

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 Judiciary

BILL: CS/SB 810

INTRODUCER: Regulated Industries Committee and Senator Galvano

SUBJECT: Pugilistic Exhibitions

DATE: April 7, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	<u>McKay</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	<u>Munroe</u>	<u>Cibula</u>	<u>JU</u>	Favorable
4.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 810 relates to pugilistic exhibitions, such as boxing, kickboxing, and the martial arts, which are regulated by the Florida State Boxing Commission within the Department of Business and Professional Regulation.

The bill makes a number of clarifying and modernizing changes to existing law which do not appear to be significant policy changes. However, the more significant changes include:

- Eliminating requirements that a promoter provide the commission with gross price charged for broadcast rights to an event if the promoter pays the commission the maximum tax of \$40,000 on the broadcast rights.
- Exempting from the 5 percent gross receipts tax the face value of tickets to an event which are given away free of charge and which generally may not exceed 5 percent of the tickets to the event.
- Authorizing the commission to exempt complimentary tickets from the gross receipts tax exceeding 5 percent of the tickets to an event if those tickets are given to military servicemembers, veterans, or nonprofit organizations.
- Exempting the proceeds from the sale of souvenirs and programs from a 5 percent gross receipts tax.
- Specifying amateur matches that are not regulated by the commission.
- Eliminating of licenses for concessionaires, booking agents, and foreign co-promoters.

- Requiring an event promoter to maintain records relating to its payments of the gross receipts tax and authorizing the commission to audit those records.
- Expressly providing that disciplinary action by the commission must comply with the Administrative Procedure Act.
Providing an appropriation of \$111,000 to the Department of Business and Professional Regulation to Implement the Act.

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. Professional matches held in this state must meet the requirements for holding the match ch. 548, F.S., and the rules adopted by the commission.

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.

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. For the most recent period for which data is available, the commission licensed 1,224 professionals in FY 2011-12 and processed 51 live event permits.³ According to the department, it had 1,056 licensed professional and processed 39 live permits for FY 2012-2013.

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

¹ Section 548.006(3), F.S.

² Section 548.002(2), F.S.

³ See *Annual Report, Fiscal Year 2011-2012*, Florida State Boxing Commission, Department of Business and Professional Regulation. A copy is available at: <http://www.myfloridalicense.com/dbpr/os/documents/SBCAR2012v6.pdf> (Last visited March 8, 2014).

participants is verified. The department or commission representative is also accompanied to the event by the department's OPS event staff, i.e., the event coordinator, timekeeper, and inspector. The 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(5), F.S., defines the term "concessionaire" to mean:

any person or business entity not licensed as a promoter which receives revenues or other compensation from the sale of tickets or from the sale of souvenirs, programs, broadcast rights, or any other concessions in conjunction with the promotion of a match.

Section 548.002(6), F.S., defines the term "contest" to mean "a boxing, kickboxing, or mixed martial arts engagement in which persons participating strive earnestly to win using, but not necessarily being limited to, strikes and blows to the head."

Section 548.002(9), F.S., defines the term "exhibition" to mean:

a boxing, kickboxing, or mixed martial arts engagement in which persons participating show or display their skill without necessarily striving to win using, but not necessarily being limited to, strikes and blows to the head.

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 548.006(17), F.S., defines a "participant" to mean "a professional competing in a boxing, kickboxing, or mixed martial arts match."

Section 548.006(19), F.S., defines the term "professional" to

a person who has received or competed for any purse or other article of a value greater than \$50, either for the expenses of training or for participating in any match.

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.

Section 548.002(21), F.S., defines the term “purse” to mean:

the financial guarantee or other remuneration for which a professional is participating in a match and includes the professional’s share of any payment received for radio broadcasting, television, and motion picture rights.

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;
- Preserving all books, papers, and documents pertaining to the business of the commission;
- Preparing any notices and papers required;
- Appointing judges, referees, and other officials as delegated by the commission and pursuant to ch. 548, F.S., and the rules of the commission; and
- Performing 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.⁴ 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.⁵ 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.⁶

Exceptions

The commission’s jurisdiction does not extend to:

⁴ See s. 548.012(1), F.S.

⁵ Section 548.017, F.S.

⁶ See s. 548.015, F.S.

- 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.⁷

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.

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.⁸

In the event a purse is withheld, the purse must be delivered to the commission by the promoter.⁹ Within 10 days after the match, the person from whom the purse was withheld may apply, in writing, to the commission for a hearing.¹⁰ Upon receipt of the application, the commission must set the date for a hearing. Within 10 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.¹¹ If the commission finds the charges sufficient, it may decide that all or a part of the funds be forfeited.¹² Conversely, if the commission does not find the charges sufficient, it must distribute the withheld funds immediately.¹³

Reporting and Tax Requirement

Within 72 hours after a match, the promoter of that match must file a written report with the commission.¹⁴ The report must include information about the number of tickets sold, the amount

⁷ See s. 548.007, F.S.

⁸ Section 548.054(1), F.S.

⁹ Section 548.054(2), F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Section 548.06(1), F.S.

of gross receipts, and any other facts that the commission requires.¹⁵ Chapter 548, F.S., does not require the promoter to retain a copy of the written report.

The term “gross receipts” includes:

- 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;
- 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.¹⁶

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.

Promoters include persons who have rights to telecast a match or matches held in this state under the supervision of the Florida State Boxing Commission. Such persons must be licensed as a promoter, and must, within 72 hours after the sale, transfer, or extension of such rights in whole or in part, file with the commission a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.¹⁷

Concessionaire must also file with the commission, within 72 hours after the match, a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.¹⁸

Any written report that must be filed with the commission and postmarked within 72 hours after the conclusion of the match with an additional five days allowed for mailing.¹⁹ According to the department, the report is required to enable the commission to verify the accuracy of the post-event tax payment for both tickets sold and broadcasting/television rights.

Section 548.015, F.S., requires that a concessionaire must file a surety bond, cash deposit, or other security in an amount determined by the commission. The security is required before licensure, license renewal, or before a match.

These written reports must be accompanied with a tax payment in the amount of 5 percent of the total gross receipts exclusive of any federal taxes. The tax payment for the sale or lease of broadcasting, television, and motion picture rights cannot exceed \$40,000 for any single event.²⁰

¹⁵ *Id.*

¹⁶ Section 548.06(1), F.S.

¹⁷ Section 548.06(2), F.S.

¹⁸ Section 548.06(3), F.S.

¹⁹ Section 548.06(4), F.S.

²⁰ Section 548.06(5), F.S.

Commission Hearings

Section 548.073, F.S., provides any member of the commission may conduct a hearing. Notwithstanding, the provisions of ch. 120, F.S., the Administrative Procedures Act, before any adjudication is rendered, a majority of the commission must examine the record and approve the adjudication and order.

Emergency Suspensions

Section 120.60(6), F.S., permits agencies to order the emergency suspension, restriction, or limitation of a license upon a finding of immediate serious danger to the public health, safety, or welfare. The agency may take such action by any procedure that is fair under the circumstances if:

- (a) The procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution;
- (b) The agency takes only that action necessary to protect the public interest under the emergency procedure; and
- (c) The agency states in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The agency's findings of immediate danger, necessity, and procedural fairness are judicially reviewable. Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation proceeding pursuant to ss. 120.569 and 120.57 shall also be promptly instituted and acted upon.

III. Effect of Proposed Changes:

This revises the laws relating to pugilistic exhibitions, such as boxing, kickboxing, and the martial arts, administered by the Florida State Boxing Commission within the Department of Business and Professional Regulation.

The bill makes a number of clarifying and modernizing changes to existing law which do not appear to be significant policy changes. However, the more significant changes include:

- Eliminating requirements that a promoter provide the commission with gross price charged for broadcast rights to an event if the promoter pays the commission the maximum tax of \$40,000 on the broadcast rights.
- Exempting from the 5 percent gross receipts tax the face value of tickets to an event which are given away free of charge and which generally may not exceed 5 percent of the tickets to the event.
- Authorizing the commission to exempt complimentary tickets from the gross receipts tax exceeding 5 percent of the tickets to an event if those tickets are given to military servicemembers, veterans, or nonprofit organizations.
- Exempting the proceeds from the sale of souvenirs and programs from a 5 percent gross receipts tax.
- Specifying amateur matches that are not regulated by the commission.
- Eliminating of licenses for concessionaires, booking agents, and foreign co-promoters.

- Requiring an event promoter to maintain records relating to its payments of the gross receipts tax and authorizing the commission to audit those records.
- Expressly providing that disciplinary action by the commission must comply with the Administrative Procedure Act.
- Providing an appropriation of \$111,000 to the Department of Business and Professional Regulation to Implement the Act

The bill takes effect on July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

In section 12 of the bill, s. 548.06(2)(e), F.S., is amended to allow promoters to give complimentary tickets for up to 5 percent of the seats in the house for an event. If the promoter wants to give more complimentary tickets, the commission, executive director, or his or her designee approve any amount in excess of the 5 percent threshold. The bill's only criteria for the commission's authorization of complimentary tickets are the limitation that complimentary tickets may not exceed 5 percent of the seats in the house and the requirement that the complimentary tickets are specified in ss. 548.06(2)(a)-(c), F.S. The bill does not provide a clear delegation of authority, beyond the requirements of ss. 548.06(2)(a)-(c), F.S., for the sitting or limits on complimentary tickets or to determine which portion of the portion of the requested percentage above 5 percent it may authorize. To the extent that this paragraph authorizes the commission to set limitations on complimentary tickets or for the denial or approval of complimentary tickets beyond the reasons specified in ss. 548.06(2)(a)-(c), F.S., such authority may constitute an unconstitutional delegation of legislative authority.

An invalid delegation of authority violates the principle of separation of powers in Article II, s. 3, Florida Constitution.²¹ When assigning to an agency a regulatory responsibility, the legislature must provide the agency with adequate standards and guidelines when delegating the duties.²² The executive branch must be limited and guided

²¹ *Gallagher v. Motors Insurance Corp.*, 605 So. 2d 62 (Fla. 1992).

²² *Askew v. Cross Key Waterways*, 372 So. 2d. 913 (Fla. 1978); *Florida East Coast Industries, Inc. v. Dept. of Community Affairs*, 677 So. 2d 357 (Fla. 1st DCA 1996).

by an appropriately detailed legislative statement of the standards and policies to be followed.²³ The bill may constitute an unconstitutional delegation of authority because it fails to provide the commission with any standards by which to judge the appropriateness of those minimum standards.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill deletes the licensure requirement for concessionaires. The current license fee for concessionaires is \$100. Concessionaires would also not be required to report and pay taxes on gross receipts.

The bill repeals the license requirement for persons who have the right to telecast matches.

C. Government Sector Impact:

The department collects \$600 annually from the licensure of concessionaires. The department estimates a reduction of approximately \$40,000 in post-event taxes for complimentary tickets and \$60,000 in post-event taxes from concessions.

The bill provides a \$111,000 appropriation from the General Revenue Fund.

VI. Technical Deficiencies

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 548.002, 548.004, 548.006, 548.007, 548.013, 548.014, 548.015, 548.017, 548.046, 548.052, 548.054, 548.06, 548.07, and 548.073.

²³ *Florida Home Builders Association v. Division of Labor*, 367 So. 2d 219 (Fla. 1979).

IX. 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 on March 13, 2014:

The committee substitute differs from the underlying bill in that it makes:

- Technical changes throughout the bill.
- Removes the concept of foreign copromoters from chapter 548, F.S.
- Expressly provides that disciplinary action by the Florida State Boxing Commission must comply with chapter 120, F.S., the Administrative Procedure Act.
- Establishes procedures for a promoter to seek the approval of the commission to issue complimentary tickets to an event in excess of a 5 percent threshold and avoid liability for gross receipts taxes that would otherwise apply to the tickets.
- Provides that a promoter who pays the maximum tax applicable to the sale or lease of broadcast rights is not required to disclose to the commission the price charged for the sale of the broadcast rights.

- B. **Amendments:**

None.