

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 965 Laser Hair Removal Or Reduction  
**SPONSOR(S):** Appropriations Committee, Careers and Competition Subcommittee, Fine  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 744

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	9 Y, 1 N, As CS	Wright	Anstead
2) Appropriations Committee	23 Y, 0 N, As CS	Mielke	Leznoff
3) Commerce Committee			

### SUMMARY ANALYSIS

The Electrolysis Council (EC) and the Board of Medicine (BOM) under the Department of Health (DOH) currently regulate the licensing and practice of electrology. "Electrology" or "electrolysis" generally means a process to permanently remove body hair using a probing device which uses electrical or heat energy to destroy the hair follicle. In order to be an electrologist, a person must obtain a license by completing a 120-hour training program, 200 practice hours, and an exam.

If an electrologist uses laser or light-based devices to remove hair, they must be supervised by a physician. Additional training is required, but maintaining additional certification is not.

The bill:

- removes oversight of the practice of electrology from the Electrolysis Council and BOM;
- eliminates the Electrolysis Council;
- provides that the practice of electrology is directly regulated by the DOH;
- defines electrolysis/electrology as the permanent removal of hair using equipment and devices that have been cleared by and registered with the United States Food and Drug Administration;
- allows temporary permits to practice electrology for no more than 90 days; and
- requires licensed electrologists to maintain a nationally recognized certification to use laser or pulsed-light devices.

The bill has an insignificant, negative fiscal impact on DOH that can be absorbed with existing resources. The bill does not have a fiscal impact on local government.

The bill has an effective date of October 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

###### Background

The Florida Board of Medicine (BOM) within DOH licenses, monitors, disciplines, educates, and rehabilitates physicians and other practitioners to assure their fitness and competence in the service of the people of Florida.<sup>1</sup> Electrology is a practice that is regulated by the BOM, with input by the Electrolysis Council (EC). The EC is a body that is housed within the BOM and advises in matters related to setting the standards of electrology practice and promulgating rules to regulate electrology.<sup>2</sup> These entities are given authority to investigate complaints, impose discipline on a license, and perform inspections related to electrolysis.<sup>3</sup>

###### Practice of Electrology

“Electrolysis or electrology” is the practice of “permanent removal of hair by destroying the hair-producing cells of the skin and vascular system, using equipment and devices approved by the board which have been cleared by and registered with the United States Food and Drug Administration (FDA) and that are used pursuant to protocols approved by the board.”<sup>4</sup> The process starts by inserting a probe into the hair follicle, which destroys the hair with chemical or heat energy. The hair is then removed with tweezers.<sup>5</sup> The procedure takes place in a DOH-licensed electrology facility.<sup>6</sup>

A professional electrology license is required to practice electrology.<sup>7</sup> Medical and osteopathic physicians can perform electrolysis, and, in addition, can perform laser and light-based hair removal or reduction without an electrology license.<sup>8</sup> Advanced registered nurse practitioners (ARNP) and physician assistants (PA) may practice laser or light-based hair removal or reduction if they are directly supervised by a physician and conform to practice requirements set forth by BOM and applicable protocols.<sup>9</sup> ARNPs and PAs, if they are supervised by a medical doctor, and practice in an office at which the exclusive service being performed is laser hair removal, are exempt from the direct supervision requirement.<sup>10</sup> Generally, in other areas of practice, the supervising physician decides if the procedure is to be directly<sup>11</sup> or indirectly<sup>12</sup> supervised during approved procedures.<sup>13</sup>

To qualify for licensure as an electrologist, an applicant must:

- be at least 18 years old,
- be of good moral character,
- possess a high school diploma or equivalent,

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<sup>1</sup> FLORIDA BOARD OF MEDICINE, <http://flboardofmedicine.gov/> (last visited Jan. 12, 2018).

<sup>2</sup> s. 478.44, F.S.

<sup>3</sup> ss. 478.43, 478.51, and 478.52, F.S.

<sup>4</sup> s. 478.42(5), F.S.

<sup>5</sup> WEBMD, LLC, *Electrolysis for Hair Removal*, <https://www.webmd.com/beauty/cosmetic-procedures-electrolysis#1> (last visited Jan. 11, 2018).

<sup>6</sup> s. 478.51, F.S.

<sup>7</sup> s. 478.49, F.S.

<sup>8</sup> ss. 458.348(2), 459.025(2), and 478.54, F.S.; and Email from Paul Runk, Director of the Office of Legislative Planning, Department of Health, RE: Laser Hair Removal, regarding scope of practice (Jan. 18, 2018).

<sup>9</sup> ss. 458.348(2) and 459.025(2), F.S.

<sup>10</sup> s. 458.348(3)(e), F.S.

<sup>11</sup> Onsite supervision. rr. 64B8-30.001, F.A.C., and 64B15-6.001, F.A.C.

<sup>12</sup> Supervision that is done remotely, but within reasonable physical proximity, or done through telecommunication. *Id.*

<sup>13</sup> s. 464.012(3), F.S.; and rr. 64B8-30.001, F.A.C., and 64B15-6.001, F.A.C.

- have not committed acts which would constitute grounds to discipline an electrologist in Florida,
- have completed the required 120-hour electrolysis training program and board approved 200-hour practical application, and
- pass a written exam approved by DOH.<sup>14</sup>

DOH is permitted to issue temporary permits to qualified applicants to practice electrology that are valid until the following board meeting where licensing decisions take place, or the next exam results are issued.<sup>15</sup> The implementation of continuous testing has lessened the need for temporary permits.<sup>16</sup>

If a licensee violates the electrology practice act, they can be disciplined<sup>17</sup> and be given penalties set forth in the physician practice act, which include: suspension, probation, fines, reprimands, refunds, and remedial education.<sup>18</sup>

Currently, there are 1,343 licensed electrologists and 310 active electrologist facilities in Florida.<sup>19</sup> For Fiscal Year 2016- 2017, 30 complaints were received by DOH against electrologists, 11 of which were found legally sufficient, and 2 of which had administrative complaints filed.<sup>20</sup>

Reports indicate that the popularity of electrolysis is on the rise<sup>21</sup> and employment in the field is expected to grow by twelve percent by 2024.<sup>22</sup>

### Laser and Pulsed-Light Devices for Hair Removal in Florida

Both laser devices and light-based devices used for hair removal or reduction work by producing light energy that is absorbed by the melanin in the hair follicle, which causes damage to the hair, therefore reducing hair growth. Specifically, laser devices produce a single, concentrated wavelength of light, and light-based devices produce a broad spectrum of light to target hair follicle melanin. Generally, a cooling gel or cooling device is applied to the skin during the procedure for protection.<sup>23</sup>

BOM has established by rule an allowance for electrologists to use laser or light-based devices in hair removal or reduction, which are procedures above the initial scope of licensure, if they:

- have completed a 30-hour training course in laser or light-based devices for hair removal or reduction,
- have passed the Certified Medical Electrologist test (CME test) given by the Society for Clinical and Medical Hair Removal (SCMHR),
- use only the devices for which they have been trained, and
- operate under the direct supervision of a licensed physician who has been trained in such procedures.<sup>24</sup>

<sup>14</sup> s. 478.45, F.S.

<sup>15</sup> s. 478.46, F.S.

<sup>16</sup> Florida Department of Health, Agency Analysis of 2018 HB 965, p. 3 (November 2, 2017).

<sup>17</sup> s. 478.52, F.S.

<sup>18</sup> s. 456.072(2), F.S.

<sup>19</sup> DOH, *supra* note 18 at 6.

<sup>20</sup> Florida Department of Health, *Annual Report & Long-Range Plan*, Fiscal Year 2016- 2017, pp. 23, 26 (October 30, 2015), available at [http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/\\_documents/annual-report-1617.pdf](http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/_documents/annual-report-1617.pdf).

<sup>21</sup> Healthline Media, *Laser Hair Removal vs. Electrolysis: Which Is Better?*, <https://www.healthline.com/health/beauty-skin-care/laser-hair-removal-vs-electrolysis#takeaway> (last visited Jan. 13, 2018).

<sup>22</sup> DOH, *supra* note 18 at 2.

<sup>23</sup> ASC IP Holdings Pty Ltd, *Laser V IPL/VPL*, <https://thecosmeticclinic.co.nz/treatments/laser/laser-hair-removal/ipl-hair-removal/> (last visited Jan. 12, 2018).; WebMD, LLC, *Laser Hair Removal: Benefits, Side Effects, and Cost*, <https://www.webmd.com/beauty/laser-hair-removal#1> (last visited Jan. 12, 2018); and WebMD, LLC, *Beyond Lasers: Pulse-Light Therapy for That Fantasy Face*, <https://www.webmd.com/beauty/news/20000727/beyond-lasers-pulse-light-therapy-for-that-fantasy-face#1> (last visited Jan. 12, 2018).

<sup>24</sup> r. 64B8-56.002, F.A.C.

Currently, there are 168 licensed electrologists who have the required protocols to practice laser and light-based hair removal or reduction.<sup>25</sup>

SCMHR is the national organization that offers certification for use of laser and light-based devices, education programs for hair removal procedures, and membership services.<sup>26</sup> The CME test that is required by DOH is \$200 for members of the organization and \$300 for non-members.<sup>27</sup> Certification that is obtained by passing the test lasts for 5 years, at which time either taking continuing education units (7.5 units at \$25 per<sup>28</sup>) or a reexamination is required to renew.<sup>29</sup> Membership costs \$195 annually.<sup>30</sup> Currently, electrologists using laser or light-based devices do not need to renew or maintain such certification to continue to use such devices.<sup>31</sup>

### National Use of Laser and Pulsed-Light Devices for Hair Removal

Laser and light-based hair removal devices were first cleared by the FDA in 1995.<sup>32</sup> However, federal law does not govern what kind of training is required to use such devices, which is left to individual states.<sup>33</sup>

States handle the practice of laser hair removal in various ways, including: only allowing physicians to perform the procedure, only allowing the procedure to be performed under supervision,<sup>34</sup> only allowing the procedure to be performed by electrologists or other licensed professionals, or allowing anyone to perform the procedure.<sup>35</sup>

Over one million laser and light-based procedures were performed in 2012 and the number of such procedures had been rising steadily since 2000.<sup>36</sup> While the industry is growing, so are related lawsuits for related injuries. Over a 27-year period, 63 such legal cases were found related to injuries from such devices during a hair removal procedure, a retrospective study found.<sup>37</sup>

A similar study found that the rise in related lawsuits may be attributed to non-physician operators performing such procedures without physician supervision, but it also stated that a lack of adequate training by any practitioner could be dangerous.<sup>38</sup> While one third of laser hair removal procedures in total are performed by a non-physician operator, seventy-five percent of the lawsuits related to laser hair removal were done by non-physician operators. Most of these cases were performed outside of a traditional medical setting.<sup>39</sup>

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<sup>25</sup> DOH, *supra* note 18 at 2.

<sup>26</sup> THE SOCIETY FOR CLINICAL & MEDICAL HAIR REMOVAL, INC., *About Us*, <https://www.scmhr.org/education/home-study/past-webinars> (last visited Jan. 11, 2018).

<sup>27</sup> *Id.* at Certified Medical Electrologist (CME) Examination Application.

<sup>28</sup> *Id.* at Past Webinars (Home Study).

<sup>29</sup> THE SOCIETY FOR CLINICAL & MEDICAL HAIR REMOVAL, INC., *supra* note 28 at Certified Medical Electrologist (CME).

<sup>30</sup> THE SOCIETY FOR CLINICAL & MEDICAL HAIR REMOVAL, INC., *supra* note 28 at Membership Application.

<sup>31</sup> THE SOCIETY FOR CLINICAL & MEDICAL HAIR REMOVAL, INC., *supra* note 26.

<sup>32</sup> Anna Jane Grossman, Zapping teenage torment, THE NEW YORK TIMES (Jun. 5, 2008), <http://www.nytimes.com/2008/06/05/health/05iht-05skin.13492066.html>.

<sup>33</sup> H. Ray Jalian, MD, Chris A. Jalisn, MD, and Mathew Avran, MD, JD; *Common Causes of Injury and Legal Action in Laser Surgery Causes*, 149 JAMA DERMATOLOGY 188 (2013).

<sup>34</sup> H. Ray Jalian, MD, Chris A. Jalisn, MD, and Mathew Avran, MD, JD, *Increased Risk of Litigation Associated with Laser Surgery by Nonphysician Operators*, 150 JAMA DERMATOLOGY 410 (2014).

<sup>35</sup> Roni Caryn Rabin, Laser Hair Removal's Risks, THE NEW YORK TIMES, (Jan. 6, 2014), <https://well.blogs.nytimes.com/2014/01/06/laser-hair-removals-risks/> (last visited Jan. 13, 2018).

<sup>36</sup> Satori Laser, *Laser Hair Removal Spending Statistics*, <https://www.satorilaser.com/blog/laser-hair-removal-statistics/> (last visited Jan. 13, 2018).

<sup>37</sup> JAMA DERMATOLOGY, *supra* note 35 at 190.

<sup>38</sup> JAMA DERMATOLOGY, *supra* note 36 at 410.

<sup>39</sup> *Id.*

## Effect of the Bill

The bill eliminates the Electrolysis Council and removes regulation of the practice of electrolysis from the BOM and provides the practice is directly regulated by DOH.

The bill simplifies the definition of “electrolysis or electrology” to “the permanent removal of hair using equipment and devices that have been cleared by and registered with the United States Food and Drug Administration.”

The bill allows electrologists to perform laser and pulsed-light hair removal and adds a requirement that licensed electrologists must maintain a nationally recognized certification in order to use laser or pulsed-light devices in hair removal or reduction procedures.

The bill provides that temporary permits to practice electrology are active for no more than 90 days.

The bill makes numerous conforming changes to provide regulation of electrology is directly with DOH, rather than the Council and BOM.

The bill provides an effective date of October 1, 2018.

### B. SECTION DIRECTORY:

**Section 1:** Amends s. 478.42, F.S., to remove and change definitions.

**Section 2:** Amends s. 478.43, F.S., to provide DOH rulemaking authority.

**Section 3:** Repeals s. 478.44, F.S., related to the Council.

**Section 4:** Amends s. 478.45, F.S., to make conforming changes.

**Section 5:** Amends s. 478.46, F.S., to make temporary permits active for no more than 90 days.

**Section 6:** Amends s. 478.47, F.S., to make conforming changes.

**Section 7:** Amends s. 478.49, F.S., to require certification when using laser or pulsed-light devices.

**Section 8:** Amends s. 478.50, F.S., to make conforming changes.

**Section 9:** Amends s. 478.51, F.S., to make conforming changes.

**Section 10:** Amends s. 478.52, F.S., to make conforming changes.

**Section 11:** Amends s. 478.53, F.S., to make conforming changes.

**Section 12:** Amends s. 478.55, F.S., to make conforming changes.

**Section 13:** Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The DOH may incur costs related to rulemaking to move regulation of the practice of electrolysis from the Council and BOM to the DOH. Current resources are adequate to absorb these costs.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will increase costs to maintain an electrology license for those who use laser and pulsed-light devices because the licensee will have to maintain their SCMHR certification and pay costs associated with doing so every five years. Current policy is that the licensee has to pass the exam only one time to continually use such devices.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

S. 478.43, F.S., provides the Department of Health rulemaking authority to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 16, 2018, the Careers and Competition Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- removes language from the medical practice acts which requires electrologists and other licensees to be directly supervised by a physician during laser and light-based hair removal procedures,
- gives the Department of Business and Professional Regulation rulemaking authority for all aspects of electrology regulation, and
- provides for a later effective date of October 1, 2018.

On February 14, 2018, the Appropriations Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- removes oversight of the practice of electrology from the Electrolysis Council and BOM;
- eliminates the Electrolysis Council;
- provides that the practice of electrology is directly regulated by the DOH, instead of a board or council;
- defines electrolysis/electrology as the permanent removal of hair using equipment and devices that have been cleared by and registered with the United States Food and Drug Administration;
- allows temporary permits to practice electrology for no more than 90 days; and
- requires licensed electrologists to maintain a nationally recognized certification to use laser or pulsed-light devices;

This analysis is drafted to the committee substitute as passed by the Appropriations Committee.