

STORAGE NAME: h1625.hcl

DATE: March 1, 2000

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

BILL #: HB 1625 (PCB HCL 00-05)

RELATING TO: Unlicensed Practice of a Health Care Profession

SPONSOR(S): Committee on Health Care Licensing & Regulation and Representative Fasano

TIED BILL(S):

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

- (1) HEALTH CARE LICENSING & REGULATION YEAS 13 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill creates a new violation for the unlicensed practice of a health care profession and adds a statement of legislative intent that the protection of the public against unlicensed activity is a state priority. This bill sets minimum criminal penalties and allows administrative and civil fines to be imposed in addition to any criminal penalty. It upgrades the crime of practicing without a license from a third degree felony to a second degree felony if serious bodily injury occurred. It also increases the severity ranking of these crimes from level 1 to level 7 to ensure incarceration is imposed.

Additionally, this bill requires all advertisements for surgical procedures to include a statement regarding unintended risks and the need to consult a licensed physician before submitting to any surgery. It also moves existing provisions of law into one unlicensed activity section.

The exact fiscal impact of this bill is unknown. The Department of Health does not anticipate needing any additional resources to implement this bill. However, there may be an impact on the Department of Corrections. The Criminal Justice Estimating Conference has not yet determined the prison bed impact of this bill. The annual cost to incarcerate a person in the state correctional system is estimated to be \$18,500. It is unknown how many persons may be prosecuted for the unlicensed practice of a health care profession.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

This bill will encourage local law enforcement and prosecutors to enforce the prohibition against the unlicensed and potentially deadly practice of a health care profession by a person not properly educated and trained to provide such health care service. Please see the "present situation" and "effect of proposed changes" sections.

B. PRESENT SITUATION:

Florida law requires persons wishing to provide health care services to patients in Florida to prove that they have the requisite education, training, and knowledge to practice that profession. Florida law provides avenues for licensure by examination or by endorsement if the health care practitioner has already been licensed in another jurisdiction. The purpose of licensure and regulation is to protect the public health, safety, and welfare from unsafe and incompetent practitioners.

The Florida Legislature has recognized in passing laws setting forth practice parameters that the practice of medicine and other health care professions is potentially dangerous. The primary legislative purpose in enacting the medical and health care practice acts is to ensure that every health care practitioner who wishes to practice in Florida meets minimum requirements for safe practice.

The Legislature has set forth certain acts which constitute criminal violations. Among the prohibited acts is practicing medicine without a license, a felony of the third degree. If a person is found guilty of practicing medicine in Florida without a license, criminal penalties may be imposed, including incarceration. However, these cases are rarely prosecuted because the crimes are listed on the Offense Severity Ranking Chart in s. 921.0022(3), F.S., as level 1 crimes. Level 1 crimes are considered to be the least serious and if prosecuted at all, almost never result in a prison sentence. Other crimes listed in level 1 include molesting a crab trap, poaching an alligator, and tampering with an odometer.

During the past year, the Department of Health and the Office of the Attorney General have worked together to form the Office of Unlicensed Activity in Ft. Lauderdale. This special investigative unit consisting of 2 investigators, 1 attorney, and 1 support staff was created to focus attention on the ever-growing problem of unlicensed activity. This unit was set up as a pilot project to focus on the 4 South Florida counties in which most of the unlicensed activity in this state occurs. This unit investigates complaints of unlicensed activity and then presents the case to local law enforcement and the appropriate prosecutor in order to

facilitate the criminal investigation and prosecution. This pilot project has been successful in getting more unlicensed persons arrested than in past years due to its narrow focus.

Recent newspaper articles have further focused attention on the rise in unlicensed activity and the great potential for harm to patients from unqualified practitioners practicing in unsanitary locations.

C. EFFECT OF PROPOSED CHANGES:

The bill focuses attention on the ever-increasing problem of unlicensed activity and gives new tools to prosecutors to enforce the law for the protection of the public. It emphasizes that vigorous enforcement of licensure regulation for all health care professions is a state priority and creates a new violation for the unlicensed practice of a health care profession.

Specifically, this bill sets minimum criminal penalties of a \$1,000 criminal fine and a minimum mandatory period of incarceration of 1 year for practicing without a license. It allows the state to impose administrative and civil fines to help stop the occurrence of unlicensed activity. It also clarifies that it is a violation to practice with an inactive or delinquent license. It further states that the Florida Legislature believes that persons convicted of practicing without a license who are not citizens of this country should be deported following incarceration to guarantee that they cannot continue to endanger Floridians.

If the unlicensed practice of a health care profession results in serious bodily injury, this bill upgrades that crime to a second degree felony. It defines "serious bodily injury" as death, brain or spinal damage, disfigurement, fracture or dislocation of bones or joints, any limitation of neurological, physical, or sensory function, or any other condition which was serious enough to require subsequent surgical repair.

This bill proactively protects patients from harm by prohibiting an unlicensed person from holding himself or herself out as able to practice a regulated profession unless that person holds a valid, active license to do so. This provision allows the state to protect the public before actual physical injury occurs.

Moreover, this bill will also educate potential patients on the inherent dangers of surgical procedures. It requires all advertisements for surgical procedures to include a specific warning about the possibility of unintended serious bodily harm and death. This statement prompts consumers to consult a licensed physician prior to submitting to surgery.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 455.637, F.S., to emphasize that vigorous enforcement of licensure regulation for all health care professions is a state priority in order to protect Florida residents and visitors from the potentially serious and dangerous consequences of receiving medical and health care services from unlicensed persons whose professional education and training and other relevant qualifications have not been approved through the issuance of a license. Provides administrative, civil, and criminal penalties for practicing without a license. Establishes minimum and maximum penalties. Reenacts authority for the Department of Health to collect a special fee of \$5 per licensee to fund efforts to combat unlicensed activity.

Section 2. Clarifies that the amendments to s. 455.637, F.S., only apply to offenses committed on or after the effective date.

Section 3. Repeals s. 455.641, F.S., relating to unlicensed activities. The provisions of this section are relocated within s. 455.637, F.S., as set forth above.

Section 4. Reenacts ss. 455.574, 468.1295, 484.014, and 484.056, F.S., with cross-references to s. 455.637, F.S.

Section 5. Creates s. 455.665, F.S., which requires specific warning about the dangers of surgical procedures and advises potential patients to consult a licensed physician about risks prior to submitting to surgery.

Section 6. Amends s. 921.0022, F.S., to delete the crimes of unlicensed practice of medicine and unlicensed practice of dentistry or dental hygiene from level 1 and insert them in level 7 of the Offense Severity Ranking Chart along with the crimes created by this bill and other existing crimes of unlicensed practice of individual health care professions.

Section 7. Provides an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments section.

2. Expenditures:

See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

There may be an increase in cost to local law enforcement to investigate and prosecute the criminal violations.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The only persons affected by this bill are persons who violate the law and practice a health care profession without a license. Those persons, if caught, may be subject to paying civil, administrative, and criminal fines as well as lose income that they might otherwise receive from patients for whom they are providing unsafe, unsanitary, and unregulated health care services.

D. FISCAL COMMENTS:

It is unknown how much Floridians currently pay to these unlicensed persons. Also, since much of the unlicensed activity goes undiscovered, the costs paid by patients to licensed and trained health care practitioners to correct damage done by unlicensed persons is unknown. This bill does not change existing law regarding the earmarking of \$5 from each licensed health care practitioner to cover the expense of investigating unlicensed activity. It does, however, allow the state to collect administrative, civil, and criminal fines from persons found to have practiced a health care profession without a license. There may be an increase in cost to the prosecuting attorney's office and to local law enforcement to investigate and prosecute criminal violations.

The Criminal Justice Estimating Conference has not yet determined the prison bed impact of this bill. The annual cost to incarcerate a person in the state correctional system is estimated to be \$18,500. It is unknown how many persons may be prosecuted for the unlicensed practice of a health care profession.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

Pursuant to Article VII, section 18, Florida Constitution, criminal laws are exempt from the requirements of section 18.

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 state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The Department of Health and the applicable boards within the department are granted rulemaking authority to implement this bill.

C. OTHER COMMENTS:

None.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

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