

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 Committee on Fiscal Policy

BILL: CS/SB 1526

INTRODUCER: Health Policy Committee and Senator Legg

SUBJECT: Athletic Trainers

DATE: April 17, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Lloyd	Stovall	HP	Fav/CS
2. Brown	Pigott	AHS	Recommend: Favorable
3. Pace	Hrdlicka	FP	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1526 revises several provisions related to athletic trainers. Specifically, the bill:

- Repeals the Governor’s authority to appoint initial members of the Board of Athletic Training;
- Requires the board to adopt rules pursuant communication between an athletic trainer and a supervising physician;
- Revises the licensure and licensure renewal requirements for athletic trainers;
- Requires athletic trainers to practice under the supervision of a licensed physician; and
- Revises the background screening requirements for athletic trainers

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

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

¹ Chapter 94-119, L.O.F., and s. 468.70, F.S.

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 9 members appointed by the Governor and confirmed by the Senate. Five of the members must be licensed athletic trainers, 1 must be a physician licensed under ch. 458, F.S., or ch. 459, F.S., 1 must be a physician licensed under ch. 460, F.S., and the remaining 2 members must be consumers who have never worked or had a financial interest in athletic training or been licensed health care practitioners.³

Services provided by athletic trainers include injury 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;
- 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 from the state that issued the license or certification.⁸

² Id.

³ Section 468.703(2), F.S.

⁴ Board of Certification for the Athletic Trainer, *Defining Athletic Training*, (January 2013) available at <http://www.bocatc.org/about-us/defining-athletic-training> (last visited April 14, 2015).

⁵ Section 468.701(5), F.S.

⁶ Section 468.701(3), F.S.

⁷ Section 468.701(2), F.S.

⁸ Section 468.707, F.S., and Department of Health, Board of Athletic Training, *Licensing and Regulation*, (updated July 23, 2014) available at <http://floridasathletictraining.gov/licensing/> (last visited April 14, 2015).

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 2-year license or \$75 for a 1-year license.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 fiscal year 2013-2014, the DOH reports that 356 initial applications were received and 324 initial licenses 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.”¹⁴

All licenses expire on September 30 of even-numbered years. To renew, a licensee must complete a renewal application, pay the renewal fees and show proof of current certification from the BOC.¹⁵ The cost to renew an active license for each biennium is \$130.¹⁶

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.¹⁷

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 Education (CAATE).¹⁸ The curriculum includes both formal instruction in injury/illness prevention, first aid and emergency care, assessment of injury/illness, human anatomy, and

⁹ Department of Health, Board of Athletic Training, *Licensing and Registration - Fees*, available at <http://floridasathletictraining.gov/licensing/> (last visited April 14, 2015), Rule 64B33-3.001, F.A.C., and 468.709, F.S. The fees listed in the statute and 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, available at <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/annual-reports.html> (last visited April 14, 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 Section 468.723, F.S.

¹⁵ Department of Health, Board of Athletic Training, *Renewal Information - Requirements*, available at <http://floridasathletictraining.gov/renewals/#tab-requirements> (last visited April 14, 2015).

¹⁶ *Id.* at note 9. *See also* Rule 64B33-3.001, F.A.C., which shows the biennial renewal fee as \$125.

¹⁷ Rule 64B33-2.003, F.A.C.

¹⁸ *Id.* at note 4.

physiology, therapeutic modalities and nutrition, as well as clinical education in practice settings.¹⁹

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 for athletic trainers.²⁰ The program is accredited through the National Commission for Certifying Agencies and undergoes reaccreditation by that agency every 5 years.²¹

The exam fee through the BOC is \$300 for first-time candidates and registration occurs through the BOC directly.²²

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.²³

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.²⁴

An athletic trainer is guilty of a first degree misdemeanor if any of the following occur:

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

¹⁹ National Athletic Trainers’ Association, *Athletic Training*, available at http://www.nata.org/about_AT/docs/GuideToAthleticTrainingServices.pdf (last visited April 14, 2015).

²⁰ Board of Certification, *BOC Vision and Mission*, available at <http://www.bocatc.org/about-us/boc-vision-mission> (last visited: April 14, 2015).

²¹ Id.

²² Board of Certification, *Register for Exam*, available at <http://www.bocatc.org/candidates/register-for-exam> (last visited April 14, 2015).

²³ Section 468.713, F.S.

²⁴ Section 468.715, F.S.

²⁵ Section 468.717, F.S.

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 ch. 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:

Section 1 modifies legislative intent to provide that athletic trainers meet minimum requirements for the safe practice of athletic training, and that the Legislative intent is to protect the public by ensuring that athletic trainers who fall below the minimum standards are prohibited from practicing in this state.

Section 2 modifies the definitions to reference current accrediting entities and repeals the definitions of “athlete,” “athlete activity,” “athletic injury,” “direct supervision,” and “supervision.” Focus is shifted from an athlete to a physically active person.

The definition of “athletic trainer” is amended to include a licensed athletic trainer who has met the education requirements of the CAATE and the BOC. 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.

The definition of “athletic training” is amended to mean the service and care provided under the direction of a licensed physician. Such service and care must be related to the 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 devices. Currently, the definition of “athletic training” is limited to the recognition, prevention, and treatment of athletic injuries.

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.

Section 3 repeals an obsolete provision relating to the appointment of initial members of the Board of Athletic Training (board).

Section 4 repeals 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. Currently, an athletic trainer must notify the supervising physician of new injuries as soon as practicable.

Section 5 amends the requirements for licensure under s. 468.707, F.S. In addition to current licensing requirements, the DOH must license each applicant who:

- Submits to a background screening under s. 456.0135, F.S., if the applicant applied after July 1, 2016. The board may require a background screening for an applicant whose license has expired or who is undergoing disciplinary action;
- Obtains 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 U.S. Department of Education or the Commission on Recognition of Postsecondary Accreditation;
- Passes the national examination to be certified by the BOC;
- Is certified by the BOC, if graduated before 2004;
- Is certified in CPR and the use of an AED as set forth in the continuing education requirements as determined by the board;
- Completes any other requirements as determined by the DOH and approved by the board; and
- Provides records or other evidence as determined by the board.

The bill repeals the requirement that an applicant be at least 21 years of age.

Section 6 repeals the examination fee. The BOC administers the required examination.

Section 7 repeals the requirement that a CPR and AED certification be provided by the American Red Cross or the American Heart Association or an equivalent training.

Section 8 revises the responsibilities of athletic trainers. Currently, an athletic trainer can practice within a written protocol established between the athletic trainer and the supervising physician and must notify the supervising physician of new injuries as soon as practicable, are deleted. The bill requires athletic trainers to practice under the direction of a licensed physician. 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 repeals the description of sexual misconduct and prohibits sexual misconduct in the practice of athletic training pursuant to s. 456.063, F.S. (general prohibition for DOH-licensed persons).

Section 10 clarifies the violations for practicing athletic training without a license. The bill prohibits the practice of athletic training, representing oneself as an athletic trainer, or providing athletic training services to a patient without being licensed. Currently, it is a violation to use the title “athletic trainer” without a license. The bill also prohibits using the title “licensed athletic trainer,” the abbreviation “AT” or “LAT,” or similar title or abbreviation that suggests licensure as an athletic trainer.

Section 11 repeals 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 bill adds reasons related to the licensee’s mental or physical condition, use of controlled substances, or any other substance that impair one’s ability to practice to the list of acts that constitute grounds for denial of a license or disciplinary action.

Section 12 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.

Related to the exemption from licensure for an athletic training student, the bill defines “direct supervision” as 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.

The bill exempts from licensure persons authorized to practice athletic training in another state when employed by, or a volunteer for, an out-of-state secondary or post-secondary educational institution, or a recreational, competitive, or professional organization that is temporarily present in this state. The bill repeals an exemption specific only to pugilistic exhibitions.

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 amends the general background screening provisions of s. 456.0135, F.S., to include athletic trainers. Fingerprinting will be handled by the 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.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁸ Section 456.0135, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Lines 177 and 178 of the bill give broad authority the Department of Health, which must be approved by the board, to determine additional licensure requirements. This authority may raise the issue of unlawful delegation of legislative authority to an entity of the executive branch.

Article II, s. 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.”²⁹ 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.”³⁰

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

None.

B. Private Sector Impact:

A person who applies for licensure after July 1, 2016, will be required to submit a background screening through the FDLE. 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 2016-2017.³¹

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

²⁹ *Askew v. Cross Key Waterways*, 372 So.2d 913 (Fla. 1978).

³⁰ *Conner v. Joe Hatton, Inc.* 216 So.2d 209 (Fla. 1968).

³¹ 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 5-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.

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.³²

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 5-year up-front inclusion in the state fingerprint retention program. Such fees are deposited into the FDLE's Operating Trust Fund.³³

No other needs for 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.³⁴

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;

³² Department of Health, Board of Athletic Trainers, *Senate Bill 1526 Analysis*, pg. 5 (February 27, 2015) (on file with the Senate Committee on Health Policy).

³³ Department of Law Enforcement, *Senate Bill 1526 Analysis*, (March 13, 2015) (on file with the Senate Fiscal Policy Committee).

³⁴ *Id.*

- 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.³⁵

The bill authorizes the DOH to adopt rules related to mandatory guidelines for communication between the athletic trainer and a physician.

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.

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

³⁵ Id.