

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 Criminal Justice Committee

BILL: SB 762

INTRODUCER: Senator Hays

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

DATE: February 2, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	Pre-meeting
3.	_____	_____	<u>BC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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.

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 provides an effective date of July 1, 2012.

This bill substantially amends the following sections of the Florida Statutes: 373.461, 455.271, 468.391, 468.4338, 468.8317, 468.8417, 475.25, 475.42, 475.615, 475.617, 475.6175, 475.6235, 475.624, 475.6245, 475.626, 475.628, 476.194, 477.0212, 477.0265, 481.217, 481.315, 489.116, and 489.519.

II. Present Situation:

Department of Business and Professional Regulation

The Department of Business and Professional Regulation (department) was established in 1993 with the merger of the Department of Business Regulation and the Department of Professional Regulation.¹ The department is created in s. 20.165, F.S. Section 20.165(2), F.S., creates the following eleven divisions within the department:

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

Professional Boards

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

- Board of Architecture and Interior Design, created under part I of ch. 481, F.S.
- Florida Board of Auctioneers, created under part VI of ch. 468, F.S.
- Barbers' Board, created under ch. 476, F.S.
- Florida Building Code Administrators and Inspectors Board, created under part XII of ch. 468, F.S.
- Construction Industry Licensing Board, created under part I of ch. 489, F.S.
- Board of Cosmetology, created under ch. 477, F.S.
- Electrical Contractors' Licensing Board, created under part II of ch. 489, F.S.
- Board of Employee Leasing Companies, created under part XI of ch. 468, F.S.
- Board of Landscape Architecture, created under part II of ch. 481, F.S.

¹ Chapter 93-220, L.O.F.

- 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.

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.

² Section 310.151, F.S.

³ Section 548.003, F.S.

⁴ Section 468.4315, F.S.

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.

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.

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

⁵ Licenses are renewed on a two-year cycle.

license may not exceed 12 classroom hours for each year the certificate or registration was inactive.

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.

Section 775.082, F.S., provides that a second degree misdemeanor is punishable by incarceration for not longer than 60 days in jail.⁶ Section 775.083, F.S., provides that a second degree misdemeanor can also be punishable by a fine of not more than \$500.⁷

III. Effect of Proposed Changes:

Professional Practice Standards for Appraisers

The bill amends s. 373.461(5)(c), F.S., which relates to the purchase of agricultural lands by the St. Johns River Water Management District, 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 appraisals, instead of referencing the Uniform Standards of Professional Appraisal Practices. (Section 1).

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. (Section 7).

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. (Section 9).

⁶ See s. 775.082(4)(b), F.S.

⁷ See s. 775.083(1)(e), F.S.

The bill amends ss. 475.617 and 475.6175(1), F.S., which provide 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. (Sections 10 and 11).

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. (Section 12).

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. (Section 13).

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. (Section 14).

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.⁸ It also references the standards of professional practice adopted by rule of the Florida Real Estate Appraisal Board. (Section 16).

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 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 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. (Section 2).

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. (Section 4);
- Home inspectors in s. 468.8317, F.S. (Section 5);

⁸ 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).

- Mold-related services in s. 468.8417, F.S. (Section 6);
- Cosmetology in s. 477.0212(2), F.S. (Section 18);
- Architecture and interior design in s. 481.217(1), F.S. (Section 20);
- Landscape architecture in s. 481.315(1), F.S. (Section 21);
- Construction contracting in s. 489.116(6), F.S. (Section 22); and
- Electrical and alarm system contracting in s. 489.519(1), F.S. (Section 23).

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 for an interior designer 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. (Section 3):

- (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 shells.
- (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 8);
- Section 476.194(1)(b), F.S., relating to violations of rules of the Barbers' Board, and violations of ch. 476, F.S. (Section 17); and
- Section 477.0265(1)(c), F.S., relating to violations of the Board of Cosmetology and ch. 477, F.S. (Section 19).

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. (Section 15).

Effective Date

The bill provides an effective date of July 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:

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.

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.

C. Government Sector Impact:

According to the department, it would see 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.

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.

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