

**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: Higher Education Committee

BILL: CS/SB 2508

INTRODUCER: Higher Education Committee and Senator Rich and others

SUBJECT: Social Worker Identification

DATE: April 19, 2007

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

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

**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 prior to July 1, 2007.

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

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

The bill takes effect July 1, 2007.

This bill substantially amends ss. 39.01, and 491.003, F.S., and creates s. 491.016 of the Florida Statutes.

**II. Present Situation:**

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, and

there are no limitations on the use of the title “social worker.” Among a social worker’s many responsibilities are linking clients with agencies and programs to meet the client’s needs, counseling, social welfare policy analysis, human services management, community organization, advocacy, and social science research.

### **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.

Appropriately trained clinical social workers may use their training to provide services to individuals, including those affected by the termination of a marriage, couples, families, groups, organizations, and communities.<sup>1</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>2</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:

- 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 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.<sup>3</sup>

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.<sup>4</sup> 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>5</sup>

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<sup>1</sup> ss. 491.003(7)(a) and (b), F.S.

<sup>2</sup> s. 491.004(1), F.S.

<sup>3</sup> s. 491.005(1)(b), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> Rule 64B4-3.0035, F.A.C.

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.

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.

Section 491.014, F.S., provides exemptions from the provisions of ch. 491, F.S., to the following individuals or entities carrying out the activities of their profession or business:

- Physicians;
- Osteopathic physicians;
- Psychologists;
- Nurses;
- School psychologists;
- Members of the clergy of any religious denomination;
- A salaried employee of a government agency; developmental disability facility or program, mental health, alcohol, or drug abuse facility; subsidized child care program, subsidized child

care case management program, or child care resource and referral program; licensed child-placing or child-caring agency; certified domestic violence center; accredited academic institution; or research institution, if such employee is performing duties for which he or she was trained and hired solely within the confines of such agency, facility, or institution;

- Salaried employees of a nonprofit organization providing counseling to children, youth, and families;
- A student providing services in the course of pursuing a degree that will lead to licensure as a clinical social worker; and
- A person licensed in another state who provides services in Florida for fewer than 15 days.

Although these persons are exempt from licensure under ch. 491, F.S., they still are prohibited from holding themselves out to the public as a clinical social worker.

A violation of ch. 491, F.S., 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.

### **School Social Workers**

According to the Department of Education, a total of 2,114 individuals hold a valid Florida Educator's Certificate in School Social Worker/Grades PreK-12. Under Rule 6A-4.035, F.A.C., certification as a school social worker requires a bachelor's or higher degree with an undergraduate or graduate major in social work from a program accredited by the National Council on Social Work Education.

According to the board of Governors of the State University System, six universities in the State University System (FAMU, FAU, FIU, FSU, UCF, and USF), currently have accredited baccalaureate and master of social work programs. The University of West Florida has an accredited baccalaureate program in social work, and Florida Gulf Coast University (FGCU) is an active candidate for accreditation for the baccalaureate program in Social Work by the Council of Social Work Education. FGCU was granted candidacy in 2006.

### **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. If an individual carrying out responsibilities under ch. 39, F.S., used the title social worker in violation of the provisions of the bill and was not covered by one of the exemptions under s. 491.094, F.S., the individual would be subject to the penalty provisions of the bill.

The bill amends s. 491.003, F.S., to define a social worker as a person who holds a bachelor's, master's, or doctoral degree in social work, and to add a provision that a social worker must hold a license or certification issued pursuant to ch. 491, F.S., 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:

- 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>6</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, 2007, in his or her employment is exempt from the provisions of this bill.

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 for Health Care Administration is exempt from the provisions of this bill.

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

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

None.

##### **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.<sup>7</sup> 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.<sup>8</sup> Case law also describes 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.<sup>9</sup>

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<sup>6</sup> The Council on Social Work Education (CSWE) is a national association that sets and maintains policy and program standards for social work education., <http://www.cswe.org/CSWE/>

<sup>7</sup> *Central Hudson Gas & Electric Corp. v. Public Service Comm'n of New York*, 447 U.S. 566, 100 S.Ct. 2243.

<sup>8</sup> *Id.*

<sup>9</sup> *See Abramson v. Gonzalez*, 949 F.2d 1567.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

A person who used the title “social worker” in violation of the provisions of the bill could be found guilty of a first-degree misdemeanor and could be subject to a fine of up to \$1,000 or up to one year in jail.

**C. Government Sector Impact:**

According to DOH, the department may 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:**

None.

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

None.

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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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