

# 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.)

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Prepared By: Health Care Committee

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BILL: SB 2212

INTRODUCER: Senator Saunders

SUBJECT: The Practice of Nursing

DATE: March 31, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HE	<b>Pre-meeting</b>
2.	_____	_____	BI	_____
3.	_____	_____	JU	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

The bill exempts an advanced registered nurse practitioner who meets specified criteria from carrying professional liability insurance or other forms of financial responsibility. The bill provides for disciplinary actions, including suspension of a license, by the Board of Nursing against an advanced registered nurse practitioner who elects not to carry insurance or another form of financial responsibility if the advanced registered nurse practitioner fails to satisfy a judgment or payment. If an advanced registered nurse chooses to not carry malpractice insurance or other financial responsibility, then the advanced registered nurse practitioner must provide notice to the individuals to whom his or her services are rendered as provided in the bill.

This bill creates section 464.0186, Florida Statutes.

## II. Present Situation:

### Financial Responsibility of Certain Health Care Practitioners

Section 456.048, F.S., directs that, by rule, the Board of Acupuncture, the Board of Chiropractic Medicine, the Board of Podiatric Medicine, and the Board of Dentistry, for the health care practitioners they regulate; the Board of Nursing, with respect to advanced registered nurse practitioners certified under s. 464.012, F.S.; the Board of Medicine and the Board of Osteopathic Medicine, with respect to anesthesiologist assistants; and the Department of Health (DOH or department), with respect to midwives, shall require these health care practitioners to maintain malpractice insurance or provide proof of financial responsibility in an amount and in a manner determined by the respective board or department to be sufficient to cover claims arising out of the rendering of or failure to render professional care and services in Florida. The boards or department are authorized to grant an exemption upon application to: a practitioner who is a

government employee; a person with an inactive license who is not practicing in Florida; a person holding a limited license and practicing under the scope of such limited license; a person who practices only in conjunction with teaching duties at an accredited school or in such school's main teaching hospitals; a person holding an active license or certification but who is not practicing in Florida; or a person who can demonstrate to the board or department that he or she has no malpractice exposure in Florida.

The Board of Nursing has adopted an administrative rule, which requires all advanced registered nurse practitioners to carry malpractice insurance or demonstrate proof of financial responsibility.<sup>1</sup> Any applicant for certification as an advanced registered nurse practitioner must submit such proof of compliance or exemption to the Board of Nursing office within sixty days of certification. Acceptable coverage must include: professional liability coverage of at least \$100,000 per claim with a minimum annual aggregate of at least \$300,000 from an authorized insurer, joint underwriting association, self-insurance plan, or risk retention group; an unexpired irrevocable letter of credit of at least \$100,000 per claim with a minimum aggregate availability of \$300,000 and which is payable to the advanced registered nurse practitioner as a beneficiary. Under the rule, any person claiming exemption from the financial responsibility requirements for advanced registered nurse practitioners must do so at initial certification, biennial renewal, and license reactivation.

### **Financial Responsibility of Allopathic and Osteopathic Physicians**

Chapter 458, F.S., provides for the regulation of the practice of medicine by the Board of Medicine within DOH. As a condition of licensure, licensure renewal, or reactivation of an inactive license, s. 458.320, F.S., requires applicants (allopathic physicians) to demonstrate financial responsibility by maintaining medical malpractice insurance, or establishing and maintaining an escrow account, or obtaining and maintaining an unexpired, irrevocable letter of credit drawn from a United States financial institution, to satisfy medical malpractice claims in amounts specified in the section. The financial responsibility law requires physicians, upon presentment of any settlement or final judgment awarding damages to a party based on the physician's malpractice, to be able to satisfy individual professional liability claims of up to \$100,000 per claim and have at least \$300,000 available to cover all such claims upon presentment of a final judgment indicating liability and awarding damages to be paid by the physician or upon presentment of a settlement agreement signed by all parties which is based on a claim arising out of the rendering of, or the failure to render, medical care and services. If the physician performs surgery in an ambulatory surgical center or has hospital privileges, the physician must be able to satisfy individual professional liability claims of up to \$250,000 per claim and have at a minimum \$750,000 available to cover all such claims upon presentment of a final judgment indicating liability and awarding damages to be paid by the physician or upon presentment of a settlement agreement signed by all parties which is based on a claim arising out of the rendering of, or the failure to render, medical care and services.

Section 458.320, F.S., exempts several categories of persons from the financial responsibility requirements for licensed allopathic physicians including: a physician who is a government employee; a physician with an inactive license who is not practicing in Florida; retired

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<sup>1</sup> See Administrative Rule 64B9-4.002, Florida Administrative Code.

professionals who are practicing with a limited license; a medical school faculty member who only practices medicine in conjunction with teaching duties; a physician with an active license who is not practicing medicine in Florida; and retired physicians who have practiced in Florida or another state for more than 15 years, maintain a part-time practice of no more than 1,000 patient contact hours annually, and meet certain additional requirements outlined in this provision of statute. In addition to the exemptions previously listed, paragraph 458.320(5)(g), F.S., allows a licensed physician to go “bare” (uninsured) for medical malpractice liability on the condition that such physician gives notice of this fact to his or her patients by posting a sign prominently displayed in the reception area and clearly noticeable to all patients or by providing a written statement to any person to whom medical services are being provided.

Uninsured physicians who do not maintain hospital privileges, must pay the entire amount of any final judgment or settlement arising from their medical malpractice or \$100,000, whichever is less, within 60 days of the judgment unless the parties agree otherwise. Uninsured physicians with hospital privileges must pay the entire amount of their medical malpractice claims or \$250,000, whichever is less. If DOH is notified of the existence of an unsatisfied judgment or medical malpractice claim against an uninsured physician who is exempt from the financial responsibility requirements under paragraph 458.320(5)(g), F.S., DOH must notify the licensee by certified mail that he is subject to disciplinary action unless, within 30 days from the date of mailing, the physician furnishes the agency with a copy of a timely filed notice of appeal and either a copy of a supersedeas bond<sup>2</sup> posted in the amount required by law or a copy of an order from a court staying the execution on the final judgment pending disposition of the appeal. The licensed physician must have completed a form supplying necessary information as required by the department.

If the uninsured physician fails to act within 30 days after receiving notice from DOH of an unsatisfied medical malpractice claim against him or her, then upon the next meeting of the probable cause panel of the Board of Medicine, the panel must determine whether probable cause exists to take disciplinary action against the licensee. If the Board of Medicine makes a factual determination that the licensee has not paid the lesser of \$100,000 or \$250,000, or the medical malpractice claim, it must take disciplinary action against the physician. The disciplinary action must include, at a minimum, probation of the physician’s license with the restriction that the physician make payments to the judgment creditor of the malpractice claim on a schedule determined by the board to be reasonable and within the financial capability of the physician. The section also authorizes the board to impose a disciplinary penalty, which may include licensure suspension of up to 5 years. In the event that an agreement to satisfy the judgment has been met, the board must remove any restriction on the license.

Chapter 459, F.S., provides for the regulation of osteopathic medicine by the Board of Osteopathic Medicine. The chapter also requires osteopathic physicians applying for initial licensure, licensure renewal, or reactivation of an inactive license to demonstrate financial responsibility for medical malpractice claims and provides exemptions to this requirement.<sup>3</sup>

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<sup>2</sup> A supersedeas bond is a bond required of a person who petitions to set aside a judgment or execution and from which the other party may be made whole if the action is successful.

<sup>3</sup> See s. 459.0085, F.S.

### III. Effect of Proposed Changes:

The bill provides an exemption from the financial responsibility requirement imposed on advanced registered nurse practitioners to carry professional liability insurance as specified in s. 456.048, F.S., or by rule of the Board of Nursing. Uninsured advanced registered nurse practitioners who do not maintain hospital privileges, must pay the entire amount of any final judgment or settlement arising from their medical malpractice or \$100,000, whichever is less, within 60 days of the judgment unless the parties agree otherwise. Uninsured advanced registered nurse practitioners with hospital privileges must pay the entire amount of their medical malpractice claims or \$250,000, whichever is less. The final judgment includes any cross-claim, counterclaim, or claim for indemnity or contribution arising from the medical malpractice claim.

If DOH is notified of the existence of an unsatisfied judgment or medical malpractice payment against an uninsured advanced registered nurse practitioner who is exempt from the financial responsibility requirements, DOH must notify the licensee by certified mail that he or she is subject to disciplinary action unless, within 30 days after the date of mailing, the advanced registered nurse practitioner furnishes the department with proof that the unsatisfied judgment has been paid as required by the bill, or a copy of a timely filed notice of appeal and either a copy of a supersedeas bond posted in the amount required by law or a copy of an order from a court staying the execution on the final judgment pending disposition of the appeal.

If the uninsured advanced registered nurse practitioner fails to act within 30 days after receiving notice from DOH of an unsatisfied medical malpractice claim against him or her, then DOH must issue an emergency order suspending the license of the advanced registered nurse practitioner. Upon the next meeting of the probable cause panel of the Board of Nursing following 30 days after the date of mailing the notice of disciplinary action, the panel must determine whether probable cause exists to take disciplinary action against the licensee. If the Board of Nursing makes a factual determination that the licensee has not paid the lesser of \$100,000 or \$250,000, or the medical malpractice claim or that the practitioner has not furnished the department with proof that the unsatisfied judgment has been paid as required by the bill, a copy of a timely filed notice of appeal and either a copy of a supersedeas bond posted in the amount required by law or a copy of an order from a court staying the execution on the final judgment pending disposition of the appeal, it must take disciplinary action against the advanced registered nurse practitioner. The disciplinary action must include, at a minimum, probation of the advanced registered nurse practitioner's license with the restriction that the advanced registered nurse practitioner make payments to the judgment creditor of the malpractice claim on a schedule determined by the Board of Nursing to be reasonable and within the financial capability of the advanced registered nurse practitioner. The bill also authorizes the Board of Nursing to impose a disciplinary penalty, which may include licensure suspension of up to 5 years. In the event that an agreement to satisfy the judgment has been met, the board may remove any restriction on the license.

An uninsured advanced registered nurse practitioner who goes "bare" must give notice of this fact to his or her patients by posting a sign prominently displayed in the reception area and clearly noticeable to all patients or by providing a written statement to any person to whom services are provided by the advanced registered nurse practitioner. The sign must state:

“Under Florida law Advanced Registered Nurse Practitioners (A.R.N.P.s) are generally required to carry medical malpractice insurance or otherwise demonstrate financial responsibility to cover potential claims for medical malpractice. YOUR A.R.N.P. HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE INSURANCE. This is permitted under Florida law subject to certain conditions. Florida law imposes penalties against noninsured A.R.N.P.s who fail to satisfy adverse judgments arising from claims of medical malpractice. This notice is provided pursuant to Florida law.”

Notwithstanding any other provision of this bill, DOH must suspend the license of any advanced registered nurse practitioner against whom has been entered a final judgment, arbitration award, or other order or who has entered into a settlement agreement to pay damages arising out of a claim for medical malpractice, if all appellate remedies have been exhausted and payment up to the amounts required by this section has not been made within 30 days after the entering of such judgment, award, order or agreement, until proof of payment is received by the department or a payment schedule has been agreed upon by the advanced registered nurse practitioner and the claimant and presented to the department. After proof of payment is received by DOH or a payment schedule has been agreed upon by the advanced registered nurse practitioner and the claimant and presented to DOH, the licensee’s license and certification must be reinstated by DOH.

The bill provides an effective date upon becoming a law.

#### **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 Article VII, Section 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 Article III, Subsection 19(f) of the Florida Constitution.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Advanced registered nurse practitioners may save costs associated with the purchase of medical malpractice insurance or a letter of credit as required under the current law as a condition of their certification.

**C. Government Sector Impact:**

The Department of Health will incur costs to implement the bill and such costs should be minimal. Officials at the department have indicated that they cannot determine what additional costs may be incurred for enforcement of discipline against advanced registered nurse practitioner under the requirements of the bill.

**VI. Technical Deficiencies:**

The bill makes several references to the licensure of advanced registered nurse practitioners. Advanced registered nurse practitioners are certified and must hold a current unencumbered license to practice professional nursing in Florida as a prerequisite to obtaining certification as an advanced registered nurse practitioner. The bill does not consistently use the terminology license, certificate, or license when referring to advanced registered nurse practitioners.<sup>4</sup>

**VII. Related Issues:**

None.

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

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<sup>4</sup> Section 456.001(5), F.S., defines "license" to mean any permit, registration, certificate, or license, including a provisional license, issued by the department.

## **VIII. Summary of Amendments:**

None.

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

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