

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 General Government Appropriations Committee

BILL: CS/CS/SB 682

INTRODUCER: General Government Appropriations Committee, Regulated Industries Committee and Senator Fasano

SUBJECT: Department of Business and Professional Regulation

DATE: April 20, 2009 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Rhea	RI	Fav/CS
2.	Naf	Wilson	GO	Fav/1 amendment
3.	Frederick	DeLoach	GA	Fav/CS
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill creates the Division of Service Operations within the Department of Business and Professional Regulation (department).

The bill transfers from the Division of Technology to the Division of Service Operations the department's responsibilities related to professional examinations.

The bill clarifies that the department must use qualified outside testing vendors to develop, prepare, and evaluate exams when such services are economically and viably available and are approved by the department.

The bill makes permanent a current three-year pilot program that allows local governments to establish a local exemption procedure to allow dogs in designated outdoor portions of restaurants, and which is otherwise set to expire on July 1, 2009.

The bill requires the Office of Program Policy Analysis and Government Accountability to perform a study and make recommendations to the Legislature regarding the enactment of laws to provide for protection and remedies from existing and unregulated online poker activities.

The bill provides an effective date of July 1, 2009.

This bill substantially amends sections 20.165 and 509.233, Florida Statutes.

II. Present Situation:

Chapter 20, F.S., sets forth the structure of the executive branch. It creates the various state departments and the divisions, bureaus, and sections within the departments and agencies. Section 20.04(7)(b), F.S., authorizes the head of a department to recommend the establishment of additional divisions, bureaus, sections, and subsections of the department to promote efficient and effective operation of the department.

Specific statutory authority is required to establish additional divisions, or offices in the Department of Children and Family Services, the Department of Corrections, and the Department of Transportation. However, new bureaus, sections, and subsections in other departments may be initiated by a department and established as recommended by the Department of Management Services and approved by the Executive Office of the Governor, or may be established by specific statutory enactment.

In April 2004, the Governor's Office of Policy and Budget approved the request of the Department of Business and Professional Regulation to establish the Division of Service Operations within the department. This division provides central services to the entire department, including the processing of applications and renewal of licenses, the collection and processing of revenue, and responding to calls and emails at the department's central call center. This division also services the department's testing and education requirements for all the professions that the department regulates.

Department of Business and Professional Regulation

The department was established in 1993 with the merger of the Department of Business Regulation and the Department of Professional Regulation.¹ The department is created in s. 20.165, F.S. Section 20.165(2), F.S., creates the following ten divisions within the department:

- Division of Administration.
- Division of Alcoholic Beverages and Tobacco.
- Division of Certified Public Accounting.
- Division of Florida Condominiums, Timeshares, and Mobile Homes.
- Division of Hotels and Restaurants.
- Division of Pari-mutuel Wagering.
- Division of Professions.
- Division of Real Estate.

¹ Chapter 93-220, L.O.F.

- Division of Regulation.
- Division of Technology.

In addition to administering the professional boards, the department processes applications for licensure and license renewal. The department also receives and investigates complaints made against licensees and, if necessary, brings administrative charges.

Chapter 455, F.S., provides the general powers of the department and sets forth the procedural and administrative frame-work for all of the professional boards housed under the department, specifically the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

Professional Boards

Section 20.165(4)(a), F.S., establishes the following professional boards within the Division of Professions:

1. Board of Architecture and Interior Design, created under part I of ch. 481, F.S.
2. Florida Board of Auctioneers, created under part VI of ch. 468, F.S.
3. Barbers' Board, created under ch. 476, F.S.
4. Florida Building Code Administrators and Inspectors Board, created under part XII of ch. 468, F.S.
5. Construction Industry Licensing Board, created under part I of ch. 489, F.S.
6. Board of Cosmetology, created under ch. 477, F.S.
7. Electrical Contractors' Licensing Board, created under part II of ch. 489, F.S.
8. Board of Employee Leasing Companies, created under part XI of ch. 468, F.S.
9. Board of Landscape Architecture, created under part II of ch. 481, F.S.
10. Board of Pilot Commissioners, created under ch. 310, F.S.
11. Board of Professional Engineers, created under ch. 471, F.S.
12. Board of Professional Geologists, created under ch. 492, F.S.
13. Board of Professional Surveyors and Mappers, created under ch. 472, F.S.
14. Board of Veterinary Medicine, created under ch. 474, F.S.

Section 20.165(4)(b), F.S., establishes the following board and commission within the Division of Real Estate:

1. Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S.
2. Florida Real Estate Commission, created under part I of ch. 475, F.S.

Section 20.165(4)(c), F.S., establishes the Board of Accountancy, created under ch. 473, F.S., within the Division of Certified Public Accounting.

Professional Examinations

Section 455. 217, F.S., delegates to the Division of Technology the department's responsibilities related to examinations for professional licensure.

Section 455.217, F.S., permits the department to use contract vendors to develop and administer professional examinations. Section 455.217(1)(a), F.S., also requires that the department use professional testing services for the development, preparation, and evaluation of examinations, when such services are available and approved by the department. According to the department, the boards use a competitive bid process to select the contract vendors.

Pilot Program for Dogs in Designated Outdoor Portions of Public Food Service Establishments

Rule 61C-4.010, F.A.C., of the Division of Hotels and Restaurants within the Department of Business and Professional Regulation adopts the 2001 Food Code published by the U.S. Food and Drug Administration (FDA Food Code). The FDA Food Code is a reference document that “provides practical, science-based guidance and manageable, enforceable provisions for mitigating risk factors known to cause foodborne illness.”

Section 6-501.115 of the FDA Food Code generally prohibits live animals on the premises of food service establishments. “Premises” is defined to mean “[t]he physical facility, its contents, and the contiguous land or property....” Section 6-501.115, C.F.R., provides that live animals may not be allowed on the premises of a food establishment.

Section 509.233, F.S., creates a three year pilot program for an exemption to section 6-501.115 of the 2001 FDA Food Code, as codified by reference by the division, for the limited purpose of allowing patrons' dogs within certain designated outdoor portions of public food service establishments.

Under the program, a municipality may adopt an ordinance to grant itself a local exemption to the current division rules that prohibit dogs on the premises of food service establishments. Interested establishments are required to apply for and receive a permit from the governing body of their municipality.

The local governing authority has the sole discretion in the procedure for adoption of the exemption. Municipalities are not required or compelled to adopt an ordinance pursuant to this section. Any ordinance adopted pursuant to this section shall provide for codification within the land development code of the participating municipality.

Section 509.233, F.S., sets forth specific regulations that must be included in all permits issued by participating municipalities. The regulations include:

- Any local exemption adopted pursuant to this section shall only provide a variance to section 6-501.115, 2001 FDA Food Code, to allow patrons' dogs within certain designated outdoor portions of public food service establishments.
- Participating public food service establishments must apply for and receive a permit from the municipality before allowing patrons' dogs on their premises.

The following minimum information must be included in an application:

- The name, location, and mailing address of the food service establishment.

- The name, mailing address, and telephone contact information of the permit applicant.
- A diagram and description of the outdoor area to be designated as available to patrons' dogs.
- A description of the days of the week and hours of operation that patrons' dogs will be permitted in the designated outdoor area.

The following minimum regulations must be included in any local ordinance adopted under this provision:

- All public food service establishment employees shall wash their hands promptly after touching, petting, or otherwise handling dogs.
- Employees shall be prohibited from touching, petting, or otherwise handling dogs while serving food or beverages or handling tableware or before entering other parts of the food service establishment.
- Patrons in a designated outdoor area shall be advised that they should wash their hands before eating, and waterless hand sanitizer shall be provided at all tables in the designated outdoor area.
- Employees and patrons shall be instructed that they shall not allow dogs to come into contact with items involved with food service operation, including serving dishes and utensils.
- Dogs must be kept on a leash and under reasonable control.
- Dogs shall not be allowed on chairs, tables, or other furnishings.
- All table and chair surfaces shall be cleaned and sanitized between seating of patrons.
- Spilled food and drink shall be removed from the floor or ground between seating of patrons.
- Accidents involving dog waste shall be cleaned immediately and the area sanitized.
- A sign or signs reminding employees and patrons of the applicable rules shall be posted on the premises.
- Dogs shall not be permitted to travel through indoor or nondesignated outdoor portions of the public food service establishment.

A permit issued pursuant to this section may not be transferred to a subsequent owner upon the sale of the public food service establishment. The permit expires at the sale of the establishment, and the subsequent owner must reapply for the permit if he or she wishes to continue to accommodate patrons' dogs.

Participating municipalities are granted the power reasonably necessary to regulate and enforce the provisions of this section. The Division of Hotels and Restaurants must also provide reasonable assistance to participating municipalities in the development of enforcement procedures and regulations.

Participating municipalities are required to monitor permit holders for compliance. The municipality must have a procedure to accept, document, and respond to complaints and to timely report to the division all complaints and the participating municipality's response to all complaints. The participating municipality is required to provide the division with a copy of all applications and permits issued. The participating municipality must require all applications, permits, and other related materials to contain the appropriate division-issued license number for each public food service establishment.

Section 509.233(7), F.S., provides that this pilot program expires on July 1, 2009, unless reviewed and reenacted by the Legislature.

Regulation of Online Poker Activities

Chapter 849, F.S., governs gambling activities. There is a general prohibition against engaging in any game at cards, keno, roulette, faro or other game of chance, at any place, by any device whatever, for money or another thing of value.² Section 849.086, F.S., however, authorizes the playing of certain games, including poker, at licensed pari-mutuel facilities known as “cardrooms.” Online poker activities are not currently addressed and regulated under s. 849.086, F.S.

III. Effect of Proposed Changes:

Division of Service Operations

The bill amends s. 20.165, F.S., to create the Division of Service Operations within the department.

The bill amends s. 455.217(1), F.S., to transfer from the Division of Technology to the created Division of Service Operations the department’s responsibilities related to professional examinations.

The bill amends s. 455.217(1)(a), F.S., to clarify that the department shall use qualified outside testing vendors to develop, prepare, and evaluate exams, when economically and viably available.

Pilot Program for Dogs in Designated Outdoor Portions Public Food Service Establishments

The bill amends s. 509.233, F.S., to make permanent the current pilot program that provides a local exemption for dogs in designated outdoor portions of restaurants, and which is otherwise set to expire on July 1, 2009.

Online Poker Activities

The bill requires the Office of Program Policy Analysis and Government Accountability to perform a study and make recommendations to the Legislature by December 1, 2009, regarding the enactment of laws to provide for protection and remedies from existing and unregulated online poker activities.

Effective Date

The bill provides an effective date of July 1, 2009.

² Section 849.08, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS/CS by General Government Appropriations on April 20, 2009:

The committee substitute requires the Office of Program Policy Analysis and Government Accountability to perform a study and to make recommendations to the Legislature by December 1, 2009, regarding the enactment of laws to provide for protection and remedies from existing and unregulated online poker activities, which currently lack oversight and consumer protection under s. 849.086, F.S.

CS by Regulated Industries on March 10, 2009:

The committee substitute amends s. 455.217(1)(a), F.S., to clarify that the department must use qualified outside testing vendors to develop, prepare, and evaluate exams, when doing so is economically and viably available. It deletes the language in the bill that repealed the requirement that the department use professional testing services for the development, preparation, and evaluation of examinations, when such services are available and approved by the department.

The committee substitute also amends s. 509.233, F.S., to make permanent the current pilot program that provides a local exemption for dogs in designated outdoor portions of restaurants.

B. Amendments:

None.