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DATE: March 13, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: CS/HB 437
RELATING TO: Pharmacists/Licensure by Endorsement
SPONSOR(S): Committee on Health Regulation, Representative Farkas and others
TIED BILL(S): None

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

- (1) HEALTH REGULATION YEAS 10 NAYS 0
- (2) STATE ADMINISTRATION
- (3) COUNCIL FOR HEALTHY COMMUNITIES
- (4)
- (5)

I. SUMMARY:

The Florida Pharmacy Act does not provide for licensure by endorsement. Licensure by endorsement is a licensing procedure that allows a practitioner licensed by another state, which has licensing requirements substantially equivalent to, or more stringent than, the requirements in the state in which the practitioner is seeking licensure, to obtain a license in that state.

CS/HB 437 authorizes licensure by endorsement. Licensure by endorsement allows a pharmacist who is licensed in another jurisdiction or who has met certain other requirements to practice pharmacy in Florida without having to take the national licensure examination at the time of application. Currently, Florida and California are the only states that do not provide for licensure by endorsement.

The applicant for licensure by endorsement must submit: proof of the active licensed practice of pharmacy in two of the immediately preceding five years; evidence of successful completion of either board-approved postgraduate training or a board-approved clinical competency examination within the prior year; or, must complete an internship within 2 years of application. Also, the applicant must obtain a passing score on the pharmacy jurisprudence portions of the licensure examination.

CS/HB 437 defines the active licensed practice of pharmacy. CS/HB 437 prohibits the Department of Health from issuing a license in Florida to any applicant being investigated in "other jurisdictions."

The bill provides that once the investigation is complete, the provisions of s. 465.016, F.S., apply. Section 465.016, F.S., provides for "disciplinary actions" against an applicant or licensee. The language in this section of the bill does not seem to anticipate a situation where the applicant's investigation would be complete and the applicant cleared of any wrongdoing, making even the innocent applicant go through the disciplinary procedures.

Additionally, the committee substitute requires legislative review during the 2006 Regular Session of the Legislature. The committee substitute takes effect upon becoming a law and has a fiscal impact on the state, which appears to be funded by application fees. The Department of Health reported the need for one additional FTE. There does not appear to be a fiscal impact on local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|-----------------------------------------|-----------------------------|-----------------------------------------|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input 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 type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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:

B. PRESENT SITUATION:

Chapter 465, F.S., regulates the practice of pharmacy by the Board of Pharmacy within the Department of Health. The Board of Pharmacy is currently composed of nine members: two of the members are consumers and the remaining seven members are pharmacists. s. 465.004, F.S.

Section 465.007, F.S., provides requirements for licensure by examination for persons who wish to practice pharmacy. Applicants must complete the application form and submit to the Department of Health an examination fee no greater than \$100, plus the actual cost to the department for purchase of portions of the examination from the National Association of Boards of Pharmacy or a similar national organization.

Pursuant to s. 465.007(1)(b) and (c), F.S., the Department of Health will examine any applicant wishing to practice pharmacy who the Board of Pharmacy certifies:

- Is 18 years of age or older;
- Has received a degree from a school or college of pharmacy accredited by an accrediting agency recognized and approved by the United States Office of Education or has graduated from a 4-year undergraduate pharmacy program of a school or college of pharmacy located outside the United States, and has also demonstrated proficiency in English by passing both the Test of English as a Foreign Language and the Test of Spoken English; and
- Has completed an internship program approved by the board.

In addition, the Board of Pharmacy must certify that a graduate of a foreign school or college of pharmacy has also completed a minimum of 500 hours of supervised work in Florida under a licensed pharmacist and has passed the board approved Foreign Pharmacy Graduate Equivalency Examination.

Any person who wishes to practice pharmacy in Florida must submit to all the requirements for licensure by examination, and to the requirements of s. 465.016, F.S., which specifies the grounds for which a pharmacist may be disciplined or an applicant for pharmacy licensure may be refused a license. The Florida Pharmacy Act contained in Chapter 465, F.S., does not provide for licensure by endorsement. Licensure by endorsement is a licensing procedure that allows a practitioner

licensed by another state, which has licensing requirements substantially equivalent to, or more stringent than, the requirements in the state in which the practitioner is seeking licensure, to obtain a license in that state. Jurisdictions that provide licensure by endorsement procedures for pharmacists may participate in the National Association of Boards of Pharmacy's electronic licensure transfer program, which enables pharmacists to transfer their existing pharmacy license from one jurisdiction to another. The National Association of Boards of Pharmacy licensure program serves as a clearinghouse that screens pharmacists for disciplinary actions and verifies background information.

Florida and California are the only two states that do not transfer licensure or issue a license by endorsement.¹ California still administers an examination that is unique to that state. Under Florida law, any pharmacist who is currently licensed in another jurisdiction must retake the national examination before being licensed in Florida. In 1986, the Florida Board of Pharmacy began using the National Association of Boards of Pharmacy examination (NABPLEX) for pharmacy licensure, which is the same examination utilized by all other states, except California.²

Most major medical professions that require the same examination as other states, recognize the scores of that national examination for licensure in Florida.³ For example, medical professions such as medical physicians, osteopathic physicians, podiatric physicians, and nurses provide for full Florida licensure by endorsement.

Florida Retail Federation, Eckerd Drugs, and Walgreen Drugs indicate that there is a shortage of pharmacists in Florida, which has reduced their ability to expand. Employment can be offered to more pharmacists than are available in the state; however, they are unable to go outside of the state to recruit because Florida law does not currently permit licensure by endorsement for applicants from other states, or even allow license examination scores to be transferred.

Section 465.016(1), F.S., provides the grounds for "disciplinary actions" against an applicant or licensee. Such grounds include fraud, incompetence, and criminal violations relating to the practice of pharmacy.

Subsection (2) of s. 465.016, F.S., provides that when the Board of Pharmacy finds any person guilty of any of the grounds set forth in subsection (1), it may enter an order imposing one or more of the following penalties: refusal to certify to the department an application for licensure; revocation or suspension of a license; imposition of an administrative fine not to exceed \$5,000 for each count or separate offense; issuance of a reprimand; and, the placement of the pharmacist on probation for a period of time and subject to certain conditions.

Subsection (3) of s. 465.016, F.S., provides that the Board of Pharmacy must not reinstate the license of a pharmacist, or cause a license to be issued to a person it has deemed unqualified, until such time she or he complies with all the terms and conditions set forth in the final order and that such person is capable of safely engaging in the practice of pharmacy.

Subsection (4) of s. 465.016, F.S., provides that the Board of Pharmacy must by rule establish guidelines for the disposition of disciplinary cases involving specific types of violations. Such guidelines may include minimum and maximum fines, periods of supervision or probation, or conditions of probation or re-issuance of a license.

¹ HB 437 Bill Analysis, Economic Statement and Fiscal Note, Department of Health (February 27, 2001).

² *Id.*

³ See Chapters 458 (Medical Practice), 459 (Osteopathic Medicine), 464 (Nursing), 467 (Midwifery), 468 (Various License Professions), 470 (Funeral Directors and Embalmers), 471 (Engineers), and 473, F.S., (Certified Public Accountants), which allow licensure by endorsement.

C. EFFECT OF PROPOSED CHANGES:

CS/HB 437 creates s. 465.0075, F.S., to provide for licensure by endorsement for a pharmacist who is licensed in another jurisdiction, which includes federal, other states or other countries where the applicant can take the National Association of Boards of Pharmacy examination (NABPLEX). It provides that applicants must have passed the NABPLEX, or a similar national examination, not more than 12 years prior to the date of the application.

Under s. 465.0075, F.S., the Department of Health must issue a license to practice pharmacy by endorsement to any applicant who has submitted a non-refundable application fee no greater than \$100, and whom the Board of Pharmacy certifies has met the following requirements specified in s. 465.007(1)(b) and (c), F.S.:

- Is 18 years of age or older;
- Has received a degree from a school or college of pharmacy accredited by an accrediting agency recognized and approved by the United States Office of Education or has graduated from a 4-year undergraduate pharmacy program of a school or college of pharmacy located outside the United States, and has demonstrated proficiency in English by passing both the Test of English as a Foreign Language and the Test of Spoken English; and
- Has completed an internship program approved by the board.

In addition, a graduate of a foreign school or college of pharmacy must have completed a minimum of 500 hours of supervised work in Florida under a licensed pharmacist and have passed the board-approved Foreign Pharmacy Graduate Equivalency Examination.

The applicant for licensure by endorsement must submit proof of the active licensed practice of pharmacy in two of the immediately preceding five years, evidence of successful completion of either board-approved postgraduate training or a board-approved clinical competency examination within the year preceding application, or must complete an internship within the 2 years immediately preceding application. Also, the applicant must obtain a passing score on the pharmacy jurisprudence portions of the licensure examination, as required by board rule.

CS/HB 437 defines the active licensed practice of pharmacy as the practice of pharmacy by pharmacists, including those employed by any governmental entity, in community or public health, within two of the five years immediately preceding application. CS/HB 437 requires applicants licensed in another state for a period in excess of two years to submit evidence of completion of certain continuing education requirements.

CS/HB 437 prohibits the Department of Health from issuing a license to any applicant who is being investigated for acts that would violate regulations applicable to Florida licensed pharmacists until the investigation is complete, when the provisions of s. 465.016, F.S., deals strictly with disciplinary actions. The language in this section of the bill does not seem to anticipate a situation where the applicant's investigation would be complete and the applicant cleared of any wrongdoing, making even the innocent applicant go through the disciplinary procedures. This language can also be found in s. 464.009(3), F.S.,⁴ which provides for licensure by endorsement for nurses, however, it is equally unclear as to the effect on the "innocent" applicant.

⁴ The department shall not issue a license by endorsement to any applicant who is under investigation in another state for an act which would constitute a violation of this part until such time as the investigation is complete, at which time the provisions of s. 464.018, F.S. (disciplinary actions for nurses) shall apply. s. 464.009(3), F.S.

The Department is also prohibited from issuing a license to any pharmacist whose license has been suspended or revoked in another state, or to any applicant whose license to practice pharmacy is currently the subject of any disciplinary proceeding in another state.

Additionally, CS/HB 437 requires legislative review during the 2006 Regular Session of the Legislature. This committee substitute takes effect upon becoming a law.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	2001-02	2002-03
Department of Health		
400 applications annually @ \$100	\$40,000	\$40,000
(Net of 7% G.R. Service Charge)	(\$2,800)	(\$2,800)
Medical Quality Assurance Trust Fund	\$37,472	\$40,342

HB 437 Bill Analysis, Department of Health, at 3.

2. Expenditures:

	2001-02	2002-03
Department of Health		
<i>One-time expenses:</i>		
Medical Quality Assurance Trust Fund	\$ 5,761	\$0
<i>Recurring expenses:</i>		
Medical Quality Assurance Trust Fund	\$25,895	\$34,526
Expenses	\$5,816	\$5,816
<i>Total Expenses:</i>		
Medical Quality Assurance Trust Fund	\$37,472	\$40,342
(1 FTE)		

Id.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Direct Private Sector Costs -- Endorsement applicants will be subject to a non-refundable application fee of no greater than \$100. The Department of Health estimates that it will process 400 applications @ \$100 each for both FY 2000-2001 and FY 2001-2002.

Direct Private Sector Benefits -- Pharmacists licensed in another state benefit from the bill's endorsement provisions and may practice in Florida without having to sit for the national licensure examination at the time of application in Florida. Entities employing pharmacists in Florida may benefit from a larger pool of potential employees.

Florida licensed pharmacists may also be able to transfer their licenses to other states, except California, without taking an examination.

Effects on Competition, Private Enterprise and Employment Markets -- The availability of additional pharmacists could benefit a number of the pharmacies located in Florida. Florida Retail Federation has indicated that employment can be offered to more pharmacists than are available in the state. Currently, they are unable to go outside of the state to recruit because Florida law does not permit endorsement with other states or allow license examination scores to be transferred.

D. **FISCAL COMMENTS:**

According to the Department of Health, CS/HB 437 establishes a new workload for the Board of Pharmacy requiring review of endorsement applications, verifying licensure in other states, conducting background and disciplinary checks, completing applications through correspondence with applicants, and certifying eligibility for licensure. The revenues generated will compensate the salary required.

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

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This committee substitute does not require counties or municipalities to expend funds or take action requiring the expenditure of funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This legislation does not provide specific rule-making authority; however, s. 465.005, F.S., provides the Board of Pharmacy authority to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the provisions of the chapter.

C. OTHER COMMENTS:

The issue of authorizing pharmacy licensure by endorsement was recommended during the 1986 Sunset Review. In response to the 1986 Sunset Review recommendation that Chapter 465, F.S., be changed to allow for licensure by endorsement, the Florida Pharmacy Association took a position opposing the recommendation. The membership discussed the issue again in 1998, and the position was to reaffirm the 1986 position, and at the same time, included a lack of support for the issue of reciprocity of pharmacists as well.

While it was the opinion of the Department of Health (prior to the 1999 Session) that an amendment could be drafted that would provide for licensure by endorsement, while at the same time providing appropriate protection for the public health, safety, and welfare, the Board of Pharmacy reviewed three draft proposals, and voted to remain neutral on the issue.

At its December 5, 1999 meeting, the Board of Pharmacy voted to support changing the law to provide for licensure by endorsement if the applicant has passed the NABPLEX examination within 15 years prior to application, and meets certain other conditions.

During the 1998 interim, committee staff conducted a review of a number of pharmacy issues of interest to the various concerned groups. One issue was identified by all but one of the responding groups—Florida's lack of reciprocity/endorsement with other states.

According to a majority of respondents, there is no justifiable reason why pharmacists in other states, who have taken the same NABPLEX examination as their counterparts in Florida, should be denied the ability to transfer those scores into this state for licensure. Also, if Florida had a policy of recognition of the grades from the national examination taken in other states, such a policy would improve the opportunities for Florida-educated pharmacists seeking professional opportunities in other states. While the goal would be to provide employment within the state for Florida-educated pharmacists, it should not be a state policy to make it difficult for such graduates to obtain jobs in other states.

In 1998, the only respondent opposing licensure by endorsement was the Florida Pharmacy Association (F.P.A.). In addition, the association submitted a letter from the Dean of the College of Pharmacy and Pharmaceutical Sciences, Florida A&M University, in opposition to licensure by endorsement. The Dean of the College of Pharmacy at the University of Florida strongly supported licensure by endorsement.

Subsequently, the Dean of the College of Pharmacy at the University of Florida submitted testimony and a letter to the Committee on Governmental Rules & Regulations during the 2000 session strongly supporting licensure by endorsement.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute differs from the original bill in that the original bill specified a period of 15 years, instead of 12 years, from the time of successful completion of the exam to the time of application for licensure by endorsement. This change was the result of a compromise between the pharmacy industry and the Florida Pharmacy Association.

VII. SIGNATURES:

COMMITTEE ON HEALTH REGULATION:

Prepared by:

Staff Director:

Wendy Smith Hansen, Senior Attorney

Lucretia Shaw Collins

AS REVISED BY THE COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Staff Director:

Jennifer D. Krell, J.D.

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