

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 2298

SPONSOR: Senator Wise

SUBJECT: Health Care Practitioner Students Loans and Service Scholarship Obligations

DATE: March 2, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HC	Favorable
2.	_____	_____	AHS	_____
3.	_____	_____	AP	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill requires the Department of Health, upon receipt of information that any Florida-licensed health care practitioner has defaulted on a student loan issued or guaranteed by the state or the federal government, to notify the licensed health care practitioner by certified mail that he or she is subject to immediate suspension of license unless, within 45 days after the date of mailing, the licensee provides proof that new payment terms have been agreed upon by all parties to the loan. The Department of Health must issue an emergency order suspending the license of any licensed health care practitioner who, after 45 days following the date of mailing from the department, has failed to provide such proof.

The bill revises a ground for discipline for failure to perform any statutory or legal obligation placed upon a licensed health care practitioner to provide that failing to repay a student loan issued or guaranteed by the state or the federal government in accordance with the terms of the loan or failing to comply with service scholarship obligations shall be considered a failure to perform a statutory or legal obligation, and the minimum disciplinary action imposed must be a suspension of the license until new payment terms are agreed upon or the scholarship obligation is resumed, followed by probation for the duration of the student loan or remaining scholarship obligation period, and a fine equal to ten percent of the defaulted loan amount.

The Department of Health must obtain from the United States Department of Health and Human Services information necessary to investigate and prosecute health care practitioners for failing to repay a student loan or comply with scholarship service obligations. The Department of Health must include statistics in its annual report to the Legislature regarding the number of practitioners in default, along with the results of its investigations and prosecutions, and the amount of fines collected from licensed practitioners for violating the provision of failing to perform a statutory or legal obligation.

This bill amends ss. 456.074 and 456.072, Florida Statutes.

This bill creates one undesignated section of law.

This bill reenacts ss. 456.026 and 456.073, Florida Statutes.

II. Present Situation:

Federal Student Loans

The United States Department of Health and Human Services (DHHS) reports that Florida has 556 health care providers who are in default of their student loans or service scholarship obligations, which totals \$45.6 million.¹ Practitioners with extended periods of default are not able to participate in the Medicare and Medicaid programs and are, therefore, unable to practice with persons covered by these programs. According to sources at DHHS, some amounts that are assessed are triple damages due to failure of the recipient of student loans or service scholarships to fulfill a service obligation.

According to a press release by DHHS, the loans for the Health Education Assistance Loans (HEAL) program, guaranteed by the federal government, are made by private banks, pension funds, credit unions, and other private and state lending institutions to health professional students. Federal loan guaranty means the federal government pays the lender if the student defaults. Federal payments for loans in default are made from the Student Loan Insurance Fund, which is supported by an insurance premium paid by the borrower and by congressional appropriation when the premiums are insufficient to cover default costs.²

State Student Loans

Part IV of ch. 240, F.S., provides for educational scholarships and financial aid. Among the loan and scholarship programs provided in ch. 240, F.S., are the Medical Education Reimbursement and Loan Repayment Program (s. 240.4067, F.S.), the Nursing Student Loan Forgiveness Program (s. 240.4075, F.S.), the Nursing Scholarship Program (s. 240.4076, F.S.), and the Florida Minority Medical Education Program (s. 240.4987, F.S.). Each of these programs specifies penalties for defaulting on loan repayment or service obligations. Section 240.465, F.S., requires the Department of Education to exert every lawful and reasonable effort to collect all delinquent unpaid and uncanceled scholarship loan notes, student loan notes, and defaulted guaranteed loan notes.

Section 381.0302, F.S., establishes the Florida Health Services Corps., which is authorized to award scholarships to students studying medicine, osteopathic medicine, chiropractic medicine, podiatric, nursing, or dentistry. A student who receives a scholarship is required to accept an

¹ The Health Resources and Services Administration (HRSA) has published this list of Health Education Assistance Loan (HEAL) borrowers who are in default, as required by section 709(c)(1) of the Public Health Service Act (the Act). Any borrower who: (1) Has had one or more default claims paid by the Department of Health and Human Services (DHHS); (2) was excluded from the Medicare program as a result of his or her HEAL default; and (3) has not had the Medicare exclusion "stayed", or lifted, by the Office of Inspector General as a result of entering a repayment agreement, is included in this notice.

² More information and a list of extended loan defaulters may be viewed at www.defaultedddocs.dhhs.gov.

assignment in a public health care program or work in a specific community located in a medically underserved area upon completion of primary care training. The program is also authorized to provide loan repayment assistance. Penalties are specified for noncompliance with participation requirements. The Florida Health Service Corps. is currently not funded. As of January 1, 2001, there was only one Florida Health Service Corps. health professional serving his scholarship obligations.

General Regulatory Provisions

Chapter 456, F.S., provides the general regulatory provisions for health care professions within the Division of Medical Quality Assurance in the Department of Health. Section 456.001, F.S., defines "health care practitioner" to mean any person licensed under ch. 457, F.S., (acupuncture); ch. 458, F.S., (medicine); ch. 459, F.S., (osteopathic medicine); ch. 460, F.S., (chiropractic medicine); ch. 461, F.S., (podiatric medicine); ch. 462, F.S., (naturopathic medicine); ch. 463, F.S., (optometry); ch. 464, F.S., (nursing); ch. 465, F.S., (pharmacy); ch. 466, F.S., (dentistry and dental hygiene); ch. 467, F.S., (midwifery); part I, II, III, IV, V, X, XIII, or XIV of ch. 468, F.S., (speech-language pathology, nursing home administration, occupational therapy, respiratory therapy, dietetics and nutrition practice, athletic trainers, and orthotics, prosthetics, and pedorthics); ch. 478, F.S., (electrology or electrolysis); ch. 480, F.S., (massage therapy); part III or IV of ch. 483, F.S., (clinical laboratory personnel or medical physics); ch. 484, F.S., (opticianry and hearing aid specialists); ch. 486, F.S., (physical therapy); ch. 490, F.S., (psychology); and ch. 491, F.S., (psychotherapy).

Disciplinary Procedures

Section 456.073, F.S., sets forth procedures the Department of Health must follow in order to conduct disciplinary proceedings against practitioners under its jurisdiction. The department, for the boards under its jurisdiction, must investigate all written complaints filed with it that are legally sufficient. Complaints are legally sufficient if they contain facts, which, if true, show that a licensee has violated any applicable regulations governing the licensee's profession or occupation. Even if the original complainant withdraws or otherwise indicates a desire that the complaint not be investigated or prosecuted to its completion, the department at its discretion may continue its investigation of the complaint. The department may investigate anonymous, written complaints or complaints filed by confidential informants if the complaints are legally sufficient and the department has reason to believe after a preliminary inquiry that the alleged violations are true. If the department has reasonable cause to believe that a licensee has violated any applicable regulations governing the licensee's profession, it may initiate an investigation on its own.

When investigations of licensees within the department's jurisdiction are determined to be complete and legally sufficient, the department is required to prepare, and submit to a probable cause panel of the appropriate board, if there is a board, an investigative report along with a recommendation of the department regarding the existence of probable cause. A board has discretion over whether to delegate the responsibility of determining probable cause to the department or to retain the responsibility to do so by appointing a probable cause panel for the board. The determination as to whether probable cause exists must be made by majority vote of a

probable cause panel of the appropriate board, or by the department if there is no board or if the board has delegated the probable cause determination to the department.

The subject of the complaint must be notified regarding the department's investigation of alleged violations that may subject the licensee to disciplinary action. When the department investigates a complaint, it must provide the subject of the complaint or her or his attorney a copy of the complaint or document that resulted in the initiation of the investigation. Within 20 days after the service of the complaint, the subject of the complaint may submit a written response to the information contained in the complaint. The department may conduct an investigation without notification to the subject if the act under investigation is a criminal offense. If the department's secretary or her or his designee and the chair of its probable cause panel agree, in writing, that notification to the subject of the investigation would be detrimental to the investigation, then the department may withhold notification of the subject.

If the subject of the complaint makes a written request and agrees to maintain the confidentiality of the information, the subject may review the department's complete investigative file. The licensee may respond within 20 days of the licensee's review of the investigative file to information in the file before it is considered by the probable cause panel. Complaints and information obtained by the department during its investigations are exempt from the public records law until 10 days after probable cause has been found to exist by the probable cause panel or the department, or until the subject of the investigation waives confidentiality. If no probable cause is found to exist, the complaints and information remain confidential in perpetuity.

When the department presents its recommendations regarding the existence of probable cause to the probable cause panel of the appropriate board, the panel may find that probable cause exists or does not exist, or it may find that additional investigative information is necessary in order to make its findings regarding probable cause. Probable cause proceedings are exempt from the noticing requirements of ch. 120, F.S. After the panel convenes and receives the department's final investigative report, the panel may make additional requests for investigative information. Section 456.073(4), F.S., specifies time limits within which the probable cause panel may request additional investigative information from the department and within which the probable cause panel must make a determination regarding the existence of probable cause. Within 30 days of receiving the final investigative report, the department or the appropriate probable cause panel must make a determination regarding the existence of probable cause. The secretary of the department may grant an extension of the 15-day and 30-day time limits outlined in s. 456.073(4), F.S. If the panel does not issue a letter of guidance or find probable cause within the 30-day time limit as extended, the department must make a determination regarding the existence of probable cause within 10 days after the time limit has elapsed.

Instead of making a finding of probable cause, the probable cause panel may issue a letter of guidance to the subject of a disciplinary complaint. Letters of guidance do not constitute discipline. If the panel finds that probable cause exists, it must direct the department to file a formal administrative complaint against the licensee under the provisions of ch. 120, F.S. The department has the option of not prosecuting the complaint if it finds that probable cause has been improvidently found by the probable cause panel. In the event the department does not prosecute the complaint on the grounds that probable cause was improvidently found, it must

refer the complaint back to the board that then may independently prosecute the complaint. The department must report to the appropriate board any investigation or disciplinary proceeding not before the Division of Administrative Hearings under ch. 120, F.S., or otherwise not completed within 1 year of the filing of the complaint. The appropriate probable cause panel then has the option to retain independent legal counsel, employ investigators, and continue the investigation, as it deems necessary.

When an administrative complaint is filed against a subject based on an alleged disciplinary violation, the subject of the complaint is informed of her or his right to request an informal hearing if there are no disputed issues of material fact, or a formal hearing if there are disputed issues of material fact or the subject disputes the allegations of the complaint. The subject may waive her or his rights to object to the allegations of the complaint, which allows the department to proceed with the prosecution of the case without the licensee's involvement. Once the administrative complaint has been filed, the licensee has 21 days to respond to the department. If the subject of the complaint and the department do not agree in writing that there are no disputed issues of material fact, s. 456.073(5), F.S., requires a formal hearing before a hearing officer of the Division of Administrative Hearings under ch. 120, F.S. The hearing provides a forum for the licensee to dispute the allegations of the administrative complaint. At any point before an administrative hearing is held, the licensee and the department may reach a settlement. The settlement is prepared by the prosecuting attorney and sent to the appropriate board. The board may accept, reject, or modify the settlement offer. If accepted, the board may issue a final order to dispose of the complaint. If rejected or modified by the board, the licensee and department may renegotiate a settlement or the licensee may request a formal hearing. If a hearing is held, the hearing officer makes findings of fact and conclusions of law that are placed in a recommended order. The licensee and the department's prosecuting attorney may file exceptions to the hearing officer's findings of facts. The boards resolve the exceptions to the hearing officer's findings of facts when they issue a final order for the disciplinary action.

The boards within the Department of Health have the status of an agency for certain administrative actions, including licensee discipline. A board may issue an order imposing discipline on any licensee under its jurisdiction as authorized by the profession's practice act and the provisions of ch. 456, F.S.³ Typically, boards are authorized to impose the following disciplinary penalties against licensees: refusal to certify, or to certify with restrictions, an application for a license; suspension or permanent revocation of a license; restriction of practice or license; imposition of an administrative fine for each count or separate offense; issuance of a reprimand or letter of concern; placement of the licensee on probation for a specified period of time and subject to specified conditions; or corrective action. The department contracts with the Agency for Health Care Administration to investigate and prosecute disciplinary complaints.

Emergency Suspension of License

Section 120.60(6), F.S., authorizes an agency to take emergency action against a license if the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency suspension, restriction, or limitation of a license.⁴ The agency may take such action

³ See s. 456.072, F.S., which specifies grounds for which a practitioner may be subject to discipline, including failing to perform any statutory or legal obligation placed upon a licensee.

⁴ Similar procedures are required for emergency rulemaking under the Administrative Procedure Act (s. 120.54(4)(a), F.S.)

by any procedure that is fair under the circumstances if: the procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution; the agency takes only that action necessary to protect the public interest under the emergency procedure; and the agency states in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The agency's findings of immediate danger, necessity, and procedural fairness are judicially reviewable.⁵ Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation proceeding under ss. 120.569 and 120.57, F.S., must also be promptly instituted and acted upon.

Section 456.073, F.S., empowers the Secretary of the Department of Health to summarily suspend a health care practitioner's license to practice his or her profession, in accordance with s. 120.60(6), F.S. Section 456.074, F.S., requires the Department of Health to issue an emergency order suspending the license of any person licensed as a medical physician, osteopathic physician, chiropractic physician, podiatric physician, naturopathic physician, optometrist, nurse, physician assistant, pharmacist, dentist, optician, or hearing aid specialist who pleads guilty to, is convicted or found guilty of, or who enters a plea of nolo contendere to, regardless of adjudication, a felony under chapter 409, F.S., relating to the Medicaid program; chapter 817, F.S., relating to fraudulent practices or chapter 893, F.S., relating to controlled substances or under 21 U.S.C. ss. 801-970, federal Food and Drug Control and Prevention or under 42 U.S.C. ss. 1395-1396, relating to the Medicare program.

III. Effect of Proposed Changes:

Section 1. Amends s. 456.074, F.S., relating to the immediate suspension of certain licensed health care practitioners, to require the Department of Health, upon receipt of information that any Florida-licensed health care practitioner has defaulted on a student loan issued or guaranteed by the state or the federal government, to notify the licensed health care practitioner by certified mail that he or she is subject to immediate suspension of license unless, within 45 days after the date of mailing, the licensee provides proof that new payment terms have been agreed upon by all parties to the loan. The Department of Health must issue an emergency order suspending the license of any licensed health care practitioner who, after 45 days following the date of mailing from the department, has failed to provide such proof. Production of such proof does not prohibit the department from commencing an action to discipline the licensed health care practitioner.

Section 2. Amends s. 456.072, F.S., relating to grounds for which a licensed health care practitioner may be subject to discipline, to revise a ground for failure to perform any statutory or legal obligation placed upon a licensed health care practitioner to provide that failing to repay a student loan issued or guaranteed by the state or the federal government in accordance with the terms of the loan or failing to comply with service scholarship obligations shall be considered a failure to perform a statutory or legal obligation, and the minimum disciplinary action imposed must be a suspension of the license until new payment terms are agreed upon or the scholarship obligation is resumed, followed by probation for the duration of the student loan or remaining

⁵ See also, s.120.68, F.S., which provides for immediate judicial review of final agency action.

scholarship obligation period, and a fine equal to ten percent of the defaulted loan amount. Fines collected must be deposited into the Medical Quality Assurance Trust Fund.

Section 3. Creates an undesignated section of law, to require the Department of Health to obtain from the United States Department of Health and Human Services information necessary to investigate and prosecute health care practitioners for failing to repay a student loan or comply with scholarship service obligations pursuant to s. 456.072, F.S. The Department of Health must obtain a list of default health care practitioners each month, along with the information necessary to investigate a complaint in accordance with s. 456.073, F.S. The Department of Health may obtain evidence to support the investigation and prosecution of any licensed health care practitioner from any financial institution or educational institution involved in providing the loan or education to the practitioner. The Department of Health must report in its annual report to the Legislature, the number of practitioners in default, along with the results of its investigations and prosecutions, and the amount of fines collected from licensed practitioners for violating the provision of failing to perform a statutory or legal obligation.

Section 4. Reenacts s. 456.026, F.S., relating to the annual report completed by the Department of Health for the regulation of licensed health care practitioners.

Section 5. Reenacts s. 456.073, F.S., relating to disciplinary proceedings of licensed health care practitioners in the Department of Health.

Section 6. Provides that the bill takes effect upon becoming a law and that it applies to any loan or scholarship that is in default on or after the effective date of the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, s. 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Licensed health care practitioners who have defaulted on student loans may be liable for costs relating to discipline and fines under the bill.

C. Government Sector Impact:

The Department of Health estimates that there are 556 health care providers in Florida who have defaulted on their educational loans or service scholarship obligations in the amount of \$45,600,000. The department estimates that 50 percent of the health care practitioners in default status would agree to new terms and repay approximately 50 percent of the total amount in default. The department indicates that its assessment of a fine equal to 10 percent of the defaulted loan amount to be deposited into the Medical Quality Assurance Trust Fund for those health care practitioners who are in default of their loan and agree to new payment terms will generate \$2,280,000 in revenue for 2002-2003. Revenue for subsequent years is indeterminate.

The bill requires the Department of Health to obtain from the U.S. Department of Health and Human Services information necessary to investigate and prosecute health care practitioners for failing to repay a student loan or comply with scholarship service obligations. Investigation and prosecution of health care practitioners are performed by the Agency for Health Care Administration under contract with the Department of Health. The funds for these investigations and prosecutions are paid from the Medical Quality Assurance Trust Fund. Depending on the cases generated, the Department of Health states that the bill may result in additional expenses, however, the fines collected should offset any costs accrued

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not specify that the loans and scholarships involved are those that the licensee obtained for completing his or her professional education. There may be licensees who have defaulted on loans obtained to complete lower level education such as a bachelor's degree obtained prior to matriculation in a institution which awards a professional health degree, e.g., an M.D. degree. There may be licensees who defaulted on loans or obligations that do not pertain to the course of education that was required from them to obtain their health care license. No distinctions or exemptions are made in the bill.

Emergency action suspending an individual's right to his or her livelihood generally occurs after a determination that there exists an immediate, serious danger to the public health, safety and welfare, warranting such emergency action. Though failing to repay a student loan may warrant inclusion as a ground for discipline, the Department of Health's General Counsel's Office indicates that it would fail to reach the level of seriousness and immediacy that emergency suspension should require.

VIII. Amendments:

None.

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