

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 5005      PCB BCAS 11-01      Deregulation of Professions and Occupations  
**SPONSOR(S):** Economic Affairs Committee, Business & Consumer Affairs Subcommittee, Bovo, Jr.  
**TIED BILLS:**                      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Business & Consumer Affairs Subcommittee	10 Y, 5 N	Morton	Creamer
1) Economic Affairs Committee	12 Y, 6 N, As CS	Morton	Tinker
2) Appropriations Committee	15 Y, 8 N	Massengale Topp	Leznoff

### SUMMARY ANALYSIS

The bill repeals the regulation of the following professions, businesses and occupations:

- Athlete Agents
- Auctioneers and Auctioneer Apprentices
- Sellers of Business Opportunities
- Charitable Organizations
- Hair Braiders, Hair Wrappers, and Body Wrappers
- Dance Studios
- Health Studios
- Interior Designers
- Intrastate Movers
- Motor Vehicle Repair Shops
- Sellers of Travel
- Talent Agents
- Telemarketing
- Yacht and Ship Brokers

It also repeals regulations relating to:

- Transportation access to outdoor theaters
- Roominghouses
- Sales representative contracts involving commissions
- Television tube labeling
- Water vending machines

The bill also eliminates the Board of Auctioneers.

The bill will reduce state trust fund revenues to the Department of Business and Professional Regulation (DBPR) by \$3.6 million and the Department of Agriculture and Consumer Services (DACS) by \$7.7 million. The Service Charge to General Revenue (8% on state revenues) will be reduced by \$904,374 (DBPR and DACS). The bill will have a positive fiscal impact on the private sector equal to the state revenue reductions.

CS/HB 5005 will allow for a reduction in appropriations in DBPR for Fiscal Year 2011-2012 of \$254,795 and 6.00 positions (\$351,695 recurring in Fiscal Year 2012-2013 and thereafter). DACS will allow for a net reduction in appropriation of \$4.9 million and 111.00 positions. The revenue impacts and reduction in appropriations associated with the regulatory repeals in CS/HB 5005 have been accounted for and included in the proposed House of Representatives General Appropriations Act for Fiscal Year 2011-2012.

The bill has an effective date of July 1, 2011.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h5005d.APC

DATE: 3/31/2011

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Regulatory Boards and Divisions**

###### Current Situation

The Department of Business and Professional Regulation (DBPR) is made up of the following divisions, which house the following boards and programs:

- Division of Administration.
- Division of Alcoholic Beverages and Tobacco.
- Division of Certified Public Accounting.
  - Board of Accountancy
- Division of Florida Condominiums, Timeshares, and Mobile Homes.
- Division of Hotels and Restaurants.
- Division of Pari-mutuel Wagering.
- Division of Professions.
  - Board of Architecture and Interior Design.
  - Florida Board of Auctioneers.
  - Barbers' Board.
  - Florida Building Code Administrators and Inspectors Board.
  - Construction Industry Licensing Board.
  - Board of Cosmetology.
  - Electrical Contractors' Licensing Board.
  - Board of Employee Leasing Companies.
  - Board of Landscape Architecture.
  - Board of Pilot Commissioners.
  - Board of Professional Engineers.
  - Board of Professional Geologists.
  - Board of Veterinary Medicine.
  - Home inspection services licensing program.
  - Mold-related services licensing program.
- Division of Real Estate.
  - Florida Real Estate Appraisal Board.
  - Florida Real Estate Commission.
- Division of Regulation.
- Division of Technology.
- Division of Service Operations.

###### Proposed Changes

Section 1 of the bill repeals Board of Auctioneers and renames the Board of Architecture and Interior Design to the "Board of Architecture."

##### **Athlete Agents**

###### Current Situation

Chapter 468, Part IX, F.S., establishes licensure requirements for athlete agents working with student athletes. The Part is substantially the same as the Uniform Athlete Agents Act (UAAA). Athlete agents are licensed by the Division of Regulation within the DBPR. Currently, there are 163 licensed athlete agents.

###### *Uniform Athlete Agents Act*

The National Collegiate Athletic Association (NCAA) is a private association of four-year post-high-school educational institutions, deriving authority from the member institutions that created it.<sup>1</sup> NCAA members must follow rules and policies collectively adopted; bylaws have direct impact only on them; and only members can change, repeal, or request waivers from them. An obligation of NCAA membership is that member institutions must monitor the conduct of those for whom they are responsible and sanction them for violations. In this way, staff members and student-athletes can be affected by NCAA bylaws. But the effect of the bylaws on them is achieved indirectly through institutional enforcement.<sup>2</sup>

In 2000, at the urging of the NCAA and various universities, the National Conference of Commissioners on Uniform State Laws drafted the UAAA to regulate the relationship between student athletes and athlete agents. The UAAA has been passed in 40 states, including Florida. Three states regulate athlete agents, but have not adopted the UAAA. Seven states do not regulate athlete agents.<sup>3</sup>

### *Florida requirements for athlete agents*

Athlete agents represent and promote athletes to prospective employers. They may also handle contract negotiation and other business matters for clients. The Part defines "athlete agent" as:

a person who, directly or indirectly, recruits or solicits a student athlete to enter into an agent contract, or who, for any type of financial gain, procures, offers, promises, or attempts to obtain employment or promotional fees or benefits for a student athlete with a professional sports team or as a professional athlete, or with any promoter who markets or attempts to market the student athlete's athletic ability or athletic reputation.

'Student Athlete' is defined as any student who:

Resides in Florida, has informed, in writing, a college or university of the student's intent to participate in that school's intercollegiate athletics, or who does participate in that school's intercollegiate athletics and is eligible to do so; or

Does not reside in Florida, but has informed, in writing, a college or university in Florida of the student's intent to participate in that school's intercollegiate athletics, or who does participate in that school's intercollegiate athletics and is eligible to do so.

Under section 468.453, F.S., an applicant for licensure as an athlete agent must:

- Be at least 18 years of age.
- Be of good moral character.
- Have completed an application and paid an applicable fee.
- Have submitted fingerprints for a criminal history records check and within the preceding 5 years, not have been convicted or found guilty of or entered a plea of nolo contendere for a crime which relates to the applicant's practice or ability to practice as an athlete agent.

Out-of-state athlete agents may submit their out-of-state application, license or certification in lieu of an application. The statute also provides for temporary licensure. Licenses are renewed biennially and there are no continuing education requirements.

Athlete agents must pay the following fees:

For initial licensure:

- Application Fee - \$500

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<sup>1</sup> Josephine R. Potuto, *The NCAA Rules Adoption, Interpretation, Enforcement, and Infractions Processes: The Laws that Regulate them and the Nature of Court Review*, 12 Vand. J. Ent. & Tech. L. 257, 259 (Winter 2010).

<sup>2</sup> *Id.* at 267.

<sup>3</sup> *See* Uniform Athlete Agents Act History and Status, National Collegiate Athletic Association, *available at* [http://www.ncaa.org/wps/portal/ncaahome?WCM\\_GLOBAL\\_CONTEXT=/ncaa/NCAA/Legislation+and+Governance/](http://www.ncaa.org/wps/portal/ncaahome?WCM_GLOBAL_CONTEXT=/ncaa/NCAA/Legislation+and+Governance/)

- Active Licensure Fee - \$750
- Background Check Fee - \$39
- Unlicensed Activity Fee - \$5

For biennial license renewal:

- Athlete Agent - \$445
- Unlicensed Activity Fee - \$5

Chapter 468, Part IX, F.S., also includes contractual requirements for athlete agents. The contract must contain specified information about the agency relationship and a warning to the student-athlete that if the contract is signed, eligibility to compete in a sport is lost. If the contract does not conform to this section, it is voidable by the student-athlete.

Chapter 468, Part IX, F.S., makes certain prohibited acts criminal and punishable either as a misdemeanor or felony and revocation of the athlete agent's license. "Generally, the prohibition is geared toward acts intended to induce a student-athlete to enter into an agency contract and failing to register or willfully providing materially false information in a registration application."<sup>4</sup>

Section 468.4562, F.S., creates a cause of action for damages against the athlete agent, a student athlete or both for damages caused to an educational institution by a violation of the Part. "The purpose of this section is to give a cause of action to an educational institution that is sanctioned [by the NCAA] as a result of activities of an athlete agent, student-athlete or both."<sup>5</sup>

### Proposed Changes

Section 8 of the bill repeals all regulations and licensure requirements related to athlete agents.

### **Auctioneers and Auctioneer Apprentices**

#### Present situation

Part VI of chapter 468, F.S., provides for the regulation and licensing of auction businesses, auctioneers, and apprentice auctioneers by the Florida Board of Auctioneers (board) within DBPR. According to DBPR there are currently 1,760 licensed auctioneers and auctioneer apprentices.

Section 468.385(2), F.S., requires a license before any person can auction or offer to auction any property in this state, unless exempt from licensure under this act.

Section 468.383, F.S., exempts the following activities from the licensure requirement:

- (1) Owner-conducted auctions, unless the owner acquired the goods to resell;
- (2) Auctions required under a judicial or administrative order, or by law;
- (3) Auctions by or for a charitable, civic, or religious organization;
- (4) Livestock auctions under certain circumstances;
- (5) Trustee-conducted auctions pursuant to a power of sale in a deed of trust on real property;
- (6) Certain auctions conducted by the owner or agent of the lien on or interest in goods;
- (7) Auctions conducted as a part of the sale of real property by a real estate broker;
- (8) Auctions of motor vehicles among motor vehicle dealers if conducted by an auctioneer; and
- (9) Certain auctions conducted for training purposes.

Section 468.382(1), F.S., defines an 'auction business' as a "sole proprietorship, partnership, or corporation which in the regular course of business arranges, manages, sponsors, advertises, promotes, or carries out auctions, employs auctioneers to conduct auctions in its facilities, or uses or allows the use of its facilities for auctions."

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<sup>4</sup> Robert N. Davis, Exploring the Contours of Agent Regulation: The Uniform Athlete Agents Act, 8 Vill. Sports & Ent. L.J. 1, 15 (2001).

<sup>5</sup> *Id.*

Under section 468.385, F.S., in order to qualify for licensure as an auctioneer, an applicant must:

- be 18 years or older;
- not have committed any act or offense in the state or any other jurisdiction which would constitute a basis for disciplinary action under s. 468.389, F.S.;
- have held an apprentice license and have served as an apprentice for 1 year or more, or have completed a course of study, consisting of not less than 80 classroom hours of instruction, that meets standards adopted by the board;
- pass the required examination; and
- be approved by the board.

Special regulations apply to apprentices and require supervision by licensed auctioneers. An apprentice must be licensed and serve under a licensed auctioneer who has agreed to serve as the supervisor of the apprentice. An apprentice cannot conduct, or contract to conduct, an auction without the express approval of his or her supervisor. The supervisor must regularly review the apprentice's records, which are required to be maintained, to determine if such records are accurate and current.

"Auctioneer Apprentice" means any person who is being trained as an auctioneer by a licensed auctioneer.

Under section 468.385, F.S., in order to qualify for licensure as an auctioneer, an applicant must:

- have held an apprentice license and have served as an apprentice for 1 year or more, or have completed a course of study, consisting of not less than 80 classroom hours of instruction, that meets standards adopted by the board;
- be 18 years or older;
- not have committed any act or offense in the state or any other jurisdiction which would constitute a basis for disciplinary action under s. 468.389, F.S.;
- pass the required examination; and
- be approved by the board.

### Proposed Changes

Sections 5 and 6 of the bill repeal all licensure and regulatory requirements for auctioneers and auctioneer apprentices and make conforming changes to cross references.

### **Sellers of Business Opportunities**

#### Current Situation

A business opportunity is an offer to assist a person in starting his or her own business by providing (either through sales or lease) products, equipment, supplies or services needed to carry on the business. Examples of such business opportunities include addressing envelopes, assembling toys at home at a cost of a few dollars, establishing vending machine routes, or installing pay telephones.

The Sale of Business Opportunities Act, ss. 559.80-559.815, F.S., establishes registration requirements for the sale of business opportunities. Sellers of business opportunities must register with the Division of Consumer Services within the Department of Agriculture and Consumer Services (DACs). Currently, there are 2,550 registered sellers of business opportunities.

The Act defines a "business opportunity" as a transaction exceeding \$500, where the seller represents to the buyer that the seller will provide equipment, inventory, marketing locations or assistance, or that the buyer is guaranteed to derive a specified return over the initial investment in the opportunity. The definition specifically excludes the following transactions:

- The sale of an ongoing business, as long as the seller does not sell more than five of the opportunities or businesses;

- The not-for-profit sale of sales demonstration equipment, materials, or samples for a total price of \$500 or less; or
- The sale or lease of laundry and drycleaning equipment.

Annual registration awards applicants with an advertisement identification number and requires the filing of specified disclosures and a \$300 fee.

Sellers must post a bond of no less than \$50,000, if the seller guarantees either: that the purchaser will derive income from the business opportunity exceeding the price paid or rent charged or the seller will refund all or a part of the price paid, or that the seller will repurchase any of the products supplied if the purchaser is unsatisfied.

Franchise sales are exempt if the franchise is governed by the federal Disclosure Requirements and Prohibitions Concerning Business Opportunities Act, 16 C.F.R. ss. 437.1-437.3. The federal law requires certain sellers of business opportunities to give a prospective buyer a packet of disclosures 10 days before any agreements are made or payments made.

Although exempt, such franchisors must pay an annual fee of \$100 and disclose the following to the DACS: The names of the applicant, franchise and that under which the applicant transacts business, the applicant's principal business address, and the applicant's federal employer identification number.

Failure to provide or deliver the supplies or services is prohibited and subjects the seller to civil, criminal (3<sup>rd</sup> degree felony), and administrative penalties. The Act also prohibits the seller from committing the following:

- Failing to disclose the known required total investment;
- Failing to disclose efforts to establish additional franchises or distributorships in the same market and market area as the business opportunity is established;
- Misrepresenting the quality or quantity of the products to be sold or distributed;
- Misrepresenting the training and management assistance available;
- Misrepresenting the amount of profits from the operation of the business opportunity;
- Failing to disclose the termination, transfer, or renewal provision of the business opportunity agreement;
- Falsely claiming that a primary marketer or trademark sponsors or participates directly or indirectly in the business opportunity agreement;
- Assigning an "exclusive-territory" encompassing the same area to more than one purchaser;
- Providing vending locations for which written authorizations have not been granted by the property owners or lessees;
- Providing machines or displays substantially different from and inferior to those promised;
- Failing to provide the purchaser a written business opportunity contract;
- Misrepresenting the ability to provide locations or assist in finding locations expected to have a positive impact on the success of the business opportunity;
- Misrepresenting a material fact or creating a false or misleading impression in the sale of a business opportunity; or
- Failing to provide or deliver the products, equipment, supplies, or services as specified in the written contract.

Section 559.813, F.S., provides for remedies and the enforcement of violations of sellers of business opportunities. Within one year of the execution of the contract and upon written notice to the seller, the purchaser is allowed to rescind the business opportunity contract and is entitled to receive from the seller all funds paid for the business opportunity, if the seller commits the following violations:

- Uses untrue or misleading statements in the sale;
- Fails to give proper disclosures required; or
- Fails to deliver the equipment supplies, or products necessary for the business to begin operation within 45 days of the delivery date in the contract.

DACS has enforcement authority to impose penalties, including administrative fines up to \$5,000 and revocation of the seller's advertisement identification number.

The act's disclosure requirements can be waived by contract.<sup>6</sup>

### Proposed Changes

Section 68 of the bill repeals all registration requirements and regulations relating to the sale of business opportunities.

### **Charitable Organizations**

#### Current Situation

Chapter 496, F.S., establishes registration requirements and sets out regulations for charitable solicitation. Charitable solicitations are overseen by the Division of Consumer Services within the Department of Agriculture and Consumer Services (DACS). Currently, there are 16,588 charitable organizations, professional fundraising consultants and professional solicitors registered with the DACS.

#### *Registration Requirements*

"Charitable Organization or sponsor" means a person who is or holds herself or himself out to be established for any benevolent, educational, philanthropic, humane, scientific, artistic, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or other eleemosynary purpose, or any person who in any manner employs a charitable appeal as the basis for any solicitation or an appeal that suggests that there is a charitable purpose to any solicitation.

"Professional Fundraising Consultant" means a person retained by a charitable organization or sponsor for a fixed fee under a written agreement to work on a fundraiser who does not solicit contributions or have control of contributions.

"Professional Solicitor" means a person who, for compensation, solicits contributions for a charitable organization or sponsor or a person employed to work on a fundraiser who does not qualify as a professional fundraising consultant.

Each registrant is required to file initial registration statements and annual renewal statements. Applicants must disclose information about who their organization, finances, tax-exempt status, and history. Professional solicitors must also file a bond of \$50,000.

Solicitors must file a solicitation notice with the DACS before beginning any solicitation campaign or event. Such notice includes a variety of required information about the campaign or event. After the event, the solicitor must file a financial report of the campaign.

The following organizations are exempt from registration requirements:

- Religious institutions, educational institutions, state agencies or other government entities, and political fundraising are exempt.
- Persons soliciting contributions for named individual, if all contributions turned over to beneficiary.
- Solicitations limited to members of the fundraising organization.
- Veterans' service organizations.

Charitable Organizations and sponsors must pay annual fees based on their previous year's total collected contributions:

- \$10, if less than \$5,000

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<sup>6</sup> S.J. Business Enterprises, Inc. v. Colorall Technologies, Inc., 755 So.2d 769 (Fla.App. 4 Dist., 2000).

- \$10, if less than \$25,000 and fundraisers are not compensated
- \$75, if between \$5,000 and \$100,000
- \$125, if between \$100,000 and \$200,000
- \$200, if between \$200,000 and \$500,000
- \$300, if between \$500,000 and \$1 million
- \$350, if between \$1 million and \$10 million
- \$400, if \$10 million or more

Professional fundraising consultant and professional solicitors must pay \$300 annually.

### *Other Regulations*

The chapter also contains contractual and recordkeeping requirements governing the relationship between charitable organizations and their hired solicitors. Likewise, the chapter governs the practice of solicitation, including what disclosures must be made to the public and how collected funds may be used.

The chapter prohibits:

- Unregistered solicitations,
- Filing false or misleading information with state authorities,
- Misrepresenting involvement or endorsement by a person or organization,
- Falsely identify oneself as a representative of a charitable organization, law enforcement agency or the U.S. military,
- Misrepresent the use or distribution of contributions,
- Misrepresent governmental approval,
- Misrepresent that contribution will bestow special treatment by emergency services or law enforcement,
- Using any device, scheme, or artifice to defraud or to obtain a contribution by means of any deception, false pretense, misrepresentation, or false promise,
- Notifying anyone that they have won a prize, if the person must pay some consideration to take part,
- Failing to pay a charitable organization the proceeds of a solicitation campaign,
- Failing to use contributions as solicited, and
- Failing to identify a professional relationship to the person for whom the solicitation is being made.

To enforce the chapter's requirements, the DACS is given the authority to investigate and seek civil and administrative penalties for complaints of fraudulent practices. The chapter also provides criminal penalties.

Under s. 496.425, F.S., airports and other public transportation authorities may permit solicitations at their facilities.

### Proposed Changes

Sections 32 through 44 of the bill repeal all regulation relevant to charitable organizations, professional solicitors and professional fundraising consultants and make conforming changes to cross references.

### **Cosmetology Specialists**

#### Current Situation

Chapter 477, F.S., establishes licensure requirements for cosmetologists and cosmetology specialists. It is implemented by chapter 61G-5, F.A.C. Cosmetologists and cosmetology specialists are licensed



by the Board of Cosmetology within DBPR. Currently, there are 4,447 body wrappers; 2,909 hair braiders; and 750 hair wrappers.

“Cosmetology” is defined as “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. Cosmetology services shall be performed only by licensed cosmetologists in licensed salons.”

There are several categories of specialty cosmetologists:

- 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.
- “Hair braiding” or the weaving or interweaving of natural human hair for compensation without cutting, coloring, permanent waving, relaxing, removing, or chemical treatment and does not include the use of hair extensions or wefts.
- “Hair wrapping” or the wrapping of manufactured materials around a strand or strands of human hair, for compensation, without cutting, coloring, permanent waving, relaxing, removing, weaving, chemically treating, braiding, using hair extensions, or performing any other service defined as cosmetology.
- “Body wrapping” or a treatment program that uses herbal wraps for the purposes of cleansing and beautifying the skin of the body, but does not include:
  - The application of oils, lotions, or other fluids to the body, except fluids contained in presoaked materials used in the wraps; or
  - Manipulation of the body’s superficial tissue, other than that arising from compression emanating from the wrap materials.
- “Skin care services” or the treatment of the skin of the body, other than the head, face, and scalp, by the use of a sponge, brush, cloth, or similar device to apply or remove a chemical preparation or other substance, except that chemical peels may be removed by peeling an applied preparation from the skin by hand. Skin care services must be performed by a licensed cosmetologist or facial specialist within a licensed cosmetology or specialty salon, and such services may not involve massage, as defined in s. 480.033(3), through manipulation of the superficial tissue.

Specialists must hold a certificate of completion from a board-approved school, with the following course work:

	Required Instruction
Hair Braiding Registration	Two-day 16 hour course
Hair Wrapping Registration	One-day, six hour course
Body Wrapping Registration	Two-day, 12 hour course

Each course must be approved by the board and have specific modules on HIV/AIDS and other communicable diseases, sanitation and sterilization, disorders and diseases of the scalp, and pertinent laws.

Every two years body wrappers, hair braiders, and hair wrappers must complete a board-approved, two hour HIV/AIDS continuing education course.

A cosmetologist licensed in another state may be licensed by endorsement, if he or she makes application and pays to the fee, and demonstrates that he or she has met education requirements at least as stringent as the state’s.

Cosmetology or Specialty Salons may be licensed by submitting an application, paying the required fee and meeting the safety and sanitary requirements established by the board.

Body wrapping, hair wrapping and hair braiding services are not required to be practiced in a salon. However, when body wrapping is practiced outside a salon, implements must be either disposable or sanitized in a disinfectant approved for hospital use or by the federal Environmental Protection Agency.

Applicants for Hair Braider, Hair Wrapper or Body Wrapper Registration must pay \$25. Each registration or license is renewed biennially with the payment of the registration fee.

There are additional fees for delinquent renewals, inactive changes of status, inactive renewals, and reactivations.

### Proposed Changes

Sections 9 through 13 of the bill repeal all registration requirements for Hair Braiders, Hair Wrappers and Body Wrappers and make conforming changes to cross references.

### **Dance Studios**

#### Present Situation

Currently, s. 501.143, F.S., is cited as the "Dance Studio Act." Currently, there are 223 registered dance studios.

This section defines "ballroom dance studio" to mean:

any person that engages in the sale of ballroom dance studio lessons or services which are provided at a location specifically used for dance studio lessons or services or secures floor space at a registered ballroom dance studio facility or other facility which is not used primarily for rendering dance studio lessons or services and enters into contracts for future dance studio lessons or services.

It is common to use the reference to dance studio or ballroom dance studio interchangeably.

The owner or operator of a dance studio must register with DACS annually. The registration procedure requires:

- the legal business or trade name, mailing address, and business locations, and the full names, addresses, and telephone numbers of its owners or corporate officers and directors and the Florida agent of the corporation;
- copies of contracts to be offered to the public;
- payment of the registration fee of \$300;
- the DACS may refuse registration if the applicant or any of its directors, has been found guilty of a crime involving fraud, has not satisfied an administrative fine or civil judgment, or has a judgment against it for unfair trade practices.

If approved, the DACS issues a certificate evidencing proof of registration. The holder of the certificate is required to display the certificate at each business location. Additionally, each advertisement or contract of a ballroom dance studio must include the phrase "(NAME OF FIRM) is registered with the State of Florida as a Ballroom Dance Studio Registration No ....."

Statutory contract requirements specify that:

- the contract is in writing and all provisions, requirements, and prohibitions which are mandated by this statutory section must be contained in the written contract before it is signed by the customer;
- a copy of the signed contract must be given to the customer at the time the customer signs the contract; and

- the contract for ballroom dance studio services or lessons include the customer's total payment obligation for services or lessons and contain a written statement of the hourly or lesson rate charged for which the customer has contracted.

A contract for the sale of future dance studio services or lessons which are paid for in advance or which the buyer agrees to pay for in future installment payments must be in writing and contain a disclosure to include the following:

- a provision for the penalty-free cancellation of the contract within 3 days upon written notice to the ballroom dance studio (a refund must be issued within 20 days after receipt of the notice of cancellation made within the 3-day period);
- a provision for the cancellation of the contract, if the buyer dies or becomes unable to avail himself or herself of the lessons or services or if the lessons or services cease to be offered as stated in the contract (the studio must refund the balance in three equal monthly installments, to be completed within not more than 90 days); and
- studio management must keep a copy of each contract on file for as long as the contract is in effect and for a period of 2 years thereafter.

Each studio that has been in business under the same ownership for less than 3 years and receives an advance payment in excess of \$250 or enters into retail installment contract for payment is required to establish a mechanism for ensuring customer refunds.

Financial security is required by statute and must be maintained in the form of a bond, an irrevocable letter of credit, or a guaranty agreement that is secured by a certificate of deposit as follows:

- if the studio has been in business under the same ownership for less than 1 year - \$5,000;
- if the studio has been in business under the same ownership for at least 1 year, but less than 2 years - \$10,000; and
- if the studio has been in business under the same ownership for at least 2 years, but less than 3 years - \$15,000.

The DACS indicates that "the statute only addresses businesses under 3 years and the Department has interpreted that to mean NO bond is required" if a studio has been under the same ownership for more than three years.

Enforcement authority is vested with the DACS and the Department of Legal Affairs for administrative, civil, and criminal penalties. Subsection 501.143(9), F.S. specifies that any moneys recovered by the enforcing authority as a penalty must be deposited in the General Inspection Trust Fund if the action was brought by the DACS or the Legal Affairs Revolving Trust Fund if the action was brought by the Department of Legal Affairs.

Additionally, a customer injured by a fraudulent act in violation of this section may bring an action for the recovery of damages. Judgment may be entered for three times the amount, at which the actual damages are assessed plus costs and reasonable attorney's fees.

### Proposed Changes

Sections 49 and 50 of the bill repeal all licensure and regulatory requirements for dance studios.

### **Health Studios**

#### Present Situation

Currently, s. 501.012–501.019, F.S., provides for the regulation of health studios." Currently, there are 2,134 registered health studios.

Section 501.0125, F.S. defines "health studio" to mean:

any person who is engaged in the sale of services for instruction, training, or assistance in a program of physical exercise or in the sale of services for the right or privilege to use equipment or facilities in furtherance of a program of physical exercise.

The owner or operator of a health studio must register with DACS annually. Exemptions from registration include:

- tax-exempt non-profit organizations;
- gymnastics schools;
- golf, tennis or racquetball clubs;
- dance, aerobic exercise, or martial arts facilities; and
- country clubs for which a physical exercise program is incidental to membership.

The registration procedure requires:

- the identification of business locations;
- payment of the registration fee of \$300; and
- file security in the form of a bond or other approved instrument at the time of registration.

If approved, the DACS issues a certificate evidencing proof of registration. The holder of the certificate is required to display the certificate at each business location. Additionally, each advertisement or contract must include the registration number.

Each health studio is required to maintain for each separate business location a bond in the amount of \$50,000. In lieu of maintaining the bond, the health studio may furnish an irrevocable letter of credit in the amount of \$50,000 or a guaranty agreement which is secured by a certificate of deposit in the amount of \$50,000.

Statutory contract requirements specify that:

- the contract be in writing and all provisions, requirements, and prohibitions which are mandated by statute be contained in the written contract;
- a copy of the signed contract must be given to the customer at the time the customer signs the contract; and
- the contract for health studio services include the customer's total payment obligation for services.

A contract for the sale of future health studio services which are paid for in advance or which the buyer agrees to pay for in future installment payments must be in writing and contain a disclosure to include the following:

- a provision for the penalty-free cancellation of the contract within 3 days upon written notice to the health studio (a refund must be issued within 30 days after receipt of the notice of cancellation made within the 3-day period), and
- a provision for the cancellation of the contract, if the buyer dies or becomes unable to avail himself or herself of the services.

Enforcement authority is vested with the DACS. Subsection 501.019, F.S. specifies that any moneys recovered by the enforcing authority as a penalty must be deposited in the General Inspection Trust Fund.

### Proposed Changes

Sections 47 and 48 of the bill repeal all licensure and regulatory requirements for health studios and make conforming changes to cross references.

### **Interior Designers**

#### Present Situation

Part I of chapter 481, F.S., regulates architects and interior designers. Both professions are regulated by the Board of Architecture and Interior Design under the DBPR. Currently, there are 4,203 individuals and businesses hold interior design licenses.

Interior design means: “designs, consultations, studies, drawings, specifications, and administration of design construction contracts relating to *nonstructural* interior elements of a building or structure.”

“Nonstructural element” means an element which does not require structural bracing and which is something other than a load-bearing wall, load-bearing column, or other load-bearing element of a building or structure which is essential to the structural integrity of the building.

Florida law differentiates between interior design and interior decorating, which includes the selection or assistance in selection of surface materials, window treatments, wallcoverings, paint, floor coverings, surface-mounted lighting, surface-mounted fixtures, and loose furnishings not subject to regulation under applicable building codes.

### *Licensure*

To practice interior design, an applicant must:

- Pay applicable fees,
- Have a combination of 6 years of relevant education and experience, and
- Pass an examination.

Interior Designers pay an application fee of \$30, and a biennial licensure fee of \$125.

The education requirement entails at least a 2-year board-approved interior design program. The experience requirement entails at least one year of work under the supervision of a licensed interior designer. Applicants can structure their education and experience in any of the following ways:

- 5-year program + 1 year experience
- 4-year program + 2 years experience
- 3-year program + 3 years experience
- 2-year program + 4 years experience

The examination is a national 3-part exam administered by the National Council for Interior Design Qualification (NCIDQ) exam, at a cost of \$1,065, including the application fee. Other fees for late filing, updates to an application, and cancellation apply. Eligibility requirements, including education and experience requirements, to sit for the exam mirror Florida’s licensure requirements.<sup>7</sup>

Business entities, or persons operating under fictitious names, offering interior design services must also obtain a certificate of authorization. At least one principal officer or partner and all personnel who act on the business entity’s behalf in the state must be registered interior designers.

Like architects, interior designers must complete 20 hours of continuing education, in subjects or courses approved by the Board, each biennium to renew their license.

### *Exemptions*

The law exempts the practice of *residential* interior design from licensure requirements.<sup>8</sup> Although the law prohibits an unlicensed actor from using the title “interior designer” or words to that effect, this provision was recently found to be an unconstitutional restriction on free speech.<sup>9</sup>

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<sup>7</sup> See <http://www.ncidq.org>

<sup>8</sup> Section 481.229(6)(a), F.S.

<sup>9</sup> *Locke v. Shore*, 682 F.Supp.2d 1283, 1295 (N.D.Fla., 2010).

The law also exempts employees of retail establishments providing interior decorator services and a manufacturer of commercial food service equipment who prepares designs, specifications, or layouts for the sale or installation of such equipment.

### *Grandfathering Provisions*

The current law was originally enacted as a title act, authorizing interior designers who met certain criteria to use the title “registered interior designer,” but not prohibiting any person from performing interior design services.<sup>10</sup> When the title act was first enacted in 1988, it included a grandfathering provision, providing three alternative routes to licensure:

- Applicants before October 1, 1989, who had municipal or county licenses and a year’s experience could obtain licensure upon completing the NCIDQ exam,
- Applicants before October 1, 1989, who had 6 year’s experience as a principal in a design firm could obtain licensure upon completing the NCIDQ exam, and
- Applicants before October 1, 1990, who had been graduated from an existing 2-year interior design program at a public community college in Florida did not have to take the interior design licensure examination or otherwise meeting qualifications.

When the law was converted to a practice act in 1994, prohibiting unlicensed designers from performing interior design services, another grandfathering provision was included to allow designers who had qualified to use the title ‘registered interior designer’ to be licensed upon taking a board-approved examination, including the NCIDQ and others, if they applied by July 31, 1997.<sup>11</sup> This deadline was later extended to April 30, 1998.

In 1995, this grandfathering provision was extended to allow those qualified to use the title ‘registered interior designer’ to show completion of 10 hours of board-approved continuing education classes relating to building and barrier free code regulation if they had not passed an exam within 3 years of application.<sup>12</sup>

Of the current 2,561 licensed individual interior designers, a minimum of 986 met full license requirements (either by exam or endorsement). The DBPR cannot distinguish the route to licensure taken by the remaining 1,575.

### *Constitutional Challenges*

The licensure requirements have withstood constitutional challenges as limitations on 1<sup>st</sup> amendment free speech<sup>13</sup> and interstate commerce<sup>14</sup> and as violations of due process and equal protection.<sup>15</sup>

### *Professional Organizations*

The American Society of Interior Designers is a voluntary professional organization promoting the profession of interior design through education and advocacy.<sup>16</sup> Professional membership in the American Society of Interior Designers mirrors Florida’s licensure requirements for education,

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<sup>10</sup> Chapter 88-383, s. 21, L.O.F.

<sup>11</sup> Chapter 94-119, s. 309, L.O.F.

<sup>12</sup> Chapter 95-389, s. 10, L.O.F.

<sup>13</sup> *Locke v. Shore*, 2011 WL 692238, 3 (11<sup>th</sup> Cir. (Fla.) 2011)(“Because the license requirement governs “occupational conduct, and not a substantial amount of protected speech,” it does not implicate constitutionally protected activity under the First Amendment.”).

<sup>14</sup> *Id.* at 5(“Out-of-state unlicensed interior designers may practice in commercial settings in Florida ‘under the instruction, control or supervision’ of a licensed architect or while ‘acting as a contractor in the execution of work designed by an architect.”).

<sup>15</sup> *Id.* at 8(“We reject Appellants’ argument that the legislature’s safety concern does not provide a rational basis for the license requirement because it was unfounded. A law ‘may be based on rational speculation unsupported by evidence or empirical data.’ A statute survives rational basis review even if it ‘seems unwise ... or if the rationale for it seems tenuous.’ Thus, the fact that, after Florida passed its license requirement, other states have considered and rejected the notion that the unlicensed practice of interior design poses safety concerns, is of no consequence.”).

<sup>16</sup> See <http://www.asid.org>

experience and examination. Membership also requires the completion of 6 continuing education hours every two years. Members pay annual dues of \$430 and an annual legislative assessment of \$15.

### *Other States*

Florida is one of five U.S. states or territories requiring interior designers be licensed.<sup>17</sup> About 20 other states offer title acts, allowing only candidates meeting statutory requirements to hold themselves out as 'registered interior designers.'<sup>18</sup>

### Proposed Changes

Sections 14 through 31 of the bill repeal all licensure and regulatory requirements for interior designers and make conforming changes to cross references.

### **Intrastate Movers**

#### Current Situation

Chapter 507, F.S., establishes the registration requirements for intrastate movers in Florida. Currently, there are 998 registered intrastate movers in Florida.

“Mover” means a person who, for compensation, loads, transports or ships, or unloads household goods as part of a household move. “Moving Broker” means a person who, for compensation, arranges for another person to load, transport or ship, or unload household goods as part of a household move or who, for compensation, refers a shipper to a mover.

Intrastate movers and moving brokers must register with the DACS annually. In order to register as an intrastate mover or moving broker, the department requires disclosure of contact information and copies of contracts offered to the public. The department then issues a certificate of registration for registrants to display. The department may refuse registration if the mover or moving broker has been convicted of a crime involving fraud, has not satisfied an administrative fine or civil judgment, or has a judgment against it for unfair trade practices. In addition, movers must maintain liability insurance or post a \$25,000 security. They must also maintain motor vehicle insurance, including combined bodily injury and property damage liability coverage in varying amounts. Moving brokers must post a \$25,000 security.

Section 507.13, F.S., allows for local regulation and cooperative agreements between the DACS and local governments for enforcement:

- (1) This chapter does not preempt local ordinances or regulations of a county or municipality which regulate transactions relating to movers of household goods or moving brokers. As provided in s. 507.03(4), counties and municipalities may require, levy, or collect any registration fee or tax or require the registration or bonding in any manner of any mover or moving broker.
- (2) The department may enter into a cooperative agreement with any county or municipality which provides for the referral, investigation, and prosecution of consumer complaints alleging violations of this chapter.

Currently, Miami-Dade, Broward, Palm Beach, Pinellas and Broward counties have relevant local ordinances pursuant to this section.<sup>19</sup>

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<sup>17</sup> Licensure is also required in Louisiana, Nevada, Puerto Rico, and Washington, D.C.

<sup>18</sup> For a list, see <http://www.asid.org/legislation/state/>.

<sup>19</sup> Miami-Dade County, Sec. 8A-325; Palm Beach County Ordinance NO. 2005-007; Pinellas County, Sec. 42-357; Broward County Moving Ordinance sec. 20-176.90 et seq.

Under s. 507.10, F.S., the department is authorized to institute a civil action in a court of competent jurisdiction to recover any penalties or damages authorized by chapter 507, F.S., and for injunctive relief to enforce compliance with the chapter. The department may seek a civil penalty of up to \$5,000 for each violation of this chapter, and may seek restitution for and on behalf of any shipper aggrieved or injured by a violation of this chapter. The remedies provided for in s. 507.10, F.S., are in addition available to those for the same conduct, including those provided in local ordinances.

Section 507.11, F.S., provides for criminal penalties. Subsection (1) provides:

The refusal of a mover or a mover's employee, agent, or contractor to comply with an order from a law enforcement officer to relinquish a shipper's household goods after the officer determines that the shipper has tendered payment of the amount of a written estimate or contract, or after the officer determines that the mover did not produce a signed estimate or contract upon which demand is being made for payment, is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A mover's compliance with an order from a law enforcement officer to relinquish goods to a shipper is not a waiver or finding of fact regarding any right to seek further payment from the shipper.

Subsection (2) states that a violation of chapter 507, F.S., by any person or business, besides as provided in subsection (1) is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

In addition to the department, Florida consumers may also contact the attorney general if they experience a problem with an intrastate mover. While claims for damaged goods must be filed through the carrier, consumers may contact the Attorney General's No Fraud Hotline at 1-866-9-NO-SCAM (1-866-966-7226) to report improper conduct by movers, such as holding cargo "hostage" until higher fees are paid.<sup>20</sup>

Intrastate movers and moving brokers pay an annual registration fee of \$300.

### Proposed Changes

Sections 57 and 58 repeal all registration and regulatory requirements for intrastate movers and moving brokers and make conforming changes to cross references.

## **Motor Vehicle Repair Shops**

### Current Situation

Chapter 599, Part IX, F.S., establishes registration requirements for motor vehicle repair shops. Motor vehicle repair shops are registered by the Division of Consumer Services within DACS. Currently, there are 24,484 registered motor vehicle repair shops.

The Motor Vehicle Repair Advisory Council, consisting of 11 members appointed by the Commissioner of Agriculture, advises and assists the DACS. Council members are uncompensated, but may receive per diem and travel expenses. The DACS provides administrative and staff support services.

"Motor vehicle repair shops" includes any person who, for compensation engages in the repair of motor vehicles owned by other persons. It includes mobile motor vehicle repair shops, motor vehicle and recreational vehicle dealers; garages; service stations; self-employed individuals; truck stops; paint and body shops; brake, muffler, or transmission shops; and shops doing glass work.

### *Registration Requirements*

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<sup>20</sup> Office of the Attorney General of Florida, Frequently Asked Questions, *available at* <http://myfloridalegal.com/pages.nsf/Main/20AFA53C4EC9E3EA85256CCB00522BE1#question21> (last visited March 2, 2011).



Motor vehicle repair shops must register with the DACS biennially. Such registration requires disclosure of contact information and copies of estimates and contracts offered to the public. The DACS issues a certificate of registration for registrants to display.

The DACS may refuse registration if the repair shop, or any of its directors, has been convicted of a crime involving fraud, has not satisfied an administrative fine or civil judgment, or has a judgment against it for unfair trade practices.

The following are not required to register with the DACS:

- Governmental entities
- Repair shops servicing only vehicles kept for rental, auction and agricultural use
- Repair shops located in schools
- Individual repairmen with no employees or established place of business

Local licensure can also substitute for registration. Miami-Dade and Broward counties have relevant local ordinances.

The following are not required to pay annual registration fees:

- A repair shop with a local license, which the DACS determines requires the same or stronger standards as the statute; and
- Any motor vehicle dealer licensed pursuant to ch. 320, F.S.

Motor vehicle repair shops must pay a biennial registration fee based on the shop's number of employees and is calculated on a per-year basis as follows:

- \$50 per year for 1-5 employees (i.e. biennial fee of \$100)
- \$150 per year for 6-10 employees
- \$300 per year for 11 or more employees

#### *Other Regulations*

In addition to registration, motor vehicle repair shops must comply with the following requirements:

- For repairs costing more than \$100, the shop must provide a written estimate
- The shop must get approval for repairs exceeding the estimate by 10 percent or \$10 (whichever greater)
- Customers must be allowed to inspect parts removed from their vehicle
- The shop must provide written invoices that contain specified information
- Shops must maintain records for one year

Motor vehicle repair shops are also prohibited from the following:

- Requiring waiver of rights as precondition to repair work,
- Refusing to return vehicle for failure to pay for unauthorized work,
- Making or charging for unauthorized repairs,
- Misrepresenting the repairs made,
- Misrepresenting necessary parts and repairs,
- Misrepresenting that the vehicle is in a dangerous condition,
- Fraudulently altering any customer contract, estimate, invoice, or other document,
- Fraudulently misusing any customer's credit card,
- Making untrue, deceptive or misleading statements,
- Making false promises to persuade a customer to authorize repairs,
- Substituting used, rebuilt, salvaged, or straightened parts for new replacement parts without notice to customer and insurance company,
- Having a customer sign any work order not stating the repairs requested or the odometer reading at the time of repair,
- Failing to provide a copy of any document requiring the customer's signature,

- Willfully departing from or disregarding accepted practices and professional standards,
- Having repair work subcontracted without the knowledge or consent of the customer,
- Rebuilding or restoring a rebuilt vehicle without the knowledge of the owner in such a manner that it does not conform to the original vehicle manufacturer's established repair procedures or specifications and allowable tolerances for the particular model and year, and
- Performing any other act that is a violation of this part or that constitutes fraud or misrepresentation.

The DACS, the state attorney and customers each have the ability to seek civil remedies. The DACS also has authority to seek administrative remedies. Certain violations subject shops to criminal penalties.

The DACS is authorized to use up to 10 percent of the annual proceeds from the registration of motor vehicle repair shops to provide financial assistance for individuals to undertake technical training or courses of study in motor vehicle repair.

The statute also provides a process by which a customer may recover a vehicle against which a repair shop or motor vehicle dealer has a possessory lien:

- The customer files a bond, in the amount of the unpaid invoice and any storage costs, with the clerk of court.
- The clerk issues a certificate notifying the lienor of the bond and directing release of the vehicle.
- The lienor has 60 days to file suit to recover the bond; prevailing party may be entitled to damages plus court costs and reasonable attorney's fees.
- If the lienor fails to file suit within 60 days, the bond is discharged.

### Proposed Changes

Sections 63 through 66 of the bill repeals all registration requirements and regulations relating to motor vehicle repair shops, including the Motor Vehicle Repair Advisory Council and the dispute resolution procedure for repair shops and dealers, and make conforming changes to cross references.

### **Sellers of Travel**

#### Current Situation

Chapter 559, Part XI, F.S., establishes registration requirements for sellers of travel. Sellers of travel are registered by the Division of Consumer Services within the Department of Agriculture and Consumer Services. Currently, there are 6,855 registered sellers of travel.

"Seller of travel" includes any person who offers for sale prearranged travel, tourist-related services, or tour-guide services, including, vacation or tour packages, or vacation certificates in exchange for a fee, commission, or other valuable consideration. The term includes any business entity offering membership in a travel club or travel services for an advance fee or payment.

Sellers of travel are further classified by their scope of business activities:

- 559.9285(1)(a) sellers do not offer for sale prearranged travel, tourist-related services, or tour-guide services directly to any terrorist state and which originate in Florida;
- 559.9285(1)(b) sellers offer for sale only prearranged travel, tourist-related services, or tour-guide services directly to any terrorist state and which originate in Florida, but engage in no other business dealings or commerce with any terrorist state; or
- 559.9285(1)(c) sellers offer for sale prearranged travel, tourist-related services, or tour-guide services directly to any terrorist state and which originate in Florida, and also engage in any other business dealings or commerce with any terrorist state.

An "independent agent" is a person who represents a seller of travel by soliciting persons on its behalf, who has a written contract with a seller of travel that is operating in compliance with this part and any

rules promulgated thereunder, who does not receive a fee, commission, or other valuable consideration directly from the purchaser for the sale of travel, who does not at any time have any unissued ticket stock or travel documents in his or her possession, and who does not have the ability to issue tickets, vacation certificates, or any other travel documents.

### *Registration Requirements*

Annual registration requires disclosure of contact information, copies of vacation certificates offered for sale and corporate structure. The DACS issues a certificate of registration for registrants to display.

Independent agents also file an affidavit annually with the DACS, disclosing contact information. The DACS issues a proof of filing for agents to display.

The DACS may refuse registration if the seller of travel, or any of its directors, has been found guilty of a crime involving fraud, has not satisfied an administrative fine or civil judgment, or has a judgment against it for unfair trade practices.

Additionally, sellers of travel must certify their business activities by filing an annual disclosure statement with the DACS. Certain sellers of travel must also post a bond of \$25,000 to \$250,000, depending on their scope of business activities.

Sellers of travel must pay an annual registration fee of \$300. Independent agents pay \$50. There is also an annual fee of \$100 to sell vacation certificates.

The following are not required to register with the DACS:

- Employees of a registered seller of travel
- Governmental entities and employees
- Intrastate common carriers
- Public accommodations
- Sellers of diving services

### *Other Regulations*

In addition to registration, sellers of travel offering vacation certificates are subject to recordkeeping, disclosure and contractual requirements.

Sellers of travel are prohibited from the following:

- Making false statements.
- Selling vacation certificates with an expiration date more than 18 months from the date of issuance.
- Requiring, requesting, encouraging or suggesting payment for the right to obtain a travel contract, certificate, or vacation package must be by credit card authorization or to otherwise announce a preference for that method of payment over any other when no correct and true explanation for such preference is likewise stated.
- Representing that the travel contract, certificate, or vacation package offered cannot be purchased later when no such restrictions or limitations in fact exist.
- Misrepresenting the purchaser's right to cancel.
- Selling any vacation certificate the duration of which exceeds the duration of any agreement between the seller and any business entity obligated thereby to provide accommodations or facilities pursuant to the vacation certificate.
- Misrepresenting the
  - amount or period of time accommodations will be available
  - location of accommodations offered
  - price, size, nature, extent, qualities, or characteristics of accommodations offered
  - nature or extent of other goods, services, or amenities offered
  - purchaser's rights, privileges, or benefits

- conditions to obtain a reservation for use of offered accommodations.
- Failing to inform a purchaser of a nonrefundable cancellation policy.
- Failing to include in any advertisement the following: “This is an offer to sell travel.”
- Failing to honor and comply with all provisions of the vacation certificate.
- Including in any vacation certificate or contract any provision purporting to waive or limit any right or benefit provided to purchasers under this part, or seeking such waiver.
- Offering vacation certificates for any accommodation or facility for which there is no contract with the owner securing the purchaser’s right to occupancy and use, unless the seller is the owner.
- Using a local mailing address, registration facility, drop box, or answering service in the promotion, advertising, solicitation, or sale of vacation certificates, unless the seller’s fixed business address is clearly disclosed during any telephone solicitation and is prominently and conspicuously disclosed on all solicitation materials and on the contract.
- Using any registered trademark, trade name, or trade logo in any promotional, advertising, or solicitation materials without written authorization from the holder of such.
- Representing any affiliation with, or endorsement by, any governmental, charitable, educational, medical, religious, fraternal, or civic organization or body, or any individual, in the promotion, advertisement, solicitation, or sale of vacation certificates without express written authorization.
- Selling a vacation certificate to any purchaser who is ineligible for its use.
- During the period of a vacation certificate’s validity, in the event, for any reason whatsoever, of lapse or breach of an agreement for the provision of accommodations or facilities to purchasers, failing to procure similar agreement for the provision of comparable alternate accommodations.
- Violating any state or federal law restricting or prohibiting commerce with terrorist states.
- Doing any other act which constitutes fraud, misrepresentation, or failure to disclose a material fact.
- Failing to produce any document or record or disclose any information required to be produced or disclosed.
- Knowingly making a material false statement in response to any request or investigation by the department, the Department of Legal Affairs, or the state attorney.

The DACS has authority to seek administrative and civil remedies. Certain violations subject sellers to criminal penalties. Violations are also considered unfair and deceptive trade practices.

All regulation and taxation of sellers of travel is preempted to the state.

### Proposed Changes

Sections 67 through 72 of the bill repeal all regulations and registration requirements relating to sellers of travel and make conforming changes to cross references.

### **Talent Agents**

#### Current Situation

Chapter 468, Part VII, F.S., establishes regulations and licensure requirements of talent agencies. Talent agencies are licensed by the Division of Regulation within DBPR. Talent agents represent and promote talent and performers to prospective employers. They may also handle contract negotiation and other business matters for clients. Currently, there are 201 licensed talent agencies.

"Talent Agency" is defined as “any person who, for compensation, engages in the occupation or business of procuring or attempting to procure engagements or any employment or placement of an artist, where the artist performs in his or her artistic capacity.”

“Artist” is defined as “a person performing on the professional stage or in the production of television, radio, or motion pictures; a musician or group of musicians; or a model.”

Under 468.405, F.S., an application for licensure must contain:

- The name and address of the owner of the talent agency.
- Proof of at least 1 year of direct experience in the talent agency business or as a subagent, casting director, producer, director, advertising agency, talent coordinator, or musical booking agent.
- The street and number of the building or place where the talent agency is to be located. If the applicant is other than a corporation, the application shall also include the names and addresses of all persons, except bona fide employees on stated salaries, financially interested, either as partners, associates, or profit sharers, in the operation of the talent agency in question, together with the amount of their respective interest.
- The application must be accompanied by affidavits of at least five reputable persons, other than artists, who have known or have been associated with the applicant for at least 3 years, stating that the applicant is a person of good moral character or, in the case of a corporation, has a reputation for fair dealing.

Additionally, an applicant for licensure must meet the following qualifications:

- Each person designated in an application as an owner or operator shall be of good moral character.
- Each application shall show whether or not the agency, any person, or any owner of the agency is financially interested in any other business of like nature and, if so, shall specify such interest or interests.
- Each licensed talent agency must post a \$5,000 bond.

Licenses are renewed biennially and there are no continuing education requirements.

Talent agencies must pay the following fees:

For initial licensure:

- Application Fee - \$300
- Initial License - \$400
- Unlicensed Activity Fee - \$5

For biennial license renewal:

- Talent Agency - \$400
- Unlicensed Activity Fee - \$5

Part VII of Chapter 468, F.S., also includes requirements for recordkeeping, prohibitions on registration fees, and contractual requirements. It also makes certain prohibited acts criminal and punishable as either a misdemeanor or felony and revocation of the talent agency's license.

### Proposed Changes

Section 7 of the bill repeals all regulations and licensure requirements of talent agents.

### **Telemarketers**

#### Current Situation

Chapter 501, Part IV, F.S., establishes licensure requirements for telemarketers. Telemarketers are licensed by the Division of Consumer Services within DACS. Currently, there are 18,205 licensed telemarketers, including commercial telephone sellers and salespersons.

“Commercial telephone seller” means any person engaged in commercial telephone solicitation on his or her own behalf or through salespersons, including owners and others engaged in the management activities of a business entity pursuant to this part.

“Salesperson” means any individual employed by a commercial telephone seller to solicit sales on behalf of the commercial telephone seller.

“Commercial telephone solicitation” means:

- (a) An unsolicited telephone call to a person initiated by a commercial telephone seller or salesperson, or an automated dialing machine used in accordance with the provisions of s. 501.059(7) for the purpose of inducing the person to purchase or invest in consumer goods or services;
- (b) Other communication with a person where:
  1. A gift, award, or prize is offered; or
  2. A telephone call response is invited; and
  3. The salesperson intends to complete a sale or enter into an agreement to purchase during the course of the telephone call; or
- (c) Other communication with a person which represents a price, quality, or availability of consumer goods or services and which invites a response by telephone or which is followed by a call to the person by a salesperson.

### *Licensure Requirements*

The annual registration requires disclosure of contact and background information and copies of scripts or other materials used in solicitations. The DACS issues a certificate of registration for registrants to display. Commercial telephone sellers must also post a security of at least \$50,000.

Commercial telephone sellers must pay an annual registration fee of \$1,500. Salespersons pay \$50.

The following are exempt from registration requirements:

- Isolated commercial telephone solicitation
- Solicitations for nonprofit 501(c)(3) or 501(c)(6) organizations
- Solicitations from licensed investment brokers or advisors
- Solicitations from licensed insurance brokers or agents
- Solicitations from federal- or state-supervised financial institutions
- Solicitations from licensed real estate professionals
- Solicitations from those licensed to sell vacation and timeshares plans
- Solicitations from those licensed to sell funeral services
- Solicitations from those licensed to sell pest control services
- Solicitations from those licensed to sell food or produce
- Solicitations for newspaper sales
- Solicitations for book, video or record clubs regulated by the Federal Trade Commission
- Solicitations for cable television services
- Solicitations for telephone services
- Business-to-business solicitations
- Solicitations for maintenance or repair of goods previously purchased
- Licensed commercial telephone seller

### *Other Regulations*

In addition to registration, telemarketers are subject to disclosure and contractual requirements.

The DACS may take administrative action against a telemarketer, if the telemarketer:

- Has been convicted or found guilty of, or has entered a plea of guilty or a plea of nolo contendere to, racketeering or any offense involving fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property, or any other crime involving moral turpitude;
- Has been convicted or found guilty of, or has entered a plea of guilty or a plea of nolo contendere to, any felony;
- Has had entered against him or her or any business for which he or she has worked or been affiliated, an injunction, a temporary restraining order, or a final judgment or order, including a

stipulated judgment or order, an assurance of voluntary compliance, or any similar document, in any civil or administrative action involving racketeering, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property or the use of any untrue or misleading representation in an attempt to sell or dispose of real or personal property or the use of any unfair, unlawful, or deceptive trade practice;

- Is subject to or has worked or been affiliated with any company which is, or ever has been, subject to any injunction, temporary restraining order, or final judgment or order, including a stipulated judgment or order, an assurance of voluntary compliance, or any similar document, or any restrictive court order relating to a business activity as the result of any action brought by a governmental agency, including any action affecting any license to do business or practice an occupation or trade;
- Has at any time during the previous 7 years filed for bankruptcy, been adjudged bankrupt, or been reorganized because of insolvency;
- Has been a principal, director, officer, or trustee of, or a general or limited partner in, or had responsibilities as a manager in, any corporation, partnership, joint venture, or other entity that filed the bankruptcy, was adjudged bankrupt, or was reorganized because of insolvency within 1 year after the person held that position;
- Has been previously convicted of or found to have been acting as a salesperson or commercial telephone seller without a license or whose licensure has previously been refused, revoked, or suspended in any jurisdiction;
- Falsifies or willfully omits any material information asked for in any application, document, or record required to be submitted or retained under this part;
- Makes a material false statement in response to any request or investigation by the department or the state attorney;
- Refuses or fails, after notice, to produce any document or record or disclose any information required to be produced or disclosed under this part or the rules of the department;
- Is not of good moral character; or
- Otherwise violates or is operating in violation of any of the provisions of this part or of the rules adopted or orders issued thereunder.

Telemarketers are also prohibited from the following:

- Requiring, or announcing a preference for, payment by credit card authorization.
- Making a commercial telephone solicitation phone call before 8:00 a.m. or after 9:00 p.m. local time at the called person's location.
- Taking any intentional action to prevent transmission of the telephone solicitor's name or telephone number to the party called when the equipment or service used by the telephone solicitor is capable of creating and transmitting the telephone solicitor's name or telephone number.

The DACS has authority to seek administrative and civil remedies. Certain violations subject telemarketers to criminal penalties. Violations are also considered unfair and deceptive trade practices. Injured parties may bring a civil action for recovery of actual damages and/or punitive damages, including costs, court costs, and attorney's fees.

### *Federal regulation*

The federal Telemarketing Sales Rule, 16 C.F.R. Part 310, requires telemarketers to make certain disclosures and prohibits lies. It gives state law enforcement officers the authority to prosecute fraudulent telemarketers who operate across state lines. It is also the basis for the DO-NOT-CALL list, which is managed in Florida by the DACS.

### Proposed Changes

Sections 51 through 56 of the bill repeal all regulations and registration requirements relating to telemarketers and make conforming changes to cross references.

## Yacht and Ship Brokers

### Present Situation

Currently, s. 326.001, F.S., is cited as the “Yacht and Ship Brokers’ Act.”(Act) The Act governs the licensing and regulation of yacht and ship brokers and salespersons in Florida. Specifically, a license is required to conduct business as a broker or salesperson in transactions involving vessels over 32’ in length, and less than 300 gross tons. Chapter 326, F.S., does not regulate transactions involving the sale of a new yacht. DBPR reports that, currently, there are 2,536 licensees in the state.

Definitions of the Act specify:

- “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.”
- “Broker” means “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.”
- “Salesperson” means “a person who, for or in expectation of compensation, is employed by a broker to perform any acts of a broker.”

When the application has been determined to be in acceptable form, the application is evaluated by the division to determine the applicant’s moral character. This process includes the determination that there are no convictions of a felony. The applicant must demonstrate they have a principal place of business in Florida, and remit the required application fee. A license is for 2 years and automatically expires if not renewed.

Before a license may be issued to a broker, he or she must deliver to the division a surety bond or irrevocable letter of credit in the sum of \$25,000. An applicant for a salesperson’s license must deposit with the division a bond or equivalent securities in the sum of \$10,000.

The division has authority to impose civil penalties up to \$10,000 per violation, and suspend or revoke licenses. Investigations may be resolved by a consent order or other administrative action, and the division may bring action in circuit court. Anyone harmed as a result of a violation by a licensee may file a claim against the licensee’s surety bond or letter of credit.

Section 212.06, F.S., grants an exemption from sales and use taxes for vessels imported into the state for sale by yacht brokers or dealers.

### Proposed Changes

Sections 2 through 4 of the bill repeal all licensure and regulatory requirements for yacht and ship brokers and salespersons and make conforming changes to cross references. The sales exemption for the sale of vessels by yacht brokers or dealers is preserved.

## Outdoor Theaters

### Current Situation

Chapter 555, F.S., was created in 1953, to provide for the safe ingress and egress to and from public roads by preventing hazardous conditions and locations in constructing outdoor theaters such as drive-ins.<sup>21</sup> The DOT reports the language is obsolete. Currently, about six drive-in theaters operate in Florida.<sup>22</sup>

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<sup>21</sup> Chapter 28085, L.O.F.

<sup>22</sup> See database at <http://www.drive-ins.com>. Operating outdoor theaters include Joy-Lan Drive-In (Dade City), Swap Shop Drive-In (Fort Lauderdale), Lake Worth Drive-In (Lake Worth), Silver Moon Drive-In (Lakeland), Ruskin Family Drive-In (Ruskin) and Fun-Lan Drive-In (Tampa).



The law applies to outdoor theaters, including any place for outdoor assembly used for the showing of plays, operas, and motion pictures to an audience viewing from parked vehicles, constructed after June 2, 1953. A theater owner must prove compliance with the law before being issued an occupational license. The last time any section of this chapter was amended was in 1979.

The law provides that all entrances and exits to the theater must comply with the rules of the Department of Transportation (DOT) and the following:

- Not more than one entrance may be provided for each access road.
- The portion of the entrance or exit lying within a public road right-of-way must comply with the regulations applicable to that road.
- Not more than two exits may be provided for each access highway.
- No entrance or exit on a state road may be located within 500 feet of its intersection with another state road.
- Enclosures surrounding the theater may not begin less than 200 feet from the centerline of the nearest state road.

The law also provides requirements for storage space for vehicles, placement of movie screens, and lighting.

#### *Other Applicable Regulations*

Under the State Highway System Access Management Act, vehicular access and connections to or from the state highway system are regulated by the Department of Transportation (DOT).<sup>23</sup> Under the Act, a connection to a state road may not be constructed or substantially altered without first obtaining an access permit from the DOT.

Local land development regulations also apply to outdoor theaters.

#### Proposed Changes

Section 61 of the bill repeals ch. 555, F.S., relating to outdoor theaters. This removes the statutory requirements concerning access to and from public roads and other requirements that specifically apply to outdoor theaters.

### **Roominghouses**

#### Current Situation

Public lodging establishments are regulated by the Division of Hotels & Restaurants within DBPR. Chapter 509, F.S., establishes licensure and inspection requirements for public lodging establishments.

“Public lodging establishment” includes transient public lodging establishments and nontransient public lodging establishments:

1. “Transient public lodging establishment” means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.
2. “Nontransient public lodging establishment” means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

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<sup>23</sup> Sections 335.18-335.188, F.S. Visit <http://www.dot.state.fl.us/planning/systems/sm/accman/> for information about the Department of Transportation’s access management program.

Roominghouses are classified as “Any public lodging establishment not classified as a hotel, motel, resort condominium, nontransient apartment, bed and breakfast inn, or transient apartment.”

Applicants seeking to open a roominghouse must submit disclosures of contact information and information about the roominghouse they are seeking to open, including location, type, target date for opening, and a certificate of balcony inspection.

Once an applicant is prepared to open the roominghouse, he or she must pass an inspection with the department before opening to the public. Roominghouse must meet sanitation and safety standards.

Annual fees for roominghouses vary, depending on where the roominghouse is located:

- Nontransient: \$170 - \$340
- Transient: \$190 - \$370

Applicants must also pay an application fee of \$50 and a Hospitality Education Program Fee of \$10. This fee goes toward the School-to-Career grant program to prepare students for employment in the hospitality industry.

Roominghouses are also subject to local requirements such as licensing, zoning, building requirements, etc., and compliance with local requirements is a pre-requisite to state licensure.

### Proposed Changes

Sections 59 and 60 of the bill removes roominghouses as a classification of public lodging establishments, thereby removing any applicable regulations.

### **Sales Commission Contracts**

#### Current Situation

A sales representative contract is an agreement between a principal and a sales representative for the sales representative to solicit orders for the principal's product or service.

Sales representatives include persons or companies soliciting orders for a principal who are compensated, in whole or in part, by commission. Employees of the sales representative and resellers are not sales representatives.

Florida statute places the following restrictions on certain sales representative contracts involving commissions:

- Contracts must be in writing;
- Contracts must set forth the method by which commissions are computed and paid; and
- Sales representatives must be given a signed copy of the contract.

If a sales representative contract is not in writing, all commissions due must be paid within 30 days of the contract's termination. If the commissions are not paid, the sales representative has a cause of action for damages equal to three times the unpaid commissions. Attorney fees and court costs are awarded to the prevailing party.

Real estate professionals regulated under chapter 475, F.S., are exempt from regulation under this statute.

The statute was enacted in 1984. “It appears that the Florida legislature sought to address the inherent problem of the disparity in bargaining power between a sales representative and a manufacturer or importer.”<sup>24</sup> Originally, the statute applied only to out-of-state principals, a classification ultimately

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<sup>24</sup> Rosenfeld v. Lu, 766 F.Supp. 1131, 1140 (S.D.Fla. 1991).

found to be an unconstitutional burden on interstate commerce.<sup>25</sup> A federal court explained the premise for the statute as follows:

Upon termination of the employment relationship, sales representatives apparently encountered difficulties in recovering the commissions they had earned from out-of-state companies. According to [the State], the out-of-state principals were aware of the fact that the expense of litigation would deter sales representatives from filing a law suit. As a result, out-of-state corporations would allegedly withhold commissions, thereby forcing sales representatives to negotiate a distress settlement. Based on [the State's evidence], it appears that the purpose of the double damages provision of the bill was to neutralize the alleged unfair advantage of the principal and place the principal and sales representative on a parity for settlement.<sup>26</sup>

In 2004, the Legislature applied the statute to both in-state and out-of-state principals, curing the constitutionality problem.

### Proposed Changes

Section 73 of the bill repeals the regulations on sales representative contracts involving commissions.

### **Water Vending Machines**

#### Present Situation

Currently, Chapter 381, F.S., specifies legislative intent relating to public health generally to include:

- Subsection 381.001(1), F.S., the Legislature recognizes that the state's public health system must be founded on an active partnership between federal, state, and local government and between the public and private sectors, and, therefore, assessment, policy development, and service provision must be shared by all of these entities to achieve its mission.

Currently, food safety is the responsibility of various federal, state, and local agencies. At the state level, DACS regulates establishments selling primarily pre-packaged foods or beverages. DBPR regulates establishments selling primarily prepared foods, such as restaurants and mobile vendors. The Department of Health oversees food service in facilities such as schools and similar institutions. Each agency attempts to coordinate activities in an effort to avoid overlapping oversight of particular establishments.

Within the DACS, the water and ice program is located in the Division of Food Safety, Bureau of Food and Meat Inspection, Section on Sanitation & Safety. This section administers the permitting requirements for water vending machines and monitors the purity of water sold through these devices. It also monitors the processing and labeling of bottled water and packaged ice sold in Florida. The section is responsible for the oversight of inspections of water vending machines, as well as, bottled water plants and packaged ice plants, and coordination of required product sample collection.

Unchanged since its enactment in 1984 and currently codified as section 500.459(1), F.S., the statement of legislative intent relating to water vending machines currently specifies:

It is the intent of the Legislature to protect the public health through licensing and establishing standards for water vending machines to ensure that consumers obtaining water through such means are given appropriate information as to the nature of such water and that such consumers are assured that the water meets acceptable standards for human consumption.

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 1139. The original statute contained a cause of action for double the unpaid commissions. This was amended to provide for triple the unpaid commissions in 2004.

“Water vending machine” is defined to mean a self-service device that, upon insertion of a coin or token or upon receipt of payment by other means, dispenses a serving of water into a container.

A water vending machine operator must annually obtain a permit from the DACS prior to operating a water vending machine. The operator must:

- Make application.
- Submit payment of a fee not to exceed \$200 (current rules of the DACS sets the fee at \$35).
- The application must state the location of each water vending machine, the source of the water to be vended, the treatment the water will receive prior to being vended, and any other information considered necessary by the department.

Operating standards specified in statute include:

- The placement of water vending machine indoors or otherwise protected against tampering and vandalism and located on flooring that is of cleanable construction.
- Surfaces of the machine with which water comes into contact must be made of nontoxic, corrosion-resistant, nonabsorbent material capable of withstanding repeated cleaning and sanitizing treatments. Section 500.459, F.S., defines “sanitized” to mean treated in conformity with 21 C.F.R. s. 110.3(o).
- Each water vending machine must have a backflow prevention device that conforms to the applicable provision of the Florida Building Code and an adequate system for collecting and handling dripping, spillage, and overflow of water.
- The source of water supply must be an approved public water system and must receive treatment and post disinfection according to approved methods established by rule of the DACS.
- Disclose on each water vending machine, in a position clearly visible to customers: the name and address of the operator; the operating permit number; the fact that the water is obtained from a public water supply; the method of treatment used; the method of post disinfection used; and a local or toll-free telephone number that may be called for obtaining further information, reporting problems, or making complaints.

Duties and responsibilities of the DACS relating to regulation of water vending machines include:

- Approve applications for a permit and deny operations if the DACS finds that the vended water will not meet drinking water quality standards (if denied, specific technical reasons for the denial must be given by the DACS).
- Adopt rules to implement the provisions of this section.
- Establish frequencies and standards for sampling water quality.
- Order an operator to discontinue the operation of a water vending machine which represents a threat to the life or health of any person, or when the vended water does not meet standards.

Penalties are specified for violations.

Regulation of this program is currently preempted to the state.

### Proposed Changes

Sections 45 and 46 of the bill repeal regulatory provisions relating to water vending machines. Section 500.459, F.S., is repealed outright and s. 500.511, F.S., is amended to remove reference to these machines. These changes remove the statutory requirements concerning regulation of the operation of water vending machines.

### **Television Tube Labeling**

#### Present Situation

Currently, s. 817.559 establishes labeling standards for television picture tubes. “Picture tube” is defined to mean:

“a cathode ray tube, commonly known as a television picture tube, designed primarily for use in a home-type television receiver alone or in combination with any electronic device or appliance.”

This section prohibits a manufacturer, processor, or distributor of television picture tubes from selling picture tubes unless the product and its container, if any, is labeled to indicate the new and used components and materials of each unit. The label must conform to the statutory schedule of new and used components and materials to be disclosed on the label based on the particular grade which applies to each tube.

When a picture tube is a “second,” the tube must be designated by label as a “second” to the exclusion of any other grade designation or component description. The following additional notation must appear verbatim on the label:

“This picture tube is a manufacturer’s reject or second line quality tube, but it is capable of giving satisfactory performance.”

A violation of the labeling requirements constitutes a misdemeanor of the second degree, punishable as provided on s. 775.082 or s. 775.083, F.S.

### Proposed Changes

Section 74 of the bill repeals s. 817.559, F.S., relating to standards applicable to labeling of television picture tubes by a manufacturer, processor, or distributor. These products would no longer be required to be labeled to indicate the new and used components and materials of each unit.

#### B. SECTION DIRECTORY:

Section 1 amends s. 20.165, F.S.; deleting provisions establishing the Florida Board of Auctioneers.

Sections 2 through 4 repeal chapter 326, F.S., relating to the licensure of yacht and ship brokers and salespersons and conforming provisions in ss. 212.06 and 213.053, F.S.

Sections 5 and 6 repeal part VI of chapter 468, F.S., relating to the licensure of auctioneers, apprentices, and auction businesses, the Florida Board of Auctioneers, the Auctioneer Recovery Fund, and the conduct of auctions; and conforming provisions in s. 538.03, F.S.

Section 7 repeals part VII of chapter 468, F.S., relating to the licensure and regulation of talent agencies.

Section 8 repeals part IX of chapter 468, F.S., relating to the licensure and regulation of athlete agents.

Sections 9 through 13 amend s. 477.0201, 477.013, 477.0132, F.S., repealing the registration of specialists of hair braiding, hair wrapping, body wrapping, and nail specialists and the registration and inspection of specialty salons; and conforming provisions in ss. 477.019, 477.025, 477.026, 477.0265, 477.028, and 477.029, F.S.

Sections 14 through 16 repeal ss. 481.2131 and 481.2251, F.S., repealing the registration of interior designers; and conforming provisions in ss. 481.201, and 481.203, F.S.

Section 17 amends s. 481.205, F.S.; changing the name of the Board of Architecture and Interior Design, to conform; revising membership of the board; conforming provisions.

Sections 18 through 31 amend ss. 481.207, 481.209, 481.211, 481.213, 481.215, 481.217, and 481.219, 481.221, 481.222, 481.223, 481.229, 481.231, 553.79, and 558.002, F.S.; conforming provisions to the repeal of the regulation of interior designers.

Sections 32 through 44 repeal chapter 496, F.S., relating to the registration of professional fundraising consultants and professional solicitors and the regulation of solicitation of charitable contributions and charitable sales promotions; and conforming provisions in ss. 110.181, 316.2045, 320.023, 322.081, 413.033, 550.0351, 550.1647, 741.0305, 775.0861, 790.166, 843.16, and 849.0935, F.S.

Section 45 repeals s. 500.459, F.S., relating to the regulation of water vending machines and the permitting of water vending machine operators.

Section 46 amends s. 500.511, F.S.; deleting provisions for the deposit of operator permitting fees, the enforcement of the state's water vending machine regulations, penalties, and the preemption of county and municipal water vending machine regulations, to conform.

Sections 47 and 48 repeal ss. 501.012-501.019, F.S., relating to the registration of health studios and the regulation of health studio services; and conforming provisions in s. 501.165, F.S.

Sections 49 and 50 repeal s. 501.143, F.S., relating to the Dance Studio Act, the registration of ballroom dance studios, and the regulation of dance studio lessons and services; and conforming provisions in s. 205.1969, F.S.

Sections 51 through 56 repeal part IV of chapter 501, F.S., relating to the Florida Telemarketing Act, the licensure of commercial telephone sellers and salespersons and the regulation of commercial telephone solicitation; and conforming provisions in ss. 205.1973, 501.165, 648.44, 772.102, and 895.02, F.S.

Sections 57 and 58 repeal chapter 507, F.S., relating to the registration of movers and moving brokers and the regulation of household moving services; and conforming provisions in ss. 205.1975, F.S.

Sections 59 and 60 amend s. 509.242, F.S.; removing the license classifications of 'roominghouse' from public lodging establishments for purposes of provisions regulating such establishments; and conforming provisions in s. 509.221, F.S.

Section 61 repeals chapter 555, F.S., relating to the regulation of outdoor theaters in which audiences view performances from parked vehicles.

Section 62 repeals part VIII of chapter 559, F.S., relating to the Sale of Business Opportunities Act and the regulation of certain business opportunities.

Sections 63 through 66 repeal part IX of chapter 559, F.S., relating to the registration of motor vehicle repair shops, the Motor Vehicle Repair Advisory Council, and the regulation of motor vehicle repair; and conforming provisions in ss. 320.27, 445.025, and 713.585, F.S.

Sections 67 through 72 repeal part XI of chapter 559, F.S., relating to the Florida Sellers of Travel Act, the registration of sellers of travel, certification of certain business activities, and the regulation of prearranged travel, tourist-related services, tour-guide services, and vacation certificates; and conforming provisions in ss. 205.1971, 501.604, 501.608, 636.044, and 721.11, F.S.

Section 73 repeals s. 686.201, F.S., relating to contracts with sales representatives involving commissions;

Section 74 repeals s. 817.559, F.S., relating to the labeling of television picture tubes.

Section 75 provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues and Expenditures:**

##### Department of Agriculture and Consumer Services

There is an anticipated negative fiscal impact to state trust fund revenues associated with the fees collected for registrations, fines, and penalties estimated at \$7,744,381. Additionally, there will be a reduction in the Service Charge to General Revenue (8% on state revenues) of \$619,550. There is also a positive fiscal impact to state trust funds associated with the costs to administer the regulatory functions of \$6,188,887 and an elimination of 111 positions (8 are vacant). However, this would be offset by leave pay outs estimated at least at 523,453 and unemployment compensation estimated at \$736,450 if all filled positions received the \$275 benefit for 26 weeks. The cost of all of them receiving the 53 weeks of extended benefits would be higher. The net negative fiscal impact to state trust funds is \$3,434,947. See chart below.

**Department of Agriculture and Consumer Services  
Fiscal Year 2011/12 Estimates**

<b>Fiscal Year 2011/12 Estimates</b>	<b>Revenues</b>		
Business Opportunities	(\$223,250)		
Charitable Organizations	(\$2,526,190)		
Dance Studios	(\$61,700)		
Health Studios	(\$612,600)		
Motor Vehicle Repair Shops	(\$1,421,162)		
Intrastate Movers	(\$316,695)		
Sellers of Travel	(\$775,838)		
Telemarketing	(\$1,711,946)		
Water Vending Machines	(\$95,000)		
<b>Impact to State Trust Funds</b>	<b>(\$7,744,381)</b>		
<b>Impact to General Revenue-8% Service Charge</b>	<b>(\$619,550)</b>		
<b>Total Impact to State Funds</b>	<b>(\$8,363,931)</b>		
<b>Estimated FTE Reduction</b>		<b>FTEs</b>	<b>Expenditures</b>
Administration		(3.0)	(\$327,560)
Division of Consumer Services		(40.0)	(\$2,199,988)
Call Center Funded from Revenues		(68.0)	(\$3,661,339)
Leave Balance Pay Outs			\$523,453
Unemployment Compensation (103 FTE X \$275 X 26)			\$736,450
<b>Total Impact to FTE/State Funds</b>		<b>(111.0)</b>	<b>(\$4,928,984)</b>

Department of Business and Professional Regulation

CS/HB 5005 will have estimated negative fiscal impact to state trust fund revenues associated with the fees collected for licensure, fines, and penalties of 3,560,297. Additionally, there will be a reduction in the Service Charge to General Revenue (8% on state revenues) of \$284,824.

DBPR will have cost savings related to the deregulation of the professions in CS/HB 5005. The cost savings will allow for a net reduction of \$254,795 in FY 2011-2012 appropriations (recurring appropriation reduction of \$351,695 in FY 2012-13 and thereafter). In FY 2011-2012, DBPR will have nonrecurring costs of \$96,900 to update the department's Single-Licensing System related to deleting data associated with the deregulated professions. See chart below for details on DBPR.

<b>Department of Business and Professional Regulation Fiscal Year 2011/12 Estimates</b>			
<b>Estimated Revenue Impact</b>	<b>Revenues</b>		
Yacht and Ship Brokers	(\$661,900)		
Rooming Houses	(\$70,255)		
Architecture and Interior Design (Interior Designers only)	(\$32,815)		
Athletic Agents	(\$124,143)		
Auctioneers and Auctioneer Apprentices	(\$492,333)		
Cosmetology (Hair Braiders, Hair Wrappers, and Body Wrappers only)	(\$2,040,235)		
Talent Agents	(\$138,616)		
<b>Total Estimate Revenue Impact-State Trust Funds</b>	<b>(\$3,560,297)</b>		
<b>Estimated Impact to General Revenue-8% Service Charge</b>	<b>(\$284,824)</b>		
<b>Total Estimated Revenue Impact to State Funds</b>	<b>(\$3,845,121)</b>		
<b>Budget and FTE Impact</b>		<b>FTEs</b>	<b>Expenditures</b>
Professional Regulation		(1.0)	(\$129,190)
Service Operations		(3.0)	(\$134,679)
Yacht and Ship Brokers		(2.0)	(\$87,826)
Information Technology			\$96,900
<b>TOTAL - Budget and FTE Impact</b>		<b>(6.0)</b>	<b>(\$254,795)</b>

Fiscal Impact – Total

The total fiscal impact of CS/HB 5005 (DBPR and DACS) is a reduction in appropriations of \$6,698,477. Additionally, the bill will result in an estimated reduction of \$11,304,678 in state revenues, which will reduce the Service Charge to General Revenue by \$904,374 (8 percent on state revenues).

CS/HB 5005 conforms to the proposed House General Appropriation Act as the revenue impacts and the reduction in FTE and appropriations have been included in the bill (PCB APC 11-01).

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill will reduce overhead costs for 89,133 currently licensed or registered private sector occupations and businesses by \$11,304,678 in licensure and other revenues associated with opening certain businesses or retaining licensure in certain professions. This is the direct result of removing requirements for various professionals and businesses to pay various fees and to submit applications and disclosures. There may be additional savings to the private sector in the futures as emerging practitioners and businesses are not required to pay these fees.



The following chart illustrates what these businesses and professionals are currently required to pay for initial licensing and examinations and periodical licensing and registration.

<b>Current Fiscal Impact of Regulation on the Private Sector</b>			
<b>Regulation</b>	<b>Initial Fees</b>	<b>Biennial Fees</b>	<b>Practitioners</b>
Athlete Agents	\$1,255	\$550	163
Auctioneers	\$446	\$155	1,760
Auctioneer Apprentices	\$205	n/a	
Body Wrappers	\$25	\$25	4,447
Charitable Organizations	Varies from \$10 - \$400 annually based on contributions		16,588
Solicitors & Consultants	\$300	\$600	
Dance Studios	\$300	\$600	223
Hair Braiders	\$25	\$25	2,909
Hair Wrappers	\$25	\$25	750
Health Studios	\$300	\$600	2,134
Interior Designers	\$661	\$125	4,203
Intrastate Movers	\$300	\$600	998
Motor Vehicle Repair Shops	Biennial fees based on number of employees ranging from \$100 to \$600		24,484
Sellers of Business Opportunities	\$300	\$600	2,550
Sellers of Travel	\$300	\$600	6,855
Independent Agent	\$50	\$100	
Talent Agents	\$705	\$405	201
Telemarketing	\$1,500	\$3,000	18,205
Salesperson	\$50	\$100	
Yacht and Ship Brokers	\$600	\$500	2,663
<b>Total Practitioners</b>			<b>89,133</b>

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that the counties or municipalities have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES