

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1718

SPONSOR: Senator Campbell

SUBJECT: Unlicensed medical practice

DATE: March 22, 2000

REVISED: 03/28/00 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gomez</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/2 amendments</u>
2.	_____	_____	<u>HC</u>	_____
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill makes two substantive changes to the existing unlicensed practice of medicine offense. First, the bill creates a minimum mandatory sentence of 1 year imprisonment and a fine of \$10,000 for a person who practices medicine in this state without a Florida license. Second, the bill creates a new criminal offense as follows:

A person who practices or attempts to practice medicine in this state without a license to practice medicine in Florida *and thereby causes harm or injury to a patient* commits a felony of the second degree....

This bill also makes one clarifying change: it adds the phrase “in this state” to the unlicensed practice provision to make clear that this provision applies to any violation occurring “in this state.”

This bill’s effective date is July 1, 2000.

This bill substantially amends the following section of the Florida Statutes: 458.327.

II. Present Situation:

Chapter 458, F.S., contains provisions which regulate the practice of medicine. The legislative intent is stated in s. 458.301, F.S.:

The primary legislative purpose in enacting this chapter is to ensure that every physician practicing in this state meets minimum requirements for safe practice. It is the legislative intent that physicians who fall below minimum competency or who otherwise present a danger to the public shall be prohibited from practicing in this state.

Criminal Penalties. Section 458.327, F.S., contains criminal penalty provisions, as follows:

(1) Each of the following acts constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.:

- (a) The practice of medicine or an attempt to practice medicine without a license to practice in Florida.
- (b) The use or attempted use of a license which is suspended or revoked to practice medicine.
- (c) Attempting to obtain or obtaining a license to practice medicine by knowing misrepresentation.
- (d) Attempting to obtain or obtaining a position as a medical practitioner or medical resident in a clinic or hospital through knowing misrepresentation of education, training, or experience.

The “practice of medicine” is defined as “the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition.” s. 458.305, F.S.

By way of comparison, other health professions have similar provisions making the unlicensed practice of their professions a third degree felony. ss. 459.013, F.S., (osteopathic medicine); 460.411, F.S., (chiropractic medicine); 461.012, F.S., (podiatric medicine); 462.17, F.S., (naturopathy); 463.015, F.S., (optometry); 464.016, F.S., (nursing); 465.015, F.S., (pharmacy); 466.026, F.S., (dentistry and dental hygiene); 467.201, F.S., (midwifery).

Offense level ranking. All felony offenders whose offenses were committed on or after October 1, 1998 are sentenced under the Criminal Punishment Code. The Code allows the trial judge to sentence any felony offender to the statutory maximum for the offense degree. As stated above, the unlicensed practice of medicine is a third degree felony. A third degree felony carries a maximum prison sentence of 5 years and a maximum fine of \$5,000. ss. 775.082, 775.083, F.S.

The Criminal Punishment Code provides for a “lowest permissible sentence” below which the judge may not sentence an offender without providing written reasons. s. 921.00265, F.S. The minimum sentence is calculated by computing various factors like victim injury and prior record. s. 921.0024, F.S. The Code’s offense severity ranking chart ranks most felony offenses from levels 1 to 10, and is the primary factor which goes into the minimum sentence calculation. A level 10 offense scores highest; level 1 and level “M” score lowest. s. 921.0022, F.S.

The offense of unlicensed practice of medicine is ranked as a level 1 offense. s. 921.0022(3)(a), F.S. This means that a first time offender who committed no additional offense and did not injure his or her victim, scores a “lowest permissible sentence” of any nonstate prison sanction, *i.e.*, probation, community control, or a county jail sentence of less than 1 year.¹

¹The other unlicensed practice offenses are similarly ranked as a level 1 offense. Like the unlicensed practice of medicine offense, the unlicensed practice of dentistry or dental hygiene is specifically listed as a level 1 offense in the offense severity ranking chart. The other health profession offenses, although not specifically listed, are ranked as a level 1 offense by virtue of the default provision in s. 921.0023, F.S.

Minimum mandatory sentencing. There are no offenses in the chapters regulating the health professions which require a minimum mandatory sentence. In several other instances, Florida law requires a minimum mandatory term of imprisonment. Some examples include: trafficking in cannabis or cocaine (3, 7 or 15 years minimum term of imprisonment, s. 893.135, F.S.); possession or discharge of a firearm during the commission of certain serious offenses (10, 20, 25 to life minimum term of imprisonment, s. 775.087, F.S.); and, aggravated assault or aggravated battery on a law enforcement officer (3 and 5 years minimum term of imprisonment, s. 784.07, F.S.).

III. Effect of Proposed Changes:

This bill makes two substantive changes to the existing unlicensed practice of medicine offense. First, the bill creates a minimum mandatory sentence of 1 year imprisonment and a fine of \$10,000 for a person who practices medicine in this state without a Florida license. This minimum mandatory sentence applies only to persons without a Florida license and not to those who use or attempt to use a medical license which is suspended or revoked.

Second, the bill creates a new criminal offense as follows:

A person who practices or attempts to practice medicine in this state without a license to practice medicine in Florida *and thereby causes harm or injury to a patient* commits a felony of the second degree....

(e.s.). The quantum of harm or injury necessary to satisfy the element of this new offense is not specified. Presumably, any level of harm or injury which deviates from the standard of care or constitutes medical negligence is sufficient.

This new offense does not specifically address harm or injury caused by a person with a suspended or revoked license, so it is likely to be construed to apply only to those person without a license to practice in Florida.

The bill also makes one clarifying change: it adds the phrase “in this state” to the unlicensed practice provision to make clear that this provision applies to any violation occurring “in this state.”

This bill’s effective date is July 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Those persons who practice medicine without a license in this state will be subject to the bill's minimum penalties provisions calling for a minimum 1 year jail sentence and a fine of \$10,000.

C. Government Sector Impact:

This bill creates new second degree felony offenses and provides a minimum mandatory sentence of 1 year imprisonment for an existing third degree felony offense. Consequently, the bill could have an impact on the courts, county jails and state prison system. The Criminal Justice Estimating Conference is statutorily charged with reviewing the potential impact of newly created crimes on the state prison system. As of this writing, the Conference has not reviewed this bill's prison bed impact. Staff anticipates that the Conference will conclude that this bill's impact will be insignificant.

The Department of Corrections analysis of this bill states: "[t]he bill has no operational or fiscal impact upon the department, as the expected offender population would be extremely minimal."

VI. Technical Deficiencies:

On page 2, lines 1-5: It is not clear how the harm or injury element of the new second degree felony offense relates to the elements of unlicensed practice. The bill provides that a person commits the offense when he or she practices without a license "and thereby causes harm or injury to a patient." The use of the phrase "and thereby causes" may be read to require proof that the unlicensed practice was a contributing cause of the harm or injury to the patient. However, the intent of the bill may be to subject unlicensed practitioners to the offense when they have caused harm or injured a patient, without a showing that their unlicensed status contributed to their medical negligence. This can be clarified by rewording the phrase "and thereby causes."

On page 2, lines 1-5: The new second degree felony offense does not require a minimum mandatory sentence, unlike the bill's provisions on the existing third degree felony offense requiring a 1 year imprisonment and a \$10,000 fee. This will likely result in tougher sentencing for the less serious third degree felony offense, an unintended consequence. This can be corrected by either providing a similar minimum mandatory for the second degree felony offense or ranking the second degree felony offense at a high level.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Criminal Justice:

Addresses technical deficiencies by clarifying the injury element of the new second degree felony offense and requiring minimum mandatory sentence.

#2 by Criminal Justice:

Amends s. 459.013, F.S., to provide analogous penalties for the unlawful practice of osteopathic medicine. (WITH TITLE AMENDMENT)

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
