposes of this exemption.
 - The distributor claiming an exemption must maintain a license, permit or registration to engage in the wholesale distribution of prescription drugs under the laws of the state from which the product is distributed.
 - All purchasers and recipients of any prescription drugs under this exemption must ensure that the products are not resold or used, directly or indirectly, on humans except in lawful clinical trials and biostudies authorized and regulated by federal law.
 - The distributor claiming an exemption and the prescription drug manufacturer purchasing and receiving the active pharmaceutical ingredient must comply with recordkeeping requirements, but not the pedigree paper requirements.
 - The immediate package or container of any active pharmaceutical ingredient distributed into the state intended for teaching, testing, research, and development must bear a label prominently displaying the statement “Caution: Research, Teaching, or Testing Only – Not for Manufacturing, Compounding, or Resale.”
- For an intracompany sale or transfer of a prescription drug from an out-of-state establishment that is licensed as a prescription drug wholesale distributor in its state of residence to a licensed prescription drug wholesale distributor in Florida.
 - Both wholesale distributors must conduct wholesale distributions of prescription drugs under the same business name.

- The recordkeeping requirements and the pedigree paper requirements must be followed for such transactions.

The bill requires persons who receive prescription drugs from a source claimed to be exempt from permitting to maintain on file the following information for all distributors and establishments from whom they purchase or receive prescription drugs under an exemption:

- A record of the FDA establishment registration number, if any;
- The resident state prescription drug wholesale distribution license, permit, or registration number; and
- A copy of the most recent resident state or FDA inspection report.

All persons claiming an exemption from the permitting requirements of the act who engage in the distribution of prescription drugs in or into Florida are subject to the act. They must make available, within 48 hours, to the department on request all records related to any prescription drugs distributed under an exemption, regardless of the location where the records are stored.

The bill requires a person who purchases or receives a prescription drug from a person claimed to be exempt from the permitting requirements to report to the department in writing within 14 days after receiving any product that is misbranded or adulterated or that fails to meet minimum standards set forth in the official compendium or state or federal good manufacturing practices for identity, purity, potency, or sterility, regardless of whether the product is thereafter rehabilitated, quarantined, returned, or destroyed.

The bill authorizes the department to adopt rules to administer the exemption provisions in the bill. The bill declares that the failure to comply with the requirements of the exemption provisions, or rules adopted by the department to administer these provisions is a violation of:

- Section 499.005(14), F.S., which makes the purchase or receipt of a prescription drug from a person that is not authorized under this chapter to distribute prescription drugs to that purchaser or recipient an unlawful act; and
- For knowing failure, s. 499.0051(4), F.S., which states that a person who knowingly purchases or receives a prescription drug in a wholesale distribution transaction from a person not authorized to distribute prescription drugs commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.³³

The exemption provisions in the bill do not relieve any persons from any requirement prescribed by law with respect to controlled substances.

Effective Date

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

³³ Section 775.082, F.S., provides that a felony of the second degree is punishable by a term of imprisonment not exceeding 15 years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not exceeding \$10,000. Section 775.084, F.S., provides increased penalties for habitual offenders.

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:

The reduction in the number of continuing education hours required to reactivate an inactive license would reduce costs for the following professionals with inactive licenses: community association managers, home inspectors, providers of mold-related services, cosmetologists, architects, landscape architects, construction contractors, and electrical and alarm system contractors. The bill may reduce the amount paid by the licensees to private continuing education providers.

Authorization of the filing of a lien to secure collections services expenses for condominium associations would result in increased collection of the expenses if liens are satisfied.

Because the bill decriminalizes violations of rules that are currently second degree misdemeanors, it would have an impact on private citizens who may otherwise have been assessed a fine or required to serve a jail sentence.

Regarding the exemptions from the permitting requirements in ch. 499, F.S., the Department of Business and Professional Regulation (department) advises that an unknown, but probably small, number of specialty distributors providing a narrow category of products to Florida customers would be exempt from permitting fees.

C. Government Sector Impact:

There would be no increase or decrease in revenue. The costs of continuing education courses are paid by the licensees directly to the private sector course provider and not to the department; therefore, the reduction in the number of continuing education hours required to reactivate an inactive license would not affect the department.

In addition, loss of revenue related to granting initial licensing fee waivers to recently discharged military veterans would be insignificant.

Regarding the exemptions from the permitting requirements in ch. 499, F.S., the department estimates that the potential reduction in license fees as a result of the exemptions in the bill would be minimal, if any. The bill may require changes to the inspection application and the associated violation codes, but this can be done with existing resources.

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/CS by Budget Subcommittee on General Government Appropriations on February 28, 2012:

The committee substitute for committee substitute (CS/CS) organizes the sections of the bill into statutory numerical order. The CS/CS also:

- Does not amend s. 468.525, F.S., relating to the initial license requirements for employee leasing companies;
- The bill amends s. 475.451, F.S., to provide that real estate schools may offer any continuing education course through distance learning if the course complies with s. 475.17, F.S., instead of with subsection (2) of s. 475.17, F.S.;
- Amends s. 499.003, F.S., of the Florida Drug and Cosmetic Act, to revise definitions;
- Amends s. 499.01, F.S., to provide exemptions from the permitting requirements of the Florida Drug and Cosmetic Act in ch. 499, F.S.; and
- Amends s. 474.202(6), F.S., to provide that a limited service veterinary medical practice operates under rules set by the Board of Veterinary Medicine, and deletes the provision that the practice operates for a limited time.

CS by Criminal Justice on February 9, 2012:

- 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 filing of a lien for collection services expenses that are reasonably related to the collection of a delinquent account rendered by a community association manager or management firm on behalf of a community association.
- Clarifies the confidentiality of certain financial documents for employee leasing companies.

- Conforms with exemptions for other utilities by removing a requirement for persons repairing, maintaining, removing, or disposing of asbestos-containing pipe or conduit used for gas service to be licensed as an asbestos consultant or contractor.
- Allows greater reciprocity of architect licensees and modifies the internship requirements to make Florida consistent with other states to improve licensing mobility for architects.
- Expands exemptions regarding mold-related services to include landscape architects.
- Revises 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.
- Permits applicants for a real estate appraiser's certification to use the results of national examinations required for the license that were obtained more than 24 months after the date of the examination.
- Permits real estate continuing education instructors to complete their continuing education through distance learning and permits real estate schools to offer any course through distance learning.

B. Amendments:

None.