

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB BCAS 11-02 Relating to reducing and streamlining regulations

SPONSOR(S): Business & Consumer Affairs Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Business & Consumer Affairs Subcommittee	10 Y, 4 N	Morton	Creamer

SUMMARY ANALYSIS

The bill reduces regulatory requirements for professions and businesses, and streamlines regulatory functions.

Specifically the bill:

- Eliminates duplicate licensure requirements for sole proprietorships that are asbestos consultants, asbestos contractors, and architects;
- Reduces the required continuing education requirements to reactivate an inactive license to only one cycle of hours required, instead of the hours required for the years the license was inactive;
- Decriminalizes many violations of professional boards' rules and administrative requirements that currently carry second-degree misdemeanor fines and penalties;
- Aligns minimum education requirements for Certified Public Accounting licensure with college requirements;
- Allows a CPA licensed in another state with 5 years of experience in the field of public accountancy to become licensed in Florida;
- Revises which matters relating to the regulation of public lodging establishments and food service establishments are preempted to the state;
- Authorizes the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to address remedial training for violations of the food code;
- Revises the validity period for inactive status certificates of fire protection system contractors from two years to 8 years;
- Provides for the release of certain driver license information by the Department of Highway Safety and Motor Vehicles to the Department of Business and Professional Regulation for investigative purposes related to unlicensed activity;
- Changes statutory references in the security industry from "repossessors" to "recovery agents";
- Transfers duplicative authority for regulation and enforcement of the Lemon Law from the Department of Agriculture and Consumer Services to the Department of Legal Affairs;
- Transfers duplicative authority for regulation and enforcement of Price Gouging statutes by removing reference to the Department of Agriculture and Consumer Affairs to the Department of Legal Affairs;
- Removes the requirement that certain fees paid by professions of the Security Industry must be in the form of a certified check; and
- Authorizes the direct sale of certain homemade foods to consumers and provides definitions and requirements for such practices.

The bill has an indeterminate fiscal impact on state trust funds and a positive fiscal impact to private businesses. See fiscal comments.

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

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

STORAGE NAME: pcb02a.BCAS

DATE: 3/17/2011

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Duplicate licensing

Architects

Current Situation

“Architecture” is defined as services in connection with the design and construction of a structure or group of structures which have as their principal purpose human habitation or use, and the utilization of space within and surrounding structures. Services include planning, providing preliminary study designs, drawings and specifications, job-site inspection, and administration of construction contracts.

Architects are regulated by the Board of Architecture and Interior Design within the Department of Business and Professional Regulation (DBPR).

License Categories:

Architect – is person who is licensed to engage in the practice of architecture. An applicant for licensure as a registered architect must complete, prior to licensure, an internship of diversified architectural experience, approved by the board of Architects and Interior Designers, in the design and construction of structures which have the principal purpose of human habitation or use. The internship is for a period of three years for an applicant holding the degree of Bachelor of Architecture; or two years for an applicant holding the professional degree of Master of Architecture.

Each applicant for licensure is required to complete 1 year of the internship experience subsequent to graduation from a school or college of architecture.

Business Entity - means a corporation or partnership licensed to practice architecture or interior design.

Methods of Licensure:

Examination - The board of Architects and Interior Designers certify for licensure by examination any applicant who passes the prescribed licensure examination and satisfies the statutory requirements for architects.

Business Entity – A certificate of authorization is required for a corporation, limited liability company, partnership, or person practicing under a fictitious name, offering architectural services to the public jointly or separately. However, when an individual is practicing architecture in her or his own name, is not required to be certified.

Fees:

Initial Fees:

Architects

- Initial Licensure, Application, and Examination Fee - \$1,040
- Licensure by Endorsement - \$200 (\$90 if applicant holds certification from the National Council for Architecture Registration Boards)
- Business Entity
- Certificate of Authorization - \$100 (Architect Corporations and Partnerships)

Biennial License Renewal Fees:

- Architects

- Registered Architects and Architects - \$120
Business Entity
- Certificate of Authorization - \$120

In addition to the license fees above, all applicants are required to pay a \$5 unlicensed activity fee. Each year, \$5 of every license fee funds an unlicensed activity media campaign. Unlicensed activity advertisements are intended to educate the public and prevent unlicensed activity. The DBPR staff creates ads to communicate with the public about unlicensed activity. The DBPR produces several ads each year tailored to each profession that run online, in print and in movie theaters and buses across the state.

Proposed Changes

The bill specifies that, if a person holds an individual license and is operating a business under a fictitious name as a sole proprietorship, an additional business license will not be required.

Asbestos Consultants and Contractors

Current Situation

"Asbestos" means the asbestiform varieties of chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Asbestos Contractors and Consultants are regulated by the DBPR.

License Categories:

An "Asbestos Contractor" is a person who removes, encapsulates, or encloses asbestos-containing materials or disposes of asbestos-containing waste in the course of activities including, but not limited to, construction, renovation, maintenance, or demolition.

An "Asbestos Consultant" is a person who conducts surveys for asbestos-containing materials, develops operation and maintenance plans, monitors and evaluates asbestos abatement, prepares asbestos abatement specifications, or performs related tasks.

Business Organization – An asbestos contracting business must be licensed by the state. Each application for licensure must include the name of the partnership and of each of its partners, the name of the corporation and of each of its officers and directors and the name of each of its stockholders who is also an officer or director, the name of the business trust and of each of its trustees, or the name of such other legal entity and of each of its members. Business organization applications must also include certain documents. The major documents required are:

- Affidavit for financial responsibility.
- Affidavit for proof of worker's compensation insurance.
- Affidavit attesting that the applicant has authority to supervise all construction work performed by the entity.

Fees:

Initial Fees:

- Application Fee - \$300
- Examination Fee - \$400
- Re-Examination - \$400
- Initial License (individual and business entity) - \$500
- Training Course - \$100

Biennial License Renewal Fees:

- Asbestos Consultants and Contractors - \$300
- Business Organizations - \$500

In addition to the license fees above, all applicants are required to pay a \$5 unlicensed activity fee. Each year, \$5 of every license fee funds an unlicensed activity media campaign. Unlicensed activity advertisements are intended to educate the public and prevent unlicensed activity. The DBPR staff creates ads to communicate with the public about unlicensed activity. The DBPR produces several ads each year tailored to each profession that run online, in print and in movie theaters and buses across the state.

Proposed Changes

The bill specifies that, if a person holds an individual license and is operating a business under a fictitious name as a sole proprietorship, an additional business license will not be required.

Continuing Education Requirements for Inactive Licenses

Current Situation

A licensee may practice a profession only if the licensee has an active status license. An inactive status licensee may change to active status provided the licensee meets requirements for active status, pays applicable fees and meets continuing education requirements.

Generally, if a licensee allows their license to go inactive, they must complete enough continuing education to fulfill the continuing education cycle for each licensure cycle in which they were inactive.

Proposed Changes

The bill amends ss. 455.271(4), 481.217, 489.116, 477.0212(2), and 489.515, F.S., reducing the amount of continuing education a licensee must complete to the equivalent of one renewal cycle before reactivating an inactive licensee. This language excludes real estate professionals licensed pursuant to chapter 475, F.S., due to current federal guidelines.

This language applies to the following professions:

- Accountants
- Architects
- Asbestos Contractors
- Building Code Administrators and Inspectors
- Construction Contractors
- Cosmetologists
- Electrical Contractors
- Engineers

Decriminalization of Rule Violations

Cosmetologists

Current Situation

Cosmetologists are licensed by the Board of Cosmetology within the DBPR pursuant to chapter 477, F.S.

Section 477.0265(1)(c), F.S., makes engaging in willful or repeated violations of chapter 477 or any rule adopted by the Board of Cosmetology an unlawful act, punishable as a second-degree misdemeanor.¹ This criminalizes violations of the professional practice act and the board rules, including violations for failure to attach a recent photo to the license, failure to keep furniture and equipment free from dust,

¹ Fla. Stat. s. 477.0265(2).

failure to comply with local building and fire codes, and failure to keep hair from accumulating on the floor.

Proposed Changes

The bill repeals s. 477.0265(1)(c), decriminalizing repeated or willful violation of administrative rules and the practice act.

The board will still be able to impose administrative discipline against a cosmetology licensee for violations, and state attorneys may still file criminal charges against a licensee for more serious violations.

Real Estate Commission

Current Situation

Currently, Florida Statutes criminalize violations of rules and orders of the Florida Real Estate Commission (FREC). Section 475.42(1)(e), F.S., provides: A person may not violate any lawful order or rule of the commission which is binding upon her or him. In addition, section 475.42(2), F.S., provides:

Any person who violates any of the provisions of subsection (1) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, or, if a corporation, it is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.083, except when a different punishment is prescribed by this chapter. Nothing in this chapter shall prohibit the prosecution under any other criminal statute of this state of any person for an act or conduct prohibited by this section; however, in such cases, the state may prosecute under this section or under such other statute, or may charge both offenses in one prosecution, but the sentence imposed shall not be a greater fine or longer sentence than that prescribed for the offense which carries the more severe penalties. A civil case, criminal case, or a denial, revocation, or suspension proceeding may arise out of the same alleged state of facts, and the pendency or result of one such case or proceeding shall not stay or control the result of either of the others.

As a result, a licensee is subject to criminal sanctions for a rule violation of the FREC. This means a licensee can be subject to criminal sanctions for minor rule infractions, for example, improper use of a guest lecturer or failure to maintain the proper office sign at the entrance of the office. In addition, a violation of section 475.42(1)(e) is subject to an administrative fine issued by the FREC ranging from \$250-\$1,000 on the first occurrence. Violators can also be subject to suspension or revocation of their license.²

Proposed Changes

The bill deletes section 475.42(1)(e). As a result, it decriminalizes a violation of an order or rule of the FREC.

The FREC will still be able to impose administrative discipline against a real estate licensee for violations, and state attorneys may still file criminal charges against a licensee for more serious violations.

Real Estate Appraisal

Background

Currently, Florida Statutes criminalize violations of practices acts and administrative rules promulgated by the Florida Real Estate Appraisal Board (FREAB). Section 475.626(1), F.S., provides: (b) No

² 61J2-24.001, F.A.C.

person shall violate any lawful order or rule of the board which is binding upon her or him. (c) No person shall commit any conduct or practice set forth in s. 475.624.

Section 475.626(2), F.S., provides:

Any person who violates any of the provisions of subsection (1) is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, except when a different punishment is prescribed by this section. Nothing in this section shall prohibit the prosecution under any other criminal statute of this state of any person for an act or conduct prohibited by this section; however, in such cases, the state may prosecute under this section or under such other statute, or may charge both offenses in one prosecution, but the sentence imposed shall not be a greater fine or longer sentence than that prescribed for the offense which carries the more severe penalties. A civil case, criminal case, or a denial, revocation, or suspension proceeding may arise out of the same alleged state of facts, and the pendency or result of one such case or proceeding shall not stay or control the result of either of the others.

As a result, a licensee is subject to criminal sanctions for a rule violation of the FREAB. This means a licensee can be subject to criminal sanctions for minor rule infractions, for example, improper use of the designation or abbreviation of appraiser. Appraisers licensed under Part II of Chapter 475, F.S., are also exposed to criminal sanctions for violations of s. 475.624, F.S. In addition, these violations are subject to fines issued by the FREAB and can range from \$500-\$5,000 per occurrence. Violators can also be subject to suspension or revocation of their license.³

Proposed Changes

The bill deletes sections 475.626(1)(b) and 475.626(1)(c), F.S., and as a result, it decriminalizes the violation of FREAB rules and practice acts set forth in s. 475.624, F.S.

The FREC will still be able to impose administrative discipline against a real estate licensee for violations, and state attorneys may still file criminal charges against a licensee for more serious violations.

Use of Digital Images

Current Situation

Currently, s. 322.142, F.S., provides for the issuance of drivers licenses by the Department of Highway Safety and Motor Vehicles using a color photographic or digital imaged driver's license bearing a photograph or digital image of the licensee. The application of this technology is also used for numerous other identification purposes, such as law enforcement.

This section specifically allows the use of reproductions from the file by the DBPR "pursuant to an interagency agreement for the purpose of accessing digital images for reproduction of licenses" issued by the DBPR.

Proposed Changes

The bill expands the use of digital image data for the purpose of identifying subjects under criminal investigation for unlicensed activity by the DBPR.

Lemon Law

Current Situation

³ 61J1-8.002, F.A.C.

Commonly known as Florida's "Lemon Law," the Motor Vehicle Warranty Enforcement Act (Act) establishes arbitration boards throughout the state to hear and settle complaints between car manufacturers and owners.⁴ The Act provides remedies for consumers purchasing or leasing motor vehicles in Florida for personal use that have a manufacturing defect or non-conformity which substantially impairs the vehicle's value, use, or safety.

Although arbitration is completed by a New Motor Vehicle Arbitration Board within the Department of Legal Affairs, the Division of Consumer Services within the Department of Agriculture and Consumer Services (DACS) screens requests for arbitration for eligibility and distributes consumer information on the program.

Proposed Changes

The bill removes DACS's roles of public education and eligibility determination from the Motor Vehicle Warranty Enforcement Act. These tasks are transferred to the Department of Legal Affairs, who administers the rest of the Act.

Price Gouging

Current Situation

Florida prohibits the rental or sale of essential commodities for unconscionable prices during a declared state of emergency.⁵ A commodity includes goods, services, materials, merchandise, supplies, equipment, resources, or other articles of commerce which includes food, water, ice, chemicals, petroleum products, and lumber necessary for consumption or use as a direct result of the emergency. A price is unconscionable if there is a gross disparity between the price charged for the commodity and the average price of that commodity during the 30 days prior to a declaration of a state of emergency, with exceptions.

The law may be enforced by the DACS, the office of the state attorney, or the Department of Legal Affairs. Penalties that may be assessed include a civil penalty of not more than \$1,000 per violation with an aggregate total not to exceed \$25,000 for any 24-hour period.⁶

Proposed Changes

The bill removes the ability of the DACS to enforce the prohibition on charging unconscionable prices for commodities during declared states of emergency.

Accountants

Current Situation

A certified public accountant (CPA) is regulated under the jurisdiction of the Board of Accountancy within the DBPR, Division of Certified Public Accountants. Qualifications for licensure include meeting the requirements for formal education and successful completion of a comprehensive licensure examination.

An applicant for licensure must have at least 150 semester hours of college education, including a baccalaureate or higher degree conferred by an accredited college or university, with a concentration in accounting and business as specified by the board. DBPR reviews an applicant's transcripts to determine if the courses satisfy the board's specific requirements.

⁴ Chapter 681, F.S

⁵ Fla. Stat. s. 501.160.

⁶ Fla. Stat. s. 501.164.

CPAs from other states are required to have substantially equivalent education courses as Florida's required coursework. In the event, through an extensive review of all applicants' course work, the Board finds the applicant's courses are not equivalent to Florida requirements, the CPA may not be licensed until additional hours are completed.

Proposed Changes

The bill amends s. 473.308, F.S. to deem a graduate of an accredited university in Florida with a 5-year Masters degree in accounting eligible for licensure after passing the CPA exam and demonstrating one year of acceptable work experience and good moral character. This removes the requirement for DBPR to review such an applicant's coursework.

The bill also amends s. 473.308, F.S., to allow a CPA licensed in another state with 5 years of relevant work experience to become licensed in Florida, if all applicable fees are paid to the DBPR.

Fire Sprinkler System Contractors

Current Situation

Chapter 633, F.S., relates to fire prevention and control. Certification is defined to mean "the act of obtaining or holding a certificate of competency from the State Fire Marshal." Contracting means "engaging in business as a contractor" and is divided into various classes of certification based on work requirements.

A person who holds a certificate may maintain the certificate in an inactive status during which time she or he may not engage in contracting. An inactive status certificate is void after 2 years. The biennial renewal fee for an inactive status certificate is \$75. An inactive status certificate may be reactivated upon application to the State Fire Marshal and payment of the initial application fee of \$300.

Proposed Changes

The bill changes the inactive status term to extend for four two year periods (8 years).

Real Estate Appraisers

Current Situation

In 2007, as part of the great recession, the United States faced a mortgage crisis. Numerous industries were identified as contributing causes, including the property appraisal industry, and steps were taken to combat practices that were deemed to have contributed to the crisis. As a result, Fannie Mae and Freddie Mac instituted the Home Valuation Code of Conduct (HVCC) which went into effect on May 1, 2009, and Fannie Mae and Freddie Mac no longer accepted loans that did not comply with HVCC.

The HVCC provided a non-exhaustive list of ten specific practices or acts that were prohibited.⁷ In all, the HVCC contained 11 sections.⁸ In essence, HVCC provided that, among other things, only a creditor or its agent could select, engage, and compensate an appraiser and that a creditor ensured that its loan production staff did not influence the appraisal process or outcome.

During the 2010 legislative session, Florida passed legislation to regulate appraisers and appraisal management companies (AMC).⁹ The legislation has an effective date of July 1, 2011, and requires the DBPR to create a new license type for the regulation of AMCs.

⁷ Home Valuation Code of Conduct, on file with subcommittee.

⁸ *Id.*

⁹ Chapter 2010-84, L.O.F.

Subsequent to the passage of the Florida legislation, Congress passed its own version of regulations for these businesses, superseding the HVCC. The Dodd-Frank Act requires states to regulate AMCs.¹⁰ Among its many provisions, the Dodd-Frank Act expanded protections from and requirements of real estate appraisers and appraisal management companies. The Dodd-Frank Act is very complex and requires numerous regulations that will be implemented over the next 18 to 36 months.

Proposed Changes

The bill changes the effective date of Chapter 2010-84, Laws of Florida, to July 1, 2014. This change will allow time for federal regulators to promulgate rules as they relate to real estate appraisers and real estate appraisal management companies. Delaying implementation of the state regulator program is designed to minimize inconsistencies with the requirements of the federal law. The effect of the bill is to prevent Florida businesses from being subject to two potentially conflicting sets of regulations.

Education Requirements for Real Estate Brokers

Current Situation

Currently, section 475.17, F.S., provides: "The postlicensure education requirements of this section, and the education course requirements for one to become initially licensed, do not apply to any applicant or licensee who has received a 4-year degree in real estate from an accredited institution of higher education."

According to the DBPR website, in order to be licensed as a real estate broker in Florida, one must fulfill six requirements:

1. Hold an active real estate sales associate license and complete 24 months of real estate experience during the 5 year period preceding becoming licensed as a broker or a licensed real estate sales associate or broker who has real estate experience in another state may apply the experience toward a Florida real estate broker license if the applicant has held an active sales associate or a valid broker license for at least 24 months during the preceding 5 years. If the applicant is claiming experience from a jurisdiction other than Florida, attach to the application a current certification of real estate license history (not more than 30 days old) from the licensing agency of that jurisdiction. The real estate license must have been obtained from the real estate licensing authority by completing its education and examination requirements. NOTE: If the applicant holds a Florida real estate sales associate license (s)he must fulfill the sales associate post-licensing education requirement before being eligible to obtain a broker license. This method does not exempt a sales associate who holds a Florida sales associate license from successfully completing the sales associate post-licensing course.
 2. Successfully complete a [Florida Real Estate Commission] FREC approved pre-licensing course for brokers consisting of 72 classroom hours and covering the topics required by the FREC. The course is valid for licensure purposes for two years after the course completion date. Applicants with a permanent physical disability as defined by FREC Rule 61J2-3.013(2) may qualify for a correspondence pre-licensing course if unable, due to a permanent physical disability, to attend the site where the course is conducted.
 3. Submit a completed application, electronic fingerprints, and appropriate fee.
 4. Pass the Florida Real Estate Broker Examination with a grade of at least 75.
 5. Submit a completed DBPR RE 11-Broker Transactions form to activate the license, otherwise the license is issued in an inactive status. Alternatively, the broker can activate the license using the broker's online account .
 6. Successfully complete a FREC-approved post-licensing course for brokers consisting of at least 60 classroom hours prior to the expiration of the initial broker license.
- Requirements 2 and 6 illustrate the pre-licensure and post-licensure educational course requirements required of a real estate broker applicant or licensee. The pre-licensure and post-licensure educational course requirements are provided through a number of licensed private real

¹⁰ Dodd-Frank Wall Street Reform and Consumer Protection Act, 124 STAT. 1376, Public Law 111-203-July 21, 2010.

estate schools.¹¹ Each licensed real estate school pays a biennial fee to offer educational courses.¹²

A plain language reading of the section 475.17, F.S., allows holders of a 4-year degree in real estate from an accredited institution of higher education to exempt out of the education requirements of the section, but it prevents applicants and licensees with advanced degrees from qualifying for the exemption.

Proposed Changes

The bill expands the exemption from the pre-licensure and post-licensure education requirements for a real estate broker applicant or licensee under the jurisdiction of the FREC to become licensed. Under the bill, the education course requirements to become initially licensed and the post-licensure education requirements of the section do not apply to any applicant or licensee who has received a bachelor's degree in real estate, a bachelor's degree in business with a concentration or emphasis in real estate, or a graduate degree with a concentration or emphasis in real estate from an accredited institution of higher education.

Under the bill, those with a 4-year degree in business with a concentration in real estate, as well as those with masters' and doctorate degrees from accredited institutions may also claim the exemption.

Security Industry

Current Situation

The security industry is regulated by the Division of Licensing within the DACS. This industry includes private security, private investigative and recovery services to the public. Additionally, the Division manages concealed weapon or firearm licenses. Statutory license requirements include certain fees to be paid by certified check, money order, or by some other means as required by the DACS.

Section 493.6101, F.S., defines "recovery agent" as "any individual who, for consideration, advertises as providing or performs repossessions." In some places, the statutes refer to recovery agents as repossessors.

Proposed Changes

The bill removes the requirement that the payment of certain fees be paid by certified check and changes terminology from "repossessor" to "recovery agent" to conform to the current statutory definition.

Restaurants

Current Situation

Under chapter 509, F.S., the Division of Hotels and Restaurants within the DBPR oversees public food service establishments.

State Preemption

Regulation of public food service and public lodging establishments, including inspections for compliance with sanitation standards and food service personnel food safety training standards, is

¹¹ Florida Department of Business and Professional Regulation, Real Estate Schools (on file with subcommittee).

¹² See 61J2-1.011, F.A.C. Each school permit-holder pays a biennial permit fee of \$135; the chief administrative person at each school pays a biennial permit fee of \$80; each school instructor pays a biennial permit fee of \$80. There is an \$80 application fee for approval of each educational offering by an entity, sponsor, organization or individual equivalent education course offering; there is an \$80 biennial renewal fee for each course offering.

preempted to the state.¹³ Some local governments have adopted ordinances governing issues of food marketing, including nutritional values.

Remedial Training

The DBPR may take disciplinary action against licensees for violations of chapter 509, F.S., including requiring remedial training. This training used to be provided by the Hospitality Education Program, which is funded by a \$10 annual fee on all public food service and public lodging licenses.¹⁴ Until 2009, the Hospitality Education Program provided training programs, including continuing education and remedial training, for no additional charge to the licensee.

The DBPR also selects private nonprofit providers to administer the food safety training certificate program for food service employees.¹⁵ The DBPR has approved approximately 130 such food service employee training programs.

Proposed Changes

State Preemption

The bill amends the preemptions for regulation of public lodging and public food service establishments to preempt to the state the regulation of food nutritional content and marketing in restaurants.

Remedial Training

The bill also amends available disciplinary actions to permit a food safety training provider with an approved remedial educational program to administer disciplinary action-related educational programs, in place of the Hospitality Education Program.

Homemade Foods

Current Situation

In Florida, food establishments are subject to the licensure and regulatory requirements of the DACS. Florida statute defines food establishment as “any factory, food outlet, or any other facility manufacturing, processing, packing, holding, or preparing food or selling food at wholesale or retail.”

DACS has adopted, by reference, provisions of the 2001 FDA Food Code, including the following definition of “food establishment”

1-201.10 Statement of Application and Listing of Terms.

(A) The following definitions apply in the interpretation and application of this Code.

(B) Terms Defined.

(36) Food Establishment.

(a) "Food establishment" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption.

(c) "Food establishment" does not include:

(i) An establishment that offers only prepackaged foods that are not potentially hazardous;

(ii) A produce stand that only offers whole, uncut fresh fruits and vegetables;

(iii) A food processing plant;

(iv) A kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law and if the consumer is informed by a clearly visible placard at the sales or service location

¹³ Fla. Stat. s. 509.032 (7).

¹⁴ Fla. Stat. s. 509.302(2)(a).

¹⁵ Fla. Stat. s. 509.049.

that the food is prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority;

DACS has also adopted by reference the following 2001 FDA Food Code prohibition on the sale of homemade food products:

6-202.111 Private Homes and Living or Sleeping Quarters, Use Prohibition.

A private home, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters may not be used for conducting food establishment operations.

Therefore, in Florida, it is illegal to sell homemade foods, except for not potentially hazardous foods, which may only be sold at functions, such as bake sales.

The DACS defines "potentially hazardous foods" as any perishable food which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, including synthetic ingredients, in a form:

- (a) Capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms; or
- (b) Capable of supporting the slower growth of *Clostridium botulinum*.
- (c) The term "potentially hazardous food" does not include foods which have a pH level of 4.6 or below or a water activity (*A_w*) value of 0.85 or less, or air-cooled hard-boiled eggs with the shell intact.

Proposed Changes

The bill:

- Authorizes the direct sale of homemade foods, labeled 'cottage foods' and provides requirements.
- Defines 'cottage food operation' as a natural person who produces or packages cottage food products only in a kitchen of that person's private residence.
- Defines "cottage food product" as not potentially hazardous food as defined by DACS rule.
- Excludes cottage food operations from the definitions of "food establishment" and "food service establishment."
- Authorizes the DACS to investigate consumer complaints against cottage food operations.

The bill requires cottage food operations meet the following:

- Sales by internet or mail order or at wholesale are prohibited.
- The annual gross sales of a cottage food operation may not exceed \$15,000. The DACS may request in writing documentation to verify the annual gross sales.

The bill provides cottage food products must:

- Be stored at the private residence.
- Be prepackaged.
- Be properly labeled.

The bill provides cottage food product label must include:

- The name and address of the cottage food operation.
- The name of the cottage food product.
- The ingredients of the cottage food product, in descending order of predominance by weight.
- The net weight or net volume of the cottage food product.
- Allergen labeling as specified by federal labeling requirements.
- If any nutritional claim is made, appropriate labeling as specified by federal labeling requirements.
- The following statement: "Made in a cottage food operation that is not subject to Florida food safety regulations."

B. SECTION DIRECTORY:

Section 1 amends s. 320.90, F.S.; transferring the responsibility for distribution of a motor vehicle consumer's rights pamphlet to a motor vehicle owner from the Department of Agriculture and Consumer Services to the Department of Legal Affairs.

Section 2 amends s. 322.142, F.S.; providing for the release of driver license photos by the Department of Highway Safety and Motor Vehicles to the Department of Business and Professional Regulation under certain circumstances.

Section 3 amends s. 469.006, F.S.; authorizing a licensed asbestos consultant or contractor to do business as a sole proprietorship.

Section 4 amends s. 475.42, F.S.; deleting criminal penalties for persons who violate orders or rules of the Florida Real Estate Commission.

Sections 5 and 6 amend s. 475.626, F.S.; deleting criminal penalties for persons who violate orders or rules of the Florida Real Estate Appraisal Board or related grounds for disciplinary action.

Section 7 amends s. 477.0265, F.S.; deleting criminal penalties for persons who commit certain violations of the Florida Cosmetology Act or rules of the Board of Cosmetology.

Sections 8 through 12 amend ss. 455.271, 477.0212, 481.217, 489.116, and 489.519, F.S.; revising the continuing education requirements for reactivating a license, certificate, or registration to practice certain regulated professions and occupations.

Section 13 amends s. 473.308, F.S.; revising licensure requirements for certified public accountants and firms.

Section 14 amends s. 475.17, F.S.; revising the education requirements for licensed real estate brokers and sales associates.

Section 15 amends s. 481.219, F.S.; providing that a certificate of authorization is not required for an architect doing business as a sole proprietorship under his or her fictitious name.

Section 16 and 17 amend ss. 493.6107 and 493.6202, F.S.; revising requirements for the method of payment of certain fees.

Section 18 amends s. 493.6401, F.S.; revising terminology for reposessor schools and training facilities.

Section 19 amends s. 493.6402, F.S.; conforming terminology; revising requirements for the method of payment of certain fees.

Section 20 amends s. 493.6406, F.S.; conforming terminology.

Section 21 amends s. 500.03, F.S.; providing and revising definitions for purposes of the Florida Food Safety Act.

Section 22 amends s. 500.121, F.S.; providing penalties for food safety violations committed by cottage food operations.

Section 23 creates s. 500.80, F.S.; exempting certain cottage food operations from food permitting requirements.

Section 24 amends s. 501.160, F.S.; deleting authority for the Department of Agriculture and Consumer Services to enforce prohibitions against unconscionable practices during states of emergency.

Section 25 amends s. 509.032, F.S.; preempting to the state regulation of nutritional content and marketing of foods in food service establishments.

Section 26 amends s. 509.261, F.S.; authorizing the Division of Hotels and Restaurants to require certain public lodging and public food service establishments to complete food safety training.

Section 27 amends s. 633.537, F.S.; revising the validity period for inactive status certificates of fire protection system contractors.

Sections 28 through 34 amend ss. 681.102, 681.103, 681.108, 681.109, 681.1095, 681.1096, and 681.112, F.S., to transfer responsibilities over aspects of the Motor Vehicle Warranty Enforcement Act from the Division of Consumer Services to the Department of Legal Affairs.

Section 35 amends s. 681.117, F.S.; deleting provisions providing for the transfer of fees and interagency contracting between the Department of Legal Affairs and the Division of Consumer Services.

Section 36 amends s. 10, ch. 2010-84, Laws of Florida; revising the effective date of provisions relating to the regulation of real estate appraisers and appraisal management companies.

Section 37 provides effective dates.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Duplicate licensing

The bill is anticipated to have an insignificant negative fiscal impact on state trust funds from the reduction in fees associated with applications for licensure. The DBPR indicates that the actual reduction is unknown at this time.

Lemon Law

The transfer of duplicative regulatory and enforcement activities related to the Lemon Law from DACS to the Department of Legal Affairs will have a negative fiscal impact to state trust funds within DACS of \$241,227. The revenues generated from this function do not cover the cost to administer the program in the DACS.

2. Expenditures:

Duplicate licensing

A positive fiscal impact on state trust funds is anticipated to occur from the reduction in cost associated with processing applications. The DBPR indicates that the actual positive impact is unknown at this time.

Lemon Law

The transfer of duplicative regulatory and enforcement activities related to the Lemon Law from DACS to the Department of Legal Affairs will have a positive fiscal impact to state trust funds within DACS of \$386,415. The savings to DACS will be realized from the reduction in administrative and enforcement functions.

Price Gouging

The transfer of duplicative regulatory and enforcement activities related to Price Gouging oversight from DACS to the Department of Legal Affairs will have a positive fiscal impact to state trust funds within DACS of \$58,667. The savings to DACS will be realized from the reduction in administrative and enforcement functions.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Education Requirements for Real Estate Brokers

Registrants and licensee's receiving the exemption will experience an indeterminate savings associated with pre and post licensure classes. It is unknown how many real estate broker applicants this would affect.

Certain educational course providers will experience a decline in the number of students and, as a result, an indeterminate reduction in revenues may occur.

Duplicate licensing

Asbestos Contractors and Consultants and Architects will experience costs savings related to the elimination of duplicate licensing for sole proprietorships. The initial and biennial business license fees for Asbestos Contractors and Consultants and Architects are as follows:

Asbestos Consultants and Contractors

- Initial Fee-\$500
- Biennial Renewal-\$500

Architects

- Initial Fee-\$100
- Biennial Renewal-\$120

There are currently 224 licensed Asbestos Contractors and Consultants and 12,822 licensed Architects. Depending on how many of these licensed professionals also are licensed as a sole proprietorship, the elimination of the duplicate licensure requirement could potentially have a positive impact on up to 13,046 licensees.

Other provisions of the bill will have a positive impact on the private sector, such as:

- The ability to sell homemade food products without having to be licensed;
- The effect of reduced penalties; and
- The reduction in the continuing education course requirements.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 15, 2011, the Business & Consumer Affairs Subcommittee took up the bill, adopted one technical amendment, and passed the bill by a vote of 10-4.

The amendment removes reference to disciplinary training imposed on a public lodging establishment or a public food service establishment “by a private nonprofit provider” and clarifies that the satisfaction of the requirements under the disciplinary authority of the division is the “completion of a remedial educational program administered by a food safety training provider whose program has been approved by the division.”