

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: SB 226

INTRODUCER: Senators Rich, Bullard, and Deutch

SUBJECT: Social Worker Identification

DATE: April 11, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ray	Jameson	CF	Favorable
2.	_____	_____	HE	_____
3.	_____	_____	HA	_____
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, 2008.

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 or the department) to adopt rules to administer the section.

The bill provides an effective date of July 1, 2008.

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, and advocacy services.¹

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.²

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 DOH.³ 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:⁴

- 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.

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.⁵ 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.

¹ Department of Children and Families Staff Analysis and Economic Impact, SB 226, October 23, 2007 (on file with the committee).

² Sections 491.003(7)(a), F.S.

³ Section 491.004(1), F.S.

⁴ Section 491.005(1)(b), F.S.

⁵ *Id.*

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.⁶

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 his or her 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:⁷

- 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.

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;

⁶ Rule 64B4-3.0035, F.A.C.

⁷ Section 491.012(2), F.S.

- 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 who lives in another state but 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.⁸ 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.

III. Effect of Proposed Changes:

The bill amends ss. 39.01 and 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.

The bill provides 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 Education⁹ or from an institution actively seeking that accreditation.
- Completes a social work program outside the United States 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" on or before July 1, 2008, in his or her employment is exempt from the provisions of this bill.

⁸ Section 491.012(3), F.S.

⁹ 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/>

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 AHCA is exempt from the provisions of this bill.

The bill provides rule making authority to DOH, and provides an effective date of July 1, 2008.

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.¹⁰ 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.¹¹ 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.¹²

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The provisions of the bill will require organizations hiring staff using the title of "social worker," to ensure that such individuals are appropriately credentialed with the required academic degree. This may increase costs for these agencies or organizations in the recruitment and hiring of "social workers."

¹⁰ *Central Hudson Gas & Electric Corp. v. Public Service Comm'n of New York*, 447 U.S. 566, 100 S.Ct. 2243.

¹¹ *Id.*

¹² *See Abramson v. Gonzalez*, 949 F.2d 1567.

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 bill will have an indeterminate fiscal impact on the DOH, Division of Medical Quality Assurance, because the department will be required¹³ to report to law enforcement any criminal violations reported.

VI. Technical Deficiencies:

According to DOH, the department has no authority to prosecute or discipline a person who is not required to hold a license and has an educational deficiency. The department currently cooperates with law enforcement. Accordingly, the department reports that rulemaking authority is not needed.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

¹³ Section 456.066, F.S.