

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 Regulated Industries

BILL: CS/SB 1050

INTRODUCER: Regulated Industries Committee and Senator Brandes

SUBJECT: Regulated Professions and Occupations

DATE: February 3, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Caldwell	RI	Fav/CS
2.			AGG	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1050 eliminates current business license requirements for certain regulated professions, but licensure requirements for individuals engaged in those professions remain intact. The affected professions are architects, interior designers, asbestos consultants and contractors, and landscape architects.

The bill allows certain activities to be practiced without licensure, including nail polishing, low voltage landscape lighting, and low voltage communication cabling. The bill eliminates licensure and registration requirements for athlete agents, talent agencies, hair wrappers, body wrappers, and labor organizations. Licensure of branch offices for yacht and ship brokers is also eliminated.

II. Present Situation:

Section 20.165, F.S., establishes the organizational structure of the Department of Business and Professional Regulation (department). There are 12 divisions, which include:

- Administration;
- Alcoholic Beverages and Tobacco;
- Certified Public Accounting;
- Drugs, Devices, and Cosmetics;
- Florida Condominiums, Timeshares, and Mobile Homes;
- Hotels and Restaurants;

- Pari-mutuel Wagering;
- Professions;
- Real Estate;
- Regulation;
- Service Operations; and
- Technology.

There are 15 boards and programs established within the Division of Professions,¹ two boards within the Division of Real Estate,² and one board within the Division of Certified Public Accounting.³ The Florida State Boxing Commission (boxing commission) is also assigned to the department for administrative and fiscal accountability purposes only.⁴ The department also administers the Child Labor Law and Farm Labor Contractor Registration Law pursuant to parts I and III of ch. 450, F.S.

Chapter 455, F.S., applies to the regulation of professions constituting “any activity, occupation, profession, or vocation regulated by the department in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.”⁵

Regulation of professions is limited under Florida law, to be undertaken “only for the preservation of the health, safety, and welfare of the public under the police powers of the state.”⁶ Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.⁷

However, “neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention,” or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.⁸

¹ Section 20.165(4)(a), F.S., establishes the following boards and programs which are noted with the implementing statutes: Board of Architecture and Interior Design, part I of ch. 481; Florida Board of Auctioneers, part VI of ch. 468; Barbers’ Board, ch. 476; Florida Building Code Administrators and Inspectors Board, part XII of ch. 468; Construction Industry Licensing Board, part I of ch. 489; Board of Cosmetology, ch. 477; Electrical Contractors’ Licensing Board, part II of ch. 489; Board of Employee Leasing Companies, part XI of ch. 468; Board of Landscape Architecture, part II of ch. 481; Board of Pilot Commissioners, ch. 310; Board of Professional Engineers, ch. 471; Board of Professional Geologists, ch. 492; Board of Veterinary Medicine, ch. 474; Home Inspection Services Licensing Program, part XV of ch. 468; and Mold-related Services Licensing Program, part XVI of ch. 468.

² See s. 20.165(4)(b), F.S. Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S., and Florida Real Estate Commission, created under part I of ch. 475, F.S.

³ See s. 20.165(4)(c), F.S., which establishes the Board of Accountancy, created under ch. 473, F.S.

⁴ See s. 548.003(1), F.S.

⁵ See s. 455.01(6), F.S.

⁶ See s. 455.201(2), F.S.

⁷ *Id.*

⁸ See s. 455.201(4)(b), F.S.

Chapter 455, F.S., provides the general powers of the department and sets forth the procedural and administrative framework for all of the professional boards housed under the department as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.⁹ When a person is authorized to engage in a profession or occupation in Florida by the department, the department issues a “permit, registration, certificate, or license” to the licensee.¹⁰

In Fiscal Year 2014-2015, the Division of Accountancy had 38,678 licensees, the Division of Real Estate had 330,565 licensees, and the Board of Professional Engineers had 57,756 licensees.¹¹ In Fiscal Year 2014-2016, there were 415,207 licensees in the Division of Professions,¹² including:

- Architects and interior designers;
- Asbestos consultants and contractors;
- Athlete agents;
- Auctioneers;
- Barbers;
- Building code administrators and inspectors;
- Community association managers;
- Construction industry contractors;
- Cosmetologists;
- Electrical contractors;
- Employee leasing companies;
- Geologists;
- Home inspectors;
- Landscape architects;
- Harbor pilots;
- Mold-related services;
- Talent agencies; and
- Veterinarians.¹³

Sections 455.203 and 455.213, F.S., establish general licensing provisions for the department, including the authority to charge license fees and license renewal fees. Each board within the department must determine by rule the amount of license fees for its profession, based on estimates of the required revenue to implement regulatory laws.¹⁴

⁹ See s. 455.203, F.S. The department must also provide legal counsel for boards within the department by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing department staff counsel. See s. 455.221(1), F.S.

¹⁰ See s. 455.01(4) and (5), F.S.

¹¹ See Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2014-2015*, <http://www.myfloridalicense.com/dbpr/os/documents/FY2014-2015AnnualReportFinal.pdf> (last accessed Jan. 31, 2016) at 22.

¹² Of the total 413,401 licensees in the Division of Professions, 22,566 are inactive. *Id.* at 22.

¹³ *Id.* at 13.

¹⁴ See s. 455.219(1), F.S.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 326.004, F.S., to remove the requirement that separate branch office licenses be maintained by yacht and ship brokers, in addition to licensure of the principal office. Brokers and salespeople are required to maintain individual licensure, with a principal place of business in Florida tied to the broker's individual license. No disciplinary orders against branch office licenses were issued in the previous three fiscal years.¹⁵

Sections 2 through **9** of the bill amend the provisions in Part I of ch. 447, F.S., to eliminate the registration and regulation of labor organizations by the department. Provisions relating to the right to work and strike, recordkeeping, rights of franchise for labor organizations, civil causes of action, criminal penalties, and recognition of federal regulations remain effective.

According to the department, the National Labor Relations Board (NLRB) is active in Florida and provides similar oversight of unions to that of the department. The United States Department of Labor, Office of Labor Management Standards also registers unions. The department issued no disciplinary orders against labor organizations during the three previous fiscal years.¹⁶

Section 10 of the bill repeals Part VII of ch. 468, F.S., and eliminates the regulation of talent agencies by the department. According to the department, three disciplinary orders were issued against talent agencies in the three previous fiscal years; two involved minor violations for failure to include the talent agency's license number in advertisements. The financial account of the licensing program has been in a perpetual deficit since creation of talent agency licensure in 1986.¹⁷

Sections 11 through **20** of the bill amend Part IX of ch. 468, F.S., to eliminate all licensing requirements for athlete agents. According to the department, no disciplinary orders were issued against athlete agents in the previous three fiscal years.¹⁸ Certain civil and criminal causes of action against athlete agents remain effective.

Sections 21 and **22** of the bill amend ch. 469, F.S., to remove the requirement that an asbestos contractor obtain a separate business license in addition to an individual license. No disciplinary orders against a licensed asbestos business were issued in the three previous fiscal years. Asbestos contractors must qualify the business organizations they supervise and are liable for the actions of those businesses. Asbestos contractors must inform the department of any change in their relationship with the qualified business, and a qualified business has 60 days to obtain another asbestos contractor to serve as qualifying agent.

Sections 23 through **28** of the bill amend ch. 477, F.S., to eliminate registration requirements for persons engaged in hair wrapping, body wrapping, and nail polishing. According to the department, these services are limited to non-invasive procedures and the use of harmful

¹⁵ See 2016 Department of Business and Professional Regulation Legislative Bill Analysis for SB 1050, Dec. 16, 2015 (on file with Senate Committee on Regulated Industries) at 4-5.

¹⁶ *Id.* at 4.

¹⁷ *Id.*

¹⁸ *Id.*

chemicals is prohibited. The Board of Cosmetology issued two disciplinary orders against body wrappers in the three previous fiscal years, and neither involved injury to a consumer.

The Board of Cosmetology issued nine disciplinary orders against hair wrappers in the three previous fiscal years; six licensees were disciplined for practicing with an expired license or failing to timely renew their salon license.

The Board of Cosmetology issued three disciplinary orders against licensed cosmetologists or cosmetology salons for matters involving nail polishing in the three previous fiscal years. Two were for unlicensed activity, and one involved a nail specialist practicing with an expired license. None involved injury to a consumer.

According to the department, these 14 orders are one-half of one percent of the 2,690 disciplinary orders issued by the Board of Cosmetology during the last three fiscal years.

Sections 29 through 32 of the bill amend ch. 481, F.S., to remove the requirement that architects and interior designers obtain a separate business license in addition to an individual license. The bill provides that architects and interior designers qualify their business organization with their individual licenses. The bill provides that architects and interior designers must inform the department of any change in their relationship with the qualified business, and the business has 60 days to obtain another qualifying architect or interior designer.

The bill amends s. 481.219(2)(b), F.S., to provide that the board may deny an application to qualify a business organization, if the applicant (or others identified in the application as partners, officers, directors, or stockholders who are also officers or directors) “has been involved in past disciplinary actions or on any grounds for which an individual registration or certification may be denied.” *See* lines 632-637.

According to the department, in the three previous fiscal years, the Board of Architecture and Interior Design disciplined licensed architecture businesses only six times in cases that did not also involve discipline against the supervising architect; generally, the licensed business was cited for operating without a supervising architect or for failure to include license numbers in advertisements.

The Board of Architecture and Interior Design disciplined licensed interior design businesses only four times in the three previous fiscal years in cases that did not also involve discipline against the qualifying interior designer. In three of the four disciplinary cases, the business license was retained by the business after the qualifying interior designer had left the firm.

Sections 33 through 38 of the bill amend Part II of ch. 481, F.S., to remove the requirement that landscape architects obtain a separate business license in addition to an individual license. The bill provides that landscape architects must qualify their business organization with their individual licenses and will be liable for the actions of the business organizations they qualify. The bill provides that landscape architects must inform the department of any change in their relationship with the qualified business, and the business has one month to obtain another qualifying landscape architect. According to the department, the Board of Landscape

Architecture and Design issued no disciplinary orders against landscape architecture businesses during the three previous fiscal years.

Sections 39 and 40 of the bill amend s. 489.503, F.S., to exempt from licensure as an electrical or alarm system contractor, those persons engaged in the installation or repair of low voltage or communication cabling. Low voltage cabling is limited to a maximum of 98 volts. Section 489.503, F.S., already exempts from licensure those employed by cable and telephone companies, who engage in the installation, maintenance, repair, etc. of systems relating to the transmission of voice and data. The bill exempts all persons from the licensure requirement, whether or not they are employed by a cable and telephone company. According to the department, the Electrical Contractors' Licensing Board issued no disciplinary orders for such work in the three previous fiscal years.

The bill provides that a person installing low voltage landscape lighting that contains a factory-installed electrical cord with a plug and does not require installation or wiring is exempt from licensure requirements. The proposed exemption does not permit the alteration of a home's internal electrical system. According to the department, the Electrical Contractors' Licensing Board issued no disciplinary orders against licensees providing these services during the three previous fiscal years.

The bill provides that persons who perform only sales or installation of wireless alarm systems, other than fire alarms, in a single family residence, are not required to complete the 14 hours of training required of burglar alarm system agents. Burglar alarm system agents installing a wireless system are required to be supervised by a properly licensed electrical or alarm system contractor who is responsible for ensuring proper installation of the alarm system. According to the department, the Electrical Contractors Licensing Board issued no disciplinary orders in the three previous fiscal years relating to this supervision requirement.

The bill provides a July 1, 2016, effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the department, licensees will receive the benefit of fee reductions in the amounts shown below:

- Condominiums: (Yacht and Ship Brokers), approximately \$1,200 in Fiscal Year 2015-2016, \$6,100 in Fiscal Year 2016-2017, \$2,600 in Fiscal Year 2017-2018, and \$6,100 in Fiscal Year 2018-2019; and
- Professions: approximately \$283,100 in Fiscal Year 2015-2016, \$346,059 in Fiscal Year 2016-2017, \$1,192,274 in Fiscal Year 2017-2018, and \$346,059 in Fiscal Year 2018-2019.

C. Government Sector Impact:

According to the department¹⁹ and as shown in its summary below, a reduction in state revenue is anticipated to be \$2,183,492 from Fiscal Year 2015-2016 to Fiscal Year 2018-2019). As a result, there will be a reduction of approximately \$174,679 in the 8% revenue service charge sent to General Revenue.

	2015-16	2016-17	2017-18	2018-19
Revenues: License fees	Condominiums (Yacht and Ship Brokers) (\$1,200) Professions (\$283,100)	Condominiums (Yacht and Ship Brokers) (\$6,100) Professions (\$346,059)	Condominiums (Yacht and Ship Brokers) (\$2,600) Professions (\$1,192,274)	Condominiums (Yacht and Ship Brokers) (\$6,100) Professions (\$346,059)
Expenditures: Surcharge to GR (non-operating)	Condominiums (Yacht and Ship Brokers) (\$96) Professions (\$22,648)	Condominiums (Yacht and Ship Brokers) (\$488) Professions (\$27,685)	Condominiums (Yacht and Ship Brokers) (\$208) Professions (\$95,382)	Condominiums (Yacht and Ship Brokers) (\$488) Professions (\$27,685)

VI. Technical Deficiencies:

None.

¹⁹ See 2016 Department of Business and Professional Regulation Legislative Bill Analysis for SB 1050, Dec. 16, 2015 (on file with Senate Committee on Regulated Industries) at 8.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 326.004, 447.02, 447.09, 468.451, 468.452, 468.454, 468.45615, 468.4565, 469.006, 469.009, 477.0132, 477.0135, 477.019, 477.026, 477.0265, 477.029, 481.203, 481.219, 481.221, 481.229, 481.303, 481.321, 481.311, 481.317, 481.319, 481.329, 489.503, and 489.518.

This bill repeals the following sections of the Florida Statutes: 447.04, 447.041, 447.045, 447.06, 447.12, 447.16, 468.401, 468.402, 468.403, 468.404, 468.405, 468.406, 468.407, 468.408, 468.409, 468.410, 468.411, 468.412, 468.413, 468.414, 468.415, 468.453, 468.4536, 468.456, 468.4561, and 468.457.

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 February 2, 2016:

The CS deletes the exemption proposed for veterinary acupuncture or veterinary massage. It removes joint and several liability of a licensed qualifying agent for a business organization offering architectural or interior design services, for any damages resulting from the actions of the organization. All provisions relating to certificates of authorization for the practice of professional geology and qualification of the organization by active licensed professional geologists in the state were removed from the bill.

- B. **Amendments:**

None.