

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

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

Prepared By: Children, Families, and Elder Affairs Committee

BILL: SB 2508

INTRODUCER: Senators Rich and Bullard

SUBJECT: Social Worker Identification

DATE: April 5, 2007                      REVISED: 4/10/07    4/11/07    4/12/07    \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ray</u>	<u>Jameson</u>	<u>CF</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>HE</u>	_____
3.	_____	_____	<u>HA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see last section for Summary of Amendments**

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

**I. Summary:**

The bill amends ss. 39.01 and 491.003, F.S., to add a definition of the term “social worker.”

The bill makes it a first degree misdemeanor for a person to hold himself or herself out to the public as a social worker unless the person has completed certain educational requirements, including a bachelor’s degree or master’s degree in social work.

The bill exempts from this requirement persons who used the title “social worker” in their employment continuously with the same employer prior to July 1, 2006.

The bill also exempts persons who provide social work services under administrative supervision in long-term care facilities licensed by the Agency of Health Care Administration (AHCA).

The bill directs the Department of Health (DOH) to adopt rules to administer the section.

The bill shall take effect July 1, 2007.

This bill substantially amends ss. 39.01, and 491.003, F.S., and creates s. 491.016, F.S.

## II. Present Situation:

Currently in Florida, there are no limitations on the use of the title “social worker.” Social services are currently provided by persons using the title “social worker” in a variety of settings including child welfare programs, adoption agencies, schools, hospitals, correctional facilities, nursing homes, and hospices. The title “social worker” has no statutory definition. Among a “social worker’s” many responsibilities are linking clients with agencies and programs to meet the patient’s needs, counseling, social welfare policy analysis, human services management, community organization, advocacy, and social science research.

According to the National Association of Social Workers, the knowledge base, practical skills, and theoretical understanding required to become a social worker can only be acquired through attaining a social work degree and cannot be gained solely by performing duties related to social work.<sup>1</sup>

Currently, licensed clinical social workers are protected under ch. 491, F.S.

### **The Practice of Clinical Social Work**

Chapter 491, F.S., relating to clinical, counseling, and psychotherapy services provides for the licensure of clinical social workers, marriage and family therapists, and mental health counselors.

The definition of “clinical social work” includes all services offered directly to the general public or through organizations, whether public or private, and applies whether or not payment is requested or received for services rendered.<sup>2</sup>

Appropriately trained clinical social workers may use their training to provide services to individuals, including those affected by the termination of a marriage and to married couples, families, groups, organizations, and communities.<sup>3</sup>

The practice of clinical social work is regulated by the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling within the Department of Health.<sup>4</sup> Clinical social workers are licensed by examination and payment of a licensure fee. To be eligible for licensure, the applicant must meet minimum educational and experience requirements. The applicant must have received:<sup>5</sup>

- A doctoral degree or master’s degree in social work from a graduate school of social work accredited by an accrediting agency recognized by the United States Department of Education, the Council on Social Work Education (CSWE), or the Canadian Association of Schools of Social Work; or
- A doctoral degree or master’s degree in social work from a graduate school of social work that has been determined to have been a program equivalent to programs approved by the

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<sup>1</sup> National Association of Social Workers, Talking Points for Social Worker Identification, (Provided, March 29, 2007).

<sup>2</sup> s. 491.003(7)(d), F.S.

<sup>3</sup> ss. 491.003(7)(a) and (b), F.S.

<sup>4</sup> s. 491.004(1), F.S.

<sup>5</sup> s. 491.005(1)(b), F.S.

CSWE by the Foreign Equivalency Determination Service of the CSWE. An applicant who graduated from a program at a university or college outside of the United States or Canada must present documentation of the equivalency determination from the council in order to qualify.

The applicant's graduate program must have emphasized direct clinical patient or client health care services, including, but not limited to, coursework in clinical social work, psychiatric social work, medical social work, social casework, psychotherapy, or group therapy and must have included certain clinical coursework and supervised field placement in a clinical setting. The applicant must provide evidence of two years of post-graduate experience under the supervision of a licensed clinical social worker approved by the board. Applicants must also demonstrate knowledge of the laws and rules governing the practice of clinical social work. Pursuant to board rule, this is done by requiring applicants to complete an approved continuing education course.<sup>6</sup>

Section 491.012, F.S., provides certain protected titles that may not be used unless the individual holds a valid, active license as a clinical social worker or in the case of a registered intern or provisional licensee, appropriate licenses for those activities. These titles are:

- Licensed clinical social worker,
- Clinical social worker,
- Licensed social worker,
- Psychiatric social worker,
- Psychosocial worker,
- Registered clinical social worker intern, and
- Provisional clinical social worker licensee.

Current law also prohibits any person from describing her or his services using certain terms or any derivative of those terms unless he or she holds an active, valid license under ch. 490, F.S., (Psychological Services) or ch. 491, F.S., or is certified under s. 464.012, F.S., as an advanced registered psychiatric nurse practitioner as determined by the Board of Nursing. The protected terms are:

- Psychotherapy,
- Sex therapy,
- Sex counseling,
- Clinical social work,
- Psychiatric social work,
- Marriage and family therapy,
- Marriage and family counseling,
- Marriage counseling,
- Family counseling, and
- Mental health counseling.

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<sup>6</sup> ch. 64B4-3.0035, F.A.C.

This section also prohibits any person from practicing clinical social work in Florida for compensation, unless the person holds a valid, active license to practice clinical social work or is an intern registered pursuant to s. 491.0045, F.S. Although certain persons, such as employees of government agencies acting within the confines of the agency, are exempt from licensure under ch. 491.014, F.S., they are still prohibited from holding themselves out to the public as a clinical social worker, mental health counselor, or marriage and family therapist.

A violation of these provisions is a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. Section 775.082, F.S., provides that the penalty for a first degree misdemeanor is a definite term of imprisonment not exceeding one year. Section 775.083, F.S., provides that the penalty for a first degree misdemeanor is a fine not to exceed \$1,000.

Section 817.567, F.S., attempts to make it a first degree misdemeanor to claim either orally or in writing to have an academic degree or the title associated with the degree unless the person has been awarded that degree from an accredited institution. However, in *Strang v. Satz* this provision was struck down as a violation of the First Amendment in that it was not narrowly tailored to achieve the government's purpose. In so holding, the court stated that the provision "operates as an absolute prohibition on potentially misleading but truthful speech. However, more narrow limitations such as a disclosure requirement would allow the speech and ensure that it is presented in a non-misleading manner. Disclosure that a person's Ph.D or claim of title such as "doctor" is from an institution unrecognized by the State of Florida or by the Federal Government would be more likely to make a positive contribution to and to aid in decision making than concealment of such information. Requiring such disclosure thus would serve the government's substantial interest in protecting Floridians who may rely on the titles of "Dr." and "Ph.D" when they seek services. Such disclosure also would ensure First Amendment protection to truthful, albeit potentially misleading, commercial speech."<sup>7</sup>

### III. Effect of Proposed Changes:

The bill amends s. 39.01, F.S., to define a social worker as a person who holds a bachelor's, master's, or doctoral degree in social work.

The bill amends s. 491.003, F.S., mirroring the definition provided in s. 39.01, F.S., and adding a provision that a social worker must hold a license or certification issued pursuant to this chapter to conduct clinical social work.

The bill provides that a person holding himself or herself out to the public as a social worker either directly or through an entity commits a misdemeanor of the first degree unless that person:

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<sup>7</sup> *Strang v. Satz*, 884 F.Supp.504, 510 (S.D.Fla. 1995)(internal citations omitted).

- Holds at least a bachelor's or master's degree in social work from a social work program accredited by the Council of Social Work Education<sup>8</sup> or from an institution actively seeking that accreditation.
- Completes a social work program outside the U.S. or Canada that is determined by the Council on Social Work Education to be equivalent to a bachelor's or master's degree in social work.

The bill provides that a person who used the title "social worker" before July 1, 2006, in his or her employment is exempt from the provisions of this chapter as long as he or she continues to work for the same employer and in the same capacity as he or she did before July 1, 2006.

The bill provides that a person who is employed to provide social work services under administrative supervision in a long-term care facility licensed by the Agency of Health Care Administration is exempt from the provisions of this chapter.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The bill may have an insignificant fiscal impact on local governments. The provisions of the bill apply to all public and private entities that employ "social workers." All similarly situated entities and persons are required to comply.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues:**

Applicable case law has held that, as long as commercial speech describes lawful activity and is truthful and not fraudulent or misleading, it is entitled to the protections of the First Amendment of the *United States Constitution*. To regulate or ban commercial speech, the government must have substantial governmental interest which is directly advanced by the restriction, and must demonstrate that there is a reasonable fit between the legislature's ends and narrowly tailored means chosen to accomplish those ends. In enacting or enforcing a restriction on commercial speech, the government need not select the least restrictive means, but rather must tailor its restriction to meet the desired objective. See *Central Hudson Gas & Electric Corp. v. Public Service Comm'n of New York*, 447 U.S. 557, 100 S.Ct. 2243, 65 L.Ed.2d 341 (1980). Case law also describes

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<sup>8</sup> The Council on Social Work Education (CSWE) is a national association that sets and maintains policy and program standards for social work education, accredits bachelor's and master's degree programs in social work, promotes research and faculty development, and advocates for social work education.

various legally recognized regulatory safeguards which the state may impose in place of the total ban on commercial speech, such as requiring a disclaimer to ensure that the consumer is not misled. See *Abramson v. Gonzalez*, 949 F.2d 1567 (11th Cir. 1992).

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

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill may increase costs for social service agencies that use “social workers” to assist others. These agencies will need to ensure that the “social workers” they employ are appropriately credentialed with the required academic degree.

A person found guilty of a misdemeanor under this bill could be subject to a fine of up to \$1,000 and up to one year in jail.

**C. Government Sector Impact:**

Government agencies, private non-profit organizations, and academic institutions that use social workers may be impacted. These entities would be required to employ persons qualified under the provisions of the bill in positions that hold a “social worker” title.

According to DOH, the department will receive complaints alleging improper and illegal use of the title “social worker.” These complaints will be referred to the department’s unlicensed activity office for investigation and prosecution. The number of complaints that may be received is unknown. However the department expects an increase in the current workload.

According to DOH, any costs incurred related to title protection will be sustained by the professions currently regulated under ch. 491, F.S., (clinical social worker, marriage and family therapist, and mental health counselor).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill provides that if a person used the title “social worker” after July 1, 2006 or changed his or her place of employment, that person would not be exempt from the provisions of the newly created s. 491.016, F.S.

This appears to be a drafting oversight. A similar bill filed during the 2006 legislative session, SB 1640, contained a similar provision that granted an exemption to a person who used the title

“social worker” in his or her employment before July 1, 2006 as long as the person continuously worked for the same employer and worked in the same capacity for that employer prior to July 1, 2006.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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## VIII. Summary of Amendments:

### **Barcode 261176 by Children, Families, and Elder Affairs:**

The amendment corrects a technical deficiency to the bill. The amendment changes the dates contained in the bill's exemption provision from July 1, 2006 to July 1, 2007.

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