

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 Committee on Appropriations

BILL: CS/SB 1686

INTRODUCER: Regulated Industries Committee and Senator Altman

SUBJECT: Pugilistic Exhibitions

DATE: April 16, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.	Davis	DeLoach	AGG	Favorable
3.	Davis	Hansen	AP	Pre-meeting
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| 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:

CS/SB 1686 relates to pugilistic exhibitions, such as boxing, kickboxing, and the martial arts, which are regulated by the Florida Boxing Commission (commission) within the Department of Business and Professional Regulation (department) under ch. 548, F.S.

The bill is not anticipated to have a fiscal impact on state expenditures. However, the bill directs the commission to adopt a rule imposing a late fee on taxes owed the commission. The commission estimates less than \$7,000 in revenue would be collected annually from imposing a late fee.

Specifically, the bill:

- Revises current definitions and defines new terms;
- Clarifies the duties and responsibilities of the executive director of the commission;
- Deletes a duplicative requirement the commission must electronically record of all its scheduled proceedings;
- Authorizes the commission to approve, suspend, or revoke its approval of amateur sanctioning organizations for mixed martial arts matches;

- Exempts several types of matches from regulation by the state, including amateur matches conducted by public postsecondary institutions, public secondary schools and the Florida National Guard and U.S. Armed Forces, and matches conducted by the International Olympic Committee, the Special Olympics, or the Junior Olympics, and professional or amateur martial arts activity;
- Provides a participant's failure or refusal to provide a urine sample is an immediate and serious risk to the health, safety, and welfare of the participants and the public, and authorizes the commission to suspend the participant's license and to subject the participant to disciplinary action;
- Provides the commission's hearings related to the withholding of purses must be held pursuant to ch. 120, F.S., the Administrative Procedures Act;
- Requires promoters to keep specified records for a period of seven years;
- Requires audits to verify compliance with promoter reporting requirements;
- Requires the commission to establish by rule the procedure for auditing a promoter's records, and for resolving any inconsistencies revealed in an audit, and for imposing late fees if taxes are owed; and
- Provides the procedure for emergency license suspensions and requires the general counsel of the department to review the grounds for emergency suspension orders and to file an administrative complaint against the licensee within 21 days after issuance of the suspension order.

The bill would take effect on July 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 548.002, 548.004, 548.006, 548.007, 548.046, 548.054, 548.06, 548.07, and 548.073.

II. Present Situation:

Florida State Boxing Commission

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing, and mixed martial arts by the Florida State Boxing Commission (commission) within the Department of Business and Professional Regulation (department).

Section 548.006(3), F.S., provides the commission with exclusive jurisdiction over every professional boxing match and professional mixed martial arts and kickboxing matches.

The commission's jurisdiction over amateur matches is limited to the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for boxing and kickboxing matches held in the state.¹ Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.² This jurisdiction does not extend to amateur sanctioning organizations for mixed martial arts.

¹ Section 548.006(3), F.S.

² Section 548.002(2), F.S.

According to the department, the commission's primary duty is to ensure all matches comply with the laws and rules and the matches are competitive and physically safe for the participants. The commission licensed 1,224 professionals in FY 2011-12 and processed 51 live event permits. In addition to its daily processing of applications for licensure and the approval or denial of live event permits, the commission coordinates live event schedules and evaluates proposed fight cards. It also evaluates the assignment of officials (referees, judges, physicians) and event staff (event coordinator, chief inspector, inspectors, and timekeeper).

A department representative or commission representative is assigned to attend each official weigh-in and live event. This person attends the official weigh-in during which the application is processed, license fees are collected, the results of participant medical examinations are verified, pre-fight physicals are conducted by physicians, the promoter/participant contracts are collected, participants' weights are recorded, officials' (referee, judges, and physicians) pay from the promoter are collected, and the required accidental death and health insurance for each of the participants is verified. The department or commission representative is also accompanied to the event by department's OPS event staff, i.e., the event coordinator, timekeeper, and inspector. These OPS event staff and the representative from the department or commission also inspect the ring for safety standards, verify that emergency medical personnel and an ambulance are on-site, assign inspectors to each of the fighters, conduct match timekeeping, verify assigned officials are present, distribute officials' pay following the event, and conduct participant drug tests, if necessary.

Definitions

Section 548.002(3), F.S., defines the term "boxing" to mean "to compete with the fists."

Section 548.002(12), F.S., defines the term "kickboxing" to mean to "compete with the fists, feet, legs, or any combination thereof, and includes "punchkick" and other similar competitions."

Section 548.002(16), F.S., defines the term "mixed martial arts" to mean:

unarmed combat involving the use, subject to any applicable limitations set forth in this chapter, of a combination of techniques from different disciplines of the martial arts, including, but not limited to, grappling, kicking, and striking.

Section 548.002(20), F.S., defines the term "promoter" to mean:

any person, and includes any officer, director, employee, or stockholder of a corporate promoter, who produces, arranges, or stages any match involving a professional.

Executive Director

Section 548.004(1), F.S., requires the department, with the approval of the commission, to employ an executive director. The duties and responsibilities of the executive director include:

- Keeping a record of all proceedings of the commission;
- Preserve all books, papers, and documents pertaining to the business of the commission;
- Prepare any notices and papers required;
- Appoint judges, referees, and other officials as delegated by the commission and pursuant to ch. 548, F.S., and the rules of the commission; and
- Perform any other duties as the department or commission directs.

Recording of Commission Proceedings

Section 548.004(2), F.S., requires the commission to electronically record all of its scheduled proceedings. Section 455.203(7), F.S., also requires the department to electronically record all of its proceedings.

Licenses

Several professions are licensed by the commission. A license is required to be the promoter of a match.³ Before acting in any capacity in a match, a license is required to be a participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician, matchmaker, concessionaire, or booking agent or representative of a booking agent.⁴ Prior to working as the ringside physician, a physician must be licensed under ch. 458, F.S., or ch. 459, F.S., must maintain an unencumbered license in good standing, and must demonstrate satisfactory medical training or experience in boxing, or a combination of both, to the executive director. The commission also licenses the concessionaires.⁵

Exceptions

The commission's jurisdiction does not extend to:

- A match conducted or sponsored by a bona fide non-profit school or education program whose primary purpose is instruction in martial arts, boxing, or kickboxing if the match is held in conjunction with the instruction, and is limited to amateur participants who are students of the school or instructional program;
- A match conducted or sponsored by any company or detachment of the Florida National Guard, if the match is limited to participants who are members of the Florida National Guard; or
- A match conducted or sponsored by the Fraternal Order of Police, if the match is limited to amateur participants and is held in conjunction with a charitable event.⁶

Revocation and Suspension of a License

Section 548.046(3)(c), F.S., provides that the failure or refusal to provide a urine sample, immediately upon request, results in the revocation of the participant's license.

³ See s. 548.012(1), F.S.

⁴ Section 548.017, F.S.

⁵ See 548.015, F.S.

⁶ See s. 548.007, F.S.

Withholding of Purses

Section 548.054, F.S., provides the procedure for the withholding of prize purses. A member of the commission, a commission representative, or the referee may order a promoter to surrender any purse or other funds payable to a participant, or to withhold the share of any manager, if it appears that:

- The participant is not competing honestly, or is intentionally not competing to the best of his or her ability and skill in a match represented to be a contest; or
- The participant, his or her manager, or any of the participant's seconds has violated ch. 548, F.S.⁷

In the event a purse is withheld, the purse must be delivered to the commission by the promoter.⁸ Within ten days after the match, the person from whom the purse was withheld may apply, in writing, to the commission for a hearing.⁹ Upon receipt of the application, the commission must set the date for a hearing. Within ten days after the hearing or after ten days following the match, if no application for a hearing is filed, the commission is required to meet and determine the disposition of the withheld purse.¹⁰ If the commission finds the charges sufficient, it may decide that all or a part of the funds be forfeited.¹¹ Conversely, if the commission does not find the charges sufficient, it must distribute the withheld funds immediately.¹²

According to the department, the current process is vague and does not provide appropriate procedure or rulemaking authority to create a procedure that provides appropriate due process rights.

Reporting Requirement

Within seventy-two hours after a match, the promoter of that match must file a written report with the commission.¹³ The report must include information about the number of tickets sold, the amount of gross receipts, and any other facts that the commission requires.¹⁴ Chapter 548, F.S., does not require the promoter to retain a copy of the written report.

The term "gross receipts" is defined as:

- The gross price charged for the sale or lease of broadcasting, television, and motion picture rights without any deductions for commissions, brokerage fees, distribution fees, advertising or other expenses or charges;
- The portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter;

⁷ Section 548.054(1), F.S.

⁸ Section 548.054(2), F.S.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Section 548.06(1), Florida Statutes.

¹⁴ *Id.*

- The face value of all tickets sold and complimentary tickets issued, provided, or given; and
- The face value of any seat or seating issued, provided, or given in exchange for advertising sponsorships, or anything of value to the promotion of an event.¹⁵

According to the department, the current definition of “gross receipts” has led to some confusion in the industry because licensees are not sure whether to include state and federal taxes within the face value of a ticket.

Commission Hearings

Section 548.073, F.S., provides any member of the commission may conduct a hearing. Before any adjudication is rendered, a majority of the commission must examine the record and approve the adjudication and order. The commission is not required to follow the Administrative Procedure Act in ch. 120, F.S.

III. Effect of Proposed Changes:

Section 1 - Definitions

The bill amends s. 548.002, F.S., to revise current definitions and to define new terms. Specifically, the bill:

- Changes the definition of the term “boxing” in s. 548.002(3), F.S., to mean the practice of fighting with the fists as a sport;
- Creates s. 548.002(6), F.S., to define the term “concessions” to mean souvenirs, programs, drinks, food, alcohol, clothing, or other tangible objects sold to the general public during matches;
- Creates s. 548.002(11), F.S., to define the term “face value” to mean the dollar value which is equal to what the customer is required to pay, or would be required to pay, if it is a complimentary ticket. Taxes are not included in the face value if the ticket specifies the amount of admission charges attributable to state or federal taxes;
- Creates s. 548.002(13), F.S., to define the term “full contact” to mean the use of blows and strikes during a match or bout in which the blows or strikes, break the plane of the participant’s body, are delivered to the head, face, neck, or body of the receiving participant’s body, or cause the receiving participant to move in response to the blow or strike;
- Amends the definition of the term “kickboxing” in s. 548.002(15), F.S., to include “hands” in the definition. It would mean the practice of fighting with the fists, hands, feet, legs, or any combination, and includes “punchkick” and other similar competitions;
- Amends s. 548.002(19), F.S., to define the term “mixed martial arts” to mean full contact, unarmed combat involving the use of a combination of two or more techniques, including, but not limited to, wrestling, grappling, kicking, and striking, from different disciplines of the martial arts. The term may include, but is not limited to, boxing, kickboxing, Muay Thai,¹⁶ and Thai boxing; and

¹⁵ Section 548.06(1), F.S.

¹⁶ Muay Thai is a combat sport from the muay martial arts of Thailand. See <http://www.wmcmuaythai.org/about> (Last visited March 18, 2013).

- Amends the definition of the term “physician” in s. 548.002(21), F.S., to mean a person licensed as a medical doctor under ch. 458, F.S, or as a doctor of osteopathy under ch. 459, F.S., or an equivalent license from another jurisdiction.

Section 2 - Executive Director

The bill amends s. 548.004(1), F.S., to require the executive director or his or her designee to perform the duties or responsibilities set forth by the commission, including conducting the functions of the commission office, appointing event and commission officials, approving licenses, permits, matches, and fight cards. It deletes the requirement that the executive director must keep a record of all proceedings of the commission, preserve all books, papers, and documents pertaining to the business of the commission, prepare any notices and papers required, appoint judges, referees, and other officials as the commission or department deem necessary.

In addition, the bill deletes the requirement in s. 548.004(2), F.S., that the commission require electronic recording of all its scheduled proceedings. Under current law, s. 455.203(7), F.S., requires all proceedings conducted by the department be electronically recorded.

Section 3 - Jurisdiction of the Commission

The bill amends s. 548.006(3), F.S., to include, within the commission’s authority, the approval and suspension or revocation of approval of amateur sanctioning organizations for mixed martial arts matches.

Section 4 - Exceptions

The bill amends s. 548.007(1), F.S., to exempt from regulation under ch. 548, F.S., matches that do not allow full contact if the match is limited to amateurs. The bill deletes the exemption in this subsection for matches conducted or sponsored by a bona fide non-profit school or education program whose primary purpose is instruction in martial arts, boxing, or kickboxing if the match is held in conjunction with the instruction, and is limited to amateur participants who are students of the school or instructional program.

The bill also provides the following additional exemptions from ch. 548, F.S.:

- Amateur matches conducted by public post secondary education institutions or public secondary schools;
- Amateur matches conducted by the Florida National Guard and U.S. Armed Forces;
- Matches conducted by the International Olympic Committee, the Special Olympics, or the Junior Olympics; and
- Professional or amateur martial arts activity.

Section 548.007(7), F.S., to defines the term “martial arts” to mean any traditional form of self-defense taught by masters which uses physical skill and coordination, and is taught and advanced on a belt system, including, but is not limited to, karate, aikido, judo, and kung fu. The term does not include “mixed martial arts,” which is defined in s. 548.002(19), F.S.

Section 5 - Immediate Suspension

The bill amends ss. 548.046(3)(c) and (d), F.S., to provide a participant's failure or refusal to provide a urine sample constitutes an immediate and serious risk to the health, safety, and welfare of the participants and the public and a grounds for immediate suspension. It authorizes the commission to suspend the participant's license and to subject the participant to disciplinary action.

The bill creates s. 548.046(3)(d), F.S., to provide that testing positive for any substance prohibited by commission rule¹⁷ will also result in the immediate suspension of the participant's license and constitute grounds for additional disciplinary action.

Section 6 - Withholding of Purses

The bill amends s. 548.054(2), F.S., to provide the commission must hold a hearing pursuant to s. 120.569, F.S., and s. 120.57, F.S., for hearings related to the withholding of purses. The hearing procedures in s. 120.569, F.S., relate to proceedings in which the substantial interests of a party are determined by an agency. The hearing procedures in s. 120.57, F.S., relate to proceedings that involve disputed material issues of fact before the Division of Administrative Hearings.

Also, the bill deletes the requirement the commission must fix a date for the hearing and meet to determine the disposition of the withheld purse within 10 days after the hearing.

Section 7 - Promoter Recordkeeping Requirement

The bill amends s. 548.06(1)(c), F.S., which requires a promoter to submit a written report to the commission within 72 hours after the match, to provide the face value of tickets sold and complimentary tickets issued does not include federal and state taxes, if applicable.

Additionally, the bill creates s. 548.06(7), F.S., to require the promoter to keep a copy of specified records for a period of seven years, including records necessary to justify and support the reports submitted to the commission, reports filed with the commission that are certified by the promoter, copies of all gross receipts, independently prepared ticket manifests, and receipted vouchers for all expenditures and deductions.

The bill creates s. 548.06(8), F.S., to provide that compliance with the reporting requirements in s. 548.06, F.S., is subject to verification by department or commission audit. It provides the commission has the right to audit a promoter's books and records.

The bill creates s. 548.06(9), F.S., to direct the commission to adopt rules to establish a procedure for auditing a promoter's records, and for resolving any inconsistencies revealed in the audit, and to impose late fees if taxes are owed.¹⁸

¹⁷ See rule 61K1-1.0043, F.A.C.

¹⁸ Section 548.075(1), F.S., authorizes the commission to impose a fine of not more than \$5,000 for any violation of ch. 548, F.S., in lieu of or in addition to any other punishment provided for such violation.

Section 8 - Emergency Suspension of License

The bill amends s. 548.07, F.S., to provide an emergency license suspension procedure. The bill authorizes the commission, any commissioner, the executive director or his or her designee, or any commission designee to issue an emergency suspension of a licensee's license when the licensee poses an immediate and serious danger to the health, safety, and welfare of the public, a licensee, or a participant.

The disciplinary process would proceed under ch. 120, F.S., after the administrative complaint is served on the licensee as provided in s. 455.275, F.S.¹⁹

In addition, the bill requires the general counsel of the department to review the grounds for the emergency suspension order and to file an administrative complaint against the licensee within 21 days after issuance of the suspension order. The bill deletes the current suspension procedure, including the requirement that the commission must hold a hearing within 10 days after the date on which the license or permit is suspended.

Section 9 - Commission Hearings

The bill amends s. 548.073, F.S., to provide the hearing held under ch. 548, F.S., must be pursuant to ch. 120, F.S. The bill deletes the provision that any member of the commission may hold a hearing. It also deletes the requirement that, before any adjudication is rendered, a majority of the members of the commission shall examine the record and approve the adjudication and order.

Section 10 - Effective Date

The bill would take effect on July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁹ Section 455.275, F.S., provides the procedure for service of a complaint on a licensee of the department. For administrative complaints, s. 455.275(3), F.S., the department is required to serve the licensee by regular mail to the licensee's last known address of record, by certified mail to the last known address of record, and, if possible, by e-mail. If the department is unable to serve the licensee by these methods, the department must call the last known telephone number of record and cause a short, plain notice to the licensee to be posted on the front page of the department's website and must also send notice via e-mail to all newspapers of general circulation and all news departments of broadcast network affiliates in the county of the licensee's last known address of record.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill creates s. 548.06(9), F.S., to direct the commission to adopt rules to establish a procedure for auditing a promoter's records and for resolving any inconsistencies revealed in the audit, and to impose late fees if taxes are owed. Section 548.075(1), F.S., authorizes the commission to impose a fine of not more than \$5,000 for any violation of ch. 548, F.S., in lieu of or in addition to any other punishment provided for such violation. The department estimates this provision would result in the annual collection of late penalties of approximately \$7,000.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Inspector General Audit

The department's Office of Inspector General conducted an audit to evaluate the activities and controls of the Florida State Boxing Commission. On November 29, 2012, the Office of Inspector General issued its audit findings. Specifically, the audit found:

- Commission revenue is under-reported by promoters and not appropriately reconciled by commission staff, contributing to the commission's current budget deficit;
- Inadequate controls exist regarding the licensure process of officials, resulting in unlicensed activity;
- Non-compliance with state regulations regarding the protection of personal and confidential information, putting the department at risk; and
- Procedures are not properly designed or effectively implemented, yielding improper oversight of commission activities.

Additionally, the audit report made several recommendations to the department. Such recommendations include that the commission ensure that:

- All revenue reported and received from live-event permit fees and post-event tax reports is appropriately collected, recorded and reconciled;
- All officials are properly licensed prior to working at commission-sanctioned events;
- Risks presented by inadequately secured personal and confidential information are identified and remediation steps are taken; and
- Policies, procedures, and oversight practices are amended so that the commission objectives are achieved and oversight of commission activities is accomplished.

The bill addresses the financial and promoter oversight issues of the Florida State Boxing commission, as highlighted by the audit.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries Committee on March 21, 2013:

The committee substitute (CS) for SB 1686 is substantively different from SB 1686. Specifically, the CS does the following:

- Deletes the provision amending s. 548.002, F.S., that defined the term “gross receipts;”
- Deletes the provision amending s. 548.002, F.S., that defined the term “match held in conjunction with instruction;”
- Deletes the provision amending s. 548.002(18), F.S., that defined the term “martial arts” but moves the definition to the exemptions in s. 548.007(7), F.S.
- Amends s. 548.007(1), F.S., to exempt from regulation under ch. 548, F.S., matches that do not allow full contact;
- Deletes the exemption for matches conducted or sponsored by a bona fide non-profit school or education program whose primary purpose is instruction in martial arts, boxing, or kickboxing if the match is held in conjunction with the instruction, and is limited to amateur participants who are students of the school or instructional program, or require the program to be located at only one physical address;
- Deletes a provision amending s. 548.007, F.S., that exempted matches conducted in connection with the entertainment industry that meet the specified restrictions;
- Creates s. 548.007(7), F.S., to exempt from regulation under ch. 548, F.S., professional or amateur martial arts activity;
- Defines the term “martial arts” to mean any traditional form of self-defense or unarmed combat involving the use of physical skill and coordination, and is taught and advanced on a belt system, including, but is not limited to, karate, aikido, judo, and kung fu. It also provides the term does not include “mixed martial arts;”
- Amends s. 548.06(1)(c), F.S., to provide the promoters report to the commission after the match on the face value of tickets sold and complimentary tickets issued does not include federal and state taxes, if applicable;
- Amends s. 548.07(7), F.S., to provide that the disciplinary process would proceed under ch. 120, F.S., after the administrative complaint is served on the licensee as provided in s. 455.275, F.S.; and

- Provides an effective date of July 1, 2013, instead of taking effect upon becoming law.

B. Amendments:

None.

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