

By the Committee on Regulated Industries and Senator Casas

315-2011A-99

1 A bill to be entitled
2 An act relating to the regulation of
3 professions and occupations; amending s. 11.62,
4 F.S.; providing criteria for evaluating
5 proposals for new regulation of a profession or
6 occupation based on the effect of such
7 regulation on job creation or retention;
8 requiring proponents of legislation to regulate
9 a profession or occupation not already
10 regulated to provide additional cost
11 information; amending ss. 455.201, 455.517,
12 F.S.; prohibiting the Department of Business
13 and Professional Regulation and the Department
14 of Health and their regulatory boards from
15 creating any regulation that has an
16 unreasonable effect on job creation or
17 retention or on employment opportunities;
18 providing for evaluation of proposals to
19 increase the regulation of already regulated
20 professions to determine the effect of such
21 regulation on job creation or retention and
22 employment opportunities; amending s. 455.564,
23 F.S.; clarifying continuing education
24 requirements; creating s. 455.2035, F.S.;
25 providing rulemaking authority to the
26 Department of Business and Professional
27 Regulation for the regulation of any profession
28 under its jurisdiction which does not have a
29 regulatory board; creating s. 455.2123, F.S.;
30 authorizing the use of distance learning to
31 satisfy continuing education requirements;

1 creating s. 455.2124, F.S.; authorizing
2 proration of continuing education requirements;
3 amending s. 455.213, F.S.; requiring
4 fingerprint cards with applications for
5 registration, certification, or licensure in
6 certain professions; providing for use of such
7 cards for criminal history record checks of
8 applicants; amending s. 455.227, F.S.;
9 providing for denial or renewal of a license
10 under certain circumstances; amending s.
11 468.453, F.S.; applying such fingerprint card
12 requirements to applicants for licensure as an
13 athlete agent; amending s. 475.175, F.S.;
14 applying such fingerprint card requirements to
15 persons applying to take the examination for
16 licensure as a real estate broker or
17 salesperson; amending s. 475.615, F.S.;
18 applying such fingerprint card requirements to
19 applicants for registration, certification, or
20 licensure as a real estate appraiser; amending
21 s. 477.013, F.S.; redefining the terms
22 "cosmetology" and "specialty" and defining the
23 terms "body wrapping" and "skin care services";
24 amending s. 477.0132, F.S.; requiring
25 registration of persons whose occupation or
26 practice is body wrapping; requiring a
27 registration fee and certain education;
28 amending s. 477.019, F.S.; exempting persons
29 whose occupation or practice is confined solely
30 to body wrapping from certain continuing
31 education requirements; amending s. 477.026,

1 F.S.; providing for the registration fee;
2 amending s. 477.0265, F.S.; prohibiting
3 advertising or implying that skin care services
4 or body wrapping have any relationship to the
5 practice of massage therapy; providing
6 penalties; amending s. 477.029, F.S.;
7 prohibiting holding oneself out as a body
8 wrapper unless licensed, registered, or
9 otherwise authorized under chapter 477, F.S.;
10 providing penalties; providing an effective
11 date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Subsections (3) and (4) of section 11.62,
16 Florida Statutes, are amended to read:

17 11.62 Legislative review of proposed regulation of
18 unregulated functions.--

19 (3) In determining whether to regulate a profession or
20 occupation, the Legislature shall consider the following
21 factors:

22 (a) Whether the unregulated practice of the profession
23 or occupation will substantially harm or endanger the public
24 health, safety, or welfare, and whether the potential for harm
25 is recognizable and not remote;

26 (b) Whether the practice of the profession or
27 occupation requires specialized skill or training, and whether
28 that skill or training is readily measurable or quantifiable
29 so that examination or training requirements would reasonably
30 assure initial and continuing professional or occupational
31 ability;

1 (c) Whether the regulation will have an unreasonable
2 effect on job creation or job retention in the state or will
3 place unreasonable restrictions on the ability of individuals
4 who seek to practice or who are practicing a given profession
5 or occupation to find employment;

6 (d)~~(c)~~ Whether the public is or can be effectively
7 protected by other means; and

8 (e)~~(d)~~ Whether the overall cost-effectiveness and
9 economic impact of the proposed regulation, including the
10 indirect costs to consumers, will be favorable.

11 (4) The proponents of legislation that provides for
12 the regulation of a profession or occupation not already
13 expressly subject to state regulation shall provide, upon
14 request, the following information in writing to the state
15 agency that is proposed to have jurisdiction over the
16 regulation and to the legislative committees to which the
17 legislation is referred:

18 (a) The number of individuals or businesses that would
19 be subject to the regulation;

20 (b) The name of each association that represents
21 members of the profession or occupation, together with a copy
22 of its codes of ethics or conduct;

23 (c) Documentation of the nature and extent of the harm
24 to the public caused by the unregulated practice of the
25 profession or occupation, including a description of any
26 complaints that have been lodged against persons who have
27 practiced the profession or occupation in this state during
28 the preceding 3 years;

29 (d) A list of states that regulate the profession or
30 occupation, and the dates of enactment of each law providing
31 for such regulation and a copy of each law;

1 (e) A list and description of state and federal laws
2 that have been enacted to protect the public with respect to
3 the profession or occupation and a statement of the reasons
4 why these laws have not proven adequate to protect the public;

5 (f) A description of the voluntary efforts made by
6 members of the profession or occupation to protect the public
7 and a statement of the reasons why these efforts are not
8 adequate to protect the public;

9 (g) A copy of any federal legislation mandating
10 regulation;

11 (h) An explanation of the reasons why other types of
12 less restrictive regulation would not effectively protect the
13 public;

14 (i) The cost, availability, and appropriateness of
15 training and examination requirements;

16 (j)~~(i)~~ The cost of regulation, including the indirect
17 cost to consumers, and the method proposed to finance the
18 regulation;

19 (k) The cost imposed on applicants or practitioners or
20 on employers of applicants or practitioners as a result of the
21 regulation;

22 (l)~~(j)~~ The details of any previous efforts in this
23 state to implement regulation of the profession or occupation;
24 and

25 (m)~~(k)~~ Any other information the agency or the
26 committee considers relevant to the analysis of the proposed
27 legislation.

28 Section 2. Subsection (4) of section 455.201, Florida
29 Statutes, is amended to read:

30 455.201 Professions and occupations regulated by
31 department; legislative intent; requirements.--

1 (4)(a) Neither the department nor any board may ~~No~~
2 ~~board, nor the department, shall~~ create unreasonably
3 restrictive and extraordinary standards that deter qualified
4 persons from entering the various professions. Neither the
5 department nor any board may ~~No board, nor the department,~~
6 ~~shall~~ take any action that ~~which~~ tends to create or maintain
7 an economic condition that unreasonably restricts competition,
8 except as specifically provided by law.

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

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

19 Section 3. Subsection (4) of section 455.517, Florida
20 Statutes, is amended to read:

21 455.517 Professions and occupations regulated by
22 department; legislative intent; requirements.--

23 (4)(a) Neither the department nor any board may ~~No~~
24 ~~board, nor the department, shall~~ create unreasonably
25 restrictive and extraordinary standards that deter qualified
26 persons from entering the various professions. Neither the
27 department nor any board may ~~No board, nor the department,~~
28 ~~shall~~ take any action that ~~which~~ tends to create or maintain
29 an economic condition that unreasonably restricts competition,
30 except as specifically provided by law.

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

7 (c) The Legislature shall evaluate proposals to
8 increase the regulation of regulated professions or
9 occupations to determine the effect of increased regulation on
10 job creation or retention and employment opportunities.

11 Section 4. Subsection (6) of section 455.564, Florida
12 Statutes, 1998 Supplement, is amended to read:

13 455.564 Department; general licensing provisions.--

14 (6) As a condition of renewal of a license, the Board
15 of Medicine, the Board of Osteopathic Medicine, the Board of
16 Chiropractic Medicine, and the Board of Podiatric Medicine
17 shall each require licensees which they respectively regulate
18 to periodically demonstrate their professional competency by
19 completing at least 40 hours of continuing education every 2
20 years, ~~which may include up to 1 hour of risk management or~~
21 ~~cost containment and up to 2 hours of other topics related to~~
22 ~~the applicable medical specialty, if required by board rule.~~
23 The boards may require by rule that up to 1 hour of the
24 required 40 or more hours be in the area of risk management or
25 cost containment. This provision shall not be construed to
26 limit the number of hours that a licensee may obtain in risk
27 management or cost containment to be credited toward
28 satisfying the 40 or more required hours. This provision shall
29 not be construed to require the boards to impose any
30 requirement on licensees except for the completion of at least
31 40 hours of continuing education every 2 years.Each of such

1 boards shall determine whether any specific continuing
2 education ~~course~~ requirements not otherwise mandated by law
3 shall be mandated and shall approve criteria for, and the
4 content of, any continuing education ~~course~~ mandated by such
5 board. Notwithstanding any other provision of law, the board,
6 or the department when there is no board, may approve by rule
7 alternative methods of obtaining continuing education credits
8 in risk management. The alternative methods may include
9 attending a board meeting at which another ~~a~~ licensee is
10 disciplined, serving as a volunteer expert witness for the
11 department in a disciplinary case, or serving as a member of a
12 probable cause panel following the expiration of a board
13 member's term. Other boards within the Division of Medical
14 Quality Assurance, or the department if there is no board, may
15 adopt rules granting continuing education hours in risk
16 management for attending a board meeting at which another
17 licensee is disciplined, for serving as a volunteer expert
18 witness for the department in a disciplinary case, or for
19 serving as a member of a probable cause panel following the
20 expiration of a board member's term.

21 Section 5. Section 455.2035, Florida Statutes, is
22 created to read:

23 455.2035 Rulemaking authority for professions not
24 under a board.--The department may adopt rules pursuant to ss.
25 120.54 and 120.536(1) to implement the regulatory requirements
26 of any profession within the department's jurisdiction which
27 does not have a statutorily authorized regulatory board.

28 Section 6. Section 455.2123, Florida Statutes, is
29 created to read:

30 455.2123 Continuing education.--A board, or the
31 department when there is no board, may provide by rule that

1 distance learning may be used to satisfy continuing education
2 requirements.

3 Section 7. Section 455.2124, Florida Statutes, is
4 created to read:

5 455.2124 Proration of continuing education.--A board,
6 or the department when there is no board, may:

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

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

15
16 These options shall also apply when continuing education is
17 first required or the number of hours required is increased by
18 law or the board, or the department when there is no board.

19 Section 8. Subsection (10) is added to section
20 455.213, Florida Statutes, 1998 Supplement, to read:

21 455.213 General licensing provisions.--

22 (10) For any profession requiring fingerprints as part
23 of the registration, certification, or licensure process or
24 for any profession requiring a criminal history record check
25 to determine good moral character, a fingerprint card
26 containing the fingerprints of the applicant must accompany
27 all applications for registration, certification, or
28 licensure. The fingerprint card shall be forwarded to the
29 Division of Criminal Justice Information Systems within the
30 Department of Law Enforcement for purposes of processing the
31 fingerprint card to determine if the applicant has a criminal

1 history record. The fingerprint card shall also be forwarded
2 to the Federal Bureau of Investigation for purposes of
3 processing the fingerprint card to determine if the applicant
4 has a criminal history record. The information obtained by the
5 processing of the fingerprint card by the Florida Department
6 of Law Enforcement and the Federal Bureau of Investigation
7 shall be sent to the department for the purpose of determining
8 if the applicant is statutorily qualified for registration,
9 certification, or licensure.

10 Section 9. Subsection (3) of section 455.227, Florida
11 Statutes, is amended to read:

12 455.227 Grounds for discipline; penalties;
13 enforcement.--

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

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

28 (c) The department shall not issue or renew a license
29 to any person against whom or business against which the board
30 has assessed a fine, interest, or costs associated with
31 investigation and prosecution until the person or business has

1 paid in full such fine, interest, or costs associated with
2 investigation and prosecution or until the person or business
3 complies with or satisfies all terms and conditions of the
4 final order.

5 Section 10. Paragraph (e) of subsection (2) of section
6 468.453, Florida Statutes, 1998 Supplement, is amended to
7 read:

8 468.453 Licensure required; qualifications;
9 examination; bond.--

10 (2) A person shall be licensed as an athlete agent if
11 the applicant:

12 (e) Has ~~provided sufficient information which must be~~
13 ~~submitted to by the department~~ a fingerprint card for a
14 criminal history records check through the Federal Bureau of
15 Investigation. The fingerprint card shall be forwarded to the
16 Division of Criminal Justice Information Systems within the
17 Department of Law Enforcement for purposes of processing the
18 fingerprint card to determine if the applicant has a criminal
19 history record. The fingerprint card shall also be forwarded
20 to the Federal Bureau of Investigation for purposes of
21 processing the fingerprint card to determine if the applicant
22 has a criminal history record. The information obtained by the
23 processing of the fingerprint card by the Florida Department
24 of Law Enforcement and the Federal Bureau of Investigation
25 shall be sent to the department for the purpose of determining
26 if the applicant is statutorily qualified for licensure.

27 Section 11. Paragraph (a) of subsection (1) of section
28 475.175, Florida Statutes, is amended to read:

29 475.175 Examinations.--

30 (1) A person shall be entitled to take the license
31 examination to practice in this state if the person:

1 (a) Submits to the department the appropriate
2 notarized application and fee, two photographs of herself or
3 himself taken within the preceding year, and a fingerprint
4 card. The fingerprint card shall be forwarded to the Division
5 of Criminal Justice Information Systems within the Department
6 of Law Enforcement for purposes of processing the fingerprint
7 card to determine if the applicant has a criminal history
8 record. The fingerprint card shall also be forwarded to the
9 Federal Bureau of Investigation for purposes of processing the
10 fingerprint card to determine if the applicant has a criminal
11 history record. The information obtained by the processing of
12 the fingerprint card by the Florida Department of Law
13 Enforcement and the Federal Bureau of Investigation shall be
14 sent to the department for the purpose of determining if the
15 applicant is statutorily qualified for examination.
16 ~~fingerprints for processing through appropriate law~~
17 ~~enforcement agencies; and~~

18 Section 12. Subsection (3) of section 475.615, Florida
19 Statutes, 1998 Supplement, is amended to read:

20 475.615 Qualifications for registration, licensure, or
21 certification.--

22 (3) Appropriate fees, as set forth in the rules of the
23 board pursuant to s. 475.6147, and a fingerprint card
24 ~~fingerprints for processing through appropriate law~~
25 ~~enforcement agencies~~ must accompany all applications for
26 registration, ~~licensure, and certification,~~ or licensure. The
27 fingerprint card shall be forwarded to the Division of
28 Criminal Justice Information Systems within the Department of
29 Law Enforcement for purposes of processing the fingerprint
30 card to determine if the applicant has a criminal history
31 record. The fingerprint card shall also be forwarded to the

1 Federal Bureau of Investigation for purposes of processing the
2 fingerprint card to determine if the applicant has a criminal
3 history record. The information obtained by the processing of
4 the fingerprint card by the Florida Department of Law
5 Enforcement and the Federal Bureau of Investigation shall be
6 sent to the department for the purpose of determining if the
7 applicant is statutorily qualified for registration,
8 certification, or licensure.

9 Section 13. Subsections (4) and (6) of section
10 477.013, Florida Statutes, 1998 Supplement, are amended, and
11 subsections (12) and (13) are added to that section, to read:

12 477.013 Definitions.--As used in this chapter:

13 (4) "Cosmetology" means the mechanical or chemical
14 treatment of the head, face, and scalp for aesthetic rather
15 than medical purposes, including, but not limited to, hair
16 shampooing, hair cutting, hair arranging, hair coloring,
17 permanent waving, and hair relaxing,~~hair removing pedicuring,~~
18 ~~and manicuring,~~for compensation. This term also includes
19 performing hair removal, including wax treatments, manicures,
20 pedicures, and skin-care services.

21 (6) "Specialty" means the practice of one or more of
22 the following:

23 (a) Manicuring, or the cutting, polishing, tinting,
24 coloring, cleansing, adding, or extending of the nails, and
25 massaging of the hands. This term includes any procedure or
26 process for the affixing of artificial nails, except those
27 nails which may be applied solely by use of a simple adhesive.

28 (b) Pedicuring, or the shaping, polishing, tinting, or
29 cleansing of the nails of the feet, and massaging or
30 beautifying of the feet.

31

1 (c) Facials, or the massaging or treating of the face
2 or scalp with oils, creams, lotions, or other preparations,
3 and skin care services.

4 (12) "Body wrapping" means a treatment program that
5 uses herbal wraps for the purposes of weight loss and of
6 cleansing and beautifying the skin of the body, but does not
7 include:

8 (a) The application of oils, lotions, or other fluids
9 to the body, except fluids contained in presoaked materials
10 used in the wraps; or

11 (b) Manipulation of the body's superficial tissue,
12 other than that arising from compression emanating from the
13 wrap materials.

14 (13) "Skin care services" means the treatment of the
15 skin of the body, other than the head, face, and scalp, by the
16 use of a sponge, brush, cloth, or similar device to apply or
17 remove a chemical preparation or other substance, except that
18 chemical peels may be removed by peeling an applied
19 preparation from the skin by hand. Skin care services must be
20 performed by a licensed cosmetologist or facial specialist
21 within a licensed cosmetology or specialty salon, and such
22 services may not involve massage, as defined in s. 480.033(3),
23 through manipulation of the superficial tissue.

24 Section 14. Section 477.0132, Florida Statutes, 1998
25 Supplement, is amended to read:

26 477.0132 Hair braiding,~~and~~ hair wrapping, and body
27 wrapping registration.--

28 (1)(a) Persons whose occupation or practice is
29 confined solely to hair braiding must register with the
30 department, pay the applicable registration fee, and take a
31 two-day 16-hour course. The course shall be board approved and

1 consist of 5 hours of HIV/AIDS and other communicable
2 diseases, 5 hours of sanitation and sterilization, 4 hours of
3 disorders and diseases of the scalp, and 2 hours of studies
4 regarding laws affecting hair braiding.

5 (b) Persons whose occupation or practice is confined
6 solely to hair wrapping must register with the department, pay
7 the applicable registration fee, and take a one-day 6-hour
8 course. The course shall be board approved and consist of
9 education in HIV/AIDS and other communicable diseases,
10 sanitation and sterilization, disorders and diseases of the
11 scalp, and studies regarding laws affecting hair wrapping.

12 (c) Unless otherwise licensed or exempted from
13 licensure under this chapter, any person whose occupation or
14 practice is body wrapping must register with the department,
15 pay the applicable registration fee, and take a two-day
16 12-hour course. The course shall be board approved and consist
17 of education in HIV/AIDS and other communicable diseases,
18 sanitation and sterilization, disorders and diseases of the
19 skin, and studies regarding laws affecting body wrapping.

20 (2) Hair braiding,~~and~~ hair wrapping, and body
21 wrapping are not required to be practiced in a cosmetology
22 salon or specialty salon. When hair braiding,~~or~~ hair
23 wrapping, or body wrapping is practiced outside a cosmetology
24 salon or specialty salon, disposable implements must be used
25 or all implements must be sanitized in a disinfectant approved
26 for hospital use or approved by the federal Environmental
27 Protection Agency.

28 (3) Pending issuance of registration, a person is
29 eligible to practice hair braiding,~~or~~ hair wrapping, or body
30 wrapping upon submission of a registration application that
31 includes proof of successful completion of the education

1 requirements and payment of the applicable fees required by
2 this chapter.

3 Section 15. Paragraph (c) of subsection (7) of section
4 477.019, Florida Statutes, 1998 Supplement, is amended to
5 read:

6 477.019 Cosmetologists; qualifications; licensure;
7 supervised practice; license renewal; endorsement; continuing
8 education.--

9 (7)

10 (c) Any person whose occupation or practice is
11 confined solely to hair braiding, ~~or~~ hair wrapping, or body
12 wrapping is exempt from the continuing education requirements
13 of this subsection.

14 Section 16. Paragraph (f) of subsection (1) of section
15 477.026, Florida Statutes, 1998 Supplement, is amended to
16 read:

17 477.026 Fees; disposition.--

18 (1) The board shall set fees according to the
19 following schedule:

20 (f) For hair braiders, ~~and~~ hair wrappers, and body
21 wrappers, fees for registration shall not exceed \$25.

22 Section 17. Paragraph (g) is added to subsection (1)
23 of section 477.0265, Florida Statutes, to read:

24 477.0265 Prohibited acts.--

25 (1) It is unlawful for any person to:

26 (g) Advertise or imply that skin care services or body
27 wrapping, as performed under this chapter, have any
28 relationship to the practice of massage therapy as defined in
29 s. 480.033(3), except those practices or activities defined in
30 s. 477.013.

31

1 Section 18. Paragraph (a) of subsection (1) of section
2 477.029, Florida Statutes, 1998 Supplement, is amended to
3 read:

4 477.029 Penalty.--

5 (1) It is unlawful for any person to:

6 (a) Hold himself or herself out as a cosmetologist,
7 specialist, hair wrapper, ~~or hair braider,~~ or body wrapper
8 unless duly licensed or registered, or otherwise authorized,
9 as provided in this chapter.

10 Section 19. This act shall take effect July 1, 1999.

11
12 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
13 COMMITTEE SUBSTITUTE FOR
14 SB 2448

15 Allows DBPR to prorate continuing education requirements for
16 new licensees. Specifies requirements for submitting
17 fingerprint cards by license applicants and directs DBPR to
forward those cards to the appropriate agencies for criminal
background checks.

18 Adds a requirement for the submittal of fingerprint cards by
19 applicants in the professions of athlete agents, real estate
brokers, salespersons, and schools, and real estate
20 appraisers.

21 Provides for the regulation of skin care services and body
wrapping under the profession of cosmetology.