



**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

BOARD OF AUCTIONEERS



CHAPTER 468, Part VI, FLORIDA STATUTES

CHAPTER 61G2, FLORIDA ADMINISTRATIVE CODE

CHAPTER 455, FLORIDA STATUTES

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NOTICE

The laws and rules are current as of the date indicated on the cover. Due to periodic changes to the statutes and administrative rules, readers should inquire periodically to ensure that they are referring to the most recently revised copy.

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**CHAPTER 468
PART VI
AUCTIONEERS**

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

History.—ss. 1, 14, ch. 86-119; s. 62, ch. 91-137; s. 11, ch. 91-156; s. 4, ch. 91-429.

468.382 Definitions.—As used in this act, the term:

(1) “Auction business” means a sole proprietorship, partnership, or corporation which in the regular course of business arranges, manages, sponsors, advertises, promotes, or carries out auctions, employs auctioneers to conduct auctions in its facilities, or uses or allows the use of its facilities for auctions.

(2) “Auctioneer” means any person licensed pursuant to this part who holds a valid Florida auctioneer license.

(3) “Apprentice” means any person who is being trained as an auctioneer by a licensed auctioneer.

(4) “Board” means the Florida Board of Auctioneers.

(5) “Department” means the Department of Business and Professional Regulation.

(6) “Livestock” means any animal included in the definition of “livestock” by s. 585.01 or s. 588.13.

(7) “Agricultural product” means the natural products from a farm, nursery, grove, orchard, vineyard, garden, or apiary, including livestock, tobacco, and vegetables and includes those agricultural products as defined in chapter 618.

(8) “Absolute auction” means an auction that requires no minimum opening bid that limits the sale other than to the highest bidder.

History.—ss. 2, 14, ch. 86-119; s. 66, ch. 90-321; s. 62, ch. 91-137; s. 11, ch. 91-156; s. 1, ch. 91-207; s. 4, ch. 91-429; s. 5, ch. 92-206; s. 3, ch. 92-291; s. 136, ch. 94-218; s. 10, ch. 2000-356.

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

(1) Auctions conducted by the owner, or the owner’s attorney, of any part of the property being offered, unless the owner acquired the goods to resell.

(2) Auctions conducted under a judicial or an administrative order, or sales required by law to be at auction.

(3) Auctions conducted by a charitable, civic, or religious organization, or for such organization by a person who receives no compensation.

(4) Auctions of livestock if conducted by a person who specializes in the sale of livestock and the auction is conducted under the supervision of a livestock trade association, a governmental agency, or an owner of the livestock. The act does not apply to the auction of agricultural products as defined in s. 618.01(1) or the equipment or tools used to produce or market such products, if the auction is conducted at a farm or ranch where the products are produced or where the equipment and tools are used or at an auction facility that sells primarily agricultural products.

(5) Auctions conducted by a trustee pursuant to a power of sale contained in a deed of trust on real property.

(6) Auctions of collateral, sales conducted to enforce carriers’ or warehousemen’s liens, sales of the contents of self-contained storage units, bulk sales, sales of goods by a presenting bank following dishonor of a documentary draft, resales of rightfully rejected goods, or resales conducted pursuant to law, if the auction is conducted by the owner or agent of the lien on or interest in such goods.

(7) Auctions conducted as a part of the sale of real property by a real estate broker, as defined in s. 475.01(1)(a).

(8) Auctions of motor vehicles among motor vehicle dealers if conducted by an auctioneer.

(9) Auctions conducted by a person enrolled in a class at an approved school of auctioneering, for the purpose of training and receiving instruction, under the direct supervision of an auctioneer who is also an instructor in the school and who further assumes full and complete responsibility for the activities of the student.

History.—ss. 3, 14, ch. 86-119; s. 1, ch. 87-210; s. 67, ch. 90-321; s. 62, ch. 91-137; s. 11, ch. 91-156; s. 2, ch. 91-207; s. 4, ch. 91-429; s. 199, ch. 94-119; s. 5, ch. 97-42; s. 298, ch. 97-103.

468.384 Florida Board of Auctioneers.—

(1) There is created in the department the Florida Board of Auctioneers. The board shall be composed of five members appointed by the Governor and confirmed by the Senate, two of whom shall have been actively and principally engaged as auctioneers for a period of not less than 5 years preceding their appointment, one of whom shall be a principal of an auction company, and two of whom shall be laypersons. Members shall serve for terms of 4 years.

(2) The board has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this act conferring duties upon it.

(3) The board shall receive and act upon applications for auctioneer, apprentice, and auction business licenses and shall have the power to issue, suspend, and revoke such licenses and to take such other action as is necessary to carry out the provisions of this act.

History.—ss. 4, 11, 14, ch. 86-119; s. 62, ch. 91-137; s. 11, ch. 91-156; s. 4, ch. 91-429; s. 47, ch. 92-149; s. 137, ch. 94-218; s. 134, ch. 98-200.

468.385 Licenses required; qualifications; examination.—

(1) The department shall license any applicant who the board certifies is qualified to practice auctioneering.

(2) No person shall auction or offer to auction any property in this state unless he or she is licensed by the department or is exempt from licensure under this act.

(3) No person shall be licensed as an auctioneer or apprentice if he or she:

(a) Is under 18 years of age; or

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

(4) Any person seeking a license as an auctioneer must pass a written examination approved by the board which tests his or her general knowledge of the laws of this state relating to provisions of the Uniform Commercial Code that are relevant to auctions, the laws of agency, and the provisions of this act.

(5) Each apprentice application and license shall name a licensed auctioneer who has agreed to serve as the supervisor of the apprentice. No apprentice may conduct, or contract to conduct, an auction without the express approval of his or her supervisor. The supervisor shall regularly review the apprentice's records, which are required by the board to be maintained, to determine if such records are accurate and current.

(6) No person shall be licensed as an auctioneer unless he or she:

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

(b) Has passed the required examination; and

(c) Is approved by the board.

(7)(a) Any auction that is subject to the provisions of this part must be conducted by an auctioneer who has an active license or an apprentice who has an active apprentice auctioneer license and who has received prior written sponsor consent.

(b) No business shall auction or offer to auction any property in this state unless it is licensed as an auction business by the board or is exempt from licensure under this act. Each application for licensure shall include the names of the owner and the business, the business mailing address and location, and any other information which the board may require. The owner of an auction business shall report to the board within 30 days of any change in this required information.

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

History.—ss. 5, 14, ch. 86-119; s. 3, ch. 87-210; s. 62, ch. 91-137; s. 11, ch. 91-156; ss. 3, 16, ch. 91-207; s. 4, ch. 91-429; s. 17, ch. 94-119; s. 138, ch. 94-218; s. 11, ch. 97-94; s. 299, ch. 97-103; ss. 11, 15, ch. 2000-356.

468.3851 Renewal of license.—

- (1) The department shall renew a license upon receipt of the renewal application and fee.
- (2) The department shall adopt a procedure for the biennial renewal of licenses.

History.—ss. 4, 9, ch. 87-210; ss. 62, 65, ch. 91-137; ss. 11, 12, ch. 91-156; s. 4, ch. 91-429; s. 200, ch. 94-119; s. 40, ch. 2015-4.

468.3852 Reactivation of license; fee.—The board shall prescribe a fee not to exceed \$250 for the reactivation of an inactive license. The fee shall be in addition to the current biennial renewal fee.

History.—ss. 5, 9, ch. 87-210; s. 41, ch. 89-162; ss. 62, 65, ch. 91-137; ss. 11, 12, ch. 91-156; s. 4, ch. 91-429; s. 201, ch. 94-119; s. 41, ch. 2015-4.

468.3855 Apprenticeship training requirements.—

(1) An auctioneer may not sponsor more than three apprentices at one time. Any auctioneer who serves as a sponsor must have held an active, valid license for 3 consecutive years preceding the date on which that auctioneer is named as sponsor of the apprentice.

(2) Any auctioneer who undertakes the sponsorship of an apprentice shall ensure that the apprentice receives training as required by board rule.

(3) An apprentice must actively participate in auction sales as required by board rule, and a record of each auction for which participation credit is claimed must be made as required by board rule.

(4) Apprentices are prohibited from conducting any auction without the prior express written consent of the sponsor. The apprentice's sponsor must be present at the auction site at any time the apprentice is actively participating in the conduct of the auction. If the apprentice's sponsor cannot attend a particular auction, the sponsor may appoint a qualified auctioneer who meets the requirements of board rule to attend the auction in his or her place. Prior written consent must be given by the apprentice's sponsor for each substitution.

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

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

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

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

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

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

History.—s. 12, ch. 2000-356.

468.386 Fees; local licensing requirements.—

(1) The board by rule may establish application, examination, licensure, renewal, and other reasonable and necessary fees, based upon the department’s estimate of the costs to the board in administering this act.

(2) An auctioneer shall obtain a local occupational license, if required, in the jurisdiction in which his or her permanent business or branch office is located. However, no local government or local agency may charge any other fee for the practice of auctioneering or require any auctioneer’s license in addition to the license required by this part.

History.—ss. 6, 14, ch. 86-119; s. 6, ch. 87-210; s. 62, ch. 91-137; s. 11, ch. 91-156; s. 4, ch. 91-429; s. 300, ch. 97-103.

468.387 Licensing of nonresidents; endorsement; reciprocity.—The department shall issue a license by endorsement to practice auctioneering to an applicant who, upon applying to the department and remitting the required fee, set by the board, demonstrates to the board that he or she satisfies the requirements of s. 468.385(3) and holds a valid license to practice auctioneering in another state, provided that the requirements for licensure in that state are substantially equivalent to or more stringent than those existing in this state. The endorsement and reciprocity provisions of this section shall apply to auctioneers only and not to professions or occupations regulated by other statutes.

History.—ss. 7, 14, ch. 86-119; s. 7, ch. 87-210; s. 62, ch. 91-137; s. 11, ch. 91-156; ss. 4, 16, ch. 91-207; s. 4, ch. 91-429; s. 18, ch. 94-119; s. 11, ch. 97-94; s. 301, ch. 97-103.

468.388 Conduct of an auction.—

(1) Prior to conducting an auction in this state, an auctioneer or auction business shall execute a written agreement with the owner, or the agent of the owner, of any property to be offered for sale, stating:

- (a) The name and address of the owner of the property;
- (b) The name and address of the person employing the auctioneer or auction business, if different from the owner; and
- (c) The terms or conditions upon which the auctioneer or auction business will receive the property for sale and remit the sales proceeds to the owner.

(2) The auctioneer or auction business shall give the owner one copy of the agreement and shall keep one copy for 2 years after the date of the auction.

(3) Each auctioneer or auction business shall maintain a record book of all sales. The record book shall be open to inspection by the board at reasonable times.

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

(5) The principal auctioneer shall prominently display at the auction site the licenses of the principal auctioneer, the auction business, and any other licensed auctioneers or apprentices who are actively participating in the auction. If such a display is not practicable, then an oral announcement at the beginning of the auction or a prominent written announcement that these licenses are available for inspection at the auction site must be made.

(6) If a buyer premium or any surcharge is a condition to sale at any auction, the amount of the premium or surcharge must be announced at the beginning of the auction and a written notice of this information must be conspicuously displayed or distributed to the public at the auction site.

(7) At the beginning of an auction must be announced the terms of bidding and sale and whether the sale is with reserve, without reserve, or absolute or if a minimum bid is required. If the sale is absolute and has been announced or advertised as such, an article or lot may not be withdrawn from sale once a bid has been accepted. If no bid is received within a reasonable time, the item or lot may be withdrawn.

(8) If an auction has been advertised as absolute, no bid shall be accepted from the owner of the property or from someone acting on behalf of the owner unless the right to bid is specifically permitted by law.

(9) The auction business under which the auction is conducted is responsible for all other aspects of the auction as required by board rule. The auction business may delegate in whole, or in part, different aspects of the auction only to the extent that such delegation is permitted by law and that such delegation will not impede the principal auctioneer's ability to ensure the proper conduct of his or her independent responsibility for the auction. The auction business under whose auspices the auction is conducted is responsible for ensuring compliance as required by board rule.

(10)(a) When settlement is not made immediately after an auction, all sale proceeds received for another person must be deposited in an escrow or trust account in an insured bank or savings and loan association located in this state within 2 working days after the auction. A maximum of \$100 may be kept in the escrow account for administrative purposes.

(b) Each auction business shall maintain, for not less than 2 years, a separate ledger showing the funds held for another person deposited and disbursed by the auction business for each auction. The escrow or trust account must be reconciled monthly with the bank statement. A signed and dated record shall be maintained for a 2-year period and be available for inspection by the department or at the request of the board.

(c) Any interest which accrues to sale proceeds on deposit shall be the property of the seller for whom the funds were received unless the parties have agreed otherwise by written agreement executed prior to the auction.

(d) Unless otherwise provided by written agreement executed prior to the auction, funds received by a licensee from the seller or his or her agent for expenses, including advertising, must be expended for the purposes advanced or refunded to the seller at the time of final settlement. Any funds so received shall be maintained in an escrow or trust account in an insured bank or savings and loan association located in this state. However, this does not prohibit advanced payment of a flat fee.

(11)(a) All advertising by an auctioneer or auction business shall include the name and Florida license number of such auctioneer and auction business. The term "advertising" shall not include articles of clothing, directional signs, or other promotional novelty items.

(b) No licensed auctioneer, apprentice, or auction business may disseminate or cause to be disseminated any advertisement or advertising which is false, deceptive, misleading, or untruthful. Any advertisement or advertising shall be deemed to be false, deceptive, misleading, or untruthful if it:

1. Contains misrepresentations of facts.
2. Is misleading or deceptive because, in its content or in the context in which it is presented, it makes only a partial disclosure of relevant facts.
3. Creates false or unjustified expectations of the services to be performed.
4. Contains any representation or claim which the advertising licensee fails to perform.
5. Fails to include the name and license number of the principal auctioneer and the auction business.
6. Fails to include the name and license number of the sponsor if an apprentice is acting as the principal auctioneer.
7. Advertises an auction as absolute without specifying any and all items to be sold with reserve or with minimum bids.
8. Fails to include the percentage amount of any buyer's premium or surcharge which is a condition to sale.

(c) The provisions of this subsection apply to media exposure of any nature, regardless of whether it is in the form of paid advertising.

(d) The auction business shall be responsible for the content of all advertising disseminated in preparation for an auction.

History.—ss. 8, 14, ch. 86-119; s. 62, ch. 91-137; s. 11, ch. 91-156; s. 5, ch. 91-207; s. 4, ch. 91-429; s. 302, ch. 97-103; s. 13, ch. 2000-356.

468.389 Prohibited acts; penalties.—

(1) The following acts shall be grounds for the disciplinary activities provided in subsections (2) and (3):

(a) A violation of any law relating to trade or commerce of this state or of the state in which an auction is conducted.

(b) Misrepresentation of property for sale at auction or making false promises concerning the use, value, or condition of such property by an auctioneer or auction business or by anyone acting as an agent of or with the consent of the auctioneer or auction business.

(c) Failure to account for or to pay or return, within a reasonable time not to exceed 30 days, money or property belonging to another which has come into the control of an auctioneer or auction business through an auction.

(d) False, deceptive, misleading, or untruthful advertising.

(e) Any conduct in connection with a sales transaction which demonstrates bad faith or dishonesty.

(f) Using or permitting the use of false bidders, cappers, or shills.

(g) Making any material false statement on a license application.

(h) Commingling money or property of another person with his or her own. Every auctioneer and auction business shall maintain a separate trust or escrow account in an insured bank or savings and loan association located in this state in which shall be deposited all proceeds received for another person through an auction sale.

(i) Refusal or neglect of any auctioneer or other receiver of public moneys to pay the moneys so received into the State Treasury at the times and under the regulations prescribed by law.

(j) Violating a statute or administrative rule regulating practice under this part or a lawful disciplinary order of the board or the department.

(k) Having a license to practice a comparable profession revoked, suspended, or otherwise acted against by another state, territory, or country.

(1) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice or the ability to practice the profession of auctioneering.

(2) When the board finds any person guilty of any of the prohibited acts set forth in subsection (1), it may enter an order imposing one or more of the following penalties:

(a) Refusal to certify to the department an application for licensure.

(b) Revocation or suspension of a license.

(c) Imposition of an administrative fine not to exceed \$1,000 for each count or separate offense.

(d) Issuance of a reprimand.

(e) Placement of the auctioneer on probation for a period of time and subject to conditions as the board may specify, including requiring the auctioneer to successfully complete the licensure examination.

(f) Requirement that the person in violation make restitution to each consumer affected by that violation. Proof of such restitution shall be a signed and notarized release executed by the consumer or the consumer's estate.

(3)(a) Failure to pay a fine within a reasonable time, as prescribed by board rule, may be grounds for disciplinary action.

(b) The department may file for an injunction or bring any other appropriate civil action against anyone who violates this part.

History.—ss. 9, 14, ch. 86-119; s. 8, ch. 87-210; s. 62, ch. 91-137; s. 11, ch. 91-156; ss. 6, 16, ch. 91-207; s. 4, ch. 91-429; s. 19, ch. 94-119; s. 11, ch. 97-94; s. 303, ch. 97-103; s. 14, ch. 2000-356.

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

History.—ss. 12, 14, ch. 86-119; s. 62, ch. 91-137; s. 11, ch. 91-156; s. 7, ch. 91-207; s. 4, ch. 91-429; s. 15, ch. 2000-356; s. 4, ch. 2012-61.

468.392 Auctioneer Recovery Fund.—There is created the Auctioneer Recovery Fund as a separate account in the Professional Regulation Trust Fund. The fund shall be administered by the Florida Board of Auctioneers.

(1) The Chief Financial Officer shall invest the money not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited to the credit of the Auctioneer Recovery Fund and shall be available for the same purposes as other moneys deposited in the Auctioneer Recovery Fund.

(2) All payments and disbursements from the Auctioneer Recovery Fund shall be made by the Chief Financial Officer upon a voucher signed by the Secretary of Business and Professional Regulation or the secretary's designee.

(3) If at any time the moneys in the Auctioneer Recovery Fund are insufficient to satisfy any valid claim or portion thereof, the board shall satisfy such unpaid claim or portion thereof as soon as a sufficient amount has been deposited in or transferred to the fund. When there is more than one unsatisfied claim outstanding, such claims shall be paid in the order in which the claims were made.

(4) Upon the payment of any amount from the Auctioneer Recovery Fund in settlement of a claim in satisfaction of a judgment against an auctioneer or auction business as described in s. 468.395, the license of such auctioneer or auction business shall be automatically suspended until the licensee has complied with s. 468.398. A discharge of bankruptcy shall not relieve a person from the penalties and disabilities provided in this section.

(5) Moneys in the fund at the end of a fiscal year shall be retained in the fund and shall accrue for the benefit of auctioneers and auction businesses. When the fund exceeds the amount as set forth in s. 468.393(2), all surcharges shall be suspended until such time as the fund is reduced below the amount as set forth in s. 468.393(3).

History.—ss. 8, 17, ch. 91-207; s. 4, ch. 91-429; s. 139, ch. 94-218; s. 16, ch. 2000-356; s. 502, ch. 2003-261; s. 54, ch. 2005-152.

468.393 Surcharge to license fee; assessments.—

(1) At the time of licensure under s. 468.385, s. 468.3851, or s. 468.3852, each licensee shall pay, in addition to an application and license fee, a surcharge in an amount to be determined by the board, not to exceed \$300, which shall be deposited in the Auctioneer Recovery Fund.

(2) If the total amount in the Auctioneer Recovery Fund, including principal and interest, exceeds \$500,000 at the end of the state fiscal year after the payment of all claims and expenses, the amount in excess of \$500,000 shall remain in the fund for benefit of the licensees in tolling the surcharge until such time as the surcharge shall need replenishing.

(3) After October 1, 1995, if the total amount in the Auctioneer Recovery Fund, including principal and interest, is less than \$200,000 at the end of the fiscal year after the payment of all claims and expenses, the board shall assess, in addition to any other fees under s. 468.3852, a surcharge against a licensee at the time of initial licensure or at the time of license renewal, according to the following formula in order to maintain the fund at \$500,000:

(a) Determine the amount remaining in the fund at the end of the state fiscal year after all expenses and claims have been paid.

(b) Subtract the amount determined under paragraph (a) from \$500,000.

(c) Determine the number of initial licenses and license renewals in the fiscal year that precedes the current fiscal year.

(d) Divide the amount determined under paragraph (b) by the number determined under paragraph (c).

(4) The board shall assess the surcharge described in subsection (3) against each licensee who receives an initial license or receives a renewal license during the fiscal year that follows the year in which the amount remaining in the fund was less than \$200,000.

History.—ss. 9, 17, ch. 91-207; s. 4, ch. 91-429; s. 130, ch. 92-149.

468.394 Interest credited; payment of expenses.—Any interest earned or investment of money in the Auctioneer Recovery Fund shall be credited at least semiannually to the fund. No money may be appropriated from the General Revenue Fund for payment of any expenses incurred under this part, and none of these expenses may be charged against the state.

History.—ss. 10, 17, ch. 91-207; s. 4, ch. 91-429.

468.395 Conditions of recovery; eligibility.—

(1) Recovery from the Auctioneer Recovery Fund may be obtained as follows:

(a) Any aggrieved person is eligible to receive recovery from the Auctioneer Recovery Fund if the Florida Board of Auctioneers has issued a final order directing an offending licensee to pay restitution to the claimant as the result of the licensee violating, within this state, any provision of s. 468.389 or any rule adopted by the board and if the board determined that the order of restitution cannot be enforced; or

(b) Any aggrieved person who obtains a final judgment in any court against any licensee to recover damages for any actual loss that results from the violation, within this state, by a licensee of any provision of s. 468.389 or any rule adopted by the board may, upon termination of all proceedings, including appeals and proceedings supplemental to judgment for collection purposes, file a verified application to the board for an order directing payment out of the Auctioneer Recovery Fund of the amount of actual loss in the transaction that remains unpaid upon the judgment. The amount of actual loss may include court costs, but shall not include attorney's fees or punitive damages awarded.

(2) The amount paid from the Auctioneer Recovery Fund may not exceed \$50,000 per claim or claims arising out of the same transaction or auction or an aggregate lifetime limit of \$100,000 with respect to any one licensee. For purposes of this subsection, auctions conducted under a single contract, agreement, or consignment shall be considered a single transaction or auction even though conducted at more than one time or place.

(3) A claim for recovery from the Auctioneer Recovery Fund shall be made within 2 years from the time of the act giving rise to the claim or within 2 years from the time the act is discovered or should have been discovered with the exercise of due diligence; however, in no event may a claim for recovery be made more than 4 years after the date of the act giving rise to the claim.

(4) The board shall not issue an order for payment of a claim from the Auctioneer Recovery Fund unless the claimant has reasonably established to the board that she or he has taken proper and reasonable action to collect the amount of her or his claim from the licensee responsible for the loss and that any recovery made has been applied to reduce the amount of the claim on the Auctioneer Recovery Fund.

(5) Notwithstanding any other provision of this part, no claim based on any act or omission that occurred outside this state or that occurred before October 1, 1991, shall be payable from the Auctioneer Recovery Fund.

(6) In case of payment of loss from the Auctioneer Recovery Fund, the fund shall be subrogated, to the extent of the amount of the payment, to all the rights of the claimant against any licensee with respect to the loss.

History.—ss. 11, 17, ch. 91-207; s. 4, ch. 91-429; s. 131, ch. 92-149; s. 304, ch. 97-103; s. 17, ch. 2000-356.

468.396 Claims against a single licensee in excess of dollar limitation; joinder of claims, payment; insufficient funds.—

(1) If the payment in full of two or more pending valid claims that have been filed by aggrieved persons against a single licensee would exceed the \$50,000 limit as set forth in s. 468.395, the \$50,000 shall be distributed among the aggrieved persons in the ratio that their respective claims bear to the aggregate of all valid claims or in any other manner that a court of record may determine to be equitable. Such money shall be distributed among the persons entitled to share in it without regard to the order of priority in which their respective judgments have been obtained or their claims have been filed.

(2) Upon petition of the board, the court may require all claimants and prospective claimants against one licensee to be joined in one action, to the end that the respective rights of all the claimants to the board may be equitably adjudicated and settled.

(3) On June 30 and December 31 of each year, the board shall identify each claim that the court orders to be paid during the 6-month period that ended on that day. The board shall pay the part of each claim that is so identified within 15 days after the end of the 6-month period in which the claim is ordered paid. However, if the balance in the fund is insufficient to pay the full payable amount of each claim that is ordered to be paid during a 6-month period, the board shall pay a prorated portion of each claim that is ordered to be paid during the period. Any part of the payable amount of a claim left unpaid due to the prorating of payments under this subsection shall be paid, subject to the \$50,000 limit described in s. 468.395, before the payment of claims ordered to be paid during the following 6 months.

History.—ss. 12, 17, ch. 91-207; s. 4, ch. 91-429.

468.397 Payment of claim.—Upon a final order of the court directing that payment be made out of the Auctioneer Recovery Fund, the board shall, subject to the provisions of this part, make the payment out of the Auctioneer Recovery Fund as provided in s. 468.395.

History.—ss. 13, 17, ch. 91-207; s. 4, ch. 91-429; s. 18, ch. 2000-356.

468.398 Suspension of judgment debtor’s license; repayment by licensee; interest.—If the board is required to make any payment from the Auctioneer Recovery Fund in settlement of a claim or toward the satisfaction of a judgment under this part, the board shall suspend the judgment debtor’s license. The licensee is not eligible to be licensed again as either an auctioneer or auction business until the licensee has repaid in full the amount paid from the Auctioneer Recovery Fund, with interest at the current applicable rate.

History.—ss. 14, 17, ch. 91-207; s. 4, ch. 91-429.

468.399 Expenditure of excess funds.—Subject to the approval of the board with the concurrence of the department, the board may expend excess moneys from the Auctioneer Recovery Fund to fund publications that provide:

- (1) Information concerning the board’s activities and administrative rulings.
- (2) Distribution of laws, rules, and educational information concerning the practice of auctioneering.

History.—ss. 15, 17, ch. 91-207; s. 4, ch. 91-429.



**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**



**CHAPTER 61G2
FLORIDA ADMINISTRATIVE CODE**

Rick Scott, Governor

Jonathan Zchem, Secretary

June 2017

**FLORIDA BOARD OF AUCTIONEERS
CHAPTER 61G2-1 through 61G2-8
FLORIDA ADMINISTRATIVE CODE
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CHAPTER 61G2-1 ORGANIZATION AND PURPOSE

61G2-1.0091 Unexcused Absences

61G2-1.010 Other Board Business for Which Compensation is Allowed

61G2-1.0091 Unexcused Absences.

(1) Unexcused absences shall include any absences other than one of the following:

- (a) Absence caused by serious illness of a board member,
- (b) Absence due to death or serious illness of an immediate family member,
- (c) Absence due to unavoidable travel delays or cancellations.

(2) Members shall communicate the reason for any absence to the Executive Director prior to the meeting and the reason for the absence shall be made part of the minutes of that meeting.

Specific Authority 455.207(3), 468.384(2) FS. Law Implemented 455.207(3) FS. History--New 4-17-94.

61G2-1.010 Other Board Business for Which Compensation is Allowed.

Pursuant to Section 455.207(4), Florida Statutes, Board members are entitled to compensation and expense reimbursement for participation in official Board business. Official Board business includes the following:

- (1) Board meetings, except those conducted by telephone conference calls;
- (2) Meetings of committees appointed by the Chairman;
- (3) Meetings of a Board member with Department of Business and Professional Regulation staff or contractors of the Department held at the Board or Department's request;
- (4) Meetings attended by a Board member at the request of the Secretary of the Department or the Board if participation in the meeting is related to the Board's regulatory authority;
- (5) Probable Cause Panel Meetings;
- (6) All activity of Board members, if authorized by the Board, related to examination of applicants for licensure.

Specific Authority 468.384(2) FS. Law Implemented 468.384(1)(b) FS. History--New 3-19-87, Formerly 21BB-1.010.

CHAPTER 61G2-2 LICENSURE

61G2-2.002	Examination for Licensure
61G2-2.0031	Delinquent Status (Repealed)
61G2-2.0035	Exemption from Licensure Renewal Provisions
61G2-2.004	Licensure by Endorsement or Reciprocity (Repealed)
61G2-2.005	Notice of Address or Electronic Mail Address Change (Repealed)
61G2-2.006	Reinstatement of Null & Void Licenses (Repealed)

61G2-2.002 Examination for Licensure.

- (1) The examination for licensure must be in writing and must test the applicant's general knowledge of:
- (a) The laws of this state relating to bulk sales;
 - (b) Auctions;
 - (c) Brokerage; and
 - (d) Chapter 468, Part VI, and Chapter 455, F.S.
- (2) The examination shall test minimum competency in the subjects set forth in subsection 61G2-2.002(1), F.A.C., by providing examination questions in the following categories and with the following approximate percentages of questions to the examination as a whole.
- (a) Advertising – 20%
 - (b) Legal aspects – 18%
 - (c) Financial aspects – 18%
 - (d) Conducting the sale – 15%
 - (e) Appraisal – 14%
 - (f) Merchandising – 8%
 - (g) Soliciting business – 7%
- (3) An examination candidate must achieve a scale score of 75 or better in order to achieve a passing grade on the examination.
- (4) Any person seeking to take the examination must have submitted a completed application and the application and examination fees provided for in Rules 61G2-3.002 and 61G2-3.003, F.A.C., at least 60 days prior to the scheduled examination date.
- (a) Each prospective auctioneer shall complete an application on a form prescribed by the department.
 - (b) Each prospective apprentice auctioneer shall complete an application on a form prescribed by the department.
 - (c) Each prospective auction business shall complete an application on a form prescribed by the department.
 - (d) If, within 30 days after receipt of an executed application form, the department notifies the applicant of any error or omission therein or requests the applicant to furnish any additional information the department is permitted by law to require, the applicant shall correct such errors, supply such omissions and furnish such additional information within 180 days of the date of such notice otherwise the form will be considered never to have been submitted.
- (5) The Board shall review all applicants for licensure by examination and approve their qualifications before an applicant will be permitted to sit for the examination. The application fee is non-refundable. Should an applicant be denied approval to sit for the examination, the examination fee shall be refunded. The examination fee paid to the Department shall be transferred to a subsequent examination upon the applicant's written request, if the request is received in the Board office at least 20 days prior to the scheduled examination date.
- (6) Examination results shall be valid for the purpose of issuance of a license for a period not to exceed six months from the Board's certification of examination grades. Any candidate who has successfully completed the examination but who fails to pay the initial license fee or comply with any other prelicensure requirement within that time shall be required to apply for and sit for examination as a new applicant.

Rulemaking Authority 468.384(2) FS. Law Implemented 120.60(2), 455.217(1)(b), 468.385 FS. History—New 5-10-87, Amended 10-20-87, 6-5-88, 5-11-89, Formerly 21BB-2.002, Amended 9-27-93, 8-20-96, 11-1-99, 6-19-12.

61G2-2.0031 Delinquent Status.

Rulemaking Authority 455.271 FS. Law Implemented 455.271 FS. History–New 9-25-95, Repealed 4-26-16.

61G2-2.0035 Exemption from Licensure Renewal Provisions.

(1) Notwithstanding the provisions of Rule 61G2-3.005, F.A.C., a spouse of a member of the armed forces who is absent from the State because of the spouse's duties with the armed forces and, having submitted documentation to the Board demonstrating same, shall be exempt from licensure renewal provisions without paying dues or fees or performing any other act on his or her part.

(2) This rule applies to all auctioneer licenses, apprenticed and business licenses.

Rulemaking Authority 455.02, 468.384(2) FS. Law Implemented 455.02, 468.384(2) FS. History–New 3-29-04.

61G2-2.004 Licensure by Endorsement or Reciprocity.

Rulemaking Authority 468.384(2), 468.387 FS. Law Implemented 468.384(2), 468.387 FS. History–New 12-6-87, Formerly 21BB-2.004, Amended 9-27-93, 5-7-96, 4-22-12, Repealed 4-26-16.

61G2-2.005 Notice of Address or Electronic Mail Address Change.

Rulemaking Authority 468.384(2) FS. Law Implemented 468.385(1), (7), 455.275 FS. History–New 12-3-90, Formerly 21BB-2.005, Amended 12-23-12, Repealed 4-26-16.

61G2-2.006 Reinstatement of Null & Void Licenses.

Rulemaking Authority 455.271(6)(b), 468.384, 468.386 FS. Law Implemented 455.271(6)(b), 468.393 FS. History–New 8-9-10, Repealed 12-3-12.

CHAPTER 61G2-3 FEES

61G2-3.001	Fees
61G2-3.002	Application Fees (Repealed)
61G2-3.003	Examination Fees (Repealed)
61G2-3.004	Initial Licensure Fees (Repealed)
61G2-3.0041	Unlicensed Activities, Fees, Disposition (Repealed)
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61G2-3.011	Change of Status Fee (Repealed)
61G2-3.012	Delinquent Fee (Repealed)

61G2-3.001 Fees

(1) Application fees. The application fee for those applying for an auctioneer license through examination is \$50; for an auctioneer license by endorsement or reciprocity \$75; for an apprentice license \$50; and for an auction business license \$50.

(2) Examination fees.

(a) When the examination is not conducted by a professional testing service pursuant to Section 455.2171, F.S., \$250.00 payable to the Department. When the examination is conducted by a professional testing service pursuant to Section 455.2171, F.S., \$239.50 payable to the Department plus \$10.00 payable to the testing service.

(b) When the re-examination is not conducted by a professional testing service pursuant to Section 455.2171, F.S., \$250.00 payable to the Department. When the re-examination is conducted by a professional testing service pursuant to Section 455.2171, F.S., \$239.50 payable the Department plus \$10.50 payable to the testing service.

(3) Initial licensure fees. The initial licensure fee for an auctioneer is \$150; an apprentice \$150; and for an auction business \$150.

(4) Unlicensed activities, fees, dispositions. Each license shall pay, in addition to all other fees, a special fee of \$5.00 upon each initial license, and renewal thereof, to fund efforts to combat the unlicensed practice of auctioneering.

(5) Renewal fees. The fee for biennial renewal of an auctioneer's license is \$150; an auction business license \$150; and an inactive auctioneer license is \$150.

(6) Reactivation fees. The fee for reactivating is \$50.

(7) Examination review fee. The fee for review of an applicant's auctioneer examination questions, answers, paper, grades, and grading key, or any portion thereof is \$50.

(8) Duplicate license fee. The fee for a duplicate copy of a previously issued license shall be \$25.

(9) Auctioneer Recovery Fund surcharge. At the time of licensure or renewal of either an active or inactive status, under Section 468.385, 468.3851 or 468.3852, F.S., each license shall pay a surcharge fee of \$100 which shall be deposited into the Auctioneer Recovery Fund.

(10) Change of Status fee. The change of status fee is \$50.00

(11) Delinquent fee. A delinquent status licensee shall pay a delinquency fee of \$100.00, when the licensee applies for active or inactive status.

(12) Fees for Reinstatement of a Void License:

(a) Non refundable Application fee of \$150.00.

(b) Non refundable Renewal fee of \$150.00 – \$300.00 for each biennium when timely renewal was missed, and

(c) Fee for unlicensed activity and recovery fund of \$105.00 – \$210.00 for each biennium when timely renewal was missed.

Rulemaking Authority 455.2281, 455.271, 468.384(2), 468.386(1), 468.393(1) FS Law Implemented 455.217(2), 455.2171, 455.219(6), 455.2281, 455.271, 468.385(2), (4), (6), (7), 468.3851, 468.386(1), 468.387, 468.393(1) FS. History—New 9-18-07, Amended 4-17-08, 12-23-12, 9-7-16.

61G2-3.002 Application Fees.

Rulemaking Authority 468.386(1) FS. Law Implemented 468.385, 468.387 FS. History–New 5-4-87, Amended 10-19-87, Formerly 21BB-3.002, Repealed 9-18-07.

61G2-3.003 Examination Fees.

Rulemaking Authority 468.386(1) FS. Law Implemented 455.2171, 468.385(4) FS. History–New 5-4-87, Amended 9-13-88, Formerly 21BB-3.003, Amended 5-3-99, 4-26-04, Repealed 9-18-07.

61G2-3.004 Initial Licensure Fees.

Rulemaking Authority 468.386(1) FS. Law Implemented 468.385(2), (6), (7) FS. History–New 5-4-87, Amended 5-7-90, Formerly 21BB-3.004, Amended 5-21-96, Repealed 9-18-07.

61G2-3.0041 Unlicensed Activities, Fees, Disposition.

Rulemaking Authority 455.2281, 468.384(2) FS. Law Implemented 455.2281 FS. History–New 4-17-94, Repealed 9-18-07.

61G2-3.005 Renewal Fees.

Rulemaking Authority 468.386(1) FS. Law Implemented 468.387 FS. History–New 5-4-87, Formerly 21BB-3.005, Amended 10-15-95, 5-21-96, Repealed 9-18-07.

61G2-3.006 Reactivation Fee.

Rulemaking Authority 468.384(2), 468.386(1) FS. Law Implemented 468.386(1) FS. History–New 10-19-87, Formerly 21BB-3.006. Amended 1-6-98, Repealed 9-18-07.

61G2-3.007 Examination Review Fee.

Rulemaking Authority 468.386(1) FS. Law Implemented 455.217(2) FS. History–New 5-7-90, Formerly 21BB-3.007, Repealed 9-18-07.

61G2-3.008 Duplicate License Fee.

Rulemaking Authority 468.384(2), 468.386(1) FS. Law Implemented 455.219(6), 468.386(1) FS. History–New 12-3-90, Formerly 21BB-3.008, Amended 1-6-98, Repealed 9-18-07.

61G2-3.010 Auctioneer Recovery Fund Surcharge.

Rulemaking Authority 468.386(1), 468.393(1), 468.384(2) FS. Law Implemented 468.393(1) FS. History–New 1-28-92, Formerly 21BB-3.010, Amended 9-25-95, 1-6-98, Repealed 9-18-07.

61G2-3.011 Change of Status Fee.

Rulemaking Authority 468.384(2), 468.386(1), 455.271 FS. Law Implemented 455.271 FS. History–New 8-14-95, Amended 1-6-98, Repealed 9-18-07.

61G2-3.012 Delinquent Fee.

Rulemaking Authority 455.271 FS. Law Implemented 455.271 FS. History–New 9-25-95, Repealed 9-18-07.

CHAPTER 61G2-4 APPRENTICESHIP PROGRAM

- 61G2-4.001 Apprenticeship Training Requirements**
61G2-4.003 Change of Sponsor (Repealed)
61G2-4.005 Funds Received by Apprentice (Repealed)

61G2-4.001 Apprenticeship Training Requirements.

(1) No auctioneer may sponsor more than 3 apprentices at one time. Any auctioneer who serves as a sponsor shall have held a valid Florida auctioneers license for three consecutive years preceding the date on which that auctioneer is named as sponsor of the apprentice.

(2) Any auctioneer who undertakes the sponsorship of an apprentice shall insure that the apprentice receives training in the following:

(a) Laws relating to Bulk sales, brokerages, Chapter 455 and Part VI of Chapter 468, F.S., and the rules promulgated thereunder.

(b) The proper conduct of all phases of auction including, but not limited to:

1. Drafting and executing a contract for auction services with the seller;
2. Preparation and lot division of goods to be sold;
3. Preparation of an advertising plan including an advertising budget and preparation of advertisements in various media;
4. The actual conduct of the auction sale, including bid calling;
5. Record keeping at the auction sale including the item, or lot number, purchase number and final selling price of items or lots sold;
6. Preparation and completion of the final settlement after the auction sale; and
7. Maintenance of records required by law.

(3) An apprentice must actively participate in at least eighty hours of auction sales during a one-year period of apprenticeship. Each apprentice must actively participate in each phase of an auction delineated by this rule at least five times during the apprenticeship. A record of each auction for which participation credit is claimed must be made on a form provided by the Department and must be filed with the application for auctioneer license examination required by this rule. The following information must be provided:

(a) The date, time and location of the auction;

(b) The name, address and license number of the apprentice and sponsor;

(c) The name and license number of the auction business under which the auction was held;

(d) The phases of the auction for which the apprentice claims active participation credit;

(e) If the auction was conducted by an apprentice, a notation of this fact along with a copy of the sponsor's written consent required by this rule.

(4) Apprentices are prohibited from conducting any auction without the prior express written consent of the sponsor. The apprentice's sponsor must be present at the auction site at any time the apprentice is actively participating in the conducting of the auction. In the event the apprentice's sponsor cannot attend a particular auction, he may appoint a qualified auctioneer who meets the requirements of subsection 61G2-4.001(1), F.A.C., to act in his stead. Prior written consent must be given by the apprentice's sponsor for each such substitution.

(5) Each apprentice and sponsor shall file a report on a form provided by the Department at least 60 days prior to expiration of the apprentice's license, at the time of termination of any sponsorship and at the time of the apprentice's application for licensure as an auctioneer. This report shall contain the following information:

(a) The result of the sponsor's reviews of apprentice records required by this rule and if an apprentice has functioned as a principal auctioneer, by Rule 61G2-5.001, F.A.C.

(b) Any violation by the apprentice of Chapter 455, F.S., or Chapter 468, Part VI, F.S., or the rules promulgated thereunder.

(c) Reports required by this rule of apprentice participation in auctions.

(6) No sponsor shall authorize an apprentice to conduct an auction or act as principal auctioneer unless the sponsor has determined that the apprentice has received adequate training to do so.

(7) The sponsor shall be responsible for any acts or omissions of the apprentice which constitute a violation of the laws of this

state relating to commercial transactions, Chapters 455 and 468, Part VI, F.S., and the rules promulgated thereunder.

(8) For the purpose of issuance of a license, all apprentice applications will be valid for a period of six months after Board approval. Any applicant who fails to complete the licensure process within that time shall be required to make application as a new applicant.

Rulemaking Authority 468.384(2) FS. Law Implemented 468.382(3), 468.385 FS. History—New 5-4-87, Amended 12-3-90, Formerly 21BB-4.001, Amended 10-13-93, 10-2-95.

61G2-4.003 Change of Sponsor.

Rulemaking Authority 468.384(2) FS. Law Implemented 468.382(3), 468.3855 FS. History—New 5-4-87, Formerly 21BB-4.003, Amended 10-13-93, 4-23-12, Repealed 4-26-16.

61G2-4.005 Funds Received by Apprentice.

Rulemaking Authority 468.384(2) FS. Law Implemented 468.382(3), 468.385 FS. History—New 10-13-93, Amended 10-2-95, Repealed 2-20-12.

CHAPTER 61G2-5 STANDARDS OF PRACTICE

- 61G2-5.001 Requirements for Conducting an Auction**
- 61G2-5.002 Required Record Keeping**
- 61G2-5.003 Client Funds and Sale Proceeds (Repealed)**
- 61G2-5.004 Advertising (Repealed)**
- 61G2-5.005 Definitions Applying to Exemptions**

61G2-5.001 Requirements for Conducting an Auction.

(1) Any auction which is subject to the provisions of Chapter 468, Part VI, F.S., must be conducted by an auctioneer who has an active Florida auctioneer license or an apprentice who has an active Florida apprentice auctioneer license and who has received prior written sponsor consent. Such auction must also be conducted under the auspices of a licensed auction business which has an active Florida auction business license. Any auctioneer or apprentice auctioneer conducting an auction subject to the provisions of Chapter 468, Part VI, F.S., and any auction business under whose auspices such action is held shall be responsible for determining that any auctioneer, auctioneer apprentice, or auction business with whom they are associated in conducting such auction have an active Florida auctioneer, auctioneer apprentice or auction business license as required by law.

(2) The principal auctioneer shall be responsible for conducting the auction in a professional and ethical manner.

(a) The principal auctioneer who calls and accepts bids at the auction shall be a Florida licensed auctioneer or Florida licensed apprentice.

(b) Prominently display at the auction site the licenses of the principal auctioneer, the auction business and any other licensed auctioneers or apprentices who are actively participating in the auction. If such a display is not practicable, then an oral announcement at the beginning of the auction or a prominent written announcement that these licenses are available for inspection at the auction site must be made.

(c) If a buyer premium or any surcharge is a condition to sale at any auction, the amount of the premium or surcharge must be announced at the beginning of the auction and a written notice of this information shall be conspicuously displayed or distributed to the public at the auction site.

(d) Announce at the beginning of the auction the terms of bidding and sale whether the sale is with reserve, without reserve or absolute, or minimum bid required. If the sale is absolute and has been announced or advertised as such, an article or lot may not be withdrawn from sale once a bid has been accepted. If no bid is received within a reasonable time, the item or lot may be withdrawn.

(e) If an auction has been advertised as absolute, no bid shall be accepted from the owner of the property or from someone acting on behalf of the owner unless the right to bid is specifically permitted by law.

(3) The auction business under which the auction is conducted is responsible for all other aspects of the auction to include contract negotiations, advertising, auction organization and layout, merchandise distribution and final settlement with the seller. The auction business may delegate in whole, or in part, different aspects of the auction only to the extent that such delegation is permitted by law and that such delegation will not impede the principal auctioneer's ability to assure the proper conduct of his independent responsibility for the auction. The auction business under whose auspices the auction is conducted is responsible for assuring compliance with the following requirements:

- (a) Comply with Section 468.388, F.S., regarding written agreements for auctions;
- (b) Maintain a record book as required by Rule 61G2-5.002, F.A.C.;
- (c) Assure that all advertising is in compliance with Rule 61G2-5.004, F.A.C.;
- (d) Comply with Section 468.388(10), F.S., regarding clients' funds and auction proceeds.
- (e) Designate a principal auctioneer for each auction conducted.

Rulemaking Authority 468.384(2) FS. Law Implemented 468.388, 468.389 FS. History—New 10-19-87, Amended 7-4-88, 12-11-88, 12-3-90, 1-28-92, Formerly 21BB-5.001, Amended 10-12-93, 6-19-12.

61G2-5.002 Required Record Keeping.

(1) The auction business which conducts an auction must maintain for a period of 2 years from each sale, a record book of all sales for which a written agreement is required. This record book is subject to inspection by the Department or at the request of the

Board and must contain the following:

- (a) A brief description of the property offered;
- (b) The name and address of the owner of the property offered;
- (c) The name and address of the buyer;
- (d) The price at which the property sold;
- (e) The date sale proceeds were delivered to the owner; and
- (f) The date and place of sale.

(2) Clerking records shall be maintained to supply the information required in paragraph 61G2-5.002(1)(a),(c) and (d), F.A.C., so long as they are maintained in a manner which is readily available and accessible to the Board and Department.

(3) Record Keeping: Inspection of the records of the auction business shall be required in connection with any violation of Chapters 455 and 468 Part IV, F.S., or any rules promulgated thereunder.

Rulemaking Authority 468.384(2) FS. Law Implemented 468.388(4) FS. History—New 5-6-87, Amended 1-28-92, Formerly 21BB-5.002, Amended 10-12-93, 10-2-95.

61G2-5.003 Client Funds and Sale Proceeds.

Rulemaking Authority 468.384(2) FS. Law Implemented 468.389(1)(c),(e),(h) FS. History—New 5-6-87, Formerly 21BB-5.003, Amended 10-12-93, 10-2-95, Repealed 2-20-12.

61G2-5.004 Advertising.

Rulemaking Authority 468.384(2) FS. Law Implemented 468.388(6), 468.389(1)(d), (j) FS. History—New 10-19-87, Formerly 21BB-5.004, Amended 10-12-93, 4-9-01, Repealed 2-20-12.

61G2-5.005 Definitions Applying to Exemptions.

livestock trade association or governmental agency actively regulates by law, rules or by-laws of the association, the safe conduct of the auction, including the health of the livestock and the proper management of sale proceeds.

(4) The phrase “auctions conducted as part of the sale of real property” means that any property so auctioned is included in the bids and sale price of the real property.

(5) A charitable auction is one where all the merchandise is either owned by or donated to the organization that is conducting the auction and all proceeds are retained by said organization.

Rulemaking Authority 468.384(2) FS. Law Implemented 468.383 FS. History—New 5-6-87, Formerly 21BB-5.005, Amended 10-12-93.

CHAPTER 61G2-6
STANDARDS FOR CLASSROOM INSTRUCTIONS

61G2-6.001 Standards for Classroom Instructions

61G2-6.001 Standards for Classroom Instructions.

A course of study in auctioneering must meet the following requirements for its successful completion to qualify an applicant for licensure.

(1) The course must consist of at least 80 hours of classroom instruction, with each classroom hour consisting of at least 50 minutes of instruction.

(2) The course of study must result in a certificate of successful completion and must provide instruction in the following subjects:

- (a) Drafting and executing contracts for auction services;
- (b) Preparation and lot division of goods to be sold;
- (c) Conduct of auction, including proper bid calling;
- (d) Record-keeping at auction and maintenance of records required by law;
- (e) Preparation and completion of final settlement after auction;
- (f) Laws relating to bulk sales and the Uniform Commercial Code as it relates to auctioneering;
- (g) Laws relating to regulation of auctioneers.
- (h) Brokerages.

Specific Authority 468.384(2) FS. Law Implemented 468.385(6) FS. History—New 1-26-88, Formerly 21BB-6.001.

CHAPTER 61G2-7 DISCIPLINE

61G2-7.010	Probable Cause
61G2-7.020	Time for Payment of Fines
61G2-7.030	Disciplinary Guidelines
61G2-7.040	Minor Violations
61G2-7.050	Citations
61G2-7.060	Restitution (Repealed)

61G2-7.010 Probable Cause.

Pursuant to Section 455.225(4), F.S., the Board delegates to the Department the authority to determine whether probable cause exists in any particular case.

Rulemaking Authority 455.225(4), 468.384(2) FS. Law Implemented 455.225(4) FS. History–New 5-4-87, Formerly 21BB-1.008, 21BB-7.010, Amended 4-17-94, 4-14-02.

61G2-7.020 Time for Payment of Fines.

In cases where the Board imposes an administrative fine for violation of Chapter 455, F.S., Chapter 468, Part VI, F.S., or the rules promulgated thereunder, the fine shall be paid within 30 days of issuance of the Board's final order.

Rulemaking Authority 468.384(2), 468.389(3)(a) FS. Law Implemented 468.389(3)(a) FS. History–New 3-19-87, Formerly 21BB-1.016, 21BB-7.020.

61G2-7.030 Disciplinary Guidelines.

(1) When the Board finds that an applicant or licensee whom it regulates under Chapter 468, Part VI, F.S., has committed any of the acts set forth in Section 468.389, F.S., it shall issue a final order imposing appropriate penalties within the ranges recommended in the following disciplinary guidelines:

(a) Violation of any law relating to trade or commerce of this state or of the state in which an auction is conducted. The usual penalty shall be: 1st offense – an administrative fine up to \$500, probation and the successful completion of the licensure exam; 2nd offense – an administrative fine from \$500 to \$1,000 and license suspension or revocation; 3rd offense – an administrative fine of \$1,000 and license revocation.

(b) Misrepresentation of property for sale at auction or making false promises concerning the use, value, or condition of such property by an auctioneer or auction business or by anyone acting as an agent of or with the consent of the auctioneer or auction business. The usual penalty shall be: 1st offense – administrative fine up to \$500, a reprimand and probation and/or license suspension; 2nd offense – an administrative fine of \$500 to \$1,000 and suspension; 3rd offense – an administrative fine of \$1,000 and license revocation.

(c) Failure to account for money belonging to another which has come into the control of an auctioneer or auction business through an auction, within a reasonable time not to exceed 30 days. The usual penalty shall be: 1st offense – an administrative fine of \$100 to \$500 and a reprimand; 2nd offense – an administrative fine of \$500 to \$1,000, an increase in the amount of bond required, probation and successful completion of the licensure examination; 3rd offense – an administrative fine of \$1,000 and license revocation.

(d) Failure to pay money belonging to another which has come into the control of an auctioneer or auction business through an auction, within a reasonable time not to exceed 30 days. The usual penalty shall be: 1st offense – an administrative fine of \$500 to \$1,000, probation and/or license suspension; 2nd offense – an administrative fine of \$1,000, suspension and an increase in the amount of bond required; 3rd offense – an administrative fine of \$1,000 and license revocation.

(e) False, deceptive, misleading, or untruthful advertising. The usual penalty shall be: 1st offense – an administrative fine of \$100 to \$500 and probation; 2nd offense – an administrative fine of \$500 to \$1,000 and license suspension; 3rd offense – an administrative fine of \$1,000 and license revocation.

(f) Conduct in connection with a sales transaction which demonstrates bad faith or dishonesty. The usual penalty shall be: 1st offense – an administrative fine of \$1,000 and license suspension followed by probation; 2nd offense – an administrative fine of

\$1,000, license suspension followed by probation and an increase in the amount of bond required; 3rd offense – an administrative fine of \$1,000 and license revocation.

(g) Using or permitting the use of false bidders, cappers, or shills. The usual penalty shall be: 1st offense – an administrative fine of \$1,000 and license suspension followed by probation; 2nd offense – an administrative fine of \$1,000, license suspension followed by probation and an increase in the amount of bond required; 3rd offense – an administrative fine of \$1,000 and license revocation.

(h) Making any material false statement on a license application. The usual penalty shall be denial of license or revocation of license and an administrative fine of \$1,000.

(i) Commingling money or property of another person with his own. The usual penalty shall be: 1st offense – an administrative fine of \$100 to \$500 and a reprimand; 2nd offense – an administrative fine of \$500 to \$1,000, an increase in the amount of bond required, probation and successful completion of the licensure examination; 3rd offense – an administrative fine of \$1,000 and license revocation.

(j) Refusal or neglect of any auctioneer or other receiver of public moneys to pay the moneys so received into the State Treasury at the times and under the regulations prescribed by law. The usual penalty shall be: 1st offense – an administrative fine of \$500 to \$1,000, probation and/or license suspension; 2nd offense – an administrative fine of \$1,000, license suspension and an increase in the amount of bond required; 3rd offense – an administrative fine of \$1,000 and license revocation.

(k) Violating any provision of Chapter 468, Part VI, F.S., Chapter 455, F.S., any rule of the Board or Department. The usual penalty shall be selected from the full range of penalties available to the Board and will be based upon the severity of the underlying offense.

(l) Violating any lawfully issued order of the Board or Department previously entered in a disciplinary hearing, or failure to comply with a lawfully issued subpoena of the Department. The usual penalty shall be an administrative fine of \$1,000 and license suspension or revocation.

(m) Having a license to practice a comparable profession revoked, suspended, or otherwise acted against by another state, territory, or county. The usual penalty shall be commensurate with the penalty invoked by the other jurisdiction or a penalty consistent with these guidelines for the underlying offense committed in the other jurisdiction.

(n) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice or the ability to practice the profession of auctioneering. The usual penalty shall be an administrative fine of \$1,000 and license suspension or revocation.

(o) Failing to timely report in writing to the board within 30 days after the licensee is convicted or found guilty of, or entered a plea of *nolo contendere* or guilty to, regardless of adjudication, a crime in any jurisdiction:

1. FIRST OFFENSE:

a. Misdemeanor: A fine from \$100.00 to \$250.00; probation not to exceed 6 months.

b. Felony: reprimand: a fine from \$500.00 to \$1,000.00; suspension with conditions of reinstatement or revocation.

2. SECOND OFFENSE:

a. Misdemeanor: reprimand; a fine from \$500.00 to \$1000.00; a period of suspension with conditions for reinstatement or revocation.

b. Felony: revocation and a fine of \$1000.00.

3. THIRD OFFENSE: a third misdemeanor offense shall be a fine of \$1000.00 and revocation.

(2) Based upon consideration of aggravating or mitigating factors, present in an individual case, the Board may deviate from the penalties recommended in subsection (1) above. The Board shall consider as aggravating or mitigating factors the following:

(a) The severity of the offense;

(b) The danger to the public;

(c) The number of repetitions of offenses;

(d) The length of time since the violation;

(e) The number of times the licensee has been previously disciplined by the Board;

(f) The length of time licensee has practiced;

(g) The actual damage, physical or otherwise, caused by the violation;

(h) The deterrent effect of the penalty imposed;

(i) The effect of the penalty upon the licensee's livelihood;

- (j) Any effort of rehabilitation by the licensee;
 - (k) The actual knowledge of the licensee pertaining to the violation;
 - (l) Attempts by the licensee to correct or stop the violation or refusal by the licensee to correct or stop the violation;
 - (m) Related violations against the licensee in another state including findings of guilt or innocence, penalties imposed and penalties served;
 - (n) Actual negligence of the licensee pertaining to any violation;
 - (o) Penalties imposed for related offenses under subsection (1) above;
 - (p) Any other relevant mitigating or aggravating factors under the circumstances.
- (3) Penalties imposed by the Board pursuant to subsection (1) above may be imposed in combination or individually, and are as follows:

- (a) Refusal to certify to the Department an application for licensure.
- (b) Revocation or suspension of a license.
- (c) Imposition of an administrative fine not to exceed \$1,000 for each count or separate offense.
- (d) Requirement of bonding in amounts not to exceed \$100,000 for auctioneers and \$300,000 for auction businesses.
- (e) Issuance of a reprimand.
- (f) Placement of the licensee on probation for a period of time and subject to such conditions as the Board may specify, including requiring the auctioneer to successfully complete the licensure examination.

Rulemaking Authority 455.2273(1) FS. Law Implemented 455.2273(1) FS. History--New 12-6-87, Formerly 21BB-1.030, 21BB-7.030, Amended 8-29-93, 12-23-12.

61G2-7.040 Minor Violations.

For purposes of Section 455.225(3), F.S., the Board hereby deems the following violations to be minor:

- (1) First time failure of an auctioneer or auction business to include the name and license number of such auctioneer and auction business in an advertisement, as required by Section 468.388(6), F.S.
- (2) First time failure of an auctioneer or auction business to prominently display his license, or make it otherwise available for inspection, at each auction in which he participates, as required by Section 468.388(5), F.S.
- (3) First time failure of an auctioneer and auction business to advertise an auction as absolute without specifying any and all items to be sold with reserve or with minimum bids as prohibited by Section 468.389(1)(d), F.S.
- (4) First time failure of an auctioneer or auction business to file a change of address with the Board office within 30 days of the effective date of such change, as prohibited by Section 468.389(1)(d), F.S.

Rulemaking Authority 455.225(3) FS. Law Implemented 455.225(3) FS. History--New 7-26-90, Formerly 21BB-1.0171, 21BB-7.040, Amended 8-29-93.

61G2-7.050 Citations.

- (1) Definitions.
 - (a) "Citation" means an instrument which meets the requirements set forth in Section 455.224, F.S., and which is served upon a subject for the purpose of assessing a penalty in an amount established by this rule;
 - (b) "Subject" means the licensee, trainee, or applicant alleged to have committed a violation designated in this rule.
- (2) In lieu of the disciplinary procedures contained in Section 455.225, F.S., the Department is hereby authorized to dispose of any violation designated herein by issuing a citation to the subject within six months after the filing of the complaint which is the basis for the citation.
- (3) The procedures described herein apply only for an initial offense of the alleged violation. Subsequent violation(s) of the same rule or statute shall require the procedures of Section 455.225, F.S., to be followed. In addition, should an initial offense for which a citation could be issued occur in conjunction with violations not described herein, then the procedures of Section 455.225, F.S., shall apply.
- (4) Pursuant to Section 455.224, F.S. (1991), the Board sets forth below those violations for which there is no substantial threat to the public health, safety, and welfare; or, if there is a substantial threat to the public health, safety, and welfare, such potential for harm has been removed prior to the issuance of the citation. The Board hereby designates the following as citation violation which shall result in a penalty of one hundred dollars (\$100.00).

(a) Failure of an auctioneer or auction business to include the name and license number of such auctioneer or auction business in an advertisement as required by Section 468.388(6), F.S.

(b) Failure of an auctioneer or auction business to prominently display his license, or make it otherwise available for inspection, at each auction in which he participates as required by Section 468.388(6), F.S.

(c) First time failure of an auctioneer or auction business to advertise an auction as absolute without specifying any and all items to be sold with reserve

or with minimum bids as prohibited by Section 468.389(1)(d), F.S.

(d) First time failure of an auctioneer or auction business to file a change of address with the Board office within 30 days of the effective date of such change.

(5) Prior to issuance of the citation, the Department must confirm that the violation has been corrected or is in the process of being corrected. If the violation is a substantial threat to the public health, safety, and welfare, such potential for harm must be removed prior to issuance of the citation.

(6) Once the citation becomes a final order, the citation and complaint become a public record pursuant to Chapter 119, F.S., unless otherwise exempt from the provisions of Chapter 119, F.S. The citation and complaint may be considered as aggravating circumstances in future disciplinary actions pursuant to Rule 61G2-7.030, F.A.C.

(7) The Board of Auctioneers shall, at the end of each calendar quarter, promulgate a report of the citations issued which report shall contain the violation, fine imposed, whether the subject complied with the citation upon it becoming a final order, and the number of subjects who chose to follow the procedures of Section 455.224, F.S.

Rulemaking Authority 455.224, 468.384(2) FS. Law Implemented 455.224 FS. History—New 1-1-92, Formerly 21BB-1.019, 21BB-7.050, Amended 8-29-93, 3-8-94, 10-2-95.

61G2-7.060 Restitution.

Rulemaking Authority 468.389 FS. Law Implemented 468.389 FS. History—New 10-2-95, Repealed 2-20-12.

CHAPTER 61G2-8 DEFINITIONS

- 61G2-8.010 Auction**
61G2-8.030 Mediation

61G2-8.010 Auction.

Auction means the sale of goods or real estate by means of exchange between an auctioneer and members of the audience; the exchanges consisting of a series of invitations for offers made by the auctioneer, offers made by members of the audience, and the acceptance by the auctioneer of the highest or most favorable offer. Use of written bids, media technology or mails in any part of the promotions, bidding, acceptance or any other part of a transaction shall not exclude such transaction from being classified as an auction.

Specific Authority 468.384(2) FS. Law Implemented 468.381, 468.383 FS. History—New 9-2-92, Formerly 21BB-8.010.

61G2-8.030 Mediation.

Pursuant to Section 468.388(6), F.A.C., the Board designates the following areas as appropriate for mediation;

(1) First time failure of an auctioneer or auction business to include the name and license number of such auctioneer and auction business in an advertisement, as required by Section 468.388(6), F.S.

(2) Failure of an auctioneer or auction business to prominently display his licenses, or make it otherwise available for inspecting at each auction in which he participated as required by Section 468.388(6), F.S.

Specific Authority 455.2235, 468.388(6) FS. Law Implemented 455.2235, 468.388(6) FS. History—New 10-8-95.



**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**



**CHAPTER 455
FLORIDA STATUTE**

Rick Scott, Governor

Jonathan Zchem, Secretary

June 2017

CHAPTER 455

BUSINESS AND PROFESSIONAL REGULATION: GENERAL PROVISIONS

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

(1) “Board” means any board or commission, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the department, including the Florida Real Estate Commission; except that, for ss. 455.201-455.245, “board” means only a board, or other statutorily created entity to the extent such entity is authorized to exercise regulatory or rulemaking functions, within the Division of Certified Public Accounting, the Division of Professions, or the Division of Real Estate.

(2) “Consumer member” means a person appointed to serve on a specific board or who has served on a specific board, who is not, and never has been, a member or practitioner of the profession, or of any closely related profession, regulated by such board.

(3) "Department" means the Department of Business and Professional Regulation.

(4) "License" means any permit, registration, certificate, or license issued by the department.

(5) "Licensee" means any person issued a permit, registration, certificate, or license by the department.

(6) "Profession" means any activity, occupation, profession, or vocation regulated by the department in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

History.—s. 1, ch. 21885, 1943; s. 1, ch. 28215, 1953; s. 12, ch. 63-195; s. 2, ch. 65-170; s. 27, ch. 67-248; s. 3, ch. 67-409; s. 1, ch. 67-596; s. 121, ch. 71-355; s. 122, ch. 73-333; s. 5, ch. 79-36; s. 123, ch. 79-164; s. 2, ch. 84-70; s. 9, ch. 91-220; s. 4, ch. 92-149; s. 5, ch. 93-220; s. 1, ch. 96-291; s. 3, ch. 97-261; s. 109, ch. 2000-153; s. 23, ch. 2000-160.

Note.—Former s. 485.01.

455.017 Applicability of this chapter.— This chapter applies only to the regulation of professions by the department.

History.—s. 60, ch. 94-218; s. 4, ch. 2010-106.

455.02 Licensure of members of the Armed Forces in good standing and their spouses with administrative boards.—

(1) Any member of the Armed Forces of the United States now or hereafter on active duty who, at the time of becoming such a member, was in good standing with any administrative board of the state and was entitled to practice or engage in his or her profession or vocation in the state shall be kept in good standing by such administrative board, without registering, paying dues or fees, or performing any other act on his or her part to be performed, as long as he or she is a member of the Armed Forces of the United States on active duty and for a period of 6 months after discharge from active duty as a member of the Armed Forces of the United States, if he or she is not engaged in his or her licensed profession or vocation in the private sector for profit.

(2) The boards listed in s. 20.165 shall adopt rules that exempt the spouse of a member of the Armed Forces of the United States from licensure renewal provisions, but only in cases of his or her absence from the state because of his or her spouse's duties with the Armed Forces.

(3)(a) The department may issue a temporary professional license to the spouse of an active duty member of the Armed Forces of the United States if the spouse applies to the department in the format prescribed by the department. An application must include proof that:

1. The applicant is married to a member of the Armed Forces of the United States who is on active duty.

2. The applicant holds a valid license for the profession issued by another state, the District of Columbia, any possession or territory of the United States, or any foreign jurisdiction.

3. The applicant's spouse is assigned to a duty station in this state and that the applicant is also assigned to a duty station in this state pursuant to the member's official active duty military orders.

4.a. A complete set of the applicant's fingerprints¹ is submitted to the Department of Law Enforcement for a statewide criminal history check.

b. The Department of Law Enforcement shall forward the fingerprints² submitted pursuant to subparagraph a. to the Federal Bureau of Investigation for a national criminal history check. The department shall, and the board may, review the results of the criminal history checks according to the level 2 screening standards in s. 435.04 and determine whether the applicant meets the licensure requirements. The costs of fingerprint processing shall be borne by the applicant. If the applicant's fingerprints are submitted through an authorized agency or vendor, the agency or vendor shall collect the required processing fees and remit the fees to the Department of Law Enforcement.

(b) An application must be accompanied by an application fee prescribed by the department that is sufficient to cover the cost of issuance of the temporary license.

(c) A temporary license expires 6 months after the date of issuance and is not renewable.

History.—s. 2, ch. 21885, 1943; s. 5, ch. 79-36; s. 95, ch. 83-329; s. 1, ch. 84-15; s. 71, ch. 85-81; s. 6, ch. 93-220; s. 186, ch. 97-103; s. 5, ch. 2010-106; s. 4, ch. 2010-182.

1**Note.**—The word "is" was substituted by the editors for the word "are," which was enacted by s. 5, ch. 2010-106. Section 4, ch. 2010-182, enacted the words "has been" instead of the word "are."

2**Note.**—As enacted by s. 4, ch. 2010-182. Subsection (3) was also added by s. 5, ch. 2010-106, and that version did not use the phrase "submitted pursuant to subparagraph a."

Note.—Former s. 485.02.

455.10 Restriction on requirement of citizenship.—No person shall be disqualified from practicing an occupation or profession regulated by the state solely because he or she is not a United States citizen.

History.—ss. 1, 2, 3, ch. 72-125; s. 1, ch. 74-37; s. 1, ch. 77-174; s. 5, ch. 79-36; s. 187, ch. 97-103.

Note.—Former s. 455.012.

455.11 Qualification of immigrants for examination to practice a licensed profession or occupation.—

(1) It is the declared purpose of this section to encourage the use of foreign-speaking Florida residents duly qualified to become actively qualified in their professions so that all Florida citizens may receive better services.

(2) Any person who has successfully completed, or is currently enrolled in, an approved course of study created pursuant to chapters 74-105 and 75-177, Laws of Florida, shall be deemed qualified for examination and reexaminations for a professional or occupational license which shall be administered in the English language unless 15 or more such applicants request that said reexamination be administered in their native language. In the event that such reexamination is administered in a foreign language, the full cost to the board of preparing and administering same shall be borne by said applicants.

(3) Each board within the department shall adopt and implement programs designed to qualify for examination all persons who were resident nationals of the Republic of Cuba and who, on July 1, 1977, were residents of this state.

History.—ss. 1, 3, ch. 77-255; s. 5, ch. 79-36; s. 194, ch. 79-400; s. 5, ch. 92-149; s. 61, ch. 94-218.

Note.—Former s. 455.016.

455.116 Regulation trust funds.—The following trust funds shall be placed in the department:

- (1) Administrative Trust Fund.
- (2) Alcoholic Beverage and Tobacco Trust Fund.
- (3) Cigarette Tax Collection Trust Fund.
- (4) Hotel and Restaurant Trust Fund.
- (5) Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.
- (6) Pari-mutuel Wagering Trust Fund.
- (7) Professional Regulation Trust Fund.

History.—s. 8, ch. 93-220; s. 44, ch. 96-418; s. 22, ch. 2008-240; s. 1, ch. 2011-30; s. 2, ch. 2012-143.

455.1165 Federal Grants Trust Fund.—

(1) The Federal Grants Trust Fund is created within the Department of Business and Professional Regulation.

(2) The trust fund is established for use as a depository for funds to be used for allowable grant activities funded by restricted program revenues from federal sources. Moneys to be credited to the trust fund shall consist of grants and funding from the Federal Government, interest earnings, and cash advances from other trust funds. Funds shall be expended only pursuant to legislative appropriation or an approved amendment to the department's operating budget pursuant to the provisions of chapter 216.

History.—s. 1, ch. 2011-60; s. 2, ch. 2014-44.

455.117 Sale of services and information by department.—The department may provide, directly or by contract, services and information to other levels of government and private entities.

History.—s. 9, ch. 93-220.

455.201 Professions and occupations regulated by department; legislative intent; requirements.—

(1) It is the intent of the Legislature that persons desiring to engage in any lawful profession regulated by the department shall be entitled to do so as a matter of right if otherwise qualified.

(2) The Legislature further believes that such professions shall be regulated only for the preservation of the health, safety, and welfare of the public under the police powers of the state. Such professions shall be regulated when:

(a) Their unregulated practice can harm or endanger the health, safety, and welfare of the public, and when the potential for such harm is recognizable and clearly outweighs any anticompetitive impact which may result from regulation.

(b) The public is not effectively protected by other means, including, but not limited to, other state statutes, local ordinances, or federal legislation.

(c) Less restrictive means of regulation are not available.

(3) It is further legislative intent that the use of the term "profession" with respect to those activities licensed and regulated by the department shall not be deemed to mean that such activities are not occupations for other purposes in state or federal law.

(4)(a) Neither the department nor any board may create unreasonably restrictive and extraordinary standards that deter qualified persons from entering the

various professions. Neither the department nor any board may take any action that tends to create or maintain an economic condition that unreasonably restricts competition, except as specifically provided by law.

(b) Neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention in the state or that places unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment.

(c) The Legislature shall evaluate proposals to increase regulation of already regulated professions or occupations to determine their effect on job creation or retention and employment opportunities.

(5) Policies adopted by the department shall ensure that all expenditures are made in the most cost-effective manner to maximize competition, minimize licensure costs, and maximize public access to meetings conducted for the purpose of professional regulation. The long-range planning function of the department shall be implemented to facilitate effective operations and to eliminate inefficiencies.

History.—s. 1, ch. 76-28; s. 5, ch. 79-36; s. 122, ch. 79-164; s. 3, ch. 82-1; s. 79, ch. 83-218; s. 36, ch. 92-33; s. 6, ch. 92-149; s. 20, ch. 93-129; s. 62, ch. 94-218; s. 134, ch. 99-251.

Note.—Former s. 455.001.

455.203 Department; powers and duties.—The department, for the boards under its jurisdiction, shall:

(1) Adopt rules establishing a procedure for the biennial renewal of licenses; however, the department may issue up to a 4-year license to selected licensees notwithstanding any other provisions of law to the contrary. Fees for such renewal shall not exceed the fee caps for individual professions on an annualized basis as authorized by law.

(2) Appoint the executive director of each board, subject to the approval of the board.

(3) Submit an annual budget to the Legislature at a time and in the manner provided by law.

(4) Develop a training program for persons newly appointed to membership on any board. The program shall familiarize such persons with the substantive and procedural laws and rules and fiscal information relating to the regulation of the appropriate profession and with the structure of the department.

(5) Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.

(6) Establish by rule procedures by which the department shall use the expert or technical advice of the appropriate board for the purposes of investigation, inspection, evaluation of applications, other duties of the department, or any other areas the department may deem appropriate.

(7) Require all proceedings of any board or panel thereof and all formal or informal proceedings conducted by the department, an administrative law judge, or a hearing officer with respect to licensing or discipline to be electronically recorded in a manner sufficient to assure the accurate transcription of all matters so recorded.

(8) Select only those investigators, or consultants who undertake investigations, who meet criteria established with the advice of the respective boards.

(9) Work cooperatively with the Department of Revenue to implement an automated method for periodically disclosing information relating to current licensees to the Department of Revenue. The purpose of this subsection is to promote the public policy of this state as established in s. 409.2551. The department shall, when directed by the court or the Department of Revenue pursuant to s. 409.2598, suspend or deny the license of any licensee found not to be in compliance with a support order, subpoena, order to show cause, or written agreement entered into by the licensee with the Department of Revenue. The department shall issue or reinstate the license without additional charge to the licensee when notified by the court or the Department of Revenue that the licensee has complied with the terms of the support order. The department shall not be held liable for any license denial or suspension resulting from the discharge of its duties under this subsection.

(10) Have authority to:

(a) Close and terminate deficient license application files 2 years after the board or the department notifies the applicant of the deficiency; and

(b) Approve applications for professional licenses that meet all statutory and rule requirements for licensure.

History.—s. 5, ch. 79-36; s. 27, ch. 81-302; s. 7, ch. 83-329; s. 15, ch. 86-285; s. 15, ch. 89-162; s. 1, ch. 90-228; s. 37, ch. 92-33; s. 7, ch. 92-149; s. 23, ch. 93-129; s. 10, ch. 93-208; s. 10, ch. 93-262; ss. 63, 64, ch. 94-218; s. 206, ch. 96-410; s. 4, ch. 97-261; s. 117, ch. 98-200; s. 24, ch. 2000-160; s. 51, ch. 2001-158; s. 38, ch. 2005-39; s. 21, ch. 2008-240.

455.2035 Rulemaking authority for professions not under a board.—The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the regulatory requirements of any profession within the department's jurisdiction which does not have a statutorily authorized regulatory board.

History.—s. 136, ch. 99-251.

455.204 Long-range policy planning; plans, reports, and recommendations.—To facilitate efficient and cost-effective regulation, the department and the board, where appropriate, shall develop and implement a long-range policy planning and monitoring process to include recommendations specific to each profession. Such process shall include estimates of revenues, expenditures, cash balances, and performance statistics for each profession. The period covered shall not be less than 5 years. The department, with input from the boards, shall develop the long-range plan and must obtain the approval of the secretary. The department shall monitor compliance with the approved long-range plan and, with input from the boards, shall annually update the plans for approval by the secretary. The department shall provide concise management reports to the boards quarterly. As part of the review process, the department shall evaluate:

(1) Whether the department, including the boards and the various functions performed by the department, is operating efficiently and effectively and if there is a need for a board or council to assist in cost-effective regulation.

(2) How and why the various professions are regulated.

(3) Whether there is a need to continue regulation, and to what degree.

(4) Whether or not consumer protection is adequate, and how it can be improved.

(5) Whether there is consistency between the various practice acts.

(6) Whether unlicensed activity is adequately enforced.

Such plans should include conclusions and recommendations on these and other issues as appropriate. Such plans shall be provided to the Governor and the Legislature by November 1 of each year.

History.—s. 8, ch. 92-149.

455.205 Contacting boards through department.—Each board under the jurisdiction of the department may be contacted through the headquarters of the department in the City of Tallahassee or at any regional office of the department.

History.—s. 30, ch. 69-106; s. 2, ch. 77-115; s. 5, ch. 79-36; s. 38, ch. 92-33; s. 23, ch. 93-129; ss. 65, 66, ch. 94-218; s. 5, ch. 97-261.

Note.—Former s. 455.004.

455.207 Boards; organization; meetings; compensation and travel expenses.—

(1) Each board within the department shall comply with the provisions of this section.

(2) The board shall annually elect from among its number a chairperson and vice chairperson.

(3) The board shall meet at least once annually and may meet as often as is necessary. The chairperson or a quorum of the board shall have the authority to call other meetings. A quorum shall be necessary for the conduct of official business by the board or any committee thereof. Unless otherwise provided by law, 51 percent or more of the appointed members of the board or any committee, when applicable, shall constitute a quorum. The membership of committees of the board, except as otherwise authorized pursuant to this chapter or the applicable practice act, shall be composed of currently appointed members of the board. The vote of a majority of the members of the quorum shall be necessary for any official action by the board or committee. Three consecutive unexcused absences or absences constituting 50 percent or more of the board's meetings within any 12-month period shall cause the board membership of the member in question to become void, and the position shall be considered vacant. The board, or the department when there is no board, shall, by rule, define unexcused absences.

(4) Unless otherwise provided by law, a board member or former board member serving on a probable cause panel shall be compensated \$50 for each day in attendance at an official meeting of the board and for each day of participation in any other business involving the board. Each board shall adopt rules defining the phrase "other business involving the board," but the phrase may not routinely be defined to include telephone conference calls. A board member also shall be entitled to reimbursement for expenses pursuant to s.

112.061. Travel out of state shall require the prior approval of the secretary.

(5) When two or more boards have differences between them, the boards may elect to, or the secretary may request that the boards, establish a special committee to settle those differences. The special committee shall consist of three members designated by each board, who may be members of the designating board or other experts designated by the board, and of one additional person designated and agreed to by the members of the special committee. In the event the special committee cannot agree on the additional designee, upon request of the special committee, the secretary may select the designee. The committee shall recommend rules necessary to resolve the differences. If a rule adopted pursuant to this provision is challenged, the participating boards shall share the costs associated with defending the rule or rules. The department shall provide legal representation for any special committee established pursuant to this section.

History.—s. 5, ch. 79-36; s. 28, ch. 81-302; s. 8, ch. 83-329; s. 72, ch. 85-81; s. 4, ch. 88-392; s. 39, ch. 92-33; s. 9, ch. 92-149; s. 23, ch. 93-129; s. 3, ch. 94-119; s. 6, ch. 97-261; s. 25, ch. 2000-160.

455.208 Publication of information.—The department and the boards shall have the authority to advise licensees periodically, through the publication of a newsletter, about information that the department or the board determines is of interest to the industry. Unless otherwise prohibited by law, the department and the boards shall publish a summary of final orders resulting in fines, suspensions, or revocations, and any other information the department or the board determines is of interest to the public.

History.—s. 5, ch. 88-392; s. 40, ch. 92-33; s. 10, ch. 92-149; s. 23, ch. 93-129; s. 67, ch. 94-218; s. 7, ch. 97-261.

455.209 Accountability and liability of board members.—

(1) Each board member shall be accountable to the Governor for the proper performance of duties as a member of the board. The Governor shall investigate any legally sufficient complaint or unfavorable written report received by the Governor or by the department or a board concerning the actions of the board or its individual members. The Governor may suspend from office any board member for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform the member's official duties, or commission of a felony.

(2) Each board member and each former board member serving on a probable cause panel shall be exempt from civil liability for any act or omission when acting in the member's official capacity, and the department shall defend any such member in any action against any board or member of a board arising from any such act or omission. In addition, the department may defend the member's company or business in any action against the company or business if the department determines that the actions from which the suit arises are actions taken by the member in the member's official capacity and were not beyond the member's statutory authority. In providing such defense, the department may employ or utilize the legal services of

the Department of Legal Affairs or outside counsel retained pursuant to s. 287.059. Fees and costs of providing legal services provided under this subsection shall be paid from the Professional Regulation Trust Fund, subject to the provisions of ss. 215.37 and 455.219.

History.—s. 5, ch. 79-36; ss. 13, 15, 25, 30, 34, 57, 62, ch. 80-406; s. 6, ch. 88-392; s. 2, ch. 90-228; s. 41, ch. 92-33; s. 11, ch. 92-149; s. 23, ch. 93-129; s. 68, ch. 94-218; s. 188, ch. 97-103; s. 8, ch. 97-261; s. 1, ch. 98-166; s. 151, ch. 99-251.

455.211 Board rules; final agency action; challenges.—

(1) The secretary of the department shall have standing to challenge any rule or proposed rule of a board under its jurisdiction pursuant to s. 120.56. In addition to challenges for any invalid exercise of delegated legislative authority, the administrative law judge, upon such a challenge by the secretary, may declare all or part of a rule or proposed rule invalid if it:

(a) Does not protect the public from any significant and discernible harm or damages;

(b) Unreasonably restricts competition or the availability of professional services in the state or in a significant part of the state; or

(c) Unnecessarily increases the cost of professional services without a corresponding or equivalent public benefit.

However, there shall not be created a presumption of the existence of any of the conditions cited in this subsection in the event that the rule or proposed rule is challenged.

(2) In addition, either the secretary or the board shall be a substantially interested party for purposes of s. 120.54(7). The board may, as an adversely affected party, initiate and maintain an action pursuant to s. 120.68 challenging the final agency action.

(3) No board created within the department shall have standing to challenge a rule or proposed rule of another board. However, if there is a dispute between boards concerning a rule or proposed rule, the boards may avail themselves of the provisions of s. 455.207(5).

(4) Any proposed board rule that has not been modified to remove proposed committee objections of the Administrative Procedures Committee must receive approval from the department prior to filing the rule with the Department of State for final adoption. The department may repeal any rule enacted by the board which has taken effect without having met proposed committee objections of the Administrative Procedures Committee.

History.—s. 5, ch. 79-36; s. 42, ch. 92-33; s. 12, ch. 92-149; s. 23, ch. 93-129; s. 69, ch. 94-218; s. 207, ch. 96-410; s. 9, ch. 97-261; s. 5, ch. 2000-356.

455.212 Education; substituting demonstration of competency for clock-hour requirements.—Any

board, or the department when there is no board, that requires student completion of a specific number of clock hours of classroom instruction for initial licensure purposes shall establish the minimal competencies that such students must demonstrate in order to be licensed. The demonstration of such competencies may be substituted for specific classroom clock-hour requirements established in statute or rule which are related to instructional programs for licensure purposes. Student

demonstration of the established minimum competencies shall be certified by the educational institution. The provisions of this section shall not apply to boards for which federal licensure standards are more restrictive or stringent than the standards prescribed in statute.

History.—s. 63, ch. 92-136; s. 30, ch. 92-321.

455.2121 Education; accreditation.—Notwithstanding any other provision of law, educational programs and institutions which are required by statute to be accredited, but which were accredited by an agency that has since ceased to perform an accrediting function, shall be recognized until such programs and institutions are accredited by a qualified successor to the original accrediting agency, an accrediting agency recognized by the United States Department of Education, or an accrediting agency recognized by the board, or the department when there is no board.

History.—s. 4, ch. 94-119.

455.2122 Education.—A board, or the department where there is no board, shall approve distance learning courses as an alternative to classroom courses to satisfy prelicensure or postlicensure education requirements provided for in part VIII of chapter 468 or part I of chapter 475. A board, or the department when there is no board, may not require centralized examinations for completion of prelicensure or postlicensure education requirements for those professions licensed under part VIII of chapter 468 or part I of chapter 475.

History.—s. 6, ch. 2010-106; s. 4, ch. 2010-176.

455.2123 Continuing education.—A board, or the department when there is no board, may provide by rule that distance learning may be used to satisfy continuing education requirements. A board, or the department when there is no board, shall approve distance learning courses as an alternative to classroom courses to satisfy continuing education requirements provided for in part VIII, part XV, or part XVI of chapter 468 or part I or part II of chapter 475 and may not require centralized examinations for completion of continuing education requirements for the professions licensed under part VIII, part XV, or part XVI of chapter 468 or part I or part II of chapter 475.

History.—s. 137, ch. 99-251; s. 7, ch. 2010-106; s. 5, ch. 2010-176.

455.2124 Proration of or not requiring continuing education.—A board, or the department when there is no board, may:

(1) Prorate continuing education for new licensees by requiring half of the required continuing education for any applicant who becomes licensed with more than half the renewal period remaining and no continuing education for any applicant who becomes licensed with half or less than half of the renewal period remaining; or

(2) Require no continuing education until the first full renewal cycle of the licensee.

These options shall also apply when continuing education is first required or the number of hours required is increased by law or the board, or the department when there is no board.

History.—s. 138, ch. 99-251.

455.2125 Consultation with postsecondary education boards prior to adoption of changes to training requirements.—Any state agency or board that has jurisdiction over the regulation of a profession or occupation shall consult with the Commission for Independent Education, the Board of Governors of the State University System, and the State Board of Education prior to adopting any changes to training requirements relating to entry into the profession or occupation. This consultation must allow the educational board to provide advice regarding the impact of the proposed changes in terms of the length of time necessary to complete the training program and the fiscal impact of the changes. The educational board must be consulted only when an institution offering the training program falls under its jurisdiction.

History.—s. 23, ch. 95-243; s. 34, ch. 98-421; s. 71, ch. 2004-5; s. 13, ch. 2004-41; s. 53, ch. 2007-217.

455.213 General licensing provisions.—

(1) Any person desiring to be licensed shall apply to the department in writing. The application for licensure shall be submitted on a form prescribed by the department and must include the applicant's social security number. Notwithstanding any other provision of law, the department is the sole authority for determining the contents of any documents to be submitted for initial licensure and licensure renewal. Such documents may contain information including, as appropriate: demographics, education, work history, personal background, criminal history, finances, business information, complaints, inspections, investigations, discipline, bonding, photographs, performance periods, reciprocity, local government approvals, supporting documentation, periodic reporting requirements, fingerprint requirements, continuing education requirements, and ongoing education monitoring. The application shall be supplemented as needed to reflect any material change in any circumstance or condition stated in the application which takes place between the initial filing of the application and the final grant or denial of the license and which might affect the decision of the department. In order to further the economic development goals of the state, and notwithstanding any law to the contrary, the department may enter into an agreement with the county tax collector for the purpose of appointing the county tax collector as the department's agent to accept applications for licenses and applications for renewals of licenses. The agreement must specify the time within which the tax collector must forward any applications and accompanying application fees to the department. In cases where a person applies or schedules directly with a national examination organization or examination vendor to take an examination required for licensure, any organization- or vendor-related fees associated with the examination may be paid directly to the organization or vendor. An application is received for purposes of s. 120.60 upon the department's receipt of the application submitted in the format prescribed by the department; the application fee set by the board or, if there is no board, set by the department; and any other fee required by law or rule to be remitted with the application.

(2) Before the issuance of any license, the department may charge an initial license fee as determined by rule of the applicable board or, if no such board exists, by rule of the department. Upon receipt of the appropriate license fee, except as provided in subsection (3), the department shall issue a license to any person certified by the appropriate board, or its designee, or the department when there is no board, as having met the applicable requirements imposed by law or rule. However, an applicant who is not otherwise qualified for licensure is not entitled to licensure solely based on a passing score on a required examination. Upon a determination by the department that it erroneously issued a license, or upon the revocation of a license by the applicable board, or by the department when there is no board, the licensee must surrender his or her license to the department.

(3) The board, or the department when there is no board, may refuse to issue an initial license to any applicant who is under investigation or prosecution in any jurisdiction for an action that would constitute a violation of this chapter or the professional practice acts administered by the department and the boards, until such time as the investigation or prosecution is complete.

(4) When any administrative law judge conducts a hearing pursuant to the provisions of chapter 120 with respect to the issuance of a license by the department, the administrative law judge shall submit his or her recommended order to the appropriate board, which shall thereupon issue a final order. The applicant for a license may appeal the final order of the board in accordance with the provisions of chapter 120.

(5) A privilege against civil liability is hereby granted to any witness for any information furnished by the witness in any proceeding pursuant to this section, unless the witness acted in bad faith or with malice in providing such information.

(6) Any board that currently requires continuing education for renewal of a license shall adopt rules to establish the criteria for continuing education courses. The rules may provide that up to a maximum of 25 percent of the required continuing education hours can be fulfilled by the performance of pro bono services to the indigent or to underserved populations or in areas of critical need within the state where the licensee practices. The board, or the department when there is no board, must require that any pro bono services be approved in advance in order to receive credit for continuing education under this section. The standard for determining indigency shall be that recognized by the Federal Poverty Income Guidelines produced by the United States Department of Health and Human Services. The rules may provide for approval by the board, or the department when there is no board, that a part of the continuing education hours can be fulfilled by performing research in critical need areas or for training leading to advanced professional certification. The board, or the department when there is no board, may make rules to define underserved and critical need areas. The department shall adopt rules for the administration of continuing education requirements

adopted by the boards or the department when there is no board.

(7) Notwithstanding anything to the contrary, any elected official who is licensed pursuant to any practice act within the purview of this chapter may hold employment for compensation with any public agency concurrent with such public service. Such dual service shall be disclosed according to any disclosure required by applicable law.

(8) In any instance in which a licensee or applicant to the department is required to be in compliance with a particular provision by, on, or before a certain date, and if that date occurs on a Saturday, Sunday, or a legal holiday, then the licensee or applicant is deemed to be in compliance with the specific date requirement if the required action occurs on the first succeeding day which is not a Saturday, Sunday, or legal holiday.

(9) Pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, each party is required to provide his or her social security number in accordance with this section. Disclosure of social security numbers obtained through this requirement shall be limited to the purpose of administration of the Title IV-D program for child support enforcement and use by the Department of Business and Professional Regulation, and as otherwise provided by law.

(10) For any profession requiring fingerprints as part of the registration, certification, or licensure process or for any profession requiring a criminal history record check to determine good moral character, the fingerprints of the applicant must accompany all applications for registration, certification, or licensure. The fingerprints shall be forwarded to the Division of Criminal Justice Information Systems within the Department of Law Enforcement for processing to determine whether the applicant has a criminal history record. The fingerprints shall also be forwarded to the Federal Bureau of Investigation to determine whether the applicant has a criminal history record. The information obtained by the processing of the fingerprints by the Department of Law Enforcement and the Federal Bureau of Investigation shall be sent to the department to determine whether the applicant is statutorily qualified for registration, certification, or licensure.

(11) Any submission required to be in writing may otherwise be required by the department to be made by electronic means. The department is authorized to contract with private vendors, or enter into interagency agreements, to collect electronic fingerprints where fingerprints are required for registration, certification, or the licensure process or where criminal history record checks are required.

(12) The department shall waive the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for a military veteran or his or her spouse at the time of discharge, if he or she applies to the department for a license, in a format prescribed by the department, within 60 months after the veteran is discharged from any branch of the United States Armed Forces. To qualify for this waiver, the veteran must have been honorably discharged.

History.—s. 5, ch. 79-36; s. 29, ch. 81-302; s. 9, ch. 83-329; s. 7, ch. 84-203; s. 30, ch. 85-175; s. 3, ch. 86-287; s. 1, ch. 89-162; s. 67, ch. 89-374; s. 1, ch. 91-137; s. 10, ch. 91-220; s. 43, ch. 92-33; ss. 13, 76, ch. 92-149; s. 23, ch. 93-129; ss. 1, 4,

ch. 96-309; s. 208, ch. 96-410; s. 1078, ch. 97-103; s. 63, ch. 97-170; s. 1, ch. 97-228; s. 10, ch. 97-261; s. 53, ch. 97-278; s. 2, ch. 98-166; s. 37, ch. 98-397; s. 139, ch. 99-251; s. 26, ch. 2000-160; s. 1, ch. 2001-269; s. 9, ch. 2001-278; s. 1, ch. 2007-86; s. 1, ch. 2009-195; s. 8, ch. 2010-106; s. 2, ch. 2012-61; s. 3, ch. 2012-72; s. 40, ch. 2013-116; s. 26, ch. 2014-1.

455.214 Limited licenses.—

(1) It is the intent of the Legislature that, absent a threat to the health, safety, and welfare of the public, the use of retired professionals in good standing to serve the indigent, underserved, or critical need populations of this state should be encouraged. To that end, the board, or the department when there is no board, may adopt rules to permit practice by retired professionals as limited licensees under this section.

(2) Any person desiring to obtain a limited license, when permitted by rule, shall submit to the board, or the department when there is no board, an application and fee, not to exceed \$300, and an affidavit stating that the applicant has been licensed to practice in any jurisdiction in the United States for at least 10 years in the profession for which the applicant seeks a limited license. The affidavit shall also state that the applicant has retired or intends to retire from the practice of that profession and intends to practice only pursuant to the restrictions of the limited license granted pursuant to this section. If the applicant for a limited license submits a notarized statement from the employer stating that the applicant will not receive monetary compensation for any service involving the practice of his or her profession, the application and all licensure fees shall be waived.

(3) The board, or the department when there is no board, may deny limited licensure to an applicant who has committed, or is under investigation or prosecution for, any act which would constitute the basis for discipline pursuant to the provisions of this chapter or the applicable practice act.

(4) The recipient of a limited license may practice only in the employ of public agencies or institutions or nonprofit agencies or institutions which meet the requirements of s. 501(c)(3) of the Internal Revenue Code, and which provide professional liability coverage for acts or omissions of the limited licensee. A limited licensee may provide services only to the indigent, underserved, or critical need populations within the state. The standard for determining indigency shall be that recognized by the Federal Poverty Income Guidelines produced by the United States Department of Health and Human Services. The board, or the department when there is no board, may adopt rules to define underserved and critical need areas and to ensure implementation of this section.

(5) A board, or the department when there is no board, may provide by rule for supervision of limited licensees to protect the health, safety, and welfare of the public.

(6) Each applicant granted a limited license is subject to all the provisions of this chapter and the respective practice act under which the limited license is issued which are not in conflict with this section.

(7) This section does not apply to chapter 458 or chapter 459.

History.—s. 14, ch. 92-149; s. 189, ch. 97-103; s. 11, ch. 97-261; s. 27, ch. 2000-160.

455.217 Examinations.—This section shall be read in conjunction with the appropriate practice act associated with each regulated profession under this chapter.

(1) The Division of Professions of the Department of Business and Professional Regulation shall provide, contract, or approve services for the development, preparation, administration, scoring, score reporting, and evaluation of all examinations. The division shall seek the advice of the appropriate board in providing such services.

(a) The department, acting in conjunction with the Division of Service Operations, the Division of Professions, and the Division of Real Estate, as appropriate, shall ensure that examinations adequately and reliably measure an applicant's ability to practice the profession regulated by the department. After an examination developed or approved by the department has been administered, the board or department may reject any question which does not reliably measure the general areas of competency specified in the rules of the board or department, when there is no board. The department shall use qualified outside testing vendors for the development, preparation, and evaluation of examinations, when such services are economically and viably available and approved by the department.

(b) For each examination developed by the department or contracted vendor, to the extent not otherwise specified by statute, the board or the department when there is no board, shall by rule specify the general areas of competency to be covered by the examination, the relative weight to be assigned in grading each area tested, the score necessary to achieve a passing grade, and the fees, where applicable, to cover the actual cost for any purchase, development, and administration of the required examination. However, statutory fee caps in each practice act shall apply. This subsection does not apply to national examinations approved and administered pursuant to paragraph (d).

(c) If a practical examination is deemed to be necessary, rules shall specify the criteria by which examiners are to be selected, the grading criteria to be used by the examiner, the relative weight to be assigned in grading each criterion, and the score necessary to achieve a passing grade. When a mandatory standardization exercise for a practical examination is required by law, the board may conduct such exercise. Therefore, board members may serve as examiners at a practical examination with the consent of the board.

(d) A board, or the department when there is no board, may approve by rule the use of any national examination which the department has certified as meeting requirements of national examinations and generally accepted testing standards pursuant to department rules. Providers of examinations, which may be either profit or nonprofit entities, seeking certification by the department shall pay the actual costs incurred by the department in making a determination regarding the certification. The department shall use any national examination which is available, certified by the department, and approved by the board. The name and number of a candidate may be provided to a national contractor for the limited purpose of preparing the grade

tape and information to be returned to the board or department or, to the extent otherwise specified by rule, the candidate may apply directly to the vendor of the national examination. The department may delegate to the board the duty to provide and administer the examination. Any national examination approved by a board, or the department when there is no board, prior to October 1, 1997, is deemed certified under this paragraph. Any licensing or certification examination that is not developed or administered by the department in-house or provided as a national examination shall be competitively bid.

(e) The department shall adopt rules regarding the security and monitoring of examinations. In order to maintain the security of examinations, the department may employ the procedures set forth in s. 455.228 to seek fines and injunctive relief against an examinee who violates the provisions of s. 455.2175 or the rules adopted pursuant to this paragraph. The department, or any agent thereof, may, for the purposes of investigation, confiscate any written, photographic, or recording material or device in the possession of the examinee at the examination site which the department deems necessary to enforce such provisions or rules.

(f) If the professional board with jurisdiction over an examination concurs, the department may, for a fee, share with any other state's licensing authority an examination developed by or for the department unless prohibited by a contract entered into by the department for development or purchase of the examination. The department, with the concurrence of the appropriate board, shall establish guidelines that ensure security of a shared exam and shall require that any other state's licensing authority comply with those guidelines. Those guidelines shall be approved by the appropriate professional board. All fees paid by the user shall be applied to the department's examination and development program for professions regulated by this chapter. All fees paid by the user for professions not regulated by this chapter shall be applied to offset the fees for the development and administration of that profession's examination. If both a written and a practical examination are given, an applicant shall be required to retake only the portion of the examination for which he or she failed to achieve a passing grade, if he or she successfully passes that portion within a reasonable time of his or her passing the other portion.

(2) For each examination developed by the department or a contracted vendor, the board or the department when there is no board, shall make rules providing for reexamination of any applicants who fail an examination developed by the department or a contracted vendor. If both a written and a practical examination are given, an applicant shall be required to retake only the portion of the examination for which he or she failed to achieve a passing grade, if the applicant successfully passes that portion within a reasonable time, as determined by rule of the board, or department when there is no board, of his or her passing the other portion.

(3) Except for national examinations approved and administered pursuant to paragraph (1)(d), the department shall provide procedures for applicants who have taken and failed an examination developed by the

department or a contracted vendor to review their most recently administered examination questions, answers, papers, grades, and grading key for the questions the candidate answered incorrectly or, if not feasible, the parts of the examination failed. Applicants shall bear the actual cost for the department to provide examination review pursuant to this subsection. An applicant may waive in writing the confidentiality of his or her examination grades.

(4) For each examination developed or administered by the department or a contracted vendor, an accurate record of each applicant's examination questions, answers, papers, grades, and grading key shall be kept for a period of not less than 2 years immediately following the examination, and such record shall thereafter be maintained or destroyed as provided in chapters 119 and 257. This subsection does not apply to national examinations approved and administered pursuant to paragraph (1)(d).

(5) Meetings and records of meetings of any member of the department or of any board or commission within the department held for the exclusive purpose of creating or reviewing licensure examination questions or proposed examination questions are confidential and exempt from ss. 119.07(1) and 286.011. However, this exemption shall not affect the right of any person to review an examination as provided in subsection (3).

(6) For examinations developed by the department or a contracted vendor, each board, or the department when there is no board, may provide licensure examinations in an applicant's native language. Applicants for examination or reexamination pursuant to this subsection shall bear the full cost for the department's development, preparation, administration, grading, and evaluation of any examination in a language other than English or Spanish. Requests for translated examinations, except for those in Spanish, must be on file in the board office, or with the department when there is no board, at least 6 months prior to the scheduled examination. When determining whether it is in the public interest to allow the examination to be translated into a language other than English or Spanish, the board, or the department when there is no board, shall consider the percentage of the population who speak the applicant's native language.

(7) In addition to meeting other requirements for licensure by examination or by endorsement, an applicant may be required by a board, or by the department, if there is no board, to pass an examination pertaining to state laws and rules applicable to the practice of the profession regulated by that board or by the department. This subsection does not apply to persons regulated under chapter 473.

History.—s. 30, ch. 69-106; s. 1, ch. 73-97; s. 3, ch. 77-115; s. 5, ch. 79-36; s. 286, ch. 81-259; s. 30, ch. 81-302; s. 4, ch. 82-1; s. 39, ch. 82-179; s. 80, ch. 83-218; s. 10, ch. 83-329; s. 1, ch. 88-49; s. 2, ch. 89-162; s. 2, ch. 91-137; s. 1, ch. 91-140; s. 11, ch. 91-220; s. 15, ch. 92-149; s. 5, ch. 94-119; s. 70, ch. 94-218; s. 303, ch. 96-406; s. 1080, ch. 97-103; s. 2, ch. 97-228; s. 12, ch. 97-261; s. 18, ch. 99-7; s. 28, ch. 2000-160; s. 6, ch. 2000-356; s. 23, ch. 2008-240; s. 1, ch. 2009-54; s. 1, ch. 2009-69; s. 63, ch. 2009-195; s. 9, ch. 2010-106.

Note.—Former s. 455.007(2).

455.2171 Use of professional testing services. Notwithstanding any other provision of law to the contrary, the department may use a professional testing

service to prepare, administer, grade, and evaluate any computerized examination, when that service is available and approved by the board, or the department when there is no board.

History.—s. 6, ch. 94-119.

455.2175 Penalty for theft or reproduction of an examination.—In addition to, or in lieu of, any other discipline imposed pursuant to s. 455.227, the theft of an examination in whole or in part or the act of reproducing or copying any examination administered by the department, whether such examination is reproduced or copied in part or in whole and by any means, constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. An examinee whose examination materials are confiscated is not permitted to take another examination until the criminal investigation reveals that the examinee did not violate this section.

History.—s. 3, ch. 90-228; s. 3, ch. 91-137; s. 47, ch. 92-33; s. 23, ch. 93-129; s. 71, ch. 94-218; s. 13, ch. 97-261; s. 10, ch. 2010-106.

455.2177 Monitoring of compliance with continuing education requirements.—

(1) The department shall establish a system to monitor licensee compliance with applicable continuing education requirements and to determine each licensee's continuing education status. As used in this section, the term "monitor" means the act of determining, for each licensee, whether the licensee was in full compliance with applicable continuing education requirements as of the time of the licensee's license renewal.

(2) The department may refuse renewal of a licensee's license until the licensee has satisfied all applicable continuing education requirements. This subsection does not preclude the department or boards from imposing additional penalties pursuant to the applicable practice act or rules adopted pursuant thereto.

(3) The department may waive the continuing education monitoring requirements of this section for any profession that demonstrates to the department that the monitoring system places an undue burden on the profession. The department shall waive the continuing education monitoring requirements of this section for any profession that has a program in place which measures compliance with continuing education requirements through statistical sampling techniques or other methods and can indicate that at least 95 percent of its licensees are in compliance.

(4) The department may adopt rules under ss. 120.536(1) and 120.54 to implement this section.

History.—s. 157, ch. 99-251; s. 17, ch. 2001-278; s. 43, ch. 2002-207; s. 2, ch. 2004-292; s. 82, ch. 2005-2.

455.2178 Continuing education providers.—

(1) Each continuing education provider shall provide to the department such information regarding the continuing education status of licensees as the department determines is necessary to carry out its duties under s. 455.2177, in an electronic format determined by the department. After a licensee's completion of a course, the information must be submitted to the

department electronically no later than 30 calendar days thereafter. However, the continuing education provider shall electronically report to the department completion of a licensee's course within 10 business days beginning on the 30th day before the renewal deadline or prior to the renewal date, whichever occurs sooner. The foregoing applies only if the profession has not been granted a waiver from the monitoring requirements under s. 455.2177. Upon the request of a licensee, the provider must also furnish to the department information regarding courses completed by the licensee.

(2) Each continuing education provider shall retain all records relating to a licensee's completion of continuing education courses for at least 4 years after completion of a course.

(3) A continuing education provider may not be approved, and the approval may not be renewed, unless the provider agrees in writing to provide such cooperation under this section and s. 455.2177 as the department deems necessary or appropriate.

(4) The department may fine, suspend, or revoke approval of any continuing education provider that fails to comply with its duties under this section. Such fine may not exceed \$500 per violation. Investigations and prosecutions of a provider's failure to comply with its duties under this section shall be conducted pursuant to s. 455.225.

(5) For the purpose of determining which persons or entities must meet the reporting, recordkeeping, and access provisions of this section, the board of any profession subject to this section, or the department if there is no board, shall, by rule, adopt a definition of the term "continuing education provider" applicable to the profession's continuing education requirements. The intent of the rule shall be to ensure that all records and information necessary to carry out the requirements of this section and s. 455.2177 are maintained and transmitted accordingly and to minimize disputes as to what person or entity is responsible for maintaining and reporting such records and information.

(6) The department may adopt rules under ss. 120.536(1) and 120.54 to implement this section.

History.—s. 158, ch. 99-251; s. 3, ch. 2004-292; s. 2, ch. 2007-86.

455.2179 Continuing education provider and course approval; cease and desist orders.—

(1) If a board, or the department if there is no board, requires completion of continuing education as a requirement for renewal of a license, the board, or the department if there is no board, shall approve the providers and courses for the continuing education. Notwithstanding this subsection or any other provision of law, the department may approve continuing education providers or courses even if there is a board. If the department determines that an application for a continuing education provider or course requires expert review or should be denied, the department shall forward the application to the appropriate board for review and approval or denial. The approval of continuing education providers and courses must be for a specified period of time, not to exceed 4 years. An approval that does not include such a time limitation

may remain in effect pursuant to the applicable practice act or the rules adopted under the applicable practice act. Notwithstanding this subsection or any other provision of law, only the department may determine the contents of any documents submitted for approval of a continuing education provider or course.

(2) The board, or the department if there is no board, shall issue an order requiring a person or entity to cease and desist from offering any continuing education programs for licensees, and fining, suspending, or revoking any approval of the provider previously granted by the board, or the department if there is no board, if the board, or the department if there is no board, determines that the person or entity failed to provide appropriate continuing education services that conform to approved course material. Such fine may not exceed \$500 per violation. Investigations and prosecutions of a provider's failure to comply with its duties under this section shall be conducted under s. 455.225.

(3) Each board authorized to approve continuing education providers, or the department if there is no board, may establish, by rule, a fee not to exceed \$250 for anyone seeking approval to provide continuing education courses and may establish, by rule, a biennial fee not to exceed \$250 for the renewal of providership of such courses. The Florida Real Estate Commission, authorized under the provisions of chapter 475 to approve prelicensure, precertification, and postlicensure education providers, may establish, by rule, an application fee not to exceed \$250 for anyone seeking approval to offer prelicensure, precertification, or postlicensure education courses and may establish, by rule, a biennial fee not to exceed \$250 for the renewal of such courses. Such postlicensure education courses are subject to the reporting, monitoring, and compliance provisions of this section and ss. 455.2177 and 455.2178.

(4) The department and each affected board may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section.

History.—s. 159, ch. 99-251; s. 7, ch. 2000-356; s. 4, ch. 2004-292; s. 4, ch. 2012-72.

455.218 Foreign-trained professionals; special examination and license provisions.—

(1) When not otherwise provided by law, the department shall by rule provide procedures under which exiled professionals may be examined within each practice act. A person shall be eligible for such examination if the person:

(a) Immigrated to the United States after leaving the person's home country because of political reasons, provided such country is located in the Western Hemisphere and lacks diplomatic relations with the United States;

(b) Applies to the department and submits a fee;

(c) Was a Florida resident immediately preceding the person's application;

(d) Demonstrates to the department, through submission of documentation verified by the applicant's respective professional association in exile, that the applicant was graduated with an appropriate professional or occupational degree from a college or university; however, the department may not require

receipt of any documentation from the Republic of Cuba as a condition of eligibility under this section;

(e) Lawfully practiced the profession for at least 3 years;

(f) Prior to 1980, successfully completed an approved course of study pursuant to chapters 74-105 and 75-177, Laws of Florida; and

(g) Presents a certificate demonstrating the successful completion of a continuing education program which offers a course of study that will prepare the applicant for the examination offered under subsection (2). The department shall develop rules for the approval of such programs for its boards.

(2) Upon request of a person who meets the requirements of subsection (1) and submits an examination fee, the department, for its boards, shall provide a written practical examination that tests the person's current ability to practice the profession competently in accordance with the actual practice of the profession. Evidence of meeting the requirements of subsection (1) shall be treated by the department as evidence of the applicant's preparation in the academic and preprofessional fundamentals necessary for successful professional practice, and the applicant shall not be examined by the department on such fundamentals.

(3) The fees charged for the examinations offered under subsection (2) shall be established by the department, for its boards, by rule and shall be sufficient to develop or to contract for the development of the examination and its administration, grading, and grade reviews.

(4) The department shall examine any applicant who meets the requirements of subsections (1) and (2). Upon passing the examination and the issuance of the license, a licensee is subject to the administrative requirements of this chapter and the respective practice act under which the license is issued. Each applicant so licensed is subject to all provisions of this chapter and the respective practice act under which the license was issued.

(5) Upon a request by an applicant otherwise qualified under this section, the examinations offered under subsection (2) may be given in the applicant's native language, provided that any translation costs are borne by the applicant.

(6) The department, for its boards, shall not issue an initial license to, or renew a license of, any applicant or licensee who is under investigation or prosecution in any jurisdiction for an action which would constitute a violation of this chapter or the professional practice acts administered by the department and the boards until such time as the investigation or prosecution is complete, at which time the provisions of the professional practice acts shall apply.

History.—s. 1, ch. 86-90; s. 7, ch. 88-205; s. 7, ch. 88-392; s. 48, ch. 92-33; s. 16, ch. 92-149; s. 23, ch. 93-129; s. 312, ch. 94-119; s. 72, ch. 94-218; s. 14, ch. 97-261; s. 3, ch. 98-166; s. 29, ch. 2000-160.

455.2185 Exemption for certain out-of-state or foreign professionals; limited practice permitted.

(1) A professional of any other state or of any territory or other jurisdiction of the United States or of any other nation or foreign jurisdiction is exempt from the requirements of licensure under this chapter and the

applicable professional practice act under the agency with regulatory jurisdiction over the profession if that profession is regulated in this state under the agency with regulatory jurisdiction over the profession and if that person:

(a) Holds, if so required in the jurisdiction in which that person practices, an active license to practice that profession.

(b) Engages in the active practice of that profession outside the state.

(c) Is employed or designated in that professional capacity by a sports entity visiting the state for a specific sporting event.

(2) A professional's practice under this section is limited to the members, coaches, and staff of the team for which that professional is employed or designated and to any animals used if the sporting event for which that professional is employed or designated involves animals. A professional practicing under authority of this section shall not have practice privileges in any licensed veterinary facility without the approval of that facility.

History.—s. 1, ch. 94-96; s. 15, ch. 97-261; s. 30, ch. 2000-160.

455.219 Fees; receipts; disposition; periodic management reports.—

(1) Each board within the department shall determine by rule the amount of license fees for its profession, based upon department-prepared long-range estimates of the revenue required to implement all provisions of law relating to the regulation of professions by the department and any board; however, when the department has determined, based on the long-range estimates of such revenue, that a profession's trust fund moneys are in excess of the amount required to cover the necessary functions of the board, or the department when there is no board, the department may adopt rules to implement a waiver of license renewal fees for that profession for a period not to exceed 2 years, as determined by the department. Each board, or the department when there is no board, shall ensure license fees are adequate to cover all anticipated costs and to maintain a reasonable cash balance, as determined by rule of the department, with advice of the applicable board. If sufficient action is not taken by a board within 1 year of notification by the department that license fees are projected to be inadequate, the department shall set license fees on behalf of the applicable board to cover anticipated costs and to maintain the required cash balance. The department shall include recommended fee cap increases in its annual report to the Legislature. Further, it is legislative intent that no regulated profession operate with a negative cash balance. The department may provide by rule for the advancement of sufficient funds to any profession or the Florida State Boxing Commission operating with a negative cash balance. Such advancement may be for a period not to exceed 2 consecutive years and shall require interest to be paid by the regulated profession. Interest shall be calculated at the current rate earned on Professional Regulation Trust Fund investments. Interest earned shall be allocated to the various funds in accordance with the

allocation of investment earnings during the period of the advance.

(2) Each board, or the department if there is no board, may, by rule, assess and collect a one-time fee from each active and each voluntary inactive licensee in an amount necessary to eliminate a cash deficit or, if there is not a cash deficit, in an amount sufficient to maintain the financial integrity of such professions as required in this section. No more than one such assessment may be made in any 4-year period without specific legislative authorization.

(3) All moneys collected by the department from fees or fines or from costs awarded to the department by a court shall be paid into the Professional Regulation Trust Fund, which fund is created in the department. The department may contract with public and private entities to receive and deposit revenue pursuant to this section. The Legislature shall appropriate funds from this trust fund sufficient to carry out the provisions of this chapter and the provisions of law with respect to professions regulated by the department and any board within the department. The department shall maintain separate accounts in the Professional Regulation Trust Fund for every profession within the department. To the maximum extent possible, the department shall directly charge all expenses to the account of each regulated profession. For the purpose of this subsection, direct charge expenses shall include, but not be limited to, costs for investigations, examinations, and legal services. For expenses that cannot be charged directly, the department shall provide for the proportionate allocation among the accounts of expenses incurred by the department in the performance of its duties with respect to each regulated profession. The department shall not expend funds from the account of a profession to pay for the expenses incurred on behalf of another profession. The department shall maintain adequate records to support its allocation of department expenses. The department shall provide any board with reasonable access to these records upon request. Each board shall be provided an annual report of revenue and direct and allocated expenses related to the operation of that profession. These reports and the department's adopted long-range plan shall be used by the board to determine the amount of license fees. A condensed version of this information, with the department's recommendations, shall be included in the annual report to the Legislature prepared pursuant to s. 455.2285.

(4) A condensed management report of budgets, finances, performance statistics, and recommendations shall be provided to each board at least once a quarter. The department shall identify and include in such presentations any changes, or projected changes, made to the board's budget since the last presentation.

(5) If a duplicate license is required or requested by the licensee, the board or, if there is no board, the department may charge a fee as determined by rule not to exceed \$25 before issuance of the duplicate license.

(6) The department or the appropriate board shall charge a fee not to exceed \$25 for the certification of a public record. The fee shall be determined by rule of the department. The department or the appropriate board

shall assess a fee for duplication of a public record as provided in s. 119.07(4).

History.—s. 5, ch. 79-36; s. 287, ch. 81-259; s. 2, ch. 84-271; s. 82, ch. 90-132; s. 4, ch. 90-228; s. 4, ch. 91-137; s. 17, ch. 92-149; s. 73, ch. 94-218; s. 8, ch. 2000-356; s. 44, ch. 2004-335.

455.221 Legal and investigative services.—

(1) The department shall provide board counsel for boards within the department by contracting with the Department of Legal Affairs, by retaining private counsel pursuant to s. 287.059, or by providing department staff counsel. The primary responsibility of board counsel shall be to represent the interests of the citizens of the state. A board shall provide for the periodic review and evaluation of the services provided by its board counsel. Fees and costs of such counsel shall be paid from the Professional Regulation Trust Fund, subject to the provisions of ss. 215.37 and 455.219. All contracts for independent counsel shall provide for periodic review and evaluation by the board and the department of services provided.

(2) The Department of Business and Professional Regulation may employ or utilize the legal services of outside counsel and the investigative services of outside personnel. However, no attorney employed or used by the department shall prosecute a matter and provide legal services to the board with respect to the same matter.

(3) Any person retained by the department under contract to review materials, make site visits, or provide expert testimony regarding any complaint or application filed with the department relating to a profession under the jurisdiction of the department shall be considered an agent of the department in determining the state insurance coverage and sovereign immunity protection applicability of ss. 284.31 and 768.28.

History.—s. 30, ch. 69-106; s. 1, ch. 73-97; s. 3, ch. 77-115; s. 5, ch. 79-36; s. 288, ch. 81-259; s. 31, ch. 81-302; s. 51, ch. 92-33; s. 23, ch. 93-129; s. 7, ch. 94-119; ss. 74, 75, ch. 94-218; s. 16, ch. 97-261; s. 152, ch. 99-251.

Note.—Former s. 455.007(3), (4).

455.2228 Barbers and cosmetologists; instruction on HIV and AIDS.—

(1) The board, or the department where there is no board, shall require each person licensed or certified under chapter 476 or chapter 477 to complete a continuing educational course approved by the board, or the department where there is no board, on human immunodeficiency virus and acquired immune deficiency syndrome as part of biennial relicensure or recertification. The course shall consist of education on modes of transmission, infection control procedures, clinical management, and prevention of human immunodeficiency virus and acquired immune deficiency syndrome, with an emphasis on appropriate behavior and attitude change.

(2) When filing fees for each biennial renewal, each licensee shall submit confirmation of having completed said course, on a form provided by the board or by the department if there is no board. At the time of the subsequent biennial renewal when coursework is to be completed, if the licensee has not submitted confirmation which has been received and recorded by the board, or department if there is no board, the department shall not renew the license.

(3) The board, or the department where there is no board, shall have the authority to approve additional equivalent courses that may be used to satisfy the requirements in subsection (1).

(4) As of December 31, 1992, the board, or the department where there is no board, shall require, as a condition of granting a license under any of the chapters or parts thereof specified in subsection (1), that an applicant making initial application for licensure complete an educational course acceptable to the board, or the department where there is no board, on human immunodeficiency virus and acquired immune deficiency syndrome. An applicant who has not taken a course at the time of licensure shall, upon an affidavit showing good cause, be allowed 6 months to complete this requirement.

(5) The board, or the department where there is no board, shall have the authority to adopt rules to carry out the provisions of this section.

(6) Any professional holding two or more licenses subject to the provisions of this section shall be permitted to show proof of having taken one board-approved course, or one department-approved course where there is no board, on human immunodeficiency virus and acquired immune deficiency syndrome, for purposes of relicensure or recertification for additional licenses.

History.—s. 11, ch. 89-350; ss. 73, 74, ch. 91-297; s. 16, ch. 95-388; s. 18, ch. 97-261; s. 147, ch. 2010-102.

455.223 Power to administer oaths, take depositions, and issue subpoenas.—For the purpose of any investigation or proceeding conducted by the department, the department shall have the power to administer oaths, take depositions, make inspections when authorized by statute, issue subpoenas which shall be supported by affidavit, serve subpoenas and other process, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence. The department shall exercise this power on its own initiative or whenever requested by a board or the probable cause panel of any board. Challenges to, and enforcement of, the subpoenas and orders shall be handled as provided in s. 120.569.

History.—s. 5, ch. 79-36; s. 32, ch. 81-302; s. 4, ch. 86-90; s. 5, ch. 91-137; s. 52, ch. 92-33; s. 23, ch. 93-129; s. 77, ch. 94-218; s. 210, ch. 96-410; s. 19, ch. 97-261.

455.2235 Mediation.—

(1) Notwithstanding the provisions of s. 455.225, the board, or the department when there is no board, shall adopt rules to designate which violations of the applicable professional practice act are appropriate for mediation. The board, or the department when there is no board, may designate as mediation offenses those complaints where harm caused by the licensee is economic in nature or can be remedied by the licensee.

(2) After the department determines a complaint is legally sufficient and the alleged violations are defined as mediation offenses, the department or any agent of the department may conduct informal mediation to resolve the complaint. If the complainant and the subject of the complaint agree to a resolution of a complaint within 14 days after contact by the mediator,

the mediator shall notify the department of the terms of the resolution. The department or board shall take no further action unless the complainant and the subject each fail to record with the department an acknowledgment of satisfaction of the terms of mediation within 60 days of the mediator's notification to the department. In the event the complainant and subject fail to reach settlement terms or to record the required acknowledgment, the department shall process the complaint according to the provisions of s. 455.225.

(3) Conduct or statements made during mediation are inadmissible in any proceeding pursuant to s. 455.225. Further, any information relating to the mediation of a case shall be subject to the confidentiality provisions of s. 455.225.

(4) No licensee shall go through the mediation process more than three times without approval of the department. The department may consider the subject and dates of the earlier complaints in rendering its decision. Such decision shall not be considered a final agency action for purposes of chapter 120.

(5) If any board fails to adopt rules designating which violations are appropriate for resolution by mediation by January 1, 1995, the department shall have exclusive authority to, and shall, adopt rules to designate the violations which are appropriate for mediation. Any board created on or after January 1, 1995, shall have 6 months to adopt rules designating which violations are appropriate for mediation, after which time the department shall have exclusive authority to adopt rules pursuant to this section. A board shall have continuing authority to amend its rules adopted pursuant to this section.

History.—s. 19, ch. 92-149; s. 8, ch. 94-119.

455.224 Authority to issue citations.—

(1) Notwithstanding s. 455.225, the board or the department shall adopt rules to permit the issuance of citations. The citation shall be issued to the subject and shall contain the subject's name and address, the subject's license number if applicable, a brief factual statement, the sections of the law allegedly violated, and the penalty imposed. The citation must clearly state that the subject may choose, in lieu of accepting the citation, to follow the procedure under s. 455.225. If the subject disputes the matter in the citation, the procedures set forth in s. 455.225 must be followed. However, if the subject does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation becomes a final order and constitutes discipline. The penalty shall be a fine or other conditions as established by rule.

(2) The board, or the department when there is no board, shall adopt rules designating violations for which a citation may be issued. Such rules shall designate as citation violations those violations for which there is no substantial threat to the public health, safety, and welfare.

(3) The department shall be entitled to recover the costs of investigation, in addition to any penalty provided according to board or department rule, as part of the penalty levied pursuant to the citation.

(4) A citation must be issued within 6 months after the filing of the complaint that is the basis for the citation.

(5) Service of a citation may be made by personal service or certified mail, restricted delivery, to the subject at the subject's last known address.

(6) Within its jurisdiction, the department has exclusive authority to, and shall adopt rules to, designate those violations for which the licensee is subject to the issuance of a citation and designate the penalties for those violations if any board fails to incorporate this section into rules by January 1, 1992. A board created on or after January 1, 1992, has 6 months in which to enact rules designating violations and penalties appropriate for citation offenses. Failure to enact such rules gives the department exclusive authority to adopt rules as required for implementing this section. A board has continuous authority to amend its rules adopted pursuant to this section.

History.—s. 6, ch. 91-137; s. 53, ch. 92-33; s. 20, ch. 92-149; s. 23, ch. 93-129; s. 313, ch. 94-119; s. 78, ch. 94-218; s. 20, ch. 97-261; s. 161, ch. 99-251.

455.225 Disciplinary proceedings.—Disciplinary proceedings for each board shall be within the jurisdiction of the department.

(1)(a) The department, for the boards under its jurisdiction, shall cause to be investigated any complaint that is filed before it if the complaint is in writing, signed by the complainant, and legally sufficient. A complaint is legally sufficient if it contains ultimate facts that show that a violation of this chapter, of any of the practice acts relating to the professions regulated by the department, or of any rule adopted by the department or a regulatory board in the department has occurred. In order to determine legal sufficiency, the department may require supporting information or documentation. The department may investigate, and the department or the appropriate board may take appropriate final action on, a complaint even though the original complainant withdraws it or otherwise indicates a desire not to cause the complaint to be investigated or prosecuted to completion. The department may investigate an anonymous complaint if the complaint is in writing and is legally sufficient, if the alleged violation of law or rules is substantial, and if the department has reason to believe, after preliminary inquiry, that the violations alleged in the complaint are true. The department may investigate a complaint made by a confidential informant if the complaint is legally sufficient, if the alleged violation of law or rule is substantial, and if the department has reason to believe, after preliminary inquiry, that the allegations of the complainant are true. The department may initiate an investigation if it has reasonable cause to believe that a licensee or a group of licensees has violated a Florida statute, a rule of the department, or a rule of a board.

(b) When an investigation of any subject is undertaken, the department shall promptly furnish to the subject or the subject's attorney a copy of the complaint or document that resulted in the initiation of the investigation. The subject may submit a written response to the information contained in such complaint or document within 20 days after service to the subject of the complaint or document. The subject's written response shall be considered by the probable cause

panel. The right to respond does not prohibit the issuance of a summary emergency order if necessary to protect the public. However, if the secretary, or the secretary's designee, and the chair of the respective board or the chair of its probable cause panel agree in writing that such notification would be detrimental to the investigation, the department may withhold notification. The department may conduct an investigation without notification to any subject if the act under investigation is a criminal offense.

(2) The department shall allocate sufficient and adequately trained staff to expeditiously and thoroughly determine legal sufficiency and investigate all legally sufficient complaints. When its investigation is complete and legally sufficient, the department shall prepare and submit to the probable cause panel of the appropriate regulatory board the investigative report of the department. The report shall contain the investigative findings and the recommendations of the department concerning the existence of probable cause. At any time after legal sufficiency is found, the department may dismiss any case, or any part thereof, if the department determines that there is insufficient evidence to support the prosecution of allegations contained therein. The department shall provide a detailed report to the appropriate probable cause panel prior to dismissal of any case or part thereof, and to the subject of the complaint after dismissal of any case or part thereof, under this section. For cases dismissed prior to a finding of probable cause, such report is confidential and exempt from s. 119.07(1). The probable cause panel shall have access, upon request, to the investigative files pertaining to a case prior to dismissal of such case. If the department dismisses a case, the probable cause panel may retain independent legal counsel, employ investigators, and continue the investigation and prosecution of the case as it deems necessary.

(3)(a) As an alternative to the provisions of subsections (1) and (2), when a complaint is received, the department may provide a licensee with a notice of noncompliance for an initial offense of a minor violation. A violation is a minor violation if it does not demonstrate a serious inability to practice the profession, result in economic or physical harm to a person, or adversely affect the public health, safety, or welfare or create a significant threat of such harm. Each board, or the department if there is no board, shall establish by rule those violations which are minor violations under this provision. Failure of a licensee to take action in correcting the violation within 15 days after notice may result in the institution of regular disciplinary proceedings.

(b) The department may issue a notice of noncompliance for an initial offense of a minor violation, notwithstanding a board's failure to designate a particular minor violation by rule as provided in paragraph (a).

(4) The determination as to whether probable cause exists shall be made by majority vote of a probable cause panel of the board, or by the department, as appropriate. Each regulatory board shall provide by rule that the determination of probable cause shall be made by a panel of its members or by the department. Each

board may provide by rule for multiple probable cause panels composed of at least two members. Each board may provide by rule that one or more members of the panel or panels may be a former board member. The length of term or repetition of service of any such former board member on a probable cause panel may vary according to the direction of the board when authorized by board rule. Any probable cause panel must include one of the board's former or present consumer members, if one is available, willing to serve, and is authorized to do so by the board chair. Any probable cause panel must include a present board member. Any probable cause panel must include a former or present professional board member. However, any former professional board member serving on the probable cause panel must hold an active valid license for that profession. All proceedings of the panel are exempt from s. 286.011 until 10 days after probable cause has been found to exist by the panel or until the subject of the investigation waives his or her privilege of confidentiality. The probable cause panel may make a reasonable request, and upon such request the department shall provide such additional investigative information as is necessary to the determination of probable cause. A request for additional investigative information shall be made within 15 days from the date of receipt by the probable cause panel of the investigative report of the department. The probable cause panel or the department, as may be appropriate, shall make its determination of probable cause within 30 days after receipt by it of the final investigative report of the department. The secretary may grant extensions of the 15-day and the 30-day time limits. In lieu of a finding of probable cause, the probable cause panel, or the department when there is no board, may issue a letter of guidance to the subject. If, within the 30-day time limit, as may be extended, the probable cause panel does not make a determination regarding the existence of probable cause or does not issue a letter of guidance in lieu of a finding of probable cause, the department, for disciplinary cases under its jurisdiction, must make a determination regarding the existence of probable cause within 10 days after the expiration of the time limit. If the probable cause panel finds that probable cause exists, it shall direct the department to file a formal complaint against the licensee. The department shall follow the directions of the probable cause panel regarding the filing of a formal complaint. If directed to do so, the department shall file a formal complaint against the subject of the investigation and prosecute that complaint pursuant to chapter 120. However, the department may decide not to prosecute the complaint if it finds that probable cause had been improvidently found by the panel. In such cases, the department shall refer the matter to the board. The board may then file a formal complaint and prosecute the complaint pursuant to chapter 120. The department shall also refer to the board any investigation or disciplinary proceeding not before the Division of Administrative Hearings pursuant to chapter 120 or otherwise completed by the department within 1 year after the filing of a complaint. The department, for disciplinary cases under its jurisdiction, must establish a uniform reporting system to quarterly

refer to each board the status of any investigation or disciplinary proceeding that is not before the Division of Administrative Hearings or otherwise completed by the department within 1 year after the filing of the complaint. A probable cause panel or a board may retain independent legal counsel, employ investigators, and continue the investigation as it deems necessary; all costs thereof shall be paid from the Professional Regulation Trust Fund. All proceedings of the probable cause panel are exempt from s. 120.525.

(5) A formal hearing before an administrative law judge from the Division of Administrative Hearings shall be held pursuant to chapter 120 if there are any disputed issues of material fact. The administrative law judge shall issue a recommended order pursuant to chapter 120. If any party raises an issue of disputed fact during an informal hearing, the hearing shall be terminated and a formal hearing pursuant to chapter 120 shall be held.

(6) The appropriate board, with those members of the panel, if any, who reviewed the investigation pursuant to subsection (4) being excused, or the department when there is no board, shall determine and issue the final order in each disciplinary case. Such order shall constitute final agency action. Any consent order or agreed settlement shall be subject to the approval of the department.

(7) The department shall have standing to seek judicial review of any final order of the board, pursuant to s. 120.68.

(8) Any proceeding for the purpose of summary suspension of a license, or for the restriction of the license, of a licensee pursuant to s. 120.60(6) shall be conducted by the Secretary of Business and Professional Regulation or his or her designee, who shall issue the final summary order.

(9) The department shall periodically notify the person who filed the complaint of the status of the investigation, whether probable cause has been found, and the status of any civil action or administrative proceeding or appeal.

(10) The complaint and all information obtained pursuant to the investigation by the department are confidential and exempt from s. 119.07(1) until 10 days after probable cause has been found to exist by the probable cause panel or by the department, or until the regulated professional or subject of the investigation waives his or her privilege of confidentiality, whichever occurs first. However, this exemption does not apply to actions against unlicensed persons pursuant to s. 455.228 or the applicable practice act. Upon completion of the investigation and pursuant to a written request by the subject, the department shall provide the subject an opportunity to inspect the investigative file or, at the subject's expense, forward to the subject a copy of the investigative file. The subject may file a written response to the information contained in the investigative file. Such response must be filed within 20 days, unless an extension of time has been granted by the department. This subsection does not prohibit the department from providing such information to any law enforcement agency or to any other regulatory agency.

(11) A privilege against civil liability is hereby granted to any complainant or any witness with regard to

information furnished with respect to any investigation or proceeding pursuant to this section, unless the complainant or witness acted in bad faith or with malice in providing such information.

History.—s. 1, ch. 74-57; s. 5, ch. 79-36; s. 289, ch. 81-259; s. 33, ch. 81-302; s. 12, ch. 83-329; s. 8, ch. 84-203; s. 3, ch. 85-311; s. 5, ch. 86-90; s. 8, ch. 88-1; s. 5, ch. 88-277; s. 1, ch. 88-279; s. 3, ch. 89-162; s. 1, ch. 90-44; s. 5, ch. 90-228; s. 7, ch. 91-137; s. 2, ch. 91-140; s. 54, ch. 92-33; s. 21, ch. 92-149; s. 132, ch. 92-279; s. 55, ch. 92-326; s. 23, ch. 93-129; s. 314, ch. 94-119; s. 79, ch. 94-218; s. 305, ch. 96-406; s. 211, ch. 96-410; s. 1082, ch. 97-103; s. 2, ch. 97-209; s. 3, ch. 97-228; s. 142, ch. 97-237; s. 21, ch. 97-261; s. 4, ch. 97-264; s. 18, ch. 97-273; s. 4, ch. 98-166; s. 31, ch. 2000-160.

Note.—Former s. 455.013.

455.2255 Classification of disciplinary actions.

(1) A licensee may petition the department to review a disciplinary incident to determine whether the specific violation meets the standard of a minor violation as set forth in s. 455.225(3). If the circumstances of the violation meet that standard and 2 years have passed since the issuance of a final order imposing discipline, the department shall reclassify that violation as inactive if the licensee has not been disciplined for any subsequent minor violation of the same nature. After the department has reclassified the violation as inactive, it is no longer considered to be part of the licensee's disciplinary record, and the licensee may lawfully deny or fail to acknowledge the incident as a disciplinary action.

(2) The department may establish a schedule classifying violations according to the severity of the violation. After the expiration of set periods of time, the department may provide for such disciplinary records to become inactive, according to their classification. After the disciplinary record has become inactive, the department may clear the violation from the disciplinary record and the subject person or business may lawfully deny or fail to acknowledge such disciplinary actions.

(3) Notwithstanding s. 455.017, this section applies to the disciplinary records of all persons or businesses licensed by the department.

History.—s. 143, ch. 99-251; s. 71, ch. 2013-18.

455.227 Grounds for discipline; penalties; enforcement.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(a) Making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession.

(b) Intentionally violating any rule adopted by the board or the department, as appropriate.

(c) Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.

(d) Using a Class III or a Class IV laser device or product, as defined by federal regulations, without having complied with the rules adopted pursuant to s. 501.122(2) governing the registration of such devices.

(e) Failing to comply with the educational course requirements for human immunodeficiency virus and acquired immune deficiency syndrome.

(f) Having a license or the authority to practice the regulated profession revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction, including its agencies or subdivisions, for a violation that would constitute a violation under Florida law. The licensing authority's acceptance of a relinquishment of licensure, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of charges against the license, shall be construed as action against the license.

(g) Having been found liable in a civil proceeding for knowingly filing a false report or complaint with the department against another licensee.

(h) Attempting to obtain, obtaining, or renewing a license to practice a profession by bribery, by fraudulent misrepresentation, or through an error of the department or the board.

(i) Failing to report to the department any person who the licensee knows is in violation of this chapter, the chapter regulating the alleged violator, or the rules of the department or the board.

(j) Aiding, assisting, procuring, employing, or advising any unlicensed person or entity to practice a profession contrary to this chapter, the chapter regulating the profession, or the rules of the department or the board.

(k) Failing to perform any statutory or legal obligation placed upon a licensee.

(l) Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, or willfully impeding or obstructing another person to do so. Such reports or records shall include only those that are signed in the capacity of a licensee.

(m) Making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession.

(n) Exercising influence on the patient or client for the purpose of financial gain of the licensee or a third party.

(o) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities the licensee knows, or has reason to know, the licensee is not competent to perform.

(p) Delegating or contracting for the performance of professional responsibilities by a person when the licensee delegating or contracting for performance of such responsibilities knows, or has reason to know, such person is not qualified by training, experience, and authorization when required to perform them.

(q) Violating any provision of this chapter, the applicable professional practice act, a rule of the department or the board, or a lawful order of the department or the board, or failing to comply with a lawfully issued subpoena of the department.

(r) Improperly interfering with an investigation or inspection authorized by statute, or with any disciplinary proceeding.

(s) Failing to comply with the educational course requirements for domestic violence.

(t) Failing to report in writing to the board or, if there is no board, to the department within 30 days after the licensee is convicted or found guilty of, or entered a plea of nolo contendere or guilty to, regardless of adjudication, a crime in any jurisdiction. A licensee must report a conviction, finding of guilt, plea, or adjudication entered before the effective date of this paragraph within 30 days after the effective date of this paragraph.

(u) Termination from a treatment program for impaired practitioners as described in s. 456.076 for failure to comply, without good cause, with the terms of the monitoring or treatment contract entered into by the licensee or failing to successfully complete a drug or alcohol treatment program.

(2) When the board, or the department when there is no board, finds any person guilty of the grounds set forth in subsection (1) or of any grounds set forth in the applicable practice act, including conduct constituting a substantial violation of subsection (1) or a violation of the applicable practice act which occurred prior to obtaining a license, it may enter an order imposing one or more of the following penalties:

(a) Refusal to certify, or to certify with restrictions, an application for a license.

(b) Suspension or permanent revocation of a license.

(c) Restriction of practice.

(d) Imposition of an administrative fine not to exceed \$5,000 for each count or separate offense.

(e) Issuance of a reprimand.

(f) Placement of the licensee on probation for a period of time and subject to such conditions as the board, or the department when there is no board, may specify. Those conditions may include, but are not limited to, requiring the licensee to undergo treatment, attend continuing education courses, submit to be reexamined, work under the supervision of another licensee, or satisfy any terms which are reasonably tailored to the violations found.

(g) Corrective action.

(3)(a) In addition to any other discipline imposed pursuant to this section or discipline imposed for a violation of any practice act, the board, or the department when there is no board, may assess costs related to the investigation and prosecution of the case excluding costs associated with an attorney's time.

(b) In any case where the board or the department imposes a fine or assessment and the fine or assessment is not paid within a reasonable time, such reasonable time to be prescribed in the rules of the board, or the department when there is no board, or in the order assessing such fines or costs, the department or the Department of Legal Affairs may contract for the collection of, or bring a civil action to recover, the fine or assessment.

(c) The department shall not issue or renew a license to any person against whom or business against which the board has assessed a fine, interest, or costs associated with investigation and prosecution until the person or business has paid in full such fine, interest, or costs associated with investigation and prosecution or until the person or business complies with or satisfies all terms and conditions of the final order.

(4) In addition to, or in lieu of, any other remedy or criminal prosecution, the department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any of the provisions of this chapter, or any provision of law with respect to professions regulated by the department, or any board therein, or the rules adopted pursuant thereto.

(5) In the event the board, or the department when there is no board, determines that revocation of a license is the appropriate penalty, the revocation shall be permanent. However, the board may establish, by rule, requirements for reapplication by applicants whose licenses have been permanently revoked. Such requirements may include, but shall not be limited to, satisfying current requirements for an initial license.

History.—s. 5, ch. 79-36; s. 13, ch. 83-329; s. 5, ch. 88-380; s. 8, ch. 91-137; s. 55, ch. 92-33; s. 22, ch. 92-149; s. 23, ch. 93-129; s. 9, ch. 94-119; s. 80, ch. 94-218; s. 5, ch. 95-187; s. 22, ch. 97-261; s. 144, ch. 99-251; s. 32, ch. 2000-160; s. 2, ch. 2009-195; s. 12, ch. 2010-106.

455.2273 Disciplinary guidelines.—

(1) Each board, or the department when there is no board, shall adopt, by rule, and periodically review the disciplinary guidelines applicable to each ground for disciplinary action which may be imposed by the board, or the department when there is no board, pursuant to this chapter, the respective practice acts, and any rule of the board or department.

(2) The disciplinary guidelines shall specify a meaningful range of designated penalties based upon the severity and repetition of specific offenses, it being the legislative intent that minor violations be distinguished from those which endanger the public health, safety, or welfare; that such guidelines provide reasonable and meaningful notice to the public of likely penalties which may be imposed for proscribed conduct; and that such penalties be consistently applied by the board.

(3) A specific finding of mitigating or aggravating circumstances shall allow the board to impose a penalty other than that provided for in such guidelines. If applicable, the board, or the department when there is no board, shall adopt by rule disciplinary guidelines to designate possible mitigating and aggravating circumstances and the variation and range of penalties permitted for such circumstances.

(4) The department must review such disciplinary guidelines for compliance with the legislative intent as set forth herein to determine whether the guidelines establish a meaningful range of penalties and may also challenge such rules pursuant to s. 120.56.

(5) The administrative law judge, in recommending penalties in any recommended order, must follow the penalty guidelines established by the board or department and must state in writing the mitigating or aggravating circumstances upon which the recommended penalty is based.

(6) Notwithstanding s. 455.017, this section applies to disciplinary guidelines adopted by all boards or divisions within the department.

History.—s. 2, ch. 86-90; s. 56, ch. 92-33; s. 23, ch. 92-149; s. 23, ch. 93-129; s. 81, ch. 94-218; s. 212, ch. 96-410; s. 23, ch. 97-261; s. 33, ch. 2000-160; s. 24, ch. 2008-240.

455.2274 Criminal proceedings against licensees; appearances by department representatives.

A representative of the department may voluntarily appear in a criminal proceeding brought against a person licensed by the department to practice a profession regulated by the state. The department's representative is authorized to furnish pertinent information, make recommendations regarding specific conditions of probation, and provide other assistance to the court necessary to promote justice or protect the public. The court may order a representative of the department to appear in a criminal proceeding if the crime charged is substantially related to the qualifications, functions, or duties of a licensee regulated by the department.

History.—s. 3, ch. 2009-195; s. 115, ch. 2014-17.

455.2275 Penalty for giving false information.

In addition to, or in lieu of, any other discipline imposed pursuant to s. 455.227, the act of knowingly giving false information in the course of applying for or obtaining a license from the department, or any board thereunder, with intent to mislead a public servant in the performance of his or her official duties, or the act of attempting to obtain or obtaining a license from either the department, or any board thereunder, to practice a profession by knowingly misleading statements or knowing misrepresentations constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

History.—s. 31, ch. 85-175; s. 12, ch. 89-124; s. 9, ch. 91-137; s. 57, ch. 92-33; s. 24, ch. 92-149; s. 23, ch. 93-129; s. 82, ch. 94-218; s. 190, ch. 97-103; s. 24, ch. 97-261.

455.2277 Prosecution of criminal violations.—

The department or the appropriate board shall report any criminal violation of any statute relating to the practice of a profession regulated by the department or appropriate board to the proper prosecuting authority for prompt prosecution.

History.—s. 25, ch. 92-149.

455.228 Unlicensed practice of a profession; cease and desist notice; civil penalty; enforcement; citations; allocation of moneys collected.—

(1) When the department has probable cause to believe that any person not licensed by the department, or the appropriate regulatory board within the department, has violated any provision of this chapter or any statute that relates to the practice of a profession regulated by the department, or any rule adopted pursuant thereto, the department may issue and deliver to such person a notice to cease and desist from such violation. In addition, the department may issue and deliver a notice to cease and desist to any person who aids and abets the unlicensed practice of a profession by employing such unlicensed person. The issuance of a notice to cease and desist shall not constitute agency action for which a hearing under ss. 120.569 and 120.57 may be sought. For the purpose of enforcing a cease and desist notice, the department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person who violates any provisions of such notice. In addition to

the foregoing remedies, the department may impose an administrative penalty not to exceed \$5,000 per incident pursuant to the provisions of chapter 120 or may issue a citation pursuant to the provisions of subsection (3). If the department is required to seek enforcement of the notice for a penalty pursuant to s. 120.569, it shall be entitled to collect its attorney's fees and costs, together with any cost of collection.

(2) In addition to or in lieu of any remedy provided in subsection (1), the department may seek the imposition of a civil penalty through the circuit court for any violation for which the department may issue a notice to cease and desist under subsection (1). The civil penalty shall be no less than \$500 and no more than \$5,000 for each offense. The court may also award to the prevailing party court costs and reasonable attorney fees and, in the event the department prevails, may also award reasonable costs of investigation.

(3)(a) Notwithstanding the provisions of s. 455.225, the department shall adopt rules to permit the issuance of citations for unlicensed practice of a profession. The citation shall be issued to the subject and shall contain the subject's name and any other information the department determines to be necessary to identify the subject, a brief factual statement, the sections of the law allegedly violated, and the penalty imposed. The citation must clearly state that the subject may choose, in lieu of accepting the citation, to follow the procedure under s. 455.225. If the subject disputes the matter in the citation, the procedures set forth in s. 455.225 must be followed. However, if the subject does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation shall become a final order of the department. The penalty shall be a fine of not less than \$500 or more than \$5,000 or other conditions as established by rule.

(b) Each day that the unlicensed practice continues after issuance of a citation constitutes a separate violation.

(c) The department shall be entitled to recover the costs of investigation, in addition to any penalty provided according to department rule as part of the penalty levied pursuant to the citation.

(d) Service of a citation may be made by personal service or certified mail, restricted delivery, to the subject at the subject's last known address.

(4) All fines, fees, and costs collected through the procedures set forth in this section shall be allocated to the professions in the manner provided for in s. 455.2281 for the allocation of the fees assessed and collected to combat unlicensed practice of a profession.

(5) The provisions of this section apply only to the provisions of s. 455.217 and the professional practice acts administered by the department.

History.—s. 3, ch. 84-271; s. 6, ch. 90-228; s. 58, ch. 92-33; s. 26, ch. 92-149; s. 23, ch. 93-129; s. 11, ch. 94-119; ss. 83, 84, ch. 94-218; s. 213, ch. 96-410; s. 25, ch. 97-261; s. 34, ch. 2000-160; s. 13, ch. 2010-106.

455.2281 Unlicensed activities; fees; disposition.—In order to protect the public and to ensure a consumer-oriented department, it is the intent of the Legislature that vigorous enforcement of regulation for all professional activities is a state priority. All enforcement costs should be covered by professions regulated

by the department. Therefore, the department shall impose, upon initial licensure and each subsequent renewal, a special fee of \$5 per licensee, in addition to all other fees imposed, to fund efforts to combat unlicensed activity. However, the department may not impose this special fee on a license renewal for any profession whose unlicensed activity account balance, at the beginning of the fiscal year before the renewal, totals more than twice the total of the expenditures for unlicensed activity enforcement efforts in the preceding 2 fiscal years. This waiver applies to all licensees within the profession, and assessment of the special fee may not begin or resume until the renewal cycle subject to the waiver has ended for all of the licensees in that profession. This waiver does not apply to a profession that has a deficit in its operating account or that is projected to have such a deficit in the next 5 fiscal years. Any profession regulated by the department which offers services that are not subject to regulation when provided by an unlicensed person may use funds in its unlicensed activity account to inform the public of such situation. The board with concurrence of the department, or the department when there is no board, may earmark \$5 of the current licensure fee for this purpose, if such board, or profession regulated by the department, is not in a deficit and has a reasonable cash balance. A board or profession regulated by the department may authorize the transfer of funds from the operating fund account to the unlicensed activity account of that profession if the operating fund account is not in a deficit and has a reasonable cash balance. The department shall make direct charges to this fund by profession and may not allocate indirect overhead. The department shall seek board advice regarding enforcement methods and strategies prior to expenditure of funds; however, the department may, without board advice, allocate funds to cover the costs of continuing education compliance monitoring under s. 455.2177. The department shall directly credit, by profession, revenues received from the department's efforts to enforce licensure provisions. The department shall include all financial and statistical data resulting from unlicensed activity enforcement and from continuing education compliance monitoring as separate categories in the quarterly management report provided for in s. 455.219. The department may not charge the account of any profession for the costs incurred on behalf of any other profession. With the concurrence of the applicable board and the department, any balance that remains in an unlicensed activity account at the end of a renewal cycle may be transferred to the operating fund account of that profession.

History.—s. 27, ch. 92-149; s. 12, ch. 94-119; s. 160, ch. 99-251; s. 2, ch. 2001-269; s. 5, ch. 2004-292; s. 1, ch. 2016-79.

455.2285 Annual report concerning finances, administrative complaints, disciplinary actions, and recommendations.—The department is directed to prepare and submit a report to the President of the Senate and Speaker of the House of Representatives by November 1 of each year. In addition to finances and any other information the Legislature may require, the report shall include statistics and relevant information, profession by profession, detailing:

(1) The revenues, expenditures, and cash balances for the prior year, and a review of the adequacy of existing fees.

(2) The number of complaints received and investigated.

(3) The number of findings of probable cause made.

(4) The number of findings of no probable cause made.

(5) The number of administrative complaints filed.

(6) The disposition of all administrative complaints.

(7) A description of disciplinary actions taken.

(8) A description of any effort by the department, for any disciplinary cases under its jurisdiction, to reduce or otherwise close any investigation or disciplinary proceeding not before the Division of Administrative Hearings under chapter 120 or otherwise not completed within 1 year after the initial filing of a complaint under this chapter.

(9) The status of the development and implementation of rules providing for disciplinary guidelines pursuant to s. 455.2273.

(10) Such recommendations for administrative and statutory changes necessary to facilitate efficient and cost-effective operation of the department and the various boards.

History.—s. 4, ch. 84-271; s. 3, ch. 86-90; s. 7, ch. 90-228; s. 59, ch. 92-33; s. 28, ch. 92-149; s. 23, ch. 93-129; ss. 85, 86, ch. 94-218; s. 143, ch. 97-237; s. 26, ch. 97-261; s. 5, ch. 97-264; s. 19, ch. 97-273; s. 5, ch. 98-166.

455.2286 Automated information system.—By November 1, 2001, the department shall implement an automated information system for all certificateholders and registrants under part XII of chapter 468, chapter 471, chapter 481, or chapter 489. The system shall provide instant notification to local building departments and other interested parties regarding the status of the certification or registration. The provision of such information shall consist, at a minimum, of an indication of whether the certification or registration is active, of any current failure to meet the terms of any final action by a licensing authority, of any ongoing disciplinary cases that are subject to public disclosure, whether there are any outstanding fines, and of the reporting of any material violations pursuant to s. 553.781. The system shall also retain information developed by the department and local governments on individuals found to be practicing or contracting without holding the applicable license, certification, or registration required by law. The system may be Internet-based.

History.—s. 6, ch. 98-287; s. 31, ch. 2000-141.

455.229 Public inspection of information required from applicants; exceptions; examination hearing.—

(1) All information required by the department of any applicant shall be a public record and shall be open to public inspection pursuant to s. 119.07, except financial information, medical information, school transcripts, examination questions, answers, papers, grades, and grading keys, which are confidential and exempt from s. 119.07(1) and shall not be discussed with or made accessible to anyone except members of the board, the department, and staff thereof, who have a bona fide need to know such information. Any information

supplied to the department by any other agency which is exempt from the provisions of chapter 119 or is confidential shall remain exempt or confidential pursuant to applicable law while in the custody of the department.

(2) The department shall establish by rule the procedure by which an applicant, and the applicant's attorney, may review examination questions and answers. Examination questions and answers are not subject to discovery but may be introduced into evidence and considered only in camera in any administrative proceeding under chapter 120. If an administrative hearing is held, the department shall provide challenged examination questions and answers to the administrative law judge. The examination questions and answers provided at the hearing are confidential and exempt from s. 119.07(1), unless invalidated by the administrative law judge.

(3) Unless an applicant notifies the department at least 5 days prior to an examination hearing of the applicant's inability to attend, or unless an applicant can demonstrate an extreme emergency for failing to attend, the department may require an applicant who fails to attend to pay reasonable attorney's fees, costs, and court costs of the department for the examination hearing.

History.—s. 5, ch. 79-36; s. 1, ch. 88-392; s. 8, ch. 90-228; s. 10, ch. 91-137; s. 3, ch. 91-140; s. 60, ch. 92-33; s. 29, ch. 92-149; s. 23, ch. 93-129; s. 13, ch. 94-119; s. 87, ch. 94-218; ss. 306, 307, ch. 96-406; s. 214, ch. 96-410; s. 27, ch. 97-261.

455.232 Disclosure of confidential information.

(1) No officer, employee, or person under contract with the department, or any board therein, or any subject of an investigation shall convey knowledge or information to any person who is not lawfully entitled to such knowledge or information about any public meeting or public record, which at the time such knowledge or information is conveyed is exempt from the provisions of s. 119.01, s. 119.07(1), or s. 286.011.

(2) Any person who willfully violates any provision of this section is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and may be subject to discipline pursuant to s. 455.227, and, if applicable, shall be removed from office, employment, or the contractual relationship.

History.—s. 2, ch. 85-311; s. 5, ch. 91-140; s. 83, ch. 91-224; s. 61, ch. 92-33; s. 30, ch. 92-149; s. 23, ch. 93-129; s. 10, ch. 94-119; s. 88, ch. 94-218; s. 28, ch. 97-261.

455.24 Advertisement by a veterinarian of free or discounted services; required statement.—In any advertisement for a free, discounted fee, or reduced fee service, examination, or treatment by a person licensed under chapter 474, the following statement shall appear in capital letters clearly distinguishable from the rest of the text: THE PERSON RESPONSIBLE FOR PAYMENT HAS A RIGHT TO REFUSE TO PAY, CANCEL PAYMENT, OR BE REIMBURSED FOR PAYMENT FOR ANY OTHER SERVICE, EXAMINATION, OR TREATMENT THAT IS PERFORMED AS A RESULT OF AND WITHIN 72 HOURS OF RESPONDING TO THE ADVERTISEMENT FOR THE FREE, DISCOUNTED FEE, OR REDUCED FEE SERVICE, EXAMINATION, OR TREATMENT. However, the required statement shall not be necessary as an accompaniment

to an advertisement of a licensed health care provider defined by this section if the advertisement appears in a classified directory the primary purpose of which is to provide products and services at free, reduced, or discounted prices to consumers and in which the statement prominently appears in at least one place.

History.—s. 1, ch. 84-161; s. 1, ch. 85-7; s. 6, ch. 86-90; s. 13, ch. 89-124; s. 31, ch. 92-149; s. 29, ch. 97-261.

455.242 Veterinarians; disposition of records of deceased practitioners or practitioners relocating or terminating practice.—Each board created under the provisions of chapter 474 shall provide by rule for the disposition, under that chapter, of the records that are in existence at the time the practitioner dies, terminates practice, or relocates and is no longer available and which records pertain to the practitioner's patients. The rules shall provide that the records be retained for at least 2 years after the practitioner's death, termination of practice, or relocation. In the case of the death of the practitioner, the rules shall provide for the disposition of such records by the estate of the practitioner.

History.—s. 1, ch. 79-302; s. 11, ch. 88-1; s. 11, ch. 88-392; s. 15, ch. 89-124; s. 16, ch. 91-137; s. 34, ch. 92-149; s. 30, ch. 97-261.

455.243 Authority to inspect.—Duly authorized agents and employees of the department shall have the power to inspect in a lawful manner at all reasonable hours any establishment at which the services of a licensee authorized to prescribe controlled substances specified in chapter 893 are offered, for the purpose of determining if any of the provisions of this chapter or any practice act of a profession or any rule adopted thereunder is being violated; or for the purpose of securing such other evidence as may be needed for prosecution.

History.—s. 2, ch. 82-22; s. 63, ch. 92-33; s. 35, ch. 92-149; s. 23, ch. 93-129; s. 92, ch. 94-218; s. 31, ch. 97-261; s. 35, ch. 2000-160.

455.245 Veterinarians; immediate suspension of license.—The department shall issue an emergency order suspending the license of any person licensed under chapter 474 who pleads guilty to, is convicted or found guilty of, or who enters a plea of nolo contendere to, regardless of adjudication, a felony under chapter 409 or chapter 893 or under 21 U.S.C. ss. 801-970 or under 42 U.S.C. ss. 1395-1396.

History.—s. 1, ch. 86-91; s. 12, ch. 88-1; s. 16, ch. 89-124; s. 64, ch. 92-33; s. 36, ch. 92-149; s. 23, ch. 93-129; s. 93, ch. 94-218; s. 192, ch. 97-103; s. 32, ch. 97-261.

455.271 Inactive and delinquent status.—

(1) A licensee may practice a profession only if the licensee has an active status license. A licensee who practices a profession without an active status license is in violation of this section and s. 455.227, and the board, or the department when there is no board, may impose discipline on the licensee.

(2) Each board, or the department when there is no board, shall permit a licensee to choose, at the time of licensure renewal, an active or inactive status.

(3) Each board, or the department when there is no board, shall, by rule, impose a fee for an inactive status license which is no greater than the fee for an active status license.

(4) An inactive status licensee may change to active status at any time, provided the licensee meets all

requirements for active status, pays any additional licensure fees necessary to equal those imposed on an active status licensee, pays any applicable reactivation fees as set by the board, or the department when there is no board, and meets all continuing education requirements as specified in this section.

(5) A licensee shall apply with a complete application, as defined by rule of the board, or the department when there is no board, to renew an active or inactive status license before the license expires. Failure of a licensee to renew before the license expires shall cause the license to become delinquent in the license cycle following expiration.

(6)(a) A delinquent status licensee must affirmatively apply with a complete application, as defined by rule of the board, or the department if there is no board, for active or inactive status during the licensure cycle in which a licensee becomes delinquent. Failure by a delinquent status licensee to become active or inactive before the expiration of the current licensure cycle shall render the license void without any further action by the board or the department.

(b) Notwithstanding the provisions of the professional practice acts administered by the department, the department may, at its discretion, reinstate the license of an individual whose license has become void if the department determines that the individual failed to comply because of illness or economic hardship. The individual must apply to the department for reinstatement and pay an applicable fee in an amount determined by rule. The department shall require that such individual meet all continuing education requirements prescribed by law, pay appropriate licensing fees, and otherwise be eligible for renewal of licensure under this chapter.

This subsection does not apply to individuals subject to regulation under chapter 473.

(7) Each board, or the department when there is no board, shall, by rule, impose an additional delinquency fee, not to exceed the biennial renewal fee for an active status license, on a delinquent status licensee when such licensee applies for active or inactive status.

(8) Each board, or the department when there is no board, shall, by rule, impose an additional fee, not to exceed the biennial renewal fee for an active status license, for processing a licensee's request to change licensure status at any time other than at the beginning of a licensure cycle.

(9) Each board, or the department when there is no board, may, by rule, impose reasonable conditions, excluding full reexamination but including part of a national examination or a special purpose examination to assess current competency, necessary to ensure that a licensee who has been on inactive status for more than two consecutive biennial licensure cycles and who applies for active status can practice with the care and skill sufficient to protect the health, safety, and welfare of the public. Reactivation requirements may differ depending on the length of time licensees are inactive. The costs to meet reactivation requirements shall be borne by licensees requesting reactivation.

(10) The board, or the department if there is no board, may not require an inactive or delinquent licensee, except for a licensee under chapter 473 or chapter 475, to complete more than one renewal cycle of continuing education to reactivate a license.

(11) The status or a change in status of a licensee shall not alter in any way the board's, or the department's when there is no board, right to impose discipline or to enforce discipline previously imposed on a licensee for acts or omissions committed by the licensee while holding a license, whether active, inactive, or delinquent.

(12) This section does not apply to a business establishment registered, permitted, or licensed by the department to do business or to a person licensed, permitted, registered, or certified pursuant to chapter 310 or chapter 475.

History.—s. 14, ch. 94-119; s. 1, ch. 2005-249; s. 2, ch. 2009-54; s. 3, ch. 2012-61; s. 5, ch. 2012-72; s. 8, ch. 2012-208.

455.273 Renewal and cancellation notices.—At least 90 days before the end of a licensure cycle, the department shall:

(1) Forward a licensure renewal notification to an active or inactive licensee at the licensee's last known address of record or e-mail address provided to the department.

(2) Forward a notice of pending cancellation of licensure to a delinquent status licensee at the licensee's last known address of record or e-mail address provided to the department.

History.—s. 15, ch. 94-119; s. 6, ch. 2012-72.

455.275 Address of record.—

(1) Each licensee of the department is solely responsible for notifying the department in writing of the licensee's current mailing address, e-mail address, and place of practice, as defined by rule of the board or the department when there is no board. A licensee's failure to notify the department of a change of address constitutes a violation of this section, and the licensee may be disciplined by the board or the department when there is no board.

(2) Notwithstanding any other provision of law, service by regular mail or e-mail to a licensee's last known mailing address or e-mail address of record with the department constitutes adequate and sufficient notice to the licensee for any official communication to the licensee by the board or the department except when other service is required pursuant to s. 455.225.

(3)(a) Notwithstanding any provision of law, when an administrative complaint is served on a licensee of the department, the department shall provide service by regular mail to the licensee's last known address of record, by certified mail to the last known address of record, and, if possible, by e-mail.

(b) If service, as provided in paragraph (a), does not provide the department with proof of service, the department shall call the last known telephone number of record and cause a short, plain notice to the licensee to be posted on the front page of the department's website and shall send notice via e-mail to all newspapers of general circulation and all news departments

of broadcast network affiliates in the county of the licensee's last known address of record.

History.—s. 16, ch. 94-119; s. 14, ch. 2010-106; s. 7, ch. 2012-72; s. 15, ch. 2012-212.

455.32 Management Privatization Act.—

(1) This section shall be known by the popular name the "Management Privatization Act."

(2) The purpose of this section is to create a model for contracting with nonprofit corporations to provide services for the regulation of Florida's professionals which will ensure a consistent, effective application of regulatory provisions and appropriate budgetary oversight to achieve the most efficient use of public funds. Nonprofit corporations may be established pursuant to this section to provide administrative, examination, licensing, investigative, and prosecutorial services to any board created within the department pursuant to chapter 20 in accordance with the provisions of this chapter and the applicable practice act. No additional entities may be created to provide these services.

(3) As used in this section, the term:

(a) "Board" means any board, commission, or council created within the department pursuant to chapter 20.

(b) "Corporation" means any nonprofit corporation with which the department contracts pursuant to subsection (14).

(c) "Department" means the Department of Business and Professional Regulation.

(d) "Contract manager" means an employee of the department who serves as a liaison between the department, the board, and the corporation and is responsible for ensuring that the police powers of the state are not exercised by the corporation, while also serving as the contract monitor.

(e) "Business case" means a needs assessment, financial feasibility study, and corporate financial model as specified in paragraph (4).

(f) "Performance standards and measurable outcomes" shall include, but not be limited to, timeliness and qualitative criteria for the activities specified in paragraph (6)(o).

(g) "Secretary" means the Secretary of Business and Professional Regulation.

(4) Based upon the request of any board, the department is authorized to establish and contract with a nonprofit corporation to provide administrative, examination, licensing, investigative, and prosecutorial services to that board, in accordance with the provisions of this chapter and the applicable practice act and as specified in a contract between the department and the corporation. The privatization request must contain a business case that includes a needs assessment and financial feasibility study performed by the board or an entity commissioned by a majority vote of the board. The needs assessment must contain specific performance standards and measurable outcomes and an evaluation of the department's current and projected performance in regard to those standards. The feasibility study must include the financial status of the board for the current fiscal year and the next 2 fiscal years. A financial model for the corporation must also be developed which includes projected costs and

expenses for the first 2 years of operation and specific performance standards and measurable outcomes. The business case for privatization shall be submitted by the board to the department for inclusion in its legislative budget request to the Executive Office of the Governor and the Legislature pursuant to s. 216.023. The board shall proceed with the privatization only if such privatization is specifically authorized by general law.

(5) Any such corporation may hire staff as necessary to carry out its functions. Such staff are not public employees for the purposes of chapter 110 or chapter 112, except that the board of directors and the employees of the corporation are subject to the provisions of s. 112.061 and part III of chapter 112. The provisions of s. 768.28 apply to each such corporation, which is deemed to be a corporation primarily acting as an instrumentality of the state but which is not an agency within the meaning of s. 20.03(11).

(6) Each corporation created to perform the functions provided in this section shall:

(a) Be a Florida corporation not for profit, incorporated under the provisions of chapter 617.

(b) Provide administrative, examination, licensing, investigative, and prosecutorial services to the board, which services may include unlicensed activity investigations and prosecutions, in accordance with the provisions of this chapter, the applicable practice act, and the contract required by this section.

(c) Receive, hold, and administer property and make only prudent expenditures directly related to the responsibilities of the applicable board and in accordance with the contract required by this section.

(d) Be approved by the department to operate for the benefit of the board and in the best interest of the state and specifically authorized by the Legislature.

(e) Operate under a fiscal year that begins on July 1 of each year and ends on June 30 of the following year.

(f) Be funded through appropriations allocated to the regulation of the relevant profession from the Professional Regulation Trust Fund pursuant to s. 455.219.

(g) Have a five-member board of directors, three of whom are to be appointed by the applicable board and must be licensees regulated by that board and two of whom are to be appointed by the secretary and are laypersons not regulated by that board. Initially, one member shall be appointed for 2 years, two members shall be appointed for 3 years, and two members shall be appointed for 4 years. One layperson shall be appointed to a 3-year term and one layperson shall be appointed to a 4-year term. Thereafter, all appointments shall be for 4-year terms. No new member shall serve more than two consecutive terms. Failure to attend three consecutive meetings shall be deemed a resignation from the board of directors, and the vacancy shall be filled by a new appointment. No professional board member may also serve on the board of directors for the corporation.

(h) Select its officers in accordance with its bylaws. The members of the board of directors may be removed by the Governor, for the same reasons that a board member may be removed pursuant to s. 455.209.

(i) Select the president of the corporation, who shall manage the operations of the corporation, subject to the approval of the board.

(j) Use a portion of the interest derived from the corporation account to offset the costs associated with the use of credit cards for payment of fees by applicants or licensees.

(k) Operate under a written contract with the department.

(l) Provide for an annual financial audit of its financial accounts and records by an independent certified public accountant. The annual audit report shall include a management letter in accordance with s. 11.45 and a detailed supplemental schedule of expenditures for each expenditure category. The annual audit report must be submitted to the board, the department, and the Auditor General for review.

(m) Provide for all employees and nonemployees charged with the responsibility of receiving and depositing fee and fine revenues to have a faithful performance bond in such an amount and according to such terms as shall be determined in the contract.

(n) Keep financial and statistical information as necessary to completely disclose the financial condition and operation of the corporation and as requested by the Office of Program Policy Analysis and Government Accountability, the Auditor General, and the department.

(o) Submit to the secretary, the board, and the Legislature, on or before October 1 of each year, a report describing all of the activities of the corporation for the previous fiscal year which includes, but is not limited to, information concerning the programs and funds that have been transferred to the corporation. The report must include:

1. The number of license renewals.
2. The number of license applications received.
3. The number of license applications approved and denied and the number of licenses issued.
4. The average time required to issue a license.
5. The number of examinations administered and the number of applicants who passed or failed the examination.
6. The number of complaints received.
7. The number of complaints determined to be legally sufficient.
8. The number of complaints dismissed.
9. The number of complaints determined to have probable cause.
10. The number of administrative complaints issued and the status of the complaints.
11. The number and nature of disciplinary actions taken by the board.
12. All revenues received and all expenses incurred by the corporation during the preceding fiscal year in its performance of the duties under the contract.
13. Any audit performed under paragraph (l), including financial reports and performance audits.
14. The status of the compliance of the corporation with all performance-based program measures adopted by the board.

(p) Meet or exceed the requirements of the business case developed by the board and approved by the Executive Office of the Governor.

(7) The department shall annually certify that the corporation is complying with the terms of the contract in a manner consistent with the goals and purposes of the board and in the best interest of the state. If the department determines the corporation is not compliant with the terms of the contract, including performance standards and measurable outcomes, the contract may be terminated as provided in paragraph (14)(e).

(8) Nothing in this section shall limit the ability of the corporation to enter into contracts and perform all other acts incidental to those contracts which are necessary for the administration of its affairs and for the attainment of its purposes.

(9) The corporation may acquire by lease, and maintain, use, and operate, any real or personal property necessary to perform the duties provided by the contract and this section.

(10) The corporation may exercise the authority assigned to the department or board under this section or the practice act of the relevant profession, pursuant to the contract, including but not limited to initiating disciplinary investigations for unlicensed practice of the relevant profession. The corporation may make a determination of legal sufficiency to begin the investigative process as provided in s. 455.225. However, the department or the board may not delegate to the corporation, by contract or otherwise, the authority for determining probable cause to pursue disciplinary action against a licensee, taking final action on license actions or on disciplinary cases, or adopting administrative rules under chapter 120.

(11) The department shall retain the independent authority to open, investigate, or prosecute any cases or complaints, as necessary to protect the public health, safety, or welfare. In addition, the department shall retain sole authority to issue emergency suspension or restriction orders pursuant to s. 120.60 or may delegate concurrent authority for this purpose to the relevant professional board.

(12) The corporation is the sole source and depository for the records of the board, including all historical information and records. The corporation shall maintain those records in accordance with the guidelines of the Department of State and shall not destroy any records prior to the limits imposed by the Department of State.

(13) The board shall provide by rule for the procedures the corporation must follow to ensure that all licensure examinations are secure while under the responsibility of the corporation and that there is an appropriate level of monitoring during the licensure examinations.

(14) The contract between the department and the corporation must be in compliance with this section and other applicable laws. The department shall retain responsibility for any duties it currently exercises relating to its police powers and any other current duty that is not provided to the corporation by contract or this section. The contract shall provide, at a minimum, that:

(a) The corporation provide administrative, examination, licensing, investigative, and prosecutorial services in accordance with the provisions of this section and the practice act of the relevant profession. The prosecutorial functions of the corporation shall include the authority to pursue investigations leading to unlicensed practice complaints, with the approval of and at the direction of the relevant professional board. With approval of the department and the board, the corporation may subcontract for specialized services for the investigation and prosecution of unlicensed activity pursuant to this chapter. The corporation shall be required to report all criminal matters, including unlicensed activity that constitutes a crime, to the state attorney for criminal prosecution pursuant to s. 455.2277.

(b) The articles of incorporation and bylaws of the corporation be approved by the department.

(c) The corporation submit an annual budget for approval by the department. If the department's appropriations request differs from the budget submitted by the corporation, the relevant professional board shall be permitted to authorize the inclusion in the appropriations request of a comment or statement of disagreement with the department's request.

(d) The corporation utilize the department's licensing and computerized database system.

(e) The corporation be annually certified by the department as complying with the terms of the contract in a manner consistent with the goals and purposes of the board and in the best interest of the state. As part of the annual certification, the department shall make quarterly assessments regarding contract compliance by the corporation. The contract must also provide for methods and mechanisms for resolving any situation in which the assessment and certification process determines noncompliance, to include termination.

(f) The department employ a contract manager to actively monitor the activities of the corporation to ensure compliance with the contract, the provisions of this chapter, and the applicable practice act.

(g) The corporation be funded through appropriations allocated to the regulation of the relevant profession from the Professional Regulation Trust Fund.

(h) If the corporation is no longer approved to operate for the board or the board ceases to exist, all moneys, records, data, and property held in trust by the corporation for the benefit of the board revert to the department, or the state if the department ceases to exist. All records and data in a computerized database must be returned to the department in a form that is compatible with the computerized database of the department.

(i) The corporation secure and maintain, during the term of the contract and for all acts performed during the term of the contract, all liability insurance coverages in an amount to be approved by the department to defend, indemnify, and hold harmless the corporation and its officers and employees, the department and its employees, the board, and the state against all claims arising from state and federal laws. Such insurance coverage must be with insurers qualified and doing business in the state. The corporation must provide proof of

insurance to the department. The department and its employees, the board, and the state are exempt from and are not liable for any sum of money which represents a deductible, which sums shall be the sole responsibility of the corporation. Violation of this paragraph shall be grounds for terminating the contract.

(j) The board, in lieu of the department, shall retain board counsel pursuant to the requirements of s. 455.221. The corporation, out of its allocated budget, shall pay all costs of representation by the board counsel, including salary and benefits, travel, and any other compensation traditionally paid by the department to other board counsel.

(k) The corporation, out of its allocated budget, pay to the department all costs incurred by the corporation or the board for the Division of Administrative Hearings of the Department of Management Services and any other cost for utilization of these state services.

(l) The corporation, out of its allocated budget, pay to the department all direct and indirect costs associated with the monitoring of the contract, including salary and benefits, travel, and other related costs traditionally paid to state employees.

(m) The corporation comply with the performance standards and measurable outcomes developed by the board and the department. The performance standards and measurable outcomes must be specified within the contract.

(15) Corporation records are public records subject to the provisions of s. 119.07(1) and s. 24(a), Art. I of the

State Constitution; however, public records exemptions set forth in ss. 455.217, 455.225, and 455.229 for records held by the department shall apply to records held by the corporation. In addition, all meetings of the board of directors are open to the public in accordance with s. 286.011 and s. 24(b), Art. I of the State Constitution. The department and the board shall have access to all records of the corporation as necessary to exercise their authority to approve and supervise the contract. The Auditor General and the Office of Program Policy Analysis and Government Accountability shall have access to all records of the corporation as necessary to conduct financial and operational audits or examinations.

(16) If any provision of this section is held to be unconstitutional or is held to violate the state or federal antitrust laws, the following shall occur:

(a) The corporation shall cease and desist from exercising any powers and duties enumerated in this section.

(b) The department shall resume the performance of such activities. The department shall regain and receive, hold, invest, and administer property and make expenditures for the benefit of the board.

(c) The Executive Office of the Governor, notwithstanding chapter 216, may reestablish positions, budget authority, and salary rate necessary to carry out the department's responsibilities related to the board.

History.—s. 9, ch. 2000-356; s. 120, ch. 2001-266; s. 1, ch. 2004-292; s. 83, ch. 2005-2; s. 1, ch. 2008-134.