

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 Appropriations Subcommittee on Health and Human Services

BILL: CS/SB 1526

INTRODUCER: Health Policy Committee and Senator Legg

SUBJECT: Athletic Trainers

DATE: April 7, 2015

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Lloyd | Stovall | HP | Fav/CS |
| 2. | Brown | Pigott | AHS | Favorable |
| 3. | | | FP | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1526 updates the regulation of athletic trainers. The bill authorizes the practice of athletic training under the direction of a physician. The direction must be communicated through an oral or written prescription or protocols. An allopathic, osteopathic, or chiropractic physician is authorized to make the determination as to the appropriate method for communicating his or her direction for the provision of services and care by the athletic trainer. The Board of Athletic Training is directed to adopt rules pertaining to mandatory requirements and guidelines for such communication.

The bill revises legislative intent relating to athletic trainers, updates definitions, and revises the requirements for licensure as an athletic trainer. Applicants must pass the national examination to be certified by the Board of Certification (BOC). Background screening requirements for new applicants, applicants whose licenses have expired, and licensees undergoing disciplinary action, go into effect on July 1, 2016.

The bill has no fiscal impact for Fiscal Year 2015-2016. However, the Florida Department of Law Enforcement (FDLE) estimates a positive fiscal impact of \$92,880 to the Operating Trust Fund in Fiscal Year 2016-2017 due to the anticipated collection of additional fees for level 2 background checks.

The bill's effective date is January 1, 2016.

II. Present Situation:

Athletic trainers are regulated by the Department of Health (DOH) and the Board of Athletic Training (board) within the DOH pursuant to part XIII of ch. 468, F.S. The Legislature created part XIII of ch. 468, F.S., in 1994.¹ The stated legislative intent was for athletes to be assisted by persons who are adequately trained to recognize, prevent, and treat physical injuries suffered during athletic activities, and to protect the public by licensing and fully regulating these trainers.²

The board consists of nine members appointed by the Governor and confirmed by the Senate. Five of the members must be licensed athletic trainers, one must be a physician licensed under ch. 458, F.S., or ch. 459, F.S., one must be a physician licensed under ch. 460, F.S., and the remaining two members must be consumers who have never worked or have had a financial interest in athletic training or been a licensed health care practitioner.³

Services provided by athletic trainers include prevention, emergency care, clinical diagnosis, therapeutic intervention, and rehabilitation of injuries and medical conditions.⁴ State law defines athletic training to mean the recognition, prevention, and treatment of athletic injuries.⁵ An athletic injury is defined as an injury that is sustained which affects the athlete's ability to participate or perform in an athletic activity.⁶ An athletic activity means participation in an activity conducted by an educational institution, a professional athletic organization, or an amateur athletic organization, involving exercises, sports, games, or recreation, requiring any of the physical attributes of strength, agility, range of motion, speed, and stamina.⁷

Licensing Process

To be licensed as an athletic trainer in Florida today, an applicant must:

- Be at least 21 years of age;
- Have a bachelor's degree from a college or university accredited by a specified accrediting agency;
- If graduated after 2004, have completed an approved athletic training curriculum from a college or university accredited by a program recognized by the Board of Certification (BOC);
- Have a current certification in cardiovascular pulmonary resuscitation (CPR) with an automated external defibrillator (AED) from the American Red Cross, the American Heart Association, American Safety and Health Institute, the National Safety Council, or an entity approved by the board as equivalent;
- Have passed the BOC Entry Level Certification examination and submit a certified copy of certificate;

¹ Chapter 94-119, Laws of Fla., and s. 468.70, F.S..

² Id.

³ Section 468.703(2), F.S.

⁴ Board of Certification for the Athletic Trainer, *Defining Athletic Training*, (January 2013) <http://www.bocatac.org/about-us/defining-athletic-training> (last visited Mar. 18, 2015).

⁵ Section 468.701(5), F.S.

⁶ Section 468.701(3), F.S.

⁷ Section 468.701, (2), F.S.

- Submit proof of taking a two-hour course on the prevention of medical errors; and
- If licensed in another state, territory or jurisdiction of the United States, have a license verification form sent directly to the board office from the office that issued the license or certification.⁸

The biennial licensure fee is \$230 for new applicants if the applicant is applying in the first year of the biennium or \$180 if the applicant is applying in the second year of the biennium. The fees include a \$100 application fee and an initial licensure fee of \$125 for a two-year licensure period or \$75 for a one-year licensure period.⁹

Currently there are 1,935 in-state athletic trainers in Florida.¹⁰ There are an additional 196 active, out-of-state licensees and three active-military licensees.¹¹ During 2013-2014, the DOH reports 356 initial applications were received and 324 initial licensed were issued.¹²

Exemptions from licensure are made for those individuals who are acting within the professional scope of their DOH-issued license, an athletic training student under the direct supervision of a licensed athletic director; a person administering standard first aid to an athlete; a person licensed under ch. 548, F.S.,¹³ if acting within the scope of such license; and a person providing personal training instructions for exercise, aerobics, or weightlifting, if the person does not represent himself or herself as an “athletic trainer.”

All licenses expire on September 30 of even-numbered years. To renew, a licensee needs to complete a renewal application, pay the renewal fees and show proof of current certification from the BOC.¹⁴ The cost to renew an active license for each biennium is \$130.¹⁵

Continuing education requirements may not exceed 24 hours biennially and must include a current certification in CPR with an AED from the American Red Cross or the American Heart Association or an equivalent training as determined by the board.¹⁶

Board of Certification

To become a certified athletic trainer, a student must earn a degree from a school with an athletic training curriculum accredited by the Commission on Accreditation of Athletic Training

⁸ Section 468.707, F.S., and Department of Health, Board of Athletic Training, *Licensing and Regulation*, (updated July 23, 2014) <http://floridasathletictraining.gov/licensing/> (last visited Mar. 18, 2015).

⁹ Department of Health, Board of Athletic Training, *Licensing and Registration - Fees*, <http://floridasathletictraining.gov/licensing/>, (last visited Mar. 18, 2015) and Rule 64B33-3001, F.A.C. The fees listed in the administrative rule do not match the fees on the board’s website.

¹⁰ Department of Health, *Senate Bill 1526 Analysis*, pg. 2 (February 26, 2015), (on file with the Senate Committee on Health Policy).

¹¹ Department of Health, *2013-14 Annual Report and Long Range Plan*, pg. 13 <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/annual-reports.html>, (last visited Mar. 18, 2015).

¹² Id at pg. 17.

¹³ Chapter 548 regulates pugilistic exhibitions, including the attendance of a physician who serves as an agent of the Florida State Boxing Commission for each event.

¹⁴ Department of Health, Board of Athletic Training, *Renewal Information - Requirements*, <http://floridasathletictraining.gov/renewals/#tab-requirements> (last visited Mar. 18, 2015).

¹⁵ Id at Fees. See also Rule 64B33-3.001, F.A.C., which shows the biennial renewal fee as \$125.

¹⁶ Rule 64B33-2.003, F.A.C.

Education (CAATE).¹⁷ The curriculum includes both formal instruction in injury/illness prevention, first aid and emergency care, assessment of injury/illness, human anatomy, and physiology, therapeutic modalities and nutrition, as well as clinical education in practice settings.¹⁸

The BOC was incorporated in 1989 to provide a certification program for entry-level athletic trainers. The BOC has been certifying athletic trainers since 1969 and is the only accredited certification program available.¹⁹ The program is accredited through the National Commission for Certifying Agencies and undergoes reaccreditation by that agency every five years.²⁰

The exam fee through the BOC is \$300 for first-time candidates and registration occurs through the BOC directly.²¹

Athletic Trainer Responsibilities

An athletic trainer practices under a written protocol with a licensed supervising physician or, if at an athletic event, under the direction of a licensed physician. A physician is defined as a provider licensed under chapters 458 (medical), 459 (osteopathic), 460 (chiropractic), F.S., or an individual otherwise authorized to practice medicine.²²

The written protocol must require the athletic trainer to notify the supervising physician of new injuries as soon as practicable.

Violations, Penalties and Discipline

Sexual misconduct between an athletic trainer and an athlete is a violation of the mutual trust needed for an athletic trainer-athlete relationship and is prohibited.²³

An athletic trainer is guilty of a first degree misdemeanor, punishable as provided under ss. 775.082 or 775.083, F.S., if any of the following occur:²⁴

- The practice of athletic training for compensation without holding an active license;
- The use or attempted use of an athletic trainer license that has been suspended or revoked;
- The act of knowingly employing an unlicensed person in the practice of athletic training;
- The act of obtaining or attempting to obtain an athletic trainer license by misleading statements or knowing misrepresentation; and

¹⁷ Board of Certification for the Athletic Trainer, *Defining Athletic Training*, (January 2013) <http://www.bocatc.org/about-us/defining-athletic-training> (last visited Mar. 18, 2015).

¹⁸ National Athletic Trainers' Association, *Athletic Training*, http://www.nata.org/about_AT/docs/GuideToAthleticTrainingServices.pdf (last visited Mar. 18, 2015).

¹⁹ Board of Certification, *BOC Vision and Mission*, <http://www.bocatc.org/about-us/boc-vision-mission> (last visited: Mar. 18, 2015).

²⁰ *Id.*

²¹ Board of Certification, *Register for Exam*, <http://www.bocatc.org/candidates/register-for-exam> (last visited Mar. 18, 2015).

²² Section 468.713, F.S.

²³ Section 468.715, F.S.

²⁴ A first degree misdemeanor conviction under s. 775.082(4), F.S., is punishable by a definite term of imprisonment not to exceed 1 year. Under s. 775.083, F.S., a first degree misdemeanor conviction is punishable by a not to exceed \$1,000, in addition to any punishment under s. 775.082, F.S.

- The use of the title “athletic trainer” without being licensed.²⁵

Disciplinary measures covered under current law provide actions which constitute grounds for denial of a license, imposition of a penalty, or disciplinary action. Examples of such acts in the practice of athletic training include:

- Failing to follow advertising guidelines;
- Committing incompetency or misconduct;
- Committing fraud or deceit;
- Committing negligence, gross negligence, or repeated negligence;
- Showing an inability to practice with reasonable skill and safety by reason of illness or use of alcohol or drugs, or as a result of any mental or physical condition;
- Violating any provision of chapter 468, F.S., or adopted rules; or
- Violating any provision of s. 456.072, F.S.²⁶

The rules promulgated under ch. 468, F.S., provide more detail as to the recommended penalties for the violations and the discipline a licensee can expect on a first through third offense.²⁷ Recommended penalties can range from a letter of concern to large fines to revocation of a license, depending on the nature of the violation or how many times the licensee has offended on the same type of violation.

III. Effect of Proposed Changes:

The bill modifies the legislative intent to focus on athletic trainers meeting minimum requirements for the safe practice of athletic training and to protect the public by ensuring that athletic trainers who fall below the minimum standards are prohibited from practicing in this state.

In **Section 2**, the definitions under s. 468.701, F.S., are updated to reference current accrediting entities and to delete “athlete,” “athlete activity,” “athletic injury,” “direct supervision,” and “supervision.” Focus is shifted from an athlete to a physically active person.

For “athletic trainer,” the education requirements of the CAATE and the BOC are added. A licensed athletic trainer is also expressly prohibited from offering to provide any care or services for which he or she lacks the education, training, or experience to provide or that he or she is prohibited by law from providing.

“Athletic training” is updated to mean service and care provided under the direction of a physician licensed under s. 468.713, F.S. Service and care are further specified to mean prevention, recognition, evaluation, management, disposition, treatment, or rehabilitation of a physically active person who sustained an injury, illness, or other condition while involved in exercise, sport, recreation, or another physical activity. An athletic trainer may use physical modalities, including but not limited to, heat, light, sound, cold, electricity, and mechanical

²⁵ Section 468.717, F.S.

²⁶ Sections 468.717 and 468.719, F.S.; and Rule 64B33-5.001, F.A.C.

²⁷ Rule 64B33-5.001, F.A.C.

devices. Under current law, the definition of “athletic training” is limited to the recognition, prevention, and treatment of athletic injuries.

Section 3 deletes obsolete provisions of s. 468.703, F.S., relating to provisions for the initial staggered terms for members of the Board of Athletic Training (board).

Section 4 amends s. 468.705, F.S., relating to the board’s authority on rulemaking to delete a requirement for a written protocol between the athletic trainer and a supervising physician. The bill authorizes the DOH to develop rules for requirements and guidelines addressing communication between the athletic trainer and a physician, including the reporting to the physician of new or recurring injuries or conditions. Existing requirements of the protocol require the athletic trainer to notify the supervising physician of new injuries as soon as practicable.

Section 5 amends the licensure requirements under s. 468.707, F.S. An applicant is required to submit information to the board and complete an application, in addition to meeting other qualifications.

Under the bill, the DOH must license each applicant who:

- Has completed an application form and remitted the required fees;
- Has submitted to a background screening under s. 456.0135, F.S., if the applicant applied after July 1, 2016;
- Has obtained a bachelor’s degree or higher from a college or university professional athletic training degree program accredited by CAATE or its successor recognized and approved by the United States Department of Education or the Commission on Recognition of Postsecondary Accreditation, and passed the national examination to be certified by the BOC;
- Has a current certification from the BOC if graduated before 2004;
- Has current certification in both CPR and the use of an AED as set forth in the continuing education requirements as determined by the board; and
- Has completed any other requirements as determined by the department and approved by the board.

Under the bill, the board may require a background screening for an applicant whose license has expired or who is undergoing disciplinary action. The current law requirement that an applicant be at least 21 years of age is removed under the bill.

Fingerprinting will be handled by FDLE for state processing and then by the Federal Bureau of Investigation (FBI) for national processing.²⁸ The cost for fingerprint processing is borne by the applicant under s. 456.0135, F.S.

The bill adds a provision requiring the applicant to provide records or other evidence to prove he or she has met the bill’s requirements. The bill leaves open to the board the ability to determine other records or requirements that are not specifically listed in statute. Broad authority to require

²⁸ Section 456.0135, F.S.

additional components or elements to the licensing or renewal process is also granted to the board.

Section 6 deletes the examination fee from s. 468.709, F.S., because the examinations are now handled through the BOC.

Section 7 removes references to specific entities for the continuing education requirements for CPR and AED training under s. 468.711, F.S.

Section 8 amends s. 468.713, F.S., to require athletic trainers to practice under the direction of a physician licensed under chapters 458, 459, 460, F.S., or a physician otherwise permitted to practice medicine under Florida law. References to practicing at an athletic event pursuant to direction of an authorized practitioner, a written protocol, and requirements for the athletic trainer to notify the supervising physician of new injuries as soon as practicable, are deleted.

The physician may communicate his or her direction to the athletic trainer through an oral or written prescription or protocol, as deemed appropriate by the physician. The athletic trainer is to provide care and service in the manner dictated by the physician.

Section 9 amends s. 468.715, F.S., to remove the description of sexual misconduct and to prohibit sexual misconduct in the practice of athletic training with a cross reference to s. 456.063, F.S., which provides more extensive protections applicable to all licensed health care professions.

Section 10 amends s. 468.717, F.S., relating to violations and penalties for athletic trainers. Two violations which are first degree misdemeanor violations pertaining to unlicensed practice and the use of certain credentials, are revised.

Section 11 amends s. 468.719, F.S., relating to disciplinary actions and removes as grounds for denial of a license or disciplinary action, the failure to adhere to certain advertising guidelines. Current law requires that an athletic trainer's name and license number be included in any advertising, including letterhead and business cards, but not clothing or novelty items.

The disciplinary action related to an athletic trainer who is unable to practice with reasonable skill and safety is modified to add reasons related to the licensee's mental or physical condition, use of controlled substances, and any other substance that may impair one's ability to practice.

Section 12 amends s. 468.723, F.S., relating to exemptions from part XIII of ch. 468, F.S. The bill clarifies that a person licensed in this state under another chapter is not prohibited from engaging in the practice for which he or she is licensed.

"Direct supervision" is defined for the purposes of supervising an athletic training student. It means the physical presence of an athletic trainer who is immediately available to an athletic trainer student and able to intervene in accordance with the standards set by CAATE.

An exemption from licensure is granted to a person authorized to practice athletic training in another state when such person is employed by or a volunteer for an out-of-state secondary or

post-secondary educational institution, or a recreation, competitive, or professional organization that is temporarily present in this state. The exemption does not further define what would be a recreation, competitive or professional organization or what length of time would be considered temporary. An exemption specific only to pugilistic exhibitions is deleted.

An exemption is also provided to third party payers to permit such organizations to reimburse employers of athletic trainers for covered services rendered by licensed athletic trainers.

Section 13 modifies the general background screening provisions of s. 456.0135, F.S., to include athletic trainers.

Section 14 provides an effective date of January 1, 2016.

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:

Broad authority is given to the Department of Health, which must be approved by the board, concerning additional requirements for licensure on lines 177 and 178 of the bill. This authority may raise the issue of unlawful delegation of legislative authority to an entity of the executive branch.

Article II, section 3 of the Florida Constitution, establishes a doctrine of separation of powers, providing that no branch may exercise powers pertaining to the other branches. Interpreting this doctrine in the context of the Legislature delegating authority to the executive branch, the Florida Supreme Court has stated that, “where the Legislature makes the fundamental policy decision and delegates to some other body the task of implementing that policy under adequate safeguards, there is no violation of the doctrine.” *Askew v. Cross Key Waterways*, 372 So.2d 913 (Fla. 1978). However, “[w]hen the statute is couched in vague and uncertain terms or is so broad in scope that no one can say with certainty, from the terms of the law itself, what would be deemed an infringement of the law, it must be held unconstitutional as attempting to grant to the administrative body the power to say what the law shall be.” *Conner v. Joe Hatton, Inc.* 216 So.2d 209 (Fla. 1968).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Under CS/SB 1526, for a person who applies for licensure after July 1, 2016, a background screening through the FDLE will be required. According to the FDLE, the costs for all aspects of the screening amount to \$75.75, which is borne by the applicant. The FDLE estimates that 1,935 record checks will be requested in Fiscal Year 2016-2017.²⁹

Each applicant and licensee is also required to have CPR and AED certification. The fiscal impact to the applicants and licensees is unknown.

Similarly, the applicant may be required to provide records or other evidence or complete any other requirements as determined by the DOH and approved by the board for licensing. The fiscal impact to applicants and renewing licensees is indeterminate since such requirements are unknown at present.

C. Government Sector Impact:

The DOH will incur non-recurring costs for rulemaking and modification of the application and forms which current budget authority is adequate to absorb. The DOH may incur a recurring increase in workload associated with additional complaints which current resources are adequate to absorb.³⁰

The FDLE anticipates no fiscal impact for Fiscal Year 2015-2016 but estimates an increase in fees collected in Fiscal Year 2016-2017 of \$92,880 if 1,935 applicants pay the \$48 combined cost of a state background check and five-year up-front inclusion in the state fingerprint retention program. Such fees are deposited into the FDLE's Operating Trust Fund.

No additional FTEs or other resources are anticipated for this bill. However, the FDLE advises that the combined effect of this bill and other legislation being considered in the 2015 Regular Session that require the FDLE to perform additional background screenings, could cause the FDLE to need additional human resources to meet the cumulative demand over time.

²⁹ Florida Department of Law Enforcement, *2015 FDLE Legislative Bill Analysis of SB 1526*, March 23, 2015, on file with staff of the Appropriations Subcommittee on Health and Human Services. The cost for a state background check is \$24, and the cost of the five-year up-front inclusion in the state fingerprint retention program is \$24. The cost for a national background check is \$14.75, and inclusion in the national fingerprint retention program is \$13. Total cost for initial background check and retention per applicant is \$75.75.

³⁰ Department of Health, Board of Athletic Trainers, *Senate Bill 1526 Analysis*, (February 27, 2015), pg. 5, (on file with the Senate Committee on Health Policy).

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill adds as a first degree misdemeanor for the use of the title “licensed athletic trainer,” the abbreviation “AT,” or “LAT,” or a similar title or abbreviation that suggests licensure as an athletic trainer. It is unclear how it could be known what similar title or abbreviation, now or in the future, might suggest to an individual that someone is a licensed athletic trainer.

To better facilitate level 2 background checks, fingerprint retention, and inclusion in the clearinghouse, the FDLE recommends inserting language acknowledging that:

- The applicant is to submit a full set of fingerprints to the FDLE or to an authorized vendor;
- Costs for the screening shall be borne by the applicant;
- The FDLE will handle fingerprints for state processing and forward them to the FBI for national processing;
- Fingerprints shall be retained by the FDLE in accordance with state law and, when enrolled with the national program, the FBI;
- Any arrest record identified will be reported to the FDLE; and
- All fingerprints received shall be entered into the Care Provider Background Screening Clearinghouse.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 468.70, 468.701, 468.703, 468.705, 468.707, 468.709, 468.711, 468.713, 468.715, 468.717, 468.719, 468.723, and 456.0135.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on March 23, 2015:

The committee substitute includes two technical amendments to provide clarity relating to care and services. No substantive changes were included.

B. Amendments:

None.