

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 92

INTRODUCER: Senator Hooper

SUBJECT: Yacht and Ship Brokers' Act

DATE: December 5, 2023

REVISED: _____

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

I. Summary:

SB 92 revises the regulation of yacht and ship brokers and salespersons by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR).

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

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

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

The bill takes effect October 1, 2024.

II. Present Situation:

Division of Florida Condominiums, Timeshares and Mobile Homes

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

Yacht and Ship Broker Branch Office Licenses

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

Definitions

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

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

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

Licensing

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

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

- Furnish proof satisfactory to the division that he or she is of good moral character.⁶
- Certify that he or she has never been convicted of a felony.
- Post the bond required by the Yacht and Ship Brokers' Act.

¹ Section 326.001, F.S.

² See ch. 326, F.S., and Department of Business and Professional Regulation, *Yacht and Ship*, available at: <http://www.myfloridalicense.com/DBPR/yacht-and-ships/> (last visited Nov. 30, 2023).

³ Section 326.002(1), F.S.

⁴ Section 326.002(3), F.S.

⁵ Section 326.004(8), F.S.

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

- Demonstrate that he or she is a resident of this state or that he or she conducts business in this state.
- Furnish a full set of fingerprints taken within the 6 months immediately preceding the submission of the application.
- Have a current license and has operated as a broker or salesperson without a license.⁷

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

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

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

A license is not required for:

- A person who sells his or her own yacht.
- An attorney at law for services rendered in his or her professional capacity.
- A receiver, trustee, or other person acting under a court order.
- A transaction involving the sale of a new yacht.
- A transaction involving the foreclosure of a security interest in a yacht.¹¹

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

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

There are currently 2,810 licensed salespersons and 337 licensed brokers.¹⁵

⁷ Section 326.004(6), F.S.

⁸ Section 326.004(7), F.S.

⁹ Section 326.004(9), F.S.

¹⁰ Fla. Admin. Code R. 61B-60.003(4).

¹¹ Section 326.004 (3), F.S.

¹² Section 326.004 (13), F.S.

¹³ Fla. Admin. Code R. 61B-60.003(4).

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

¹⁵ Email from Derek Miller, Director of Legislative Affairs, Department of Business and Professional Regulation, to Patrick L. Imhof, Staff Director, Senate Regulated Industries Committee (Nov. 30, 2023) (on file with the Senate Regulated Industries Committee).

III. Effect of Proposed Changes:

The bill amends s. 326.002(4), F.S., to revise the term “yacht” to provide that the vessel be manufactured or operated primarily for pleasure or leased, rented, or chartered to a person other than for such person’s pleasure. The bill deletes the requirement for the vessel to weigh less than 300 gross tons.

The bill amends s. 326.004(3), F.S., to exempt from the license requirements for a broker or salesperson a person who conducts business as a broker or salesperson in another state as his or her primary profession and engages in the purchase or sale of a yacht under ch. 326, F.S., if the transaction is executed in its entirety with a broker or salesperson licensed in Florida.

The bill amends s. 326.004(6), F.S., to clarify that the division may deny a broker or salesperson license to a person who does not meet all of the requirements listed in this subsection.

Section 326.004(8), F.S., is amended by the bill to revise the requirements for licensure as a broker. Under the bill, an applicant for a broker license must demonstrate that he or she has been directly involved in at least four transactions that resulted in the sale of a yacht. The bill does not provide a time period during which the four must have been performed. Alternatively, a person may qualify for a broker license by certifying that he or she has completed 20 hours of continuing education,¹⁶ in-person or online, from a provider approved by the division under ss. 455.2178 and 455.2179, F.S.,¹⁷ regarding the state laws, rules, and ethics relating to the professional standards of practice, duties, and responsibilities of a licensee.

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

The bill takes effect October 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁶ Salespersons and brokers licensed under ch. 326, F.S., are not required to complete continuing education as a condition for renewal of a license.

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

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

An out-of-state sales broker or salesperson may engage in a transaction for the sale or purchase of a yacht under the conditions in the bill without applying for a license, including paying the \$500 license application fee.

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

C. Government Sector Impact:

Under the bill, a broker or salesperson in another state who is not licensed in Florida would be able to engage in the purchase or sale of a yacht in Florida if the transaction is entirely executed through a licensed Florida broker or salesperson. The division may incur costs reviewing the sales transaction history of an applicant for a broker's license and developing the criteria for an education provider which license applicants may use as option for qualifying as a broker. Under the bill, the division anticipates it will need an additional four full time employees for a total fiscal impact of \$342,742 recurring and \$27,845 nonrecurring.¹⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

The definition for the term "yacht" is revised by the bill to require that the vessel be manufactured or operated primarily for pleasure or leased, rented, or chartered to a person other than for such person's pleasure. The term "pleasure" is undefined. However, the term "pleasure" means, in part, "someone or something that provides amusement or enjoyment," and the term

¹⁸ See Department of Business and Professional Regulation, *2024 Agency Legislative Bill Analysis for SB 22*, pp. 2 and 5 (Nov. 2, 2023) (on file with the Senate Regulated Industries Committee).

“recreation” is a synonym for this meaning of the term.¹⁹ The bill may be interpreted as defining “yacht” as a vessel used primarily for recreation.

Section 326.004(8), F.S., is amended by the bill to revise the requirements for licensure as a broker. Under the bill, an applicant for a broker license must demonstrate that he or she has been directly involved in at least four transactions that resulted in the sale of a yacht. The bill does not provide a time period during which the four must have been performed.

Under the bill, a broker or salesperson in another state who is not licensed in Florida would be able to engage in the purchase or sale of a yacht in Florida if the transaction is entirely executed through a licensed Florida broker or salesperson. The division notes that, if the non-Florida licensed broker violates ch. 326, F.S., the division would only have regulatory jurisdiction over the Florida-licensed broker or salesperson.²⁰

The bill permits a person to qualify for a broker license if he or she has been directly involved in at least four transactions that resulted in the sale of a yacht or certifies that they have obtained 20 continuing education credits approved by the division. The division states that it is unclear whether the continuing education requirements are recurring for each licensure period or only apply to initial licensure.²¹

VIII. Statutes Affected:

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

IX. Additional Information:

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

None.

B. **Amendments:**

None.

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

¹⁹ See Merriam-Webster.com, “Pleasure,” <https://www.merriam-webster.com/thesaurus/pleasure> (last visited Nov. 20, 2023).

²⁰ See *infra*, note 18 at 2.

²¹ *Id.*