

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 810

INTRODUCER: Regulated Industries Committee and Senator Galvano

SUBJECT: Pugilistic Exhibitions

DATE: March 13, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 810 relates to pugilistic exhibitions, such as boxing, kickboxing, and the martial arts, which are regulated by the Florida Boxing Commission within the Department of Business and Professional Regulation under ch. 548, F.S.

The bill provides a \$111,000 appropriation in recurring funds from the General Revenue Fund to the department for the implementation of this act during the 2013-2014 fiscal year.

The bill repeals the concessionaire license requirement, and eliminates requirements for concessionaires to report and pay taxes. It also repeals the license and tax reporting requirements for persons who have the right to telecast matches. It also repeals the license requirement for co-promoters.

The bill limits the amount of taxes that promoters' must report and pay based on 5 percent tax on gross receipts, including gross receipts derived from the gross price charged for the sale of broadcasting, television and motion picture rights, to a maximum of \$40,000 for a single event.

The bill also deletes the requirement that promoters report and pay the 5 percent tax on gross receipts based on the portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter.

The bill also:

- Revises current definitions and defines new terms;
- Clarifies the duties and responsibilities of the executive director of the commission;
- Deletes a duplicative requirement that the commission must electronically record of all its scheduled proceedings;
- Authorizes the commission to approve, suspend, or revoke its approval of amateur sanctioning organizations for mixed martial arts matches;
- Exempts several types of matches from regulation by the state, including amateur matches conducted by public postsecondary institutions, public secondary schools and the Florida National Guard and U.S. Armed Forces, and matches conducted by the International Olympic Committee, the Special Olympics, or the Junior Olympics, and professional or amateur martial arts activity;
- Provides that a participant's failure or refusal to provide a urine sample upon request results in the license being immediately suspended, and such failure is grounds for additional disciplinary action;
- Provides the commission's hearings related to the withholding of purses must be held pursuant to ch. 120, F.S., the Administrative Procedures Act;
- Permits promoters to deduct the face value of complimentary tickets issued, provided or given from the calculation of the tax on gross receipts. The promoters may deduct complimentary tickets, up to 5 percent of the seating designated for the match, from the calculation of gross receipts;
- Permits promoters to not include the face value of complimentary tickets, when calculating the gross receipts tax, for more than 5 percent of the seats designated for the match if the promoter obtains written authorization from the commission or the executive director, or his or her designee;
- Permits complimentary tickets that are provided to reserve of active members of the United States Armed Forces and the National Guard, military veterans, and not for profit organizations persons, would not be included in the calculation of the gross receipts tax if authorized by the commission;
- Requires promoters to keep specified records for one year;
- Requires audits to verify compliance with promoter reporting requirements;
- Requires the commission to establish by rule the procedure for auditing a promoter's records, and for resolving any inconsistencies revealed in an audit, and for imposing late fees if taxes are owed; and
- Provides the procedure for emergency license suspensions and requires the general counsel of the department to review the grounds for emergency suspension orders and to file an administrative complaint against the licensee within 21 days after issuance of the suspension order.

The bill would take effect on July 1, 2014.

II. Present Situation:

Florida State Boxing Commission

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing, and mixed martial arts by the Florida State Boxing Commission (commission) within the Department of Business and Professional Regulation (department).

Section 548.006(3), F.S., provides the commission with exclusive jurisdiction over every professional boxing match and professional mixed martial arts and kickboxing matches. Professional matches held in this state must meet the requirements for holding the match ch. 548, F.S., and the rules adopted by the commission.

The commission's jurisdiction over amateur matches is limited to the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for boxing and kickboxing matches held in the state.¹ Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.² This jurisdiction does not extend to amateur sanctioning organizations for mixed martial arts.

According to the department, the commission's primary duty is to ensure all matches comply with the laws and rules and the matches are competitive and physically safe for the participants. For the most recent period for which data is available, the commission licensed 1,224 professionals in FY 2011-12 and processed 51 live event permits.³ According to the department, it had 1,056 licensed professional and processed 39 live permits for FY 2012-2013.

In addition to its daily processing of applications for licensure and the approval or denial of live event permits, the commission coordinates live event schedules and evaluates proposed fight cards. It also evaluates the assignment of officials (referees, judges, physicians) and event staff (event coordinator, chief inspector, inspectors, and timekeeper).

A department representative or commission representative is assigned to attend each official weigh-in and live event. This person attends the official weigh-in during which the application is processed, license fees are collected, the results of participant medical examinations are verified, pre-fight physicals are conducted by physicians, the promoter/participant contracts are collected, participants' weights are recorded, officials' (referee, judges, and physicians) pay from the promoter are collected, and the required accidental death and health insurance for each of the participants is verified. The department or commission representative is also accompanied to the event by the department's OPS event staff, i.e., the event coordinator, timekeeper, and inspector. The OPS event staff and the representative from the department or commission also inspect the ring for safety standards, verify that emergency medical personnel and an ambulance are on-site, assign inspectors to each of the fighters, conduct match timekeeping, verify assigned officials are present, distribute officials' pay following the event, and conduct participant drug tests, if necessary.

¹ Section 548.006(3), F.S.

² Section 548.002(2), F.S.

³ See *Annual Report, Fiscal Year 2011-2012*, Florida State Boxing Commission, Department of Business and Professional Regulation. A copy is available at: <http://www.myfloridalicense.com/dbpr/os/documents/SBCAR2012v6.pdf> (Last visited March 8, 2014).

Definitions

Section 548.002(3), F.S., defines the term “boxing” to mean “to compete with the fists.”

Section 548.002(5), F.S., defines the term “concessionaire” to mean:

any person or business entity not licensed as a promoter which receives revenues or other compensation from the sale of tickets or from the sale of souvenirs, programs, broadcast rights, or any other concessions in conjunction with the promotion of a match.

Section 548.002(6), F.S., defines the term “contest” to mean “a boxing, kickboxing, or mixed martial arts engagement in which persons participating strive earnestly to win using, but not necessarily being limited to, strikes and blows to the head.”

Section 548.002(9), F.S., defines the term “exhibition” to mean:

a boxing, kickboxing, or mixed martial arts engagement in which persons participating show or display their skill without necessarily striving to win using, but not necessarily being limited to, strikes and blows to the head.

Section 548.002(12), F.S., defines the term “kickboxing” to mean to “compete with the fists, feet, legs, or any combination thereof, and includes “punchkick” and other similar competitions.”

Section 548.002(16), F.S., defines the term “mixed martial arts” to mean:

unarmed combat involving the use, subject to any applicable limitations set forth in this chapter, of a combination of techniques from different disciplines of the martial arts, including, but not limited to, grappling, kicking, and striking.

Section 548.006(17), F.S., defines a “participant” to mean “a professional competing in a boxing, kickboxing, or mixed martial arts match.”

Section 548.006(19), F.S., defines the term “professional” to

a person who has received or competed for any purse or other article of a value greater than \$50, either for the expenses of training or for participating in any match.

Section 548.002(20), F.S., defines the term “promoter” to mean:

any person, and includes any officer, director, employee, or stockholder of a corporate promoter, who produces, arranges, or stages any match involving a professional.

Section 548.002(21), F.S., defines the term “purse” to mean:

the financial guarantee or other remuneration for which a professional is participating in a match and includes the professional’s share of any payment received for radio broadcasting, television, and motion picture rights.

Executive Director

Section 548.004(1), F.S., requires the department, with the approval of the commission, to employ an executive director. The duties and responsibilities of the executive director include:

- Keeping a record of all proceedings of the commission;
- Preserving all books, papers, and documents pertaining to the business of the commission;
- Preparing any notices and papers required;
- Appointing judges, referees, and other officials as delegated by the commission and pursuant to ch. 548, F.S., and the rules of the commission; and
- Performing any other duties as the department or commission directs.

Recording of Commission Proceedings

Section 548.004(2), F.S., requires the commission to electronically record all of its scheduled proceedings. Section 455.203(7), F.S., also requires the department to electronically record all of its proceedings.

Licenses

Several professions are licensed by the commission. A license is required to be the promoter of a match.⁴ Before acting in any capacity in a match, a license is required to be a participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician, matchmaker, concessionaire, or booking agent or representative of a booking agent.⁵ Prior to working as the ringside physician, a physician must be licensed under ch. 458, F.S., or ch. 459, F.S., must maintain an unencumbered license in good standing, and must demonstrate satisfactory medical training or experience in boxing, or a combination of both, to the executive director. The commission also licenses the concessionaires.⁶

Exceptions

The commission’s jurisdiction does not extend to:

- A match conducted or sponsored by a bona fide non-profit school or education program whose primary purpose is instruction in martial arts, boxing, or kickboxing if the match is held in conjunction with the instruction, and is limited to amateur participants who are students of the school or instructional program;

⁴ See s. 548.012(1), F.S.

⁵ Section 548.017, F.S.

⁶ See 548.015, F.S.

- A match conducted or sponsored by any company or detachment of the Florida National Guard, if the match is limited to participants who are members of the Florida National Guard; or
- A match conducted or sponsored by the Fraternal Order of Police, if the match is limited to amateur participants and is held in conjunction with a charitable event.⁷

Revocation and Suspension of a License

Section 548.046(3)(c), F.S., provides that the failure or refusal to provide a urine sample, immediately upon request, results in the revocation of the participant's license.

Withholding of Purses

Section 548.054, F.S., provides the procedure for the withholding of prize purses. A member of the commission, a commission representative, or the referee may order a promoter to surrender any purse or other funds payable to a participant, or to withhold the share of any manager, if it appears that:

- The participant is not competing honestly, or is intentionally not competing to the best of his or her ability and skill in a match represented to be a contest; or
- The participant, his or her manager, or any of the participant's seconds has violated ch. 548, F.S.⁸

In the event a purse is withheld, the purse must be delivered to the commission by the promoter.⁹ Within ten days after the match, the person from whom the purse was withheld may apply, in writing, to the commission for a hearing.¹⁰ Upon receipt of the application, the commission must set the date for a hearing. Within ten days after the hearing or after ten days following the match, if no application for a hearing is filed, the commission is required to meet and determine the disposition of the withheld purse.¹¹ If the commission finds the charges sufficient, it may decide that all or a part of the funds be forfeited.¹² Conversely, if the commission does not find the charges sufficient, it must distribute the withheld funds immediately.¹³

Reporting and Tax Requirement

Within seventy-two hours after a match, the promoter of that match must file a written report with the commission.¹⁴ The report must include information about the number of tickets sold, the amount of gross receipts, and any other facts that the commission requires.¹⁵ Chapter 548, F.S., does not require the promoter to retain a copy of the written report.

The term "gross receipts" includes:

⁷ See s. 548.007, F.S.

⁸ Section 548.054(1), F.S.

⁹ Section 548.054(2), F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Section 548.06(1), F.S.

¹⁵ *Id.*

- The gross price charged for the sale or lease of broadcasting, television, and motion picture rights without any deductions for commissions, brokerage fees, distribution fees, advertising or other expenses or charges;
- The portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter;
- The face value of all tickets sold and complimentary tickets issued, provided, or given; and
- The face value of any seat or seating issued, provided, or given in exchange for advertising sponsorships, or anything of value to the promotion of an event.¹⁶

According to the department, the current definition of “gross receipts” has led to some confusion in the industry because licensees are not sure whether to include state and federal taxes within the face value of a ticket.

Promoters include persons who have rights to telecast a match or matches held in this state under the supervision of the Florida State Boxing Commission. Such persons must be licensed as a promoter, and must, within 72 hours after the sale, transfer, or extension of such rights in whole or in part, file with the commission a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.¹⁷

Concessionaire must also file with the commission, within 72 hours after the match, a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.¹⁸

Any written report that must be filed with the commission and postmarked within 72 hours after the conclusion of the match with an additional 5 days allowed for mailing.¹⁹ According to the department, the report is required to enable the commission to verify the accuracy of the post-event tax payment for both tickets sold and broadcasting/television rights.

Section 548.015, F.S., requires that a concessionaire must file a surety bond, cash deposit, or other security in an amount determined by the commission. The security is required before licensure, license renewal, or before a match.

These written reports must be accompanied with a tax payment in the amount of 5 percent of the total gross receipts exclusive of any federal taxes. The tax payment for the sale or lease of broadcasting, television, and motion picture rights cannot exceed \$40,000 for any single event.²⁰

Commission Hearings

Section 548.073, F.S., provides any member of the commission may conduct a hearing. Notwithstanding, the provisions of ch. 120, F.S., the Administrative Procedures Act, before any adjudication is rendered, a majority of the commission must examine the record and approve the adjudication and order.

¹⁶ Section 548.06(1), F.S.

¹⁷ Section 548.06(2), F.S.

¹⁸ Section 548.06(3), F.S.

¹⁹ Section 548.06(4), F.S.

²⁰ Section 548.06(5), F.S.

Emergency Suspensions

Section 120.60(6), F.S., permits agencies to order the emergency suspension, restriction, or limitation of a license upon a finding of immediate serious danger to the public health, safety, or welfare. The agency may take such action by any procedure that is fair under the circumstances if:

- (a) The procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution;
- (b) The agency takes only that action necessary to protect the public interest under the emergency procedure; and
- (c) The agency states in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The agency's findings of immediate danger, necessity, and procedural fairness are judicially reviewable. Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation proceeding pursuant to ss. 120.569 and 120.57 shall also be promptly instituted and acted upon.

III. Effect of Proposed Changes:

Section 1 – Definitions

The bill amends s. 548.002, F.S., to revise current definitions and to define new terms. Specifically, the bill:

- Amends the definition of the term “boxing” in s. 548.002(3), F.S., to mean the unarmed combat sport of fighting by striking with fists;
- Deletes the definition for the term “concessionaire” in s. 548.002(5), F.S.;
- Amends the definition of the terms “contest” and “exhibition” in ss. 548.002(5) and (8), F.S., to include the participants' use other full-contact maneuvers;
- Creates s. 548.002(11), F.S., to define the term “face value” to mean the dollar value which is equal to what the customer is required to pay, or would be required to pay, if it is a complimentary ticket. Taxes are not included in the face value if the ticket specifies the amount of admission charges attributable to state or federal taxes;
- Creates s. 548.002(13), F.S., to define the term “full contact” to mean the use of strikes and blows during a match in which the strikes and blows are intended to break the plane of the participant's body, are delivered to the head, face, neck, or body of the receiving participant's body, or cause the receiving participant to move in response to the strikes and blows;
- Deletes the definition for the term “foreign copromoter” in s. 548.002(10), F.S.;
- Amends the definition of the term “judge” in s. 548.002(11), F.S., to provide that the judge is licensed by the commission and scores a match using a designated scoring system;
- Amends the definition of the term “kickboxing” in s. 548.002(12), F.S., to include the act, activity, or sport of fighting with the use of fists, hands, feet, legs or any combination thereof

in a roped ring. It provides that the term does not include any form of ground fighting techniques;²¹

- Amends s. 548.002(16), F.S., to define the term “mixed martial arts” to mean the act, activity, or sport of unarmed combat involving the use of a combination of techniques, including, but not limited to, wrestling, grappling, kicking, and striking, and other techniques from different disciplines of the martial arts. The term may include, but is not limited to, boxing, kickboxing, Muay Thai,²² jujitsu, and wrestling in a roped square ring or a fenced –in area;
- Amends the definition of the term “physician” in s. 548.002(18), F.S., to mean a person licensed to practice medicine under ch. 458, F.S. or ch. 459, F.S., whose license is unencumbered and in good standing;
- Amends the definition of the term “promoter” in s. 548.002(20), F.S., to include “any entity” in addition to “any person” in current law. It also amends the definition to include the trustee or partner of a corporate partner or any promoter partnership. Current law does not reference promoter partnerships;
- Amends the definition of the term “purse” in s. 548.002(21), F.S., to include the professional’s share of any payment from pay-per-view or closed circuit. Current law is limited to payment from radio broadcasts and television; and
- Amends the definition of the term “second” or cornerman” in s. 548.002(22), F.S., to mean a person who assists a participant in preparing for a match and between rounds. Current law limits the definition to a person who assists the match participant between rounds.
- Creates a definition for the term “unarmed combat” in s. 548.002(24), F.S., to mean a form of competition in which a strike or blow is struck which may reasonable be expected to inflict injury.

Section 2 - Executive Director

The bill amends s. 548.004(1), F.S., to require the executive director or his or her designee to perform the duties or responsibilities set forth by the commission, including conducting the functions of the commission office, appointing event and commission officials, approving licenses, permits, and matches. It deletes the requirement that the executive director must keep a record of all proceedings of the commission, preserve all books, papers, and documents pertaining to the business of the commission, prepare any notices and papers required, appoint judges, referees, and other duties as the commission or department deem necessary to fulfill the duties of the position.

The bill also amends s. 548.004(1), F.S., to authorize the direct to issue subpoenas and administer oaths to witnesses, permitholders, record custodians, and licenses.

In addition, the bill deletes the requirement in s. 548.004(2), F.S., that the commission require electronic recording of all its scheduled proceedings. Under current law, s. 455.203(7), F.S., requires all proceedings conducted by the department be electronically recorded.

²¹ Ground fighting involves hand-to-hand combat with the combatants are on the ground. This type of combat generally involving grappling. *See* http://en.wikipedia.org/wiki/Ground_fighting [Last visited March 8, 2014].

²² Muay Thai is a combat sport from the muay martial arts of Thailand. *See* <http://www.wmcmuaythai.org/about> (Last visited March 18, 2013).

Section 3 - Jurisdiction of the Commission

The bill amends s. 548.006(3), F.S., to include, within the commission's authority, the approval and suspension or revocation of approval of amateur sanctioning organizations for mixed martial arts matches.

Section 4 - Exceptions

The bill amends s. 548.007(1), F.S., to exempt from regulation under ch. 548, F.S., matches that do not allow full contact if the match is limited to amateurs. The bill deletes the exemption in this subsection for matches conducted or sponsored by a bona fide non-profit school or education program whose primary purpose is instruction in martial arts, boxing, or kickboxing if the match is held in conjunction with the instruction, and is limited to amateur participants who are students of the school or instructional program.

The bill also provides the following additional exemptions from ch. 548, F.S.:

- Amateur matches conducted by public K-12 schools, as defined in s. 1000.04, F.S.;²³
- Amateur matches conducted by the Florida National Guard and U.S. Armed Forces involving its amateur members;
- Matches conducted by the International Olympic Committee, the Special Olympics, or the Junior Olympics; and

Each of these exemptions requires that the matches must be limited to amateurs who are members of the exempted organization.

The bill also exempts professional or amateur martial arts activity, which it defines as one of the traditional forms of self-defense or unarmed combat involving the use of physical skill and coordination including karate, aikido, judo, and kung fu. The term does not include mixed martial arts.

Section 5. Foreign Promoter License Requirement

The bill repeals s. 548.013, F.S., which provides the license requirement for foreign copromoters. The also deletes the definition for the term "foreign copromoter" in s. 548.002(10), F.S.

Section 6. Promoter and Foreign Copromoter Bond Requirements

The bill amends s. 548.014, F.S., to delete references to the term "foreign copromoters."

²³ Section 1000.04(1), F.S., defines "public K-12 schools" to "include charter schools and consist of kindergarten classes; elementary, middle, and high school grades and special classes; virtual instruction programs; workforce education; career centers; adult, part-time, and evening schools, courses, or classes, as authorized by law to be operated under the control of district school boards; and lab schools operated under the control of state universities."

Section 7. Concessionaires – Security

The bill repeals s. 548.015, F.S., which authorizes the commission to require that concessionaires file a surety bond as a condition for a license.

Section 8. Persons Required to be Licensed

The bill amends s. 548.017, F.S., to delete the requirement that concessionaires must be licensed by the commission.

Section 9. - Immediate Suspension

The bill amends s. 548.046(3)(c), F.S., to provide that a participant's failure or refusal to provide a urine sample is considered an immediate, serious danger to the health, safety, and welfare of the person's opponent and is grounds for immediate license suspension pursuant to s. 120.60(6), F.S. It authorizes the commission to suspend the participant's license and to subject the participant to additional disciplinary action.

The bill also amends s. 548.046(3)(c), F.S., to delete the provisions in this paragraph that provide that the loser of the match who subsequently does not provide a urine sample forfeits his or her share of the purse. The bill provides that the decision shall be changed to a no decision result, which under current law in this paragraph requires the distribution of the purse as though the participant who violated this subsection had lost the match.

The bill creates s. 548.046(3)(d), F.S., to provide that, if a participant tests positive for any substance prohibited by commission rule,²⁴ the participant shall be considered an immediate, serious danger to the health, safety, and welfare of the public and his or her opponent. The participants shall be immediate suspended under s. 120.60(6), F.S., and subject to additional disciplinary action.

Section 10. Payment of Advances by Promoter Regulated

The bill amends s. 548.052, F.S., to delete references to the term "foreign copromoter."

The bill also amends this section to permit the commission or the executive director, or his or her designee, to give prior written consent to a promoter to pay, lend, or give a participant an advance against her or his purse before a contest.

Section 11 - Withholding of Purses

The bill amends s. 548.054(2), F.S., to provide the commission must hold a hearing pursuant to s. 120.569, F.S., and s. 120.57, F.S., for hearings related to the withholding of purses. The hearing procedures in s. 120.569, F.S., relate to proceedings in which the substantial interests of a party are determined by an agency. The hearing procedures in s. 120.57, F.S., relate to proceedings that involve disputed material issues of fact before the Division of Administrative Hearings.

²⁴ See rule 61K1-1.0043, F.A.C.

Also, the bill deletes the requirement that the commission must fix a date for the hearing and meet to determine the disposition of the withheld purse within 10 days after the hearing.

Section 12 - Promoter Payments to the State and Recordkeeping Requirement

The bill amends s. 548.06(1)(a), F.S., to provide that promoters must report and pay the 5 percent tax on gross receipts within 72 hours after a match except as provided in s. 548.06(4), F.S. The bill also amends s. 548.06, F.S., to use the term “gross receipts” instead of “total gross receipts.”

The bill deletes the requirement in s. 548.06(1)(b), F.S., that the promoter report and pay the 5 percent tax on gross receipts based on the portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter.

The bill amends s. 548.06(1)(b), F.S., to provide that the gross receipts complimentary tickets above 5 percent of the seats in the house designated for use in the event and not authorized by the commission pursuant to subsection (2).

The bill creates s. 548.06(2), F.S., to provide for the authorization of complimentary tickets by the commission. It permits promoters to issue, provide, or give, complimentary tickets for up to 5 percent of the seats in the house designated for use in the event, equally distributed between or among the price categories for which they were issued, without the commission’s written authorization. Promoters do not have to include the face value of these complimentary tickets when calculating the gross receipts tax in s. 548.06(4), F.S. The bill permits a promoter to also not include the face value of complimentary tickets for more than 5 percent of the seats in the house when calculating the gross receipts tax if the promoter obtains written authorization from the commission or the executive director, or his or her designee.

The bill creates s. 548.06(2)(a), F.S., to provide that the commission may not consider the complimentary tickets that it authorizes as part of the gross receipts from admission fees.

The bill creates s. 548.06(2)(b), F.S., to permit a promoter to give complimentary tickets for more than 5 percent of the seats in the house without written authorization. However, the promoter must include the face value of such tickets when calculating the gross receipts tax.

The bill creates s. 548.06(2)(c), F.S., to provide the classes of persons that the commission may authorize promoters to give complimentary tickets. Complimentary tickets provided to these persons, if authorized by the commission, would not be included in the calculation of the gross receipts tax:

- Reserve of active members of the United States Armed Forces and the National Guard;
- Military veterans; and
- Not for profit organizations.

The bill creates s. 548.06(2)(d), F.S., to provide the process for promoters to follow to obtain the written authorization of the commission for giving complimentary tickets for more than 5 percent. Section 548.06(2)(d)1., F.S., requires the promoter to submit an application, on a form

adopted by the commission, no later than 2 business days before the date of the professional event. The bill requires that the application must include, at a minimum, the date, time, and location of the event, the number of complimentary tickets being requested, the percentage of total tickets issued for the seats in the house designated for use in the event being requested as complimentary tickets, and which individuals or entities will receive the complimentary tickets.

Section 548.06(2)(d)2., F.S., requires that the promoter maintain the documentation that evidences that the tickets were given to individuals or entities that fall into the categories listed in s. 548.06(2)(c), F.S., and provides that the commission may audit these records, as provided in s. 548.06(7), F.S.

Section 548.06(2)(e), F.S., requires that the commission, executive director, or his or her designee, must deny or approve the application. The commission, executive director, or his or her designee may set limitations on the approval and may approve all or a portion of the requested percentage above 5 percent. The bill's only criteria for the commission's authorization of complimentary tickets are the limitation that complimentary tickets may not exceed 5 percent of the seats in the house and the requirement that the complimentary tickets are specified in ss. 548.06(2)(a)-(c), F.S. The bill does not provide a clear delegation of authority, beyond the requirements of ss. 548.06(2)(a)-(c), F.S., for setting limits on complimentary tickets or determining which portion of the requested percentage above 5 percent it may authorize.

The bill requires that the commission, executive director, or his or her designee must provide the decision in writing to the promoter at least one business day before the start of the event, with an explanation for the denial or approval and an explanation for any limitation on the approval. The bill provides that the promoter remains responsible for complying with other reporting and taxation requirements as set forth in ch. 548, F.S.

The bill deletes the provision in s. 548.06(2), F.S., that classifies as promoters the persons who have rights to telecast a match or matches held in this state, that requires that they must be licensed as a promoter, and requires that they file with the commission a written report of the number of tickets sold, the amount of gross receipts within 72 hours after the sale, transfer, or extension of such rights in whole or in part.

The bill deletes the provision in s. 548.06(3), F.S., that requires concessionaires to file with the commission, within 72 hours after the match, a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.

The bill amends s. 548.06(4), F.S., to include pay-per-view rights in place of motion picture rights. It also limits the provision to matches occurring within the state. The bill provides that, if a promoter remits the maximum tax amount of \$40,000 for the sale or lease of broadcasting, television, or pay-per-view rights of any single event pursuant to this subsection, the promoter is only required to indicate that the amount of \$40,000 has been remitted for such taxes on a form provided by the commission. The bill provides that the promoter remains responsible for complying with other reporting and taxation requirements related to other gross receipts as set forth in this chapter.

The bill creates s. 548.06(6), F.S., to require the promoter to keep a copy of specified records for a period of one year, including records necessary to justify and support the reports submitted to the commission, copies of independently prepared ticket manifests, and records to verify compliance with the complimentary tickets requirements in s. 548.06(2), F.S. It is not clear if one year is sufficient for the commission to be able to conduct audits of the records. Current law does not require promoters to retain records relating to the reporting of gross receipts under s. 548.06, F.S.

The bill creates s. 548.06(7), F.S., to provide that compliance with the reporting requirements in s. 548.06, F.S., is subject to verification by department or commission audit. It provides the commission has the right to audit a promoter's books and records relating to the promoter's operations upon reasonable notice.

The bill creates s. 548.06(8), F.S., to direct the commission to adopt rules to establish a procedure for auditing a promoter's records, and for resolving any inconsistencies revealed in the audit, and to impose late fees if taxes are owed.²⁵

Section 13 - Emergency Suspension of License

The bill amends s. 548.07, F.S., to provide an emergency license suspension procedure. The bill authorizes the commission, any commissioner, the executive director or his or her designee, or any commission designee to issue an emergency suspension of a licensee's license when the licensee poses an immediate and serious danger to the health, safety, and welfare of the public, a licensee, or a participant.

In addition, the bill requires the general counsel of the department to review the grounds for the emergency suspension order and to file an administrative complaint against the licensee within 21 days after issuance of the suspension order. The bill deletes the current suspension procedure, including the requirement that the commission must hold a hearing within 10 days after the date on which the license or permit is suspended.

The disciplinary process would proceed under ch. 120, F.S., after the administrative complaint is served on the licensee as provided in s. 455.275, F.S.²⁶

Section 14 - Commission Hearings

The bill amends s. 548.073, F.S., to provide the hearing held under ch. 548, F.S., must be pursuant to ch. 120, F.S. The bill deletes the provision that any member of the commission may

²⁵ Section 548.075(1), F.S., authorizes the commission to impose a fine of not more than \$5,000 for any violation of ch. 548, F.S., in lieu of or in addition to any other punishment provided for such violation.

²⁶ Section 455.275, F.S., provides the procedure for service of a complaint on a licensee of the department. For administrative complaints, s. 455.275(3), F.S., the department is required to serve the licensee by regular mail to the licensee's last known address of record, by certified mail to the last known address of record, and, if possible, by e-mail. If the department is unable to serve the licensee by these methods, the department must call the last known telephone number of record and cause a short, plain notice to the licensee to be posted on the front page of the department's website and must also send notice via e-mail to all newspapers of general circulation and all news departments of broadcast network affiliates in the county of the licensee's last known address of record.

hold a hearing. It also deletes the requirement that, before any adjudication is rendered, a majority of the members of the commission shall examine the record and approve the adjudication and order.

Section 15 – Appropriation

The bill provides an appropriation of \$111,000 in recurring funds from the General Revenue Fund to the department for the implementation of this act during the 2014-2015 fiscal year.

Section 16 - Effective Date

The bill would take effect on July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section 548.06(2)(e), F.S., authorizes the commission, executive director, or his or her designee may set limitations on the approval and may approve all or a portion of the requested percentage above 5 percent. The bill's only criteria for the commission's authorization of complimentary tickets are the limitation that complimentary tickets may not exceed 5 percent of the seats in the house and the requirement that the complimentary tickets are specified in ss. 548.06(2))(a)-(c), F.S. The bill does not provide a clear delegation of authority, beyond the requirements of ss. 548.06(2))(a)-(c), F.S., for the sitting or limits on complimentary tickets or to determine which portion of the requested percentage above 5 percent it may authorize. To the extent that this paragraph authorizes the commission to set limitation on complimentary tickets or for the denial or approval of complimentary tickets beyond the reasons specified in ss. 548.06(2))(a)-(c), F.S., such authority may constitute an unconstitutional delegation of legislative authority.

An invalid delegation of authority violates the principal of separation of powers in Art. II, s. 3, Florida Constitution.²⁷ When assigning to an agency a regulatory responsibility, the legislature must provide the agency with adequate standards and guidelines when

²⁷ *Gallagher v. Motors Insurance Corp.*, 605 So.2d 62 (Fla. 1992).

delegating the duties.²⁸ The executive branch must be limited and guided by an appropriately detailed legislative statement of the standards and policies to be followed.²⁹ The bill may constitute an unconstitutional delegation of authority because it fails to provide the commission with any standards by which to judge the appropriateness of those minimum standards.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill deletes the licensure requirement for concessionaires. The current license fee for concessionaires is \$100. Concessionaires would also not be required to report and pay taxes on gross receipts.

The bill repeals the license requirement for persons who have the right to telecast matches.

C. Government Sector Impact:

The department collects \$600 annually from the licensure of concessionaires. The department estimates a reduction of approximately \$40,000 in post-event taxes for complimentary tickets and \$60,000 in post-event taxes from concessions.

The bill provides a \$111,000 appropriation from the General Revenue Fund.

VI. Technical Deficiencies

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 548.002, 548.004, 548.006, 548.007, 548.013, 548.014, 548.015, 548.017, 548.046, 548.052, 548.054, 548.06, 548.07, and 548.073.

²⁸ *Askew v. Cross Key Waterways*, 372 So.2d. 913 (Fla. 1978); *Florida East Coast Industries, Inc. v. Dept. of Community Affairs*, 677 So.2d 357 (Fla. 1st DCA 1996).

²⁹ *Florida Home Builders Association v. Division of Labor*, 367 So. 219 (Fla. 1979).

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Regulated Industries on March 13, 2014:

The committee substitute (CS) differs from SB 810 as follows:

The CS does not amend the definition of the term “boxing” in s. 548.002(3), F.S., to mean the act, activity, or sport of fighting by striking with fists covered with approved padded gloves in a roped square ring, subject to ch. 548, F.S., and the rules adopted pursuant to this chapter. Instead, it amends the term to mean the unarmed combat sport of fighting by striking with fists.

The CS creates a definition for the term “unarmed combat” in s. 548.002(24), F.S., to mean a form of competition in which a strike or blow is struck which may reasonable be expected to inflict injury.

The CS amends s. 548.004(1), F.S., to reference “other duties as the commission or department deem necessary to fulfill the duties of the position” instead of “other duties as the commission or department deem necessary.” The bill also amends s. 548.004(1), F.S., to include permitholders and record custodians among the listing of persons to whom the executive director is authorized to issue subpoenas and administer oaths.

The CS amends the exemption in s. 548.007(2), F.S., to include the exemption for amateur matches that are limited to members of the United States Armed Forces in this subsection. It deletes the exemption for the United States Armed Forces in subsection (5) of the bill. It amends s. 548.007(4), F.S., to reference amateur matches conducted by public K-12 schools, as defined in s. 1000.04, F.S., instead of referencing public post-secondary education institutions or public secondary schools.

The CS repeals s. 548.013, F.S., which provides the license requirement for foreign copromoters.

The CS amends s. 548.014, F.S., to delete references to the term “foreign copromoters.”

The CS amends s. 548.046(3)(c), F.S., to provide a participant’s failure or refusal to provide a urine sample is grounds for immediate license suspension pursuant to s. 120.60(6), F.S., instead of revocation.

The CS does not amend s. 548.046(3)(c), F.S., to provide that participant’s failure or refusal to provide a urine sample results in the immediate revocation of the participant’s license. Instead, it amends this paragraph to provide that the failure to provide the urine sample is considered an immediate, serious danger to the health, safety, and welfare of the person’s opponent and is grounds for immediate license suspension pursuant to s. 120.60(6), F.S. The CS deletes the provisions in this paragraph that provide that the loser of the match who subsequently does not provide a urine sample forfeits his or her

share of the purse. Instead, the CS provides that the decision shall be changed to a no decision result, which under current law requires the distribution of the purse as though the participant who violated this subsection had lost the match.

The CS amends s. 548.046(3)(d), F.S., to provide that, if a participant tests positive for any substance prohibited by commission rule, the participant shall be considered an immediate, serious danger to the health, safety, and welfare of the public and his or her opponent.

The CS amends s. 548.052, F.S., to delete references to the term “foreign copromoter.” It also amends this section to permit the commission or the executive director, or his or her designee, to give prior written consent to a promoter to pay, lend, or give a participant an advance against her or his purse before a contest.

The CS does not amend s. 548.06(1)(b), F.S., to prohibit the promoter from issuing complimentary tickets for more than 5 percent of the seats in the house, equally distributed between or among the price categories for which they were issued, without the commission’s written authorization. Instead, it provides this requirement in s. 548.06(2), F.S. The bill permits a promoter to also not include the face value of complimentary tickets for more than 5 percent of the seats in the house when calculating the gross receipts tax if the promoter obtains written authorization from the commission or the executive director, or his or her designee.

The CS amends s. 548.06(1)(b), F.S., to include in the gross receipts the complimentary tickets above 5 percent of the seats in the house designated for use in the event and not authorized by the commission pursuant to subsection (2). It deletes the language that provides that prohibited the commission from considering complimentary tickets that it authorizes as part of the total gross receipts from admission.

The CS amends s. 548.06(2), F.S., to permit a promoter to not include the face value of complimentary tickets for more than 5 percent of the seats in the house when calculating the gross receipts tax if the promoter obtains written authorization from the commission or the executive director, or his or her designee.

The CS creates s. 548.06(2)(a), F.S., to prohibit the commission from consider the complimentary tickets that it authorizes as part of the gross receipts from admission fees.

The CS creates s. 548.06(2)(b), F.S., to permit a promoter to give complimentary tickets for more than 5 percent of the seats in the house without written authorization if the promoter includes the face value of such tickets when calculating the gross receipts tax.

The CS creates s. 548.06(2)(c), F.S., to provide the classes of persons for who the commission may authorize promoters to give additional complimentary tickets.

The CS creates s. 548.06(2)(d), F.S., to provide the process for promoters to follow to obtain the written authorization of the commission for giving complimentary tickets for

more than 5 percent of the house, including the application, the maintenance of records, and the auditing of such records.

The CS creates s. 548.06(2)(e), F.S., to require that the commission, executive director, or his or her designee, must deny or approve the application for complimentary tickets. It also provides that the commission, executive director, or his or her designee may set limitations on the approval and may approve all or a portion of the requested percentage above 5 percent.

The CS amends s. 548.06(4), F.S., to provide that, if a promoter remits the maximum tax amount of \$40,000 for the sale or lease of broadcasting, television, or pay-per-view rights of any single event pursuant to this subsection, the promoter is only required to indicate that the amount of \$40,000 has been remitted for such taxes on a form provided by the commission. The CS also provides that the promoter remains responsible for complying with other reporting and taxation requirements related to other gross receipts as set forth in this chapter.

The CS amends s. 548.06(6), F.S., to require the promoter to keep records to verify compliance with the complimentary tickets requirements in s. 548.06(2), F.S.

B. Amendments:

None.