

**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.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 802

INTRODUCER: Senator Passidomo

SUBJECT: Regulated Professions and Occupations

DATE: April 3, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>McSwain</u>	<u>RI</u>	<b>Favorable</b>
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 802 reduces or eliminates the licensing and registration requirements for several occupations and professions, and otherwise reduces the role of the Department of Business and Professional Regulation (DBPR or Department) in regulating several of these, while maintaining and sometimes creating civil causes of action or criminal liability for wrongdoing by practitioners in these industries. More specifically, the bill eliminates:

- The requirement to have a license for each yacht or ship broker office;
- Required registration for labor organizations and licensing of labor organization business agents, while maintaining civil causes of action and criminal penalties;
- Licensing scheme for auctioneers, but creates civil liability (instead of administrative liability) for wrongdoing by auctioneers, auction business, and certain other related persons, and maintains felony criminal sanctions;
- Licensure requirements for talent agencies and the Department’s regulation of talent agencies, yet maintains many statutory regulations remain, including criminal penalties for most prohibited acts or omissions provided in current law;
- The requirement that an asbestos abatement contractor obtain a separate business license in addition to an individual license, yet increases accountability of asbestos contractors for the actions of their businesses;
- Required licensure or registration for hair braiders, hair wrappers, and body wrappers;
- The requirement that landscape architects, architects, or interior designers obtain a separate business license in addition to individual license; and
- The registration requirement for businesses offering professional geological services.

Additionally, the bill establishes a two-tiered barbering licensure, one for “barbers,” and one for the newly designated “restricted barbers.” Restricted barbers are licensed to do most things that a barber may do under current law, with the exception of applying oils, creams, lotions, or other

preparations to the face, neck or scalp. The bill also reduces the training requirements for unrestricted barbers.

## II. Present Situation:

The present situation relative to each section of the bill will be discussed in the Effect of Proposed Changes section of this bill analysis. Generally, there will be a heading or subheading, then a discussion of the present situation, then a discussion of the effect of the proposed changes. But before proceeding to the Present Situation and Effect of Proposed Changes relative to each section of the bill, the following brief background information on the Department of Business and Professional Regulation (DBPR or Department) is presented to provide context for the discussion of the bill.

### Background

#### *Organization of the Department of Business and Professional Regulation*

Section 20.165, F.S., establishes the organizational structure of DBPR, which has the following 12 divisions:

- Administration;
- Alcoholic Beverages and Tobacco;
- Certified Public Accounting;
- Drugs, Devices, and Cosmetics;
- Florida Condominiums, Timeshares, and Mobile Homes;
- Hotels and Restaurants;
- Pari-mutuel Wagering;
- Professions;
- Real Estate;
- Regulation;
- Service Operations; and
- Technology.

Within several of these divisions, there exists one or more boards or programs, of which there are fifteen in total.<sup>1</sup> For example, two boards are within the Division of Real Estate,<sup>2</sup> and one board exists in the Division of Certified Public Accounting.<sup>3</sup>

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<sup>1</sup> Section 20.165(4)(a), F.S., establishes the following boards and programs which are noted with the implementing statutes: Board of Architecture and Interior Design, part I of ch. 481; Florida Board of Auctioneers, part VI of ch. 468; Barbers' Board, ch. 476; Florida Building Code Administrators and Inspectors Board, part XII of ch. 468; Construction Industry Licensing Board, part I of ch. 489; Board of Cosmetology, ch. 477; Electrical Contractors' Licensing Board, part II of ch. 489; Board of Employee Leasing Companies, part XI of ch. 468; Board of Landscape Architecture, part II of ch. 481; Board of Pilot Commissioners, ch. 310; Board of Professional Engineers, ch. 471; Board of Professional Geologists, ch. 492; Board of Veterinary Medicine, ch. 474; Home Inspection Services Licensing Program, part XV of ch. 468; and Mold-related Services Licensing Program, part XVI of ch. 468, F.S.

<sup>2</sup> See s. 20.165(4)(b), F.S., (establishing the Florida Real Estate Appraisal Board, and Florida Real Estate Commission).

<sup>3</sup> See s. 20.165(4)(c), F.S., (establishing the Board of Accountancy).

The Florida State Boxing Commission is assigned to DBPR for administrative and fiscal accountability purposes only.<sup>4</sup> DBPR also administers the Child Labor Law and Farm Labor Contractor Registration Law.<sup>5</sup>

### ***Powers and Duties of the Department***

Chapter 455, F.S., sets forth the general powers of DBPR as to the regulation of “profession[s].” And professions are defined as “any activity, occupation, profession, or vocation regulated by the department in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.” This Chapter also sets forth the procedural and administrative framework for the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation, and all of the professional boards within DBPR.<sup>6</sup>

The Department’s regulation of professions is to be undertaken “only for the preservation of the health, safety, and welfare of the public under the police powers of the state.”<sup>7</sup> And this regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.<sup>8</sup>

However, “neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention,” or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.<sup>9</sup>

### ***Permitting, Registration, Licensing, and Certification***

Sections 455.203 and 455.213, F.S., establish general licensing authority for the DBPR, including the authority to charge license fees and license renewal fees. Each board within the Department must determine by rule the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.<sup>10</sup>

When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a “license,” which may be referred to in different instances as a permit, registration, certificate, or license.<sup>11</sup> And those who are granted any of these licenses are referred to as licensees.<sup>12</sup>

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<sup>4</sup> Section 548.003(1), F.S.

<sup>5</sup> See Parts I and III of ch. 450, F.S.

<sup>6</sup> See s. 455.203, F.S. DBPR must also provide legal counsel for boards within DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing DBPR staff counsel. See s. 455.221(1), F.S.

<sup>7</sup> Section 455.201(2), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Section 455.201(4)(b), F.S.

<sup>10</sup> Section 455.219(1), F.S.

<sup>11</sup> Section 455.01(4), F.S.

<sup>12</sup> Section 455.01(5), F.S.

In Fiscal Year 2015-2016, there were 39,216 people licensed by the Division of Accountancy, 349,668 people licensed by the Division of Real Estate, and 61,396 people licensed by the Board of Professional Engineers.<sup>13</sup> In Fiscal Year 2015-2016, there were 434,001 people licensed by the Division of Professions,<sup>14</sup> including:

- Architects and interior designers;
- Asbestos consultants and contractors;
- Athlete agents;
- Auctioneers;
- Barbers;
- Building code administrators and inspectors;
- Community association managers;
- Construction industry contractors;
- Cosmetologists;
- Electrical contractors;
- Employee leasing companies;
- Geologists;
- Home inspectors;
- Landscape architects;
- Harbor pilots;
- Mold-related services;
- Talent agencies; and
- Veterinarians.<sup>15</sup>

The Department's Division of Florida Condominiums, Timeshares, and Mobile Homes provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure.<sup>16</sup> This Division has limited regulatory authority over the following business entities and individuals:

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowner's Associations (jurisdiction is limited to arbitration of election and recall disputes).<sup>17</sup>

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<sup>13</sup> See Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2015-2016*, page 21, [http://www.myfloridalicense.com/dbpr/os/documents/ProfessionsAnnualReportFY2015-2016\\_Final.pdf](http://www.myfloridalicense.com/dbpr/os/documents/ProfessionsAnnualReportFY2015-2016_Final.pdf), (last visited Apr. 1, 2017).

<sup>14</sup> Of the total 415,207 licensees in the Division of Professions, 23,183 are inactive. *Id.* at page 22.

<sup>15</sup> *Id.* at pages 21-22.

<sup>16</sup> Department of Business and Professional Regulation, *Division of Florida condominiums, Timeshares, and Mobile Homes*, <http://www.myfloridalicense.com/dbpr/lsc/index.html> (last visited Apr. 1, 2017).

<sup>17</sup> *Id.*

### III. Effect of Proposed Changes:

#### Yacht and Ship Broker Branch Office Licenses

##### *Present Situation:*

Chapter 326, F.S., governs the licensing and regulation of yacht and ship brokers, salespersons, and related business organizations in the state. The Yacht and Ship Broker's Section is a unit of the Division of Florida Condominiums, Timeshares and Mobile Homes of the Department of Business and Professional Regulation (DBPR or Department). This Section processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the yacht brokerage industry.<sup>18</sup>

A person may not act as a yacht or ship broker or salesperson unless licensed under ch. 326, F.S.<sup>19</sup> Each yacht or ship broker must maintain a principal place of business in Florida and may establish branch offices in Florida. A separate license must be maintained for each branch office."<sup>20</sup>

Applicants for a branch office license and renewal pay a \$100 fee; licenses must be renewed every two years.<sup>21</sup> A branch office has no regulatory obligations other than to obtain licensure. Additionally, branch offices are not subject to inspection requirements.

##### *Effect of Proposed Changes:*

**Section 1** of the bill amends s. 326.004, F.S., to remove the requirement that separate branch office licenses be maintained by yacht and ship brokers in addition to a license for the principal office. Brokers and salespeople are required to maintain individual licensure, with a principal place of business in Florida tied to the broker's individual license.

#### Labor Organizations

##### *Present Situation:*

Chapter 447, F.S., governs the licensing and regulation of labor organizations and related business agents in the state. The Department's Division of Regulation oversees the licensing and regulation of labor organizations. In addition to issuing licenses, this Division responds to consumer complaints and inquiries by monitoring activities and compliance within the labor organization industry.

A labor organization is defined as "[a]ny organization of employees or local or subdivision thereof, having within its membership residents of the state, whether incorporated or not, organized for the purpose of dealing with employers concerning hours of employment, rate of

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<sup>18</sup> See Department of Business and Professional Regulation, *Yacht and Ship Brokers; Licensing and Enforcement*, <http://www.myfloridalicense.com/dbpr/lsc/YachtandShip.html> (last visited Apr. 1, 2017).

<sup>19</sup> Section 326.004(1), F.S.

<sup>20</sup> Section 326.004(13), F.S.

<sup>21</sup> Rule 61B-60.002, F.A.C.

pay, working conditions, or grievances of any kind relating to employment and recognized as a unit of bargaining by one or more employers doing business in this state.”<sup>22</sup>

In Florida, all labor organizations are required to register with the Department and all business agents of labor organizations must obtain a license.<sup>23</sup> Business agents are defined as “[a]ny person, without regard to title, who shall, for a pecuniary or financial consideration, act or attempt to act for any labor organization in:

- The issuance of membership or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization; or
- Soliciting or receiving from any employer any right or privilege for employees.”<sup>24</sup>

Applicants for a business agent license must pay a \$25 fee for licensure and must meet a number of licensure requirements.<sup>25</sup> A labor organization must register with the Department annually and pay a fee of \$1.<sup>26</sup>

### *Effect of Proposed Changes:*

**Sections 2 through 9** of the bill amend Part I of ch. 447, F.S., eliminating the registration scheme relating to labor organizations and the licensing scheme relating to business agents. However, civil causes of action and criminal penalties for wrongdoing by labor organizations and business agents remain, as do provisions relating to the right to work and strike, recordkeeping requirements, and rights of franchise for labor organizations.

### **Auctioneers**

#### *Present Situation:*

Section 468.385, F.S. requires that a person who auctions or offers to auction any property in Florida must be licensed by the Department, unless the person is exempt from licensure<sup>27</sup> under s. 468.385, F.S. A person may not be licensed as an auctioneer or apprentice if he or she is under 18 years of age, or has committed any act or offense that would constitute a basis for disciplinary action under s. 468.389, F.S., such as misrepresenting property for sale at auction or engaging in false or deceptive advertising. A person seeking auctioneer licensure must pass a written examination testing knowledge of the laws of Florida relating to the Uniform Commercial Code that are relevant to auctions.<sup>28</sup>

Persons who are suffer financial loss because of certain wrongful acts of auctioneers may bring an administrative action and, if successful, be made whole out of the Auctioneer Recovery Fund.<sup>29</sup> This Fund is supplied by the fees paid by applicants for an auctioneer’s license.<sup>30</sup> An

<sup>22</sup> Section 447.02(1), F.S.

<sup>23</sup> Section 447.04(2), F.S.

<sup>24</sup> Section 447.02(2), F.S.

<sup>25</sup> Section 447.04(2), F.S.

<sup>26</sup> Section 447.06(2), F.S.

<sup>27</sup> See s. 468.383, F.S., for exemptions from the requirement that auctioneers be licensed.

<sup>28</sup> See s. 468.385(4), F.S.

<sup>29</sup> See s. 486.395, F.S.

<sup>30</sup> See s. 486.393, F.S.

auctioneer whose wrongdoing causes someone to be paid from the fund must reimburse the fund before having his or her license reinstated.

***Effect of Proposed Changes:***

**Sections 10 through 29** of the bill eliminate the licensing scheme relating to auctioneers. However, the bill creates civil causes of action (instead of administrative remedies) against auctioneers, auction businesses, and others for certain violations. Accordingly, the bill eliminates the statutes funding and regulating disbursement from the Auctioneer Recovery Fund. Moreover, the bill maintains that several violations of these statutes constitute third degree felonies,<sup>31</sup> punishable by up to 5 years in prison,<sup>32</sup> 5 years of probation, and a fine not to exceed \$5,000.<sup>33</sup>

**Talent Agencies**

***Present Situation:***

Chapter 468, Part VII, F.S., governs the licensing and regulation of talent agencies. The Department's Division of Professions oversees the licensing and regulation of talent agencies. The Division of Professions processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the talent agency industry.

Individuals are prohibited from owning, operating, soliciting business, or otherwise engaging in or carrying on the occupation of a talent agency in this state unless the person first obtains licensure for the talent agency.<sup>34</sup> A talent agency is defined as “[a]ny person who, for compensation, engages in the occupation or business of procuring or attempting to procure engagements for an artist.”<sup>35</sup>

To qualify for a talent agency license, each person designated in the application must be of good moral character<sup>36</sup> and the application must show whether the agency, any person, or any owner of the agency is financially interested in any other business of like nature, and if so, must specify the interests.<sup>37</sup>

At the time of application, applicants for a talent agency license must pay an application fee of \$300, an unlicensed activity fee of \$5, and an initial licensure fee of \$200 if licensed after March 31 of any odd numbered year; otherwise, the initial license fee is \$400. Talent agency licensees must pay a biennial renewal fee of \$400.<sup>38</sup>

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<sup>31</sup> Section 810.08(2)(c), F.S.

<sup>32</sup> Section 775.082(3)(e), F.S.

<sup>33</sup> Section 775.083(1)(c), F.S.

<sup>34</sup> Section 468.403(1), F.S.

<sup>35</sup> Section 468.401, F.S.

<sup>36</sup> “Good moral character” means “a personal history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation.” Section 468.433(2)(a), F.S.

<sup>37</sup> Section 468.405, F.S.

<sup>38</sup> Rule 61-19.005, F.A.C.

Licensed talent agencies are required to:

- File an itemized schedule of maximum fees, charges, and commissions it intends to charge and collect for its services;<sup>39</sup>
- Pay to the artist all money collected from an employer for the benefit of an artist within 5 business days after receipt of the money;<sup>40</sup>
- Display a copy of the license conspicuously in the place of business;<sup>41</sup>
- File a bond with DBPR in the form of a surety for the penal sum of \$5,000, which may be drawn upon if a person is aggrieved by the misconduct of the talent agency;<sup>42</sup>
- Maintain records including the application, registration, or contract of each artist, with additional information;<sup>43</sup>
- Provide a copy of the contract to the artist within 24 hours after the contract's execution;<sup>44</sup> and
- Abstain from the prohibited acts listed in s. 468.412, F.S.

Licensed talent agencies are prohibited from:

- Charging the artist a registration fee;<sup>45</sup> and
- Requiring the artist to subscribe to, purchase, or attend any publication, postcard service, and advertisement, résumé service, photography service, school, acting school, workshop, or acting workshop.<sup>46</sup>

Talent agents are prohibited from engaging in sexual misconduct, meaning using the talent agent's position to induce or attempt to induce sexual activity.<sup>47</sup>

The following acts are third degree felonies,<sup>48</sup> punishable by up to 5 years in prison,<sup>49</sup> 5 years of probation, and a fine not to exceed \$5,000.<sup>50, 51</sup>

- Operating a talent agency without a license; or
- Obtaining a license through misrepresentation.

The following act or omissions are second degree misdemeanors, punishable by 60 days in jail and a fine not to exceed \$500.<sup>52</sup>

- Assigning a license to another individual;
- Relocating a talent agency without notifying DBPR;
- Failing to provide information on an application regarding related businesses;

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<sup>39</sup> Section 468.406(1), F.S.

<sup>40</sup> Section 468.406(2), F.S.

<sup>41</sup> Section 468.407(2), F.S.

<sup>42</sup> Section 468.408, F.S.

<sup>43</sup> Section 468.409, F.S.

<sup>44</sup> Section 468.410(3), F.S.

<sup>45</sup> Section 468.410(1), F.S.

<sup>46</sup> Section 468.410(2), F.S.

<sup>47</sup> Section 468.415, F.S.

<sup>48</sup> Section 810.08(2)(c), F.S.

<sup>49</sup> Section 775.082(3)(e), F.S.

<sup>50</sup> Section 775.083(1)(c), F.S.

<sup>51</sup> Section 468.413(1), F.S.

<sup>52</sup> See ss. 468.413(2), 775.082(4)(b), and 775.083(1)(e), F.S.



- Failing to maintain records;
- Requiring the artist to subscribe to, purchase, or attend any publication, postcard service, advertisement, resume service, photography service, school, acting school, workshop, or acting workshop;
- Failing to provide a copy of the contract to the artist;
- Failing to maintain a record sheet; and
- Knowingly sending an artist to an employer the licensee knows to be in violation of the laws of Florida or of the United States.

According to the Department, only three disciplinary orders were issued against talent agencies in recent years; two involved minor violations for failure to include the talent agency's license number in advertisements. The financial account of the licensing program has been in a perpetual deficit since the enactment of legislation authorizing talent agency licensure in 1986.<sup>53</sup>

***Effect of Proposed Changes:***

**Sections 30 through 43** of the bill amend Part VII of ch. 468, F.S., eliminating all required licensure of talent agencies and the Department's regulation of talent agencies. However, many statutory regulations remain, including criminal penalties for most prohibited acts or omissions provided in current law, except those relating to licensure. Also, sexual misconduct is still prohibited, and one who violates the prohibition is still theoretically barred from ever again<sup>54</sup> acting as an agent, owner, or operator of a talent agency. Lastly, contract and notice requirements related to talent agents are retained.

**Asbestos Abatement Business Organization**

***Present Situation:***

Chapter 469, F.S., governs the licensing and regulation of asbestos abatement. The Asbestos Licensing Unit is a program located under the Division of Professions. The program processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the asbestos abatement industry.

As a general matter, a person must be a licensed asbestos contractor in order to conduct asbestos abatement work.<sup>55</sup>

And a person must be a licensed asbestos consultant to:

- Conduct an asbestos survey;
- Develop an operation and maintenance plan;
- Monitor and evaluate asbestos abatement; or
- Prepare asbestos abatement specifications.<sup>56</sup>

<sup>53</sup> See *2016 Legislative Bill Analysis for Senate Bill 1050 (2016)* by the Florida Department of Business and Professional Regulation, page 2 (Dec 16, 2015) (on file with Senate Committee on Judiciary).

<sup>54</sup> It's unclear what effect this provision has under the bill, given that the bill does not make this a crime and does not specify how someone is found to be guilty of this wrongdoing. Moreover, it is unclear who would enforce this provision.

<sup>55</sup> Section 469.003(3), F.S.

<sup>56</sup> Section 469.003, F.S.

An asbestos consultant's license may be issued only to an applicant who holds a current, valid, and active license as an architect, professional engineer, professional geologist, is a diplomat of the American Board of Industrial Hygiene, or has been awarded designation as a Certified Safety Professional by the Board of Certified Safety Professionals.<sup>57</sup>

If an applicant for licensure as an asbestos consultant or contractor intends to engage in consulting or contracting as a business organization, such as a corporation, or in any name other than the applicant's legal name, the business organization must be licensed separately as an asbestos abatement business. Each licensed business organization must have a qualifying agent who is licensed under ch. 469, F.S.,<sup>58</sup> is qualified to supervise the enterprise, and is financially responsible. If the qualifying agent terminates his or her affiliation with the business organization and is the only qualifying agent for the business organization, the business organization must be qualified by another qualifying agent within 60 days after the termination, and the business organization may not engage in the practice of asbestos abatement until it is qualified.

Applicants for an asbestos abatement business license pay an application fee of \$300, an unlicensed activity fee of \$5, an initial licensure fee of \$250, and a biennial renewal fee of \$250.<sup>59</sup> A branch office has no regulatory obligations other than to obtain licensure. Additionally, branch offices are not subject to inspection.

***Effect of Proposed Changes:***

**Sections 44 and 45** of the bill amend ch. 469, F.S., to remove the requirement that an asbestos abatement contractor obtain a separate business license in addition to an individual license. Nonetheless, asbestos abatement contractors must qualify the business organizations they supervise and they are liable for the actions of those businesses. Asbestos abatement contractors must inform the Department of any change in their relationship with the qualified business, and a qualified business has 60 days to obtain another asbestos abatement contractor to serve as qualifying agent.

**Restricted Barbering**

***Present Situation:***

The term "barbering" used in ss. 476.014 through 476.254, F.S., the Barbers' Act, includes any of the following practices when done for payment by the public:<sup>60</sup> shaving, cutting, trimming, coloring, shampooing, arranging, dressing, curling, or waving the hair or beard or applying oils, creams, lotions, or other preparations to the face, scalp, or neck, either by hand or by mechanical appliances.<sup>61</sup>

If a person wants to be licensed as a barber, they must pass an examination. However, to be eligible to take the examination, a person must be at least 16 years of age, pay the application fee, and either have been licensed in another state for at least 1 year or have 1,200 hours of

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<sup>57</sup> Section 469.004(1), F.S.

<sup>58</sup> Section 469.006, F.S.

<sup>59</sup> Rule 61E1-3.001, F.A.C.

<sup>60</sup> But not when done for the treatment of disease or physical or mental ailments.

<sup>61</sup> Section 476.034(2), F.S.

specified training.<sup>62</sup> However, the Barber Board is authorized to establish by rule a procedure for a barber school or program to certify a person to take the licensure examination following completion of a minimum of 1,000 hours of training and for the licensure of such person who passes the examination.<sup>63</sup>

***Effect of Proposed Changes:***

**Sections 46 through 48** of the bill amend ss. 476.034, 476.114, and 476.144, F.S. to establish a two-tiered barbering licensure, one for “barbers,” and one for “restricted barbers.” Restricted barbers are licensed to do most things that a barber may do under current law, with the exception of applying oils, creams, lotions, or other preparations to the face, neck or scalp. Accordingly, the prerequisite education for one to take the examination to become a restricted barber is considerably lower: 550 hours, as opposed to 800 hours for unrestricted barbers. And the 800 hours required before one can take an examination for the unrestricted barbering license is 400 hours less than the standard requirement under current law.

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

***Present Situation:***

Chapter 477, F.S., governs the licensing and regulation of cosmetologists, hair wrappers, hair braiders, nail specialists, facial specialists, full specialists, body wrappers and related salons in the state. The Board of Cosmetology, within the Department’s Division of Professions, processes license applications and responds to consumer complaints and inquiries by monitoring activities and compliance within the cosmetology industry.

Individuals are prohibited from providing manicures or pedicures in Florida without first being registered as a nail specialist, full specialist, or cosmetologist.

A “specialist” is defined as “any person holding a specialty registration in one or more of the specialties registered under [ch. 477, F.S.]”<sup>64</sup> The term “specialty” is defined as “the practice of one or more of the following:

- Manicuring, or the cutting, polishing, tinting, coloring, cleansing, adding, or extending of the nails, and massaging of the hands. This term includes any procedure or process for the affixing of artificial nails, except those nails which may be applied solely by use of a simple adhesive;
- Pedicuring, or the shaping, polishing, tinting, or cleansing of the nails of the feet, and massaging or beautifying of the feet;
- Facials, or the massaging or treating of the face or scalp with oils, creams, lotions, or other preparations, and skin care services.”<sup>65</sup>

The term “cosmetologist” is defined as “a person who is licensed to engage in the practice of cosmetology . . . .”<sup>66</sup> “Cosmetology” is defined as “the mechanical or chemical treatment of the

<sup>62</sup> See s. 476.114(2), F.S.

<sup>63</sup> Section 476.114(2), F.S.

<sup>64</sup> Section 477.013(5), F.S.

<sup>65</sup> Section 477.013(6), F.S.

<sup>66</sup> Section 477.013(3), F.S.

head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services.”<sup>67</sup>

A nail specialist may complete manicures and pedicures. A full specialist may complete manicures, pedicures, and facials. Manicures and pedicures, as a part of cosmetology services, are required to be provided in a licensed specialty salon or cosmetology salon.<sup>68</sup> All cosmetology and specialty salons are subject to inspection by DBPR.<sup>69</sup>

To qualify for a specialist license, the applicant must be at least 16 years old, obtain a certificate of completion from an approved specialty education program, and submit an application for registration with DBPR with the registration fee.<sup>70</sup>

To qualify for a license as a cosmetologist, the applicant must be at least 16 years old, have received a high school diploma, have submitted an application with the applicable fee and examination fee, and have either a license in another state or country for at least 1 year, or have received 1,200 hours training including completing an education at an approved cosmetology school or program. The applicants must also pass all parts of the licensure examination.<sup>71</sup>

The act of painting nails with fingernail polish falls under the scope of manicuring, even if the individual is not cutting, cleansing, adding, or extending the nails. Therefore, individuals seeking to add polish to fingernails and toenails for compensation are required to obtain a registration as a specialist or a license as a cosmetologist. DBPR does not have a separate license for polishing nails.

***Effect of Proposed Changes:***

**Section 49** of the bill amends s. 477.013, F.S. to specify the activities that constitute the practice of a “nail specialty,” a “facial specialty,” and a “full specialty.” A nail specialty, includes:

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

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

**Section 50** of the bill repeals s. 477.0132, F.S., and eliminates registration requirements for hair braiding, hair wrapping, and body wrapping.

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<sup>67</sup> Section 477.013(4), F.S.

<sup>68</sup> Section 477.0263, F.S.

<sup>69</sup> Section 477.025, F.S.

<sup>70</sup> Section 477.0201, F.S.

<sup>71</sup> Section 477.019(2), F.S.

**Sections 51 and 52** of the bill amend ss. 477.0135 and 477.019, F.S., to eliminate licensure or registration for a person whose occupation or practice is confined solely to hair braiding, to hair wrapping, or to body wrapping, and to exempt these persons from certain continuing education requirements.

**Section 53** of the bill amends s. 477.0201, F.S., on specialty registration, to include registrations for nail, facial specialty practices, and full specialty practices, including minimum training requirements.

**Section 54** of the bill deletes s. 477.026(1)(f), F.S., eliminating the registration fee for hair braiders, hair wrappers, and body wrappers.

### **Architecture Business or Interior Design Organization**

#### ***Present Situation:***

Chapter 481, Part I, F.S., governs the licensing and regulation of architects, interior designers, and related business organizations. The Board of Architecture and Interior Design exists under the Department's Division of Professions. The board processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the architecture and interior design industries.

“The practice of or the offer to practice architecture or interior design by licensees through a corporation, limited liability company, or partnership offering architectural or interior design services to the public, or by a corporation, limited liability company, or partnership offering architectural or interior design services to the public through licensees under this part as agents, employees, officers, or partners, is permitted, subject to the provisions of [ch. 481, Part I, F.S.].”<sup>72</sup> An architecture or interior design business corporation, limited liability company, or partnership, which is offering architecture or interior design service to the public, must obtain a certificate of authorization prior to practicing.<sup>73</sup>

Applicants for an architecture business certificate of authorization or interior design business certificate of authorization must pay an application fee of \$100, an unlicensed activity fee of \$5, and a biennial renewal fee of \$125.<sup>74</sup> A business entity has no regulatory obligations other than to obtain licensure.

According to DBPR, in recent years, the Board of Architecture and Interior Design disciplined licensed architecture businesses only six times in cases that did not also involve discipline against the supervising architect; generally, the licensed business was cited for operating without a supervising architect or for failure to include license numbers in advertisements.<sup>75</sup>

<sup>72</sup> Section 481.219(1), F.S.

<sup>73</sup> Section 481.219(2)-(3), F.S.

<sup>74</sup> Rules 61G1-17.001 and 61G1-17.002, F.A.C.

<sup>75</sup> *Id.* at 5.

The Board of Architecture and Interior Design disciplined licensed interior design businesses only four times in recent years in cases that did not also involve discipline against the qualifying interior designer. In three of the four disciplinary cases, the business license was retained by the business after the qualifying interior designer had left the firm.<sup>76</sup>

***Effect of Proposed Changes:***

**Sections 55 through 58** of the bill amend ch. 481, F.S., to remove the requirement that architects and interior designers obtain a separate business license (certificate of authorization) in addition to an individual license. The bill provides that architects and interior designers qualify their business organizations with their individual licenses. The bill provides that architects and interior designers must inform DBPR of any change in their relationship with the qualified business, and the business has 60 days to obtain a replacement qualifying architect or interior designer. The executive director or chair of the Board of Architecture and Interior Design may authorize another registered architect or interior designer employed by the business organization to temporarily service as its qualifying agent for no more than 60 days.

The bill amends s. 481.219(2)(b), F.S., to provide that the Board of Architecture and Interior Design may deny an application to qualify a business organization if the applicant (or others identified in the application as partners, officers, directors, or stockholders who are also officers or directors) “has been involved in past disciplinary actions or on any grounds for which an individual registration or certification may be denied.”

**Landscape Architecture Business Organization**

***Present Situation:***

Chapter 481, Part II, F.S., governs the licensing and regulation of landscape architects and related business organizations in the state. The Board of Landscape Architecture, a board located within the Division of Professions, processes licenses and responds to consumer complaints and inquiries by monitoring activities and compliance within the landscape architecture industry.

A person may not knowingly practice landscape architecture unless the person holds a valid license issued pursuant to ch. 481, Part II, F.S.<sup>77</sup> A corporation or partnership is permitted to offer landscape architectural services to the public, subject to the provisions of ch. 481, Part I, F.S., if:

- One or more of the principals of the corporation, or partners in the partnership, is a licensed landscape architect;
- One or more of the officers, directors, or owners of the corporation, or one of more of the partners of the partnership is a licensed landscape architect; and
- The corporation or partnership has been issued a certificate of authorization by the board.<sup>78</sup>

Applicants for a landscape architecture business certificate of authorization must pay an application fee and initial licensure fee of \$450, an unlicensed activity fee of \$5, and a biennial,

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<sup>76</sup> *Id.*

<sup>77</sup> Section 481.323(1)(a), F.S.

<sup>78</sup> Section 481.319(1), F.S.

renewal fee of \$337.50.<sup>79</sup> A business entity has no regulatory obligations other than to obtain licensure.

***Effect of Proposed Changes:***

**Sections 59 through 64** of the bill amend Part II of ch. 481, F.S., to remove the requirement that landscape architects obtain a separate business license in addition to an individual license. The bill provides that landscape architects must qualify their business organization with their individual licenses and that they will be liable for the actions of the business organizations they qualify.

The bill repeals Department's authority to issue a certificate of authorization to an applicant wishing to practice as a corporation, limited liability company, or partnership offering landscape architectural services. Furthermore, the bill repeals the board's ability to grant a temporary certificate of authorization for a business organization that is seeking to work on one project in Florida for a period not to exceed 1 year to an out-of-state corporation, partnership, or firm.

The bill provides that a corporation or partnership is permitted to offer landscape architectural services to the public, subject to the provisions of ch. 481, Part I, F.S., if:

- One or more of the principals of the corporation, or partners in the partnership, is a licensed landscape architect; and
- One or more of the officers, directors, or owners of the corporation, or one of more of the partners of the partnership is a licensed landscape architect.

Under the bill, landscape architects must inform DBPR of any change in their relationship with the qualified business, and the business has 1 month to obtain another qualifying landscape architect. According to DBPR, the Board of Landscape Architecture and Design issued no disciplinary orders against landscape architecture businesses during the 3 previous fiscal years.<sup>80</sup>

**Professional Geology**

***Present Situation:***

Section 492.111, F.S., requires that a firm, corporation, or partnership offering geological services to the public first obtain a certification of authorization from the Department. No similar requirement exists for a person practicing professional geology in his or her own name.

***Effect of Proposed Changes:***

**Sections 65 through 68** of the bill amend ss. 492.111, 492.104, and 492.113, F.S., to eliminate the requirement that a firm, corporation, or partnership offering geological services to the public obtain a certification of authorization.

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<sup>79</sup> Rule 61G10-12.002, F.A.C.

<sup>80</sup> *Id.*

## State Boxing Commission

### *Present Situation:*

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing, and mixed martial arts by the Department's Florida State Boxing Commission.

The Commission with exclusive jurisdiction over every professional boxing match and professional mixed martial arts and kickboxing matches.<sup>81</sup> Professional matches held in this state must meet the requirements for holding the match set forth in ch. 548, F.S., and must accord with the rules adopted by the Commission.

However, as to amateur matches, the Commission's jurisdiction is limited to the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for boxing and kickboxing matches held in this state.<sup>82</sup> Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.<sup>83</sup> This jurisdiction does not extend to amateur sanctioning organizations for mixed martial arts.

Under current law, certain persons providing certain services related to professional and amateur boxing, kickboxing, and mixed martial arts must be licensed by the commission before directly or indirectly performing those services. Licensing is mandated for a participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician, matchmaker, or promoter.<sup>84</sup>

### *Effect of Proposed Changes:*

**Section 69** of the bill amends s. 548.017, F.S., to eliminate the licensure requirement for persons serving as timekeepers and announcers for a match.<sup>85</sup>

### **Effective Date**

The bill takes effect October 1, 2017.

## **IV. Constitutional Issues:**

### A. Municipality/County Mandates Restrictions:

None.

### B. Public Records/Open Meetings Issues:

None.

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<sup>81</sup> Section 548.006(3), F.S.

<sup>82</sup> *Id.*

<sup>83</sup> Section 548.002(2), F.S.

<sup>84</sup> Section 548.017, F.S.

<sup>85</sup> Section 70 conforms s. 548.003(2)(i), F.S., to the substantive change made in section 69.



C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill repeals requirements for criminal history record checks for talent agents. The Department of Law Enforcement estimates an annual revenue loss of \$1,824, on account of approximately 76 records checks that produce \$24 each in fees payable to the state.<sup>86</sup>

B. Private Sector Impact:

The bill repeals requirements for criminal history record checks for talent agents, who will no longer be required to pay for and obtain these records checks.

According to DBPR, the bill will result in a reduction of licensing fees, fees for renewal of licenses, and unlicensed activity fees paid by the private sector of approximately \$971,003 in Fiscal Year 2017-2018, \$1,123,148 in Fiscal Year 2018-2019, and \$970,828 in Fiscal Year 2019-2020.<sup>87</sup>

DBPR's Division of Condominiums (Yacht and Ship Brokers) estimates that the bill will result in a reduction of license and license renewal fees to be paid by the private sector of approximately \$4,300 in Fiscal Year 2017-2018, \$4,300 in Fiscal Year 2018-2019, and \$4,300 in Fiscal Year 2019-2020.<sup>88</sup>

DBPR estimates that the bill will result in a reduction of the private sector's fees for licensing and renewal of licensing to be paid to the Florida State Boxing Commission of approximately \$1,000 in Fiscal Year 2017-2018, \$1,000 in Fiscal Year 2018-2019, and \$1,000 in Fiscal Year 2019-2020.<sup>89</sup>

C. Government Sector Impact:

In short, DBPR anticipates a reduction in the state government's revenue over the next 3 fiscal years of \$3,080,878. Also, as to the state government's expenditures in this same timeframe, DBPR estimates \$246,470 less going to General Revenue by way of the 8% service charge that would have had to be paid from the \$3,080,878 in collected fees.<sup>90, 91</sup> The following chart displays these impacts in greater detail:<sup>92</sup>

<sup>86</sup> Florida Department of Law Enforcement, *2017 FDLE Legislative Bill Analysis (SB 802)*, page 3. (Feb. 15, 2017) (on file with the Senate Committee Judiciary).

<sup>87</sup> Department of Business and Professional Regulation, *2017 Agency Legislative Bill Analysis (SB 802)*, page 9, Mar. 2, 2017 (on file with Senate Committee on Judiciary).

<sup>88</sup> *Id.* at page 10.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at page 7.

<sup>91</sup> \$246,470 is 8% of \$3,080,878.

<sup>92</sup> Department of Business and Professional Regulation, *2017 Agency Legislative Bill Analysis (SB 802)*, page 9, Mar. 2, 2017 (on file with Senate Committee on Judiciary).

	FY 2017-2018	FY 2018-2019	FY 2019-2020
Revenues: License fees and Unlicensed Activity Fees	Condominiums (Yacht and Ship Brokers) (\$4,300)	Condominiums (Yacht and Ship Brokers) (\$4,300)	Condominiums (Yacht and Ship Brokers) (\$4,300)
	Professions (\$971,003)	Professions (\$1,123,148)	Professions (\$970,828)
	Boxing Commission (\$1,000)	Boxing Commission (\$1,000)	Boxing Commission (\$1,000)
Expenditures: Surcharge to GR (non-operating)	Condominiums (Yacht and Ship Brokers) (\$344)	Condominiums (Yacht and Ship Brokers) (\$344)	Condominiums (Yacht and Ship Brokers) (\$344)
	Professions (\$77,680)	Professions (\$89,852)	Professions (\$77,666)
	Boxing Commission (\$80)	Boxing Commission (\$80)	Boxing Commission (\$80)

Apparently, the bill will effectively cause the funding accounts of several Boards of DBPR that often have negative balances to close, as the fees that fund the accounts will no longer be charged. These accounts, which had been borrowing from better-funded accounts, are those of the Talent Agencies, the Board of Professional Geologists, and the Board of Auctioneers.<sup>93</sup> It is unclear whether this borrowing arrangement was beneficial for the borrow-from accounts, and therefore for DPBR as a whole.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 326.004, 447.02, 447.09, 468.381, 468.382, 468.388, 468.389, 468.391, 468.401, 468.406, 468.408, 468.409, 468.410, 468.412, 468.413, 468.415, 469.006, 469.009, 476.034, 476.114, 476.144, 477.013, 477.0135, 477.019, 477.0201, 477.026, 481.203, 481.219, 481.221, 481.229, 481.303, 481.311, 481.317, 481.319, 481.321, 481.329, 492.111, 492.104, 492.113, 492.115, 548.003, and 548.017.

This bill repeals the following sections of the Florida Statutes: 447.04, 447.041, 447.045, 447.06, 447.12, 447.16, 468.384, 468.385, 468.3851, 468.3852, 468.3855, 468.386, 468.387, 468.392, 468.393, 468.394, 468.395, 468.396, 468.397, 468.398, 468.399, 468.402, 468.403, 468.404, 468.405, 468.407, 468.414, and 477.0132.

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<sup>93</sup> *Id.* at pages 9-10.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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

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