

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 Appropriations Committee on Agriculture, Environment, and General Government

BILL: CS/SB 406

INTRODUCER: Regulated Industries Committee and Senator Hooper

SUBJECT: Yacht and Ship Brokers

DATE: April 17, 2023

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 406 revises the regulation of yacht and ship brokers and salespersons by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR).

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

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

The bill revises the requirements for licensure as a broker. Under the bill, an applicant for a broker license must demonstrate that he or she has been directly involved in at least four transactions during the two years preceding the date of the license application that resulted in the

sale of a yacht. Alternatively, a person may qualify for a broker license by certifying that he or she has obtained 20 hours of education, in-person or online, from a provider approved by the division regarding the state laws, rules, and ethics relating to the professional standards of practice, duties, and responsibilities of a licensee. The bill deletes the requirement that an applicant for a broker license have been licensed as a salesperson for two consecutive years.

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

The bill has an indeterminate fiscal impact on state expenditures. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2023.

II. Present Situation:

Division of Florida Condominiums, Timeshares and Mobile Homes

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

Yacht and Ship Broker Branch Office Licenses

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

Definitions

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

¹ Section 326.001, F.S.

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

³ Section 326.002(1), F.S.

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

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

Licensing

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

To qualify for a broker’s license, a person must have been licensed as a salesperson for at least two consecutive years.⁵ Current law gives the division the discretion to deny an application for a broker or salesperson license if the applicant does not:

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

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

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

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

A license is not required for:

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

⁴ Section 326.002(3), F.S.

⁵ Section 326.004(8), F.S.

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

⁷ Section 326.004(6), F.S.

⁸ Section 326.004(7), F.S.

⁹ Section 326.004(9), F.S.

¹⁰ Fla. Admin. Code R. 61B-60.003(4).

- A transaction involving the foreclosure of a security interest in a yacht.¹¹

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

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

III. Effect of Proposed Changes:

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

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

The DBPR’s analysis for the bill notes that “[t]he term “pleasure”¹⁵ is undefined, and thus rulemaking authority is required to define such a term. Moreover, “primarily” would need to be defined by either statute or rule relative to the scope of use. Otherwise, there is no standard by which to discern whether the yacht in question is a yacht for which the division has regulatory authority.”¹⁶

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

The bill also amends s. 326.004(6), F.S., to require the division to deny an application for a broker or salesperson license on the basis of the grounds listed in this subsection. Current law gives the division the discretion to deny an application for a broker or salesperson license.

Section 326.004(8), F.S., is amended by the bill to revise the requirements for licensure as a broker. Under the bill, an applicant for a broker license must demonstrate that he or she has been directly involved in at least four transactions during the two years preceding the date of the

¹¹ Section 326.004 (3), F.S.

¹² Section 326.004 (13), F.S.

¹³ Fla. Admin. Code R. 61B-60.003(4).

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

¹⁵ The term “pleasure” means, in part, “someone or something that provides amusement or enjoyment.” The term “recreation is a synonym for this meaning of the term. See Merriam-Webster.com, “Pleasure,” <https://www.merriam-webster.com/thesaurus/pleasure> (last visited Mar. 29, 2023).

¹⁶ Department of Business and Professional Regulation, *2023 Agency Legislative Bill Analysis for HB 83 [identical to SB 406]* at 3 (Feb. 17, 2023) (on file with the Senate Regulated Industries Committee).

license application that resulted in the sale of a yacht. Alternatively, a person may qualify for a broker license by certifying that he or she has completed 20 hours of education, in-person or online, from a provider approved by the division under ss. 455.2178 and 455.2179, F.S.,¹⁷ regarding the state laws, rules, and ethics relating to the professional standards of practice, duties, and responsibilities of a licensee.

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

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

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹⁷ Sections ss. 455.2178 and 455.2179, F.S., relate to the division's authority and the process for approving of continuing education providers.

B. Private Sector Impact:

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

Applicants for a broker license who opt to qualify for a license by completing 20 hours of education will incur costs related to completing those education hours.

C. Government Sector Impact:

The bill has an indeterminate, but likely minimal, fiscal impact on the division's expenditures, which could be accommodated with existing resources. To date, an analysis from the DBPR regarding the fiscal impact of CS/SB 406 on the division's revenues, expenditures, or operations has not been provided. However, the division may incur costs related to developing the criteria for an education provider which license applicants may use as option for qualifying as a broker.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The definition for the term "yacht" is revised by the bill to require that the vessel be manufactured or operated primarily for pleasure or leased, rented, or chartered to a person other than for such person's pleasure. The DBPR's analysis for the bill notes that "[t]he term "pleasure" is undefined, and thus rulemaking authority is required to define such a term. Moreover, "primarily" would need to be defined by either statute or rule relative to the scope of use. Otherwise, there is no standard by which to discern whether the yacht in question is a yacht for which the division has regulatory authority."¹⁸ However, the term "pleasure" means, in part, "someone or something that provides amusement or enjoyment," and the term "recreation" is a synonym for this meaning of the term.¹⁹ The bill may be interpreted as defining "yacht" as a vessel used primarily for recreation.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 326.002 and 326.004.

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

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

CS by Regulated Industries on March 29, 2023:

¹⁸ *Supra* note 15.

¹⁹ See Merriam-Webster.com, "Pleasure," <https://www.merriam-webster.com/thesaurus/pleasure> (last visited Mar. 29, 2023).

The CS deletes from the bill the amendment to s. 20.165, F.S., renaming the division as the Florida Condominiums, Timeshares, Yacht Brokers, and Mobile Homes, and also deletes all conforming amendments to ss. 192.037; 213.053; 326.006; 455.116; 475.455; 509.512; 559.935; 718.103; 718.105; 718.1255; 718.501; 718.5011; 718.502; 718.503; 718.504; 718.508; 718.509; 718.608; 719.103; 719.1255; 719.501; 719.502; 719.504; 719.508; 719.608; 720.301; 721.05; 721.07; 721.08; 721.26; 721.28; 721.301; 723.003; 723.006; 723.009; and 723.0611, F.S.

The CS also revises the qualifications in the bill for a ship broker license to provide that the four transactions needed to qualify for a license must occur during the two years preceding the license application, and to provide that the education requirement is based on 20 hours of education from a division-approved provider regarding the state laws, rules, and ethics relating to the professional standards of practice, duties, and responsibilities of a licensee.

B. Amendments:

None.