

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 Health Policy

BILL: SB 744

INTRODUCER: Senator Grimsley

SUBJECT: Laser Hair Removal or Reduction

DATE: February 12, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-VanWinkle	Stovall	HP	Pre-meeting
2.	_____	_____	RI	_____
3.	_____	_____	AP	_____

I. Summary:

SB 744 transfers the licensing and regulation of electrology from the Board of Medicine (BOM) within the Department of Health (DOH) to the Department of Business and Professional Regulation (DBPR). The bill repeals provisions in the Electrolysis Practice Act relating to the BOM, the Electrolysis Council (EC), and temporary permits to practice electrology. The bill requires licensees who use laser or pulse-light devices to be certified by a nationally-recognized electrology organization.

The bill transfers all applicable statutory powers, duties, functions, records, personnel, property and unexpended balances of appropriations, allocations and other funds by a type 2 transfer to the DBPR. The bill preserves the validity of any pending judicial or administrative actions, or the validity of licenses and temporary permits issued by the DOH; and further provides that lawful orders of the DOH will remain in effect and enforceable after the transfer.

The effective date of the bill is July 1, 2018.

II. Present Situation:

State Regulation of Electrology

The EC and the BOM, currently regulate the licensing and practice of electrology.¹ “Electrolysis or electrology” is defined as the permanent removal of hair by destroying the hair-producing cells of the skin and vascular system, using equipment and devices approved by the BOM which have been cleared by, and registered with, the United States Food and Drug Administration and that are used pursuant to protocols approved by the BOM.²

¹ See ch. 478, F.S., and Rules 64B8-50 through 64B8-56, F.A.C.

² Section 478.42(5), F.S.

The EC consists of five members appointed by the BOM. The EC meets quarterly and has the following responsibilities:³

- Approval and denial of applicants by examination and endorsement;
- Approval and denial of continuing education providers and electrolysis training programs;
- Authority to accept non-disciplinary voluntarily relinquishments;
- Authority to notice rules for development and to propose rules to the BOM; and
- Initial consideration of rulemaking proposals, petitions to adopt, amend, or repeal rules related to electrology and making recommendations to the BOM as to the appropriate action to be taken.

A person may not practice electrolysis or hold himself or herself out as an electrologist unless that person has an active valid Florida license.⁴ Specifically, an applicant for a license must:

- Be at least 18 years old;
- Be of good moral character;
- Possess a high school diploma or high school equivalency diploma;
- Have not committed in any jurisdiction an act that constitutes grounds for discipline as an electrologist in Florida;
- Have successfully completed the academic and practical training requirements of an electrolysis training program approved of by the BOM, not to exceed 120 hours; and
- Have passed a written examination developed by the DOH or a national examination approved by the BOM.⁵

The DOH may issue temporary permits to qualified applicants to practice electrology that are valid until the next board meeting at which licensing decisions occur, or the next exam results are issued.⁶

The BOM, with the assistance of the EC,⁷ establishes minimum standards for the delivery of electrolysis services and adopts rules to implement ch. 478, F.S.⁸

Electrology facilities must be licensed by the DOH. The BOM is responsible for rulemaking to govern the licensure, operation, personnel, and safety and sanitary requirements of electrology facilities.⁹

Use of Laser and Light-based Devices for Hair Removal or Reduction

A Florida electrologist may use laser and light-based devices for hair removal or reduction if he or she:

- Has completed a 30-hour continuing education course approved by the EC;¹⁰

³ Section 478.44, F.S., and Rule 64B8-50.003, F.A.C.

⁴ Section 478.49(1), F.S.

⁵ Section 478.45(1) and (2), F.S.

⁶ Section 478.46, F.S.

⁷ Section 478.44, F.S., creates the Electrolysis Council, and specifies its membership and meeting requirements.

⁸ Section 478.43, F.S. *See* Rules 64B8-50 through 64B8-56, F.A.C., which regulate the licensure, practice, continuing education, and discipline of electrologists.

⁹ Section 478.51, F.S.

¹⁰ Rule 64B8-52.004, F.A.C.

- Is certified in the use of laser and light-based devices for the removal or reduction of hair by a national certification organization approved by the EC and the BOM;
- Is using only the laser and light-based hair removal or reduction devices upon which they have been trained; and
- Is operating under the direct supervision and responsibility of a physician¹¹ properly trained in laser hair removal and licensed pursuant chs. 458 or 459, F.S.¹²

The EC and the BOM have approved the Society for Clinical & Medical Hair Removal, Inc.,¹³ as the national certification organization to certify Florida electrologists in the use of laser and pulse-light devices for the removal or reduction of hair.¹⁴

If a licensee violates the electrology practice act, he or she can be disciplined¹⁵ and be given penalties set forth in s. 456.072, F.S., which include: suspension, probation, fines, reprimands, refunds, and remedial education.¹⁶

There are currently 1,329 active electrologist licenses, and 310 licensed electrolysis facilities, in Florida. The DOH does not distinguish in its reporting between those electrologists certified and those not certified in the use of lasers or pulse-light devices.¹⁷

Type Two Transfer

A type two transfer is a transfer of an entire state agency, or portion thereof, to another state agency. This generally includes the transfer of the agency's statutory powers, duties, functions, property, personnel, and funds, unless otherwise provided by law. The administrative rules in effect under the transferred agency at the time of transfer remain in effect until specifically changed in a manner provided by law.¹⁸

Department of Business and Professional Regulation (DBPR)

The DBPR, through various divisions, regulates and licenses businesses and professionals in Florida.¹⁹

¹¹ A physician cannot supervise more than four electrologists at any one time. Rule 64B8-56.002(6), F.A.C.

¹² Rule 64B8-56.002(2), F.A.C.

¹³ The Society for Clinical & Medical Hair Removal, Inc., is an international non-profit organization with members in the United States, Canada, and abroad. The Society for Clinical & Medical Hair Removal offers four certifications through International Commission for Hair Removal Certification (ICHRC) competency-based certification examinations. These certifications enhance the professional growth of members and the Society, and all allied health practitioners, including physicians, electrologists, nurses and others authorized to practice in the jurisdiction in which they practice. See The Society of Clinical & Medical Hair Removal, Inc., *Certification* <https://www.scmhr.org/certification/> (last visited Feb. 8, 2018).

¹⁴ Department of Health, Licensing and Regulation, Electrolysis, *Laser Information* <http://www.floridahealth.gov/licensing-and-regulation/electrolysis/laser/index.html> (last visited Feb. 8, 2018).

¹⁵ Section 478.52, F.S.

¹⁶ Section 456.072(2), F.S.

¹⁷ The number of active Florida licenses was calculated by adding "In State Active," "Out of State Active," and "Military Active" practitioners. See Department of Health, Division of Medical Quality Assurance, Annual Report and Long Range Plan, Fiscal Year 2016-2017, *Summary of Licensed Practitioners*, pp. 11 and 14, <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/documents/annual-report-1617.pdf> (last visited Feb. 8, 2018).

¹⁸ Section 20.06, F.S.

¹⁹ Section. 20.165, F.S.

The DBPR, Division of Professions, licenses and regulates more than 434,000 professionals through professional boards or regulated licensing programs.²⁰ The Division of Regulation (division) is the DBPR's enforcement authority for the boards and programs.²¹ To ensure compliance with applicable laws and rules by the DBPR professions and related businesses, the division investigates complaints, utilizes compliance mechanisms, and performs inspections. Together the Divisions of Professions and Regulations regulate those professions without a professional board, which include the home inspection services licensing program²² and the mold-related service licensing program.^{23,24}

III. Effect of Proposed Changes:

SB 744 transfers the licensing and regulation of electrology from the BOM within the DOH to the DBPR, via a type two transfer. This includes transferring the statutory powers, duties, functions, records, property, personnel, and funds to the DBPR. The bill preserves pending judicial or administrative actions as of 11:59 p.m. on the day before the transfer. Lawful orders related to electrology issued by the DOH will remain in effect and will be enforceable. Persons who hold a valid electrologist license, temporary license, or electrology facility license, in good standing at the time of the transfer will retain such license or permit in the same capacity after the transfer.

The bill eliminates the EC and establishes the electrology licensing program within the DBPR. The profession will be licensed and regulated by the DBPR through the Divisions of Professions and Regulations without an advisory council or oversight from the BOM or the DOH. Disciplinary penalties for electrologists will be the same as the current DBPR standards for other professions.

The bill authorizes in statute electrologists to perform laser and pulsed-light hair removal provided the licensed electrologist maintains a nationally-recognized certification in the use of laser or pulsed-light devices in hair removal or reduction procedures.

The bill revises the definition of "electrolysis or electrology," to reflect technological advancements. It removes the reference to destroying hair producing cells, instead referring to the permanent removal of hair using equipment and devices that have been cleared by and registered with the U.S. Food and Drug Administration.

Temporary electrologists permits may no longer be issued under the bill; but temporary permits issued prior to the bill's effective date that are in good standing remain in the same capacity after the bill takes effect.

²⁰ Department of Business and Professional Regulation, *Division of Professions*, <http://www.myfloridalicense.com/DBPR/division-of-professions/> (last visited Feb. 8, 2018).

²¹ Department of Business and Professional Regulation, *Division of Regulation*, <http://www.myfloridalicense.com/DBPR/division-of-regulation/> (last visited Feb. 8, 2018).

²² See s. 468.832, F.S., and Rules 61-30.101 through 61-30.811, F.A.C.

²³ See s. 468.842, F.S., and Rules 61-31,101 through 61.31.605, F.A.C.

²⁴ *Supra* note 21.

The bill reorganizes ss. 20.165 and 20.43, F.S. It moves the electrolysis licensing program to the DBPR as a regulated profession, and removes it from the DOH. It lists the boards and professions regulated by each department in alphabetical order.

The bill substitutes the DBPR for the BOM for all aspects regarding the licensure and regulation of electrology and electrolysis facilities.

The effective date of the bill is July 1, 2018.

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:

None.

C. Government Sector Impact:

The DOH will experience a decrease in revenue associated with the collection of the application, initial licensure, renewal, and miscellaneous fees for electrologist and electrolysis facilities. The DBPR will experience an increase by receiving these fees.

VI. Technical Deficiencies:

Section 456.001(4), F.S., includes any person licensed under ch. 478, F.S., within the definition of a health care practitioner. Chapter 478, F.S., should be removed from this definition to avoid conflicting jurisdiction over the practice of electrology, especially in light of the numerous references in ch. 456, F.S., and other Florida Statutes, to, "health care practitioners as defined in s. 456.001, F.S."

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.165, 20.43, 478.42, 478.49, 456.037, 478.45, 478.47, 478.50, 478.51, 478.52, 478.53, and 478.55.

This bill creates one undesignated section of law.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.