

STORAGE NAME: h0981z.hcl
DATE: June 21, 1999

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE LICENSING & REGULATION
FINAL ANALYSIS**

BILL #: HB 981
RELATING TO: Dentistry
SPONSOR(S): Representative Morroni
COMPANION BILL(S): SB 1378(s) and HB 1467(c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) HEALTH CARE LICENSING & REGULATION YEAS 10 NAYS 0
(2)
(3)
(4)
(5)

I. FINAL ACTION STATUS:

HB 981 was approved by the Governor on May 14, 1999, and was codified as chapter 99-183, Laws of Florida. Similar provisions appear as section 126 in HB 2125 which was approved by the Governor on June 18, 1999, and was codified as chapter 99-397, Laws of Florida.

II. SUMMARY:

HB 981 requires dental appointees to the Board of Dentistry to have been actively engaged in the clinical practice of dentistry for at least 5 years immediately preceding the appointment, must be a dentist whose primary source of income is derived from direct patient care, and must remain primarily in clinical practice for the duration of the appointment. This requirement only applies to appointments made on or after July 1, 1999. Authorizes appointment of persons to the Board of Dentistry who are connected with a dental college or community college if no more than 5 percent of that person's income is derived from that relationship with such college.

Requires work orders of unlicensed persons and registered dental laboratories providing services to licensed dentists or other registered dental laboratories to be in a form prescribed by rule of the board rather than the Department of Health. Eliminates requirements that such forms be supplied by the department and assigned to individual dentists.

The advertising section is expanded to include advertising of specialties approved by the Board of Dentistry or the American Dental Association. Prohibits a dentist from disclosing that his or her practice is limited to a specialty unless the dentist has attained membership in or credentialed by an accrediting organization. Requires notice to consumers of specialty areas and organizations. Dentists who wish to advertise their accrediting organization and have met the prescribed criteria, may do so if the dentist incorporates in capital letters or some other manner clearly distinguishable from the rest of the announcement, solicitation, or advertisement a clarifying statement.

The Department of Health states that the bill has not fiscal impact on the state, local government or the private sector.

III. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Pursuant to section 466.004, F.S., the Board of Dentistry shall consist of 11 members appointed by the Governor and subject to confirmation by the Senate. Seven members of the board are to be licensed dentists actively engaged in the practice of dentistry in this state for at least 5 years preceding the date of the appointment; two members are to be licensed dental hygienists; and two members must be laypersons. There is no requirement that the dental members of the board had to have been practicing in the state for 5 years immediately preceding the appointment.

Under the general provisions of Part II, chapter 455, F.S., any person who is otherwise qualified to sit on a board who is connected with a medical college, *dental college*, or community college may be eligible for appointment to any board as long as that connection (relationship with the college) does not result in providing the *principal source of income* for that appointee. This section does not place a specific "percentage of income restriction" on the relationship with the college other than it can not be his or her principal source of income.

Work orders for use by unlicensed personnel to perform dental laboratory services are now required to be on a form approved by the department. This form must be supplied to the dentists by the department at a cost not to exceed that of printing and handling.

In 1994, s. 466.0282, F.S., prohibited Florida licensed dentists from advertising membership in, or specialty recognition by, an accrediting organization that is not recognized or accredited by the American Dental Association. In August, 1994, the Florida Board of Dentistry issued a final order on a petition filed for a declaratory statement as to the ability of American Academy of Implant Dentistry (AAID) members to advertise their status as fellows of the AAID. The board reported as a conclusion of law that the Florida Statutes and/or administrative rules then in effect permitted a dentist to advertise his or her "Fellow" status so long as the advertisement did not imply to the public that the advertising dentist had obtained specialty status.

Effective October 1, 1996, the Florida Legislature nullified the board's 1994 order (BOD 94-01DS) when it amended the law to prohibit dentists in Florida from advertising membership in, or specialty recognition by, organizations not recognized or accredited by the American Dental Association. In *Borgner and The American Academy of Implant Dentistry v. Cook and et al*, the past Executive Director of the Florida Board of Dentistry stated in his affidavit that:

"It is his opinion and belief that a substantial portion of the consumers of dental services in Florida believe that dentists who hold themselves out to the public as 'specialists,' as being 'board certified,' or as limiting their practice to a particular type of practice have in fact obtained specialty certification from the State of Florida or a specialty organization approved by the State of Florida."

The court stated that, "While the defendants support their assertions with little more than speculation and conjecture about the possibility of deception in hypothetical cases, they provide no specific evidence that suggests, much less demonstrates, that Borgner's advertisement will create the danger of deception they claim to fear." With that, the Senior United States District Judge ruled that "Section 466.0282 is DECLARED unconstitutional to the extent it prohibits Borgner from advertising his membership in AAID and his credentialed status in AAID and ABOI/ID, and the defendants are ENJOINED from enforcing section 466.0282 against Borgner...."

B. EFFECT OF PROPOSED CHANGES:

Requires members of the Board of Dentistry who are licensed dentists to be actively engaged in clinical practice for at least 5 years immediately preceding appointment to the board, to derive their primary source of income from direct patient care, and to remain primarily in clinical practice for the duration of said appointment. This requirement only applies to appointments made on or after July 1, 1999. Authorizes appointment of persons to the board who are connected with a dental college or community college if no more than 5 percent of that person's income is derived from that relationship with such college.

Requires work orders of unlicensed persons and registered dental laboratories providing services to licensed dentists or other registered dental laboratories to be in a form prescribed by rule of the board rather than the Department of Health. Eliminates requirements that such forms be supplied by the department and assigned to individual dentists.

Prohibits a dentist from disclosing that his or her practice is limited to a specialty unless the dentist has attained membership in or credentialed by an accrediting organization. Requires notice to consumers of specialty areas and organizations. Dentists who wish to advertise their accrediting organization and have met the prescribed criteria, may do so as long as the advertisement contains a certain clarifying statement.

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?

Specific authorization is not provided but is implied because of the need to promulgate rules to implement the provisions in the bill.

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

The Board of Dentistry and the American Dental Association have to determined if additional specialties should be recognized for advertisement purposes.

(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?

No.

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?

N/A

4. Individual Freedom:

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

N/A

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

N/A

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?

N/A

- 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:

Sections 466.004, 466.021, and 466.0282, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 466.004, F.S., to require members of the Board of Dentistry who are licensed dentists to be actively engaged in clinical practice for at least 5 years immediately preceding appointment to the board, to derive their primary source of income from direct patient care, and to remain primarily in clinical practice for the duration of said appointment. This requirement only applies to appointments made on or after July 1, 1999. Authorizes appointment of persons to the board who are connected with a dental college or community college if no more than 5 percent of that person's income is derived from that relationship with such college.

Section 2. Amends s. 466.021, F.S., to require work orders of unlicensed persons and registered dental laboratories providing services to licensed dentists or other registered dental laboratories to be in a form prescribed by rule of the board rather than the Department of Health. Eliminates requirements that such forms be supplied by the department and assigned to individual dentists.

Section 3. Amends s. 466.0282, F.S., to prohibit a dentist from disclosing that his or her practice is limited to a specialty unless the dentist has attained membership in or credentialed by an accrediting organization. Requires notice to consumers of specialty areas and organizations. Dentists who wish to advertise their accrediting organization and have met the prescribed criteria, may do so as long as the advertisement contains a certain clarifying statement.

Section 4. Provides an effective date of July 1, 1999.

IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

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:

None.

2. Direct Private Sector Benefits:

Consumers will be made aware of any specialization obtained by their dentist that is approved as bona fide by the Board of Dentistry or the American Dental Association.

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

Dentists that are not allowed to advertise a specialty because it is not approved by the Board of Dentistry or the American Dental Association will not be able to compete with other dentists who have membership in certain credentialing or accredited organizations.

D. FISCAL COMMENTS:

The Department of Health reports that this bill does not have a fiscal impact. The dental work order pads presently used are contracted to a private vendor for distribution to the dentists.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The 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:

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

VI. COMMENTS:

None.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VIII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

Staff Director:

Lucretia Shaw Collins

Lucretia Shaw Collins

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

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