

**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: SB 394  
 INTRODUCER: Senator Hays  
 SUBJECT: Unlicensed Activity Fees  
 DATE: November 18, 2015      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	<b>Favorable</b>
2.	_____	_____	AGG	_____
3.	_____	_____	AP	_____

**I. Summary:**

SB 394 mandates that a special unlicensed activity fee of \$5 charged to all professionals renewing a license issued by the Department of Business and Professional Regulation (department) be waived for a profession if certain benchmarks for the profession’s operating account and unlicensed activity account are met. The waiver applies to all licensees in a renewal cycle for the duration of that cycle. The waiver does not apply if a profession has a deficit in its operating account or be projected to have a deficit within five fiscal years. There will be a reduction in unlicensed activity fee revenue of approximately \$1,588,300 in Fiscal Year 2016-2017. There is a corresponding reduction in the 8 percent service charge to the General Revenue Fund of approximately \$127,064 in Fiscal Year 2016-2017.

**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,<sup>1</sup> two boards within the Division of Real Estate,<sup>2</sup> and one board within the Division of Certified Public Accounting.<sup>3</sup> The Florida State Boxing Commission (boxing commission) is also assigned to the department for administrative and fiscal accountability purposes only.<sup>4</sup> 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.”<sup>5</sup>

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.”<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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.

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

<sup>4</sup> See s. 548.003(1), F.S.

<sup>5</sup> See s. 455.01(6), F.S.

<sup>6</sup> See s. 455.201(2), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> See s. 455.201(4)(b), F.S.

<sup>9</sup> 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.

<sup>10</sup> See s. 455.01(4) and (5), F.S.

In Fiscal Year 2013-2014, the Division of Accountancy had 37,513 licensees, the Division of Real Estate had 312,715 licensees, and the Board of Professional Engineers had 57,653 licensees.<sup>11</sup> In Fiscal Year 2013-2014, there were 413,401 licensees in the Division of Professions,<sup>12</sup> 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.<sup>13</sup>

Sections 455.203, F.S., 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.<sup>14</sup>

The department may adopt rules to implement a waiver of renewal fees, when the department determines that a profession's trust fund moneys exceed the amount required to cover the necessary functions of the board (or of the department, when there is no board). However, the waiver period may not exceed 2 years.<sup>15</sup>

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<sup>11</sup> See Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2013-2014*, <http://www.myfloridalicense.com/dbpr/os/documents/FY2013-2014AnnualReportProRegCPARE.pdf> (last accessed 2015) at 22.

<sup>12</sup> Of the total 413,401 licensees in the Division of Professions, 22,859 are inactive, but all licensees, whether or not active, must pay the \$5 unlicensed activity fee. *Id.* at 21-22.

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

<sup>14</sup> See s. 455.219(1), F.S.

<sup>15</sup> *Id.* Each board (or the department when there is no board) must ensure that license fees will cover all anticipated costs and a reasonable cash balance will be maintained. If sufficient action is not taken by a board within one year of notification by the department that license fees are projected to be inadequate, the department must set license fees for the board, in order to cover anticipated costs and to maintain the required cash balance.

Section 455.2281, F.S., requires that persons who are issued licenses by the department pay a special fee of \$5 to fund efforts to combat unlicensed activity. The fee is imposed on all initial licenses and renewed licenses, including inactive licenses. The funds of a profession regulated by the department are held in an unlicensed activity account and an operating fund account.

A transfer from the profession's operating fund account to its unlicensed activity account may be authorized if the operating fund account for the profession is not in a deficit and has a reasonable cash balance,<sup>16</sup> in order to inform the public about the consequences of obtaining services from professionals who are not properly licensed.

The department's Unlicensed Activity Program consists of public outreach and education, thorough investigation of complaints, and enforcement and prosecution.<sup>17</sup> The department maintains an educational campaign to inform consumers and licensees about the danger of hiring unlicensed individuals, with an emphasis on compliance rather than discipline of unlicensed offenders. In Fiscal Year 2014-2015, the department received over 5,000 complaints of unlicensed activity. More than 3,300 complaints that met requirements to be pursued resulted in the issuance of more than more than 200 citations<sup>18</sup> and more than 2,300 Notices to Cease and Desist.

Administrative action is taken on those cases not resolved by issuance of a citation or a notice to discontinue the unlicensed activity. The number of fines and administrative actions against unlicensed offenders increased in Fiscal Year 2014-2015 over the prior fiscal year, from 317 to 543 fines and from 168 to 433 actions.<sup>19</sup>

The department's administrative rules include disciplinary guidelines for the imposition of penalties against unlicensed persons.<sup>20</sup> Practicing a profession without holding the required license may result in a fine of \$3,000 for a first violation.<sup>21</sup> Various circumstances may be considered in order to reduce or increase fine amounts.<sup>22</sup>

Recently, the department engaged in a media campaign to increase awareness of unlicensed activity and the threat to consumers and to professionals who are properly licensed.<sup>23</sup> In addition to promoting the "Report Unlicensed Activity" mobile telephone application, the campaign's objectives were to increase the number of Florida consumers and licensed professionals exposed to information about:

- The professional services that require a license;
- How to verify a license; and
- How to report unlicensed activity.

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<sup>16</sup> See s. 455.2281, F.S.

<sup>17</sup> See Department of Business and Professional Regulation, *Unlicensed Activity Program, Fiscal Year 2014-2015* <http://www.myfloridalicense.com/dbpr/reg/documents/ULA14-15FINALAnnualReport.pdf> (last accessed Nov. 18, 2015).

<sup>18</sup> See s. 455.228(3)(a), F.S., which states the penalty for the unlicensed practice of a profession is a fine of not less than \$500 or more than \$5,000, or other conditions as established by rule.

<sup>19</sup> See *supra* note 17, at 1-2.

<sup>20</sup> See Rule 61-5.007, F.A.C.

<sup>21</sup> *Id.* A second violation may result in a \$2,500 fine; third and subsequent violations may result in fines of \$5,000.

<sup>22</sup> *Id.* These include the severity of the offense, the number of repetitions of the unlicensed activity, and complaints filed, among others.

<sup>23</sup> See *supra* note 17, at 20-27.

### III. Effect of Proposed Changes:

SB 394 mandates that the special unlicensed activity fee of \$5 charged to professionals renewing a license issued by the department be waived for all licensees in a renewal cycle for the duration of that cycle if:

- The unlicensed activity account balance for the profession at the beginning of the fiscal year before the renewal is more than twice the expenditures for unlicensed activity enforcement in the previous two fiscal years; and
- The profession does not have a deficit in its operating account or is not projected to have a deficit in the next five fiscal years.

The bill revises language to meet bill drafting conventions.

The bill provides an effective date of July 1, 2016.

### 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:

Fees payable by professionals renewing a license issued by the department may be reduced by \$5, if the special unlicensed activity fee of \$5 authorized in s. 455.2281, F.S., is required to be waived during a profession's qualified license renewal cycle. In order for a profession to qualify for the waiver of the unlicensed activity fee for all licensees in that renewal cycle:

- The unlicensed activity account balance for the profession at the beginning of the fiscal year before the renewal must be more than twice the expenditures for unlicensed activity enforcement in the previous two fiscal years; and
- The profession may not have a deficit in its operating account or be projected to have a deficit in the next five fiscal years.

According to the department, as of July 1, 2015, eight of the 22 professions for which it issues licenses meet the proposed criteria for waiver of the unlicensed activity fee of \$5

upon license renewal.<sup>24</sup> The total reduction in renewal fees payable by licensees in a single two-year renewal cycle for all eight professions eligible for the waiver is estimated by the department as \$3,193,450.

The department estimates there will be a reduction in unlicensed activity fee revenue of approximately \$1,588,300 in Fiscal Year 2016-2017, \$1,603,935 in Fiscal Year 2017-2018 and \$1,588,300 in Fiscal Year 2018-2019. There will be a corresponding reduction in the 8% service charge sent to General Revenue of approximately \$127,064 in Fiscal Year 2016-2017, \$128,315 in Fiscal Year 2017-2018 and \$127,064 in Fiscal Year 2018-2019.<sup>25</sup>

**B. Private Sector Impact:**

If a profession qualifies for waiver of a special unlicensed activity fee of \$5 during a renewal cycle, the renewal fees payable by affected licensees in that profession will be reduced by \$5. The waiver applies to all licensees in a renewal cycle for that profession for the duration of that cycle. If a profession has a deficit in its operating account or is projected to have a deficit within five fiscal years, the waiver is not applicable, and renewal fees will not be reduced.

**C. Government Sector Impact:**

The bill requires the department to determine whether a profession qualifies for the waiver of the unlicensed activity fee for all licensees in a license renewal cycle. The department must calculate, for each profession:

- The expenditures made for enforcement against unlicensed activity in the previous two fiscal years; and
- Whether the profession has a deficit in its operating account, or is projected to have a deficit in the next five fiscal years.

The department will be required to modify license renewal information provided to licensees, based on whether a renewal cycle qualifies for a reduction in the special unlicensed activity fee, reducing the renewal fees by \$5 for each professional renewing during that cycle.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>24</sup> See Email from C. Madill, Legislative Coordinator, Department of Business and Professional Regulation, to A. Nicotra, Office of Senator D. Alan Hays and *Professional Board Unlicensed Activity Fee Holiday Projections* chart attached thereto (Oct. 21, 2015)(on file with the Senate Committee on Regulated Industries).

<sup>25</sup> See *2016 Department of Business and Professional Regulation Legislative Bill Analysis for SB 394*, October 23, 2015 (on file with Senate Committee on Regulated Industries) at 3.

**VIII. Statutes Affected:**

This bill substantially amends section 455.2281 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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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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