

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 406

INTRODUCER: Senator Hooper

SUBJECT: Yacht and Ship Brokers

DATE: March 28, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>AEG</u>	_____
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 406 renames the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR) as the Division of Florida Condominiums, Timeshares, Yacht Brokers, and Mobile Homes.

The bill defines the term “visiting broker” to mean a person who conducts business as a broker or salesperson in another state as his or her primary profession and engages in the purchase or sale of a yacht under ch. 326, F.S., if the transaction is executed in its entirety with a broker or salesperson licensed in Florida. Under the bill, a visiting broker is exempt from the license requirements for a yacht and ship broker or salesperson license if the visiting broker engages in the purchase or sale of a yacht and the transaction is executed in its entirety with a broker or salesperson licensed in Florida.

The definition for the term “yacht” is revised by the bill to require that the vessel be manufactured or operated for pleasure or leased, rented, or chartered to a person other than the owner for such person’s pleasure. The bill retains current law that a yacht is a vessel which is propelled by sail or machinery in the water which exceeds 32 feet in length, but deletes the requirement for the vessel to weigh less than 300 gross tons.

The bill revises the requirements for licensure as a broker. Under the bill, an applicant for a broker license must demonstrate that he or she has been directly involved in at least four transactions that resulted in the sale of a yacht or certify that he or she has obtained 20 continuing education credits approved by the division. The bill deletes the requirement that an applicant for a broker license have been licensed as a salesperson for two consecutive years.

The bill also deletes the division’s authority to issue a temporary 90-day license while the Florida Department of Law Enforcement (FDLE) conducts a national criminal history analysis of an applicant for a broker or salesperson license by means of fingerprint identification. The bill

maintains the requirement that an applicant for a broker or salesperson license furnish the division with a full set of fingerprints taken within the six months immediately preceding the submission of the license application.

The bill takes effect July 1, 2023.

II. Present Situation:

Division of Florida Condominiums, Timeshares and Mobile Homes

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the DBPR administers the provisions of chs. 718 and 719, F.S., for condominium and cooperative associations, respectively. The division also has jurisdiction over yacht and ship brokers and sales persons under ch. 326, F.S., timeshares under ch. 721, F.S., and mobile homes under ch. 723, F.S., and limited jurisdiction over homeowners' associations under ch. 720, F.S.

Yacht and Ship Broker Branch Office Licenses

Chapter 326, F.S., which may be cited as the “Yacht and Ship Brokers' Act,”¹ governs the licensing and regulation of yacht and shipbrokers, salespersons, and related business organizations in the state. The Yacht and Ship Broker Section, a unit of the division, processes license applications and responds to consumer complaints and inquiries by monitoring activities and compliance within the yacht brokerage industry.²

Definitions

A broker or yacht and ship broker is a “person who, for or in expectation of compensation: sells, offers, or negotiates to sell; buys, offers, or negotiates to buy; solicits or obtains listings of; or negotiates the purchase, sale, or exchange of, yachts for other persons.”³

A salesperson is “a person who, for or in expectation of compensation, is employed by a broker to perform any acts of a broker.”⁴

The term “yacht” means “any vessel which is propelled by sail or machinery in the water which exceeds 32 feet in length, and which weighs less than 300 gross tons.”

Licensing

A person may not act as a yacht or ship broker or salesperson unless licensed under ch. 326, F.S.

To qualify for a broker's license, a person must have been licensed as a salesperson for at least two consecutive years.⁵

¹ Section 326.001, F.S.

² See ch. 326, F.S., and Department of Business and Professional Regulation, *Yacht and Ship*, available at: <http://www.myfloridalicense.com/DBPR/yacht-and-ships/> (last visited Mar. 24, 2023).

³ Section 326.002(1), F.S.

⁴ Section 326.002(3), F.S.

⁵ Section 326.004(8), F.S.

Current law gives the division the discretion to deny an application for a broker or salesperson license if the applicant does not:

- Furnish proof satisfactory to the division that he or she is of good moral character.⁶
- Certify that he or she has never been convicted of a felony.
- Post the bond required by the Yacht and Ship Brokers' Act.
- Demonstrate that he or she is a resident of this state or that he or she conducts business in this state.
- Furnish a full set of fingerprints taken within the 6 months immediately preceding the submission of the application.
- Have a current license and has operated as a broker or salesperson without a license.⁷

The applicant must also deliver to the division a good and sufficient surety bond or irrevocable letter of credit, executed by the broker as principal, in the sum of \$25,000 before any license may be issued to a broker.⁸ A salesperson must have a bond or equivalent securities in the sum of \$10,000.⁹

The fee for an initial license application for a salesperson or broker license, and for the biennial renewal of a license, is \$500. Additionally, there is a \$51 fee for national fingerprint processing during the initial application process.¹⁰

A broker is not required to complete any continuing education hours as a condition for licensure or renewal of a license.

A license is not required for:

- A person who sells his or her own yacht.
- An attorney at law for services rendered in his or her professional capacity.
- A receiver, trustee, or other person acting under a court order.
- A transaction involving the sale of a new yacht.
- A transaction involving the foreclosure of a security interest in a yacht.¹¹

A broker must maintain a principal place of business in Florida and may establish branch offices in Florida.¹² The biennial fee for a branch office is \$100 for each branch office.¹³

The division is required to provide by rule for the issuance of a temporary 90-day license to an applicant while the FDLE conducts a national criminal history analysis of the applicant by means of fingerprint identification.¹⁴

⁶ See Fla. Admin. Code R. 61B-60.003(3)(a), providing the factors that bear upon good moral character.

⁷ Section 326.004(6), F.S.

⁸ Section 326.004(7), F.S.

⁹ Section 326.004(9), F.S.

¹⁰ Fla. Admin. Code R. 61B-60.003(4).

¹¹ Section 326.004 (3), F.S.

¹² Section 326.004 (13), F.S.

¹³ Fla. Admin. Code R. 61B-60.003(4).

¹⁴ Section 326.004 (15), F.S. See Fla. Admin. Code R. 61B-60.001(1)(k) and 61B-60.003(2)(a), relating to the requirements for a temporary license.

III. Effect of Proposed Changes:

The bill amends s. 20.165(2), F.S., which establishes the divisions within the DBPR, to rename the division as the Division of Florida Condominiums, Timeshares, Yacht Brokers, and Mobile Homes. The bill amends multiple provisions in the Florida Statutes to conform to the renamed division.

The bill creates s. 326.002(4), F.S., to define a “visiting broker” to mean a person who conducts business as a broker or salesperson in another state as his or her primary profession and engages in the purchase or sale of a yacht under ch. 326, F.S., if the transaction is executed in its entirety with a broker or salesperson licensed in Florida.

The definition for the term “yacht” is revised by the bill to require that the vessel be manufactured or operated primarily for pleasure or leased, rented, or chartered to a person other than for such person’s pleasure. The bill deletes the requirement for the vessel to weigh less than 300 gross tons.

As the DBPR analysis noted, “[t]he term “pleasure” is undefined, and thus rulemaking authority is required to define such a term. Moreover, “primarily” would need to be defined by either statute or rule relative to the scope of use. Otherwise, there is no standard by which to discern whether the yacht in question is a yacht for which the division has regulatory authority.”¹⁵

The bill amends s. 326.004(3), F.S., to exempt a visiting broker from the license requirements for a broker or salesperson if the visiting broker engages in the purchase or sale of a yacht and the transaction is executed in its entirety with a broker or salesperson licensed in Florida.

The bill also amends s. 326.004(4), F.S., to require the division to deny an application for a broker or salesperson license on the basis of the grounds listed in this subsection. Current law gives the division the discretion to deny an application for a broker or salesperson license.

Section 326.004(8), F.S., is amended by the bill to revise the requirements for licensure as a broker. Under the bill, an applicant for a broker license must demonstrate that he or she has been directly involved in at least four transactions that resulted in the sale of a yacht or certify that he or she has obtained 20 continuing education credits approved by the division.

The bill does not provide a time frame during which the applicant must have been directly involved in the minimum of four transactions that resulted in the sale of a yacht. The bill also does not provide requirements for the subject content of the continuing education or specify how the 20 credits are to be calculated, e.g., the 20 credits may equal 20 course hours of education or some fraction thereof. Although the term “continuing education” is used in the bill, it does not provide a continuing, ongoing requirement for completion of such education as a condition for renewal of a broker license.

¹⁵ Department of Business and Professional Regulation, *2023 Agency Legislative Bill Analysis for HB 83 [identical to SB 406]* at 3 (Feb. 17, 2023) (on file with the Senate Regulated Industries Committee).

The bill also amends s. 326.004(8), F.S., to delete the requirement that an applicant for a broker license have been licensed as a salesperson for two consecutive years.

The bill deletes the authority of the division to issue a temporary 90-day license while the FDLE conducts a national criminal history analysis of the applicant by means of fingerprint identification. The bill maintains the requirement that an applicant for a broker or salesperson license furnish the division with a full set of fingerprints taken within the six months immediately preceding the submission of the application.

The bill takes effect July 1, 2023.⁵

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A visiting broker may engage in a transaction for the sale or purchase of a yacht under the conditions in the bill without applying for a license, including paying the \$500 license application fee.

Applicants for a broker license who opt to qualify for a license by completing 20 continuing education credits approved by the division will incur costs related to completing those education hours.

C. Government Sector Impact:

The division and the DBPR may incur costs related to changing their forms and systems to reflect the renaming of the division. According to the DBPR, it and the division will need to update all department correspondence, materials, and other paraphernalia, as well as update all Florida Administrative Code rules in a tedious process for which the DBPR's staff would need to dedicate their time – “taking time away from their primary day to day functions and responsibilities managing condominium filings and cases.”¹⁶ The DBPR will also incur costs related to develop the continuing education course or criteria for such continuing education for qualifying as a broker.¹⁷ The DBPR anticipates it can implement the requirements of the bill with existing resources.¹⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill amends s. 326.004(8), F.S., to revise the requirements for licensure as a broker by permitting an applicant for a broker license to qualify by demonstrating that he or she has been directly involved in at least four transactions that resulted in the sale of a yacht or by certifying that he or she has obtained 20 continuing education credits approved by the division. The bill does not provide a time frame during which the applicant must have been directly involved in the minimum of four transactions that resulted in the sale of a yacht. The bill also does not provide requirements for the subject matter content of the continuing education or specify how the 20 credits are to be calculated, e.g., the 20 credits may equal 20 course hours of education or some fraction thereof. Although the bill uses the term “continuing education,” the bill does not provide a continuing requirement for such education as a condition for renewal of a broker license.

The bill sponsor may want to consider amendments to the bill to address the following:

- Provide a timeframe during which the four transactions must be performed to qualify for a broker license, e.g., the bill could require four such transactions during the two years before the application for a license.
- Clarify the term “20 continuing education credits” by, for example, using the term “20 hours of education.”
- Provide the division and applicants with guidance regarding the subject matter that must be addressed in the education course or courses that must be completed as a basis to qualify for a broker license.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.165; 192.037; 213.053; 326.002; 326.004; 326.006; 455.116; 475.455; 509.512; 559.935; 718.103; 718.105; 718.1255; 718.501; 718.5011; 718.502; 718.503; 718.504; 718.508; 718.509; 718.608; 719.103;

¹⁶ *Id.*, at 2.

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 6.

719.1255; 719.501; 719.502; 719.504; 719.508; 719.608; 720.301; 721.05; 721.07; 721.08;
721.26; 721.28; 721.301; 723.003; 723.006; 723.009; and 723.0611s.

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.

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