

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 810

INTRODUCER: Regulated Industries Committee and Senator Galvano

SUBJECT: Pugilistic Exhibitions

DATE: April 21, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>McKay</u>	<u>McVaney</u>	<u>GO</u>	<u>Favorable</u>
3.	<u>Munroe</u>	<u>Cibula</u>	<u>JU</u>	<u>Favorable</u>
4.	<u>Davis</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**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 (commission) within the Department of Business and Professional Regulation (department). The significant policy 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 five 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 five percent of the tickets to the event.
- Authorizing the commission to exempt complimentary tickets from the gross receipts tax exceeding five 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 five percent gross receipts tax.
- Clarifying the commission has exclusive jurisdiction over amateur mixed martial arts matches held in the state.
- Eliminating the requirement of licensure 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.

The bill appropriates \$111,000 in recurring funds from the General Revenue Fund to the department for the implementation of this 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 Florida must meet the requirements for holding the match included in 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.<sup>1</sup> Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.<sup>2</sup> 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 periods for which data is available, the commission licensed 1,224 professionals in Fiscal Year 2011-2012 and processed 51 live event permits.<sup>3</sup> According to the department, it licensed 1,056 professionals and processed 39 live permits in Fiscal Year 2012-2013.

In addition to its 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,

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<sup>1</sup> Section 548.006(3), F.S.

<sup>2</sup> Section 548.002(2), F.S.

<sup>3</sup> 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' weights are recorded, officials' (referee, judges, and physicians) pay from the promoter is 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 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(10), F.S., defines the term "foreign copromoter" to mean "a promoter who has no place of business within this state."

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(19), F.S., defines the term “professional” to mean:

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.<sup>4</sup> 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.<sup>5</sup> 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

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<sup>4</sup> See s. 548.012(1), F.S.

<sup>5</sup> Section 548.017, F.S.

training or experience in boxing, or a combination of both, to the executive director. The commission also licenses the concessionaires.<sup>6</sup>

### **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.<sup>7</sup>

### **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.<sup>8</sup>

In the event a purse is withheld, the purse must be delivered to the commission by the promoter.<sup>9</sup> Within ten days after the match, the person from whom the purse was withheld may apply, in writing, to the commission for a hearing.<sup>10</sup> 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.<sup>11</sup> If the commission finds the charges sufficient, it may decide

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<sup>6</sup> See s. 548.015, F.S.

<sup>7</sup> See s. 548.007, F.S.

<sup>8</sup> Section 548.054(1), F.S.

<sup>9</sup> Section 548.054(2), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

that all or a part of the funds be forfeited.<sup>12</sup> Conversely, if the commission does not find the charges sufficient, it must distribute the withheld funds immediately.<sup>13</sup>

### **Reporting and Tax Requirement**

Within 72 hours after a match, the promoter of that match must file a written report with the commission.<sup>14</sup> The report must include information about the number of tickets sold, the amount of gross receipts, and any other facts that the commission requires.<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup>

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.<sup>18</sup>

Any written report required to be filed with the commission must be postmarked within 72 hours after the conclusion of the match; an additional five days is allowed for mailing.<sup>19</sup> 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.

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Section 548.06(1), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> Section 548.06(1), F.S.

<sup>17</sup> Section 548.06(2), F.S.

<sup>18</sup> Section 548.06(3), F.S.

<sup>19</sup> Section 548.06(4), F.S.

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 five 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.<sup>20</sup>

### **Commission Hearings**

Notwithstanding, the provisions of ch. 120, F.S., the Administrative Procedures Act, any member of the commission may conduct a hearing.<sup>21</sup> 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. An 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 bill revises the laws relating to pugilistic exhibitions, such as boxing, kickboxing, and the martial arts, administered by the commission.

**Section 1** amends s. 548.002, F.S., to provide definitions or redefine terms to clarify legislative intent, ensure the Department of Business and Professional Regulation (department) is able to enforce ch 548, F.S., and to conform the chapter to current industry standards. This section:

- Amends the definition of “boxing” to mean the unarmed combat sport of fighting by striking with fists.
- Repeals the definition of “concessionaire.”
- Amends the definition of “contest” and “exhibition” to include the participants’ use of other full-contact maneuvers.

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<sup>20</sup> Section 548.06(5), F.S.

<sup>21</sup> Section 548.073, F.S.

- Creates a definition of 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 a definition of the term “full contact” to mean the use of strikes and blows during a match in which the strikes and blows are intended to 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 strikes and blows.
- Repeals the definition of “foreign copromoter.”
- Amends the definition of “judge” to provide that the judge is licensed by the Florida State Boxing Commission (commission) and scores a match using a designated scoring system.
- Amends the definition of “kickboxing” to include the act, activity, or sport of fighting with the use of fists, hands, feet, legs or any combination thereof in a roped ring. It provides that the term does not include any form of ground fighting techniques.<sup>22</sup>
- Amends the definition of “mixed martial arts” to mean the act, activity, or sport of unarmed combat involving the use of a combination of techniques, including, but not limited to, wrestling, grappling, kicking, and striking, and other techniques from different disciplines of the martial arts. The term may include, but is not limited to, boxing, kickboxing, Muay Thai,<sup>23</sup> jujitsu, and wrestling.
- Amends the definition of “physician” to mean a person licensed to practice medicine under ch. 458, F.S. or ch. 459, F.S., whose license is unencumbered and in good standing.
- Amends the definition of “promoter” to include “any entity” in addition to “any person” in current law. It also amends the definition to include the trustee or partner of a corporate partner or any promoter partnership. Current law does not reference promoter partnerships.
- Amends the definition of “purse” to include the professional’s share of any payment from pay-per-view or closed circuit. Current law is limited to payment from radio broadcasts and television.
- Amends the definition of “second” or cornerman” to mean a person who assists a participant in preparing for a match and between rounds. Current law limits the definition to a person who assists the match participant between rounds.
- Creates a definition of “unarmed combat” in s. 548.002(24), F.S., to mean a form of competition in which a strike or blow is struck which may reasonable be expected to inflict injury.

**Section 2** amends s. 548.004(1), F.S., modify the duties and responsibilities to be performed by the executive director of the commission, as set forth by the commission. Pursuant to the bill, the executive director must:

- Conduct the functions of the commission office.
- Appoint event and commission officials.
- Approve licenses, permits, and matches.

<sup>22</sup> Ground fighting involves hand-to-hand combat with the combatants are on the ground. This type of combat generally involving grappling. *See* [http://en.wikipedia.org/wiki/Ground\\_fighting](http://en.wikipedia.org/wiki/Ground_fighting) [Last visited March 8, 2014].

<sup>23</sup> Muay Thai is a combat sport from the muay martial arts of Thailand. *See* <http://www.wmcmuaythai.org/about> (Last visited March 25, 2014).



- Perform other duties as the department or commission deems necessary to fulfill the duties of the position.

The bill authorizes the executive director to issue subpoenas and administer oaths to witnesses, permitholders, record custodians, and licensees.

In addition, the bill repeals the requirement that the commission require electronic recording of all its scheduled proceedings. Section 455.203(7), F.S., also requires all proceedings conducted by the department be electronically recorded.

**Section 3** amends s. 548.006(3), F.S., to clarify the commission's existing jurisdiction over professional and amateur boxing, kickboxing, and mixed martial arts matches as well as amateur mixed martial arts matches held in the state.

As with boxing and kickboxing, these changes clarify that the commission has oversight over the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for mixed martial arts matches held in Florida. Nothing in the bill affects the commission's exclusive jurisdiction over amateur sanctioning organizations for amateur boxing and kickboxing matches held within the state.

**Section 4** amends s. 548.007, F.S., clarify existing exemptions to ch. 548, F.S., as well as create new exemptions from ch. 548, F.S. The exemptions include:

- A match that does not allow full contact, if the match is limited to amateurs.
- A match conducted or sponsored by a company or detachment of the Florida National Guard or the United States Armed Forces, if the match is limited to amateurs who are members of a company or detachment of the Florida National Guard or United States Armed Forces.
- A match conducted or sponsored by the Fraternal Order of Police, if the match is limited to amateurs and is held in conjunction with a charitable event.
- A match conducted by or between a public postsecondary education institution or public K-12 school as defined in s. 1000.04, F.S., if the match is limited to amateurs who are members of a school-sponsored club or team.
- A match conducted by the International Olympic Committee, the International Paralympic Committee, the Special Olympics, or the Junior Olympics, if the match is limited to amateurs who are competing in or attempting to qualify for the Olympics, Paralympics, Special Olympics, or Junior Olympics.
- A professional or amateur "martial arts activity." As used in this exemption, the term "martial arts" means one of the traditional forms of self-defense or unarmed combat involving the use of physical skill and coordination, including, but not limited to, karate, aikido, judo, and kung fu; however the term does not include mixed martial arts.

The bill eliminates the existing exemption found in s. 548.007(1), F.S., for a bona fide non-profit school or education program whose primary purpose is instruction in the martial arts, boxing, or kickboxing, if the match held, in conjunction with the instruction, is limited to amateur participants who are students of the school or instructional program. Instead, that exemption is replaced by s. 548.007(6), F.S., which encompasses a larger group of businesses and individuals.

**Section 5** repeals s. 548.013, F.S., to eliminate the requirement that foreign copromoters be licensed by the commission. Foreign copromoters are promoters with their licenses located outside of the state of Florida. The commission issues licenses to promoters, regardless of the location of their licensure, and therefore has no licensed foreign copromoters. The also deletes the definition for the term “foreign copromoter” in s. 548.002(10), F.S.

**Section 6** amends s. 548.014, F.S., to delete references to the term “foreign copromoters.”

**Section 7** repeals s. 548.015, F.S., which authorizes the commission to require that concessionaires file a surety bond as a condition for a license.

**Section 8** amends s. 548.017, F.S., to delete the requirement that concessionaires must be licensed by the commission. Additionally, the bill adds promoters to the list of individuals or entities who directly or indirectly act in specific capacities in connection with any match involving a participant and who are required to obtain a license under s. 548.017, F.S.

**Section 9** amends s. 548.046(3)(c), F.S., to provide that a participant’s failure or refusal to provide a urine sample immediately upon request constitutes an immediate, serious danger to the health, safety, and welfare of the person’s opponent. This results in the immediate suspension of the participant’s license, rather than a revocation of that license under current law.

The bill also deletes provisions that provide that the loser of a match who subsequently does not provide a urine sample forfeits his or her share of the purse. The bill provides that the decision shall be changed to a no decision result, which under current law requires the distribution of the purse as though the participant who failed to provide a urine sample had lost the match.

The bill creates s. 548.046(3)(d), F.S., to provide that, if a participant tests positive for any substance prohibited by commission rule,<sup>24</sup> the participant shall be considered an immediate, serious danger to the health, safety, and welfare of the public and his or her opponent. The participants shall be immediately suspended under s. 120.60(6), F.S., and subject to additional disciplinary action.

**Section 10** amends s. 548.052, F.S., to delete references to the term “foreign copromoter.”

The bill also amends this section to permit the commission or the executive director, or his or her designee, to give prior written consent to a promoter to pay, lend, or give a participant an advance against her or his purse before a contest.

**Section 11** amends s. 548.054(2), F.S., to provide that, within 10 days after the match, a person who has had a purse withheld is entitled to submit a petition for a hearing to the commission pursuant to s. 120.569, F.S. Additionally, the bill requires the commission to hold the hearing pursuant to ss. 120.569 and 120.57, F.S.

**Section 12** amends s. 548.06(1)(a), F.S., to provide that promoters must report and pay the five percent tax on gross receipts within 72 hours after a match except as provided in s. 548.06(4),

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<sup>24</sup> See rule 61K1-1.0043, F.A.C.

F.S. The bill also amends s. 548.06, F.S., to use the term “gross receipts” instead of “total gross receipts.”

The bill deletes the requirement in s. 548.06(1)(b), F.S., that the promoter report and pay the five percent tax on gross receipts based on the portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter.

The bill amends s. 548.06(1)(b), F.S., to provide that the amount of gross receipts reported to the commission must include the face value of all tickets sold and complimentary tickets issued, provided, or given above five percent of the seats in the house designated for use in the event and not authorized by the commission pursuant to subsection (2).

The bill creates s. 548.06(2), F.S., to provide for the authorization of complimentary tickets by the commission. It permits promoters to issue, provide, or give, complimentary tickets for up to five percent of the seats in the house designated for use in the event, equally distributed between or among the price categories for which they were issued, without the commission’s written authorization. Promoters do not have to include the face value of these complimentary tickets when calculating the gross receipts tax in s. 548.06(4), F.S. The bill permits a promoter to also not include the face value of complimentary tickets for more than five percent of the seats in the house when calculating the gross receipts tax if the promoter obtains written authorization from the commission or the executive director, or his or her designee.

The bill creates s. 548.06(2)(a), F.S., to provide that the commission may not consider the complimentary tickets that it authorizes as part of the gross receipts from admission fees.

The bill creates s. 548.06(2)(b), F.S., to permit a promoter to give complimentary tickets for more than five percent of the seats in the house without written authorization. However, the promoter must include the face value of such tickets when calculating the gross receipts tax.

The bill creates s. 548.06(2)(c), F.S., to provide the classes of persons to whom the commission may authorize promoters to give complimentary tickets. If authorized by the commission, complimentary tickets provided to reserve or active members of the United States Armed Forces and the National Guard, military veterans, and not for profit organizations would not be included in the calculation of the gross receipts tax.

The bill creates s. 548.06(2)(d), F.S., to provide the process for promoters to follow to obtain the written authorization from the commission for giving “more than 5 percent complimentary tickets”. A promoter must submit an application, on a form adopted by the commission, no later than two business days before the date of the professional event. The bill requires that the application must include, at a minimum, the date, time, and location of the event, the number of complimentary tickets being requested, the percentage of total tickets issued for the seats in the house designated for use in the event being requested as complimentary tickets, and which individuals or entities will receive the complimentary tickets.

Section 548.06(2)(d)2., F.S., requires that the promoter maintain the documentation that evidences that the tickets were given to individuals or entities that fall into the categories listed in

s. 548.06(2)(c), F.S., and provides that the commission may audit these records, as provided in s. 548.06(7), F.S.

Section 548.06(2)(e), F.S., requires that the commission, executive director, or his or her designee, must deny or approve the application. The commission, executive director, or his or her designee may set limitations on the approval and may approve all or a portion of the requested percentage above five percent. The bill's only criteria for the commission's authorization of complimentary tickets are the limitation that complimentary tickets may not exceed five 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 setting limits on complimentary tickets or determining which portion of the requested percentage above five percent it may authorize.

The bill requires that the commission, executive director, or his or her designee must provide the decision in writing to the promoter at least one business day before the start of the event, with an explanation for the denial, approval, or any limitation on the approval. A promoter remains responsible for complying with other reporting and taxation requirements as set forth in ch. 548, F.S.

The bill deletes the provision in s. 548.06(2), F.S., that classifies promoters as the persons who have rights to telecast a match or matches held in this state, that requires that they must be licensed as a promoter, and requires that they file with the commission a written report of the number of tickets sold, the amount of gross receipts within 72 hours after the sale, transfer, or extension of such rights in whole or in part.

The bill deletes the provision in s. 548.06(3), F.S., that requires concessionaires to 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.

The bill amends s. 548.06(4), F.S., to include pay-per-view rights in place of motion picture rights. It also limits the provision to matches occurring within the state. The bill provides that, if a promoter remits the maximum tax amount of \$40,000 for the sale or lease of broadcasting, television, or pay-per-view rights of any single event pursuant to this subsection, the promoter is only required to indicate that the amount of \$40,000 has been remitted for such taxes on a form provided by the commission. The bill provides that the promoter remains responsible for complying with other reporting and taxation requirements related to other gross receipts as set forth in this chapter.

The bill creates s. 548.06(6), F.S., to require the promoter to keep a copy of certain records for one year, including records necessary to justify and support the reports submitted to the commission, copies of independently prepared ticket manifests, and records to verify compliance with the complimentary tickets requirements. It is not clear if one year is sufficient for the commission to be able to conduct audits of the records. Current law does not require promoters to retain records relating to the reporting of gross receipts under s. 548.06, F.S.

The bill creates s. 548.06(7), 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. The commission is authorized to audit a promoter's books and records relating to the promoter's operations upon reasonable notice.

The bill creates s. 548.06(8), F.S., to direct the commission to adopt rules establishing a procedure for auditing a promoter's records, for resolving any inconsistencies revealed in the audit, and imposing a late fee if taxes are owed.<sup>25</sup>

**Section 13** 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.

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

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.<sup>26</sup>

**Section 14** amends s. 548.073, F.S., to provide the hearing held under ch. 548, F.S., must be held in accordance with the Administrative Procedure Act (ch. 120, F.S.). The bill repeals the provision authorizing any member of the commission to hold a hearing and the requirement that, before any adjudication is rendered, a majority of the members of the commission must examine the record and approve the adjudication and order.

**Section 15** provides an appropriation of \$111,000 in recurring funds from the General Revenue Fund to the department for the implementation of the act during the 2014-2015 fiscal year.

**Section 16** provides bill takes effect on July 1, 2014.

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<sup>25</sup> 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.

<sup>26</sup> 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.

**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), F.S., is amended to allow promoters to issue complimentary tickets for up to five percent of the seats in the house for an event. If the promoter wants to give or issue additional complimentary tickets, the commission, executive director, or his or her designee must approve any amount in excess of the five percent threshold. The bill's only criteria for the commission's authorization of additional complimentary tickets are for those classes of persons specified in ss. 548.06(2) (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 setting of limits on the number or percentage of complimentary tickets or to determine which portion of the requested percentage above five percent that may be authorized. To the extent that this paragraph authorizes the commission to set limitations on complimentary tickets or approve or deny issuance of complimentary tickets other than as specified in ss. 548.06(2)(a)-(c), F.S., the 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.<sup>27</sup> When assigning to an agency a regulatory responsibility, the legislature must provide the agency with adequate standards and guidelines when delegating the duties.<sup>28</sup> The executive branch must be limited and guided by an appropriately detailed legislative statement of the standards and policies to be followed.<sup>29</sup> 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 its actions.

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<sup>27</sup> *Gallagher v. Motors Insurance Corp.*, 605 So. 2d 62 (Fla. 1992).

<sup>28</sup> *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).

<sup>29</sup> *Florida Home Builders Association v. Division of Labor*, 367 So. 2d 219 (Fla. 1979).

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

The deregulation of concessionaires and booking agents, and lower post-event tax payments is anticipated to reduce the commission's revenues by \$95,750.<sup>30</sup> That revenue, in part, currently supports the commission's operations. Any additional revenues from late fees on post-event taxes and pay-per-view taxes are indeterminate, but expected to be insignificant.

#### *Late Fees*

The bill directs the commission to adopt a rule imposing a late fee on taxes owed the commission. Any revenue collections based on imposing a late fee on post-event taxes are expected to be insignificant. The commission estimated in 2013 that had a late fee been imposed in Fiscal Year 2011-2012, the fee revenues collected would have been approximately \$6,915.<sup>31</sup> The fee revenue estimate is based on total post-event taxes collected of \$115,258, a 10 percent penalty imposed, with 60 percent of estimated tax reports being filed late. The commission indicated with the implementation of accountability measures in 2013, the amount of post-event tax collections which are received late will likely decline in future years, thereby reducing any late fee revenues from the estimated Fiscal Year 2011-2012 collection amount.

#### *Pay-Per-View Tax*

The bill provides that gross receipts includes the gross price charged for the sale or lease of broadcasting, television, and pay-per-view rights of any match occurring within the state of Florida. The bill effectively reinstates part of the "pay-per-view tax" for in-state matches, which was eliminated in 2012. However, the bill only reinstates the tax on matches held within the state of Florida, not the tax on pay-per-view for matches held outside of Florida.

The commission indicated that pay-per-view matches occurring within the state of Florida generated \$1,484 in Fiscal Year 2009-2010 and \$2,138 in Fiscal Year 2010-2011.<sup>32</sup> The expected fiscal impact of this tax reinstatement is positive, but indeterminate at this time.

#### *Deregulation of Booking Agents*

The bill provides that booking agents and concessionaires would no longer need to obtain licensure from the Commission in order to practice in their field. The department

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<sup>30</sup> 2014 Legislative Bill Analysis for CS/SB 810, Department of Business and Professional Regulation (April 4, 2014 on file with the General Government Appropriations Subcommittee).

<sup>31</sup> Department of Business and Professional Regulation, Estimated post-event tax penalties for late fees, correspondence with staff of the General Government Appropriations Subcommittee, March 14, 2013, (on file with the subcommittee).

<sup>32</sup> Department of Business and Professional Regulation, total revenue from pay-per-view matches occurring within the state of Florida, FY 2009-10 and 2010-11, correspondence with staff of the Business & Professional Regulation Subcommittee, March 7, 2014, (on file with the General Government Appropriations Subcommittee).

estimates a reduction in revenue from loss of licensure fees for booking agents to be approximately \$150 per year.<sup>33</sup>

#### *Concessions*

The bill eliminates receipts from concessions from the calculation of gross receipts for the promoters' tax liability purposes. Additionally, the bill deregulates concessionaires. The department estimates a reduction to post-event taxes related to concessions of approximately \$55,000 per year.<sup>34</sup> Furthermore, the department estimates a reduction in revenue from loss of licensure fees for concessionaires to total approximately \$600 per year.<sup>35</sup>

#### *Complimentary Tickets*

The bill provides that complimentary tickets for up to five percent of the seating capacity of the house are not included in gross receipts or the corresponding post-event taxes. The department estimates, based on a review of prior year data, that the commission would collect \$40,000 less in post-event taxes related to the issuance of complimentary tickets.<sup>36</sup> The department's estimate is based on the assumption that promoters would not issue complimentary tickets in excess of that percentage. The department did not provide an estimate to cover any complimentary tickets granted over the five percent, if the promoter obtains authorization from the commission to issue more.

Promoters often issue complimentary tickets when the tickets have not sold prior to the event in order to recoup some cost through the sales of concessions to the individuals who receive the complimentary tickets. Often the complimentary tickets issued would never have sold prior to the event date. The commission would not have included the unsold tickets in the gross receipts and would not have received the five percent post-event tax for the sale of the tickets.

### **B. Private Sector Impact:**

The bill deletes the licensure requirements for concessionaires and booking agents. The current license fee for concessionaires is \$100; the fee is \$75 for booking agents. Concessionaires would also not be required to report and pay taxes on gross receipts.

Additionally, permitting five percent of seats in a house be issued as complimentary tickets without being included in gross receipts or paying post-event taxes on the tickets lowers the costs of holding events in the state of Florida.

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<sup>33</sup> 2014 Legislative Bill Analysis for CS/SB 810, Department of Business and Professional Regulation (April 4, 2014 on file with the General Government Appropriations Subcommittee).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*



**C. Government Sector Impact:**

The department anticipates a loss in taxation and licensure fee revenue of \$95,750.<sup>37</sup> In addition, as a result of the estimated \$95,750 reduction in taxes and license fees, there will be a \$7,660 annual reduction in the service charge paid to the General Revenue Fund.<sup>38</sup> The bill appropriates \$111,000 in recurring funds from the General Revenue Fund to the department for the implementation of this act during the 2014-2015 fiscal year in order to offset this expected revenue loss.

**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, 548.014, 548.017, 548.046, 548.052, 548.054, 548.06, 548.07, and 548.073.

This bill repeals the following sections of the Florida Statutes: 548.013 and 548.015.

**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 five 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.

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

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

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