

SB 720 by **Brandes**; (Identical to H 1189) Deregulation of Professions and Occupations

976354 A S RCS RI, Braynon btw L.261 - 262: 03/22 12:53 PM

SB 852 by **Bean**; (Similar to CS/H 0667) Real Estate Brokers and Appraisers

667092 D S RCS RI, Thrasher Delete everything after 03/22 12:45 PM

SB 1398 by **Hukill**; (Similar to H 1025) Appraisers**SB 1344** by **Latvala**; (Identical to H 0715) Malt Beverages

684080 A S RCS RI, Detert Delete L.18: 03/22 11:06 AM

662070 D S L FC RI, Sachs Delete everything after 03/22 11:06 AM

SB 1686 by **Altman**; (Similar to H 1067) Pugilistic Exhibitions

627732 PCS S RCS RI 03/22 11:09 AM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

REGULATED INDUSTRIES
Senator Stargel, Chair
Senator Braynon, Vice Chair

MEETING DATE: Thursday, March 21, 2013
TIME: 10:00 a.m.—12:00 noon
PLACE: 301 Senate Office Building

MEMBERS: Senator Stargel, Chair; Senator Braynon, Vice Chair; Senators Detert, Flores, Galvano, Gibson, Legg, Sachs, Sobel, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 720 Brandes (Identical H 1189, Compare CS/H 7023, CS/S 1040)	Deregulation of Professions and Occupations; Exempting certain auctioneers who conduct motor vehicle auction contests from licensure; deleting provisions requiring the registration of persons whose occupation or practice is confined solely to hair braiding, hair wrapping, or body wrapping; providing that the Florida Cosmetology Act does not apply to such persons; repealing provisions relating to the Sale of Business Opportunities Act and the regulation of certain business opportunities, etc. RI 03/21/2013 Fav/CS CM AGG AP	Fav/CS Yeas 7 Nays 1
2	SB 852 Bean (Similar CS/H 667)	Real Estate Brokers and Appraisers; Providing that specified administrative procedures for summary hearings apply to disciplinary cases involving certain real estate appraisers; revising certain exceptions from provisions specifying that certain applicants for certification or registration as an appraiser or trainee appraiser are not deemed to be qualified for such certification or registration; deleting authority for a licensed appraiser to act as the direct supervisor of a registered trainee real estate appraiser, etc. RI 03/21/2013 Fav/CS AGG AP	Fav/CS Yeas 9 Nays 0
3	SB 1398 Hukill (Similar H 1025)	Appraisers; Defining a qualifying classroom hour; requiring all courses to be completed in a classroom or through an online course that has received certain approvals, etc. RI 03/21/2013 Favorable JU	Favorable Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Regulated Industries

Thursday, March 21, 2013, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1344 Latvala (Identical H 715)	Malt Beverages; Authorizing an additional size for individual containers of malt beverages sold or offered for sale by vendors at retail, etc. RI 03/14/2013 Temporarily Postponed RI 03/21/2013 Fav/CS CM CA RC	Fav/CS Yeas 8 Nays 0

A proposed committee substitute for the following bill (SB 1686) is expected to be considered:

SB 1686 Altman (Similar H 1067)	Pugilistic Exhibitions; Revising the duties of the Executive Director of the Florida State Boxing Commission; clarifying provisions and providing exclusive jurisdiction to the commission relating to sanctioning bodies for mixed martial arts matches; providing exemptions from regulation for matches conducted by certain educational, military, and other organizations; providing sanctions for certain violations related to required testing for prohibited substances, etc. RI 03/21/2013 Fav/CS AGG AP	Fav/CS Yeas 9 Nays 0
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Other Related Meeting Documents

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 720

INTRODUCER: Regulated Industries Committee and Senator Brandes

SUBJECT: Deregulation of Professions and Occupations

DATE: March 22, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	Fav/CS
2.			CM	
3.			AGG	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 720 amends and repeals various provisions relating to the Deregulation of Professions and Occupations. The bill amends provisions in part VI of ch. 468, F.S. to repeal licensing requirements for apprentice auctioneers. The bill amends Chapter 477, F.S., to repeal regulation of persons who engage only in hair braiding, hair wrapping, or body wrapping. The bill repeals part VIII of ch. 559, F.S., regulating the sale or lease of certain business opportunities.

The bill provides for a study and report to the Legislature by the Office of Program Policy Analysis and Government Accountability by January 1, 2014 on all regulated or licensed businesses and professions under the jurisdiction of the Department of Business and Professional Regulation.

The bill provides a July 1, 2013 effective date.

The bill substantially amends sections 468.383, 468.385, 468.381, 468.384, 468.3855, 468.388, 468.391, 477.0132, 477.019, 477.026, 477.0265, 477.029, 205.1971, 501.604, and 721.11, Florida Statutes.

The bill creates an unnumbered section of the Florida Statutes.

The bill repeals sections 559.80, 559.801, 559.802, 559.803, 559.805, 559.807, 559.809, 559.811, 559.813, and 559.815, Florida Statutes.

II. Present Situation:

Auctions and Apprentices

Part VI of ch. 468, F.S., (act) sets forth licensing requirements for auctioneers, apprentices and auction businesses by the Florida Board of Auctioneers (board) in the Department of Business and Professional Regulation (department). Auctioneer means any person licensed pursuant to part VI who holds a valid Florida auctioneer license; apprentice means any person who is being trained as an auctioneer by a licensed auctioneer; and auction business means 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.¹

The act does not apply to the following exempted auction types:

- Auctions conducted by the owner, or the owner's attorney, of any part of the property being offered, unless the owner acquired the goods to resell;
- Auctions conducted under a judicial or an administrative order, or sales required by law to be at auction;
- Auctions conducted by a charitable, civic, or religious organization, or for such organization by a person who receives no compensation;
- Auctions of livestock if conducted by a person who specializes in the sale of livestock and the auction is conducted under the supervision of a livestock trade association, a governmental agency, or an owner of the livestock;
- Auctions of agricultural products as defined in s. 618.01(1), F.S., or the equipment or tools used to produce or market such products, if the auction is conducted at a farm or ranch where the products are produced or where the equipment and tools are used or at an auction facility that sells primarily agricultural products;
- Auctions conducted by a trustee pursuant to a power of sale contained in a deed of trust on real property;
- Auctions of collateral, sales conducted to enforce carriers' or warehousemen's liens, sales of the contents of self-contained storage units, bulk sales, sales of goods by a presenting bank following dishonor of a documentary draft, resales of rightfully rejected goods, or resales conducted pursuant to law, if the auction is conducted by the owner or agent of the lien on or interest in such goods;
- Auctions conducted as a part of the sale of real property by a real estate broker defined in s. 475.01(1)(a), F.S.;
- Auctions of motor vehicles among motor vehicle dealers if conducted by an auctioneer; and
- Auctions conducted by a person enrolled in a class at an approved school of auctioneering, for the purpose of training and receiving instruction, under the direct supervision of an

¹Section 468.382, F.S.,

auctioneer who is also an instructor in the school and who further assumes full and complete responsibility for the activities of the student.²

The board receives and acts upon applications for auctioneer, apprentice, and auction business licenses and has the power to issue, suspend, and revoke such licenses and to take such other action as is necessary to carry out the provisions of the act.³

Section 468.385, F.S., provides that only persons licensed by the department or exempt from licensure may auction or offer to auction any property in this state. Each apprentice application and license shall name a licensed auctioneer who has agreed to serve as the supervisor of the apprentice, and no apprentice may conduct, or contract to conduct, an auction without the express approval of his or her supervisor, who shall regularly review the apprentice's records that are required by the board to be maintained, to determine if such records are accurate and current.⁴ Only persons who have held an apprentice license, have served as an apprentice for one year or more, have completed a course of study of not less than 80 classroom hours of instruction, have passed the required examination, and been approved by the board, may be licensed as auctioneers.⁵

Section 468.385(7), F.S., provides that any auction that is subject to the provisions of the act must be conducted by an auctioneer who has an active license or an apprentice who has an active apprentice auctioneer license and who received prior written sponsor consent. No business shall auction or offer to auction any property in this state unless it is licensed as an auction business by the board or is exempt from licensure under the act.⁶ Each application for licensure shall include the names of the owner and the business, the business mailing address and location, and any other information which the board may require, and the owner of an auction business shall report to the board within 30 days of any change in this required information.⁷

A license issued by the department to an auctioneer, apprentice, or auction business is not transferable.⁸

Section 468.3855, F.S., describes apprenticeship training requirements, as follows:

- An auctioneer may not sponsor more than three apprentices at one time. Any auctioneer who serves as a sponsor must have held an active, valid license for three consecutive years preceding the date on which that auctioneer is named as sponsor of the apprentice;
- Any auctioneer who undertakes the sponsorship of an apprentice shall ensure that the apprentice receives training as required by board rule;
- An apprentice must actively participate in auction sales as required by board rule, and a record of each auction for which participation credit is claimed must be made as required by board rule;

²Section 468.383, F.S.

³Section 468.384(3), F.S.

⁴Section 468.385, F.S.

⁵*Id.*

⁶Section 468.385(7), F.S.

⁷*Id.*

⁸Section 468.385(8), F.S.

- Apprentices are prohibited from conducting any auction without the prior express written consent of the sponsor. The apprentice's sponsor must be present at the auction site at any time the apprentice is actively participating in the conduct of the auction. If the apprentice's sponsor cannot attend a particular auction, the sponsor may appoint a qualified auctioneer who meets the requirements of board rule to attend the auction in his or her place. Prior written consent must be given by the apprentice's sponsor for each substitution;
- Each apprentice and sponsor shall file reports as required by board rule;
- A sponsor may not authorize an apprentice to conduct an auction or act as principal auctioneer unless the sponsor has determined that the apprentice has received adequate training to do so;
- The sponsor shall be responsible for any acts or omissions of the apprentice which constitute a violation of law in relation to the conduct of an auction;
- All apprentice applications shall be valid for a period of six months after board approval. Any applicant who fails to complete the licensure process within that time shall be required to make application as a new applicant;
- Any licensed apprentice who wishes to change the sponsor under whom he or she is licensed must submit a new application and application fee. However, a new license fee shall not be required and credit shall be awarded for training received or any period of apprenticeship served under the previous sponsor;
- Credit for training received or any period of apprenticeship served shall not be allowed unless it occurred under the supervision of the sponsor under whose supervision the apprentice is licensed.

Section 468.386, F.S., provides that the board, by rule, may establish application, examination, licensure, renewal, and other reasonable and necessary fees, based upon the department's estimate of the costs to the board in administering the act. It also provides that local occupational licenses, if required, should be obtained by auctioneers in the jurisdiction in which his or her permanent business or branch office is located, but that no local government or local agency may charge any other fee for the practice of auctioneering or require any auctioneer's license in addition to the license required by the act.

Section 468.387, F.S., states that provided the requirements for licensure in the state where an applicant holds a valid license are substantially equivalent to or more stringent than those existing in this state, that the department shall issue a license by endorsement to practice auctioneering to an applicant who applies to the department and remits the required fee set by the board, demonstrates to the board that he or she is over 18 years of age, and has not committed any act or offense in this state or any other jurisdiction which would constitute an act prohibited under s. 468.389, F.S. These endorsement and reciprocity provisions shall apply to auctioneers only and not to professions or occupations regulated by other statutes.

There are numerous requirements for the conduct of an auction listed in s. 468.388, F.S., and s. 468.389, F.S., sets forth those prohibited acts constituting grounds for disciplinary activities.

Practice of Hair Braiding, Hair Wrapping or Body Wrapping

Section 477.0132, F.S., sets forth the requirements for registration of hair braiders, hair wrappers and body wrappers with the department. Hair braiding means 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.⁹

Hair wrapping means 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.¹⁰

Body wrapping means 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.¹¹

Persons whose occupation or practice is confined solely to hair braiding must register with the department, pay the applicable registration fee, and take a two-day board-approved 16-hour course, consisting of 5 hours of HIV/AIDS and other communicable diseases, 5 hours of sanitation and sterilization, 4 hours of disorders and diseases of the scalp, and 2 hours of studies regarding laws affecting hair braiding.¹²

Persons whose occupation or practice is confined solely to hair wrapping must register with the department, pay the applicable registration fee, and take a one-day board-approved 6-hour course, consisting of education in HIV/AIDS and other communicable diseases, sanitation and sterilization, disorders and diseases of the scalp, and studies regarding laws affecting hair wrapping.¹³

Section 477.0132(1)(c), F.S., provides that unless otherwise licensed or exempted from licensure under the cosmetology act, any person whose occupation or practice is body wrapping must register with the department, pay the applicable registration fee, and take a two-day board-approved 12-hour course, consisting of education in HIV/AIDS and other communicable diseases, sanitation and sterilization, disorders and diseases of the skin, and studies regarding laws affecting body wrapping.

Hair braiding, hair wrapping, and body wrapping are not required to be practiced in a cosmetology salon or specialty salon.¹⁴ When hair braiding, hair wrapping, or body wrapping is practiced outside a cosmetology salon or specialty salon, disposable implements must be used or all implements must be sanitized in a disinfectant approved for hospital use or approved by the federal Environmental Protection Agency.¹⁵

⁹Section 477.013(9), F.S.

¹⁰Section 477.013(10), F.S.

¹¹Section 477.013(12), F.S.

¹²Section 477.0132, F.S.

¹³*Id.*

¹⁴Section 477.0132(2), F.S.

¹⁵*Id.*

Sale or Lease of Business Opportunities

Sections 559.80 to 559.815, F.S., constitute the Sale of Business Opportunities Act (opportunities act). A business opportunity is defined in s. 559.801(1)(a), F.S., as the sale or lease of any products, equipment, supplies or services that are sold or leased to enable the purchaser (or lessee) to start a business, when the purchaser must pay an initial fee exceeding \$500, and the seller (or lessor) represents:

- That the seller or person or entity affiliated with or referred by the seller will provide locations or assist the purchaser in finding locations (which includes but is not limited to supplying the purchaser with names of locator companies, contracting with the purchaser to provide assistance or supply names, or collecting a fee on behalf of or for a locator company) for the use or operation of vending machines, racks, display cases, currency or card operated equipment, or other similar devices or currency-operated amusement machines or devices on premises neither owned nor leased by the purchaser or seller;
- That the seller will purchase any or all products made, produced, fabricated, grown, bred, or modified by the purchaser using in whole or in part the supplies, services, or chattels sold to the purchaser;
- That the seller guarantees that the purchaser will derive income from the business opportunity which exceeds the price paid or rent charged for the business opportunity or that the seller will refund all or part of the price paid or rent charged for the business opportunity, or will repurchase any of the products, equipment, supplies, or chattels supplied by the seller, if the purchaser is unsatisfied with the business opportunity; or
- That the seller will provide a sales program or marketing program that will enable the purchaser to derive income from the business opportunity (except as to the sale of a sales program or marketing program made in conjunction with the licensing of a trademark or service mark that is registered under the laws of any state or the United States, if the seller requires use of the trademark or service mark in the sales agreement).

For purposes of the opportunities act, the term business opportunity does not include:¹⁶

- The sale of ongoing businesses when the owner of those businesses sells and intends to sell only those business opportunities so long as those business opportunities to be sold are no more than five in number;
- The not-for-profit sale of sales demonstration equipment, materials, or samples for a price that does not exceed \$500 or any sales training course offered by the seller the cost of which does not exceed \$500; or
- The sale or lease of laundry and drycleaning equipment.

Every seller of a business opportunity is required to file with the Department of Agriculture and Consumer Services (DACS) a copy of a disclosure statement containing certain required information described in s. 559.803, F.S., before placing an advertisement or making any other representation designed to offer to, sell to, or solicit an offer to buy a business opportunity from a prospective purchaser in this state, which must be updated with any material change in the required information within 30 days after the material change occurs.¹⁷

¹⁶Section 559.801(1)(b), F.S.

¹⁷Section 559.805, F.S.

The sale of a franchise is exempt if the franchise meets the definition of that term in Federal Trade Commission regulations,¹⁸ and the franchisor files a notice and the applicable fee with DACS before selling or offering a franchise for sale in this state to a Florida resident, stating that the franchisor is in substantial compliance with the requirements of the applicable Federal Trade Commission rule.¹⁹ The initial exemption is for a period of one year after the date of filing the notice, with one-year renewal periods upon filing of the renewal notice and applicable fee.²⁰ Only the name, principal address and federal employer identification number of the applicant, the name of the franchise, and the name under which the applicant intends to, or does, transact business, if different may be requested by DACS.²¹

At least three working days prior to the time the purchaser signs a business opportunity contract, or at least three working days prior to the receipt of any consideration by the seller, whichever occurs first, the seller must provide the prospective purchaser a written document with disclosures controlled as to size and placement, as follows:²²

- A cover sheet titled with the phrase DISCLOSURES REQUIRED BY FLORIDA LAW and containing the following statement:
- The State of Florida has not reviewed and does not approve, recommend, endorse, or sponsor any business opportunity. The information contained in this disclosure has not been verified by the state. If you have any questions about this investment, see an attorney before you sign a contract or agreement.
- An index page that briefly lists the required contents of the disclosure document, the pages where each disclosure may be located by the prospective purchaser, and the following statement at the top of the page:
- The State of Florida requires sellers of business opportunities to disclose certain information to prospective purchasers. This index is provided to help you locate this information.
- The name of the seller; whether the seller is doing business as an individual, partnership, corporation, or other business entity; the names under which the seller has done business; and the name of any parent or affiliated company that will engage in business transactions with the purchasers or who takes responsibility for statements made by the seller (seller's affiliated entities);
- The names, addresses, and titles of the seller's officers, directors, trustees, general partners, general managers, and principal executives and of any other persons charged with the responsibility for the seller's business activities relating to the sale of business opportunities (seller's executives);
- The length of time the seller has sold business opportunities; or sold business opportunities involving the products, equipment, supplies, or services currently being offered to the purchaser;
- A full and detailed description of the actual services that the business opportunity seller undertakes to perform for the purchaser;

¹⁸Section 559.802, F.S. and 16 C.F.R., ss. 436.1 *et seq.*

¹⁹*Id.*

²⁰*Id.*

²¹*Id.*

²²Section 559.803, F.S.

- A copy of a current (not older than 13 months) financial statement of the seller, updated to reflect material changes in the seller's financial condition;
- If training is promised by the seller, a complete description of the training, the length of the training, and the cost or incidental expenses of that training, which cost or expense the purchaser will be required to incur;
- If the seller promises services to be performed in connection with the placement of the equipment, product, or supplies at a location, the full nature of those services as well as the nature of the agreements to be made with the owners or managers of the location where the purchaser's equipment, product, or supplies will be placed;
- If the business opportunity seller is required to secure a bond, guaranteed letter of credit, or certificate of deposit pursuant to s. 559.807, F.S., either of the following statements:
 - As required by Florida law, the seller has secured a bond issued by ____, a surety company authorized to do business in this state. Before signing a contract to purchase this business opportunity, you should confirm the bond's status with the surety company; or
 - As required by Florida law, the seller has established a guaranteed letter of credit or certificate of deposit (number of account) with (name and address of bank or savings institution). Before signing a contract to purchase this business opportunity, you should confirm with the bank or savings institution the current status of the guaranteed letter of credit or certificate of deposit;
- The following statement: If the seller fails to deliver the product, equipment, or supplies necessary to begin substantial operation of the business within 45 days of the delivery date stated in your contract, you may notify the seller in writing and cancel your contract;
- If the seller makes any statement concerning sales or earnings or a range of sales or earnings that may be made through this business opportunity, a statement disclosing:
 - The total number of purchasers of business opportunities involving the product, equipment, supplies, or services being offered who have actually achieved sales of or received earnings in the amount or range specified within three years prior to the date of the disclosure statement; and
 - The total number of purchasers of business opportunities involving the product, equipment, supplies, or services being offered within three years prior to the date of the disclosure statement;
- The total number of persons who purchased the business opportunity being offered by the seller within the past three years;
- The names, addresses, and telephone numbers of the 10 persons who previously purchased the business opportunity from the seller and who are geographically closest to the potential purchaser;
- A statement disclosing who, if any, of the seller's affiliated entities or seller's executives:
 - Has, at any time during the previous 10 fiscal years, regardless of adjudication, been convicted of, or found guilty of, or pled guilty or nolo contendere to, or has been incarcerated within the last 10 years as a result of having previously been convicted of, or found guilty of, or pled guilty or nolo contendere to, a felony or a crime involving fraud, theft, larceny, violation of any franchise or business opportunity law or unfair or deceptive practices law, embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade.
 - Has, at any time during the previous seven fiscal years, been held liable in a civil action resulting in a final judgment or has settled out of court any civil action or is a party to any

- civil action involving allegations of fraud (including violation of any franchise or business opportunity law or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade or any civil action which was brought by a present or former franchisee or franchisees and which involves or involved the franchise relationship. Only material individual civil actions must be listed, including any group of civil actions which, irrespective of the materiality of any single such action, in the aggregate is material.
- Is subject to any currently effective state or federal agency or court injunctive or restrictive order, or has been subject to any administrative action in which an order by a governmental agency was rendered, or is a party to a proceeding currently pending in which such order is sought, relating to or affecting business opportunities activities or the business opportunity seller-purchaser relationship or involving fraud (including violation of any franchise or business opportunity law or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade.

Such statement must set forth the identity and location of the court or agency; the date of conviction, judgment, or decision; the penalty imposed; the damages assessed; the terms of settlement or the terms of the order; and the date, nature, and issuer of each such order or ruling. A business opportunity seller may include a summary opinion of counsel as to any pending litigation, but only if counsel's consent to the use of such opinion is included in the disclosure statement.

- A statement disclosing who, if any, of the seller's affiliated entities or seller's executives at any time during the previous seven fiscal years has filed in bankruptcy, been adjudged bankrupt, been reorganized due to insolvency, or been a principal, director, executive officer, or partner of any other person that has so filed or was so adjudged or reorganized during or within one year after the period that such person held such position in relation to such other person, and if so, the name and location of the person having so filed or having been so adjudged or reorganized, the date thereof, and any other material facts relating thereto;
- A copy of the business opportunity contract which the seller uses as a matter of course and which is to be presented to the purchaser at closing.

Should any seller of business opportunities prepare a disclosure statement pursuant to Federal Trade Commission regulations,²³ the seller may file that disclosure statement in lieu of the document required pursuant to s. 559.803, F.S. Should the seller be required by those regulations to prepare any other documents to be presented to the prospective purchaser, those documents shall also be filed with DACS.²⁴

Every seller of a business opportunity must annually file with DACS a copy of the disclosure statement required by s. 559.803, F.S., before placing an advertisement²⁵ or making any other

²³16 C.F.R. ss. 436.1 *et seq.*,

²⁴*Id.*

²⁵Section 559.805, F.S., states that '[a]n advertisement is not placed in the state merely because the publisher circulates, or there is circulated on his or her behalf in the state, any bona fide newspaper or other publication of general, regular, and paid circulation which has had more than two-thirds of its circulation during the past 12 months outside the state or because a radio or television program originating outside the state is received in the state.'

representation designed to offer to, sell to, or solicit an offer to buy a business opportunity from a prospective purchaser in this state.²⁶ The filing must be updated by reporting any material change in the required information within 30 days after the material change occurs.²⁷ If the seller is required by s. 559.807, F.S., to provide a bond or establish a trust account or guaranteed letter of credit, he or she shall contemporaneously file with DACS a copy of the bond, a copy of the formal notification by the depository that the trust account is established, or a copy of the guaranteed letter of credit.²⁸ Every seller of a business opportunity shall file with DACS a list of independent agents who will engage in the offer or sale of business opportunities on behalf of the seller in this state. This list must be kept current and shall include the following information: name, home and business address, telephone number, present employer, and birth date, and a person may not offer or sell business opportunities unless the required information has been provided to DACS.²⁹

Every seller of a business opportunity shall file with DACS a list of the seller's officers, directors, trustees, general partners, general managers, principal executives, and any other persons charged with the responsibility for the seller's business activities relating to the sale of business opportunities. This list must be kept current and shall include the following information: name, home and business address, telephone number, driver's license number, the state in which the driver's license is issued, and birth date.³⁰

Upon the filing of the disclosure statement and the posting of a bond or the establishment of a trust account or a guaranteed letter of credit, if any is required, an advertisement identification number shall be issued by DACS to the business opportunity seller.³¹ The business opportunity seller shall include and prominently display the advertisement identification number in all written advertisements, sales materials, promotional documents, and business opportunity contracts.³²

The advertisement identification number must be disclosed by the seller to each person with whom he or she places advertising, and the person receiving the advertising must record the number so that the advertising media may verify the authenticity of the registration.³³

A seller required to comply with s. 559.805, F.S., must pay an annual fee of \$300 to DACS for the administration and enforcement of the act.³⁴ If any material change in the information submitted to DACS occurs before the date for annual registration, a seller must submit a fee of \$50 for every required update filing.³⁵

²⁶Section 559.805(1), F.S.

²⁷*Id.*

²⁸*Id.*

²⁹Section 559.805(2), F.S.

³⁰Section 559.805(2), F.S.

³¹Section 559.805(3), F.S.

³²*Id.*

³³Section 559.805(4), F.S.

³⁴Section 559.805(5), F.S.

³⁵*Id.*

If the business opportunity seller makes certain representations regarding guarantees of income, refunds or repurchase of products, equipment, supplies or chattels³⁶ supplied by the seller, if the purchaser is unsatisfied with the business opportunity,³⁷ the seller must either have obtained a surety bond issued by a surety company authorized to do business in this state or have established a certificate of deposit or a guaranteed letter of credit with a licensed and insured bank or savings institution located in the state, in an amount not less than \$50,000.³⁸

Section 559.807(2), F.S., provides that the bond, certificate of deposit, or guaranteed letter of credit shall be in the favor of DACS for the use and benefit of any person who is injured by the fraud, misrepresentation, breach of contract, financial failure, or violation of the opportunities act by the seller. Such liability may be enforced by filing an action at law in a court of competent jurisdiction without preventing enforcement in an administrative action pursuant to ch. 120, the Administrative Procedure Act.

The bond, certificate of deposit, or guaranteed letter of credit shall be enforceable only by and through administrative proceedings before DACS. A money judgment resulting from an action at law, less any award for costs and attorney's fees, shall be prima facie evidence sufficient to establish the value of the claim in an administrative action.³⁹ Such bond, certificate of deposit, or guaranteed letter of credit is liable only for payment of claims duly adjudicated by order of DACS,⁴⁰ and while liable for successive claims, the aggregate amount of all claims may not exceed the amount of the bond, certificate of deposit, or guaranteed letter of credit.⁴¹

Under s. 559.809, F.S., a seller of a business opportunity may not:

- Misrepresent, by failure to disclose or otherwise, the known required total investment for such business opportunity;
- Misrepresent the quantity or the quality of the products to be sold or distributed through the business opportunity;
- Misrepresent the training and management assistance available to the business opportunity purchaser;
- Misrepresent the amount of profits, net or gross, which the franchisee can expect from the operation of the business opportunity;
- Misrepresent, by failure to disclose or otherwise, the termination, transfer, or renewal provision of a business opportunity agreement;
- Falsely claim or imply that a primary marketer or trademark of products or services sponsors or participates directly or indirectly in the business opportunity;
- Assign a so-called "exclusive territory" encompassing the same area to more than one business opportunity purchaser;
- Provide vending locations for which written authorizations have not been granted by the property owners or lessees;

³⁶Chattels is defined as personal property of any kind (BLACK'S LAW DICTIONARY (9th ed. 2009)).

³⁷Section 559.801(1)(a)3, F.S.

³⁸Section 559.807(1), F.S.

³⁹Section 559.807(2), F.S.

⁴⁰*Id.*

⁴¹*Id.*

- Provide machines or displays of a brand or kind substantially different from and inferior to those promised by the business opportunity seller;
- Fail to provide the purchaser a written contract as provided in s. 559.811, F.S.;
- Misrepresent their ability or the ability of a person or entity providing services as defined in s. 559.801(1)(a), F.S., to provide locations or assist the purchaser in finding locations expected to have a positive impact on the success of the business opportunity;
- Misrepresent a material fact or create a false or misleading impression in the sale of a business opportunity; or
- Fail to provide or deliver the products, equipment, supplies, or services as specified in the written contract required under s. 559.811, F.S.

Section 559.811(1), F.S., provides that every business opportunity contract shall be in writing, and a copy shall be given to the purchaser at least three working days before signing the contract. Pursuant to s. 559.811(2), F.S., every contract for a business opportunity shall include the following:

- The terms and conditions of payment, including the total financial obligation of the purchaser to the seller;
- A full and detailed description of the acts or services that the business opportunity seller undertakes to perform for the purchaser;
- The seller's principal business address and the name and address of its agent in the state authorized to receive service of process; and
- The approximate delivery date of products, equipment, or supplies which the business opportunity seller is to deliver to the purchaser.

Section 559.813, F.S., provides that the purchaser of a business opportunity may, within two years of the date of execution of a contract, and upon written notice to a seller, rescind the contract and be entitled to receive from the seller all sums paid to the seller, if the contract does not comply with the requirements of the opportunities act or, if the seller:

- Uses untrue or misleading statements in the sale of a business opportunity;
- Fails to give the proper disclosures in the manner required by the opportunities act; or
- Fails to deliver the equipment, supplies, or products necessary to begin substantial operation of the business within 45 days of the delivery date stated in the contract.

Upon receipt of such sums from the seller, the purchaser shall make available to the seller at the purchaser's address, or at the places at which they are located at the time notice is given, all products, equipment, or supplies received by the purchaser. The purchaser shall not be entitled to unjust enrichment by exercising the remedies provided in s. 559.813(1), F.S.

Certain penalties may be imposed pursuant to s. 559.813(2)(a), F.S., if DACS finds that a seller or any of the seller's principal officers or agents:

- Violated or is operating in violation of any of the provisions of the opportunities act, or the orders issued or rules adopted by DACS;

- Made a material false statement in any application, document, or record required to be submitted or retained under the opportunities act;
- Refused or failed, after notice, to produce any document or record or disclose any information required to be produced or disclosed under the opportunities act or the rules of DACS;
- Made a material false statement in response to any request or investigation by DACS, the Department of Legal Affairs, or the state attorney; or
- Has intentionally defrauded the public through dishonest or deceptive means.

Pursuant to s. 559.813(2)(b), F.S., an order may be entered by DACS imposing one or more of the following penalties, upon a finding that a seller or any of the seller's principal officers or agents:

- Issuing a notice of noncompliance pursuant to s. 120.695, F.S.;
- Imposing an administrative fine not to exceed \$5,000 per violation for each act which constitutes a violation of the opportunities act or a rule or order;
- Directing that the seller or its principal officers or agents cease and desist specified activities;
- Refusing to issue or revoking or suspending an advertisement identification number; and
- Placing the registrant on probation for a period of time, subject to such conditions as DACS may specify.

The administrative proceedings which could result in the entry of an order imposing any of the penalties shall be conducted in accordance with ch. 120, F.S.⁴²

Any purchaser injured by a violation of the opportunities act, or by the business opportunity seller's breach of a contract subject to the opportunities act or any obligation arising from it, may bring an action for recovery of damages, including reasonable attorney's fees.⁴³ Upon complaint of any person that a business opportunity seller has violated the provisions of the opportunities act, the circuit court shall have jurisdiction to enjoin the defendant from further such violations.⁴⁴

The Department of Legal Affairs, DACS, or the state attorney, if a violation of the opportunities act occurs in her or his judicial circuit, are the enforcing authorities that may bring civil actions in circuit court for temporary or permanent injunctive relief and other appropriate civil relief, including, but not limited to, a civil penalty not to exceed \$5,000 for each violation, restitution and damages for injured purchasers of business opportunities, and court costs and reasonable attorney's fees.⁴⁵

Any remedy provided in s. 559.813, F.S., may be recovered in an appropriate action, or the enforcing authority may terminate any investigation or action upon agreement by the offender to pay as stipulated civil penalty, to make restitution or pay damages to purchasers, or to satisfy any

⁴²Section 559.813(2)(c), F.S.

⁴³Section 559.813(3), F.S.

⁴⁴Section 559.813(4), F.S.

⁴⁵Section 559.813(5), F.S.

other relief authorized in s. 559.813, F.S., and requested by the enforcing authority.⁴⁶ These remedies are in addition to any other remedies provided by law or in equity.⁴⁷

Section 559.813(8), F.S., provides that a person who fails to file the disclosures required by s. 559.805, F.S., or who commits a prohibited act in violation of s. 559.809, F.S., is guilty of a third degree felony punishable as provided in ss. 775.082, 775.083, or 775.084.⁴⁸

III. Effect of Proposed Changes:

Section 1 exempts motor vehicle auctions⁴⁹ conducted by auctioneers licensed in other states from the licensing requirements set forth in part VI of ch. 468, F.S., but only when the auction is for the purpose of conducting sanctioned contests among auctioneers and a Florida licensed auctioneer is on site to monitor the contest.

Section 2 eliminates licensing and reporting requirements for apprentice auctioneers but requires that all apprentice auctioneers work under the supervision of licensed auctioneers. The bill requires that an auction subject to part VI of ch. 468, F.S., be conducted by a licensed auctioneer or an apprentice actively supervised by a licensed sponsor.

Sections 3 and 4 eliminate the term apprentice from ss. 468.381 and 468.384, F.S., respectively, relating to the purpose of regulating auctioneers and auction businesses, and licensure by the Board of Auctioneers (board).

Section 5 amends provisions regarding apprenticeship training requirements set forth in s. 468.3855, F.S. The bill eliminates the filing of reports as required by rule of the board by apprentice auctioneers and their sponsors. The bill eliminates the requirement for apprentice auctioneers to complete licensure requirements within six months after board approval. The bill adds a provision requiring apprentice auctioneers to submit written verification of the apprenticeship signed by the sponsors, on the form prescribed by the department, when submitting an application for an auctioneer license.

Section 6 amends s. 468.388, F.S., to delete references to licensed apprentice auctioneers and apprentices.

Section 7 amends s. 468.391, F.S., to provide that apprentice auctioneers operating without a written sponsorship consent will subject the apprentice to the existing statutory penalty for operating without an active license.⁵⁰

⁴⁶Section 559.813(6), F.S.

⁴⁷Section 559.813(7), F.S.

⁴⁸A person convicted of a third degree felony may be sentenced to a term of imprisonment not exceeding five years and a fine not to exceed \$5,000; more severe consequences result for offenders classified as habitual felony offenders, habitual violent felony offenders, or three-time violent felony offenders pursuant to s. 775.084, F.S.

⁴⁹Section 320.27, F.S.

⁵⁰468.391, F.S., states that a violation constitutes a third degree felony, which is punishable by a term of imprisonment not to exceed five years and a fine not exceeding \$5,000.

Section 8 amends s. 477.0132, F.S., to delete the application of the Florida Cosmetology Act (cosmetology act) to persons whose occupation or practices are confined solely to hair braiding, hair wrapping, or body wrapping as defined in the act.

Section 9 conforms the provisions of s. 477.019(7), F.S., by deleting a reference to an exemption from continuing education requirements for persons whose occupation or practice is confined solely to hair braiding, hair wrapping, or body wrapping.

Section 10 amends s. 477.026 to delete a reference to fees for registration of hair braiders, hair wrappers, and body wrappers.

Section 11 amends s. 477.0265(1)(f), F.S., to eliminate a reference to body wrapping.

Section 12 amends s. 477.029(1)(a), F.S., to delete a reference to hair wrapper, hair braider, or body wrapper.

Section 13 repeals part VIII of ch. 559, F.S., the Sale of Business Opportunities Act (opportunities act). Sellers or lessors of certain business opportunities are no longer required to file disclosure statements, update filings, and renewal statements, to identify advertisements with a registration number issued by DACS, or to provide security in the form of a bond, certificate of deposit, or letter of credit for claims of injury due to fraud, misrepresentation, breach of contract, financial failure of violation of the opportunities act. The remedies and enforcement provisions set forth in s. 559.813, F.S. are no longer available to purchasers of certain business opportunities.

Sections 14, 15 and 16 revise references to part XI in ss. 205.1971, 501.604, and 721.11, F.S., to part X, due to the deletion of part VIII of ch. 559, F.S.

Section 17 requires a study and report to the President of the Senate and the Speaker of the House of Representatives by the Office of Program Policy Analysis and Government Accountability (OPPAGA) by January 1, 2014. The bill requires that OPPAGA review all regulated or licensed businesses and professions under the jurisdiction of the Department of Business and Professional Regulation. The report must include a description of the current regulatory scheme for each business or profession, and a discussion of the feasibility of (if any), and recommendations for, changing from the current licensure system to a self-regulating system with a minimum standard of insurance or bond requirements for each regulated business or profession.

The bill provides a July 1, 2013 effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A motor vehicle auction may be conducted by auctioneers licensed in other states when the auction is for the purpose of conducting sanctioned contests properly monitored by a Florida licensed auctioneer. Licensing and reporting requirements for apprentice auctioneers are no longer required, but all apprentice auctioneers must work under the supervision of licensed auctioneers and submit written verification of the apprenticeship as prescribed by the department. Operating without a written sponsorship consent will subject the apprentice to the existing statutory penalty for operating without an active license.

Persons whose occupation or practice is solely confined to hair braiding, hair wrapping, or body wrapping will no longer be required to register or pay fees to the department, or to attend board-approved educational courses.

C. Government Sector Impact:

According to the Department of Business and Professional Regulation, there will be a fiscal impact caused by the deregulation of auction apprentices and hair braiders, hair wrappers, and body wrappers, due to the loss of current revenues generated by new registrations and renewals of those license categories.⁵¹ According to the department, there will be a net reduction in revenue of \$123,271 to the state.

According to the Department of Agriculture and Consumer Services, there will be a fiscal impact caused by the repeal of part VIII of ch. 559, F.S., due to a loss of approximately \$11,000 in revenue.⁵²

There may be a fiscal impact related to the cost of the review by the Office of Program Policy Analysis and Government Accountability of all regulated or licensed businesses and professions under the jurisdiction of the Department of Business and Professional

⁵¹See *2013 Legislative Analysis for SB 720*, Office of Legislative Affairs, Florida Department of Business and Professional Regulation, March 1, 2013.

⁵²Email from Department of Agriculture and Consumer Services, Office of Legislative Affairs, to staff (dated March 19, 2013) (on file with the Senate Committee on Regulated Industries).

Regulation (DBPR), as well as evaluation of the feasibility of, and development of recommendations for, changing to a self-regulating system with a minimum standard of insurance or bond requirements. To the extent that DBPR staff are requested to provide or compile information for such review, there may be a fiscal impact to DBPR.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. 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 21, 2013:

The committee substitute requires a study and report to the President of the Senate and the Speaker of the House of Representatives by the Office of Program Policy Analysis and Government Accountability (OPPAGA) by January 1, 2014. The committee substitute requires that OPPAGA review all regulated or licensed businesses and professions under the jurisdiction of the Department of Business and Professional Regulation. The report must include a description of the current regulatory scheme for each business or profession, and a discussion of the feasibility of (if any), and recommendations for, changing from the current licensure system to a self-regulating system with a minimum standard of insurance or bond requirements for each regulated business or profession.

- B. **Amendments:**

None.



976354

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/22/2013	.	
	.	
	.	
	.	

The Committee on Regulated Industries (Braynon) recommended the following:

Senate Amendment (with title amendment)

Between lines 261 and 262
insert:

Section 17. The Office of Program Policy Analysis and Government Accountability shall review all regulated or licensed businesses and professions under the jurisdiction of the Department of Business and Professional Regulation and shall submit a report to the President of the Senate and the Speaker of the House of Representatives by January 1, 2014. The report must include a description of the current regulatory scheme for each business or profession, and a discussion of the



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13 feasibility, if any, of and recommendations for changing from
14 the current licensure system to a self-regulating system that
15 includes a minimum standard of insurance or bond requirements
16 for each regulated business or profession.

17
18 ===== T I T L E A M E N D M E N T =====

19 And the title is amended as follows:

20 Delete line 19

21 and insert:

22 conforming a cross-reference; providing for a study
23 and report to the Legislature by the Office of Program
24 Policy Analysis and Government Accountability;
25 providing an effective

By Senator Brandes

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A bill to be entitled

An act relating to the deregulation of professions and occupations; amending s. 468.383, F.S.; exempting certain auctioneers who conduct motor vehicle auction contests from licensure; amending s. 468.385, F.S.; deleting licensure requirements for auctioneer apprentices; amending ss. 468.381, 468.384, 468.3855, 468.388, and 468.391, F.S., to conform; amending s. 477.0132, F.S.; deleting provisions requiring the registration of persons whose occupation or practice is confined solely to hair braiding, hair wrapping, or body wrapping; providing that the Florida Cosmetology Act does not apply to such persons; amending ss. 477.019, 477.026, 477.0265, and 477.029, F.S., to conform; repealing part VIII of chapter 559, F.S., relating to the Sale of Business Opportunities Act and the regulation of certain business opportunities; amending ss. 205.1971, 501.604, and 721.11, F.S.; conforming a cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (10) is added to section 468.383, Florida Statutes, to read:

468.383 Exemptions.—This act does not apply to the following:

(10) Motor vehicle auctions, as defined in s. 320.27, conducted by auctioneers licensed in other states and held for

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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the purpose of conducting sanctioned contests among auctioneers, if an auctioneer licensed pursuant to this part is on site to monitor the sanctioned contest.

Section 2. Subsections (3), (5), (6), (7), and (8) of section 468.385, Florida Statutes, are amended to read:

468.385 Licenses required; qualifications; examination.—

(3) ~~A~~ No person may not ~~shall~~ be licensed as an auctioneer ~~or apprentice~~ if he or she:

(a) Is under 18 years of age; or

(b) Has committed any act or offense in this state or any other jurisdiction which would constitute a basis for disciplinary action under s. 468.389.

(5) Each apprentice shall work under the supervision of application and license shall name a licensed auctioneer who has agreed to serve as the supervisor of the apprentice. ~~An~~ No apprentice may not conduct, or contract to conduct, an auction without the express approval of his or her supervisor. The supervisor shall regularly review the apprentice's records, which are required by the board to be maintained, to determine if such records are accurate and current.

(6) ~~A~~ No person may not ~~shall~~ be licensed as an auctioneer unless he or she:

(a) ~~Has held an apprentice license and has served as an apprentice for 1 year or more, or has completed a course of study, consisting of not less than 80 classroom hours of instruction, that meets standards adopted by the board;~~

(b) Has passed the required examination; and

(c) Is approved by the board.

(7) (a) Any auction that is subject to ~~the provisions of~~

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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59 this part must be conducted by an auctioneer who has an active
60 license or an apprentice who is actively supervised by a
61 licensed sponsor ~~has an active apprentice auctioneer license and~~
62 ~~who has received prior written sponsor consent.~~

63 (b) ~~A~~ No business ~~may not shall~~ auction or offer to auction
64 any property in this state unless it is licensed as an auction
65 business by the board or is exempt from licensure under this
66 act. Each application for licensure shall include the names of
67 the owner and the business, the business mailing address and
68 location, and any other information which the board may require.
69 The owner of an auction business shall report to the board
70 within 30 days after ~~of~~ any change in this required information.

71 (8) A license issued by the department to an auctioneer,
72 ~~apprentice,~~ or auction business is not transferable.

73 Section 3. Section 468.381, Florida Statutes, is amended to
74 read:

75 468.381 Purpose.—The Legislature finds that unqualified
76 auctioneers ~~and apprentices~~ and unreliable auction businesses
77 present a significant threat to the public. It is the intent of
78 the Legislature to protect the public by creating a board to
79 regulate auctioneers, ~~apprentices,~~ and auction businesses ~~and~~ by
80 requiring a license to operate.

81 Section 4. Subsection (3) of section 468.384, Florida
82 Statutes, is amended to read:

83 468.384 Florida Board of Auctioneers.—

84 (3) The board shall receive and act upon applications for
85 auctioneer, ~~apprentice,~~ and auction business licenses and shall
86 have the power to issue, suspend, and revoke such licenses and
87 to take such other action as is necessary to carry out the

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88 provisions of this act.

89 Section 5. Subsections (5) through (10) of section
90 468.3855, Florida Statutes, are amended, and a new subsection
91 (9) is added to that section, to read:

92 468.3855 Apprenticeship training requirements.—

93 ~~(5) Each apprentice and sponsor shall file reports as~~
94 ~~required by board rule.~~

95 ~~(5)(6)~~ A sponsor may not authorize an apprentice to conduct
96 an auction or act as principal auctioneer unless the sponsor has
97 determined that the apprentice has received adequate training to
98 do so.

99 ~~(6)(7)~~ The sponsor is ~~shall be~~ responsible for any acts or
100 omissions of the apprentice which constitute a violation of law
101 in relation to the conduct of an auction.

102 ~~(8) All apprentice applications shall be valid for a period~~
103 ~~of 6 months after board approval. Any applicant who fails to~~
104 ~~complete the licensure process within that time shall be~~
105 ~~required to make application as a new applicant.~~

106 ~~(7)(9)~~ Any ~~licensed~~ apprentice who wishes to change the
107 sponsor under whom he or she is supervised ~~licensed must submit~~
108 ~~a new application and application fee. However, a new license~~
109 ~~fee shall not be required and credit shall be awarded~~ credit for
110 training received or any period of apprenticeship served under
111 the previous sponsor.

112 ~~(8)(10)~~ Credit for training received or any period of
113 apprenticeship served is ~~shall not be~~ allowed unless it occurred
114 under the supervision of the sponsor ~~under whose supervision the~~
115 ~~apprentice is licensed.~~

116 (9) An apprentice must submit verification of his or her

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117 apprenticeship signed by the sponsors on a form prescribed by
 118 the department at the time of submitting the application for an
 119 auctioneer license.

120 Section 6. Subsection (4) and paragraph (b) of subsection
 121 (11) of section 468.388, Florida Statutes, are amended to read:
 122 468.388 Conduct of an auction.—

123 (4) Each auction must be conducted by an auctioneer who has
 124 an active license or by an apprentice ~~who has an active~~
 125 ~~apprentice auctioneer license and~~ who has received prior written
 126 sponsor consent. Each auction must be conducted under the
 127 auspices of a licensed auction business. Any auctioneer or
 128 apprentice auctioneer conducting an auction, and any auction
 129 business under whose auspices such auction is held, shall be
 130 responsible for determining that any auctioneer, apprentice, or
 131 auction business with whom they are associated in conducting
 132 such auction has an active Florida auctioneer, ~~apprentice,~~ or
 133 auction business license.

134 (11)

135 (b) ~~A~~ No licensed auctioneer, licensed apprentice, ~~or~~
 136 apprentice ~~may~~ not disseminate or cause to
 137 be disseminated any advertisement or advertising which is false,
 138 deceptive, misleading, or untruthful. Any advertisement or
 139 advertising ~~is shall be deemed to be~~ false, deceptive,
 140 misleading, or untruthful if it:

- 141 1. Contains misrepresentations of facts.
- 142 2. Is misleading or deceptive because, in its content or in
 143 the context in which it is presented, it makes only a partial
 144 disclosure of relevant facts.
- 145 3. Creates false or unjustified expectations of the

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146 services to be performed.

147 4. Contains any representation or claim which the
 148 advertising licensee fails to perform.

149 5. Fails to include the name and license number of the
 150 principal auctioneer and the auction business.

151 6. Fails to include the name and license number of the
 152 sponsor if an apprentice is acting as the principal auctioneer.

153 7. Advertises an auction as absolute without specifying any
 154 and all items to be sold with reserve or with minimum bids.

155 8. Fails to include the percentage amount of any buyer's
 156 premium or surcharge which is a condition to sale.

157 Section 7. Section 468.391, Florida Statutes, is amended to
 158 read:

159 468.391 Penalty.—Any auctioneer, apprentice, or auction
 160 business or any owner or manager thereof, or, in the case of
 161 corporate ownership, any substantial stockholder of the
 162 corporation owning the auction business, who operates without an
 163 active license or written sponsorship consent or violates s.
 164 468.389(1)(c), (e), (f), (h), or (i) commits a felony of the
 165 third degree, punishable as provided in s. 775.082 or s.
 166 775.083.

167 Section 8. Section 477.0132, Florida Statutes, is amended
 168 to read:

169 (Substantial rewording of section. See
 170 s. 477.0132, F.S., for present text.)
 171 477.0132 Hair braiding, hair wrapping, and body wrapping;
 172 application of chapter.—This chapter does not apply to a person
 173 whose occupation or practice is confined solely to hair
 174 braiding, hair wrapping, or body wrapping.

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175 Section 9. Subsection (7) of section 477.019, Florida
176 Statutes, is amended to read:

177 477.019 Cosmetologists; qualifications; licensure;
178 supervised practice; license renewal; endorsement; continuing
179 education.-

180 (7) (a) The board shall prescribe by rule continuing
181 education requirements intended to ensure protection of the
182 public through updated training of licensees and registered
183 specialists, not to exceed 16 hours biennially, as a condition
184 for renewal of a license or registration as a specialist under
185 this chapter. Continuing education courses shall include, but is
186 not ~~be~~ limited to, the following subjects as they relate to the
187 practice of cosmetology: human immunodeficiency virus and
188 acquired immune deficiency syndrome; Occupational Safety and
189 Health Administration regulations; workers' compensation issues;
190 state and federal laws and rules as they pertain to
191 cosmetologists, cosmetology, salons, specialists, specialty
192 salons, and booth renters; chemical makeup as it pertains to
193 hair, skin, and nails; and environmental issues. Courses given
194 at cosmetology conferences may be counted toward the number of
195 continuing education hours required if approved by the board.

196 ~~(b) Any person whose occupation or practice is confined~~
197 ~~solely to hair braiding, hair wrapping, or body wrapping is~~
198 ~~exempt from the continuing education requirements of this~~
199 ~~subsection.~~

200 (b)(c) The board may, by rule, require any licensee in
201 violation of a continuing education requirement to take a
202 refresher course or refresher course and examination in addition
203 to any other penalty. The number of hours for the refresher

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204 course may not exceed 48 hours.

205 Section 10. Paragraph (f) of subsection (1) of section
206 477.026, Florida Statutes, is amended to read:

207 477.026 Fees; disposition.-

208 (1) The board shall set fees according to the following
209 schedule:

210 ~~(f) For hair braiders, hair wrappers, and body wrappers,~~
211 ~~fees for registration shall not exceed \$25.~~

212 Section 11. Paragraph (f) of subsection (1) of section
213 477.0265, Florida Statutes, is amended to read:

214 477.0265 Prohibited acts.-

215 (1) It is unlawful for any person to:

216 (f) Advertise or imply that skin care services ~~or body~~
217 ~~wrapping~~, as performed under this chapter, have any relationship
218 to the practice of massage therapy as defined in s. 480.033(3),
219 except those practices or activities defined in s. 477.013.

220 Section 12. Paragraph (a) of subsection (1) of section
221 477.029, Florida Statutes, is amended to read:

222 477.029 Penalty.-

223 (1) It is unlawful for any person to:

224 (a) Hold himself or herself out as a cosmetologist or ~~r~~
225 ~~specialist, hair wrapper, hair braider, or body wrapper~~ unless
226 duly licensed or registered, or otherwise authorized, as
227 provided in this chapter.

228 Section 13. Part VIII of chapter 559, Florida Statutes,
229 consisting of sections 559.80, 559.801, 559.802, 559.803,
230 559.805, 559.807, 559.809, 559.811, 559.813, and 559.815,
231 Florida Statutes, is repealed.

232 Section 14. Section 205.1971, Florida Statutes, is amended

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 233 to read:

234 205.1971 Sellers of travel; consumer protection.—A county
 235 or municipality may not issue or renew a business tax receipt to
 236 engage in business as a seller of travel pursuant to part X ~~XF~~
 237 of chapter 559 unless such business exhibits a current
 238 registration or letter of exemption from the Department of
 239 Agriculture and Consumer Services.

240 Section 15. Subsection (20) of section 501.604, Florida
 241 Statutes, is amended to read:

242 501.604 Exemptions.—The provisions of this part, except ss.
 243 501.608 and 501.616(6) and (7), do not apply to:

244 (20) A person who is registered pursuant to part X ~~XF~~ of
 245 chapter 559 and who is soliciting within the scope of the
 246 registration.

247 Section 16. Paragraph (d) of subsection (3) of section
 248 721.11, Florida Statutes, is amended to read:

249 721.11 Advertising materials; oral statements.—

250 (3) The term "advertising material" does not include:

251 (d) Any audio, written, or visual publication or material
 252 relating to the promotion of the availability of any
 253 accommodations or facilities, or both, for transient rental,
 254 including any arrangement governed by part X ~~XF~~ of chapter 559,
 255 so long as a mandatory tour of a timeshare plan or attendance at
 256 a mandatory sales presentation is not a term or condition of the
 257 availability of such accommodations or facilities, or both, and
 258 so long as the failure of any transient renter to take a tour of
 259 a timeshare plan or attend a sales presentation does not result
 260 in the transient renter receiving less than what was promised to
 261 the transient renter in such materials.

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 262 Section 17. This act shall take effect July 1, 2013.



The Florida Senate

Committee Agenda Request

To: Senator Kelli Stargel, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: February 20, 2013

I respectfully request that **Senate Bill #720**, relating to Deregulation of Professions and Occupations, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 22

CC: Patrick Imhof
Staff Director

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/21/13

Meeting Date

Topic _____

Bill Number 720
(if applicable)

Name Sam Verghese

Amendment Barcode 976354
(if applicable)

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Street

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E-mail Sam.Verghese@myfloridalicense.com

City

State

Zip

Speaking: For Against Information

Representing Department of Business & Professional Regulation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-21-13

Meeting Date

Topic Motor Vehicle Auctions

Bill Number 720
(if applicable)

Name Lane Stephens

Amendment Barcode _____
(if applicable)

Job Title _____

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Street

Phone 513-0004

Tally FL 01
City State Zip

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Speaking: For Against Information

Representing Manheim Auto Auctions

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3 / 21 / 2013

Meeting Date

Topic _____ Bill Number 720
(if applicable)

Name BRIAN PITTS Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291

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SAINT PETERSBURG FLORIDA 33705
City State Zip

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Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

03/21/13

Meeting Date

Topic SB 720-Occupational Licensing

Bill Number 720
(if applicable)

Name Justin Pearson

Amendment Barcode _____
(if applicable)

Job Title Executive Director

Address 999 Brickell Ave., Suite 720

Phone (305) 721-1600

Street

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City

State

Zip

E-mail JPearson@IJ.org

Speaking: For Against Information

Representing Institute for Justice-Florida Chapter

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

**TESTIMONY OF JUSTIN PEARSON
EXECUTIVE DIRECTOR
INSTITUTE FOR JUSTICE - FLORIDA CHAPTER**

Florida Senate Committee on Regulated Industries
March 21, 2013

Testimony of Justin Pearson
Executive Director, Institute for Justice – Florida Chapter
Florida Senate Committee on Regulated Industries
March 21, 2013

Thank you for the opportunity to testify in support of Senate Bill 720. My name is Justin Pearson, and I am the Executive Director of the Florida Chapter of the Institute for Justice. The Institute for Justice is a libertarian public interest constitutional law firm with offices around the country. Economic liberty, or the constitutional right to earn an honest living free from arbitrary government interference, is one of our main areas of focus.

We believe the government should only use its regulatory powers to protect public health and safety, not to provide economic advantages to some at the expense of others. Unfortunately, entrenched interests often use irrational licensing schemes having nothing to do with public safety to expand their power and prevent competition, to the detriment of consumers and the public as a whole. Senate Bill 720 helps to address this problem.

Florida Hair Braiding

The licensing requirements for hair braiders in Florida provide an example of how overregulation can be misused by industry insiders as a weapon to prevent healthy competition. Florida law currently requires hair braiders to obtain licenses from the Board of Cosmetology, despite the fact that hair braiding and cosmetology are two different occupations. Nobody would argue that a travel agent should be forced to obtain a pilot's license, but that is the equivalent of what is currently required if one wants to make a living as a hair braider in Florida.

Consequently, a hair braider wishing to earn an honest living must pay to take classes at a Board of Cosmetology-approved school, pay an application fee, pay to take Board of Cosmetology-approved continuing education classes and pay renewal fees for the hair braiding license.

Yet, Florida Statute § 477.013 clearly states that hair braiding is different than cosmetology, and the statutory definition of hair braiding specifically states that hair braiding does not include "cutting, coloring, permanent waving, relaxing, removing, or chemical treatment." In other words, the statute's own definition admits that hair braiders are not doing anything that could harm the public health and safety or be considered cosmetology, yet the current law still requires the license.

Across the nation, we have seen regulators use the power of government to favor one competitor over another. One reasonable interpretation of Florida's hair braiding regulations is that this is happening here. After all, licensed cosmetologists are exempted from the hair braiding licensing requirements, regardless of whether they have ever taken a single hair braiding class. In other words, the Board of Cosmetology has created a system where any licensed cosmetologist can expand into hair braiding at no additional cost. On the other hand, any

experienced hair braider who would like to start a business will need to overcome the licensing hurdles created by their competitors at the Board of Cosmetology.

This is even more troubling when one considers the inherent safety of hair braiding. Hair braiding is exactly what it says it is – the natural braiding of hair. It has been performed for centuries and is typically handed down from one generation to the next. Every single day, it is legally performed in Florida for free without any record of tragedy. The same is true in the states where hair braiding does not require a license. The reason is simple. Hair braiding is safe, and there is no legitimate reason to force hair braiders to obtain occupational licenses.

Moreover, these exact issues have been addressed by federal judges in states around the nation. The Institute for Justice has brought cases challenging hair braiding licensing requirements in eight different states. We won all eight, either because the court directly ruled that the requirements were unconstitutional or because, once we filed the lawsuit, the respective legislature recognized the problem and removed the regulation. In each case, opponents to deregulation made the exact same arguments made by the opponents of Senate Bill 720. And in each case, federal judges and legislators looked at the facts and recognized that there was no legitimate reason to impose licensing burdens on hair braiders.

Auctioneering Apprentices

Florida law currently forces auctioneering apprentices to obtain their own licenses. This is despite the fact that, by definition, an auctioneering apprentice is already being supervised by a licensed auctioneer. This requirement for apprentices does not accomplish anything other than imposing a burden on hard-working individuals, and there is no legitimate reason why one should have to obtain a license merely to begin training underneath a licensed auctioneer. Indeed, many states do not even license auctioneers at all, let alone an auctioneer's apprentice. Senate Bill 720 is correct to remove this burden.

Florida's Licensing System

Hair braiders and auctioneering apprentices are not the only predominantly low- and moderate-income occupations harmed by irrational licensing regulations. This is especially true here in Florida. In 2012, the Institute for Justice released its *License to Work* report, which compared the licensing laws for 102 low- and moderate-income occupations across all fifty states and the District of Columbia. An internet link to a summary of Florida's licensing restrictions is available at: <http://licensetowork.ij.org/fl>.

License to Work ranked the states based on their licensing burdens. Regrettably, Florida's citizens are the seventh-most extensively and onerously licensed in the country. Even worse, the burdens placed by Florida on those occupations for which licenses are required are the fourth-most burdensome in the country. In other words, Florida's occupational licensing regime is more harmful to low- and moderate-income workers, entrepreneurs and small business owners than the vast majority of other states.

These overly burdensome requirements destroy the American dream for hard-working individuals who are on the first rung of the economic ladder. These burdens also cause Florida to be less competitive with other states.

In 2005, a constitutional challenge filed by the Institute for Justice resulted in Mississippi removing its hair braiding licensing requirements. As a direct result of the legislature's intervention, Melony Armstrong and at least 300 other hair braiders were able to earn an honest living in Mississippi. Melony's story can be read at: <http://ij.org/power-of-one-entrepreneur-reports>. These stories of economic opportunity could exist in Florida too, if the common sense reforms proposed by Senate Bill 720 were to become law.

Conclusion

Forcing hair braiders to obtain a cosmetology license harms workers, harms entrepreneurs, harms customers and violates both the U.S. and Florida constitutions. Requiring apprentices to obtain a license before they can begin training underneath a licensed auctioneer defies common sense. Although the scope of Senate Bill 720 is quite modest, its passage would have a positive impact on the lives of real people involved in the relevant occupations by allowing more of them to become self-sufficient and possibly even start their own businesses. The Institute for Justice asks the committee to vote favorably on Senate Bill 720.

Thank you again for the opportunity to testify before this committee.



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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 852

INTRODUCER: Regulated Industries and Senator Bean

SUBJECT: Real Estate Brokers and Appraisers

DATE: March 21, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.			AGG	
3.			AP	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 852 relates to the regulation of real estate brokers and real estate appraisers. Regarding real estate brokers, the bill permits brokers to be issued an additional license if that license will not be used in a manner that is likely to be harmful to any person. It also authorizes the Florida Real Estate Commission within the Department of Business and Professional Regulation. (department) to deny a multiple license request and that all of the licenses of a broker are subject to a final order of discipline.

The bill deletes references to “licensed appraiser” because, as of 2003, the department has been prohibited under current Florida law from issuing licenses for the category of licensed appraiser.

The bill requires the applicant for an appraiser registration or certification must meet the conditions adopted by the Appraiser Qualifications Board December 9, 2011, as prescribed by rule of the department’s Real Estate Appraiser Board.

Effective January 1, 2014, the bill changes the term “Appraisal Qualifications Board” to the “Appraiser Qualifications Board.” According to the department, the delayed effective date would give it time to reflect the change by rule.

The bill would take effect upon becoming law, except as otherwise expressly provided.

This bill substantially amends the following sections of the Florida Statutes: 475.215, 475.611, 475.612, 475.615, and 475.6221.

II. Present Situation:

Qualifications - Real Estate Brokers

The regulation of real estate brokers is overseen by the Florida Real Estate Commission (commission) within the Division of Real Estate in the department. The commission administers and enforces the provisions of part I of ch. 475, F.S.

Section 475.17(1), F.S., sets forth the qualifications for practice for a real estate broker. Specifically, an applicant must:

- Be a natural person of at least eighteen years of age;
- Hold a high school diploma or its equivalent;
- Be honest, truthful, trustworthy, of good character, and have a good reputation for fair dealing; and
- Be competent and qualified to make real estate transactions and conduct negotiations.¹

In addition to the requirements provided in s. 475.17(1)(a), F.S., the applicant must also hold an active real estate sales associate license for a specified period of time,² complete a pre-licensing course,³ pass the Florida Real Estate Brokers' Examination,⁴ and participate in post-licensure education.⁵

In addition to a primary brokers' license, a licensed broker may also be issued additional brokers' licenses whenever it is clearly shown that the request for additional licenses is necessary to the conduct of the real estate brokerage business, and that the additional licenses will not be used in a manner that is likely to be prejudicial.⁶

According to the department, it may only impose discipline through the license that is specifically charged in the administrative complaint. According to the department, in order to impose discipline on any additional brokers' licenses, the complaining party must have charged each additional license number in the administrative complaint. The department advises that it is currently possible for a broker to obtain an additional license during the enforcement process in order to avoid having disciplinary actions attached to that additional license.

Multiple Licenses

Section 475.215, F.S., permits a licensed broker to be issued, upon request, additional licenses as

¹ Section 475.17(1)(a), F.S.

² Section 475.17(2)(b), F.S.

³ Section 475.17(2)(a), F.S.

⁴ Section 475.175, F.S.

⁵ Section 475.17(3)(a), F.S.

⁶ Section 475.215(1), F.S.

a broker whenever it is clearly shown that the request for additional licenses is necessary to the conduct of a real estate brokerage business and that the additional licenses will not be used in a manner likely to be prejudicial to any person, including a licensee under this chapter. According to the department, when the division issues a complaint against a broker licensee, the discipline is only imposed against the license charged in the administrative complaint.

Real Estate Appraisers

Real estate appraisers in Florida are regulated by the Florida Real Estate Appraisal Board (board) within the Division of Real Estate of Department of Business and Professional Regulation (department), which administers and enforces the provisions of part II of ch. 475, F.S. The board is authorized to:

- Regulate the issuance of licenses, certifications, registrations, and permits;
- Discipline appraisers;
- Establish qualifications for licenses, certifications, registrations, and permits;
- Regulate approved education courses;
- Establish standards for real estate appraisers; and
- Establish standards for and regulate supervisory appraisers.⁷

The board's headquarters is located in Orlando, Florida.

Section 475.611(1), F.S., defines the term "appraisal" or "appraisal services" to mean:

... the services provided by certified or licensed appraisers or registered trainee appraisers, and includes:

1. "Appraisal assignment" denotes an engagement for which a person is employed or retained to act, or could be perceived by third parties or the public as acting, as an agent or a disinterested third party in rendering an unbiased analysis, opinion, review, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real property.
2. "Analysis assignment" denotes appraisal services that relate to the employer's or client's individual needs or investment objectives and includes specialized marketing, financing, and feasibility studies as well as analyses, opinions, and conclusions given in connection with activities such as real estate brokerage, mortgage banking, real estate counseling, or real estate consulting.
3. "Appraisal review assignment" denotes an engagement for which an appraiser is employed or retained to develop and communicate an opinion about the quality of another appraiser's appraisal, appraisal report, or work. An appraisal review may or may not contain the reviewing appraiser's opinion of value.

The Appraisal Foundation

The Appraisal Foundation (TAF) of the Federal Financial Institutions Examination Council is a private, non-profit educational organization that was formed in 1987 to promote professionalism

⁷ Section 475.613(2), F.S.

in the valuation industry.⁸ The Appraisal Foundation is governed by a Board of Trustees, which oversees three independent boards:

- The Appraisal Standards Board (ASB), which establishes the generally-accepted standards of the profession, known as the Uniform Standards of Professional Appraisal Practice (USPAP);
- The Appraiser Qualifications Board (AQB), which establishes the minimum education, experience, and examination qualifications for appraisers; and
- The Appraisal Practices Board (APB), which is responsible for developing best practices and providing voluntary guidance to professionals.⁹

The Appraisal Subcommittee

The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council was created in 1989, pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).¹⁰ The Appraisal Subcommittee is the federal agency charged with oversight of the states' appraisal regulatory programs.¹¹ It is responsible for monitoring and reviewing the activities of the Appraisal Foundation and its three boards.¹² Appraisal Subcommittee oversees Florida's appraiser regulatory program.

The Appraisal Subcommittee has six members, designated by the heads of the:

- Board of Governors of the Federal Reserve System (FRB);
- Federal Deposit Insurance Corporation (FDIC);
- Office of the Comptroller of the Currency (OCC);
- Office of Thrift Supervision (OTS);
- National Credit Union Administration (NCUA); and
- Department of Housing and Urban Development (HUD).¹³

On September 22, 1997, the ASC adopted the most recent version of the Policy Statements Regarding State Certification and Licensing of Real Estate Appraisers. These policy statements are intended to “assist the States in the continuing development and maintenance of appropriate organizational and regulatory structures for certifying, licensing and supervising real estate appraisers.”¹⁴

The Appraisal Subcommittee conducts biennial on-site reviews of each state's appraisal agency, with more frequent visits to states with weak enforcement programs. The Appraisal Subcommittee has the ability to disapprove a state's appraisal regulatory program, which effectively disqualifies that state's appraisers from conducting appraisals for federally-related

⁸ For information about the Appraisal Subcommittee (ASC): <https://www.asc.gov/About-the-ASC/ASCHistory.aspx> (Last visited on March 11, 2013.) See also s. 475.611(1)(b), F.S.

⁹ *Id.*

¹⁰ See, generally: 12 U.S.C. s. 3331-3351.

¹¹ 12 U.S.C. s. 3332(a).

¹² 12 U.S.C. s. 3332(b).

¹³ 12 C.F.R. 1102.303(b).

¹⁴ For more information about the ASC, see: <https://www.asc.gov/About-the-ASC/ASCHistory.aspx>, (Last visited on February 27, 2013.)

transactions.¹⁵ A “federally-related transaction” is any real estate-related financial transaction which: 1) a federal financial institution’s regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates; and 2) requires the services of an appraiser.¹⁶

According to information provided by the department, there are 7,064 Florida-licensed appraisers on the National Registry of State Certified and Licensed Appraisers, which lists the individuals who have received a state certification or license to perform appraisals upon the payment of a \$25 registration fee. An appraiser must be listed on the National Registry to be eligible to perform appraisals in connection with federally related transactions, which would include mortgage transactions.

Appraiser License Classifications

Section 475.611(1)(u), F.S., defines the term “supervisory appraiser” to mean:

a licensed appraiser, a certified residential appraiser,¹⁷ or a certified general appraiser¹⁸ responsible for the direct supervision of one or more registered trainee appraisers and fully responsible for appraisals and appraisal reports prepared by those registered trainee appraisers.

Section 475.611(1)(q), F.S., defines the term “licensed appraiser” to mean “a person who is licensed by the department as qualified to issue appraisal reports for residential real property of one to four residential units or on such real estate or real property as may be authorized by federal regulation.

Section 475.611(1)(q), F.S., also prohibits, as of July 1, 2003, the department from issuing licenses for the category of licensed appraiser.

Section 475.611(1)(r), F.S., defines the term “registered trainee appraiser” to mean:

a person who is registered with the department as qualified to perform appraisal services only under the direct supervision of a licensed or certified appraiser. A registered trainee appraiser may accept appraisal assignments only from her or his primary or secondary supervisory appraiser.

According to the department, there are remaining licensed appraisers, but the number continues to decline. According to the department, the ASC does not permit licensed appraisers to supervise trainee appraisers.

Appraisal Subcommittee - Appraiser Designations

The Appraisal Subcommittee has established two title designations for appraisers: “state

¹⁵ See, generally: 12 U.S.C. s. 3347 and 12 C.F.R. 1102 Subpart B.

¹⁶ 12 U.S.C. s. 3350(4).

¹⁷ Section 475.611(1)(k), F.S., defines the term “certified general appraiser” to mean “a person who is certified by the department as qualified to issue appraisal reports for any type of real property.”

¹⁸ Section 475.611(1)(l), F.S., defines the term “certified residential appraiser” to mean “a person who is certified by the department as qualified to issue appraisal reports for residential real property of one to four residential units, without regard to transaction value or complexity, or real property as may be authorized by federal regulation.”

licensed” and “state certified.”¹⁹ The Appraiser Qualifications Board has approved a third designation, “certified residential appraiser,” which the ASC has also recognized.²⁰ The Appraisal Subcommittee urges states to use these federally-recognized designations or titles in order to decrease the likelihood of confusion among users, and to prevent the employment of appraisers who do not have the required designation to perform the appraisal for which they are engaged.²¹

Qualifications – Appraisers

Section 475.615, F.S., provides the qualifications for registration or certification of appraisers, as outlined by the Real Property Appraiser Qualification Criteria of the AQB. In December 2011, the AQB adopted the latest version of the Real Property Appraiser Qualification Criteria with an effective date of January 1, 2015.²² An appraiser applicant must be competent to handle appraisals with safety to those with whom they may undertake a relationship of trust and confidence. If an applicant has been denied a prior registration or certification application, or has had a license, registration, or certification revoked or suspended in any jurisdiction, the applicant is deemed not to be qualified. The board may grant the application if, because of lapse of time and subsequent good conduct and reputation, or other reason deemed sufficient, it appears to the board that the interest of the public is not likely to be endangered by the granting of registration or certification.

Registered Trainee Real Estate Appraiser

Section 475.6221, F.S., provides that a registered trainee real estate appraiser must perform appraisal services under the direct supervision of a licensed or certified appraiser who is designated as the primary supervisory appraiser. The primary supervisory appraiser may also designate additional licensed or certified appraisers as secondary supervisory appraisers.

III. Effect of Proposed Changes:

Multiple Licenses – Real Estate Brokers

The bill amends s. 475.215(1), F.S., to provide that an additional license may not be granted if that license will be used in a manner that is likely to be harmful to any person. The bill authorizes the Florida Real Estate Commission to deny an additional license request pursuant to s. 475.17(1)(a), F.S., which provides qualification requirements for brokers. The bill also provides that a final order of discipline against the primary license applies against any multiple licenses held by the broker at the time the final order becomes effective.

Licensed Appraisers

The bill amends s. 475.611, F.S., to delete the term “licensed appraiser” from the definition for

¹⁹ Appraisal Subcommittee, *Appraisal Subcommittee Policy Statements*, Statement 2: Appraiser Classifications. A copy of the *Appraisal Subcommittee Policy Statements* is available at: <https://www.asc.gov/Statement2.aspx> (Last visited March 11, 2013).

²⁰ *Id.*

²¹ *Id.*

²² A copy of the AQB’s *Real Property Appraiser Qualification Criteria* is available at: <https://netforum.avectra.com/eweb/DynamicPage.aspx?Site=taf&WebCode=RPCriteria> (Last visited March 12, 2013).

the term “supervisory appraiser.” As of 2003, the department has been prohibited from issuing licenses for the category of licensed appraiser.²³

The bill also amends ss. 475.612(1) and 475.6221(1), F.S., to delete the reference to licensed appraiser.

Qualifications – Appraisers

The bill amends ss. 475.615(2), F.S., to authorize the board to adopt rules to modify or waive certification requirements to conform to the federal Appraiser Qualifications Board requirements adopted by the AQB on December 9, 2011. Section 475.615(6), F.S., is amended to provide that an applicant who has a disciplinary history or history of unlawful conduct in Florida or another state must meet the standards of the AQB to be considered for licensure by the Florida Board of Appraisers.

The bill also deletes the provision that allows the board to consider the lapse of time and subsequent good conduct and reputation when considering the license application of an applicant with prior discipline history or history of unlawful conduct. The bill maintains the criteria that the board must consider that the interest of the public is not likely to be endangered by the granting of certification.

The bill amends ss. 475.615(2) and (6), F.S., to change the term “Appraisal Qualifications Board” to the “Appraiser Qualifications Board.” These provisions would take effect on January 1, 2014. According to the department, the delayed effective date would give it time to reflect the change by rule.

Effective Date

The bill would take effect upon becoming law, except as otherwise expressly provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²³ See s. 475.611(1)(q), F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. 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 21, 2013:

The committee substitute (CS) does not create s. 120.574(3), F.S., to provide a mandatory summary hearing procedure before the Division of Administrative Hearings for disciplinary cases against real estate appraisers.

The CS amends s. 475.612(1), F.S., to delete the reference to the licensed appraiser classification.

The CS amends ss. 475.615(2) and (6), F.S., to reference the December 9, 2011 date on which the Appraiser Qualifications Board of the Appraisal Foundation adopted the licensing requirements. It also provides a January 1, 2014 effective date for the amendment to s. 475.615(6), F.S.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/22/2013	.	
	.	
	.	
	.	

The Committee on Regulated Industries (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (1) of section 475.215, Florida
Statutes, is amended to read:

475.215 Multiple licenses.—

(1) A licensed broker may be issued upon request additional
licenses as a broker, but not as a sales associate or as a
broker associate, whenever it is clearly shown that the
requested additional licenses are necessary to the conduct of
real estate brokerage business and that the additional licenses



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13 will not be used in a manner likely to be prejudicial or harmful
14 to any person, including a licensee under this chapter. The
15 commission may also deny a multiple license request pursuant to
16 s. 475.17(1)(a). A final order of discipline rendered against a
17 broker for a violation of this part or s. 455.227(1) applies to
18 the primary license of the broker as well as any multiple
19 licenses held by that broker at the time the final order becomes
20 effective.

21 Section 2. Paragraph (u) of subsection (1) of section
22 475.611, Florida Statutes, is amended to read:

23 475.611 Definitions.—

24 (1) As used in this part, the term:

25 (u) "Supervisory appraiser" means ~~a licensed appraiser,~~ a
26 certified residential appraiser, or a certified general
27 appraiser responsible for the direct supervision of one or more
28 registered trainee appraisers and fully responsible for
29 appraisals and appraisal reports prepared by those registered
30 trainee appraisers. The board, by rule, shall determine the
31 responsibilities of a supervisory appraiser, the geographic
32 proximity required, the minimum qualifications and standards
33 required of a ~~licensed or~~ certified appraiser before she or he
34 may act in the capacity of a supervisory appraiser, and the
35 maximum number of registered trainee appraisers to be supervised
36 by an individual supervisory appraiser.

37 Section 3. Subsection (1) of section 475.612, Florida
38 Statutes, is amended to read:

39 475.612 Certification, licensure, or registration
40 required.—

41 (1) A person may not use the title "certified real estate



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42 appraiser," "licensed real estate appraiser," or "registered
43 trainee real estate appraiser," or any abbreviation or words to
44 that effect, or issue an appraisal report, unless such person is
45 certified, licensed, or registered by the department under this
46 part. However, the work upon which an appraisal report is based
47 may be performed by a person who is not a certified or licensed
48 appraiser or registered trainee appraiser if the work is
49 supervised and approved, and the report is signed, by a
50 certified or licensed appraiser who has full responsibility for
51 all requirements of the report and valuation service. Only a
52 certified or licensed appraiser may issue an appraisal report
53 and receive direct compensation for providing valuation services
54 for the appraisal report. A registered trainee appraiser may
55 only receive compensation for appraisal services from her or his
56 authorized certified ~~or licensed~~ appraiser.

57 Section 4. Effective January 1, 2014, subsections (2) and
58 (6) of section 475.615, Florida Statutes, are amended to read:

59 475.615 Qualifications for registration or certification.—

60 (2) The board is authorized to waive or modify any
61 education, experience, or examination requirements established
62 in this part in order to conform with any such requirements
63 established by the Appraiser ~~Appraisal~~ Qualifications Board of
64 the Appraisal Foundation or any successor body recognized by
65 federal law, including any requirements adopted on December 9,
66 2011 ~~February 20, 2004~~. The board shall implement this section
67 by rule.

68 (6) All applicants must be competent and qualified to make
69 real estate appraisals with safety to those with whom they may
70 undertake a relationship of trust and confidence and the general



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71 public. If any applicant has been denied registration,
72 licensure, or certification, or has been disbarred, or the
73 applicant's registration, license, or certificate to practice or
74 conduct any regulated profession, business, or vocation has been
75 revoked or suspended by this or any other state, any nation, or
76 any possession or district of the United States, or any court or
77 lawful agency thereof, because of any conduct or practices which
78 would have warranted a like result under this part, or if the
79 applicant has been guilty of conduct or practices in this state
80 or elsewhere which would have been grounds for disciplining her
81 or his registration, license, or certification under this part
82 had the applicant then been a registered trainee appraiser or a
83 licensed or certified appraiser, the applicant is ~~shall be~~
84 deemed not to be qualified unless the applicant has met the
85 conditions adopted by the Appraiser Qualifications Board of the
86 Appraisal Foundation on December 9, 2011, as prescribed by rule
87 of the board and, ~~because of lapse of time and subsequent good~~
88 ~~conduct and reputation, or other reason deemed sufficient,~~ it
89 appears to the board that the interest of the public is not
90 likely to be endangered by the granting of registration or
91 certification.

92 Section 5. Subsection (1) of section 475.6221, Florida
93 Statutes, is amended to read:

94 475.6221 Employment of and by registered trainee real
95 estate appraisers.—

96 (1) A registered trainee real estate appraiser must perform
97 appraisal services under the direct supervision of a ~~licensed or~~
98 certified appraiser who is designated as the primary supervisory
99 appraiser. The primary supervisory appraiser may also designate



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100 additional ~~licensed or~~ certified appraisers as secondary
101 supervisory appraisers. A secondary supervisory appraiser must
102 be affiliated with the same firm or business as the primary
103 supervisory appraiser and the primary or secondary supervisory
104 appraiser must have the same business address as the registered
105 trainee real estate appraiser. The primary supervisory appraiser
106 must notify the Division of Real Estate of the name and address
107 of any primary and secondary supervisory appraiser for whom the
108 registered trainee will perform appraisal services, and must
109 also notify the division within 10 days after terminating such
110 relationship. Termination of the relationship with a primary
111 supervisory appraiser automatically terminates the relationship
112 with the secondary supervisory appraiser.

113 Section 6. Except as otherwise expressly provided in this
114 act, this act shall take effect upon becoming a law.

115
116 ===== T I T L E A M E N D M E N T =====

117 And the title is amended as follows:

118 Delete everything before the enacting clause
119 and insert:

120 A bill to be entitled
121 An act relating to real estate brokers and appraisers;
122 amending s. 475.215, F.S.; providing a qualifying
123 condition for the issuance of additional licenses to a
124 licensed broker; providing grounds for the Florida
125 Real Estate Commission to deny multiple license
126 requests; providing for applicability and effect of
127 certain final orders of discipline on primary and
128 multiple licenses held by a broker; amending s.



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129 475.611, F.S.; revising the definition of the term
130 "supervisory appraiser"; amending s. 475.612, F.S.;
131 revising a provision specifying from whom a registered
132 trainee appraiser may receive compensation; amending
133 s. 475.615, F.S.; revising certain exceptions from
134 provisions specifying that certain applicants for
135 certification or registration as an appraiser or
136 trainee appraiser are not deemed to be qualified for
137 such certification or registration; revising the dated
138 version of certain requirements adopted by the
139 Appraiser Qualifications Board of the Appraisal
140 Foundation based upon which the Florida Real Estate
141 Appraisal Board is authorized to waive or modify
142 certain education, experience, or examination
143 requirements applicable to certified appraisers and
144 registered trainee appraisers; amending s. 475.6221,
145 F.S.; deleting authority for a licensed appraiser to
146 act as the direct supervisor of a registered trainee
147 real estate appraiser; providing effective dates.

By Senator Bean

4-00542A-13

2013852__

1 A bill to be entitled
 2 An act relating to real estate brokers and appraisers;
 3 amending s. 120.574, F.S.; providing that specified
 4 administrative procedures for summary hearings apply
 5 to disciplinary cases involving certain real estate
 6 appraisers; providing exceptions and conditions
 7 relating to such procedures; amending s. 475.215,
 8 F.S.; providing a qualifying condition for the
 9 issuance of additional licenses to a licensed broker;
 10 providing grounds for the Florida Real Estate
 11 Commission to deny multiple license requests;
 12 providing for applicability and effect of certain
 13 final orders of discipline on primary and multiple
 14 licenses held by a broker; amending s. 475.611, F.S.;
 15 revising the definition of the term "supervisory
 16 appraiser"; amending s. 475.615, F.S.; revising
 17 certain exceptions from provisions specifying that
 18 certain applicants for certification or registration
 19 as an appraiser or trainee appraiser are not deemed to
 20 be qualified for such certification or registration;
 21 revising the dated version of certain requirements
 22 adopted by the Appraiser Qualifications Board of the
 23 Appraisal Foundation based upon which the Florida Real
 24 Estate Appraisal Board is authorized to waive or
 25 modify certain education, experience, or examination
 26 requirements applicable to certified appraisers and
 27 registered trainee appraisers; amending s. 475.6221,
 28 F.S.; deleting authority for a licensed appraiser to
 29 act as the direct supervisor of a registered trainee

Page 1 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

4-00542A-13

2013852__

30 real estate appraiser; providing effective dates.
 31
 32 Be It Enacted by the Legislature of the State of Florida:
 33
 34 Section 1. Subsection (3) is added to section 120.574,
 35 Florida Statutes, to read:
 36 120.574 Summary hearing.-
 37 (3) The procedures in subsection (2) apply to disciplinary
 38 cases involving real estate appraisers licensed in this state.
 39 However:
 40 (a) Final orders in such cases must be rendered within 90
 41 days after the date the administrative complaint is filed.
 42 (b) The provisions of subparagraph (2)(a)5. do not apply.
 43 (c) Motions for continuance may not be granted absent
 44 extraordinary circumstances.
 45 (d) The division may assign former administrative law
 46 judges or former circuit or county court judges, or may
 47 designate special masters, to adjudicate the summary hearings
 48 under this section.
 49 Section 2. Subsection (1) of section 475.215, Florida
 50 Statutes, is amended to read:
 51 475.215 Multiple licenses.-
 52 (1) A licensed broker may be issued upon request additional
 53 licenses as a broker, but not as a sales associate or as a
 54 broker associate, whenever it is clearly shown that the
 55 requested additional licenses are necessary to the conduct of
 56 real estate brokerage business and that the additional licenses
 57 will not be used in a manner likely to be prejudicial or harmful
 58 to any person, including a licensee under this chapter. The

Page 2 of 5

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

4-00542A-13 2013852
 59 commission may also deny a multiple license request pursuant to
 60 s. 475.17(1)(a). A final order of discipline rendered against a
 61 broker for a violation of this part or s. 455.227(1) applies to
 62 the primary license of the broker as well as any multiple
 63 licenses held by that broker at the time the final order becomes
 64 effective.

65 Section 3. Paragraph (u) of subsection (1) of section
 66 475.611, Florida Statutes, is amended to read:

67 475.611 Definitions.—

68 (1) As used in this part, the term:

69 (u) "Supervisory appraiser" means ~~a licensed appraiser,~~ a
 70 certified residential appraiser, or a certified general
 71 appraiser responsible for the direct supervision of one or more
 72 registered trainee appraisers and fully responsible for
 73 appraisals and appraisal reports prepared by those registered
 74 trainee appraisers. The board, by rule, shall determine the
 75 responsibilities of a supervisory appraiser, the geographic
 76 proximity required, the minimum qualifications and standards
 77 required of a ~~licensed or~~ certified appraiser before she or he
 78 may act in the capacity of a supervisory appraiser, and the
 79 maximum number of registered trainee appraisers to be supervised
 80 by an individual supervisory appraiser.

81 Section 4. Subsection (6) of section 475.615, Florida
 82 Statutes, is amended to read:

83 475.615 Qualifications for registration or certification.—

84 (6) All applicants must be competent and qualified to make
 85 real estate appraisals with safety to those with whom they may
 86 undertake a relationship of trust and confidence and the general
 87 public. If any applicant has been denied registration,

4-00542A-13 2013852
 88 licensure, or certification, or has been disbarred, or the
 89 applicant's registration, license, or certificate to practice or
 90 conduct any regulated profession, business, or vocation has been
 91 revoked or suspended by this or any other state, any nation, or
 92 any possession or district of the United States, or any court or
 93 lawful agency thereof, because of any conduct or practices which
 94 would have warranted a like result under this part, or if the
 95 applicant has been guilty of conduct or practices in this state
 96 or elsewhere which would have been grounds for disciplining her
 97 or his registration, license, or certification under this part
 98 had the applicant then been a registered trainee appraiser or a
 99 licensed or certified appraiser, the applicant is shall be
 100 deemed not to be qualified unless the applicant has met the
 101 conditions set forth by the Appraiser Qualifications Board of
 102 the Appraisal Foundation as prescribed by rule of the board and,
 103 because of lapse of time and subsequent good conduct and
 104 reputation, or other reason deemed sufficient, it appears to the
 105 board that the interest of the public is not likely to be
 106 endangered by the granting of registration or certification.

107 Section 5. Effective January 1, 2014, subsection (2) of
 108 section 475.615, Florida Statutes, is amended to read:

109 475.615 Qualifications for registration or certification.—

110 (2) The board is authorized to waive or modify any
 111 education, experience, or examination requirements established
 112 in this part in order to conform with any such requirements
 113 established by the Appraiser Appraisal Qualifications Board of
 114 the Appraisal Foundation or any successor body recognized by
 115 federal law, including any requirements adopted on December 9,
 116 2011 February 20, 2004. The board shall implement this section

4-00542A-13

2013852__

117 by rule.

118 Section 6. Subsection (1) of section 475.6221, Florida
119 Statutes, is amended to read:

120 475.6221 Employment of and by registered trainee real
121 estate appraisers.—

122 (1) A registered trainee real estate appraiser must perform
123 appraisal services under the direct supervision of a ~~licensed or~~
124 certified appraiser who is designated as the primary supervisory
125 appraiser. The primary supervisory appraiser may also designate
126 additional ~~licensed or~~ certified appraisers as secondary
127 supervisory appraisers. A secondary supervisory appraiser must
128 be affiliated with the same firm or business as the primary
129 supervisory appraiser and the primary or secondary supervisory
130 appraiser must have the same business address as the registered
131 trainee real estate appraiser. The primary supervisory appraiser
132 must notify the Division of Real Estate of the name and address
133 of any primary and secondary supervisory appraiser for whom the
134 registered trainee will perform appraisal services, and must
135 also notify the division within 10 days after terminating such
136 relationship. Termination of the relationship with a primary
137 supervisory appraiser automatically terminates the relationship
138 with the secondary supervisory appraiser.

139 Section 7. Except as otherwise expressly provided in this
140 act, this act shall take effect upon becoming a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Commerce and Tourism
Communications, Energy, and Public Utilities
Governmental Oversight and Accountability

SELECT COMMITTEE:

Select Committee on Patient Protection
and Affordable Care Act

SENATOR AARON BEAN

4th District

March 4, 2013

Honorable Kelli Stargel
Chair, Regulated Industries Committee
324 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairwoman Stargel:

I am writing to respectfully request you consider placing Senate Bill 852, relating to Real Estate Brokers and Appraisers on the Regulated Industries agenda at your earliest convenience.

Thank you in advance for your consideration. As always, please do not hesitate to contact me with any question or comments you, or your staff may have.

Respectfully,

A handwritten signature in cursive script that reads "Aaron Bean".

Aaron Bean
Senator District 4

Cc: Patrick "Booter" Imhof, Staff Director
330 Knott

REPLY TO:

□ 302 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5004

Senate's Website: www.flisenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/21/13

Meeting Date

Topic Real Estate Brokers and Appraisers

Bill Number 852
(if applicable)

Name Sam Verghese

Amendment Barcode _____
(if applicable)

Job Title Legislative Affairs ~~Director~~ Director

Address 1940 N. Monroe St
Street

Phone 850-487-4827

Tallahassee FL 32399
City State Zip

E-mail Sam.Verghese@myfloridalicense.com

Speaking: For Against Information

Representing Dept. of Business and Professional Regulation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1398

INTRODUCER: Senator Hukill

SUBJECT: Appraisers

DATE: March 21, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Favorable
2.			JU	
3.				
4.				
5.				
6.				

I. Summary:

SB 1398 relates to the education requirement for appraisers license by the Florida Real Estate Appraisal Board (board) within the Division of Real Estate of the Department of Business and Professional Regulation. The bill requires that all academic education courses must be completed in a classroom or through online distance education. Current law does not permit an applicant to meet required classroom hours through online distance education.

The board would determine that an online distance education course has met the same requirements as classroom courses if the online course has received approval from the International Distance Education Certification Center for course design and delivery method. The course must also have received the approval of the federal Appraiser Qualifications Board through its Course Approval Program.

This bill substantially amends s. 475.617, Florida Statutes.

II. Present Situation:

Real estate appraisers in Florida are regulated by the Florida Real Estate Appraisal Board (board) within the Division of Real Estate of the Department of Business and Professional Regulation (department), which administers and enforces the provisions of part II of ch. 475, F.S. The board is authorized to:

- Regulate the issuance of licenses, certifications, registrations, and permits;
- Discipline appraisers;
- Establish qualifications for licenses, certifications, registrations, and permits;

- Regulate approved courses;
- Establish standards for real estate appraisers; and
- Establish standards for and regulate supervisory appraisers.¹

The board's headquarters is located in Orlando, Florida.

Section 475.611(1), F.S., defines the term "appraisal" or "appraisal services" to mean:

... the services provided by certified or licensed appraisers or registered trainee appraisers, and includes:

1. "Appraisal assignment" denotes an engagement for which a person is employed or retained to act, or could be perceived by third parties or the public as acting, as an agent or a disinterested third party in rendering an unbiased analysis, opinion, review, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real property.
2. "Analysis assignment" denotes appraisal services that relate to the employer's or client's individual needs or investment objectives and includes specialized marketing, financing, and feasibility studies as well as analyses, opinions, and conclusions given in connection with activities such as real estate brokerage, mortgage banking, real estate counseling, or real estate consulting.
3. "Appraisal review assignment" denotes an engagement for which an appraiser is employed or retained to develop and communicate an opinion about the quality of another appraiser's appraisal, appraisal report, or work. An appraisal review may or may not contain the reviewing appraiser's opinion of value.

Appraiser License Classifications

Section 475.611(1)(k), F.S., defines a "certified general appraiser" to mean a person who is certified by the department as qualified to issue appraisal reports for any type of real property.

Section 475.611(1)(l), defines a "certified residential appraiser" to mean:

a person who is certified by the department as qualified to issue appraisal reports for residential real property of one to four residential units, without regard to transaction value or complexity, or real property as may be authorized by federal regulation.

Section 475.611(1)(u), F.S., defines the term "supervisory appraiser" to mean:

a licensed appraiser, a certified residential appraiser,² or a certified general appraiser³ responsible for the direct supervision of one or more registered trainee

¹ Section 475.613(2), Florida Statutes.

² Section 475.611(1)(k), F.S., defines the term "certified general appraiser" to mean "a person who is certified by the department as qualified to issue appraisal reports for any type of real property."

³ Section 475.611(1)(l), F.S., defines the term "certified residential appraiser" to mean "a person who is certified by the department as qualified to issue appraisal reports for residential real property of one to four residential units, without regard to transaction value or complexity, or real property as may be authorized by federal regulation."

appraisers and fully responsible for appraisals and appraisal reports prepared by those registered trainee appraisers.

Section 475.611(1)(q), F.S., defines the term “licensed appraiser” to mean “a person who is licensed by the department as qualified to issue appraisal reports for residential real property of one to four residential units or on such real estate or real property as may be authorized by federal regulation.

Section 475.611(1)(q), F.S., also prohibits, as of July 1, 2003, the department from issuing licenses for the category of licensed appraiser.

According to the department, there are remaining licensed appraisers, but the number continues to decline.

Section 475.611(1)(r), F.S., defines the term “registered trainee appraiser” to mean:

a person who is registered with the department as qualified to perform appraisal services only under the direct supervision of a licensed or certified appraiser. A registered trainee appraiser may accept appraisal assignments only from her or his primary or secondary supervisory appraiser.

Qualifications – Appraisers

Section 475.615, F.S., provides the qualifications for registration or certification of appraisers, as outlined by the Real Property Appraiser Qualification Criteria of the Appraiser Qualifications Board (AQB).⁴

In December 2011, the AQB adopted the latest version of the Real Property Appraiser Qualification Criteria with an effective date of January 1, 2015.⁵ An appraiser applicant must be competent to handle appraisals with safety to those with whom they may undertake a relationship of trust and confidence. If an applicant has been denied a prior registration or certification application, or has had a license, registration, or certification revoked or suspended in any jurisdiction, the applicant is deemed not to be qualified unless, because of lapse of time and subsequent good conduct and reputation, or other reason deemed sufficient, it appears to the board that the interest of the public is not likely to be endangered by the granting of registration or certification.

Section 475.617(1), F.S., requires an applicant for registration as a trainee appraiser to present evidence to the board that she or he has successfully completed at least 100 hours of approved academic courses in subjects related to real estate appraisal, including Uniform Standards of Professional Appraisal Practice (USPAP) or its equivalent. The academic courses must be taken

⁴ The Appraiser Qualifications Board establishes the minimum education, experience, and examination qualifications for appraisers. It is a board of The Appraisal Foundation (TAF) of the Federal Financial Institutions Examination Council, which is a private, non-profit educational organization that was formed in 1987 to promote professionalism in the valuation industry.⁴

⁵ A copy of the AQB’s *Real Property Appraiser Qualification Criteria* is available at: <https://netforum.avectra.com/eweb/DynamicPage.aspx?Site=taf&WebCode=RPCriteria> (Last visited March 12, 2013).

at a college, university or other educational institution authorized under s. 475.451, F.S. Classroom hours are defined as 50 minutes out of each 60 minute segment.

Section 475.617(2), F.S., requires an applicant for certification as a residential appraiser to present satisfactory evidence to the board that she or he has met the minimum education and experience requirements prescribed by rule of the board. The applicant must have at least 2,500 hours of experience obtained over a 24-month period. The applicant must also complete 200 classroom hours, inclusive of examination, of approved academic courses in subjects related to real estate appraisal, including USPAP or its equivalent from an educational institution authorized under s. 475.451, F.S. Classroom hours are defined as 50 minutes out of each 60 minute segment.

Section 475.617(3), F.S., requires an applicant for certification as a general appraiser to present satisfactory evidence to the board that she or he has met the minimum education and experience requirements prescribed by rule of the board. The applicant must have at least 3,000 hours of experience obtained over a 30-month period in real property appraisal and have successfully completed at least 300 classroom hours of academic courses from an educational institution authorized under s. 475.451, F.S.

Current law does not permit an applicant to meet the required classroom hours through online distance education.

III. Effect of Proposed Changes:

The bill amends s. 475.617, F.S., to require that all academic education courses must be completed in a classroom or through online distance education.

The board would determine that an online distance education course has meet the same requirements as classroom courses if the online course has received approval from the International Distance Education Certification Center (IDECC) for course design and delivery method.⁶ The course must also have received the approval of the AQB through its Course Approval Program.

The bill also amends s. 475.617, F.S., to change the term “classroom hour” to “qualifying classroom hour.” The term “qualifying classroom hour” is consistent with terms used throughout part II, ch. 475, F.S, and, according to the department, the terms used within the AQB criteria.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁶ The International Distance Education Certification Center (IDECC) is a non-profit organization dedicated to the mission of promoting quality in distance education through the establishment and monitoring of standards for course delivery. For more information about the IDECC, see: <https://www.idecc.org/index.cfm> (Last visited March 17, 2013.)

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

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

None.

B. Amendments:

None.

By Senator Hukill

8-01262A-13

20131398__

A bill to be entitled

An act relating to appraisers; amending s. 475.617, F.S.; defining a qualifying classroom hour; requiring all courses to be completed in a classroom or through an online course that has received certain approvals; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 475.617, Florida Statutes, is amended to read:

475.617 Education and experience requirements.—

(1) To be registered as a trainee appraiser, an applicant must present evidence satisfactory to the board that she or he has successfully completed at least 100 hours of approved academic courses in subjects related to real estate appraisal, which must include coverage of the Uniform Standards of Professional Appraisal Practice, or its equivalent, as established by rule of the board, from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. The board may increase the required number of hours to not more than 125 hours. A qualifying classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved on an hour-for-hour basis.

(2) To be certified as a residential appraiser, an applicant must present satisfactory evidence to the board that

Page 1 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

8-01262A-13

20131398__

she or he has met the minimum education and experience requirements prescribed by rule of the board. The board shall prescribe by rule education and experience requirements that meet or exceed the following real property appraiser qualification criteria adopted on February 20, 2004, by the Appraisal Qualifications Board of the Appraisal Foundation:

(a) Has at least 2,500 hours of experience obtained over a 24-month period in real property appraisal as defined by rule.

(b) Has successfully completed at least 200 classroom hours, inclusive of examination, of approved academic courses in subjects related to real estate appraisal, which must include a 15-hour National Uniform Standards of Professional Appraisal Practice course, or its equivalent, as established by rule of the board, from a nationally recognized or state-recognized appraisal organization, career center, accredited community college, college, or university, state or federal agency or commission, or proprietary real estate school that holds a permit pursuant to s. 475.451. A qualifying classroom hour is defined as 50 minutes out of each 60-minute segment. Past courses may be approved by the board and substituted on an hour-for-hour basis.

(3) To be certified as a general appraiser, an applicant must present evidence satisfactory to the board that she or he has met the minimum education and experience requirements prescribed by rule of the board. The board shall prescribe education and experience requirements that meet or exceed the following real property appraiser qualification criteria adopted on February 20, 2004, by the Appraisal Qualifications Board of the Appraisal Foundation:

Page 2 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

8-01262A-13 20131398__

59 (a) Has at least 3,000 hours of experience obtained over a
60 30-month period in real property appraisal as defined by rule.

61 (b) Has successfully completed at least 300 classroom
62 hours, inclusive of examination, of approved academic courses in
63 subjects related to real estate appraisal, which must include a
64 15-hour National Uniform Standards of Professional Appraisal
65 Practice course, or its equivalent, as established by rule of
66 the board, from a nationally recognized or state-recognized
67 appraisal organization, career center, accredited community
68 college, college, or university, state or federal agency or
69 commission, or proprietary real estate school that holds a
70 permit pursuant to s. 475.451. A qualifying classroom hour is
71 defined as 50 minutes out of each 60-minute segment. Past
72 courses may be approved by the board and substituted on an hour-
73 for-hour basis.

74 (4) All academic education courses must be completed in a
75 classroom or through online distance education. The board may
76 find that an online distance education course meets the
77 classroom hour requirement if the course has received approval
78 from the International Distance Education Certification Center
79 for the course design and delivery method and the approval of
80 the Appraiser Qualifications Board through its Course Approval
81 Program.

82 (5)-(4) Each applicant must furnish, under oath, a detailed
83 statement of the experience for each year of experience she or
84 he claims. Upon request, the applicant shall furnish to the
85 board, for its examination, copies of appraisal reports or file
86 memoranda to support the claim for experience. Any appraisal
87 report or file memoranda used to support a claim for experience

Page 3 of 4

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8-01262A-13 20131398__

88 must be maintained by the applicant for no less than 5 years
89 after the date of certification.

90 (6)-(5) The board may implement the provisions of this
91 section by rule.

92 Section 2. This act shall take effect July 1, 2013.

Page 4 of 4

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Finance and Tax, *Chair*
Appropriations
Appropriations Subcommittee on Education
Commerce and Tourism
Communications, Energy, and Public Utilities
Community Affairs
Governmental Oversight and Accountability

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL
8th District

March 6, 2013

The Honorable Kelli Stargel
324 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chairman Stargel:

Senate Bill 1398, relating to Appraisers has been referred to the Regulated Industries Committee. I am requesting your consideration on placing SB 1398 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Dorothy L. Hukill".

Dorothy L. Hukill, District 8

cc: Patrick Imhof, Staff Director of the Regulated Industries Committee
Lynn Koon, Administrative Assistant of the Regulated Industries Committee

REPLY TO:

209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
 Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3 / 21 / 2013

Meeting Date

Topic _____ Bill Number 1398
(if applicable)

Name BRIAN PITTS Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705 E-mail JUSTICE2JESUS@YAHOO.COM
City State Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

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 1344

INTRODUCER: Regulated Industries Committee and Senator Latvala

SUBJECT: Malt Beverages

DATE: March 21, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.			CM	
3.			CA	
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 1344 authorizes the sale of individual containers of malt beverages containing 64 ounces. Current law requires that all malt beverages sold by retail vendors of alcoholic beverages must be packaged in individual containers containing no more than 32 ounces. Current law also permits malt beverages to be packaged in bulk or in kegs or in barrels or in any individual container containing one gallon or more of malt beverage regardless of individual container type.

The bill requires that malt beverage containers may be filled at the point of sale by a licensed manufacturer or by a vendor licensed for consumption on the premises. The malt beverage container must have an unbroken seal or be incapable of being immediately consumed.

The effective date of the bill is July 1, 2013.

This bill substantially amends section 563.06, Florida Statutes.

II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law.¹ These provisions regulate the manufacture, distribution, and sale of wine, beer, and liquor via manufacturers, distributors, and vendors.² The Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation is the agency authorized to administer and enforce the Beverage Law.³

Three Tier System

In the United States, the regulation of alcohol has traditionally been through what is termed the “three-tier system.” The system requires that the manufacture, distribution, and sale of alcoholic beverages be separated. Retailers must buy their products from distributors who in turn buy their products from the manufacturers. Manufacturers cannot sell directly to retailers or directly to consumers. The system is deeply rooted in the perceived evils of the “tied house” in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.⁴

There are some exceptions to this regulatory system. The exceptions include allowing vendors to manufacture malt beverages⁵ and to sell them to consumers,⁶ allowing individuals to bring small quantities of alcohol back from trips out-of-state,⁷ and allowing in-state wineries to manufacture and sell directly to consumers.⁸

There are two license options that permit vendors to manufacture malt beverages for sale directly to consumers. Section 561.221(2), F.S., permits a vendor to manufacture malt beverages, even if the vendor is also licensed as a distributor. The malt beverages the vendor manufactures must be sold on property consisting of a single complex that includes a brewery and other structures that promote the brewery and the tourist industry of the state. The property may be divided by no more than one public street or highway. This type of license does not limit the amount of malt beverages that may be manufactured.

Section 561.221(3), F.S., permits a vendor also to be licensed as a manufacturer of malt beverages if the vendor is engaged in brewing malt beverages at a single location in an amount that does not exceed 10,000 kegs per year.⁹ The malt beverages must be sold to consumers for consumption on the vendor’s licensed premises or on contiguous licensed premises owned by the vendor. These vendors are known as “brew pubs.”

¹ The Beverage Law means chs. 561, 562, 563, 564, 565, 567, and 568, F.S. See s. 561.01(6), F.S.

² See s. 561.14, F.S.

³ Section 561.02, F.S.

⁴ Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington’s Three-Tier System Challenged by Costco v. Washington State Liquor Control Board*, a copy can be found at: http://www.lanepowell.com/wp-content/uploads/2009/04/pricce_001.pdf (Last visited February 28, 2013).

⁵ Section 563.01, F.S., defines the terms “beer” and “malt beverage” to mean all brewed beverages containing malt.

⁶ See ss 561.221(2) and (3), F.S., which permits the limited manufacture of beer by vendors.

⁷ See s. 562.16, F.S., which permits the possession of less than one gallon of untaxed alcoholic beverages when purchased by the possessor out-of-state in accordance with the laws of the state where purchased and brought into the state by the possessor.

⁸ See s. 561.221(1), F.S.

⁹ Section 561.221(3)(a)1., F.S., defines the term “keg” as 15.5 gallons.

In a three-tier system, each license classification has clearly delineated functions. In Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.¹⁰ Vendors are limited to purchasing their alcoholic beverage inventory from licensed distributors, manufacturers, or bottlers.¹¹ Importers, whether resident or nonresident, are licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else. An importer can have no direct or indirect affiliation with any vendor licensed in this state.¹²

Section 561.20, F.S., limits, per county, the number of alcoholic beverage licenses that may be issued that permit the sale of beer, wine, and liquor. Section 561.20, F.S., limits the number of licenses in a county to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as quota licenses. New quota licenses are created and issued when there is an increase in the population of a county. The licenses can also be issued when a county initially changes from a county which does not permit the sale of intoxicating liquor to one that does permit their sale. The quota license is the only alcoholic beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation.

On-Premises or Off-Premises Consumption-Malt Beverages

Section 564.02, F.S., distinguishes between places of business where a vendor is licensed to only sell malt beverages for on-premises consumption¹³ and places of business where such on-premises consumption is permitted.¹⁴ According to the department, vendors licensed to sell malt beverages for on-premises consumption may sell alcoholic beverages for the customer to take it away from the licensed premises for consumption elsewhere. The license for a place of business where consumption on the premises is permitted does not prohibit the sale to a consumer for consumption away from the licensed premises. The license fee for consumption only off the licensed premises is 50 percent less than for a license in which on-premises consumption is permitted.¹⁵

According to alcoholic beverage industry representatives and a representative for the division, vendors with on-premises licenses routinely fill containers with a malt beverage and seal them for customers to take off-premises for later consumption. They note that current law does not prohibit this practice. The vendors typically seal the beverage container before the consumer leaves the premises so that the consumer will not violate any local ordinances that prohibit the carrying in public of open containers of alcoholic beverages or the state-law prohibition against the possession of open containers of alcoholic beverages in vehicles.¹⁶ The beverage law does not define the term “sealed container.”

¹⁰ Section 561.14(3), F.S. However, see discussion regarding the exception for certified Florida Farm Wineries in s. 561.221, F.S.

¹¹ Section 561.14(3), F.S. Vendors may buy from vendors in a pool buying group if the initial purchase was by a single purchase by a pool buying agent.

¹² Section 561.14(5), F.S.

¹³ See s. 565.02(1)(a), F.S.

¹⁴ See ss. 565.02(1)(b)-(f) and 565.045, F.S.

¹⁵ See s. 565.02(1)(a), F.S.

¹⁶ Section 316.1936, F.S.

In 1995, the department repealed a rule which explicitly stated that an on-premises malt beverage licensee could sell malt beverages, for consumption off-premises, in “sealed containers” and could also sell wine and distilled spirits in the “original sealed containers as received from the distributor.”¹⁷

Malt Beverage Containers

Section 563.06(6), F.S., requires that all malt beverages that are offered for sale by vendors must be packaged in individual containers containing no more than 32 ounces (one quart). However, malt beverages may be packaged in bulk or in kegs or in barrels or in any individual container containing one gallon or more of malt beverage regardless of individual container type.

Prior to 2001, s. 563.06(6), F.S., provided that malt beverages could be sold by vendors only in 8, 12, 16, or 32 ounce individual containers. Chapter 2001-78, L.O.F., amended that section to allow vendors to sell malt beverages in individual containers of “no more than 32 ounces. The current provision allowing containers of one gallon or more was unaffected by that amendment.

Growlers

Some states permit vendors to sell malt beverages in containers known as “growlers,”¹⁸ which typically are reusable containers of between 32 ounces and one gallon that the consumer can fill with the vendor’s malt beverage for consumption off the licensed premises. According to a representative for several vendors who manufacture malt beverages,¹⁹ the national standard size for a growler is 64 ounces. Florida law does not permit the use of a 64 ounce growler.

III. Effect of Proposed Changes:

The bill amends s. 563.06(6), F.S., to authorize the sale of individual containers of malt beverages containing 64 ounces.

The bill requires that malt beverage containers may be filled at the point of sale by a licensed manufacturer or by a vendor licensed for consumption on the premises. The malt beverage container must have an unbroken seal or be incapable of being immediately consumed.

The effective date of the bill is July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁷ Rule 7A-1.008, F.A.C., as amended on March 10, 1985. This rule was subsequently transferred to rule 61A-1.008, F.A.C., and then repealed on July 5th, 1995.

¹⁸ The term “growlers” is derived from the late 1800s and early 1900s practice in which fresh beer was carried from the local pub to one’s home by means of a small-galvanized pail. When the beer sloshed around the pail, it created a rumbling sound as the carbon dioxide escaped through the lid. See “The Growler: Beer-to-Go!,” *Beer Advocate* (July 31, 2002). A copy of the article is available at: <http://beeradvocate.com/articles/384> (Last visited March 8, 2013).

¹⁹ According to several representatives for vendors who manufacture malt beverages and sell 32-ounce growlers, they are licensed under s. 561.221(2), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Licensed venders of alcoholic beverages could sell malt beverages in 64 ounce containers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. 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 Committee on March 21, 2013:

The committee substitute (CS) amends s. 563.06(6), F.S., to require that malt beverage containers may be filled at the point of sale by a licensed manufacturer or by a vendor licensed for consumption on the premises. The CS also requires that the malt beverage container must have an unbroken seal or be incapable of being immediately consumed.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/22/2013	.	
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	.	

The Committee on Regulated Industries (Detert) recommended the following:

Senate Amendment

Delete line 18
and insert:
beverages. Such containers may be filled at the point of sale by either a licensed manufacturer or a vendor licensed for consumption on the premises but must have an unbroken seal or be incapable of being immediately consumed. ~~; provided, however,~~
~~that nothing contained in~~



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LEGISLATIVE ACTION

Senate	.	House
Comm: FC	.	
03/22/2013	.	
	.	
	.	
	.	

The Committee on Regulated Industries (Sachs) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (9) of section 316.1936, Florida Statutes, is amended to read:

316.1936 Possession of open containers of alcoholic beverages in vehicles prohibited; penalties.—

(9) A bottle of wine that has been resealed and is transported pursuant to s. 564.09 or a 64-ounce container of malt beverage that has been refilled and resealed and is transported pursuant to s. 563.0205 is not an open container



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13 under the provisions of this section.

14 Section 2. Subsections (22) through (24) are added to
15 section 561.01, Florida Statutes, to read:

16 561.01 Definitions.—As used in the Beverage Law:

17 (22) "Package store" means a licensed place of business in
18 which alcoholic beverages are sold in sealed containers as
19 received from the distributor for consumption off the premises
20 only.

21 (23) "Sales by the package" or "package sales" means sales
22 of sealed containers for consumption off the premises.

23 (24) "Sealed container" means a container that is factory
24 sealed by a licensed manufacturer and has not been opened.

25 Section 3. Section 561.221, Florida Statutes, is amended to
26 read:

27 561.221 Licensing of manufacturers and distributors as
28 vendors and of vendors as manufacturers; conditions and
29 limitations.—

30 (1) (a) Nothing contained in s. 561.22, s. 561.42, or any
31 other provision of the Beverage Law prohibits the ownership,
32 management, operation, or control of not more than three
33 vendor's licenses for the sale of alcoholic beverages by a
34 manufacturer of wine who is licensed and engaged in the
35 manufacture of wine in this state, even if such manufacturer is
36 also licensed as a distributor; provided that no such vendor's
37 license shall be owned, managed, operated, or controlled by any
38 licensed manufacturer of wine unless the licensed premises of
39 the vendor are situated on property contiguous to the
40 manufacturing premises of the licensed manufacturer of wine.

41 (b) The Division of Alcoholic Beverages and Tobacco shall



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42 issue permits to a certified Florida Farm Winery to conduct
43 tasting and sales of wine produced by certified Florida Farm
44 Wineries at Florida fairs, trade shows, expositions, and
45 festivals. The certified Florida Farm Winery shall pay all entry
46 fees and shall have a winery representative present during the
47 event. The permit is limited to the length of the event.

48 (2) Notwithstanding s. 561.22, s. 561.42, or any other
49 provision of the Beverage Law, the division may ~~is authorized to~~
50 issue vendor's licenses to a manufacturer of malt beverages,
51 ~~even if such manufacturer is also licensed as a distributor,~~ for
52 the sale of alcoholic beverages, whether by the drink or in
53 sealed containers, on property consisting of a single complex,
54 for consumption only on the vendor's licensed premises within
55 such complex if all of the following requirements are met:

56 (a) The complex comprises at least 25 enclosed acres of
57 land.

58 (b) The enclosed area has a controlled entrance and exit.

59 (c) The property has permanent exhibitions and a variety of
60 recreational activities.

61 (d) At least 1 million visitors annually pay admission fees
62 to the complex.

63 (e) The complex includes, ~~which property shall include~~ a
64 brewery and such other structures that ~~which~~ promote the brewery
65 and the tourist industry of the state. ~~However, such~~

66 (f) The property is not ~~may be~~ divided by ~~no~~ more than one
67 public street or highway.

68 (3) (a) Notwithstanding s. 561.22, s. 561.42, or any other
69 provision ~~provisions~~ of the Beverage Law, any vendor licensed in
70 this state may be licensed as a manufacturer of malt beverages



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71 and referred to as a brewpub upon a finding by the division
72 that:

73 1. The vendor will be engaged in brewing malt beverages at
74 a single location and in an amount that ~~which~~ will not exceed
75 5,000 ~~10,000~~ kegs, as defined in s. 563.01, per year. ~~For~~
76 ~~purposes of this subsection, the term "keg" means 15.5 gallons.~~

77 2. The malt beverages so brewed will be sold to consumers
78 for consumption on the vendor's licensed premises or on
79 contiguous licensed premises owned by the vendor.

80 (b) Any vendor that ~~which~~ is also licensed as a
81 manufacturer of malt beverages under ~~pursuant to~~ this subsection
82 is ~~shall be~~ responsible for applicable reports pursuant to ss.
83 561.50 and 561.55 with respect to the amount of beverage
84 manufactured each month and shall pay applicable excise taxes
85 thereon to the division by the 10th day of each month for the
86 previous month.

87 (c) It is ~~shall be~~ unlawful for a ~~any~~ licensed distributor
88 of malt beverages or an ~~any~~ officer, agent, or other
89 representative thereof to discourage or prohibit a ~~any~~ vendor
90 licensed as a manufacturer under this subsection from offering
91 malt beverages brewed for consumption on the licensed premises
92 of the vendor.

93 (d) It is ~~shall be~~ unlawful for a ~~any~~ manufacturer of malt
94 beverages or an ~~any~~ officer, agent, or other representative
95 thereof to take any action to discourage or prohibit a ~~any~~
96 distributor of the manufacturer's product from distributing such
97 product to a licensed vendor that ~~which~~ is also licensed as a
98 manufacturer of malt beverages under ~~pursuant to~~ this
99 subsection.



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100 (4) Notwithstanding s. 561.22, s. 561.42, or any other
101 provision of the Beverage Law, the division may issue vendor's
102 licenses to a manufacturer of malt beverages licensed and
103 operating in this state as a startup brewery, as defined in s.
104 563.01, for the sale of malt beverages pursuant to s. 563.0205.

105 Section 4. Subsection (1) of section 561.5101, Florida
106 Statutes, is amended to read:

107 561.5101 Come-to-rest requirement; exceptions; penalties.—

108 (1) For purposes of inspection and tax-revenue control, all
109 malt beverages, except those manufactured and sold under a
110 vendor's license issued pursuant to s. 561.221(3), must come to
111 rest at the licensed premises of an alcoholic beverage
112 wholesaler in this state before being sold to a vendor by the
113 wholesaler. The prohibition contained in this subsection does
114 not apply to the shipment of malt beverages commonly known as
115 private labels. The prohibition contained in this subsection
116 does shall not prevent a manufacturer from shipping malt
117 beverages for storage at a bonded warehouse facility if,
118 ~~provided that~~ such malt beverages are distributed as provided in
119 this subsection or to an out-of-state entity.

120 Section 5. Section 563.01, Florida Statutes, is amended to
121 read:

122 563.01 Definitions ~~Definition.~~—As used in this chapter, the
123 term: terms

124 (1) "Beer" or and "malt beverage" means a mean-all brewed
125 beverage beverages containing malt.

126 (2) "Brewery" means a manufacturer of malt beverages.

127 (3) "Brewpub" means a vendor licensed in this state to sell
128 alcoholic beverages which is also licensed as a manufacturer of



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129 malt beverages pursuant to s. 561.221(3).

130 (4) "Keg" means 15.5 gallons.

131 (5) "Startup brewery" means a brewery licensed and
132 operating in this state which produces no more than 2,500 kegs
133 of malt beverages on its premises per year.

134 Section 6. Subsection (2) of section 563.02, Florida
135 Statutes, is amended to read:

136 563.02 License fees; vendors; manufacturers and
137 distributors.—

138 (2) A Each manufacturer engaged in the business of brewing
139 only malt beverages which is not a brewpub must shall pay an
140 annual state license tax of \$3,000 for each plant or branch he
141 or she operates may operate. A However, Each manufacturer
142 engaged in the business of brewing less than 10,000 kegs of malt
143 beverages as a brewpub must annually for consumption on the
144 premises pursuant to s. 561.221(3) shall pay an annual state
145 license tax of \$500 for each plant or branch he or she operates.

146 Section 7. Section 563.0205, Florida Statutes, is created
147 to read:

148 563.0205 Startup breweries.—

149 (1) A startup brewery licensed and operating in this state
150 which is also licensed as a vendor under s. 561.221(4) may sell
151 malt beverages produced on its premises:

152 (a) By the drink for on-premises consumption; or

153 (b) In a 64-ounce sealed container for off-premises
154 consumption if the container was:

155 1. Sealed at the factory; or

156 2. Refilled and resealed on the premises of the vendor as
157 securely as the original seal, but it must be visible that the



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158 seal has been broken and the container opened or tampered with.

159 (2) Sales described in subsection (1) are authorized only
160 on private property contiguous to the brewery premises licensed
161 in this state and included on the sketch or diagram defining the
162 licensed premises submitted with the brewery's application for a
163 manufacturer's license. All sketch or diagram revisions by the
164 brewery require approval from the Division of Alcoholic
165 Beverages and Tobacco of the Department of Business and
166 Professional Regulation verifying that all malt beverage retail
167 locations operated by the brewery are owned or leased by the
168 brewery and are on property contiguous to the brewery's
169 production building in this state.

170 (3) A startup brewery may not sell malt beverages as a
171 vendor under this section except in face-to-face sales
172 transactions with consumers who purchase for personal use rather
173 than for resale.

174 (4) A startup brewery shall report to the Division of
175 Alcoholic Beverages and Tobacco of the Department of Business
176 and Professional Regulation within 5 days after producing more
177 than 2,500 kegs of malt beverages on its premises in a year.
178 After the brewery reaches this production limitation, it ceases
179 to be a startup brewery, and any sales to consumers at the
180 brewery's licensed premises for off-premises consumption are
181 prohibited upon the expiration of its manufacturer's license.

182 (5) A startup brewery is responsible for applicable reports
183 pursuant to ss. 561.50 and 561.55 with respect to the amount of
184 malt beverages manufactured each month, and it must pay
185 applicable excise taxes thereon to the Division of Alcoholic
186 Beverages and Tobacco of the Department of Business and



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187 Professional Regulation by the 10th day of each month for the
188 previous month. A startup brewery shall also provide the
189 Division of Alcoholic Beverages and Tobacco of the Department of
190 Business and Professional Regulation a copy of each federal
191 excise tax report that it submits to the Federal Government, if
192 any, with all supporting documents during the reporting period
193 under subsection (4).

194 (6) A startup brewery may not ship, arrange to ship, or
195 deliver any of its malt beverages to consumers within the state.
196 However, a startup brewery may ship, arrange to ship, or deliver
197 its malt beverages to wholesale distributors of malt beverages,
198 state or federal bonded warehouses, or exporters.

199 (7) The Division of Alcoholic Beverages and Tobacco of the
200 Department of Business and Professional Regulation may adopt
201 rules to administer this section.

202 Section 8. Subsection (14) of section 563.022, Florida
203 Statutes, is amended to read:

204 563.022 Relations between beer distributors and
205 manufacturers.—

206 (14) MANUFACTURER; PROHIBITED INTERESTS.—

207 (a) This subsection applies to:

208 1. A manufacturer;

209 2. Any officer, director, agent, or employee of a
210 manufacturer; or

211 3. An affiliate of any manufacturer, regardless of whether
212 the affiliation is corporate or by management, direction, or
213 control.

214 (b) Except as provided in paragraph (c), an ~~no~~ entity or
215 person specified in paragraph (a) may not have an interest in



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216 the license, business, assets, or corporate stock of a licensed
217 distributor nor may ~~shall~~ such entity sell directly to any
218 vendor in this state other than to vendors who are licensed
219 pursuant to s. 561.221(2), (3), or (4) ~~561.221(2)~~.

220 (c) Any entity described in paragraph (a) may financially
221 assist a proposed distributor in acquiring ownership of the
222 distributorship through participation in a limited partnership
223 arrangement in which the entity described in paragraph (a) is a
224 limited partner and the proposed distributor seeking to acquire
225 ownership of the distributorship is the general partner. Such
226 limited partnership arrangements may exist for no longer than 8
227 years from their creation and may ~~shall~~ not be extended or
228 renewed by means of a transfer of full ownership to an entity
229 described in paragraph (a) followed by the creation of a new
230 limited partnership or by any other means. In any such
231 arrangement for financial assistance, the federal basic permit
232 and distributor's license issued by the division shall be issued
233 in the name of the distributor and not in the name of an entity
234 described in paragraph (a). If, after the creation of a limited
235 partnership pursuant to this paragraph, an entity described in
236 paragraph (a) acquires title to the distributorship that ~~which~~
237 was the subject of the limited partnership, the entity described
238 in paragraph (a) shall divest itself of the distributorship
239 within 180 days, and the distributorship shall be ineligible for
240 limited partnership financing for 20 years thereafter. An ~~No~~
241 entity described in paragraph (a) may not ~~shall~~ enter into a
242 limited partnership arrangement with a licensed distributor
243 whose distributorship existed and was operated prior to the
244 creation of such limited partnership arrangement.



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245 (d) ~~Nothing in~~ The Beverage Law may not ~~shall~~ be construed
246 to prohibit a manufacturer from shipping products to or between
247 its breweries without a distributor's license.

248 (e) Notwithstanding ~~the provisions of~~ paragraph (b), any
249 entity named in paragraph (a) may have an interest in the
250 license, business, assets, or corporate stock of a licensed
251 distributor for a maximum of 180 consecutive days as the result
252 of a judgment of foreclosure against the distributor or for 180
253 consecutive days after acquiring title pursuant to the written
254 request of the licensed distributor. Under either of these
255 circumstances, manufacturer ownership of an interest in the
256 license, business, assets, or corporate stock of a licensed
257 distributor shall only be for 180 days and only for the purpose
258 of facilitating an orderly transfer of the distributorship to an
259 owner not affiliated with a manufacturer.

260 (f) Notwithstanding ~~the provisions of~~ paragraph (b), any
261 entity named in paragraph (a) may have a security interest in
262 the inventory or property of its licensed distributors to secure
263 payment for the said inventory or other loans for other
264 purposes.

265 Section 9. Subsection (6) of section 563.06, Florida
266 Statutes, is amended, and present subsection (7) of that section
267 is amended and renumbered as subsection (8), to read:

268 563.06 Malt beverages; imprint on individual container;
269 size of containers; exemptions.-

270 (6) All malt beverages packaged in individual containers
271 sold or offered for sale by vendors at retail in this state
272 shall be in individual containers containing 64 ounces or
273 smaller containers containing no more than 32 ounces of such



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274 malt beverages. ~~; provided, however, that nothing contained in~~
275 (7) This section does not shall affect malt beverages
276 packaged in bulk, ~~or~~ in kegs or ~~in~~ barrels, or in any individual
277 container containing 1 gallon or more of such malt beverage
278 regardless of individual container type.

279 (8) ~~(7)~~ Any person, firm, or corporation, or any of its
280 agents, officers, or employees which violates, violating any of
281 ~~the provisions of~~ this section commits, shall be guilty of a
282 misdemeanor of the first degree, punishable as provided in s.
283 775.082 or s. 775.083; and the license, if any, is shall be
284 subject to revocation or suspension by the division.

285 Section 10. A manufacturer of malt beverages which holds
286 active licenses as a manufacturer and as a vendor which were
287 issued under the Beverage Law before October 1, 2013, and whose
288 terms have not expired as of that date may continue to operate
289 under those licenses until the term of the license as a
290 manufacturer expires.

291 Section 11. This act shall take effect October 1, 2013.

292
293 ===== T I T L E A M E N D M E N T =====

294 And the title is amended as follows:

295 Delete everything before the enacting clause
296 and insert:

297 A bill to be entitled
298 An act relating to alcoholic beverages; amending s.
299 316.1936, F.S.; exempting certain resealed containers
300 of malt beverages from open container prohibitions;
301 amending s. 561.01, F.S.; providing definitions
302 relating to package sales; amending s. 561.221, F.S.;



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303 revising provisions relating to the licensing of
304 manufacturers of malt beverages as vendors and of
305 vendors as manufacturers of malt beverages;
306 authorizing the issuance of vendor's licenses to
307 manufacturers of malt beverages licensed as startup
308 breweries; amending s. 561.5101, F.S.; revising
309 exceptions to the come-to-rest requirement; amending
310 s. 563.01, F.S.; providing definitions relating to
311 regulation of the manufacture, distribution, and sale
312 of beer or malt beverages; amending s. 563.02, F.S.;
313 revising requirements for license fees based on
314 whether a manufacturer of malt beverages operates as a
315 brewpub; creating s. 563.0205, F.S.; providing
316 requirements for startup breweries to manufacture and
317 sell their products; providing reporting requirements
318 and requirements relating to payment of state and
319 federal excise taxes on malt beverages; providing
320 rulemaking authority; amending s. 563.022, F.S.;
321 revising exceptions relating to prohibited interests
322 for manufacturers of malt beverages; conforming a
323 cross-reference to changes made by the act; amending
324 s. 563.06, F.S.; authorizing the sale of malt
325 beverages at retail in containers of a specified size;
326 providing for applicability relating to certain
327 manufacturers licensed before the effective date of
328 this act; providing an effective date.

By Senator Latvala

20-00758C-13

20131344__

1 A bill to be entitled

2 An act relating to malt beverages; amending s. 563.06,
3 F.S.; authorizing an additional size for individual
4 containers of malt beverages sold or offered for sale
5 by vendors at retail; providing an effective date.

6
7 Be It Enacted by the Legislature of the State of Florida:

8
9 Section 1. Subsection (7) of section 563.06, Florida
10 Statutes, is renumbered as subsection (8), and subsection (6) of
11 that section is amended to read:

12 563.06 Malt beverages; imprint on individual container;
13 size of containers; exemptions.-

14 (6) All malt beverages packaged in individual containers
15 sold or offered for sale by vendors at retail in this state
16 shall be in individual containers containing 64 ounces, or a
17 lesser size containing no more than 32 ounces, of such malt
18 beverages; ~~provided, however, that nothing contained in~~

19 (7) This section does not shall affect malt beverages
20 packaged in bulk, ~~or~~ in kegs or ~~in~~ barrels, or in an any
21 individual container containing 1 gallon or more of such malt
22 beverage regardless of individual container type.

23 Section 2. This act shall take effect July 1, 2013.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Budget - Subcommittee on General Government
Appropriations
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Community Affairs
Environmental Preservation and Conservation
Rules
Judiciary
Appropriations
Select Committee on Gaming

SENATOR JACK LATVALA
20th District

March 5, 2013

The Honorable Senator Kelli Stargel, Chair
Senate Committee on Regulated Industries
330 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Stargel:

I respectfully request consideration of Senate Bill 1344 regarding Malt Beverages. I would greatly appreciate the opportunity to present this legislation to the Committee on Regulated Industries as soon as possible.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Jack Latvala".

Jack Latvala
State Senator
District 20

Cc: Patrick Imhof, Staff Director;
Lynn Koon, Administrative Assistant

REPLY TO:

- 26133 U.S. Highway 19 North, Suite 201 Clearwater, FL 33763 (727) 793-2797
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: www.flsenate.gov

Don Gaetz
President of the Senate

Garrett Richter
President Pro Tempore

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/21/13
Meeting Date

Topic Malt Beverages

Bill Number 1344
(if applicable)

Name Josh Aubuchon

Amendment Barcode (all)
(if applicable)

Job Title Executive Director, Attorney

Address 215 S. Monroe St.
Street

Phone 850-222-3533

Tallahassee FL 32301
City State Zip

E-mail _____

Speaking: For Against Information

Representing Florida Brewers Guild

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/21/13

Meeting Date

Topic Growler size

Bill Number 1344
(if applicable)

Name Craig Birkmaier

Amendment Barcode _____
(if applicable)

Job Title Brewmaster

Address 3140 SW 42nd Way

Phone 352-258-2543

Street

Gainesville FL 32608

City

State

Zip

E-mail craig@swamphead.com

Speaking: For Against Information

Representing Swamp Head Brewery + Florida Brewers Guild

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-21-2013
Meeting Date

Topic GROWLERS

Bill Number 1344
(if applicable)

Name RICHARD GENTRY

Amendment Barcode _____
(if applicable)

Job Title _____

Address 2305 BRAEBURN CIR
Street

Phone 251-1837

Tall. FL 32309
City State Zip

E-mail RGENTRY@COMCAST.NET

Speaking: For Against Information

Representing BEER INDUSTRY OF FL.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

March 21, 2013
Meeting Date

Topic Malt Beverage Container Size

Bill Number 1344
(if applicable)

Name Scott Dick

Amendment Barcode _____
(if applicable)

Job Title lobbyist

Address 210 S. Monroe St.

Phone 850 421-9100

Tallahassee, FL 32301
City State Zip

E-mail Scott@skdgrp.com

Speaking: For Against Information

Representing FA Retail Federation & ABC Fine Wine & Spirits

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/21/2013

Meeting Date

Topic _____

Bill Number 1344

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/21/13
Meeting Date

Topic BOTTLE SIZES

Bill Number 1344
(if applicable)

Name ERIC LUMAN

Amendment Barcode _____
(if applicable)

Job Title OWNER/BREWER GREEN ROOM BREWING

Address 228 3RD ST N

Phone 904-472-1985

Street

JAV BEACH FL 32250

City

State

Zip

E-mail eric@greenroombrewing.com

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/21/13

Meeting Date

Topic BOTTLE SIZES

Bill Number 1344
(if applicable)

Name MIKE HALKER

Amendment Barcode _____
(if applicable)

Job Title PRESIDENT / HEAD BREWER

Address 2900 HIGH RIDGE RD #3

Phone 541-707-1253

Street

BOYNTON BEACH, FL 33426

City

State

Zip

E-mail MIKE@DUESOUTHACES.COM

Speaking: For Against Information

Representing DUE SOUTH BREWING CO.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/21/13

Meeting Date

Topic Growth B.11 / Craft Beer

Bill Number 1344
(if applicable)

Name Justin Clark

Amendment Barcode _____
(if applicable)

Job Title Vice President

Address 3924 Spruce St W

Phone (813) 541-5747

Street

Tampa
City

FL
State

33607
Zip

E-mail justin@citybrewing.com

Speaking: For Against Information

Representing City City Brewing

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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Late Filed
Amendment

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-21-13

Meeting Date

Topic Mart Beverages

Bill Number 1344
(if applicable)

Name Natalie King
Natalie

Amendment Barcode _____
(if applicable)

Job Title _____

Address 235 W. Brandon Blvd Ste 640
Street

Phone 813 924 8218

Brandon FL 33511
City State Zip

E-mail natalie@rsaconsultingllc

Speaking: For Against Information

Representing Peper Distributing

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/21/2013

Meeting Date

Topic Growler sizes

Bill Number 1344
(if applicable)

Name Devon Kreps

Amendment Barcode _____
(if applicable)

Job Title President, Seventh Sun Brewery

Address 1012 Broadway

Phone 770.235.5094

Street

Dunedin FL 34698

City

State

Zip

E-mail devon@seventhsun
brewing.com

Speaking: For Against Information

Representing Seventh Sun

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

*wants to
speak on
all
amend.
+ Bill*

3/21/13

Meeting Date

Topic Container Size

Bill Number SB 1344
(if applicable)

Name Mitchell Rubin

Amendment Barcode _____
(if applicable)

Job Title Ex Director

Address 215 S. Monroe St. #340

Phone (850) 224-2337

Street

Tallahassee FL 32301

E-mail MRubin2505@gol.com

City

State

Zip

Speaking: For Against Information

Representing Florida Beer Wholesalers Assn

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)



580-02497A-13

Proposed Committee Substitute by the Committee on Regulated Industries

A bill to be entitled

An act relating to pugilistic exhibitions; amending s. 548.002, F.S.; revising definitions; amending s. 548.004, F.S.; revising the duties and responsibilities of the executive director of the Florida State Boxing Commission; deleting a provision requiring the electronic recording of all scheduled Florida State Boxing Commission proceedings; amending s. 548.006, F.S.; providing the commission exclusive jurisdiction over approval of amateur mixed martial arts matches; amending s. 548.007, F.S.; revising nonapplicability of ch. 548, F.S.; amending s. 548.046, F.S.; providing for immediate license suspension and other disciplinary action if a participant fails or refuses to provide a urine sample or tests positive for specified prohibited substances; amending s. 548.054, F.S.; revising procedure and requirements for requesting a hearing following the withholding of a purse; amending s. 548.06, F.S.; requiring promoters to retain specified documents and records; authorizing the commission and the Department of Business and Professional Regulation to audit specified records retained by a promoter; requiring the commission to adopt rules; amending s. 548.07, F.S.; revising the procedure for suspension of licensure by specified persons; amending s. 548.073, F.S.; revising rules of procedure governing commission



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hearings; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 548.002, Florida Statutes, is amended to read:

548.002 Definitions.—As used in this chapter, the term:

(1) "Amateur" means a person who has never received nor competed for any purse or other article of value, either for the expenses of training or for participating in a match, other than a prize of \$50 in value or less.

(2) "Amateur sanctioning organization" means any business entity organized for sanctioning and supervising matches involving amateurs.

(3) "Boxing" means the practice of fighting with the fists as a sport to compete with the fists.

(4) "Commission" means the Florida State Boxing Commission.

(5) "Concessionaire" means 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.

(6) "Concessions" means souvenirs, programs, drinks, food, alcohol, clothing, or other tangible objects sold to the general public during matches.

~~(7)~~(6) "Contest" means 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.



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57 ~~(8)-(7)~~ "Department" means the Department of Business and
58 Professional Regulation.
59 ~~(9)-(8)~~ "Event" means one or more matches comprising a show.
60 ~~(10)-(9)~~ "Exhibition" means a boxing, kickboxing, or mixed
61 martial arts engagement in which persons participating show or
62 display their skill without necessarily striving to win using,
63 but not necessarily being limited to, strikes and blows to the
64 head.
65 (11) "Face value" means the dollar value of a ticket which
66 is equal to the dollar amount that a customer is required to pay
67 or, for complimentary tickets, would have been required to pay
68 to purchase a ticket with equivalent seating priority in order
69 to view the event. If the ticket specifies the amount of
70 admission charges attributable to state or federal taxes, such
71 taxes shall not be included in the face value.
72 ~~(12)-(10)~~ "Foreign copromoter" means a promoter who has no
73 place of business within this state.
74 ~~(13)~~ "Full contact" means the use of blows and strikes
75 during a match or bout that:
76 (a) Are intended to break the plane of the receiving
77 participant's body;
78 (b) Are delivered to the head, face, neck, or body of the
79 receiving participant; and
80 (c) Cause the receiving participant to move in response to
81 the blow or strike.
82 ~~(14)-(11)~~ "Judge" means a person who has a vote in
83 determining the winner of any contest.
84 ~~(15)-(12)~~ "Kickboxing" means the practice of fighting ~~to~~
85 compete with the fists, hands, feet, legs, or any combination



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86 thereof as a sport, and includes "punchkick" and other similar
87 competitions.
88 ~~(16)-(13)~~ "Manager" means any person who, directly or
89 indirectly, controls or administers the boxing, kickboxing, or
90 mixed martial arts affairs of any participant.
91 ~~(17)-(14)~~ "Match" means any contest or exhibition.
92 ~~(18)-(15)~~ "Matchmaker" means a person who brings together
93 professionals or arranges matches for professionals.
94 ~~(19)-(16)~~ "Mixed martial arts" means full contact, unarmed
95 combat involving the use, ~~subject to any applicable limitations~~
96 ~~set forth in this chapter~~, of a combination of two or more
97 techniques, including, but not limited to, wrestling, grappling,
98 kicking, and striking, from different disciplines of the martial
99 arts, including, but not limited to, boxing, kickboxing, muay
100 Thai, and Thai boxing grappling, kicking, and striking.
101 ~~(20)-(17)~~ "Participant" means a professional competing in a
102 boxing, kickboxing, or mixed martial arts match.
103 ~~(21)-(18)~~ "Physician" means a person an individual licensed
104 as a physician under ch. 458 or licensed as an osteopathic
105 physician under ch. 459 or holding an equivalent license from
106 another jurisdiction to practice medicine and surgery in this
107 state.
108 ~~(22)-(19)~~ "Professional" means a person who has received or
109 competed for any purse or other article of a value greater than
110 \$50, either for the expenses of training or for participating in
111 any match.
112 ~~(23)-(20)~~ "Promoter" means any person, and includes any
113 officer, director, employee, or stockholder of a corporate
114 promoter, who produces, arranges, or stages any match involving



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115 a professional.

116 ~~(24)(21)~~ "Purse" means the financial guarantee or other
117 remuneration for which a professional is participating in a
118 match and includes the professional's share of any payment
119 received for radio broadcasting, television, and motion picture
120 rights.

121 ~~(25)(22)~~ "Second" or "cornerman" means a person who assists
122 the match participant between rounds and maintains the corner of
123 the participant during the match.

124 ~~(26)(23)~~ "Secretary" means the Secretary of Business and
125 Professional Regulation.

126 Section 2. Section 548.004, Florida Statutes, is amended to
127 read:

128 548.004 Executive director; duties, compensation,
129 administrative support.—

130 (1) The department shall employ an executive director with
131 the approval of the commission. The executive director shall
132 serve at the pleasure of the secretary. The executive director
133 or his or her designee shall perform duties and responsibilities
134 as set forth by the commission, which shall include conducting
135 the functions of the commission office; appointing event and
136 commission officials; approving licenses, permits, matches, and
137 fight cards; and performing any ~~keep a record of all proceedings~~
138 ~~of the commission; shall preserve all books, papers, and~~
139 ~~documents pertaining to the business of the commission; shall~~
140 ~~prepare any notices and papers required; shall appoint judges,~~
141 ~~referees, and other officials as delegated by the commission and~~
142 ~~pursuant to this chapter and rules of the commission; and shall~~
143 ~~perform such other duties as the department or commission deems~~



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144 ~~necessary directs.~~ The executive director may issue subpoenas
145 and administer oaths.

146 ~~(2) The commission shall require electronic recording of~~
147 ~~all scheduled proceedings of the commission.~~

148 ~~(2)(3)~~ The department shall provide assistance in budget
149 development and budget submission for state funding requests.
150 The department shall submit an annual balanced legislative
151 budget for the commission which is based upon anticipated
152 revenue. The department shall provide technical assistance and
153 administrative support, if requested or determined necessary
154 ~~needed~~, to the commission and its executive director on issues
155 relating to personnel, contracting, property management, or
156 other issues identified as important to performing the duties of
157 this chapter and to protecting the interests of the state.

158 Section 3. Subsection (3) of section 548.006, Florida
159 Statutes, is amended to read:

160 548.006 Power of commission to control professional and
161 amateur pugilistic matches contests and exhibitions;
162 certification of competitiveness of professional mixed martial
163 arts and kickboxing matches.—

164 (3) The commission has exclusive jurisdiction over
165 approval, disapproval, suspension of approval, and revocation of
166 approval of all amateur sanctioning organizations for amateur
167 boxing, ~~and~~ kickboxing, ~~and~~ mixed martial arts matches held in
168 this state.

169 Section 4. Section 548.007, Florida Statutes, is amended to
170 read:

171 548.007 Exemptions.—This chapter does Applicability of
172 ~~provisions to amateur matches and certain other matches or~~



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173 ~~events. Sections 548.001-548.079 do not apply to:~~

174 (1) A match that does not allow full contact ~~match~~
175 ~~conducted or sponsored by a bona fide nonprofit school or~~
176 ~~education program whose primary purpose is instruction in the~~
177 ~~martial arts, boxing, or kickboxing, if the match held in~~
178 ~~conjunction with the instruction is limited to amateurs. ~~amateur~~~~
179 ~~participants who are students of the school or instructional~~
180 ~~program;~~

181 (2) A match conducted or sponsored by any company or
182 detachment of the Florida National Guard, if the match is
183 limited to amateurs participants who are members of the company
184 or detachment of the Florida National Guard. ~~or~~

185 (3) A match conducted or sponsored by the Fraternal Order
186 of Police, if the match is limited to amateurs amateur
187 ~~participants~~ and is held in conjunction with a charitable event.

188 (4) A match conducted by a public postsecondary education
189 institution or a public secondary school, if the match is
190 limited to amateurs who are students enrolled in the institution
191 or school and members of a school-sponsored club or team.

192 (5) A match conducted by or between companies or
193 detachments of the United States Army, Navy, Air Force, Marines,
194 Coast Guard, or National Guard, if the match is limited to
195 amateurs who are members of the United States Armed Forces.

196 (6) A match conducted by the International Olympic
197 Committee, the International Paralympic Committee, the Special
198 Olympics, or the Junior Olympics, if the match is limited to
199 amateurs who are competing in or attempting to qualify for the
200 Olympics, Paralympics, Special Olympics, or Junior Olympics.

201 (7) A professional or amateur martial arts activity. As



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202 used in this subsection, the term "martial arts" means any one
203 of the traditional forms of self-defense or unarmed combat
204 involving the use of physical skill and coordination that are
205 taught and advanced on a belt system, including, but not limited
206 to, karate, aikido, judo, and kung fu. The term does not include
207 "mixed martial arts."

208 Section 5. Paragraph (c) of subsection (3) of section
209 548.046, Florida Statutes, is amended, and paragraph (d) is
210 added to that subsection, to read:

211 548.046 Physician's attendance at match; examinations;
212 cancellation of match.-

213 (3)

214 (c) Failure or refusal to provide a urine sample
215 immediately upon request constitutes an immediate serious danger
216 to the health, safety, and welfare of the participants and the
217 public and shall result in the immediate suspension ~~revocation~~
218 of the participant's license and constitute grounds for
219 additional disciplinary action. Any participant who has been
220 adjudged the loser of a match and who subsequently refuses to or
221 is unable to provide a urine sample shall forfeit his or her
222 share of the purse to the commission. Any participant who is
223 adjudged the winner of a match and who subsequently refuses to
224 or is unable to provide a urine sample shall forfeit the win and
225 shall not be allowed to engage in any future match in the state.
226 A no-decision result shall be entered into the official record
227 as the result of the match. The purse shall be redistributed as
228 though the participant found to be in violation of this
229 subsection had lost the match. If redistribution of the purse is
230 not necessary or after redistribution of the purse is completed,



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231 the participant found to be in violation of this subsection
232 shall forfeit his or her share of the purse to the commission.

233 (d) Testing positive for any of the prohibited substances
234 as set forth by commission rule constitutes an immediate serious
235 danger to the health, safety, and welfare of the participants
236 and the general public and shall result in the immediate
237 suspension of the participant's license and constitute grounds
238 for additional disciplinary action.

239 Section 6. Subsection (2) of section 548.054, Florida
240 Statutes, is amended to read:

241 548.054 Withholding of purses; hearing; disposition of
242 withheld purse forfeiture.-

243 (2) Any purse so withheld shall be delivered by the
244 promoter to the commission upon demand. Within 10 days after the
245 match, the person from whom the sum was withheld may submit a
246 petition for a hearing to the commission ~~apply in writing to the~~
247 ~~commission for a hearing.~~ Upon receipt of the petition
248 application, the commission may hold ~~shall fix a date for a~~
249 hearing pursuant to ss. 120.569 and 120.57. ~~Within 10 days after~~
250 ~~the hearing or after 10 days following the match,~~ If no petition
251 application for a hearing is filed, the commission shall meet
252 and determine the disposition to be made of the withheld purse.
253 If the commission finds the charges sufficient, it may declare
254 all or ~~any~~ part of the funds forfeited. If the commission finds
255 the charges not sufficient upon which to base a withholding
256 order, it shall immediately distribute the withheld funds to the
257 persons entitled thereto.

258 Section 7. Subsection (1) of section 548.06, Florida
259 Statutes, is amended, and subsections (7), (8), and (9) are



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260 added to that section, to read:

261 548.06 Payments to state; exemptions; audit of records.-

262 (1) A promoter holding a match shall, within 72 hours after
263 the match, file with the commission a written report which
264 includes the number of tickets sold, the amount of gross
265 receipts, and any other facts the commission may require. For
266 the purposes of this chapter, ~~total~~ gross receipts include:

267 (a) The gross price charged for the sale or lease of
268 broadcasting, television, and motion picture rights without any
269 deductions for commissions, brokerage fees, distribution fees,
270 advertising, or other expenses or charges;

271 (b) The portion of the receipts from the sale of souvenirs,
272 programs, and other concessions received by the promoter;

273 (c) The face value of all tickets sold and complimentary
274 tickets issued, provided, or given, less federal and state
275 taxes, if applicable; and

276 (d) The face value of any seat or seating issued, provided,
277 or given in exchange for advertising, sponsorships, or anything
278 of value to the promotion of an event.

279 (7) The promoter shall retain a copy of the following
280 records for a period of 7 years and shall provide a copy of such
281 records to the commission upon request:

282 (a) Records necessary to justify and support each report
283 submitted to the commission.

284 (b) A copy of each report filed with the commission,
285 certified by the professional or amateur promoter to be correct.

286 (c) Copies of all gross receipts.

287 (d) A copy of the independently prepared ticket manifest.

288 (e) Receipted vouchers for all expenditures and deductions.



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289 (8) Compliance with the requirements of this section is
290 subject to verification by department or commission audit. The
291 commission shall have the right, upon reasonable notice to the
292 promoter, to audit the promoter's books and records relating to
293 the promoter's operations under this chapter.

294 (9) The commission shall adopt rules establishing a
295 procedure for auditing a promoter's records and resolving any
296 inconsistencies revealed by an audit, such as excessive taxes
297 paid or taxes owed by the filing promoter, and shall adopt a
298 rule imposing a late fee in the event of taxes owed.

299 Section 8. Section 548.07, Florida Statutes, is amended to
300 read:

301 548.07 Suspension of license or permit by commissioner;
302 hearing. ~~Notwithstanding any provision of chapter 120, any~~
303 ~~member of the commission may, upon her or his own motion or upon~~
304 ~~the verified written complaint of any person charging a licensee~~
305 ~~or permittee with violating this chapter, suspend any license or~~
306 ~~permit until final determination by the commission if such~~
307 ~~action is necessary to protect the public welfare and the best~~
308 ~~interests of the sport. The commission shall hold a hearing~~
309 ~~within 10 days after the date on which the license or permit is~~
310 ~~suspended.~~

311 (1) The commission, any commissioner, any commission
312 designee, or the executive director or his or her designee may
313 issue an emergency suspension of license order to any person
314 licensed under this chapter who poses an immediate serious
315 danger to the health, safety, and welfare of the participants
316 and the general public.

317 (2) The department's Office of General Counsel shall review



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318 the grounds for each emergency suspension order issued and file
319 an administrative complaint against the licensee within 21 days
320 after the issuance of the emergency suspension order.

321 (3) Following service of the administrative complaint,
322 pursuant to procedures set forth in s. 455.275, the disciplinary
323 process shall proceed pursuant to chapter 120.

324 Section 9. Section 548.073, Florida Statutes, is amended to
325 read:

326 548.073 Commission hearings. ~~All hearings held under this~~
327 ~~chapter must be held in accordance with chapter 120~~
328 ~~Notwithstanding the provisions of chapter 120, any member of the~~
329 ~~commission may conduct a hearing. Before any adjudication is~~
330 ~~rendered, a majority of the members of the commission shall~~
331 ~~examine the record and approve the adjudication and order.~~

332 Section 10. This act shall take effect July 1, 2013.

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 1686

INTRODUCER: Regulated Industries Committee and Senator Altman

SUBJECT: Pugilistic Exhibitions

DATE: March 14, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.			AGG	
3.			AP	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 1686 relates to pugilistic exhibitions, such as boxing, kickboxing, and the martial arts, which are regulated by the Florida Boxing Commission (commission) within the Department of Business and Professional Regulation (department) under ch. 548, F.S. The bill:

- 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 US 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 is an immediate and serious risk to the health, safety, and welfare of the participants and the public, and

authorizes the commission to suspend the participant's license and to subject the participant to disciplinary action;

- Provides that the commission's hearings related to the withholding of purses must be held pursuant to ch. 120, F.S., the Administrative Procedures Act;
- Requires promoters to keep specified records for a period of seven years;
- 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, 2013.

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

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.

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 that all matches comply with the laws and rules and that the matches are competitive and physically safe for the participants. The commission licensed 1,224 professionals in FY 2011-12 and processed 51 live event permits. 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).

¹ Section 548.006(3), F.S.

² Section 548.002(2), F.S.

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 department's OPS event staff, i.e., the event coordinator, timekeeper, and inspector. These 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.

Definitions

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

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 548.002(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.

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;
- Preserve all books, papers, and documents pertaining to the business of the commission;
- Prepare any notices and papers required;
- Appoint judges, referees, and other officials as delegated by the commission and pursuant to ch. 548, F.S., and the rules of the commission; and
- Perform 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.³ 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.⁴ 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.⁵

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;
- 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.⁶

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.⁷

In the event that a purse is withheld, the purse must be delivered to the commission by the promoter.⁸ Within ten days after the match, the person from whom the purse was withheld may

³ See s. 548.012(1), F.S.

⁴ Section 548.017, F.S.

⁵ See 548.015, F.S.

⁶ See s. 548.007, F.S.

⁷ Section 548.054(1), F.S.

⁸ Section 548.054(2), F.S.

apply, in writing, to the commission for a hearing.⁹ 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.¹⁰

If the commission finds the charges sufficient, it may decide that all or a part of the funds be forfeited.¹¹ Conversely, if the commission does not find the charges sufficient, it must distribute the withheld funds immediately.¹²

According to the department, the current process is vague and does not provide appropriate procedure or rulemaking authority to create a procedure that provides appropriate due process rights.

Reporting Requirement

Within seventy-two hours after a match, the promoter of that match must file a written report with the commission.¹³ The report must include information about the number of tickets sold, the amount of gross receipts, and any other facts that the commission requires.¹⁴ Chapter 548, F.S., does not require the promoter to retain a copy of the written report.

The term “gross receipts” is defined as:

- 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.¹⁵

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.

Commission Hearings

Section 548.073, F.S., provides that any member of the commission may conduct a hearing. Before any adjudication is rendered, a majority of the commission must examine the record and approve the adjudication and order. The commission is not required to follow the Administrative Procedure Act in ch. 120, F.S.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Section 548.06(1), Florida Statutes.

¹⁴ *Id.*

¹⁵ Section 548.06(1), F.S.

III. Effect of Proposed Changes:

Definitions

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

The bill changes the definition of the term “boxing” in s. 548.002(3), F.S., to mean the practice of fighting with the fists as a sport.

The bill creates s. 548.002(6), F.S., to define the term “concessions” to mean souvenirs, programs, drinks, food, alcohol, clothing, or other tangible objects sold to the general public during matches.

The bill 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.

The bill creates s. 548.002(13), F.S., to define the term “full contact” to mean the use of blows and strikes during a match or bout in which the blows or strikes, 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 blow or strike.

The bill amends the definition of the term “kickboxing” in s. 548.002(15), F.S., to include “hands” in the definition. It would mean the practice of fighting with the fists, hands, feet, legs, or any combination, and includes “punchkick” and other similar competitions.

The bill amends s. 548.002(19), F.S., to define the term “mixed martial arts” to mean full contact, unarmed combat involving the use of a combination of two or more techniques, including, but not limited to, wrestling, grappling, kicking, and striking, from different disciplines of the martial arts. The term may include, but is not limited to, boxing, kickboxing, Muay Thai,¹⁶ and Thai boxing.

The bill amends the definition of the term “physician” in s. 548.002(21), F.S., to mean a person licensed as a medical doctor under ch. 458, F.S., or as a doctor of osteopathy under ch. 459, F.S., or an equivalent license from another jurisdiction.

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, matches, and fight cards. 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

¹⁶ Muay Thai is a combat sport from the muay martial arts of Thailand. See <http://www.wmcmuaythai.org/about> (Last visited March 18, 2013).

required, appoint judges, referees, and other officials as the commission or department deem necessary.

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 that all proceedings conducted by the department be electronically recorded.

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.

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 post secondary education institutions or public secondary schools;
- Amateur matches conducted by the Florida National Guard and U.S. Armed Forces;
- Matches conducted by the International Olympic committee, the Special Olympics, or the Junior Olympics; and
- Professional or amateur martial arts activity.

Section 548.007(7), F.S., to defines the term "martial arts" to mean any traditional form of self-defense taught by masters which uses physical skill and coordination, and is taught and advanced on a belt system, including, but is not limited to, karate, aikido, judo, and kung fu. The term does not include "mixed martial arts," which is defined in s. 548.002(19), F.S.

Immediate Suspension

The bill amends ss. 548.046(3)(c) and (d), F.S., to provide that a participant's failure or refusal to provide a urine sample constitutes an immediate and serious risk to the health, safety, and welfare of the participants and the public and a grounds for immediate suspension. It authorizes the commission to suspend the participant's license and to subject the participant to disciplinary action.

The bill creates s. 548.046(3)(c), F.S., to provide that testing positive for any substance prohibited by commission rule¹⁷ will also result in the immediate suspension of the participant's license and constitute grounds for additional disciplinary action.

¹⁷ See rule 61K1-1.0043, F.A.C.

Withholding of Purses

The bill amends s. 548.054(2), F.S., to provide that 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 Hearing.

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.

Promoter Recordkeeping Requirement

The bill amends s. 548.06(1)(c), F.S., which requires promoters submit a written report to the commission within 72 hours after the match, to provide that the face value of tickets sold and complimentary tickets issued does not include federal and state taxes, if applicable.

The bill creates s. 548.06(7), F.S., to require that the promoter to keep a copy of specified records for a period of seven years, including records necessary to justify and support the reports submitted to the commission, reports filed with the commission that are certified by the promoter, copies of all gross receipts, independently prepared ticket manifests; and receipted vouchers for all expenditures and deductions.

The bill creates s. 548.06(8), 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 that the commission has the right to audit a promoter's books and records.

The bill creates s. 548.06(9), 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.¹⁸

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.

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.¹⁹

¹⁸ 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.

¹⁹ 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

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.

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 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.

Effective Date

The bill would take effect on July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill creates s. 548.06(9), 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. 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. According to the department, it estimates that the provision would result in the collection of late penalties of approximately \$7,000.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. 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 Committee on March 21, 2013:

The committee substitute (CS) for SB 1686 is substantively different from SB 1686 as follows:

The CS does not amend s. 548.002, F.S., to define the term “gross receipts.”

The CS does not amend s. 548.002, F.S., to define the term “match held in conjunction with instruction.”

The CS does not amend s. 548.002(18), F.S., to define the term “martial arts” but moves the definition to the exemptions in s. 548.007(7), F.S. The CS also does not provide that the term “martial arts” does not include any of the traditional forms or techniques used in the traditional form of self-defense or unarmed combat.

The CS amends s. 548.007(1), F.S., to exempt from regulation under ch. 548, F.S., matches that do not allow full contact. The CS deletes the exemption 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, or require the program to be located at only one physical address. The CS does not amend s. 548.007, F.S., to exempt matches conducted in connection with the entertainment industry that meet the specified restrictions.

The CS creates s. 548.007(7), F.S., to exempt from regulation under ch. 548, F.S., professional or amateur martial arts activity. This subsection also defines the term “martial arts” to mean any traditional form of self-defense or unarmed combat involving the use of physical skill and coordination, and is taught and advanced on a belt system,

including, but is not limited to, karate, aikido, judo, and kung fu. It also provides that the term does not include “mixed martial arts.”

The CS amends s. 548.06(1)(c), F.S., to provide that the promoters report to the commission after the match on the face value of tickets sold and complimentary tickets issued does not include federal and state taxes, if applicable.

The CS amends s. 548.07(7), F.S., to provide that 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.

The CS provides an effective date of on July 1, 2013, instead of taking effect upon becoming law.

B. Amendments:

None.

By Senator Altman

16-01069-13

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A bill to be entitled

An act relating to pugilistic exhibitions; amending s. 548.002, F.S.; providing new definitions and revising existing definitions; amending s. 548.004, F.S.; revising the duties of the Executive Director of the Florida State Boxing Commission; amending s. 548.006, F.S.; clarifying provisions and providing exclusive jurisdiction to the commission relating to sanctioning bodies for mixed martial arts matches; amending s. 548.007, F.S.; providing exemptions from regulation for matches conducted by certain educational, military, and other organizations; amending s. 548.046, F.S.; providing sanctions for certain violations related to required testing for prohibited substances; amending s. 548.054, F.S.; clarifying provisions relating to hearings relating to the withholding of purses by promoters; amending s. 548.06, F.S.; providing financial recordkeeping requirements for promoters; providing for inspections and the adoption of rules by the commission; amending s. 548.07, F.S.; revising procedures relating to the suspension of licenses by the commission; providing for review by the General Counsel of the Department of Business and Professional Regulation; amending s. 548.073, F.S.; requiring all hearings to be held pursuant to ch. 120, F.S.; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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Section 1. Section 548.002, Florida Statutes, is amended to read:

548.002 Definitions.—As used in this chapter, the term:

(1) "Amateur" means a person who has never received nor competed for any purse or other article of value, either for the expenses of training or for participating in a match, other than a prize of \$50 in value or less.

(2) "Amateur sanctioning organization" means a ~~any~~ business entity organized for sanctioning and supervising matches involving amateurs.

(3) "Boxing" means the practice of fighting, as a sport, with the fists to compete with the fists.

(4) "Commission" means the Florida State Boxing Commission.

(5) "Concessionaire" means a ~~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.

(6) "Concessions" means souvenirs, programs, drinks, food, alcohol, clothing, or other tangible objects sold to the general public during a match.

~~(7)(6)~~ "Contest" means 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.

~~(8)(7)~~ "Department" means the Department of Business and Professional Regulation.

~~(9)(8)~~ "Event" means one or more matches comprising a show.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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59 (10)~~(9)~~ "Exhibition" means a boxing, kickboxing, or mixed
60 martial arts engagement in which persons participating show or
61 display their skill without necessarily striving to win using,
62 but not necessarily being limited to, strikes and blows to the
63 head.

64 (11) "Face value" means the dollar value of a ticket, which
65 reflects the dollar amount that a customer is required to pay,
66 or, for complimentary tickets, would have been required to pay,
67 to purchase a ticket with equivalent seating priority, to view
68 the event. If the ticket specifies the amount of admission
69 charges attributable to state or federal taxes, such taxes are
70 not included in the face value.

71 (12)~~(10)~~ "Foreign copromoter" means a promoter who has no
72 place of business within this state.

73 (13) "Full contact" means a match or a bout during which
74 the blows or strikes that are delivered:

75 (a) Are intended to cause injury;

76 (b) Are intended to break the plane of the receiving
77 participant's body;

78 (c) Are delivered to the head, face, neck, or body of the
79 receiving participant; or

80 (d) Cause the receiving participant to move in response to
81 the blow.

82 (14) "Gross receipts" means:

83 (a) The gross price charged for the sale or lease of
84 broadcasting, television, and motion picture rights, without any
85 deduction for commissions, brokerage fees, distribution fees,
86 advertising, or other expenses or charges;

87 (b) The portion of the receipts from the sale of

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88 concessions received by the promoter; and

89 (c) The face value of all tickets sold and complimentary
90 tickets issued.

91
92 The term does not include any amount charged for federal and
93 state taxes.

94 (15)~~(11)~~ "Judge" means a person who has a vote in
95 determining the winner of any contest.

96 (16)~~(12)~~ "Kickboxing" means to compete in any form of
97 boxing in which blows are delivered with the hands, fists, any
98 part of the legs, including the feet, ~~with the fists, feet,~~
99 ~~legs,~~ or any combination thereof, and includes "punchkick" and
100 other similar competitions.

101 (17)~~(13)~~ "Manager" means a ~~any~~ person who, directly or
102 indirectly, controls or administers the boxing, kickboxing, or
103 mixed martial arts affairs of a ~~any~~ participant.

104 (18) "Martial arts" means any traditional form of self-
105 defense taught by masters which uses physical skill and
106 coordination, is taught and advanced on a belt system, and may
107 include, but is not limited to, karate, aikido, judo, and kung
108 fu. The term does not mean a combination of any of the
109 traditional forms or the techniques used in the traditional
110 forms of self-defense or unarmed combat.

111 (19)~~(14)~~ "Match" means any contest or exhibition.

112 (20) "Match held in conjunction with instruction" means a
113 practice bout or sparring session between two students of the
114 same school or instructional facility which is used to display
115 skills obtained from instruction and which is conducted over a
116 period of more than 30 days in the techniques used in boxing,

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117 kickboxing, and martial arts. The instruction may be received
 118 before the match or during the match from a trainer or the
 119 referee.

120 ~~(21)(15)~~ "Matchmaker" means a person who brings together
 121 professionals or arranges matches for professionals.

122 ~~(22)(16)~~ "Mixed martial arts" means unarmed combat
 123 involving the use, subject to any applicable limitations ~~set~~
 124 ~~forth~~ in this chapter, of a combination of two or more
 125 techniques, including, but not limited to, wrestling, grappling,
 126 kicking, and striking, from different disciplines of the martial
 127 arts, including, but not limited to, kickboxing, boxing, Muay
 128 Thai, and Thai boxing ~~grappling, kicking, and striking.~~

129 ~~(23)(17)~~ "Participant" means a professional competing in a
 130 boxing, kickboxing, or mixed martial arts match.

131 ~~(24)(18)~~ "Physician" means an individual licensed as a
 132 physician, as defined in chapter 458, or an osteopathic
 133 physician, as defined in chapter 459, ~~to practice medicine and~~
 134 ~~surgery~~ in this state.

135 ~~(25)(19)~~ "Professional" means a person who has received or
 136 competed for any purse or other article of a value greater than
 137 \$50, either for the expenses of training or for participating in
 138 any match.

139 ~~(26)(20)~~ "Promoter" means any person, and includes any
 140 officer, director, employee, or stockholder of a corporate
 141 promoter, who produces, arranges, or stages any match involving
 142 a professional.

143 ~~(27)(21)~~ "Purse" means the financial guarantee or other
 144 remuneration for which a professional is participating in a
 145 match and includes the professional's share of any payment

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146 received for radio broadcasting, television, and motion picture
 147 rights.

148 ~~(28)(22)~~ "Second" or "cornerman" means a person who assists
 149 the match participant between rounds and maintains the corner of
 150 the participant during the match.

151 ~~(29)(23)~~ "Secretary" means the Secretary of Business and
 152 Professional Regulation.

153 Section 2. Section 548.004, Florida Statutes, is amended to
 154 read:

155 548.004 Executive director; duties, compensation,
 156 administrative support.—

157 (1) The department shall employ an executive director with
 158 the approval of the commission. The executive director shall
 159 serve at the pleasure of the secretary. The executive director
 160 or his or her designee shall comply with any duties or
 161 responsibilities specified by the commission, including
 162 conducting the functions of the commission office, appointing
 163 event and commission officials, approving licenses, permits,
 164 matches, and fight cards, ~~keep a record of all proceedings of~~
 165 ~~the commission; shall preserve all books, papers, and documents~~
 166 ~~pertaining to the business of the commission; shall prepare any~~
 167 ~~notices and papers required; shall appoint judges, referees, and~~
 168 ~~other officials as delegated by the commission and pursuant to~~
 169 ~~this chapter and rules of the commission, and performing shall~~
 170 ~~perform~~ such other duties as the department or commission deems
 171 necessary ~~directs~~. The executive director may issue subpoenas
 172 and administer oaths.

173 ~~(2) The commission shall require electronic recording of~~
 174 ~~all scheduled proceedings of the commission.~~

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175 ~~(2)~~ (3) The department shall provide assistance in budget
 176 development and budget submission for state funding requests.
 177 The department shall submit an annual balanced legislative
 178 budget for the commission which is based upon anticipated
 179 revenue. The department shall provide technical assistance and
 180 administrative support, if requested or determined necessary
 181 ~~needed~~, to the commission and its executive director on issues
 182 relating to personnel, contracting, property management, or
 183 other issues identified as important to performing the duties of
 184 this chapter and to protecting the interests of the state.

185 Section 3. Section 548.006, Florida Statutes, is amended to
 186 read:

187 548.006 Power of commission to control professional and
 188 amateur pugilistic ~~contests and exhibitions; certification of~~
 189 ~~competitiveness of professional mixed martial arts and~~
 190 ~~kickboxing matches.~~

191 (1) The commission has exclusive jurisdiction over every
 192 match held within the state which involves a professional.

193 (2) As to professional mixed martial arts and kickboxing,
 194 until a central repository of match records for each exists and
 195 is approved by the commission, the matchmaker shall certify as
 196 to the competitiveness of each match.

197 (3) The commission has exclusive jurisdiction over
 198 approval, disapproval, suspension of approval, and revocation of
 199 approval of all amateur sanctioning organizations for amateur
 200 boxing, ~~and~~ kickboxing, and mixed martial arts matches held in
 201 this state.

202 (4) Professional and amateur matches shall be held in
 203 accordance with this chapter and the rules adopted by the

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204 commission.

205 Section 4. Section 548.007, Florida Statutes, is amended to
 206 read:

207 548.007 Exceptions ~~Applicability of provisions to amateur~~
 208 ~~matches and certain other matches or events.~~ Sections 548.001-
 209 548.079 do not apply to:

210 (1) A match conducted or sponsored by a bona fide nonprofit
 211 school or education program whose primary purpose is instruction
 212 in the martial arts, boxing, or kickboxing, if the match held in
 213 conjunction with the instruction is limited to amateur
 214 participants who are students of the school or instructional
 215 program and if the school or program is located at only one
 216 physical address;

217 (2) A match conducted or sponsored by any company or
 218 detachment of the Florida National Guard, if the match is
 219 limited to amateur participants who are members of the company
 220 or detachment of the Florida National Guard; ~~or~~

221 (3) A match conducted or sponsored by the Fraternal Order
 222 of Police, if the match is limited to amateur participants and
 223 is held in conjunction with a charitable event; ~~or~~

224 (4) A match conducted by a university, college, community
 225 college, junior college, high school, or junior high school; or
 226 a match limited to amateur participants who are enrolled
 227 students at the university, college, community college, junior
 228 college, high school, or junior high school that is conducting
 229 the match;

230 (5) A match conducted by a company or detachment of the
 231 United States Army, Navy, Air Force, Marine Corps, Coast Guard,
 232 or National Guard, if the match is limited to amateur

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233 participants who are members of the United States Armed Forces;

234 (6) A match conducted by the International Olympic
 235 Committee, the International Paralympic Committee, the Special
 236 Olympics, or the Junior Olympics, if the match is limited to
 237 amateur participants who are competing or qualifying for the
 238 Olympics, the Paralympics, the Special Olympics, or the Junior
 239 Olympics; or

240 (7) A match conducted by an entity in connection with the
 241 motion picture, fashion photography, theatrical, or television
 242 industry, if the match is intended for entertainment purposes,
 243 does not allow full contact, and contains all of the following
 244 factors:

245 (a) Predetermined winners.

246 (b) Celebrity participants.

247 (c) "Pillow-fight" gloves, which weigh no less than 24
 248 ounces.

249 (d) Headgear.

250 (e) Rounds lasting no more than 1 minute, with at least 1-
 251 minute rest intervals.

252 (f) No purse.

253 Section 5. Paragraph (c) of subsection (3) of section
 254 548.046, Florida Statutes, is amended, and paragraph (d) is
 255 added to that subsection, to read:

256 548.046 Physician's attendance at match; examinations;
 257 cancellation of match.—

258 (3)

259 (c) Failure or refusal to provide a urine sample
 260 immediately upon request is an immediate and serious risk to the
 261 health, safety, and welfare of the participants and the public

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262 and shall result in the immediate suspension ~~revocation~~ of the
 263 participant's license and subject the participant to
 264 disciplinary action. A ~~Any~~ participant who has been adjudged the
 265 loser of a match and who subsequently refuses to or is unable to
 266 provide a urine sample shall forfeit his or her share of the
 267 purse to the commission. A ~~Any~~ participant who is adjudged the
 268 winner of a match and who subsequently refuses to or is unable
 269 to provide a urine sample shall forfeit the win and ~~may shall~~
 270 not ~~be allowed to~~ engage in any future match in the state. A no-
 271 decision result shall be entered into the official record as the
 272 result of the match. The purse shall be redistributed as though
 273 the participant found to be in violation of this subsection had
 274 lost the match. If redistribution of the purse is not necessary
 275 or after redistribution of the purse is completed, the
 276 participant found to be in violation of this subsection shall
 277 forfeit his or her share of the purse to the commission.

278 (d) Testing positive for a prohibited substance specified
 279 in a commission rule is an immediate and serious danger to the
 280 health, safety, and welfare of the participants and the general
 281 public. A professional participant who tests positive on a
 282 verified drug test for a prohibited drug or substance is subject
 283 to disciplinary action.

284 Section 6. Subsection (2) of section 548.054, Florida
 285 Statutes, is amended to read:

286 548.054 Withholding of purses; hearing; disposition of
 287 withheld purse forfeiture.—

288 (2) Any purse so withheld shall be delivered by the
 289 promoter to the commission upon demand. Within 10 days after the
 290 match, the person from whom the sum was withheld may submit to

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291 ~~the commission a petition for hearing apply in writing to the~~
 292 ~~commission for a hearing.~~ Upon receipt of the petition
 293 ~~application,~~ the commission may hold a hearing pursuant to s.
 294 120.569 or s. 120.57 shall fix a date for a hearing. Within 10
 295 ~~days after the hearing or after 10 days following the match, If~~
 296 no ~~petition application~~ for a hearing is filed, the commission
 297 shall meet and determine the disposition to be made of the
 298 withheld purse. If the commission finds the charges sufficient,
 299 it may declare all or any part of the funds forfeited. If the
 300 commission finds the charges not sufficient upon which to base a
 301 withholding order, it shall immediately distribute the withheld
 302 funds to the persons entitled thereto.

303 Section 7. Subsections (7) through (9) are added to section
 304 548.06, Florida Statutes, to read:

305 548.06 Payments to state; exemptions.—

306 (7) A promoter shall retain a copy of the following records
 307 for 7 years and shall provide copies to the commission, upon
 308 request:

309 (a) Records necessary to justify and support the reports
 310 submitted to the commission;

311 (b) Filed reports, certified by the promoter;

312 (c) Copies of all gross receipts;

313 (d) Independently prepared ticket manifests; and

314 (e) Receipted vouchers for all expenditures and deductions.

315 (8) Compliance with this section is subject to verification
 316 by commission audit. The commission may, upon reasonable notice
 317 to the promoter, audit the promoter's books and records relating
 318 to the promoter's operations under this section.

319 (9) The commission shall adopt rules, including actions to

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320 be taken by the commission if an audit reflects excessive taxes
 321 paid or taxes owed by the promoter, including a late fee if
 322 taxes are owed.

323 Section 8. Section 548.07, Florida Statutes, is amended to
 324 read:

325 548.07 Suspension of license or permit by commissioner;
 326 hearing.—

327 (1) The commission, any commissioner, the executive
 328 director or his or her designee, or any commission designee may
 329 issue an emergency suspension of the license of a licensee who
 330 poses an immediate and serious danger to the health, safety, and
 331 welfare of the public, a licensee, or a participant.

332 (2) The general counsel of the department shall review the
 333 grounds for the emergency suspension order and shall file an
 334 administrative complaint against the licensee within 21 days
 335 after issuance of the order. Notwithstanding any provision of
 336 chapter 120, any member of the commission may, upon her or his
 337 own motion or upon the verified written complaint of any person
 338 charging a licensee or permittee with violating this chapter,
 339 suspend any license or permit until final determination by the
 340 commission if such action is necessary to protect the public
 341 welfare and the best interests of the sport. The commission
 342 shall hold a hearing within 10 days after the date on which the
 343 license or permit is suspended.

344 Section 9. Section 548.073, Florida Statutes, is amended to
 345 read:

346 548.073 Commission hearings.—Hearings held under this
 347 chapter must be pursuant to chapter 120. Notwithstanding the
 348 provisions of chapter 120, any member of the commission may

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349 ~~conduct a hearing. Before any adjudication is rendered, a~~
350 ~~majority of the members of the commission shall examine the~~
351 ~~record and approve the adjudication and order.~~

352 Section 10. This act shall take effect upon becoming a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military Affairs, Space, and Domestic Security, *Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Finance and Tax
Children, Families, and Elder Affairs
Criminal Justice
Environmental Preservation and Conservation

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR THAD ALTMAN

16th District

March 14, 2013

The Honorable Kelli Stargel
Senate Committee on Regulated Industries, Chair
324 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairwoman Stargel:

I respectfully request that SB 1686, related to *Pugilistic Exhibitions*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Thad Altman".

Thad Altman
TA/rk

CC: Patrick L. "Booter" Imhof, Staff Director, 330 Knott Building

REPLY TO:

- 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/21/13

Meeting Date

Topic Pugilistic Exhibitions

Bill Number 1686 (PCS)
(if applicable)

Name Sam Verghese

Amendment Barcode _____
(if applicable)

Job Title Director, Office of Legislative Affairs

Address 1940 N. Monroe St.
Street

Phone 850.487.4827

Tall. FL 32399
City State Zip

E-mail Sam.Verghese@myflorida
license.com

Speaking: For Against Information

Representing Dept. of Business and Professional Regulation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3 / 21 / 2013

Meeting Date

Topic _____ Bill Number 1686
(if applicable)

Name BRIAN PITTS Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JOHN LEGG

17th District

The Honorable Senator Kelli Stargel
324 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

March 20, 2013

Chair Stargel,

Please excuse my absence for the Regulated Industries Committee scheduled for March 21, 2013. I will be tending to a personal family matter. If there is an issue where you need to speak with me directly, please contact me on my personal cell phone at 727-514-3313. Thank you for your kind consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "John Legg".

John Legg
State Senate, District 17

cc: Patrick L. Imhof
Staff Director

Handwritten initials in black ink, possibly "KMS".

REPLY TO:

- 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017
- 262 Crystal Grove Boulevard, Lutz, Florida 33548

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: SB 301
Case: Senate Regulated Industries Committee

Type:
Judge:

Started: 3/21/2013 10:03:07 AM
Ends: 3/21/2013 11:10:02 AM **Length:** 01:06:56

10:03:26 AM Meeting called to order
10:03:38 AM Roll Call
10:04:40 AM SB 852 - Senator Bean
10:05:02 AM Amendment - Senator Thrasher #667092
10:05:24 AM Senator Bean to explain the bill and the amendment
10:06:46 AM Senator Detert questioning
10:07:54 AM Senator Sobel questioning
10:08:45 AM Senator Thrasher commenting
10:09:24 AM Amendment Adopted
10:09:41 AM SB 852 moved as a CS
10:09:58 AM CS/SB 852 - Passes
10:10:47 AM PCS/SB 1685 - Senator Altman
10:11:07 AM Rick Kendust, Leg. Aide to Senator Altman explains the bill
10:11:54 AM Brian Pitts, Justice-2-Jesus
10:15:39 AM PCS/SB 1686 moved as a CS
10:15:55 AM CS/SB 1686 - Passes
10:16:21 AM SB 1344 - Senator Latvala
10:16:31 AM Senator Latvala to explain the bill
10:18:35 AM Senator Detert, Courtesy Amendment #684080
10:18:50 AM Senator Latvala to explain the amendment
10:19:08 AM Senator Braynon questioning
10:20:04 AM Mitchell Rubin, Florida Beer Wholesalers Assoc.
10:21:18 AM Senator Sobel questioning
10:21:48 AM Mr. Rubin responding
10:24:55 AM Josh Aubuchon, Florida Brewers Guild
10:25:34 AM Senator Sachs questioning
10:25:44 AM Amendment Adopted
10:26:11 AM Late Filed Amendment (662070) Not introduced
10:26:45 AM Senator Sobel commenting on Late Filed Amendment
10:27:32 AM Senator Latvala to respond
10:29:03 AM Senator Thrasher commenting
10:30:38 AM Senator Detert commenting
10:31:29 AM Senator Sachs commenting
10:33:43 AM Natalie King, Pepin Distributing
10:34:27 AM Senator Braynon questioning
10:34:59 AM Ms. King responding
10:36:24 AM Mike Halker, Due South Brewing Company
10:37:56 AM Justin Clark, Cigar City Brewing
10:40:49 AM Craig Birkmaler, Swamp Head Brewery & Florida Brewers Guild
10:43:33 AM Mitchell Rubin, Florida Beer Wholesalers Association
10:45:43 AM Josh Aubuchon, Florida Brewers Guild
10:46:45 AM Senator Sobel commenting
10:47:13 AM Senator Sachs commenting
10:48:28 AM SB 1344 moved as a CS
10:48:44 AM Senator Latvala to close on the bill
10:49:35 AM CS/SB 1344 - Passes
10:49:53 AM SB 1398 - Senator Hukill
10:50:18 AM Lindsay Swindle, Leg. Aide, to present the bill
10:50:58 AM SB 1398 - Passes
10:51:40 AM SB 720 - Senator Brandes
10:51:57 AM Chris Spencer, Legislative Aide to explain the bill
10:52:14 AM Amendment by Senator Braynon #976354

10:52:41 AM Senator Sachs questioning
10:55:38 AM Senator Detert questioning
10:57:25 AM Senator Stargel questioning
10:58:45 AM Sam Verghees, DBPR
11:00:04 AM Mary Kreamer, Staff Attorney responding
11:00:55 AM Justin Pearson, Institute for Justice, Florida Chapter
11:01:15 AM Amendment Adopted
11:04:27 AM Senator Sobel questioning
11:04:48 AM Mr. Pearson responding
11:06:22 AM Brian Pitts, Justice-2-Jesus
11:08:57 AM Senator Stargel commenting
11:09:13 AM SB 720 moved as a CS
11:09:28 AM Chris Stevens to close on the bill
11:09:45 AM CS/SB 720 - Passes
11:09:55 AM Meeting adjourned