

STORAGE NAME: h2017.brc

DATE: March 23, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
ANALYSIS**

BILL #: HB 2017 (PCB BRCA 99-02)

RELATING TO: Regulation of Professions and Occupations

SPONSOR(S): Committee on Business Regulation and Consumer Affairs and Representative Ogles

COMPANION BILL(S): SB 2268 (c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

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I. SUMMARY:

This bill is part of the Department of Business and Professional Regulation's (DBPR or department) annual legislative package. It contains a variety of provisions, relating to criteria for evaluating new professional regulation, rulemaking, distance learning, proration of continuing education requirements, fingerprint cards/criminal history check authority, and disciplinary authority. One provision establishes regulation of the practice of body-wrapping, under the cosmetologist's practice act, requiring 12 hours of training, and establishing a \$25 registration fee. The bill also requires licensure as a cosmetologist for removal of body hair by wax treatments, and defines skin care services.

This bill does not have a significant fiscal impact on state or local governments. However, there is a \$50,000 one-time cost to DBPR to upgrade its computer capability. In the private sector, the bill establishes training requirements and a \$25 biennial fee for persons wishing to practice body wrapping.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

See Section-By-Section Analysis portion of bill.

B. EFFECT OF PROPOSED CHANGES:

See Section-By-Section Analysis portion of the bill.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. It provides the DBPR needed rulemaking authority for professions regulated directly under the department.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The bill establishes a regulatory program for body wrappers, with required training and a registration fee.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

Yes. The bill establishes a \$25 registration fee for body wrappers.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes. Body wrappers pay \$25 to cover registration.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. The bill requires registration in order to practice body wrapping.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 11.62, and chapters 455, 468, 475, and 477, F.S.

E. SECTION-BY-SECTION ANALYSIS:

SUNRISE LAW

Section 1. Amends s. 11.62, F.S., to include new legislative considerations under the Sunrise Act.

Current Situation

Section 11.62, F.S., establishes Florida's Sunrise Act. The Sunrise Act requires the collection of certain data and the consideration of certain questions prior to hearing legislation that would establish regulation of a previously unregulated activity or profession. Prior to the 1998 regular session of the Florida Legislature, Senate staff conducted an interim project on the effect of regulation on job creation, and recommended that a provision requiring the Legislature to consider the effect any proposal for new or expanded regulation would have on job markets or job retention.

Effect of Proposed Changes

The bill adds a new criteria for legislative evaluation of new regulation during the sunrise process, requiring the Legislature to consider what effect any proposal for new or expanded regulation would have on job markets or job retention. It also requires the proponents of the proposed regulation to provide the Legislature certain information on any examination or required training elements of the proposal. It also requires the proponents to provide information on the projected costs to applicants, practitioners, and practitioners' employers imposed by the regulation.

CHAPTER 455 PROVISIONS (GENERAL DBPR AUTHORITY)

Sections 2 and 3. Amend ss. 455.201 and 455.517, F.S., to prohibit the DBPR or any board from developing unreasonable standards for entry into a profession.

Current Situation

Presently, the DBPR and the Department of Health (and any board under them) are prohibited from developing "unreasonably restrictive" standards that deter qualified persons from entering the profession.

Effect of Proposed Changes

These sections prohibit the DBPR (in s. 455.201, F.S.) and the Department of Health (in s. 455.517, F.S.), or any board under them, from developing regulation that has an unreasonable effect on job creation or job retention. It also requires the Legislature to evaluate the effect on job creation or job retention of any proposal to increase existing regulation.

Section 4. Amends s. 455.2035, F.S., to provide the DBPR rulemaking authority where there are no boards.

Current Situation

Some professional regulation is assigned to a board under the DBPR, with the board having the rulemaking authority to implement the regulation. In other instances, the regulation is directly under the DBPR. In such an instance, the DBPR needs to have rulemaking authority. The DBPR has indicated that it currently lacks necessary rulemaking authority for some of the regulation assigned to it.

Effect of Proposed Changes

This provision provides the DBPR rulemaking authority in any instance where the regulation is directly within its jurisdiction, and no board exists.

Section 5. Amends s. 455.2123, F.S., to encourage acceptance of distance learning as a CE modality.

Current Situation

Both the department and the boards have broad discretion in selecting what types of training, activities, or classes can be accepted as fulfilling continuing education requirements. However, distance learning (the provision of instruction or education via telecommunication) is a relatively new phenomenon, and some boards may not be aware that such provision could be acceptable.

Effect of Proposed Changes

The section provides that a board or the department, where there is no board, may provide by rule that distance learning may be used to satisfy any continuing education requirement.

Section 6. Amends s. 455.2124, F.S., to allow proration of CE requirements.

Current Situation

Licensed professionals are often required to complete a certain number of hours of continuing education (CE) credits before being allowed to renew their license. License renewals are generally required every two years, with renewal cycles often taking place at the same time for all licensees in that profession. This means that if, for example, all the licensees within a certain profession are required to renew their license on June 1 of 1999, there will be some number of licensees that have only recently obtained their initial licensure (a licensee may have obtained his/her license in July of 1998, and have not had an entire two-year time period to complete his/her CE, prior to renewal in July of 1999.)

Effect of Proposed Changes

The bill allows proration of CE requirements, or no CE requirements at all, for the initial renewal cycle of licensees who do not have the full biennial time period to complete the CE requirements.

Section 7- 10. Amend ss. 455.213, 468.453, 475.175, and 475.615, F.S. Section 7 amends s. 455.213, F.S., to establish a provision which applies to all of the professions regulated under the DBPR, giving them proper authority to allow processing of fingerprint cards by the FBI. Sections 8-10 amend ss. 468.453, 475.175, and 475.615, F.S., to provide corrected language for three specific professions which require fingerprints and criminal history background checks.

Current Situation

The DBPR representatives state that they need the requested statutory language in chapter 455 due to difficulties they have had getting the FBI to process the fingerprint cards. The FBI requires very specific language in the enabling statutes in order to process the cards (they say they are bound by a federal law). They have discovered two practice acts which do not meet their requirements. There may be others which use similar language of which they are not yet aware. The two they have a problem with are Athlete Agents and Real Estate Appraisers. The department notes that although the FBI did not specifically mention them as having a similar problem, real estate brokers have similar fingerprint requirement language as the real estate appraisers. According to the FBI, the statutes need to say that a background check is required, that fingerprints will be processed, and that the processing will be done by the Federal Bureau of Investigation.

The real estate appraiser and real estate broker statutes say fingerprints processed by an appropriate law enforcement agency (does not specifically cite the FBI). The athlete agent statute cites the FBI, but doesn't say fingerprints.

Effect of Proposed Changes

Section 7 provides the DBPR general authority to obtain, and send for processing, fingerprint cards in any instance where separate authority for obtaining fingerprints or running a criminal history check exists. Sections 8-10 correct the existing language as regards real estate brokers, real estate appraisers, and athlete agents.

Section 11. Amends s. 455.225, F.S., to allow the DBPR to petition for a determination of the existence of probable cause in an instance in which a board determines that no probable cause exists.

Current Situation

Two years ago, legislation inadvertently removed the DBPR's long-standing (but rarely used) authority to overturn a probable cause panels' finding that no probable cause exists to proceed in a disciplinary case against a licensee.

Effect of Proposed Changes

This section provides that the DBPR is allowed to petition for a determination of the existence of probable cause in an instance in which a board determines that no probable cause exists.

Section 12. Amends s. 455.227, F.S., to provide that the DBPR shall not renew any license if the licensee has an unpaid delinquent fine or has otherwise failed to comply with the terms of a final order.

Current Situation

Currently, there is no prohibition against renewing a licensee's license, when the licensee has an unpaid delinquent fine, or has otherwise failed to comply with the terms of discipline imposed.

Effect of Proposed Changes

This section provides that the department shall not issue or renew a license if the applicant has not complied with all terms of any previously imposed discipline, including payments of any outstanding fine. A similar provision was passed last year regarding cosmetologists, and this provision will make the principle applicable to all professions.

COSMETOLOGY

Section 13. Amends s. 477.013, F.S., to add definitions, and elements to the job scope of cosmetologists.

Current Situation

Cosmetology is currently defined to include mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes. The 1998 Legislature removed from the Massage Therapy Act the exemption for body wrapping, scrubbing and waxing. Some people interpreted that action to prohibit such activities without licensure.

Effect of proposed Changes

This section would require wax treatments for removal of body hair to be done by a licensed cosmetologist. It also defines "skin care services." See Comments section.

BODY WRAPPING

Sections 14-18. Amend ss. 477.013, 477.0132, 477.019, 477.026, and 477.029, F.S., to provide regulatory guidelines under the cosmetology statutes for body wrapping.

Current Situation

Currently, part I of chapter 455, F.S., contains the general provisions which authorize the DBPR to oversee the regulation of the numerous professions which come under their regulatory purview. Part II of this chapter similarly addresses professions which come under the purview of the Department of Health.

Chapter 480, F.S., regulates the practice of massage therapy. The Board of Massage is the regulatory body for the profession. Massage is, basically, the manipulation of the superficial tissues of the human body. With exceptions, licensure is required for anyone conducting this activity or holding themselves out to be a massage therapist.

Current exemptions from licensure include athletic trainers for professional sports and government employed massage therapists. Prior to 1997, "treatments for the purpose of cleaning and beautifying the skin or in conjunction with a weight loss program, including herbal wraps, body scrubs, paraffin wax treatments, and seaweed wraps" were also specifically exempted. Chapter 97-264, Laws of Florida, among other provisions, repealed this body wrapping exemption. Subsequently, some interested professionals have questioned whether the repeal of the exemption would, in fact, subject this activity to professional regulation.

Effect of proposed changes

The bill creates regulatory guidelines under the cosmetology statutes for body wrapping. Body wrapping is defined to mean treatments using herbal wraps for the purpose of cleansing and beautifying the skin, or of weight loss.

A person who conducts the activity of body wrapping would be required to register with the department, pay a registration fee not to exceed \$25 and participate in training classes to be conducted as a two-day course totaling 12 hours.

Section 17 also provides that it is unlawful to advertise or imply that skin care services have any relationship to the practice of massage, except for those explicitly provided in the definition.

Section 19. Provides an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The department has indicated that it will cost them approximately \$50,000 to establish a system to track unpaid fines, in support of the provision in section 8 of the bill.

2. Recurring Effects:

Indeterminate. The DBPR will receive a biennial \$25 registration fee from an unknown number of persons wanting to practice as body wrappers.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Persons wishing to practice body wrapping will incur a biennial \$25 biennial registration fee, and have to pay for a two-day, 12 hour training course.

2. Direct Private Sector Benefits:

The provisions in section 1 of the bill, requiring the Legislature to consider whether new or expanded regulation will hurt job creation or job retention, may serve to protect private industry from the costs of such new or expanded regulation.

The regulation of body wrapping, in sections 14-18 of the bill, is predicated in the assumption that such regulation will protect the health, safety, and welfare of the public.

3. Effects on Competition, Private Enterprise and Employment Markets:

See above.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

In order to clarify the intent of the bill that skin care services be provided only by cosmetologists, the definition of cosmetology should be amended to add the terms "skin care services." Such an amendment will ensure that these services are authorized activities of licensed cosmetologists and only they can perform the activity in a licensed cosmetology salon. The amended would be as follows: on page 15, line 1, after the word "hair", insert: skin care services.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its March 11, 1999, meeting, the Business Regulation and Consumer Affairs (BRCA) Committee adopted four amendments and one amendment-to-the-amendment. The first three amendments made changes in three specific practice acts regarding their authority to process fingerprints for the purpose of obtaining criminal history record information. The fourth amendment struck proposed language providing that body wrapping is an activity which is not regulated, and substituted language that provided that body wrapping is regulated under chapter 477 (cosmetologists). An amendment-to-the-amendment changed the required training for body wrappers from 6 hours to 12 hours.

Amendments adopted at the March 17, 1999, Business Regulation and Consumer Affairs Committee meeting removed the disciplinary provision relating to noncompliance with continuing education requirements because it conflicted with provisions in PCB BRCA 99-05. Other amendments added provisions defining skin treatment and making wax treatment from removal of body hair an activity requiring licensure as a cosmetologist.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

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