

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 General Government

BILL: CS/SB 220

INTRODUCER: Regulated Industries Committee and Senator Latvala

SUBJECT: Veterinary Medicine

DATE: March 7, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>McSwain</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Betta</u>	<u>AGG</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 220 revises the laws governing the practice of veterinary medicine in ch. 474, F.S., to include alternative veterinary medicine, veterinary dentistry, and veterinary telemedicine. Alternative veterinary medicine includes therapies outside of conventional medicine, such as veterinary acupuncture, and other therapies that are based on techniques practiced in osteopathy, chiropractic medicine, or physical therapy.

The bill specifies activities included in the practice of veterinary dentistry, which must be performed by a licensed veterinarian or by a person under his or her immediate supervision.

Veterinarians engaged in veterinary telemedicine provide animal patient care, treatment, or service through medical information that is exchanged from one site to another by means of electronic communications. The use of telemedicine for patient care and treatment is allowed if a physical examination is performed by a veterinarian and a valid patient relationship between a patient (an animal) and a veterinarian is established. The term “physical examination,” as defined in the bill, does not apply in the context of investigations pursuant to s. 474.2185, F.S., concerning physical examinations related to lawful investigation of a complaint against a licensed veterinarian (or of an application for licensure).

The bill has no fiscal impact on state government. See Section V.

The bill takes effect July 1, 2017.

II. Present Situation:

Veterinary Medicine, the Practice of Veterinary Medicine, and Exempted Persons

In 1979, the Legislature determined the practice of veterinary medicine is potentially dangerous to public health and safety if conducted by incompetent and unlicensed practitioners and that minimum requirements for the safe practice of veterinary medicine are necessary.¹ The Board of Veterinary Medicine (board) in the Department of Business and Professional Regulation (DBPR) implements the provisions of ch. 474, F.S., on Veterinary Medical Practice.² A veterinarian is a health care practitioner licensed to engage in the practice of veterinary medicine in Florida under ch. 474, F.S.³

Veterinary medicine includes, with respect to animals:⁴

- Surgery;
- Acupuncture;
- Obstetrics;
- Dentistry;
- Physical therapy;
- Radiology;
- Theriogenology (reproductive medicine);⁵ and
- Other branches or specialties of veterinary medicine.

The practice of veterinary medicine is the diagnosis of medical conditions of animals, and the prescribing or administering of medicine and treatment to animals for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease, or holding oneself out as performing any of these functions.⁶ Veterinarians who are incompetent or present a danger to the public are subject to discipline and may be prohibited from practicing in the state.⁷

Eight categories of persons are exempt from complying with ch. 474, F.S.:⁸

- Faculty veterinarians when they have assigned teaching duties at accredited⁹ institutions;

¹ See s. 474.201, F.S.

² See ss. 474.204 through 474.2125, F.S., concerning the powers and duties of the board.

³ See s. 474.202(11), F.S.

⁴ See s. 474.202(13), F.S. Section 474.202(1), F.S., defines “animal” as “any mammal other than a human being or any bird, amphibian, fish, or reptile, wild or domestic, living or dead.”

⁵ The Society for Theriogenology, established in 1954, is composed of veterinarians dedicated to standards of excellence in animal reproduction. See <http://www.therio.org/> (last visited Feb. 1, 2017).

⁶ See s. 474.202(9), F.S. Also included is the determination of the health, fitness, or soundness of an animal, and the performance of any manual procedure for the diagnosis or treatment of pregnancy or fertility or infertility of animals.

⁷ See s. 474.213, F.S., on prohibited acts, and s. 474.214, F.S., on disciplinary proceedings.

⁸ See s. 474.203, F.S.

⁹ Sections 474.203(1) and (2), F.S., provide that accreditation of a school or college must be granted by the American Veterinary Medical Association (AVMA) Council on Education, or the AVMA Commission for Foreign Veterinary Graduates. The AVMA Council on Education is recognized by the Council for Higher Education Accreditation (CHEA) as the accrediting body for schools and programs that offer the professional Doctor of Veterinary Medicine degree (or its equivalent) in the United States and Canada, and may also approve foreign veterinary colleges. See <https://www.avma.org/professionaldevelopment/education/accreditation/colleges/pages/coe-pp-overview-of-the-coe.aspx> (last visited Feb. 1, 2017). The AVMA Commission for Foreign Veterinary Graduates assists graduates of foreign, non-accredited schools to meet the requirement of most states that such foreign graduates successfully complete an educational

- Intern/resident veterinarians at accredited institutions who are graduates of an accredited institution, but only until they complete or terminate their training;
- Students in a school or college of veterinary medicine who perform assigned duties by an instructor (no accreditation of the institution is required), or work as preceptors¹⁰ (if the preceptorship is required for graduation from an accredited institution);
- Doctors of veterinary medicine employed by a state agency or the United States Government while actually engaged in the performance of official duties at the installations for which the services were engaged;
- Persons or their employees caring for the persons' own animals, as well as part-time or temporary employees, or independent contractors, who are hired by an owner to help with herd management and animal husbandry tasks (excluding immunization or treatment of diseases that are communicable to humans and significant to public health) for herd/flock animals, with certain limitations; however, the exemption is not available to a person licensed as a veterinarian in another state and temporarily practicing in Florida, or convicted of violating ch. 828, F.S., on animal cruelty, or of any similar offense in another jurisdiction, and employment may not be provided for the purpose of circumventing ch. 474, F.S.;
- Certain entities or persons¹¹ that conduct experiments and scientific research on animals as part of the development of pharmaceuticals, biologicals, serums, or treatment methods of treatment or techniques to diagnose or treatment of human ailments, or in the study and development of methods and techniques applicable to the practice of veterinary medicine;
- Veterinary aides, nurses, laboratory technicians, preceptors, or other employee of a licensed veterinarian, who administer medication or provide help or support under the responsible supervision¹² of a licensed veterinarian; and
- Certain non-Florida veterinarians who are licensed and actively practicing veterinary medicine in another state, are board certified in a specialty recognized by the Florida Board of Veterinary Medicine, and are assisting upon request of a Florida-licensed veterinarian to consult on the treatment of a specific animal or on the treatment on a specific case of the animals of a single owner.

Veterinarian/Client/Patient Relationship

Section 474.202(12), F.S., defines a “veterinarian/client/patient relationship” as one in which a veterinarian has assumed responsibility for making medical judgments about the health of an animal and its need for medical treatment.

equivalency assessment certification program. *See*

<https://www.avma.org/professionaldevelopment/education/foreign/pages/ecfvg-about-us.aspx> (last visited Feb. 1, 2017). In turn, the Council for Higher Education Accreditation, a national advocate for regulation of academic quality through accreditation, is an association of 3,000 degree-granting colleges and universities and recognizes 60 institutional and programmatic accrediting organizations. *See* <http://chea.org/> (last visited Feb. 1, 2017).

¹⁰ A preceptor is a skilled practitioner or faculty member, who directs, teaches, supervises, and evaluates students in a clinical setting to allow practical experience with patients. *See also* <https://www.merriam-webster.com/dictionary/preceptor#medicalDictionary> (last visited Feb. 1, 2017).

¹¹ *See* s. 474.203(6), F.S., which states that the exemption applies to “[s]tate agencies, accredited schools, institutions, foundations, business corporations or associations, physicians licensed to practice medicine and surgery in all its branches, graduate doctors of veterinary medicine, or persons under the direct supervision thereof”

¹² The term “responsible supervision” is defined in s. 474.202(10), F.S., as the “control, direction, and regulation by a licensed doctor of veterinary medicine of the duties involving veterinary services” delegated to unlicensed personnel.

Telemedicine

The use of electronic communications to facilitate patient health care (telemedicine) is not addressed in ch. 474, F.S., and is not authorized for practitioners of veterinary medicine in Florida. However, the Florida Mental Health Act (popularly known as “The Baker Act”),¹³ contains a legislative finding that “the use of telemedicine for patient evaluation, case management, and ongoing care will improve management of patient care and reduce costs of transportation.”¹⁴

III. Effect of Proposed Changes:

The bill amends s. 474.202(16), F.S., to include alternative veterinary medicine and veterinary telemedicine within the practice of veterinary medicine. The bill creates s. 474.202(4), F.S., to specify the practice of veterinary medicine includes “complementary or alternative and integrative therapies” (therapies), that are a diverse group of philosophies and practices that may be preventive, diagnostic, or therapeutic in nature, but are not part of conventional or Western medicine¹⁵ as practiced by most veterinarians.

The veterinary therapies added to the practice of veterinary medicine include:

- Acupuncture, acuthery;¹⁶ and acupressure;
- Homeopathy;¹⁷
- Manual or manipulative therapy, such as therapies based on techniques practiced in osteopathy,¹⁸ chiropractic medicine, or physical medicine and therapy;
- Nutraceutical¹⁹ therapy; and
- Physiotherapy.²⁰

A similar definition for “complementary, alternative and integrative therapies” is in the Standards of Practice adopted in 2005 by the DBPR.²¹

¹³ See s. 394.451, F.S.

¹⁴ See s. 394.453(3), F.S.

¹⁵ The term “Western medicine” has been defined as a system in which healthcare professionals treat symptoms and diseases using drugs, radiation, or surgery; alternative descriptions include conventional medicine, mainstream medicine, and orthodox medicine. See the *Dictionary of Cancer Terms of the National Cancer Institute at the National Institutes of Health*, available at <https://www.cancer.gov/publications/dictionaries/cancer-terms?cdrid=454743> (last visited Feb. 1, 2017).

¹⁶ Acuthery utilizes needles or non-needle techniques with electrical stimulation or pressure. See <http://medical-dictionary.thefreedictionary.com/acuthery> (last visited Feb. 1, 2017).

¹⁷ *Id.* Homeopathy is an alternative approach to medicine based on the belief that natural substances, specially prepared and used in very small amounts, restore health, and that, in order for a remedy to be effective, it must cause in a healthy person the same symptoms being treated in the patient.

¹⁸ Section 459.003(3), F.S., defines the practice of osteopathic medicine by licensed osteopathic physicians for human patients as “the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental conditions.” The practice is based in part upon requirements that emphasize the importance of the musculoskeletal structure and manipulative therapy to maintain and restore health. *Id.*

¹⁹ A “nutraceutical” is a food or dietary supplement that is believed to provide health benefits. See the *Dictionary of Cancer Terms of the National Cancer Institute at the National Institutes of Health*, available at <https://www.cancer.gov/publications/dictionaries/cancer-terms?cdrid=454743> (last visited Feb. 1, 2017).

²⁰ Section 486.021(8), F.S., defines “physiotherapy” as identical to and interchangeable with the term “physical therapy.”

²¹ See Fla. Admin. Code R. 61G18-19.002. The rule requires that a licensed veterinarian who offers such treatment must inform the owner of the patient of the treatment and explain (orally or in writing) the associated benefits and risks, along with the veterinarian’s education, experience, and credentials for the proposed treatment option.

The bill creates s. 474.202(17), F.S., to include veterinary telemedicine by licensed veterinarians within the practice of veterinary medicine. The bill requires performance of a physical examination and establishment of a valid patient relationship between a patient (an animal) and a veterinarian. Veterinarians engaged in veterinary telemedicine provide patient care, treatment, or service through medical information that is exchanged from one site to another by means of electronic communications.²²

The bill creates s. 474.202(10), F.S., to define “physical examination” as the evaluation of a patient by personal inspection, palpation,²³ and auscultation (listening to sounds using a stethoscope) by a veterinarian. The term “physical examination” does not apply in the context of investigations pursuant to s. 474.2185, F.S., concerning physical examinations related to lawful investigation of a complaint against a licensed veterinarian (or of an application for licensure).

The bill amends the current definition of “veterinarian/client/patient relationship” in s. 274.202(12), F.S., which is a relationship in which a veterinarian has assumed responsibility for making medical judgments about the health of an animal and its need for medical treatment.²⁴ The existing definition is revised by the bill to be a definition of a “veterinarian relationship,” a “client relationship,” or a “patient relationship.”

The bill creates s. 474.202(15), F.S., to specify the following activities included in the practice of veterinary dentistry and performed either by a licensed veterinarian or by a person under his immediate supervision:²⁵

- The examination, evaluation, diagnosis, prevention, and treatment of the oral cavity, jaw and facial (maxillofacial) areas and associated structures; and
- Dental cleaning, which includes:
 - Removal of plaque and calcified dental plaque from gums and teeth;²⁶ and
 - Teeth polishing using power or hand instruments.

The treatment of diseased periodontal tissues (periodontal therapy) is also included in veterinary dentistry; periodontal therapy includes dental cleaning and one or more of the following treatments:

- Root planing (trimming);
- Gum trimming (gingival curettage);

²² Electronic communication” is defined in 18 U.S. Code s. 2510(10) to mean, in pertinent part, any transfer of signals, writing, images, sounds, data, or intelligence of any nature transmitted by a wire, radio, electromagnetic, photo-electronic or photo-optical system, excluding (a) any wire or oral communication; (b) any communication made through a tone-only paging device; (c) any communication from a tracking device; or (d) electronic funds transfer information stored by a financial institution in an electronic communications system used for the storage and transfer of funds;

²³ Palpation is an examination that includes pressing on the body to feel organs and tissues underneath. *See the Dictionary of Cancer Terms of the National Cancer Institute at the National Institutes of Health, available at <https://www.cancer.gov/publications/dictionaries/cancer-terms?cdrid=454743>* (last visited Feb. 1, 2017).

²⁴ See s. 474.202(12), F.S.

²⁵ The term “immediate supervision” is defined in s. 474.202(5), F.S., to mean, “a licensed doctor of veterinary medicine is on the premises whenever veterinary services are being provided.” Section 474.215, F.S., requires a premises permit from the DBPR for any permanent or mobile establishment where a licensed veterinarian practices. *See also* Fla. Admin. Code R. Ch. 61G18-15, for the requirements for issuance of a premises permit by the DBPR.

²⁶ The technical terms in the bill are scaling and supragingival and subgingival plaque and calculus removal.

- Removal or repositioning of soft tissue (periodontal flaps);
- Extractions of teeth;
- Regenerative surgery (for natural renewal of a tissue or part);
- Procedures to remove or re-contour gums (gingivectomy or gingivoplasty); and
- Local administration of antiseptics or antibiotics.

The bill revises two references in s. 474.2165, F.S., to substitute the term “physical examination” for “examination,” to conform to the definition of “physical examination” created in s. 474.202(10), F.S.

The bill amends s. 474.202, F.S., to conform cross-references.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By specifying the practice of veterinary medicine includes alternative veterinary medicine, veterinary telemedicine, and veterinary dentistry, as defined in CS/SB 220, and requiring that such activities be performed by licensed veterinarians (and others if properly supervised), the bill may adversely affect persons who have previously engaged in such activities, but are not licensed as veterinarians in Florida.

The DBPR maintains that licensure as a veterinarian is required for a person to provide the complementary or alternative and integrative therapies described in the bill.²⁷

Prosecution of the unlicensed practice of veterinary medicine by the DBPR is based upon

²⁷ See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for SB 220, dated February 2, 2017 (on file with Senate Committee on Regulated Industries) at page 2.

the definition of “veterinary medicine” in s. 474.202(13), F.S.²⁸ The DBPR has prosecuted individuals for unlicensed activity based on the performance of the services described in the bill as “veterinary dentistry” and “veterinary telemedicine,” and the revised definition of veterinary medicine may increase the number of persons deemed to be engaging in the unlicensed practice of veterinary medicine.²⁹

C. Government Sector Impact:

The DBPR indicates CS/SB 220 has no fiscal impact. However, the bill could lead to an increase in the number of cases of unlicensed veterinary practice.³⁰ It is indeterminate how many new cases could result, but, according to the DBPR, it could handle an increase with existing staff.³¹ The DBPR also indicates that rulemaking may be necessary to clarify undefined terms in the bill and to implement veterinary telemedicine regulations, including:

- The means and methods of such implementation; and
- Any requirements for third-party service providers to be licensed by the DBPR.³²

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DBPR Office of the General Counsel provided the following comments:

- The proposed definition of “physical examination” states that it is performed by a veterinarian. By including that phrase in the definition of examination, it could create a situation where an unlicensed person may claim he or she was not actually performing an examination because he or she is not a veterinarian; and therefore, not in violation.
- The change to s. 474.2165(3), F.S., where “physical” is added to examination may create a situation where records of telemedicine would not be provided to the client upon request. It does not affect the requirement to keep medical records of the telemedicine consultation, but it exempts the veterinarian from providing those medical records to the client. This could create confusion for the public and licensees.³³

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 474.202 and 474.2165.

²⁸ *Id.*

²⁹ *Id.* at page 5.

³⁰ *Id.* at pp. 4 and 5.

³¹ *Id.* at page 5.

³² *Id.* at page 5.

³³ *Id.* at page 6 and based on a telephone conversation with DBPR staff on February 28, 2017.

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

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

CS by Regulated Industries on February 8, 2017:

The committee substitute revises:

- The definition of “physical examination” in s. 474.202(10), F.S., to substitute the term “veterinarian” for “licensed veterinary practitioner”; and
- The definition of “veterinary telemedicine” in s. 474.202(17), F.S., to substitute:
 - The term “veterinarian” for the term “licensed Florida veterinarian”; and
 - The term “physical examination,” for the term “complete physical examination.”

B. Amendments:

None.