

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 1114

INTRODUCER: Commerce and Tourism Committee and Senator Brandes and others

SUBJECT: Professional Regulation

DATE: February 26, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>McSwain</u>	<u>RI</u>	Favorable
2.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	Fav/CS
3.	<u>Davis</u>	<u>Hansen</u>	<u>AP</u>	Pre-meeting
4.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1114 addresses licensing, registration, and regulatory requirements for various professions and occupations. The bill:

- Permits a person to submit a petition for declaratory statement to any Florida agency to determine the effect of a criminal background on his or her eligibility for occupational or professional licensure;
- Requires petitioners seeking a declaratory statement to pay a fee not to exceed \$100 and the costs of state and federal fingerprint processing;
- Prohibits an agency from denying an application for licensure for certain professions if a specific duration has passed since the applicant's conviction;
- Creates a process for reviewing the criminal history of applicants for barber, cosmetology, certain construction contracting, and certified nursing assistant licenses;
- Specifies accommodations that an agency must make for applicants who are under confinement or supervision at the time of their application;
- Requires pertinent boards under the Department of Business and Professional Regulation (DBPR) to adopt rules that specify crimes that do or do not constitute grounds for licensure denial;
- Eliminates the current licensing required for business entities engaged in certain regulated professions (architecture and interior design, landscape architecture, and asbestos abatement consulting or contracting), while retaining the license required for individuals engaged in those professions;

- Provides that licensed individuals must apply for licensure and act as qualifying agents for business organizations to be licensed to engage in architecture and interior design, landscape architecture, or asbestos abatement consulting or contracting;
- Allows certain boxing match services to be practiced without a license (announcers and knockdown timekeepers);
- Revises the current license requirements for restricted barbers to specify:
 - The services that may and may not be provided by restricted barbers; and
 - A minimum of 325 training hours;
- Specifies license requirements for specialists in practices defined as “nail specialty,” “facial specialty,” and “full specialty;”
- Eliminates license and registration requirements for those who engage solely in:
 - Hair braiding, hair wrapping, or body wrapping; or
 - The polishing of nails or applying makeup;
- Eliminates registration requirements for labor organizations and licensing of labor organization business agents, while maintaining civil causes of action and criminal penalties; and
- Eliminates license requirement for yacht and ship brokers’ branch offices.

The elimination of professional licensing requirements contained in the bill will reduce state government revenues deposited in the Professional Regulation Trust Fund by \$815,130 in Fiscal Year 2018-2019, \$422,505 in Fiscal Year 2019-2020, and \$928,205 in Fiscal Year 2020-2021. In addition, state government revenues deposited in the Condominiums, Timeshares, and Mobile Homes Trust Fund will be reduced annually by \$4,300 in Fiscal Year 2018-2019 through Fiscal Year 2020-2021. As a result, revenues transferred to the General Revenue Fund as the general revenue service charge will be reduced by \$65,554 in Fiscal Year 2018-2019, \$34,144 in Fiscal Year 2019-2020, and \$74,600 in Fiscal Year 2020-2021.

The Bureau of Education and Testing (Bureau) in the DBPR also indicates that the bill will have a minimal impact on its workload, although some examination content may require updating; such updating is a part of the Bureau’s standard procedure to address statutory changes. Government agencies that provide occupational or professional licenses may see an increase in workload related to an increase in submissions of petitions for declaratory statements.

Additionally, the agencies will likely have increased revenues associated with the declaratory statement petition fee of not more than \$100. However, the fiscal impact on state government is indeterminate, because it is unknown how many people will request declaratory statements.

The bill takes effect July 1, 2018.

II. Present Situation:

Agency Declaratory Statements

The Administrative Procedure Act provides uniform procedures for agencies to exercise their authority, and is applicable to every Florida administrative agency.¹

¹ See, ss. 120.50-120.515, F.S.

A declaratory statement is meant to “enable members of the public to definitively resolve ambiguities of law arising in the conduct of their daily affairs or in the planning of their future affairs’ and ‘to enable the public to secure definitive binding advice as to the applicability of agency-enforced law to a particular set of facts.’”² A petition for declaratory statement must include a petitioner’s specific set of circumstances and the applicable law, rule, or order he or she wishes to have interpreted in light of those circumstances.³

When a petitioner files a petition for a declaratory statement with an agency, the agency must file a notice of the petition in the next available issue of the Florida Administrative Register and transmit copies of the petition to the Joint Administrative Procedures Committee.⁴ Within 90 days from the petition’s filing, the agency must either issue a declaratory statement or deny the petition. The agency must give notice of its action in the next available issue of the Florida Administrative Register.⁵

Generally, an agency will only issue a declaratory statement on actions that will take place in the future.⁶ However, the fact pattern must not be hypothetical so as to amount to a request for an advisory opinion regarding facts that are only ‘contingent, uncertain, [and] rest in the future.’⁷

Current law does not require a fee for filing a petition for declaratory statement with an agency.

Department of Business and Professional Regulation

Section 20.165, F.S., establishes the organizational structure of the Department of Business and Professional Regulation (DBPR or department), which has 12 divisions tasked with the regulation of several professions and businesses.⁸

Chapter 455, F.S., provides the general powers of the DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under the DBPR as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.⁹ The DBPR may engage in the regulation of professions “only for the preservation of the health,

² Section 120.565(1), F.S.; *Fla. Dept. of Bus. & Pro. Reg., Div. of Pari-Mutuel Wagering v. Invest. Corp. of Palm Bch.*, 747 So. 2d 374 (Fla. 1999), quoting Patricia A. Dore, *Access to Florida Administrative Proceedings*, 13 Fla. St. U. L. Rev. 965 (1986).

³ Section 120.565(2), F.S.

⁴ Section 120.565(3), F.S. The Joint Administrative Procedures Committee (JAPC) is a joint standing committee of the Legislature created by Rule 4.1 of the Joint Rules of the Florida Legislature. It is composed of five Senators appointed by the President of the Senate and six Representatives appointed by the Speaker of the House. The primary function of JAPC is generally to review agency action pursuant to the operation of the Administrative Procedure Act in ch. 120, F.S., related to the rulemaking process, to ensure that rules adopted by the executive branch agencies do not create new law and stay within the authority specifically delegated to them by the Legislature.

⁵ Section 120.565(3), F.S.

⁶ *Fed’n of Mobile Home Owners of Fla., Inc. v. Dept. of Bus. Regulation*, 479 So. 2d 252 (Fla. Dist. Ct. App. 1985).

⁷ *Santa Rosa Cnty. v. Admin. Comm’n., Div. of Admin. Hearings*, 661 So. 2d 1190 (Fla. 1995).

⁸ See s. 20.165, F.S., creating the divisions of 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.

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

safety, and welfare of the public under the police powers of the state.”¹⁰ 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.¹¹

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.¹²

When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a “permit, registration, certificate, or license” to the licensee.¹³

In Fiscal Year 2016-2017, there were 412,872 active licensees in the Division of Professions,¹⁴ including:

- Architects and interior designers;
- Asbestos consultants and contractors;
- Athlete agents;
- Auctioneers;
- Barbers (19,098 active and 199 inactive);
- Building code administrators and inspectors;
- Community association managers;
- Construction industry contractors (71,818 active and 15,004 inactive);
- Cosmetologists (237,090 active and 1,600 inactive);
- Electrical contractors (11,960 active and 1,285 inactive);
- Employee leasing companies;
- Geologists;
- Home inspectors;
- Harbor pilots;
- Landscape architects;
- Mold-related services;
- Talent agencies; and
- Veterinarians.¹⁵

Sections 455.203 and 455.213, F.S., establish general licensing authority for the DBPR, including the authority to charge license fees and license renewal fees. Each board within the

¹⁰ Section 455.201(2), F.S.

¹¹ *Id.*

¹² Section 455.201(4)(b), F.S.

¹³ Section 455.01(4) and (5), F.S.

¹⁴ See Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2016-2017*, at <http://www.myfloridalicense.com/dbpr/os/documents/DivisionAnnualReport.pdf?x40199> (last visited Feb. 7, 2018) at pages 21 and 22. Of the total 434,574 licensees in the Division of Professions, 21,702 are inactive. *Id.* at page 22.

¹⁵ *Id.*

DBPR must determine by rule the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.¹⁶

Yacht and Ship Broker Branch Office Licenses

A person may not act as a yacht or ship broker or salesperson unless licensed under ch. 326, F.S.¹⁷ The Yacht and Ship Broker's Section, a unit of the Division of Florida Condominiums, Timeshares and Mobile Homes of the DBPR,¹⁸ requires each yacht or shipbroker to maintain a principal place of business in Florida. The yacht or shipbroker may maintain branch offices, but must obtain a separate license for each branch office, which requires a \$100 application fee.¹⁹ Applicants for a branch office license pay a \$100 fee, and the license must be renewed every two years.²⁰

Labor Organizations

The DBPR's Division of Regulation licenses and regulates labor organizations and related business agents pursuant to ch. 447, F.S.²¹ A labor organization is an organization of employees that is recognized as a unit of bargaining by one or more employers in the state that deals with employers concerning employee's hours, pay, working conditions, and other grievances.²²

A labor organization's business agent is a person who acts, for pecuniary or monetary gain, for any labor organization in:

- The issuance of membership or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization; and
- Soliciting or receiving from any employer any right or privilege for employees."²³

A labor organization's business agents must be licensed by the DBPR.²⁴ Business agent license applicants must pay a \$25 license fee and meet a number of licensure requirements.²⁵

Asbestos Abatement Business Organizations

The Asbestos Licensing Unit licenses and regulates asbestos abatement pursuant to ch. 469, F.S.; it also responds to consumer complaints and inquiries by monitoring activities and compliance within the asbestos abatement industry.²⁶ The Asbestos Licensing Unit operates under the DBPR's Division of Professions.

¹⁶ Section 455.219(1), F.S.

¹⁷ Section 326.004(1), F.S.

¹⁸ See Department of Business and Professional Regulation, *Yacht and Ship Brokers; Licensing and Enforcement*, <http://www.myfloridalicense.com/dbpr/lsc/YachtandShip.html> (last visited Feb. 7, 2018).

¹⁹ Section 326.004(13), F.S.

²⁰ See Fla. Admin. Code R. 61B-60.002 (2017) at <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=61B-60> (last visited Feb. 7, 2018).

²¹ Section 447.01, F.S., and see <http://www.myfloridalicense.com/dbpr/reg/LaborOrganizationsandBusinessAgents.html> (last visited Feb. 7, 2018).

²² Section 447.02(1), F.S.

²³ Section 447.02(2), F.S.

²⁴ Sections 447.04(2) and 447.06, F.S.

²⁵ Section 447.04(2), F.S.

²⁶ See Florida Department of Business and Professional Regulation, *Asbestos Contractors and Consultants*, available at <http://www.myfloridalicense.com/DBPR/asbestos-contractors-and-consultants/>, and Florida Department of Business and

Only licensed asbestos contractors may perform asbestos abatement,²⁷ unless exempted.²⁸ A person must be a licensed asbestos consultant to:

- Conduct an asbestos survey;
- Develop an operation and maintenance plan;
- Monitor and evaluate asbestos abatement; or
- Prepare asbestos abatement specifications.²⁹

An asbestos abatement professional applicant must either be currently licensed as an architect, professional engineer, or professional geologist; be a diplomat of the American Board of Industrial Hygiene; or have been awarded designation as a Certified Safety Professional by the Board of Certified Safety Professionals.³⁰

If an applicant wishes to consult or contract on asbestos abatement under any name other than his or her legal name, then the applicant must apply for licensure under the fictitious name.³¹ Similarly, a business organization must apply for licensure as an asbestos abatement consultant or contractor through a qualifying agent who is licensed under ch. 469, F.S. The qualifying agent must have authority to supervise the enterprise, and be financially responsible for the business.³² The business organization licensee must consistently maintain a qualifying agent.³³

Applicants for an asbestos abatement business license pay an application fee of \$300, an unlicensed activity fee of \$5, an initial licensure fee of \$250, and a biennial renewal fee of \$250.³⁴

Barbering

The term “barbering” in ss. 476.014 through 476.254, F.S., (the Barbers’ Act) includes any of the following practices when done for payment: shaving, cutting, trimming, coloring, shampooing, arranging, dressing, curling, or waving the hair or beard or applying oils, creams, lotions, or other preparations to the face, scalp, or neck, either by hand or by mechanical appliances.³⁵

An applicant for licensure as a barber must pass an examination. To be eligible to take the examination, the applicant must:

- Be at least 16 years of age;

Professional Regulation, *DBPR Online Services*, available at <https://www.myfloridalicense.com/intentions2.asp?chBoard=true&boardid=59&SID> (last visited Feb. 7, 2018).

²⁷ Section 469.003(3), F.S.

²⁸ Section 469.002, F.S., provides that in limited circumstances, certain governmental employees with required training may engage in asbestos abatement work solely for maintenance purposes.

²⁹ Section 469.003, F.S.

³⁰ Section 469.004(1), F.S.

³¹ Section 469.006(2), F.S.

³² *Id.*

³³ Section 469.006(3), F.S.

³⁴ See Fla. Admin. Code R. 61E1-3.001 (2017) at <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=61E1-3> (last visited Feb. 7, 2018).

³⁵ See s. 476.034(2), F.S. The term does not include those services when done for the treatment of disease or physical or mental ailments.

- Pay the application fee; and
- Have held an active valid license in another state for at least one year,³⁶ or have a minimum of 1,200 hours of specified training.³⁷

Alternatively, a person may apply for and receive a “restricted license” to practice barbering, which authorizes the licensee to practice only in areas in which he or she has demonstrated competency pursuant to rules of the Barbers’ Board.³⁸

Nail and Facial Specialists, Hair Braiders, Hair Wrappers, and Body Wrappers

Chapter 477, F.S., governs the licensing and regulation of cosmetologists, hair braiders, hair wrappers, nail specialists, facial specialists, full specialists, body wrappers, and related salons in the state. The Board of Cosmetology, within the DBPR’s Division of Professions, processes license applications, reviews disciplinary cases, and conducts informal administrative hearings relating to licensure and discipline.³⁹

Individuals are prohibited from providing manicures, pedicures, or facials without first becoming licensed as a cosmetologist or registered as a nail specialist, facial specialist, or full specialist.⁴⁰ The application of polish to fingernails and toenails is considered manicuring, even though the individual is not cutting, cleansing, adding, or extending the nails.⁴¹ Therefore, a registration as a specialist or licensure as a cosmetologist is required to apply polish to fingernails and toenails for compensation.

A “specialist” is “any person holding a specialty registration in one or more of the specialties registered under [ch. 477, F.S.]”⁴² The term “specialty” is defined as “the practice of one or more of the following:

- Manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands. This term includes any procedure or process for the affixing of artificial nails, except those nails which may be applied solely by use of a simple adhesive.
- Pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet.
- Facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services.”⁴³

³⁶ Licensure by endorsement may also allow a practitioner holding an active license in another state or country to qualify for licensure in Florida. *See* s. 476.144(5), F.S.

³⁷ *See* s. 476.114(2), F.S.; the training must include, but is not limited to the completion of services directly related to the practice of barbering at a licensed school of barbering, a public school barbering program, or a government-operated barbering program in Florida.

³⁸ *See* s. 476.144(6), F.S.

³⁹ *See* Department of Business and Professional Regulation, *Cosmetology*, available at <http://www.myfloridalicense.com/DBPR/cosmetology/> (last visited Feb. 7, 2018).

⁴⁰ *See* Florida Department of Business and Professional Regulation, *Board of Cosmetology Frequently Asked Questions and Answers* (Aug. 2017), available at: http://www.myfloridalicense.com/dbpr/pro/cosmo/documents/cosmo_faq.pdf (last visited Feb. 7, 2018).

⁴¹ *See* s. 477.013(6)(a) and (b), F.S.

⁴² *See* s. 477.013(5), F.S.

⁴³ *See* s. 477.013(6), F.S.

A nail specialist may complete manicures and pedicures, and a full specialist may complete manicures, pedicures, and facials.⁴⁴ Manicures and pedicures, as a part of cosmetology services, are required to be provided in a licensed specialty salon or cosmetology salon.⁴⁵ All cosmetology and specialty salons are subject to inspection by the DBPR.⁴⁶

An applicant for a specialist license must:

- Be at least 16 years of age;
- Obtain a certificate of completion from an approved specialty education program; and
- Submit an application for registration to the DBPR with the registration fee.⁴⁷

A “cosmetologist” is a person who is licensed to engage in the practice of cosmetology.⁴⁸ “Cosmetology” is “the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services.”⁴⁹

Certain persons who apply cosmetic products (makeup) are exempt from ch. 477, F.S., under limited conditions, including application of such products in photography studio salons, in connection with certain retail sales, or during the production of qualified films.⁵⁰ In addition, persons who provide makeup in a theme park or entertainment complex to actors and others or the general public are exempt from licensing requirements.⁵¹

An applicant for a cosmetologist license must pass a licensure examination and:

- Be at least 16 years of age;
- Have a high school diploma;
- Submit an application with the applicable fee and examination fee; and
- Be licensed in another state or country for at least one year, or received 1,200 hours training, including completion of an education at an approved cosmetology school or program.⁵²

Architecture or Interior Design Business Organizations

Chapter 481, Part I, F.S., governs the licensing and regulation of architects, interior designers, and related business organizations. The Board of Architecture and Interior Design, under the

⁴⁴ See s. 477.013(6), F.S.

⁴⁵ See s. 477.0263, F.S. Under s. 477.0135(3), F.S., licensing is not required for a person whose occupation is confined solely to cutting, trimming, polishing, or cleansing fingernails of customers in an active, licensed barbershop, and who did so before October 1, 1985.

⁴⁶ See s. 477.025(9), F.S.

⁴⁷ See s. 477.0201, F.S.

⁴⁸ See s. 477.013(3), F.S.

⁴⁹ See s. 477.013(4), F.S. A licensed cosmetologist is not required to register separately as a hair braider, hair wrapper, body wrapper, or specialist. See note 40, *supra*.

⁵⁰ See ss. 477.013(11), 477.0135(1)(f), and 477.0135(5), F.S.

⁵¹ See s. 477.0135(6), F.S.

⁵² See ss. 477.019(2) and (4), F.S.

DBPR's Division of Professions, processes license applications, reviews disciplinary cases, and conducts informal administrative hearings relating to licensure and discipline.⁵³

The practice or offering of architectural or interior design services to the public through certain business organizations is authorized for:

- Licensees acting through a corporation, limited liability company, or partnership; or
- A corporation, limited liability company, or partnership acting through licensees as agents, employees, officers, or partners.⁵⁴

A certificate of authorization is required to practice or provide architecture or interior design services to the public.⁵⁵ Applicants for an architecture business certificate of authorization or interior design business certificate of authorization must pay an application fee of \$100, an unlicensed activity fee of \$5, and a biennial renewal fee of \$125.⁵⁶ A business entity has no regulatory obligations other than to obtain licensure.

According to the DBPR, during the past four fiscal years through Fiscal Year 2016-2017, 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. In most cases, the licensed business was cited for operating without a supervising architect or for failure to include license numbers in advertisements.⁵⁷

The Board of Architecture and Interior Design disciplined licensed interior design businesses only five times during the past four fiscal years through Fiscal Year 2016-2017, in cases that did not also involve discipline against the qualifying interior designer.⁵⁸

Landscape Architecture Business Organization

Chapter 481, Part II, F.S., governs the licensing and regulation of landscape architects and related business organizations in Florida. The Board of Landscape Architecture, under the DBPR's Division of Professions, processes license applications, reviews disciplinary cases, and conducts informal administrative hearings relating to licensure and discipline.⁵⁹

⁵³ See Florida Department of Business and Professional Regulation, *Architecture and Interior Design*, <http://www.myfloridalicense.com/DBPR/architecture-and-interior-design/> (last visited Feb. 7, 2018).

⁵⁴ Section 481.219(1), F.S.; such practice must comply with all the requirements in s. 481.219, F.S.

⁵⁵ Section 481.219(2)-(3), F.S.

⁵⁶ See Fla. Admin. Code R. 61G1-17.001 and R. 61G1-17.002 (2017) at <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=61G1-17> (last visited Feb. 7, 2018).

⁵⁷ Email from J. Morris, Legislative Affairs Director, DBPR, to Senate Committee on Regulated Industries staff (Jan. 19, 2018) (on file with Senate Committee on Regulated Industries).

⁵⁸ *Id.*

⁵⁹ Florida Department of Business and Professional Regulation, *Landscape Architecture*, <http://www.myfloridalicense.com/DBPR/landscape-architecture/> (last visited Feb. 7, 2018).

A person may not knowingly practice landscape architecture⁶⁰ unless the person holds a valid license issued pursuant to ch. 481, Part II, F.S.⁶¹ A corporation or partnership is permitted to offer landscape architectural services to the public, subject to the provisions of ch. 481, Part I, F.S., if:

- One or more of the principals of the corporation, or partners in the partnership, is a licensed landscape architect;
- One or more of the officers, directors, or owners of the corporation, or one of more of the partners of the partnership is a licensed landscape architect; and
- The corporation or partnership has been issued a certificate of authorization by the board.⁶²

Applicants for a landscape architecture business certificate of authorization must pay an application fee and initial licensure fee of \$450, an unlicensed activity fee of \$5, and a biennial renewal fee of \$337.50.⁶³ A business entity has no regulatory obligations other than to obtain licensure and notify the DBPR within one month of any change in the information contained in its license application.⁶⁴

State Boxing Commission

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing,⁶⁵ and mixed martial arts⁶⁶ by the Florida State Boxing Commission (commission), which is assigned to the DBPR for administrative and fiscal purposes.⁶⁷

The commission has exclusive jurisdiction over every boxing, kickboxing, and mixed martial arts match held in Florida,⁶⁸ which involves a professional.⁶⁹ Professional matches held in Florida must meet ch. 548, F.S.'s requirements, and the rules adopted by the commission.⁷⁰ Chapter 548, F.S., does not apply to certain professional or amateur "martial arts," such as karate, aikido, judo, and kung fu; the term "martial arts" is distinct from and does not include "mixed martial arts."⁷¹

⁶⁰ The term "landscape architecture" includes but is not limited to the determination of building siting, drainage, and contouring of land and water forms, and other activities including design in connection with land development for the preservation, conservation, enhancement, or determination of proper land uses, natural features, or naturalistic and aesthetic values. *See* s. 481.303(6)(a)-(d), F.S., relating to the professional services included in landscape architecture.

⁶¹ Section 481.323(1)(a), F.S.

⁶² Section 481.319(1), F.S.

⁶³ *See* Fla. Admin. Code R. 61G10-12.002 (2017) at <https://www.flrules.org/gateway/ruleNo.asp?id=61G10-12.002> (last visited Feb. 7, 2018).

⁶⁴ *See* 481.319(4), F.S.

⁶⁵ The term "kickboxing" means the unarmed combat sport of fighting by striking with the fists, hands, feet, legs, or any combination, but does not include ground fighting techniques. *See* s. 548.002(12), F.S.

⁶⁶ The term "mixed martial arts" means the unarmed combat sport involving the use of a combination of techniques, including, but not limited to, grappling, kicking, striking, and using techniques from martial arts disciplines, including, but not limited to, boxing, kickboxing, Muay Thai, jujitsu, and wrestling. *See* s. 548.002(16), F.S.

⁶⁷ *See* s. 548.003(1), F.S.

⁶⁸ *See* s. 548.006(1), F.S.

⁶⁹ The term "professional" means a person who has "received or competed for a purse or other article of a value greater than \$50, either for the expenses of training or for participating in a match. *See* s. 548.002(19), F.S.

⁷⁰ *See* s. 548.006(4), F.S.

⁷¹ *See* s. 548.007(6), F.S., and *see supra* note 78 for the definition of "mixed martial arts."

However, as to amateur matches, the commission's jurisdiction is limited to the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for amateur boxing, kickboxing, and mixed martial arts matches held in Florida.⁷² Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.⁷³ During Fiscal Year 2016-2017, of the 164 amateur events in Florida, the Division of Regulation in the DBPR conducted 26 checks for compliance with health and safety standards and proper supervision of the events.⁷⁴

Under current law, a participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician, matchmaker, or promoter who provides services for a boxing, kickboxing, or mixed martial arts match must be licensed by the commission.⁷⁵

Construction Contracting Professionals

The Construction Industry Licensing Board (CILB) within the DBPR is responsible for licensing and regulating the construction industry in this state under part I of ch. 489, F.S.⁷⁶ The CILB is divided into two divisions with separate jurisdictions:

- Division I comprises the general contractor, building contractor, and residential contractor members of the CILB. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors.
- Division II comprises the roofing contractor, sheet metal contractor, air-conditioning contractor, mechanical contractor, pool contractor, plumbing contractor, and underground utility and excavation contractor members of the CILB. Division II has jurisdiction over the regulation of roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors.

A specialty contractor's scope of work and responsibility is limited to a particular phase of construction as detailed in an administrative rule adopted by the CILB. Jurisdiction is dependent on the scope of work and whether Division I or Division II has jurisdiction over such work in accordance with the applicable administrative rule.⁷⁷

The Electrical Contractors' Licensing Board (ECLB) within the DBPR is responsible for licensing and regulating electrical contractors in this state under part II of ch. 489, F.S.⁷⁸

⁷² See s. 548.006(3), F.S.

⁷³ Section 548.002(2), F.S.

⁷⁴ See Department of Business and Professional Regulation, *Florida State Boxing Commission Annual Report, Fiscal Year 2016-2017* at <http://www.myfloridalicense.com/dbpr/os/documents/FY2016-2017BoxingCommissionAnnualReport.pdf> (Message from Secretary) (last visited Feb. 7, 2018).

⁷⁵ The term "participant" means a professional competing in a boxing, kickboxing, or mixed martial arts match. See s. 548.002, F.S., for the definitions of "participant," "manager," "second," "judge," "physician," "matchmaker," and "promoter." The terms "trainer," "timekeeper," "referee," and "announcer" are not defined in ch. 548, F.S.

⁷⁶ See s. 489.107, F.S.

⁷⁷ For example, specialty swimming pool contractors have limited scopes of work for the construction of pools, spas, hot tub, and decorative or interactive water displays. See Fla. Admin. Code R. 61G4-15.032 (2016).

⁷⁸ Section 489.507, F.S.

Construction contractors under part I of ch. 489, F.S., and electrical contractors under part II of ch. 489, F.S., must satisfactorily complete a licensure examination before being licensed.⁷⁹

Master septic tank contractors and septic tank contractors are regulated by the DBPR under part III of ch. 489, F.S. Septic tank contractors must pass an examination and register with the DBPR before engaging in the occupation.⁸⁰ A master septic tank contractor must have at least three years' experience as a registered septic tank contractor or a plumbing contractor certified under part I of ch. 489, F.S., who has provided septic tank contracting services for at least three years.

The CILB and the ECLB may deny a license application for any person who it finds guilty of any of the grounds for discipline set forth in s. 455.227(1), F.S., or set forth in the profession's practice act.⁸¹ Specifically, the CILB may deny a license application for any person having been convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of, or the ability to practice, a licensee's profession.⁸²

The CILB and the ECLB may also deny a registration application under s. 455.227, F.S., which authorizes the denial of a license on the basis of a criminal background related to the practice of, or the ability to practice, a profession.⁸³

To be eligible for registration by the DBPR, master septic tank contractors and septic tank contractors must be of good moral character. In considering good moral character, the DBPR may consider any matter that has a substantial connection between the good moral character of the applicant and the professional responsibilities of a registered contractor, including, but not limited to:

the applicant being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of contracting or the ability to practice contracting...⁸⁴ (Emphasis added.)

The DBPR may also deny a registration application under s. 455.227, F.S., which authorizes the denial of a license on the basis of a criminal background related to the practice of, or the ability to practice, a profession.⁸⁵

⁷⁹ See ss. 489.113 and 489.516, F.S., respectively.

⁸⁰ Sections 489.552 and 489.553, F.S.

⁸¹ Section 455.227(2), F.S.

⁸² Sections 489.129(1)(b) and 489.553(1)(d), F.S., proving the disciplinary grounds for construction contractors and electrical contractors, respectively.

⁸³ See s 477.029(1)(h), F.S.

⁸⁴ Section 489.553(4)(a), F.S.

⁸⁵ See s 477.029(1)(h), F.S.

Chapter 489, F.S., does not specifically require the DBPR, the CILB, or the ECLB to consider the passage of time since the disqualifying criminal offense before denying or granting a license or registration.

Licensing and Criminal Background

Section 112.011, F.S., outlines general guidelines for considering criminal convictions during licensure determinations. Generally, a person may be denied a professional license based on his or her prior conviction of a crime if the crime was a felony or first-degree misdemeanor that is directly related to the standards determined by the regulatory authority to be necessary and reasonably related to the protection of the public health, safety, and welfare for the specific profession for which the license is sought.⁸⁶ Notwithstanding any law to the contrary, a state agency may not deny an application for a license based solely on the applicant's lack of civil rights.⁸⁷

DBPR

The regulatory boards of the DBPR, or the department if there is no board, may deny a license application for any person who it finds guilty of any of the grounds for discipline set forth in s. 455.227(1), F.S., or set forth in the profession's practice act.⁸⁸ Specifically, the regulatory board, or the department if there is no board, may deny a license application for any person having been:

convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.⁸⁹ (Emphasis added.)

Section 455.227, F.S., does not specifically require the DBPR or the applicable regulatory board to consider the passage of time since the disqualifying criminal offense before denying or granting a license.

Department of Health

The Department of Health (DOH) or an applicable board may deny the licensure of any applicant who has been "convicted of or pled guilty or nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession regulated by this state"⁹⁰ or related to certain types of fraud,⁹¹ or for other reasons in the applicable practice act.

⁸⁶ Section 112.011(1)(b), F.S.

⁸⁷ Section 112.011(1)(c), F.S.

⁸⁸ Section 455.227(2), F.S.

⁸⁹ Section 455.227(1)(c), F.S.

⁹⁰ Sections 456.024(3)(c); 456.072(1)(c), (x), (ii) and (ll); and 456.071(2)(a), F.S.

⁹¹ Section 456.0635, F.S.

There are no statutory provisions of rules that prohibit individuals from applying for licensure while they are still incarcerated or under some form of supervised release.⁹²

Certified Nursing Assistants

The Board of Nursing within the DOH is responsible for licensing and regulating the certified nursing assistants (CNA) under part II of ch. 464, F.S.⁹³ In Fiscal Year 2015-2016, there were 146,495 active certified nursing assistants.⁹⁴

The “practice of a certified nursing assistant” means:

providing care and assisting persons with tasks relating to the activities of daily living. Such tasks are those associated with personal care, maintaining mobility, nutrition and hydration, toileting and elimination, assistive devices, safety and cleanliness, data gathering, reporting abnormal signs and symptoms, postmortem care, patient socialization and reality orientation, end-of-life care, cardiopulmonary resuscitation and emergency care, residents’ or patients’ rights, documentation of nursing-assistant services, and other tasks that a certified nurse assistant may perform after training beyond that required for initial certification and upon validation of competence in that skill by a registered nurse.⁹⁵

The definition of “practice of a certified nursing assistant” does not restrict a person who is otherwise trained and educated from performing the tasks specified in the definition.⁹⁶

To be certified in Florida, a person must have a high school diploma, or its equivalent; or be at least 18 years of age, and pass a nursing assistant competency examination. Alternatively, a person may be certified in Florida if he or she is certified by another state and has not been found to have committed abuse, neglect, or exploitation in that state.⁹⁷

The qualifications for certification as a CNA do not specifically refer to a person’s criminal background, but an applicant must pass a background screening pursuant to s. 400.215, F.S., which requires the personnel of nursing homes and related healthcare facilities to pass a level two background screening, or s. 408.809, F.S.⁹⁸ The background screening must be completed every 5 years following licensure, employment, or entering into contract in a capacity that requires background screening.⁹⁹

⁹² Florida Department of Health, *Agency Analysis of HB 1041*, p. 2 (Jan. 24, 2018) (on file with the Committee on Commerce and Tourism).

⁹³ See s. 489.107, F.S.

⁹⁴ See Florida Department of Health, Division of Medical Quality Assurance, *Annual Report & Long-range Plan, Fiscal Year 2016-2017*, at <http://mqawebteam.com/annualreports/1617/#1/z> (last visited Feb. 7, 2018) at page 13. Of the total 193,637 certified nursing assistants, 42,209 are in-state delinquent, 2,019 are out-of-state delinquent, and are active military.

⁹⁵ Section 464.201(5), F.S.

⁹⁶ *Id.*

⁹⁷ Section 464.203, F.S.

⁹⁸ Section 408.809(1), F.S.

⁹⁹ Section 408.809(2), F.S.

Level two background screening ensures that a subject of the screening has not been arrested for, is not awaiting final disposition of, has not been found guilty of, regardless of adjudication, or not entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent and the record has not been sealed or expunged for, any of the 52 prohibited offenses.¹⁰⁰ The prohibited offenses include violent crimes, property crimes, and sexual offenses.¹⁰¹

In addition to the crimes specified under s. 435.04, F.S., a CNA may not have a felony record for certain specified felony financial crimes, including Medicaid fraud and forgery.¹⁰²

A level two background screening includes fingerprinting for statewide criminal history records checks through the Florida Department of Law Enforcement (FDLE) and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies. Once the background screening is complete, and the FDLE receives the information from the FBI, the criminal history information is transmitted to the DOH. The DOH determines if the screening contains any disqualifying information for employment.

If a person is disqualified from employment due to failing the required background screening, the DOH may grant an exemption from disqualification for:

- Felonies for which at least three years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying felony;
- Misdemeanors prohibited under any of the statutes cited in this chapter or under similar statutes of other jurisdictions for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court;
- Offenses that were felonies when committed but that are now misdemeanors and for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court; or
- Findings of delinquency.¹⁰³

However, if the disqualifying crime committed while the applicant was a delinquent would be considered a felony if committed by an adult, and the record has not been sealed or expunged, the DOH may not grant an exemption until at least three years have elapsed since the applicant's completion or lawful release from confinement, supervision, or nonmonetary condition imposed by the court for the offense.¹⁰⁴

An applicant who seeks an exemption must first pay any court-ordered amount for any fee, fine, fund, lien, civil judgment, application, costs of prosecution, trust, or restitution as part of the judgment and sentence for the disqualifying crime.¹⁰⁵

¹⁰⁰ Section 435.04, F.S.

¹⁰¹ See 435.04(2), F.S.

¹⁰² See 408.809(4), F.S.

¹⁰³ Section 435.07(1)(a), F.S.

¹⁰⁴ *Id.*

¹⁰⁵ Section 435.07(1)(b), F.S.

However, the DOH may not grant an exemption to an individual who is found guilty of, regardless of adjudication, or who has entered a plea of nolo contendere or guilty to, any felony covered by s. 435.03 or s. 435.04, F.S., solely by reason of any pardon, executive clemency, or restoration of civil rights.¹⁰⁶

An exemption may also not be granted to anyone who is a sexual predator, career offender, or sexual offender (unless not required to register).¹⁰⁷ The agency may not grant an exemption from disqualification to persons with a criminal history that includes other violent felonies, crimes against children, and sex-related crimes, such as felony domestic violence, luring or enticing a child, sexual battery, child pornography, and child abuse.¹⁰⁸

III. Effect of Proposed Changes:

Declaratory Statements

Section 1 amends s. 120.565, F.S., to create a new declaratory statement process that permits a person who desires to become licensed in a state-regulated profession or occupation to obtain a binding determination of whether his or her criminal conviction or sanction will prevent such licensure, registration, or certification in the profession or occupation.

A person may seek the agency's opinion prior to the person possessing the training or education required for the license, registration, or certificate in the profession or occupation. Additionally, he or she may request the agency's determination while still under criminal confinement or supervision.

The petition may include mitigating factors or other information the petitioner believes relevant to establish the petitioner's eligibility, including, but not limited to:

- The time elapsed since completion of or lawful release from confinement, supervision, or nonmonetary condition imposed by the court for a disqualifying offense; and
- The petitioner's standing in his or her community.

The agency's declaratory statement must further indicate:

- If an agency's determination of disqualification as a result of criminal background may be reversed based on evidence of rehabilitation or mitigation; and
- Whether any federal laws or regulations or any conditions imposed by the court on the petitioner may impede his or her licensure, registration, or certification in the profession or occupation.

The agency's conclusion is binding on the agency as to the petitioner, but any subsequent criminal history may form an independent basis for denial of licensure, registration, or certification.

An agency may require a petitioner to submit the following with his or her petition for declaratory statement:

¹⁰⁶ See s. 435.07(4)(a), F.S.

¹⁰⁷ See s. 435.07(4)(b), F.S.

¹⁰⁸ See s. 435.07(4)(c), F.S.

- A fee of not more than \$100;
- A certified copy of each criminal judgment rendered against the petitioner;
- A complete set of fingerprints; and
- A fingerprint processing fee.

The agency must submit the fingerprints to the Florida Department of Law Enforcement (FDLE) for a state criminal history record check and the FDLE must forward the fingerprints to the Federal Bureau of Investigation (FBI) for a national criminal history record check.

Licensing Deregulation

Yacht and Ship Broker Branch Office Licenses

Section 2 amends s. 326.004, F.S., to remove the requirement that a yacht or ship broker obtain separate licenses for each branch office. Current provisions related to licensing for yacht brokers and salespeople are retained.

Labor Organizations

Sections 3 - 11 amend Part I of ch. 447, F.S., to eliminate the registration and regulation of labor organizations and their business agents by the Department of Business and Professional Regulation (DBPR) and the requirement that the Public Employees Relations Commission notify the DBPR of registrations and renewals of such organizations. 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 are not affected by the bill.

Asbestos Abatement Business Organizations

Sections 15 and 16 amend ch. 469, F.S., to require an applicant seeking to engage in asbestos abatement as a business organization, or in any name other than the applicant's legal name, to apply for licensure under the name of the business organization. However, the issued license must be in the name of the qualifying agent, and the name of the qualified business organization must be noted on the license. In addition, the bill makes conforming changes associated with qualification of business organizations by licensed qualifying agents.

Barbering

Section 17 amends s. 476.034, F.S., to define the terms "restricted barber" and "restricted barbering." Restricted barbers are licensed to perform, for payment by the public, hair cutting and styling, full facial shaves, mustache and beard trimming, and shampooing, conditioning and blow drying hair; restricted barbers may apply only hair tonics and hair spray and may not apply other chemical preparations or solutions to hair.

Section 18 amends s. 476.114, F.S., to reduce the minimum training hours from 1,200 hours to 325 hours for restricted barbers. The bill specifies the content of the training must be in "sanitation, safety, and laws and rules."

The bill provides an applicant for a restricted barber license must also be at least 16 years of age, pay the application fee, and pass an examination. To be eligible to take the examination, an

applicant for restricted barbering must have held an active valid license in another state for at least one year,¹⁰⁹ or have a minimum of 325 hours of training.¹¹⁰

Section 19 repeals current law (s. 476.144(6)(b), F.S.) limiting the practice of a restricted license to areas in which the licensee has demonstrated competency.

Nail and Facial Specialists, Hair Braiders, Hair Wrappers, and Body Wrappers

Section 20 amends s. 477.013, F.S., to specify the activities that constitute the practice of a “nail specialty,” a “facial specialty,” and a “full specialty.” A nail specialty, includes:

- Manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands, including any procedure for the affixing of artificial nails, except those that are affixed solely by a simple adhesive; and
- Pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet.

A facial specialty includes facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services. A full specialty includes all manicuring, pedicuring, and facial services.

The bill expands the definition of “hair braiding” to include the weaving of natural human hair with commercial hair, and the use of hair extensions or wefts.¹¹¹ Under current law, the use of hair extensions or wefts is excluded from “hair braiding.”

Section 21 repeals s. 477.0132, F.S., eliminating registration requirements for hair braiding, hair wrapping, and body wrapping, and requirements that those registrants take specified courses approved by the Board of Cosmetology.

The bill repeals the requirements that persons whose practice is confined solely to:

- Hair braiding take an approved two-day, 16-hour course consisting of five hours of HIV/AIDS and other communicable diseases, five hours of sanitation and sterilization, four hours of disorders and diseases of the scalp, and two hours of studies regarding laws affecting hair braiding.
- Hair wrapping take an approved one-day, six-hour course consisting of education in HIV/AIDS and other communicable diseases, sanitation and sterilization, disorders and diseases of the scalp, and studies regarding laws affecting hair wrapping.
- Body wrapping (unless otherwise licensed or exempt from licensing) take an approved two-day, 12-hour course consisting of education in HIV/AIDS and other communicable diseases, sanitation and sterilization, disorders and diseases of the skin, and studies regarding laws affecting body wrapping.

¹⁰⁹ Licensure by endorsement may also allow a practitioner holding an active license in another state or country to qualify for licensure in Florida. *See* s. 476.144(5), F.S.

¹¹⁰ The training must include, but is not limited to the completion of services directly related to the practice of restricted barbering at a licensed school of barbering, a public school barbering program, or a government-operated barbering program in Florida.

¹¹¹ A “weft” of hair is a long curtain of hair that has a seam at the top and is found on wigs and hair extensions. Vogue Wigs, *What is a Weft?*, <https://www.voguewigs.com/what-is-a-weft.html> (last visited Feb. 7, 2018).

Additionally, the bill repeals s. 477.0132(2), F.S., which provides that:

- Hair braiding, hair wrapping, and body wrapping are not required to be practiced in a cosmetology salon or specialty salon; and
- Disposable implements must be used, or all implements must be sanitized in a disinfectant approved for hospital use or approved by the Federal Environmental Protection Agency, when hair braiding, hair wrapping, or body wrapping is practiced outside a cosmetology salon, or specialty salon.

Section 22 amends s. 477.0135, F.S., to eliminate licensure or registration requirements for a person whose occupation or practice is confined solely to hair braiding, hair wrapping, body wrapping, applying polish to fingernails and toenails, or makeup application. The bill also eliminates a current exemption for certain continuing education requirements.

Section 23 deletes s. 477.019(7), F.S., relating to an exemption from continuing education requirements for hair braiders, hair wrappers, and body wrappers.

Section 24 amends s. 477.0201, F.S., on specialist registration, to include registrations for nail, facial, and full specialty practices, and minimum training requirements. As in current law, applicants for any specialist registration must be at least 16 years of age or have received a high school diploma. Training requirements, with a primary focus on sanitation and safety, and completion of services directly related to the particular specialty registration being sought, include a minimum of:

- 150 hours, for a nail specialty practice (current requirement is 240 hours);
- 165 hours, for a facial specialty practice (current requirement is 260 hours); and
- 300 hours for a full specialty practice (current requirement is 500 hours).¹¹²

Similar to the current law requirement for registration in a specialty within the practice of cosmetology,¹¹³ completion of services directly related to each specialty must be received from specified types of schools or specialty programs.

Sections 25 - 27 make conforming changes to ch. 477, F.S., to reflect the deregulation of hair braiders, hair wrappers, and body wrappers.

Architecture or Interior Design Business Organizations

Sections 28 - 31 amend ch. 481, F.S., to remove the requirement that architects and interior designers obtain a separate business license (certificate of authorization) in addition to an individual license. Architects and interior designers must qualify, or associate, their business organizations with their individual license; they must also disclose any fictitious names under which they operate.

¹¹² See http://www.myfloridalicense.com/dbpr/pro/cosmo/documents/cosmo_faq.pdf at page 3 (Question 8) (last visited Feb. 7, 2018) and Department of Business and Professional Regulation, *SB 526 Bill Analysis*, p. 3 (Nov. 3, 2017) (on file with Senate Committee on Regulated Industries).

¹¹³ See s. 477.0201(1)(b), F.S.

Architects and interior designers who act as qualifying agents must inform the DBPR of any change in their relationship with a business, and if the qualifying agent is the business' only qualifying agent, the business must obtain a replacement within 60 days. A business without a qualifying agent may not engage in the practice of architecture or interior design, unless the executive director or chair of the Board of Architecture and Interior Design authorizes another registered architect or interior designer employed by the business organization to temporarily serve as its qualifying agent for no more than 60 days.

The bill amends s. 481.219(2)(b), F.S., to provide that the Board of Architecture and Interior Design 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 may be denied."

Landscape Architecture Business Organization

Sections 32 - 37 amend Part II of ch. 481, F.S., to remove the requirement that landscape architects obtain a separate business license (certificate of authorization) in addition to an individual license. A landscape architect must qualify its business organizations by associating it with an individual license, and must disclose operations under a fictitious name.

The bill repeals the Board of Landscape Architecture's ability to grant a temporary certificate of authorization for a business organization that seeks to work on one project in Florida for a period not to exceed one year to an out-of-state corporation, partnership, or firm.

The bill repeals the DBPR's authority to issue a certificate of authorization to an applicant who wishes to practice as a corporation or partnership that offers landscape architectural services. The bill provides that a corporation or partnership is not required to obtain a certificate of authorization to offer its services to the public, but must:

- Have one or more of the principals of the corporation, or partners in the partnership, and all of the personnel of the business organization who act in its behalf as landscape architects as landscape architects; and
- One or more of the officers, directors, or owners of the corporation, or one or more of the partners of the partnership is a registered landscape architect has applied to be the qualifying agent for the business organization.

Landscape architects who operate under a corporation or partnership must file the names and addresses of specific persons responsible for the business with the DBPR. Such business organizations must also inform the DBPR of any change of the information in its license application, and of the termination of an employee within one month after the termination.

The bill eliminates a duplicate requirement in s. 481.319(5), F.S., for disciplinary action against a corporation or partnership to be administered similar to disciplinary action against a registered landscape architect. Under current law, practicing landscape architecture through a corporation or partnership does not relieve a landscape architect from personal liability for professional acts,

unless otherwise agreed to by contract.¹¹⁴ According to the DBPR, the Board of Landscape Architecture has issued no disciplinary orders against landscape architecture businesses during the past four fiscal years through Fiscal Year 2016-2017.¹¹⁵

State Boxing Commission

Sections 39 and 40 amend s. 548.017, F.S., to eliminate the licensure requirement for persons serving as timekeepers and announcers for a match. The bill also amends s. 548.003(2)(i), F.S., to make conforming changes by deleting a reference to a “knockdown timekeeper.” In Fiscal Year 2016-2017, the Division issued licenses to 13 announcers and six timekeepers.¹¹⁶

Conforming Revisions

Section 38 amends s. 287.055, F.S., the Consultants’ Competitive Negotiation Act, to conform cross references in the definition of “design-build firm.” The bill substitutes the term “qualified” for “certified,” in references to entities practicing architecture or landscape architecture. *See also Sections 29 and 35.*

Licensing and Criminal Background

Sections 12 - 14 create a process for reviewing the criminal history of applicants for specified professions or occupations regulated by the DBPR and the Department of Health (DOH).

The bill amends s. 455.213, F.S., dealing with the general licensing provisions of the DBPR, and s. 464.203, F.S., dealing with the certification requirements for certified nursing assistants under the DOH.

The license application review process in the bill applies to the following professions and occupations:

- Certified Nursing Assistants.
- Barbers.
- Cosmetologists and cosmetology specialists (i.e., hair braiders, hair wrappers, and body wrappers).
- Construction Professionals:
 - Electrical contractors;
 - Alarm system contractors;
 - Septic tank contractors;
 - Swimming pool and spa contractors;
 - Sheet metal contractors;
 - Roofing contractors;
 - Air-conditioning contractors;
 - Mechanical contractors;
 - Plumbing contractors;
 - Underground utility and excavation contractors;

¹¹⁴ See s. 481.319(6), F.S., and s. 558.0035, F.S.

¹¹⁵ Email from J. Morris, Legislative Affairs Director, DBPR, to Senate Committee on Regulated Industries staff (Jan. 19, 2018) (on file with Senate Committee on Regulated Industries).

¹¹⁶ See Boxing Commission Annual Report, *supra* note 74 at page 7.

- Solar contractors;
- Pollutant storage systems contractor; and
- Other specialty contractors whose scope of work and responsibility is limited to a particular phase of construction, e.g. drywall, glazing, swimming pool excavation, etc.

The process created in the bill:

- Permits a person to apply for a license while under criminal confinement (incarceration) or supervision.
- Limits the period during which the agency may consider criminal history as an impairment to licensure to five years from the date of the criminal conviction for barbers, cosmetologists, and certain contractors, or seven years for certified nursing assistants.
- Requires each agency to identify by rule the crimes that do not impair a person's qualifications for licensure.
- Requires each agency to identify by rule the crimes that do impair a person's qualifications for licensure.
- Requires an agency to permit applicants who are incarcerated or under supervision to appear by teleconference or video conference at a meeting of a board or the agency for a hearing concerning the person's license application.
- Requires the Department of Corrections to cooperate and coordinate with the board or department, as applicable, to facilitate the appearance of the applicant at the hearing in person, by teleconference, or by video conference, as appropriate.

However, as required under current law, the DOH must deny a certified nursing assistant application, if the applicant has a criminal history of more than seven years from the date of the application and the criminal history includes a violent felony, crime against children, or sexual offense identified in s. 435.07(4), F.S.

Effective Date

Section 41 provides the bill takes effect July 1, 2018.

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:**

According to the Department of Business and Professional Regulation (DBPR), the bill will result in a reduction of license fees, license renewal fees, and unlicensed activity fees paid by the private sector of approximately \$814,130 in Fiscal Year 2018-2019, \$421,505 in Fiscal Year 2019-2020, and \$927,205 in Fiscal Year 2020-2021.¹¹⁷

The Division of Condominiums, Timeshares, and Mobile Homes (Yacht and Ship Brokers) of the DBPR estimates that the bill will result in a reduction of license and license renewal fees paid by the private sector of approximately \$4,300 in Fiscal Year 2018-2019, \$4,300 in Fiscal Year 2019-2020, and \$4,300 in Fiscal Year 2020-2021.¹¹⁸

The DBPR estimates that the bill will result in a reduction of license and license renewal fees paid by the private sector to the Florida State Boxing Commission of approximately \$1,000 in Fiscal Year 2018-2019, \$1,000 in Fiscal Year 2019-2020, and \$1,000 in Fiscal Year 2020-2021.¹¹⁹

B. Private Sector Impact:

The bill repeals licensing requirements for certain professions. According to the DBPR, the bill will result in a reduction in license fees, license renewal fees, and unlicensed activity fees paid by the private sector of approximately \$814,130 in Fiscal Year 2018-2019, \$421,505 in Fiscal Year 2019-2020, and \$927,205 in Fiscal Year 2020-2021.¹²⁰

Labor organizations, pugilistic announcers, pugilistic timekeepers, hair braiders, hair wrappers, body wrappers, nail painters, and makeup artists will no longer need to pay costs associated with professional licensure.

Nail specialists, facial specialists, full specialists, and restricted barber applicants will require less training to obtain licensure, which may lead to a reduced training cost.

Persons who submit a petition for a declaratory statement from an agency to determine whether the petitioner's criminal history affects the person's eligibility for a license, registration, or certificate, must pay a filing fee not to exceed \$100 for the petition and the actual cost of state and federal processing related to the criminal background check. However, such individuals may also forego certain unnecessary schooling, training, or application costs, depending on the agency's determination.

¹¹⁷ See Department of Business and Professional Regulation, *SB 526 Bill Analysis*, p. 7 (Nov. 3, 2017) (on file with Senate Committee on Regulated Industries).

¹¹⁸ *Id.* at page 6.

¹¹⁹ *Id.* at page 7.

¹²⁰ See Department of Business and Professional Regulation, *CS/SB 526 Bill Analysis*, p. 6 (Feb. 7, 2018) (on file with Senate Subcommittee on General Government).

C. Government Sector Impact:

According to the DBPR, the elimination of professional licensing requirements contained in the bill will reduce state government revenues deposited in the Professional Regulation Trust Fund by \$815,130 in Fiscal Year 2018-2019, \$422,505 in Fiscal Year 2019-2020, and \$928,205 in Fiscal Year 2020-2021. In addition, state government revenues deposited in the Condominiums, Timeshares, and Mobile Homes Trust Fund will be reduced annually by \$4,300 in Fiscal Year 2018-2019 through Fiscal Year 2020-2021. As a result, revenues transferred to the General Revenue Fund as the general revenue service charge¹²¹ will be reduced by \$65,554 in Fiscal Year 2018-2019, \$34,144 in Fiscal Year 2019-2020, and \$74,600 in Fiscal Year 2020-2021.¹²²

The Bureau of Education and Testing (Bureau) in the DBPR also indicates that the bill will have a minimal impact on its workload, although some examination content may require updating; such updating is a part of the Bureau's standard procedure to address statutory changes.¹²³

Government agencies that provide occupational or professional licenses may see an increase in workload related to an increase in submissions of petitions for declaratory statements. Additionally, the agencies will likely have increased revenues associated with the declaratory statement petition fee of not more than \$100. However, the fiscal impact on state government is indeterminate, because it is unknown how many people will request declaratory statements.

VI. Technical Deficiencies:

The bill provides new licensure requirements for "restricted barbers" but does not amend a provision in s. 476.144(6), F.S., which refers to a "restricted license to practice barbering." It is unclear whether that "restricted license" applies to a "barber" or a "restricted barber."

VII. Related Issues:

It is unclear how an agency should proceed if presented with a petition for declaratory statement as described in the bill by a petitioner whose criminal charges have not yet been resolved by a court action, settlement, or other action. It would be difficult for an agency to render an opinion based on hypothetical information.

This bill contains provisions of CS/SB 526, which were amended into the bill in the Commerce and Tourism Committee meeting on February 6, 2018.

¹²¹ A service charge of eight percent is appropriated from revenue income deposited in specified trust funds, representing the estimated pro rata share of the cost of general government. *See* s. 215.20(1), F.S., relating to the service charge. Section 455.116, F.S., lists the seven trust funds in the DBPR, including the Professional Regulation Trust Fund and the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund, which receive revenues from fees paid by licensees in the professions and occupations affected by CS/SB 526.

¹²² *See* Department of Business and Professional Regulation, *CS/SB 526 Bill Analysis*, p. 6 (Feb. 7, 2018) (on file with Senate Subcommittee on General Government).

¹²³ *Id.* at page 8.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 120.565, 326.004, 400.211, 447.02, 447.09, 447.305, 455.213, 464.203, 469.006, 469.009, 476.034, 476.114, 476.144, 477.013, 477.0135, 477.019, 477.0201, 477.026, 477.0265, 477.029, 481.203, 481.219, 481.221, 481.229, 481.303, 481.311, 481.317, 481.319, 481.321, 481.329, 287.055, 548.003, and 548.017.

This bill repeals the following sections of the Florida Statutes: 447.04, 447.041, 447.045, 447.06, 447.12, 447.16, and 477.0132.

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 Commerce and Tourism on February 6, 2018:

- Eliminates the current licensing required for business entities engaged in certain regulated professions (architecture and interior design, landscape architecture, and asbestos abatement consulting or contracting), while retaining the license required for individuals engaged in those professions.
- Provides that licensed individuals must apply for licensure and act as qualifying agents for business organizations to be licensed to engage in architecture and interior design, landscape architecture, or asbestos abatement consulting or contracting.
- Allows certain boxing match services to be practiced without a license (announcers and knockdown timekeepers).
- Revises the current license requirements for restricted barbers to specify:
 - The services that may and may not be provided by restricted barbers; and
 - A minimum of 325 training hours.
- Specifies license requirements for specialists in practices defined as “nail specialty,” “facial specialty,” and “full specialty.”
- Eliminates license and registration requirements for those who engage solely in:
 - Hair braiding, hair wrapping, or body wrapping; or
 - The polishing of nails or applying makeup.
- Eliminates registration requirements for labor organizations and licensing of labor organization business agents, while maintaining civil causes of action and criminal penalties.
- Eliminates license requirement for yacht and ship brokers’ branch offices.

B. Amendments:

None.