

Tab 1 **SB 356** by **Boyd**; (Identical to H 00503) Practice of Dentistry

Tab 2 **SB 380** by **Garcia (CO-INTRODUCERS) Rouson, Osgood**; (Identical to H 00587) Protection from Surgical Smoke

Tab 3 **SB 614** by **Harrell**; (Identical to H 01059) Mammography Reports

Tab 4 **SB 870** by **Burton**; (Similar to H 00899) Surrendered Newborn Infants

Tab 5 **SB 558** by **Burton**; (Similar to H 00351) Certified Nursing Assistants

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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

HEALTH POLICY
Senator Burton, Chair
Senator Brodeur, Vice Chair

MEETING DATE: Monday, March 6, 2023
TIME: 3:30—5:30 p.m.
PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Burton, Chair; Senator Brodeur, Vice Chair; Senators Albritton, Avila, Book, Broxson, Burgess, Calatayud, Davis, Garcia, Harrell, and Osgood

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 356 Boyd (Identical H 503)	Practice of Dentistry; Requiring dentists to provide each patient with specified information; requiring individuals and entities that provide dental services through telehealth to make specified information available to each patient before rendering such services and at any time upon patient request; requiring that advertisements of specified dental services provided through telehealth contain a specified disclaimer; providing additional grounds for disciplinary action against dental practitioners, etc. HP 03/06/2023 Favorable BI RC	Favorable Yeas 10 Nays 0
2	SB 380 Garcia (Identical H 587)	Protection from Surgical Smoke; Defining the terms “smoke evacuation system” and “surgical smoke”; requiring hospitals and ambulatory surgical centers to, by a specified date, adopt and implement policies requiring the use of smoke evacuation systems during certain surgical procedures, etc. HP 03/06/2023 Favorable CA RC	Favorable Yeas 11 Nays 0
3	SB 614 Harrell (Identical H 1059)	Mammography Reports; Abrogating the repeal of provisions requiring facilities that perform mammography to send patients a certain summary of their mammography report under certain circumstances, etc. HP 03/06/2023 Favorable RC	Favorable Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Health Policy

Monday, March 6, 2023, 3:30—5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 870 Burton (Similar H 899)	Surrendered Newborn Infants; Revising the definition of the term "newborn infant"; authorizing certain hospitals, emergency medical services stations, and fire stations to use newborn infant safety devices to accept surrendered newborn infants if the device meets specified criteria; authorizing a parent to leave a newborn infant with medical staff or a licensed health care professional at a hospital after the delivery of the newborn infant under certain circumstances; providing that a parent who leaves a newborn infant in a newborn infant safety device has the right to remain anonymous and not to be pursued or followed, with exceptions, etc. HP 03/06/2023 Favorable CF RC	Favorable Yeas 7 Nays 3
5	SB 558 Burton (Similar H 351)	Certified Nursing Assistants; Authorizing nursing home facilities to allow their registered nurses to delegate certain tasks to certified nursing assistants who meet specified criteria; providing for the designation of such certified nursing assistants as qualified medication aides; providing that the time spent by certified nursing assistants performing the duties of a qualified medication aide may not be included in the computing of certain minimum staffing ratio requirements for direct care provided to residents; authorizing registered nurses to delegate to certified nursing assistants the administration of medication to residents in nursing home facilities if the certified nursing assistants meet specified criteria, etc. HP 03/06/2023 Fav/CS AHS FP	Fav/CS Yeas 10 Nays 0

Other Related Meeting Documents

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 356

INTRODUCER: Senator Boyd

SUBJECT: Practice of Dentistry

DATE: March 3, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto Vanwinkle	Brown	HP	Favorable
2.	_____	_____	BI	_____
3.	_____	_____	RC	_____

I. Summary:

SB 356 requires dentists and any individual, partnership, corporation, or other entity that provides dental services through telehealth to make available the name, telephone number, after-hours contact information for emergencies, and upon request, licensure information.

The bill requires the dentist of record to remain primarily responsible for all dental treatment for any patient who is treated through telehealth, whether care is rendered by the dentist of record, another dentist, dental hygienist, or dental assistant.

The bill creates a definition for advertisement and requires that if dental services are provided through telehealth, an advertisement must include a specific disclaimer for each of the following services, if advertised:

- The taking of an impression or the digital scanning of the human tooth, teeth, or jaws, directly or indirectly and by any means or method;
- Placing an appliance or a structure in the human mouth or adjusting or attempting to adjust the appliance or structure; and
- Correcting or attempting to correct malformations of teeth or jaws.

The bill sets supervisory standards for dental hygienists and dental assistants who take an impression or perform digital scanning of the human tooth, teeth, or jaws, directly or indirectly and by any means or method, for the purpose of the practice of dentistry. The bill creates new disciplinary offenses that establish a standard that would require a dentist of record to perform an in-person examination of a patient or obtain records from an in-person examination within the last six months before the initial diagnosis and correction of a malposition of human teeth or initial use of an orthodontic appliance.

The bill provides an effective date of July 1, 2023.

II. Present Situation:

The Practice of Dentistry

The Board of Dentistry (BOD) regulates the practice of dentistry in Florida, including dentists, dental hygienists, and dental assistants under the Dental Practice Act.¹ A dentist is licensed to examine, diagnose, treat, and care for conditions within the human oral cavity and its adjacent tissues and structures.² A dental hygienist provides education, preventive, and delegated therapeutic dental services.³

Dentists

The requirements for dental licensure in Florida are found in s. 466.006, F.S. An applicant must apply to the Department of Health (DOH) to take and pass the following examinations:

- The American Dental Licensing Examination (ADLEX);⁴ and
- An exam on Florida laws and rules relating to dentistry.

To take the ADLEX clinical examination, a dental applicant must be at least 18 years of age and must:

- Be a graduate from a dental school accredited by the American Dental Association's (ADA) Commission on Dental Accreditation (CODA) or any other dental accrediting entity recognized by the U.S. Department of Education (DOE); or
- Be a dental student in the final year of a program at an ADA-CODA-accredited dental school who has completed all the coursework necessary to prepare the student to perform the clinical and diagnostic procedures required to pass the examinations; and
- Have passed Parts I and II of the National Board Dental Examination (NBDE), administered by the Joint Commission on National Dental Examinations (JCNDE).⁵

If an applicant fails to pass the diagnostic skills examination in three attempts, the applicant is not eligible for reexamination unless she or he completes additional educational requirements established by the BOD.⁶

Dental Hygienist

The requirements for licensure as a dental hygienist are found in s. 466.007, F.S. An applicant must apply to the DOH to take the American Board of Dental Examiners' Dental Hygiene Examination (ADHLEX) and is entitled to licensure if he or she is 18 years of age or older and has:⁷

¹ Section 466.004, F.S.

² Section 466.003(3), F.S.

³ Section 466.003(4) and (5), F.S.

⁴ Section 466.006, F.S.

⁵ American Dental Association, Joint Commission on National Dental Examinations, *Upholding Quality Oral Care For All*, available at <https://jcnde.ada.org/> (last visited Feb. 28, 2023) The Joint Commission on National Dental Examinations (JCNDE) is the agency responsible for the development and administration of the National Board Dental Examinations (NBDE). This 16-member Commission includes representatives from dental schools, dental practice, state dental examining boards, dental hygiene, dental students, and the public.

⁶ *Id.*

⁷ Section 466.007, F.S.

- Graduated from a dental hygiene college or school that is:
 - BOD-approved;
 - Accredited by the ADA-CODA or by any other dental accrediting entity recognized by the U.S. DOE;
- Passed the Florida Laws and Rules examination; and
- Passed the ADHLEX examination.

A dentist who is a graduate of an accredited dental college or school or a graduate of an unaccredited dental college or school, may also take the ADHLEX and obtain licensure as a dental hygienist if he or she meets certain additional criteria.⁸

License Display Requirements

Every dentist or dental hygienist licensed in Florida must post and keep conspicuously displayed his or her license in the office wherein she or he practices, in plain sight of patients. Any dentist or dental hygienist who practices at more than one location shall be required to display a copy of his or her license in each location where she or he practices.⁹

Dental Patient Records

Every dentist must maintain written dental records and medical history records on every patient which must justify the dentist's course of treatment for the patient. The records must include, but not be limited to:

- Patient history;
- Examination results;
- Test results; and,
- X rays, if taken.¹⁰

In a multidentist practice, the owner dentist(s) must maintain either the original or duplicates of all patient records, including dental charts, patient histories, examination and test results, study models, and X rays, of any patient treated by a dentist at the owner dentist's practice facility for four years from the date of the last patient's visit.¹¹ The owner dentist(s) of a multidentist practice may be relieved of this responsibility if, upon request of the patient or the patient's legal representative, the dentist transfers custody of the records to another dentist, the patient, or the patient's legal representative and retains, in lieu of the records, a written statement, signed by the owner dentist, the person who received the records, and two witnesses, that lists the date, the records that were transferred and the persons to whom the records were transferred. The owner dentist(s) must provide reasonable access to duplicate records at cost.¹²

Dentist of Record

Section 466.018, F.S., requires that each dental patient shall have a dentist of record. The dentist of record must remain primarily responsible for all dental treatment on a patient regardless of

⁸ See s. 466.007 (2)(b)1. and (3), F.S.

⁹ Section 466.016, F.S.

¹⁰ Section 466.018 (3), F.S.

¹¹ Section 466.018(5), F.S.

¹² Section 466.018(4), F.S.

whether the treatment is rendered by the dentist or by another dentist, dental hygienist, or dental assistant rendering such treatment in conjunction with, at the direction or request of, or under the supervision of such dentist of record. The dentist of record must be identified in the record of the patient. If treatment is rendered by a dentist other than the dentist of record or by a dental hygienist or assistant, the name or initials of such person must be placed in the record of the patient. In any disciplinary proceeding against a dentist, it is presumed as a matter of law that treatment was rendered by the dentist of record unless otherwise noted on the patient record.¹³

Delegation of Duties

A dentist may not delegate irremediable tasks to a dental hygienist or dental assistant, except as provided by law. A dentist may delegate remediable tasks to a dental hygienist or dental assistant when such tasks pose no risk to the patient. A dentist may only delegate remediable tasks so defined by law or BOD rule.¹⁴

The BOD designates by rule which tasks are remediable and delegable, except that the following are found by law to be remediable and delegable:

- Taking impressions for study casts but not for the purpose of fabricating any intraoral restorations or orthodontic appliance;
- Placing periodontal dressings;
- Removing periodontal or surgical dressings;
- Removing sutures;
- Placing or removing rubber dams;
- Placing or removing matrices;
- Placing or removing temporary restorations;
- Applying cavity liners, varnishes, or bases;
- Polishing amalgam restorations;
- Polishing clinical crowns of the teeth for the purpose of removing stains but not changing the existing contour of the tooth;
- Obtaining bacteriological cytological specimens not involving cutting of the tissue; and
- Administering local anesthesia.¹⁵

All other remediable tasks must be performed under the direct, indirect, or general supervision of a dentist, after such additional training as required by BOD rule.¹⁶

A dentist may not delegate to anyone other than another licensed dentist:

- Any prescription of drugs or medications requiring the written order or prescription of a licensed dentist or physician; or
- Any diagnosis for treatment or treatment planning.¹⁷

¹³ Section 466.018,(1), F.S.

¹⁴ Section 466.024, (1), F.S.

¹⁵ *Id.*

¹⁶ Section 466.024(7), F.S.

¹⁷ Section 466.024(8), F.S.

According to the DOH, a direct-to-consumer teeth aligner business model currently exists for consumers. Dental impressions are being taken by the consumer using a dental impression kit mailed by the aligner company, or the consumer visits a location for a digital scan by a technician. The impression or image is then reviewed by a dentist to create custom aligners, which are shipped back to the consumer for use. This business model does not include an in-person examination by a licensed dentist or direct supervision by a licensed dentist when digital scanning is performed.¹⁸

Dental Advertising

A licensed dentist's advertisements may not contain any false, fraudulent, misleading, or deceptive statement or claim or any statement or claim which:

- Contains misrepresentations of fact;
- Is likely to mislead or deceive because, in context, it makes only a partial disclosure of relevant facts;
- Contains laudatory statements about the dentist or group of dentists;
- Is intended or is likely to create false, unjustified expectations of favorable results;
- Relates to the quality of dental services provided as compared to other available dental services;
- Is intended or is likely to appeal primarily to a layperson's fears;
- Contains fee information without a disclaimer that such is a minimum fee only; or
- Contains other representations or implications that in reasonable probability will cause an ordinary, prudent person to misunderstand or to be deceived.¹⁹

Telehealth

Section 456.47, F.S., defines the term "telehealth" as the use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include audio-only telephone calls, e-mail messages, or facsimile transmissions.

In a general sense, "synchronous" telehealth happens in live, real-time settings where the patient interacts with a provider, usually via phone or video. Providers and patients communicate directly, often resulting in a diagnosis, treatment plan, or prescription. Synchronous telehealth can include additional at-home devices such as a blood pressure or heart rate monitors, thermometers, oximeters, cameras, or scales to help the provider more accurately assess the patient's health status.²⁰

¹⁸ Florida Department of Health, *2023 Agency Legislative Bill Analysis, Senate Bill 356*, Jan. 25, 2023 (on file with the Senate Committee on Health Policy).

¹⁹ Section 466.019, F.S.

²⁰ TELEHEALTH.HHS.GOV, "Synchronous direct-to-consumer telehealth," available at <https://telehealth.hhs.gov/providers/direct-to-consumer/synchronous-direct-to-consumer-telehealth/> (last visited Feb. 28, 2023).

“Asynchronous” telehealth, also known as “store-and-forward,” is often used for patient intake or follow-up care. For example, a patient sends a photo of a skin condition that is later reviewed by a dermatologist who recommends treatment.²¹

Section 456.47, F.S., also authorizes out-of-state health care providers to use telehealth to deliver health care services to Florida patients if they register²² with the DOH or the applicable board²² and meet certain eligibility requirements.²³ A registered out-of-state telehealth provider may use telehealth, within the relevant scope of practice established by Florida law and rule, to provide health care services to Florida patients but is prohibited from opening an office in Florida and from providing in-person health care services to patients located in Florida without first becoming licensed by the state of Florida.

A telehealth provider may not use telehealth to prescribe a controlled substance listed in Schedule II²⁴ or s. 893.03, F.S., unless the controlled substance is prescribed for the following:

- The treatment of a psychiatric disorder;
- Inpatient treatment at a hospital licensed under ch. 395, F.S.;
- The treatment of a patient receiving hospice services as defined in s. 400.601, F.S.; or
- The treatment of a resident of a nursing home facility as defined in s. 400.021, F.S.²⁵

A telehealth provider must document in the patient’s medical record the health care services rendered using telehealth according to the same standard as used for in-person services. Medical records, including video, audio, electronic, or other records generated as a result of providing such services, are confidential pursuant to ss. 395.3025(4), and 456.057, F.S.²⁶

The website of an out-of-state telehealth provider registered under s. 456.47, F.S., must prominently display a hyperlink to the DOH’s website, and the DOH’s website must publish a list of all out-of-state registrants and include the following information for each:

- Name;
- Health care occupation;
- Health care training and education, including completion dates and any certificates or degrees obtained;
- Out-of-state health care licenses, including license numbers;
- Florida telehealth provider registration number;

²¹ TELEHEALTH.HHS.GOV, “Asynchronous direct-to-consumer telehealth,” available at <https://telehealth.hhs.gov/providers/direct-to-consumer/asynchronous-direct-to-consumer-telehealth/> (last visited Feb. 28, 2023).

²² Under s. 456.001(1), F.S., the term “board” is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within DOH or, in some cases, within DOH’s Division of Medical Quality Assurance (MQA).

²³ Section 456.47(4), F.S.

²⁴ Schedule II drugs, substances, or chemicals are defined as drugs with a high potential for abuse, with use potentially leading to severe psychological or physical dependence. These drugs are also considered dangerous. Some examples of Schedule II drugs are: combination products with less than 15 milligrams of hydrocodone per dosage unit (Vicodin), cocaine, methamphetamine, methadone, hydromorphone (Dilaudid), meperidine (Demerol), oxycodone (OxyContin), fentanyl, Dexedrine, Adderall, and Ritalin. United States Drug Enforcement Administration, Drug Scheduling, *Schedule II*, available at <https://www.dea.gov/drug-information/drug-scheduling> (last visited Feb. 28, 2023).

²⁵ Section 456.47(2)(c), F.S.

²⁶ Section 456.47(3), F.S.

- Specialty, if any;
- Board certification, if any;
- Five-years of disciplinary history, including sanctions imposed and board actions;
- Medical malpractice insurance provider and policy limits, including whether the policy covers claims that arise in Florida; and
- The name and address of the registered agent designated for service of process in this state.²⁷

A health care professional may not register under s. 456.47, F.S., if his or her license to provide health care services is subject to a pending disciplinary investigation or action; or has been revoked in any state or jurisdiction. A health care professional registered under this subsection must notify the appropriate board, or the DOH if there is no board, of any restrictions placed on his or her license to practice, or any disciplinary action taken or pending against him or her, in any state or jurisdiction. The notification must be provided within five business days after the restriction is placed or disciplinary action is initiated or taken.²⁸

The applicable board, or the DOH if there is no board, may take disciplinary action against an out-of-state telehealth provider registered under s. 456.47, F.S., if the registrant:

- Fails to notify the applicable board, or the DOH if there is no board, of any adverse actions taken against his or her license;
- Has restrictions placed on, or disciplinary action taken against, his or her license in any state or jurisdiction;
- Violates any of the requirements of s. 456.47, F.S.; or
- Commits any act that constitutes grounds for disciplinary action under s. 456.072, F.S, or the applicable practice act for similarly licenses Florida providers.²⁹

Venue for civil or administrative actions initiated by the DOH, a board, or a patient who receives telehealth services from an out-of-state telehealth provider may be located in the patient's county of residence or in Leon County.³⁰ A health care professional who is not licensed to provide health care services in Florida, but who holds an active license to provide health care services in another state or jurisdiction, and who provides such services using telehealth to a patient located in Florida, is not subject to the registration requirement under s. 456.47, F.S., if the services are provided:

- In response to an emergency medical condition; or
- In consultation with a health care professional licensed Florida who has ultimate authority over the diagnosis and care of the patient.³¹

²⁷ Section 456.47(4)(h), F.S.

²⁸ Section 456.47 (4)(d), F.S.

²⁹ Section 456.47(4)(i), F.S.

³⁰ Section 456.47(5), F.S.

³¹ Section 456.47(6), F.S.

III. Effect of Proposed Changes:

SB 356 defines “digital scanning” for dentistry as the use of digital technology to create a computer-generated replica of the hard and soft tissue of the oral cavity using enhanced digital photography, lasers, or other optical scanning devices.

The bill amends s. 466.016, F.S. to require that every dentist must provide each of his or her patients with the dentist’s name, contact telephone number, after-hours contact information for emergencies, and, upon the patient’s request, license information. Any individual, partnership, corporation, or other entity that provides dental services through telehealth must also provide its patients with the name, contact telephone number, after-hours contact information for emergencies, and, upon the patient’s request, the license information of each dentist who provides dental services to the patient.

For any dental patient treated through telehealth, the bill requires that there must be a dentist of record as described in s. 466.018, F.S., who remains primarily responsible for all dental treatment on the patient regardless of whether the treatment is rendered by the dentist of record, another dentist, a dental hygienist, or dental assistant, in conjunction, or at the direction of, or under the supervision of, the dentist of record. A dentist of record for a telehealth patient is subject to all of the requirements S. 466.018, F.S., applicable to dentists of record.

The bill requires that any individual, partnership, corporation, or other entity that provides dental services through telehealth must also make available to the patient, before services are rendered, the name, the telephone number, practice address, and state license number for the dentist of record and any other dentist who will be providing dental services to the patient, and at any time requested by a patient.

SB 356 clarifies that s. 466.018, F.S., is not to be construed to assign any responsibility to a dentist of record for treatment rendered pursuant to a proper referral to another dentist who is not in the same practice with the dentist of record or to prohibit a patient from voluntarily selecting a new dentist without permission of the dentist of record.

SB 356 defines advertisement for s. 466.019, F.S., as a representation disseminated in any manner or by any means to solicit patients and includes, but is not limited to, business cards, circulars, pamphlets, newspapers, websites, and social media.

The bill amends s. 466.019, F.S., to require that an advertisement for dental services provided through telehealth must include a disclaimer that reads, in a clearly legible font and size, “An in-person examination with a dentist licensed under chapter 466, Florida Statutes, is recommended before beginning telehealth treatment in order to prevent injury or harm” for each of the following dental services, if advertised:

- The taking of an impression or the digital scanning of the human tooth, teeth, or jaws by any means or method, directly or indirectly;
- Furnishing, supplying, constructing, reproducing, or repairing any prosthetic denture, bridge, or appliance or any other structure designed to be worn in the human mouth;
- Placing an appliance or a structure in the human mouth or adjusting or attempting to adjust the appliance or structure; and

- Correcting or attempting to correct malformations of teeth or jaws.

The bill amends s. 466.024, F.S., to require that only a licensed dentist, a dental hygienist under general supervision, or a dental assistant under direct supervision, may take an impression or perform digital scanning of the human tooth, teeth, or jaws, directly or indirectly, by any means or method, for the purpose of the practice of dentistry.

SB 356 amends s. 466.028, F.S., to add the following additional grounds for the denial of a dental license or disciplinary action against a dentist:

- Failure by the dentist of record, before the initial diagnosis and correction of a malposition of human teeth or initial use of an orthodontic appliance, to perform an in-person examination of the patient or obtain records from an in-person examination within the last six months and to perform a review of the patient's most recent diagnostic digital or conventional radiographs or other equivalent bone imaging suitable for orthodontia;
- For dental services provided in-person or through telehealth by an individual, a partnership, a corporation, or any other entity, failing to provide each patient with the name, contact telephone number, after-hours contact information for emergencies, and, upon the patient's request, the license information of each dentist who is providing dental services to the patient; and
- For dental services provided through telehealth by an individual, a partnership, a corporation, or any other entity, failing to designate a dentist of record and make available, before the rendering of such services and upon the patient's request, the name, telephone number, practice address, and state license number for the dentist of record and any other dentist who will be involved in the provision of dental services to the patient through telehealth.

The bill makes a conforming amendment to s. 409.906, F.S., to reflect a numbering change in s. 466.024, F.S.

The bill provides an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:³²

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the DOH, the provisions of the bill may result in an increase in revenues for individual dentistry practices due to the creation of a standard that would require a dentist of record to perform an in-person examination of a patient or obtain records from an in-person examination within the last six months before the initial diagnosis and correction of a malposition of human teeth or initial use of an orthodontic appliance.

C. Government Sector Impact:

According to the DOH, the department will experience an increase in workload associated with complaints and investigations under the bill. The impact is indeterminate; therefore, the fiscal impact cannot be calculated at this time.

The DOH has also indicated it will incur nonrecurring costs for rulemaking, which current budget authority is adequate to absorb.

The department will also experience a nonrecurring increase in workload and costs associated with updating the Licensing and Enforcement Information Database System, Online Service Portal, Artificial Intelligence Virtual Customer Contact Agent, Continuing Education Tracking System, License Verification Search Site, and BOD website. Resources and budget authority are adequate to absorb.³³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 466.003, 466.016, 466.018, 466.019, 466.024, 466.028, and 409.906.

³² *Supra*, note 18.

³³ *Id.*

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.

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

By Senator Boyd

20-00350A-23

2023356__

1 A bill to be entitled
 2 An act relating to the practice of dentistry; amending
 3 s. 466.003, F.S.; defining the term "digital
 4 scanning"; amending s. 466.016, F.S.; requiring
 5 dentists to provide each patient with specified
 6 information; requiring individuals and entities that
 7 provide dental services through telehealth to provide
 8 each patient with specified information regarding the
 9 dentists treating such patient; amending s. 466.018,
 10 F.S.; requiring that there be a dentist of record for
 11 each patient treated through telehealth; subjecting
 12 such dentists to certain requirements; requiring
 13 individuals and entities that provide dental services
 14 through telehealth to make specified information
 15 available to each patient before rendering such
 16 services and at any time upon patient request;
 17 providing construction; amending s. 466.019, F.S.;
 18 defining the term "advertisement"; requiring that
 19 advertisements of specified dental services provided
 20 through telehealth contain a specified disclaimer;
 21 amending s. 466.024, F.S.; specifying that only
 22 certain dental practitioners may perform specified
 23 functions of dentistry; amending s. 466.028, F.S.;
 24 providing additional grounds for disciplinary action
 25 against dental practitioners; amending s. 409.906,
 26 F.S.; conforming a cross-reference; providing an
 27 effective date.
 28
 29 Be It Enacted by the Legislature of the State of Florida:

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

20-00350A-23

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30
 31 Section 1. Present subsections (8) through (15) of section
 32 466.003, Florida Statutes, are redesignated as subsections (9)
 33 through (16), respectively, a new subsection (8) is added to
 34 that section, and present subsection (15) of that section is
 35 amended, to read:
 36 466.003 Definitions.—As used in this chapter:
 37 (8) "Digital scanning" means the use of digital technology
 38 that creates a computer-generated replica of the hard and soft
 39 tissue of the oral cavity using enhanced digital photography,
 40 lasers, or other optical scanning devices.
 41 (16)(15) "School-based prevention program" means preventive
 42 oral health services offered at a school by one of the entities
 43 defined in subsection (15) (14) or by a nonprofit organization
 44 that is exempt from federal income taxation under s. 501(a) of
 45 the Internal Revenue Code, and described in s. 501(c)(3) of the
 46 Internal Revenue Code.
 47 Section 2. Section 466.016, Florida Statutes, is amended to
 48 read:
 49 466.016 License to be displayed.—
 50 (1) Every practitioner of dentistry or dental hygiene
 51 within the meaning of this chapter shall post and keep
 52 conspicuously displayed her or his license in the office wherein
 53 she or he practices, in plain sight of the practitioner's
 54 patients. Any dentist or dental hygienist who practices at more
 55 than one location ~~must shall be required to~~ display a copy of
 56 her or his license in each office where she or he practices.
 57 (2) Every dentist shall provide each of her or his patients
 58 with the dentist's name, contact telephone number, after-hours

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59 contact information for emergencies, and, upon the patient's
60 request, license information.

61 (3) Any individual, partnership, corporation, or other
62 entity that provides dental services through telehealth as
63 defined in s. 456.47 shall provide each patient with the name,
64 contact telephone number, after-hours contact information for
65 emergencies, and, upon the patient's request, license
66 information of each dentist who provides dental services to the
67 patient through telehealth.

68 Section 3. Subsection (6) is added to section 466.018,
69 Florida Statutes, to read:

70 466.018 Dentist of record; patient records.-

71 (6) For any patient treated through telehealth as defined
72 in s. 456.47, there must be a dentist of record who remains
73 primarily responsible for all dental treatment on the patient
74 regardless of whether the treatment is rendered by the dentist
75 of record or by another dentist, dental hygienist, or dental
76 assistant rendering such treatment in conjunction with, at the
77 direction or request of, or under the supervision of such
78 dentist of record. A dentist of record for a patient treated
79 through telehealth is subject to all of the requirements of this
80 section applicable to dentists of record.

81 (a) Any individual, partnership, corporation, or other
82 entity that provides dental services through telehealth shall
83 make available the name, telephone number, practice address, and
84 state license number for the dentist of record and any other
85 dentist who will be involved in the provision of services to a
86 patient before the rendering of such services and at any time
87 requested by a patient.

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88 (b) This subsection may not be construed to assign any
89 responsibility to a dentist of record for treatment rendered
90 pursuant to a proper referral to another dentist who is not in
91 the same practice with the dentist of record or to prohibit a
92 patient from voluntarily selecting a new dentist without
93 permission of the dentist of record.

94 Section 4. Section 466.019, Florida Statutes, is amended to
95 read:

96 466.019 Advertising by dentists.-

97 (1) As used in this section, the term "advertisement" means
98 a representation disseminated in any manner or by any means to
99 solicit patients and includes, but is not limited to, business
100 cards, circulars, pamphlets, newspapers, websites, and social
101 media.

102 (2) The purpose of this section is to ensure that the
103 public has access to information which provides a sufficient
104 basis upon which to make an informed selection of dentists while
105 also ensuring that the public is protected from false or
106 misleading advertisements which would detract from a fair and
107 rational selection process. The board shall adopt rules to carry
108 out the intent of this section, the purpose of which shall be to
109 regulate the manner of such advertising in keeping with the
110 provisions hereof.

111 (3)-(2) An ~~no~~ advertisement by a licensed dentist ~~may not~~
112 ~~shall~~ contain any false, fraudulent, misleading, or deceptive
113 statement or claim or any statement or claim which:

114 (a) Contains misrepresentations of fact;

115 (b) Is likely to mislead or deceive because in context it
116 makes only a partial disclosure of relevant facts;

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- 117 (c) Contains laudatory statements about the dentist or
118 group of dentists;
- 119 (d) Is intended or is likely to create false, unjustified
120 expectations of favorable results;
- 121 (e) Relates to the quality of dental services provided as
122 compared to other available dental services;
- 123 (f) Is intended or is likely to appeal primarily to a
124 layperson's fears;
- 125 (g) Contains fee information without a disclaimer that such
126 is a minimum fee only; or
- 127 (h) Contains other representations or implications that in
128 reasonable probability will cause an ordinary, prudent person to
129 misunderstand or to be deceived.
- 130 (4) An advertisement of dental services provided through
131 telehealth as defined in s. 456.47 must include a disclaimer
132 that reads, in a clearly legible font and size, "An in-person
133 examination with a dentist licensed under chapter 466, Florida
134 Statutes, is recommended before beginning telehealth treatment
135 in order to prevent injury or harm" for each of the following
136 services, if advertised:
- 137 (a) The taking of an impression or the digital scanning of
138 the human tooth, teeth, or jaws by any means or method, directly
139 or indirectly.
- 140 (b) Furnishing, supplying, constructing, reproducing, or
141 repairing any prosthetic denture, bridge, or appliance or any
142 other structure designed to be worn in the human mouth.
- 143 (c) Placing an appliance or a structure in the human mouth
144 or adjusting or attempting to adjust the appliance or structure.
- 145 (d) Correcting or attempting to correct malformations of

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- 146 teeth or jaws.
- 147 ~~(5)-(3)~~ For purposes of this section, D.D.S. or D.M.D. are
148 synonymous and may be used interchangeably by licensed dentists
149 who have graduated from an accredited American dental school
150 with a D.D.S. or D.M.D. degree, when advertising dental
151 services.
- 152 Section 5. Present subsections (2) through (10) of section
153 466.024, Florida Statutes, are redesignated as subsections (3)
154 through (11), respectively, a new subsection (2) is added to
155 that section, and present subsections (3), (5), (6), and (8) are
156 amended, to read:
- 157 466.024 Delegation of duties; expanded functions.—
- 158 (2) Only a licensed dentist, a dental hygienist under
159 general supervision, or a dental assistant under direct
160 supervision may take an impression or perform digital scanning
161 of the human tooth, teeth, or jaws, directly or indirectly and
162 by any means or method, for the purpose of the practice of
163 dentistry.
- 164 ~~(4)-(3)~~ For all remediable tasks listed in subsection (3)
165 ~~(2)~~, the following disclaimer must be provided to the patient in
166 writing before any procedure is performed:
- 167 (a) The services being offered are not a substitute for a
168 comprehensive dental exam by a dentist.
- 169 (b) The diagnosis of caries, soft tissue disease, oral
170 cancer, temporomandibular joint disease (TMJ), and dentofacial
171 malocclusions will be completed only by a dentist in the context
172 of delivering a comprehensive dental exam.
- 173 ~~(6)-(5)~~ A dental hygienist who performs, without
174 supervision, the remediable tasks listed in subsection (3) ~~(2)~~

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175 shall:

176 (a) Provide a dental referral in strict compliance with
177 federal and state patient referral, anti-kickback, and patient
178 brokering laws.

179 (b) Encourage the establishment of a dental home.

180 (c) Maintain professional malpractice insurance coverage
181 that has minimum limits of \$100,000 per occurrence and \$300,000
182 in the aggregate through the employing health access setting or
183 individual policy.

184 ~~(7)(6)~~ Notwithstanding subsection (1) or subsection (3)
185 ~~(2)~~, a dentist may delegate the tasks of gingival curettage and
186 root planing to a dental hygienist but not to a dental
187 assistant.

188 (9)(8) Notwithstanding subsection (1) or subsection (3)
189 ~~(2)~~, a dentist may not delegate to anyone other than another
190 licensed dentist:

191 (a) Any prescription of drugs or medications requiring the
192 written order or prescription of a licensed dentist or
193 physician.

194 (b) Any diagnosis for treatment or treatment planning.

195 Section 6. Present paragraph (mm) of subsection (1) of
196 section 466.028, Florida Statutes, is redesignated as paragraph
197 (pp), and a new paragraph (mm) and paragraphs (nn) and (oo) are
198 added to that subsection, to read:

199 466.028 Grounds for disciplinary action; action by the
200 board.—

201 (1) The following acts constitute grounds for denial of a
202 license or disciplinary action, as specified in s. 456.072(2):

203 (mm) Failure by the dentist of record, before the initial

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204 diagnosis and correction of a malposition of human teeth or
205 initial use of an orthodontic appliance, to perform an in-person
206 examination of the patient or obtain records from an in-person
207 examination within the last 6 months and to perform a review of
208 the patient's most recent diagnostic digital or conventional
209 radiographs or other equivalent bone imaging suitable for
210 orthodontia.

211 (nn) For dental services provided in-person or through
212 telehealth by an individual, a partnership, a corporation, or
213 any other entity, failing to provide each patient with the name,
214 contact telephone number, after-hours contact information for
215 emergencies, and, upon the patient's request, the license
216 information of each dentist who is providing dental services to
217 the patient.

218 (oo) For dental services provided through telehealth by an
219 individual, a partnership, a corporation, or any other entity,
220 failing to designate a dentist of record and make available,
221 before the rendering of such services and upon the patient's
222 request, the name, telephone number, practice address, and state
223 license number for the dentist of record and any other dentist
224 who will be involved in the provision of dental services to the
225 patient through telehealth.

226 Section 7. Subsection (6) of section 409.906, Florida
227 Statutes, is amended to read:

228 409.906 Optional Medicaid services.—Subject to specific
229 appropriations, the agency may make payments for services which
230 are optional to the state under Title XIX of the Social Security
231 Act and are furnished by Medicaid providers to recipients who
232 are determined to be eligible on the dates on which the services

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233 were provided. Any optional service that is provided shall be
 234 provided only when medically necessary and in accordance with
 235 state and federal law. Optional services rendered by providers
 236 in mobile units to Medicaid recipients may be restricted or
 237 prohibited by the agency. Nothing in this section shall be
 238 construed to prevent or limit the agency from adjusting fees,
 239 reimbursement rates, lengths of stay, number of visits, or
 240 number of services, or making any other adjustments necessary to
 241 comply with the availability of moneys and any limitations or
 242 directions provided for in the General Appropriations Act or
 243 chapter 216. If necessary to safeguard the state's systems of
 244 providing services to elderly and disabled persons and subject
 245 to the notice and review provisions of s. 216.177, the Governor
 246 may direct the Agency for Health Care Administration to amend
 247 the Medicaid state plan to delete the optional Medicaid service
 248 known as "Intermediate Care Facilities for the Developmentally
 249 Disabled." Optional services may include:

250 (6) CHILDREN'S DENTAL SERVICES.—The agency may pay for
 251 diagnostic, preventive, or corrective procedures, including
 252 orthodontia in severe cases, provided to a recipient under age
 253 21, by or under the supervision of a licensed dentist. The
 254 agency may also reimburse a health access setting as defined in
 255 s. 466.003 for the remediable tasks that a licensed dental
 256 hygienist is authorized to perform under s. 466.024(3) ~~s.~~
 257 ~~466.024(2)~~. Services provided under this program include
 258 treatment of the teeth and associated structures of the oral
 259 cavity, as well as treatment of disease, injury, or impairment
 260 that may affect the oral or general health of the individual.
 261 However, Medicaid will not provide reimbursement for dental

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262 services provided in a mobile dental unit, except for a mobile
 263 dental unit:

264 (a) Owned by, operated by, or having a contractual
 265 agreement with the Department of Health and complying with
 266 Medicaid's county health department clinic services program
 267 specifications as a county health department clinic services
 268 provider.

269 (b) Owned by, operated by, or having a contractual
 270 arrangement with a federally qualified health center and
 271 complying with Medicaid's federally qualified health center
 272 specifications as a federally qualified health center provider.

273 (c) Rendering dental services to Medicaid recipients, 21
 274 years of age and older, at nursing facilities.

275 (d) Owned by, operated by, or having a contractual
 276 agreement with a state-approved dental educational institution.

277 Section 8. This act shall take effect July 1, 2023.

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2023 AGENCY LEGISLATIVE BILL ANALYSIS



AGENCY: Florida Department of Health

<u>BILL INFORMATION</u>	
BILL NUMBER:	SB 356
BILL TITLE:	Practice of Dentistry
BILL SPONSOR:	Boyd
EFFECTIVE DATE:	July 1, 2023

<u>COMMITTEES OF REFERENCE</u>
1) Click or tap here to enter text.
2) Click or tap here to enter text.
3) Click or tap here to enter text.
4) Click or tap here to enter text.
5) Click or tap here to enter text.

<u>PREVIOUS LEGISLATION</u>	
BILL NUMBER:	Click or tap here to enter text.
BILL TITLE:	Click or tap here to enter text.
BILL SPONSOR:	Click or tap here to enter text.
YEAR:	Click or tap here to enter text.
LAST ACTION:	Click or tap here to enter text.

<u>CURRENT COMMITTEE</u>
Click or tap here to enter text.

<u>SIMILAR BILLS</u>	
BILL NUMBER:	Click or tap here to enter text.
BILL SPONSOR:	Click or tap here to enter text.

<u>IDENTICAL BILLS</u>	
BILL NUMBER:	HB 503
BILL SPONSOR:	Berfield

<u>Is this bill part of an Agency Package?</u>
Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

<u>BILL ANALYSIS INFORMATION</u>	
DATE OF ANALYSIS:	January 25, 2023
LEAD AGENCY ANALYST:	Jessica Sapp
ADDITIONAL ANALYST(S):	Click or tap here to enter text.
FISCAL ANALYST:	Madison Adkins
LEGAL ANALYST:	John Wilson

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

This bill amends the Dental Practice Act to include a definition of digital scanning and sets certain requirements for dental services provided through telehealth.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

The Board of Dentistry, within the Department of Health (DOH), regulates dental practice in Florida, including dentists, dental hygienists, and dental assistants under the Dental Practice Act. A dentist is licensed to examine, diagnose, treat, and care for conditions within the human oral cavity and its adjacent tissues and structures. A dental hygienist is licensed to provide education, preventive and delegated therapeutic dental services. A dental assistant is not licensed in Florida but can provide certain dental care services, as outlined by rule of the Board, directly to a patient under the supervision and authorization of a dentist.

Section 466.024, Florida Statutes, allows the Board of Dentistry to create a certification process for expanded-duty dental assistants. Rule 64B5-9.011, F.A.C., establishes the process for dental assistants that position and expose dental radiographic images, and certifies them as a Dental Radiographer.

Section 466.003, Florida Statutes, defines dentistry to include the taking of an impression of the human tooth, teeth, or jaws directly or indirectly and by any means or method. Section 456.74, Florida Statutes, defines telehealth to mean the use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include audio-only telephone calls, e-mail messages, or facsimile transmissions.

An optical impression by an intraoral scanner (IOS) is used to create a digital scan and involves optically measuring the surface shape of the target teeth or gums directly in the patient's mouth. IOSs have many advantages, such as reduce patients' pain and discomfort, the operator's burden and the risk of infection, real-time impression scanning and visualization, simple replication and selective scanning, reduction of cost and waste of materials and detection of dental caries.

Rule 64B5-17.004, F.A.C., requires every dentist to provide, either personally, through another licensed dentist, or through a reciprocal agreement with another agency, reasonable 24-hour emergency services for all patients under his or her continuing care.

Rule 64B5-17.002, F.A.C., defines a dentist of record as a dentist who:

- Is identified and noted in the patient record as the dentist of record
- Provides a specific treatment or service and is noted in the patient record as the dentist of record for that treatment or service
- If there has been more than one provider of treatment, is the dentist who places the final restoration, does the surgical procedure, makes the diagnosis or finishes the service or procedure in question
- If the dentist of record is not identifiable, then the owner of the dental practice in which the patient was treated is the dentist of record

Rule 64B5-4.002, F.A.C., defines advertising to mean any statements, oral or written, disseminated to or before the public or any portion thereof with the intent of furthering the purpose, either directly or indirectly, of selling professional services, or offering to perform professional services, or inducing members of the public to enter into

any obligation relating to such professional services. The provisions of this rule shall apply to media exposure of any nature regardless of whether it is in the form of paid advertising.

General supervision requires that a licensed dentist authorizes the procedures to be performed but need not be present when the authorized procedures are being performed. The authorized procedures may also be performed at a place other than the dentist's usual place of practice.

Under general supervision, a dental hygienist can:

- Take impressions for study casts which are not being made for the purpose of fabricating any intra-oral appliances, restorations or orthodontic appliances;
- Take impressions to be used for creating opposing models or the fabrication of bleaching stents and surgical stents to be used for the purpose of providing palatal coverage as well as impressions used for fabrication of topical fluoride trays for home application;
- Take of impressions for and delivery of at-home bleaching trays; and
- Take impressions for passive appliances, occlusal guards, space maintainers and protective mouth guards.

Direct supervision requires that a licensed dentist examine the patient, diagnose a condition to be treated, authorize the procedure to be performed, be on the premises while the procedure is performed, and approve the work performed prior to the patient's departure from the premises.

Under direct supervision, a dental assistant can:

- Make impressions for study casts which are being made for the purpose of fabricating orthodontic retainers;
- Take of impressions for and delivery of at-home bleaching trays; and
- Take impressions for passive appliance, occlusal guards, space maintainers and protective mouth guards.

Indirect supervision requires that a licensed dentist examine the patient, diagnose a condition to be treated, authorize the procedure to be performed, and be on the premises while the procedure is performed.

Under indirect supervision, a dental assistant can:

- Making impressions for study casts which are not being made for the purpose of fabricating any intra-oral appliances, restorations or orthodontic appliances; and
- Making impressions to be used for creating opposing models or the fabrication of bleaching stents and surgical stents to be used for the purpose of providing palatal coverage as well as impressions used for fabrication of topical fluoride trays for home application.

The Florida Board of Dentistry has the authority to issue a final order imposing appropriate penalties as recommended in their disciplinary guidelines if they find that an applicant, licensee, certificate holder, or telehealth registrant whom it regulates under Chapter 466, Florida Statutes, has committed any of the acts set forth in Sections 456.072(1), 466.028, or 456.47, Florida Statutes.

As of December 31, 2022, there were 18,238 licensed dentists, 18,335 licensed dental hygienists, 31, 444 licensed dental radiographers, and 35 out-of-state registered telehealth dentists.

2. EFFECT OF THE BILL:

The bill creates a new definition of "digital scanning" in section 466.003, Florida Statutes, to mean the use of digital technology that creates a computer-generated replica of the hard and soft tissue of the oral cavity using enhanced digital photography, lasers, or other optical scanning devices.

The bill requires every dentist and any individual, partnership, corporation, or other entity that provides dental services through telehealth to make available the name, telephone number, after-hours contact information for

emergencies, and upon request, licensure information. A violation of this provision would constitute grounds for disciplinary action.

The bill requires a dentist of record to remain primarily responsible for all dental treatment for any patient who is treated through telehealth, whether that is rendered by the dentist of record, another dentist, dental hygienist, or dental assistant. A dentist of record would not be responsible for the patient if a proper referral to another dentist was performed, or if the patient voluntarily selects a new dentist of record.

The bill creates a definition for advertisement to mean a representation disseminated in any manner or by any means to solicit patients and includes business cards, circulars, pamphlets, newspapers, websites, and social media. If dental services are provided through telehealth, an advertisement must include a disclaimer that reads, “An in-person examination with a dentist licensed under chapter 466, Florida Statutes, is recommended before beginning telehealth treatment in order to prevent injury or harm.” This disclaimer would be required for each of the following advertised services:

- The taking of an impression or the digital scanning of the human tooth, teeth, or jaws, directly or indirectly and by any means or method;
- Placing an appliance or a structure in the human mouth or adjusting or attempting to adjust the appliance or structure; and
- Correcting or attempting to correct malformations of teeth or jaws.

The bill sets forth supervision requirements for dental hygienists and dental assistants who take an impression or perform digital scanning of the human tooth, teeth, or jaws, directly or indirectly and by any means or method, for the purpose of the practice of dentistry.

The bill creates a new disciplinary offense, which establishes a standard that would require a dentist of record to perform an in-person examination of a patient or obtain records from an in-person examination with the last six months before the initial diagnosis and correction of a malposition of human teeth or initial use of an orthodontic appliance.

A direct-to-consumer teeth aligner business model currently exists for consumers. This consists of dental impressions being taken by the consumer using a dental impression kit mailed by the aligner company, or the consumer visiting a location for a digital scan by a technician. The impression or image is then reviewed by a dentist to create custom aligners, which are shipped back to the consumer for use. This model does not include an in-person examination by a licensed dentist or include direct supervision by a dentist when digital scanning is performed. The requirements of the bill would eliminate this business model.

The bill provides an effective date of July 1, 2023.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES?

Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
If yes, explain:	The Board of Dentistry would be required to amend their disciplinary guidelines to incorporate the violations this bill creates.
Is the change consistent with the agency's core mission?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Rule(s) impacted (provide references to F.A.C., etc.):	Rule 64B5-13.005, F.A.C., Disciplinary Guidelines

4. WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?

Proponents and Summary of Position:	Unknown
Opponents and Summary of Position:	Unknown

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL?

Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
If yes, provide a description:	N/A
Date Due:	N/A
Bill Section Number(s):	N/A

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL?

Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Board:	N/A
Board Purpose:	N/A
Who Appoints?	N/A
Changes:	N/A
Bill Section Number(s):	N/A

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT?

Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Revenues:	N/A
Expenditures:	N/A
Does the legislation increase local taxes or fees? If yes, explain:	N/A
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	N/A

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT?

Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Revenues:	N/A
Expenditures:	<p>DOH/MQA will experience an increase in workload associated with complaints and investigations due to the provisions of this legislation. The impact is indeterminate; therefore, the fiscal impact cannot be calculated at this time.</p> <p>DOH will incur non-recurring costs for rulemaking, which current budget authority is adequate to absorb.</p> <p>DOH/MQA will experience a non-recurring increase in workload and costs associated with updating the Licensing and Enforcement Information Database System, Online Service Portal, Artificial Intelligence Virtual Customer Contact Agent, Continuing Education Tracking System, License Verification Search Site, and board website. Resources and budget authority are adequate to absorb.</p>
Does the legislation contain a State Government appropriation?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If yes, was this appropriated last year?	N/A

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR?

Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Revenues:	The provisions of this legislation may result in an increase in revenues for individual dentistry practices due to the creation of a standard that would require a dentist of record to perform an in-person examination of a patient or obtain records from an in-person examination with the last six months before the initial diagnosis and correction of a malposition of human teeth or initial use of an orthodontic appliance.
Expenditures:	N/A
Other:	N/A

4. DOES THE BILL INCREASE OF DECREASE TAXES, FEES, OR FINES?

Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
If yes, explain impact:	N/A
Bill Section Number:	N/A

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY’S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)?

Yes <input type="checkbox"/> No <input type="checkbox"/>	
If yes, describe the anticipated impact to the agency including any fiscal impact:	N/A

FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)?

Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
If yes, describe the anticipated impact including any fiscal impact:	N/A

ADDITIONAL COMMENTS

None.

LEGAL – GENERAL COUNSEL’S OFFICE REVIEW

Issues/Concerns/Comments: Section 466.018(2), Florida Statutes, may need to be updated as well to reference the new subsection (6) beginning at line 71. Specifically, to make it clear if the dentist of record is not identified in the telehealth patient record, it shall be presumed as a matter of law that the dentist of record is the dentist owner of the telehealth dental practice in which the patient was treated.

Further clarification may be needed if lines 158-163 are intended to end the aligner industry described above. Although based on Board action and not statutes, the North Carolina antitrust case concerned the same industry.

The Florida Senate

APPEARANCE RECORD

3/6/23

SB-356

Meeting Date

Deliver both copies of this form to Senate professional staff conducting the meeting

Bill Number or Topic

Health Policy
Committee

Amendment Barcode (if applicable)

Name Jeffrey Sulitzer, DMB

Phone 818-726-4177

Address 414 Union St Suite 800

Email jeff.sulitzer@smiledirectclub.com

Street

Nashville TN

City

State

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

3-6-23

SB 356

Meeting Date

Deliver both copies of this form to Senate professional staff conducting the meeting

Bill Number or Topic

Health Policy
Committee

Amendment Barcode (if applicable)

Name WALTER COLON

Phone 850-597-0112

Address 2160 Capital Circle

Email walt@talkhuswcepens.com

Street

Tallahassee

FL

32308

City

State

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

3-6-23

Meeting Date

SB 356

Bill Number or Topic

Health Policy

Committee

Amendment Barcode (if applicable)

Name Andrew Brown DDS

Phone 904-610-6092

Address 1478 Riverplace Blvd #1406

Email andrewbrowndds@gmail.com

Street

Jacksonville FL 32207

City

State

Zip

Speaking: [X] For [] Against [] Information OR Waive Speaking: [] In Support [] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[X] I am appearing without compensation or sponsorship.

[] I am a registered lobbyist, representing:

[] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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3/6/2023

Meeting Date

SB 0356

Bill Number or Topic

Health Policy

Committee

Amendment Barcode (if applicable)

Name Gianna Nawrocki

Phone 8156903209

Address 401 N. Lindbergh Blvd

Email ghnawrocki@aaortho.org

Street

St. Louis MO 63021

City

State

Zip

Speaking: [X] For [] Against [] Information OR Waive Speaking: [] In Support [] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[X] I am appearing without compensation or sponsorship.

[] I am a registered lobbyist, representing:

[] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

3/6/2023

The Florida Senate
APPEARANCE RECORD

356

Meeting Date

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Bill Number or Topic

Health Policy

Committee

Amendment Barcode (if applicable)

Name Zayne Smith

Phone (850) 228-4243

Address 215 South Monroe Suite 603

Email zsmith@aarp.org

Street

Tallahassee

Florida

32301

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

AARP

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3-6-23

The Florida Senate
APPEARANCE RECORD

SB 356

Meeting Date

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Bill Number or Topic

Health Policy

Committee

Amendment Barcode (if applicable)

Name Joe Anne Hart

Phone 850-224-1089

Address 118 East Jefferson St

Email jahart@floridadental.org

Street

Tallahassee FL 32301

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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Agriculture, *Vice Chair*
Appropriations Committee on Agriculture,
Environment, and General Government
Finance and Tax
Fiscal Policy
Judiciary
Rules
Transportation

SENATOR JIM BOYD

20th District

February 13, 2023

Senator Colleen Burton
404 South Monroe Street
530 Knott Building
Tallahassee, FL 32399

Dear Madame-Chair Burton:

I respectfully request Senate Bill 356: Practice of Dentistry, be scheduled for a hearing in the Committee on Health Policy, at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me.

Thank you for your consideration of this matter.

Best regards,

A handwritten signature in blue ink that reads "Jim Boyd".

Jim Boyd

cc: Allen Brown
Anhar Al-Asadi

REPLY TO:

- 717 Manatee Avenue West, Bradenton, Florida 34205 (941) 742-6445
- 418 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

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 380

INTRODUCER: Senator Garcia and others

SUBJECT: Protection from Surgical Smoke

DATE: March 3, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Brown</u>	<u>HP</u>	<u>Favorable</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 380 requires hospitals and ambulatory surgical centers (ASC) to, by January 1, 2024, adopt and implement policies that require the use of a smoke evacuation system during any surgical procedure that is likely to generate surgical smoke.

The bill provides an effective date of July 1, 2023.

II. Present Situation:

Surgical smoke is produced by the thermal destruction of tissue by use of lasers or electrosurgical devices.¹ Surgical smoke has been shown to contain toxic gases, vapors and particulates, viable and non-viable cellular material, viruses, and bacteria.²

Potential known health effects from the exposure to surgical smoke include eye, nose, and throat irritation; headache; cough; nasal congestion; and asthma and asthma-like symptoms, but little is known about the health effects from chronic exposure to surgical smoke.³ Other risks include the transmission of viruses through surgical smoke, for example the transmission of Human Papillomavirus (HPV) through surgical smoke from lasers has been documented,⁴ and some researchers have suggested that surgical smoke may act as a vector for cancerous cells that may be inhaled.⁵

¹ The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, *Health and Safety Practices Survey of Healthcare Workers*, last updated March 30, 2017, available at <https://www.cdc.gov/niosh/topics/healthcarehsps/smoke.html> (last visited March 2, 2023).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ United States Department of Labor, Occupational Safety and Health Administration, *Surgical Suite >> Smoke Plume*, available at <https://www.osha.gov/etools/hospitals/surgical-suite/smoke-plume>, (last visited March 2, 2023).

According to the Occupational Safety and Health Administration, recognized controls and work practices for surgical smoke include:

- Using portable local smoke evacuators and room suction systems with in-line filters.
- Keeping the smoke evacuator or room suction hose nozzle inlet within two inches of the surgical site to effectively capture airborne contaminants.
- Having a smoke evacuator available for every operating room where plume is generated.
- Evacuating all smoke, no matter how much is generated.
- Keeping the smoke evacuator "ON" (activated) at all times when airborne particles are produced during all surgical or other procedures.
- Considering all tubing, filters, and absorbers as infectious waste and dispose of them appropriately.
- Using new tubing before each procedure and replace the smoke evacuator filter as recommended by the manufacturer.
- Inspecting smoke evacuator systems regularly to ensure proper functioning.⁶

Additionally, the Joint Commission, a major accrediting organization for hospitals and ambulatory surgical centers, addressed the issue of surgical smoke in its newsletter entitled "Quick Safety Issue 56: Alleviating the Dangers of Surgical Smoke." In the newsletter the Joint Commission recommends that "health care organizations that conduct surgery and other procedures using lasers and other devices that produce surgical smoke should take the following actions to help protect patients and especially staff from the dangers of surgical smoke.

- Implement standard procedures for the removal of surgical smoke and plume through the use of engineering controls, such as smoke evacuators and high filtration masks.
- Use specific insufflators for patients undergoing laparoscopic procedures that lessen the accumulation of methemoglobin buildup in the intra-abdominal cavity. (Surgical smoke is cytotoxic if absorbed into the blood and can cause elevated methemoglobin.) For example, a lapro-shield smoke evacuation device — a filter that attaches to a trocar — helps clear the field inside the abdomen.
- During laser procedures, use standard precautions, such as those promulgated by the Blood-Borne Pathogen Standard (29CFR1910.1030) and the Center for Disease Control and Prevention's Core Infection Prevention and Control Practices for Safe Healthcare Delivery in All Settings, to prevent exposure to the aerosolized blood, blood by-products and pathogens contained in surgical smoke plumes.
- Establish and periodically review policies and procedures for surgical smoke safety and control. Make these policies and procedures available to staff in all areas where surgical smoke is generated.
- Provide surgical team members with initial and ongoing education and competency verification on surgical smoke safety, including the organization's policies and procedures.
- Conduct periodic training exercises to assess surgical smoke precautions and consistent evacuation for the surgical suite or procedural area."⁷

⁶ *Supra* n. 5.

⁷ Quick Safety Issue 56: Alleviating the Dangers of Surgical Smoke, the Joint Commission, available at <https://www.jointcommission.org/resources/news-and-multimedia/newsletters/newsletters/quick-safety/quick-safety-issue-56/quick-safety-issue-56/> (last visited March 2, 2023).

III. Effect of Proposed Changes:

SB 380 creates s. 395.1013, F.S., to require that hospitals and ASCs adopt and implement policies that require the use of a smoke evacuation system during any surgical procedures that is likely to generate surgical smoke. The bill defines:

- “Smoke evacuation system” to mean equipment that effectively captures, filters, and eliminates surgical smoke at the site of origin before the smoke makes contact with the eyes or respiratory tract of occupants in the room; and
- “Surgical smoke” to mean the gaseous byproduct produced by energy-generating devices such as lasers and electrosurgical devices. The term includes, but is not limited to, surgical plume, smoke plume, bio-aerosols, laser-generated airborne contaminants, and lung-damaging dust.

The bill requires hospitals and ASCs to adopt and implement the required policies by January 1, 2024.

The bill provides an effective date of July 1, 2023.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

SB 380 may have a negative fiscal impact on hospitals and ASCs if the hospital or ASC is required to purchase and maintain equipment in order to meet the requirements of the bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 395.1013 of the Florida Statutes.

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.

By Senator Garcia

36-00676-23

2023380__

A bill to be entitled

An act relating to protection from surgical smoke; creating s. 395.1013, F.S.; defining the terms "smoke evacuation system" and "surgical smoke"; requiring hospitals and ambulatory surgical centers to, by a specified date, adopt and implement policies requiring the use of smoke evacuation systems during certain surgical procedures; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 395.1013, Florida Statutes, is created to read:

395.1013 Smoke evacuation systems required.-

(1) As used in this section, the term:

(a) "Smoke evacuation system" means equipment that effectively captures, filters, and eliminates surgical smoke at the site of origin before the smoke makes contact with the eyes or respiratory tract of occupants in the room.

(b) "Surgical smoke" means the gaseous byproduct produced by energy-generating devices such as lasers and electrosurgical devices. The term includes, but is not limited to, surgical plume, smoke plume, bio-aerosols, laser-generated airborne contaminants, and lung-damaging dust.

(2) By January 1, 2024, each licensed facility shall adopt and implement policies that require the use of a smoke evacuation system during any surgical procedure that is likely to generate surgical smoke.

Section 2. This act shall take effect July 1, 2023.

3/6/23 #2
Meeting Date
Senate Health Policy
Committee

The Florida Senate
APPEARANCE RECORD

SB 380
Bill Number or Topic
Amendment Barcode (if applicable)

Deliver both copies of this form to
Senate professional staff conducting the meeting

Name Meghan Moroney Phone 305-431-2345
Address S203 Bayshore Blvd Email swimwater22@hotmail.com
Tampa FL 33611
City State Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:
 I am appearing without compensation or sponsorship. I am a registered lobbyist, representing: I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:
Florida Nurses Association

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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3/6/23 #1
Meeting Date
Health Policy
Committee

The Florida Senate
APPEARANCE RECORD

SB 380
Bill Number or Topic
Amendment Barcode (if applicable)

Deliver both copies of this form to
Senate professional staff conducting the meeting

Name Janeie Adams Phone 813 777 4572
Address 6306 Anhinga Pl Email jadamso7264@gmail.com
Tampa FL 33615
City State Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:
 I am appearing without compensation or sponsorship. I am a registered lobbyist, representing: I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:
Florida Nurses Association

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3/6/23

#2

The Florida Senate APPEARANCE RECORD

S.B. 380

Meeting Date

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Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Kristin Minskey

Phone (904) 303-6093

Address 7759 Sunnydale Ln

Email kristinminskey@yahoo.com

Jacksonville
City

FL
State

32256
Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

Florida Nurses Association

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S-001 (08/10/2021)

3-6-23

#3

The Florida Senate APPEARANCE RECORD

SB 380

Meeting Date

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Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Kathleen Faith Halvorsen

Phone 904-759-4876

Address 909 Arthur Moore Dr.

Email Faith Halvorsen

Green Cove Springs Fl. 32043
City State Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

FL Nurse Assoc.

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S-001 (08/10/2021)

03/06/23 #6

The Florida Senate
APPEARANCE RECORD

SB 380

Meeting Date

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Bill Number or Topic

Committee

Name EVA LIM

Amendment Barcode (if applicable)
Phone (589) 3099625

Address 247 STONEWELL DRIVE
Street

Email limev85@juno.com

ST. JOHNS FL 32259
City State Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

- I am appearing without compensation or sponsorship.
- I am a registered lobbyist, representing:
- I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

Florida Nurses Association

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S-001 (08/10/2021)

03/06/23 #5

The Florida Senate
APPEARANCE RECORD

SB 380

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Bill Number or Topic

Committee

Name JENNIFER PROHLER

Amendment Barcode (if applicable)
Phone 904 657 9483

Address 175 Lige Branch Lane
Street

Email Jenprohlerb19@gmail.com

St. Johns Florida 32259
City State Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

- I am appearing without compensation or sponsorship.
- I am a registered lobbyist, representing:
- I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

Florida Nurses Association

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S-001 (08/10/2021)

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Meeting Date
Hear Bus
Committee

SB380
Bill Number or Topic
Amendment Barcode (if applicable)

Name JACK CORI
Address 730 East Ford Ave
City Tallahassee State FL Zip 3236

Phone 850 893-0995
Email JACKCORI@PA.CM

Speaking: For Against Information **OR** Waive Speaking: In Support Against

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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Appropriations Committee on Health and
Human Services, *Vice Chair*
Appropriations Committee on Agriculture, Environment,
and General Government
Education Postsecondary
Ethics and Elections
Fiscal Policy
Health Policy
Rules

SENATOR ILEANA GARCIA

36th District

February 13, 2023

Senator Colleen Burton, Chair
Committee on Health Policy
530 Knott Building
Tallahassee FL 32399

Dear Chair Burton:

Senate Bill 380, relating to protection from surgical smoke, has been referred to your committee. I would appreciate it if you would consider placing the bill on an upcoming agenda at your convenience.

Thank You,

A handwritten signature in black ink, appearing to read "Ileana Garcia".

Ileana Garcia
State Senator

cc: Allen Brown
Anhar Al-Asadi

REPLY TO:

- 2828 Coral Way, Suite 208, Miami, Florida 33145 (305) 442-6841
- 322 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

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 614

INTRODUCER: Senator Harrell

SUBJECT: Mammography Reports

DATE: March 3, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Brown	HP	Favorable
2.			RC	

I. Summary:

SB 614 removes the statutory repeal date in s. 381.933, F.S., relating to mammography reports so that this section of statute does not sunset on June 30, 2023.

Section 381.933, F.S., enacted in the 2018 Legislative Session, requires a facility that performs mammography to send a summary of the patient's mammography report to the patient. If a facility determines that a patient has heterogeneously or extremely dense breasts, the summary must include a specific notice to raise the patient's awareness of dense breast tissue. The statute will be repealed on June 30, 2023, unless otherwise saved from repeal.

The act shall take effect upon becoming a law.

II. Present Situation:

What is dense breast tissue?

Dense breast tissue refers to the appearance of breast tissue on a mammogram. It is a normal and common finding.¹

Breast tissue is composed of milk glands, milk ducts and supportive tissue (dense breast tissue), and fatty tissue (non-dense breast tissue). When viewed on a mammogram, women with dense breasts have more dense tissue than fatty tissue. On a mammogram, non-dense breast tissue appears dark and transparent. Dense breast tissue appears as a solid white area on a mammogram, which makes it difficult to see through.

¹ The Mayo Clinic: Dense Breast Tissue: What it means to have dense breast tissue, last updated February 25, 2022; available at: <https://www.mayoclinic.org/tests-procedures/mammogram/in-depth/dense-breast-tissue/art-20123968> (last visited February 28, 2023).

The radiologist who analyzes the mammogram determines the ratio of non-dense tissue to dense tissue and assigns a level of breast density. Levels of density are described using a results reporting system called Breast Imaging Reporting and Data System (BI-RADS). The levels of density are often recorded in a mammogram report using letters. The levels of density are:

- A: Almost entirely fatty indicates that the breasts are almost entirely composed of fat. About 10 percent of women have this result.
- B: Scattered areas of fibroglandular density indicates there are some scattered areas of density, but the majority of the breast tissue is non-dense. About 40 percent of women have this result.
- C: Heterogeneously dense indicates that there are some areas of non-dense tissue while the majority of the breast tissue is dense. About 40 percent of women have this result.
- D: Extremely dense indicates that nearly all of the breast tissue is dense. About 10 percent of women have this result.

In general, women with breasts that are classified as heterogeneously dense or extremely dense are considered to have dense breasts. About half of women undergoing mammograms have dense breasts.

Reporting to Patients

Thirty-nine states require notification concerning dense breasts, while 29 states mandate specific language for such notifications.²

Section 381.933, F.S., relating to mammography reports was enacted in 2018. It defines “facility,” “mammography,” and “mammography report” to comport with the definitions in the Federal Food and Drug Administration’s (FDA) federal regulations under the Mammography Quality Standards Act.

Subsection (2) of this statute requires a facility that performs mammography to send a summary of the patient’s mammography report to the patient. Also, if a facility determines that a patient has heterogeneously or extremely dense breasts, the summary must include a specific notice to raise the patient’s awareness of dense breast tissue. This notice must state:

Your mammogram shows that your breast tissue is dense. Dense breast tissue is relatively common and is found in approximately 50 percent of women. The presence of dense breast tissue can make it more difficult to detect some abnormalities in the breast and may also be associated with an increased risk of breast cancer. This information about the result of your mammogram is given to you to raise your awareness. A report of your results was sent to your health care provider. Further recommendations may be added at the discretion of the interpreting radiologist. Please be aware that additional screening studies may not be covered by your insurance.

² Dense Breast-info: Comparative Analysis of State Density Inform Efforts and Insurance Coverage, revised October 10, 2022; available at: https://densebreast-info.org/wp-content/uploads/2022/12/Table.laws_ALPHA_10.9.22.copyright.pdf (last visited February 28, 2023).

The law provides that it does not create a duty, standard of care, or other legal obligation beyond the duty to provide notice as set forth in this subsection. The law further provides that it does not require a notice that is inconsistent with the federal Mammography Quality Standards Act or any regulation promulgated pursuant to that act.

The FDA has initiated a proposed regulation to, among other things, address reporting to patients identified with dense breasts.³ The proposed regulation was published on March 18, 2019, and a recent report indicated a final rule might be available in December, 2022; however, a final rule has not been published as of this writing.⁴

III. Effect of Proposed Changes:

SB 614 repeals the sunset of s. 381.933, F.S., found in subsection (3) of that section, and thereby retains in Florida law the requirement for a facility that performs a mammography to provide a summary of a mammography report to the patient, as provided under current law.

No changes are made to the statute as it currently exists, other than striking the repeal date.

The act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

³ See: 84 FR 11669, 11685. Available at: <https://www.govinfo.gov/content/pkg/FR-2019-03-28/pdf/2019-05803.pdf> (last visited February 28, 2023).

⁴ See: RIN: 0910-AH04, Publication: Fall 2022, available at: <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=0910-AH04> (last visited February 28, 2023).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 381.933 of the Florida Statutes.

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.

By Senator Harrell

31-01454-23

2023614__

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A bill to be entitled

An act relating to mammography reports; amending s.
381.933, F.S.; abrogating the repeal of provisions
requiring facilities that perform mammography to send
patients a certain summary of their mammography report
under certain circumstances; providing an effective
date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 381.933, Florida
Statutes, is amended to read:

381.933 Mammography reports.-

~~(3) REPEAL. This section is repealed June 30, 2023.~~

Section 2. This act shall take effect upon becoming a law.

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

3/6/23

Meeting Date

SB 614

Bill Number or Topic

Health Policy

Committee

Amendment Barcode (if applicable)

Name Alison Dudley

Phone 850/559-1139

Address 108 S Monroe Street

Email alison.dudley@dudleyandassociates.com

Tallahassee FL 32301

City

State

Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Radiological Society

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Committee on Health and Human Services, *Chair*
Environment and Natural Resources, *Vice Chair*
Appropriations
Appropriations Committee on Education
Education Postsecondary
Health Policy
Judiciary

SELECT COMMITTEE:

Select Committee on Resiliency

SENATOR GAYLE HARRELL

31st District

February 22, 2023

Senator Colleen Burton
530 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Burton,

I respectfully request that SB 614 – Mammography Reports be placed on the next available agenda for the Health Policy Committee Meeting.

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in blue ink that reads "Gayle".

Senator Gayle Harrell
Senate District 31

Cc: Allen Brown, Staff Director
Anhar Al-Asadi, Committee Administrative Assistant

REPLY TO:

- 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019 FAX: (888) 263-7895
- 414 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5031

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

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 870

INTRODUCER: Senator Burton

SUBJECT: Surrendered Newborn Infants

DATE: March 3, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Brown	HP	Favorable
2.	_____	_____	CF	_____
3.	_____	_____	RC	_____

I. Summary:

SB 870 modifies statutory provisions relating to surrendered newborn infants. The age of a newborn infant who may be lawfully surrendered is increased from up to approximately seven days old to approximately 30 days old.

The bill authorizes a hospital, an emergency medical services (EMS) station, or a fire station that is staffed 24 hours per day to use a newborn infant safety device to accept surrendered newborn infants in accordance with safety procedures specified in the bill.

The bill provides an additional method of lawful surrender by allowing the parent of a newborn infant to dial 911 to request that an EMS provider meet at a specified location for surrender of the newborn infant directly to the EMS provider. The manner in which a parent may relinquish a newborn infant at a hospital after delivery is clarified.

The bill extends immunity from criminal investigation solely because a newborn infant is left at an EMS station or a fire station.

The act shall take effect July 1, 2023.

II. Present Situation:

Infant Safe Haven Laws

Every state legislature has enacted laws to address infant abandonment and endangerment in response to a reported increase in the abandonment of infants in unsafe locations, such as public restrooms or trash receptacles. Beginning with Texas in 1999, states have enacted these safe haven laws as an incentive for mothers in crisis to safely relinquish their babies at designated

locations where the babies are protected and provided with care until a permanent home is found.¹

While there is great variability in the laws across states, safe haven laws generally allow the parent, or an agent of the parent, to remain anonymous and to be shielded from criminal liability and prosecution for child endangerment, abandonment, or neglect in exchange for surrendering the baby to a safe haven.² Most states designate hospitals, emergency medical services providers, health care facilities, and fire stations as a safe haven. In ten states, emergency medical personnel responding to 911 calls may accept an infant.³ Laws in nine states, allow a parent to voluntarily deliver the infant to a newborn safety device that meets certain safety standards.⁴

The age in which a baby may be lawfully surrendered also varies significantly from state to state. Approximately 23 states accept infants up to 30 days old.⁵ Ages in other states range from up to 72 hours to 1 year.⁶

According to the nonprofit organization known as the National Safe Haven Alliance (NSHA), 4,505 safe haven relinquishments occurred during 1999-2021 nationwide,⁷ and 4,709 nationally as of this writing.⁸ Illegal abandonments have also occurred during that time span, with some newborns found alive and others deceased. These statistics are unofficial estimates, as there is no federally mandated safe haven report requirement.

Surrender of Newborn Infants in Florida

The Florida Legislature enacted Florida's initial abandoned newborn infant law in 2000.⁹ The law created s. 383.50, F.S., and authorized the abandonment of a newborn infant, up to three days old or younger, at a hospital or a fire station and addressed: presumption of relinquishment of parental rights, implied consent to treatment, anonymity, and physical custody of the infant.¹⁰ The law also directed the Department of Health, in conjunction with the Department of Children and Families, to produce a media campaign to promote safe placement alternatives for newborn infants.

In 2001, s. 383.50, F.S., was amended to authorize EMS stations, in addition to hospitals and fire stations, as optional locations for the lawful relinquishment of a newborn infant.¹¹

¹ See Child Welfare Information Gateway (2022). Infant Safe Haven Laws. U.S. Department of Health and Human Services, Administration for Families, Children's Bureau. (Current Through September 2021) available at <https://www.childwelfare.gov/pubPDFs/safehaven.pdf> (last visited February 28, 2023).

² *Id.*

³ *Id.* Connecticut, Idaho, Illinois, Indiana, Iowa, Louisiana, Minnesota, New Hampshire, Vermont, and Wisconsin.

⁴ *Id.* Arkansas, Indiana, Kentucky, Louisiana, Maine, Missouri, Ohio, Oklahoma, and Pennsylvania.

⁵ *Id.* Arizona, Arkansas, Connecticut, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Montana, Nebraska, Nevada, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, and West Virginia.

⁶ *Id.*

⁷ See National Safe Haven Alliance 2021 Impact Report available at [d98b71_3b9795ec5f784b93aba04a6ad560e2f4.pdf](https://www.nationalsafehavenalliance.org/d98b71_3b9795ec5f784b93aba04a6ad560e2f4.pdf) ([nationalsafehavenalliance.org](https://www.nationalsafehavenalliance.org)) (last visited February 28, 2023).

⁸ See Nation Safe Haven Alliance [Our Cause | NSHA \(nationalsafehavenalliance.org\)](https://www.nationalsafehavenalliance.org) (last visited February 28, 2023).

⁹ Chapter 2000-188, Laws of Fla.

¹⁰ Section 383.50, F.S.

¹¹ Chapter 2001-53, s. 15, Laws of Fla.

In 2008, multiple provisions of the Florida Statutes were modified to refer to “surrendered newborn infant” rather than “abandoned newborn infant.” The three-day age limit for surrender of a newborn infant was increased to a seven-day age limit. Additionally, a provision was added to indicate that when an infant is born in a hospital and the mother expresses intent to leave the infant and not return, the hospital or registrar is directed, upon her request, to complete the infant’s birth certificate without naming the mother.

A Safe Haven for Newborns¹² reports approximately 361 newborns have been surrendered in Florida to a safe haven, a hospital, an emergency medical services station, or a fire station since 2000, and approximately 63 newborns have been abandoned in unsafe places.¹³ In 2022, 14 newborns were surrendered to a safe haven and none were abandoned in an unsafe place.¹⁴

Safe Haven Baby Boxes

A baby box is a safety device provided for under a state’s Safe Haven Law to legally and safely facilitate a mother in crisis to safely, securely, and anonymously surrender a newborn infant if she is unable to care for her newborn. A Baby Box is installed in an exterior wall of a designated fire station or hospital. It has an exterior door that automatically locks upon placement of a newborn inside, an alarm system to alert that a baby is inside, and an interior door which allows a medical staff member to secure the surrendered newborn from inside the designated building.¹⁵

Safe Haven Baby Boxes, Inc. is a nonprofit incorporated in Indiana,¹⁶ which has patented a device for receiving a surrendered baby,¹⁷ trademarked as a “Safe Haven Baby Box.”¹⁸ The federal Food and Drug Administration has determined that a Safe Haven Baby Box is not a medical “device” pursuant to s. 201 of the federal Food, Drug, and Cosmetic Act, and therefore is not required to comply with the requirements of the act.¹⁹

Over 120 babies have been surrendered nationwide inside Safe Haven Baby Boxes since the first was installed in 2016.²⁰ There are over 130 active baby boxes – 93 in Indiana, 6 in Ohio, 16 in Kentucky,²¹ 11 in Arkansas, and 1 each in New Mexico, North Carolina, Tennessee,

¹² A Safe Haven for Newborns is a program of The Florida M. Silverio Foundation, a 501(c)(3) organization located in Miami, Florida.

¹³ A Safe Haven for Newborns Statistics, last updated February 9, 2023; available at: <https://asafehavenfornewborns.com/what-we-do/safe-haven-statistics/> (last visited February 28, 2023).

¹⁴ *Id.*

¹⁵ See Safe Haven Baby Boxes at: <https://shbb.org/> (last visited February 28, 2023).

¹⁶ See Indiana Secretary of State Corporation and Business Entity Search; search by entity name at: <https://bsd.sos.in.gov/publicbusinesssearch> (last visited February 28, 2023).

¹⁷ See United States Patent (dated Apr. 28, 2020) available at <https://img1.wsimg.com/blobby/go/0e1dea24-4aa4-477a-b7dd-0e668b1de6d1/downloads/Patent%20.pdf?ver=1610398180477> (last visited February 28, 2023).

¹⁸ See Trademark Certificate (registered Oct. 15, 2019) available at <https://img1.wsimg.com/blobby/go/0e1dea24-4aa4-477a-b7dd-0e668b1de6d1/downloads/Trademark%20Certificate.pdf?ver=1610398180478> (last visited February 28, 2023).

¹⁹ See Letter from U.S. Food and Drug Administration to Safe Haven Baby Boxes, Inc. (dated Feb. 15, 2019) available at <https://img1.wsimg.com/blobby/go/0e1dea24-4aa4-477a-b7dd-0e668b1de6d1/downloads/C180100.Letter.pdf?ver=1610398180478> (last visited February 28, 2023).

²⁰ See Safe Haven Baby Boxes available at <https://shbb.org/> (last visited February 28, 2023).

²¹ See An Associated Press article published in the Tallahassee Democrat on February 12, 2023, reported an infant was recently surrendered in a Safe Haven Baby Box at a fire station in Kentucky. Fire department staff was able to tend to the

Pennsylvania, and Florida, plus four Baby Drawers introduced by Banner Hospital in Arizona.²² Florida's Safe Haven Baby Box is located at the Martin Luther King, Jr., First Responder Campus in Ocala and was dedicated by their City Council on December 15, 2020.²³ In January 2023, the first newborn infant was surrendered at the Baby Box at the fire station in Ocala.²⁴

III. Effect of Proposed Changes:

Section 1 amends s. 383.50, F.S., to revise the definition of "newborn infant" to increase the allowable age of a surrendered newborn infant from approximately seven days old or younger to approximately 30 days old or younger.

A definition of "newborn infant safety device" is added to mean a device that is installed in a supporting wall of a hospital, an emergency medical services (EMS) station, or a fire station and that has an exterior point of access allowing an individual to place a newborn infant inside and an interior point of access allowing individuals inside the building to safely retrieve the newborn infant.

The bill authorizes a hospital, an EMS station, or a fire station that is staffed 24 hours per day to use a newborn infant safety device to accept surrendered newborns if the device is:

- Physically part of the hospital, EMS station, or fire station.
- Temperature-controlled and ventilated for the safety of newborns.
- Equipped with a dual alarm system which automatically triggers an alarm inside the building when a newborn infant is placed inside.
- Equipped with a surveillance system that allows employees of the hospital, EMS station, or fire station to monitor the inside of the device 24 hours per day.
- Located such that the interior point of access is conspicuous and visible for employees.

Under the bill, a hospital, EMS station, or fire station that uses the device to accept surrendered newborn infants must use the device's surveillance system to monitor the inside of the device 24 hours per day, physically check the device at least twice daily, and test the device at least weekly to ensure that the alarm system is in working order. A fire station that is staffed 24 hours per day except when all firefighter first responders are dispatched from the fire station for an emergency must use the dual alarm system of the device to immediately dispatch the nearest first responder to retrieve a newborn infant left in the device.

baby in less than 90 seconds. Approximately 24 newborns have been surrendered in baby boxes. Article is available in the Senate Health Policy Committee.

²² See Safe Haven Baby Boxes, Baby Box Locations, available at: <https://shbb.org/locations> (last visited February 28, 2023).

²³ See Ocala to Become First Florida City to Install Safe Haven Baby Boxes, Health News Florida by Caitlyn McLaughlin and Jessica James (published Dec. 10, 2020) available at <https://health.wusf.usf.edu/health-news-florida/2020-12-10/ocala-to-become-first-florida-city-to-install-safe-haven-baby-boxes> (last visited February 28, 2023). See also Ocala Fire Rescue unveils Florida's first Safe Haven Baby Box, Ocala News (published Dec. 15, 2020) available at <https://www.ocala-news.com/2020/12/15/ocala-fire-rescue-unveils-floridas-first-safe-haven-baby-box/> (last visited February 28, 2023).

²⁴ See Newborn surrendered at Florida fire station is first baby save by state's only "Baby Box" by Charine Akbara, (published January 10, 2023, Fox 13 News), available at: <https://www.fox13news.com/news/newborn-surrendered-at-florida-fire-station-is-first-baby-saved-by-states-only-baby-box> (last visited February 28, 2023).

The bill clarifies the manner in which a parent may surrender a newborn infant at a hospital. The newborn infant may be left with medical staff or a licensed health care professional after the delivery of the newborn infant in a hospital, if the parent notifies medical staff or a licensed health care professional that the parent is voluntarily surrendering the infant and does not intend to return. A person seeking to surrender a newborn infant after delivery of the infant in the hospital may use this method or the newborn infant safety device, if available.

The bill provides another avenue for lawfully surrendering a newborn infant. If the parent is unable to surrender the newborn infant by leaving it in a newborn infant safety device or surrendering it to appropriate persons at a hospital, EMS station, or fire station, the parent may dial 911 to request that an EMS provider meet the surrendering parent at a specified location. The surrendering parent must stay with the newborn infant until the EMS provider arrives to take custody of the newborn infant.

Existing provisions relating to the presumption that the parent intended to leave the newborn infant, consented to appropriate medical treatment and care, and to termination of parental rights; the care and custodial processing of an infant upon lawful surrender; and the parent's anonymity upon surrender are extended to occasions when newborn infants are surrendered in a newborn infant safety device.

The bill further provides that a criminal investigation may not be initiated solely because a newborn infant is left at an EMS station or a fire station in accordance with this section of statute unless there is actual or suspected child abuse or neglect. This provision currently applies only to a newborn infant left at a hospital.

Section 2 amends s. 63.0423, F.S., relating to the termination of parental rights procedures with respect to surrendered newborn infants to make conforming and technical changes.

Section 3 provides an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 383.50 and 63.0423.

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.

By Senator Burton

12-01357A-23

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1 A bill to be entitled
 2 An act relating to surrendered newborn infants;
 3 amending s. 383.50, F.S.; revising the definition of
 4 the term "newborn infant"; defining the term "newborn
 5 infant safety device"; authorizing certain hospitals,
 6 emergency medical services stations, and fire stations
 7 to use newborn infant safety devices to accept
 8 surrendered newborn infants if the device meets
 9 specified criteria; requiring such hospitals,
 10 emergency medical services stations, and fire stations
 11 to monitor the inside of the device 24 hours per day
 12 and physically check and test the devices at specified
 13 intervals; providing additional requirements for
 14 certain fire stations using such devices; conforming
 15 provisions to changes made by the act; authorizing a
 16 parent to leave a newborn infant with medical staff or
 17 a licensed health care professional at a hospital
 18 after the delivery of the newborn infant under certain
 19 circumstances; providing that a parent who leaves a
 20 newborn infant in a newborn infant safety device has
 21 the right to remain anonymous and not to be pursued or
 22 followed, with exceptions; authorizing a parent to
 23 surrender a newborn infant by calling 911 and
 24 requesting an emergency medical services provider to
 25 meet at a specified location to retrieve the newborn
 26 infant; requiring the parent to stay with the newborn
 27 infant until the emergency medical services provider
 28 arrives; providing additional locations to which the
 29 prohibition on the initiation of criminal

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30 investigations based solely on the surrendering of a
 31 newborn infant applies; amending s. 63.0423, F.S.;
 32 conforming a cross-reference; making conforming
 33 changes; providing an effective date.
 34

35 Be It Enacted by the Legislature of the State of Florida:

36
 37 Section 1. Section 383.50, Florida Statutes, is amended to
 38 read:

39 383.50 Treatment of surrendered newborn infant.—

40 (1) As used in this section, the term:

41 (a) "Newborn infant" means a child who a licensed physician
 42 reasonably believes is approximately 30 7 days old or younger at
 43 the time the child is left at a hospital, an emergency medical
 44 services station, or a fire station.

45 (b) "Newborn infant safety device" means a device that is
 46 installed in a supporting wall of a hospital, an emergency
 47 medical services station, or a fire station and that has an
 48 exterior point of access allowing an individual to place a
 49 newborn infant inside and an interior point of access allowing
 50 individuals inside the building to safely retrieve the newborn
 51 infant.

52 (2) There is a presumption that the parent who leaves the
 53 newborn infant in accordance with this section intended to leave
 54 the newborn infant and consented to termination of parental
 55 rights.

56 (3) (a) A hospital, an emergency medical services station,
 57 or a fire station that is staffed 24 hours per day may use a
 58 newborn infant safety device to accept surrendered newborn

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59 infants under this section if the device is:

60 1. Physically part of the hospital, emergency medical
61 services station, or fire station.

62 2. Temperature-controlled and ventilated for the safety of
63 newborns.

64 3. Equipped with a dual alarm system connected to the
65 physical location of the device which automatically triggers an
66 alarm inside the building when a newborn infant is placed in the
67 device.

68 4. Equipped with a surveillance system that allows
69 employees of the hospital, emergency medical services station,
70 or fire station to monitor the inside of the device 24 hours per
71 day.

72 5. Located such that the interior point of access is in an
73 area that is conspicuous and visible to the employees of the
74 hospital, emergency medical services station, or fire station.

75 (b) A hospital, an emergency medical services station, or a
76 fire station that uses a newborn infant safety device to accept
77 surrendered newborn infants shall use the device's surveillance
78 system to monitor the inside of the newborn infant safety device
79 24 hours per day and shall physically check the device at least
80 twice daily and test the device at least weekly to ensure that
81 the alarm system is in working order. A fire station that is
82 staffed 24 hours per day except when all firefighter first
83 responders are dispatched from the fire station for an emergency
84 must use the dual alarm system of the newborn infant safety
85 device to immediately dispatch the nearest first responder to
86 retrieve any newborn infant left in the newborn infant safety
87 device.

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88 (4)(3) Each emergency medical services station or fire
89 station that is staffed with full-time firefighters, emergency
90 medical technicians, or paramedics shall accept any newborn
91 infant left with a firefighter, an emergency medical technician,
92 or a paramedic or in a newborn infant safety device. The
93 firefighter, emergency medical technician, or paramedic shall
94 consider these actions as implied consent to and shall:

95 (a) Provide emergency medical services to the newborn
96 infant to the extent that he or she is trained to provide those
97 services, and

98 (b) Arrange for the immediate transportation of the newborn
99 infant to the nearest hospital having emergency services.

100
101 A licensee as defined in s. 401.23, a fire department, or an
102 employee or agent of a licensee or fire department may treat and
103 transport a newborn infant pursuant to this section. If a
104 newborn infant is placed in the physical custody of an employee
105 or agent of a licensee or fire department or is placed in a
106 newborn infant safety device, such placement ~~is~~ shall be
107 considered implied consent for treatment and transport. A
108 licensee, a fire department, or an employee or agent of a
109 licensee or fire department is immune from criminal or civil
110 liability for acting in good faith pursuant to this section.
111 Nothing in this subsection limits liability for negligence.

112 (5) (a) A newborn infant may be left with medical staff or a
113 licensed health care professional after the delivery of the
114 newborn infant in a hospital if the parent of the newborn infant
115 notifies medical staff or a licensed health care professional
116 that the parent is voluntarily surrendering the infant and does

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117 not intend to return.

118 (b)(4) Each hospital of this state subject to s. 395.1041
 119 shall, and any other hospital may, admit and provide all
 120 necessary emergency services and care, as defined in s.
 121 395.002(9), to any newborn infant left with the hospital in
 122 accordance with this section. The hospital or any of its
 123 licensed health care professionals shall consider these actions
 124 as implied consent for treatment, and a hospital accepting
 125 physical custody of a newborn infant has implied consent to
 126 perform all necessary emergency services and care. The hospital
 127 or any of its licensed health care professionals is immune from
 128 criminal or civil liability for acting in good faith in
 129 accordance with this section. Nothing in this subsection limits
 130 liability for negligence.

131 (6)(5) Except when there is actual or suspected child abuse
 132 or neglect, any parent who leaves a newborn infant in a newborn
 133 infant safety device or with a firefighter, an emergency medical
 134 technician, or a paramedic at a fire station or an emergency
 135 medical services station, or brings a newborn infant to an
 136 emergency room of a hospital and expresses an intent to leave
 137 the newborn infant and not return, has the absolute right to
 138 remain anonymous and to leave at any time and may not be pursued
 139 or followed unless the parent seeks to reclaim the newborn
 140 infant. When an infant is born in a hospital and the mother
 141 expresses intent to leave the infant and not return, upon the
 142 mother's request, the hospital or registrar shall complete the
 143 infant's birth certificate without naming the mother thereon.

144 (7)(6) A parent of a newborn infant left at a hospital,
 145 emergency medical services station, or fire station under this

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146 section may claim his or her newborn infant up until the court
 147 enters a judgment terminating his or her parental rights. A
 148 claim to the newborn infant must be made to the entity having
 149 physical or legal custody of the newborn infant or to the
 150 circuit court before whom proceedings involving the newborn
 151 infant are pending.

152 (8)(7) Upon admitting a newborn infant under this section,
 153 the hospital shall immediately contact a local licensed child-
 154 placing agency or alternatively contact the statewide central
 155 abuse hotline for the name of a licensed child-placing agency
 156 for purposes of transferring physical custody of the newborn
 157 infant. The hospital shall notify the licensed child-placing
 158 agency that a newborn infant has been left with the hospital and
 159 approximately when the licensed child-placing agency can take
 160 physical custody of the child. In cases where there is actual or
 161 suspected child abuse or neglect, the hospital or any of its
 162 licensed health care professionals shall report the actual or
 163 suspected child abuse or neglect in accordance with ss. 39.201
 164 and 395.1023 in lieu of contacting a licensed child-placing
 165 agency.

166 (9)(8) Any newborn infant admitted to a hospital in
 167 accordance with this section is presumed eligible for coverage
 168 under Medicaid, subject to federal rules.

169 (10)(9) A newborn infant left at a hospital, an emergency
 170 medical services station, or a fire station in accordance with
 171 this section ~~is shall~~ not ~~be~~ deemed abandoned or ~~and~~ subject to
 172 reporting and investigation requirements under s. 39.201 unless
 173 there is actual or suspected child abuse or until the Department
 174 of Health takes physical custody of the child.

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175 (11) If the parent of a newborn infant is unable to
 176 surrender the newborn infant in accordance with this section,
 177 the parent may dial 911 to request that an emergency medical
 178 services provider meet the surrendering parent at a specified
 179 location. The surrendering parent must stay with the newborn
 180 infant until the emergency medical services provider arrives to
 181 take custody of the newborn infant.

182 (12)(10) A criminal investigation may shall not be
 183 initiated solely because a newborn infant is left at a hospital,
 184 an emergency medical services station, or a fire station under
 185 this section unless there is actual or suspected child abuse or
 186 neglect.

187 Section 2. Section 63.0423, Florida Statutes, is amended to
 188 read:

189 63.0423 Procedures with respect to surrendered newborn
 190 infants.—

191 (1) Upon entry of final judgment terminating parental
 192 rights, a licensed child-placing agency that takes physical
 193 custody of a newborn ~~an~~ infant surrendered at a hospital, an
 194 emergency medical services station, or a fire station pursuant
 195 to s. 383.50 assumes responsibility for the medical and other
 196 costs associated with the emergency services and care of the
 197 surrendered newborn infant from the time the licensed child-
 198 placing agency takes physical custody of the surrendered newborn
 199 infant.

200 (2) The licensed child-placing agency shall immediately
 201 seek an order from the circuit court for emergency custody of
 202 the surrendered newborn infant. The emergency custody order
 203 shall remain in effect until the court orders preliminary

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204 approval of placement of the surrendered newborn infant in the
 205 prospective home, at which time the prospective adoptive parents
 206 become guardians pending termination of parental rights and
 207 finalization of adoption or until the court orders otherwise.
 208 The guardianship of the prospective adoptive parents shall
 209 remain subject to the right of the licensed child-placing agency
 210 to remove the surrendered newborn infant from the placement
 211 during the pendency of the proceedings if such removal is deemed
 212 by the licensed child-placing agency to be in the best interests
 213 of the child. The licensed child-placing agency may immediately
 214 seek to place the surrendered newborn infant in a prospective
 215 adoptive home.

216 (3) The licensed child-placing agency that takes physical
 217 custody of the surrendered newborn infant shall, within 24 hours
 218 thereafter, request assistance from law enforcement officials to
 219 investigate and determine, through the Missing Children
 220 Information Clearinghouse, the National Center for Missing and
 221 Exploited Children, and any other national and state resources,
 222 whether the surrendered newborn infant is a missing child.

223 (4) The parent who surrenders the newborn infant in
 224 accordance with s. 383.50 is presumed to have consented to
 225 termination of parental rights, and express consent is not
 226 required. Except when there is actual or suspected child abuse
 227 or neglect, the licensed child-placing agency may shall not
 228 attempt to pursue, search for, or notify that parent as provided
 229 in s. 63.088 and chapter 49. For purposes of s. 383.50 and this
 230 section, a surrendered newborn ~~an~~ infant who tests positive for
 231 illegal drugs, narcotic prescription drugs, alcohol, or other
 232 substances, but shows no other signs of child abuse or neglect,

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233 shall be placed in the custody of a licensed child-placing
 234 agency. Such a placement does not eliminate the reporting
 235 requirement under s. 383.50(8) ~~s. 383.50(7)~~. When the department
 236 is contacted regarding a newborn ~~an~~ infant properly surrendered
 237 under this section and s. 383.50, the department shall provide
 238 instruction to contact a licensed child-placing agency and may
 239 not take custody of the newborn infant unless reasonable efforts
 240 to contact a licensed child-placing agency to accept the newborn
 241 infant have not been successful.

242 (5) A petition for termination of parental rights under
 243 this section may not be filed until 30 days after the date the
 244 newborn infant was surrendered in accordance with s. 383.50. A
 245 petition for termination of parental rights may not be granted
 246 until a parent has failed to reclaim or claim the surrendered
 247 newborn infant within the time period specified in s. 383.50.

248 (6) A claim of parental rights of the surrendered newborn
 249 infant must be made to the entity having legal custody of the
 250 surrendered newborn infant or to the circuit court before which
 251 proceedings involving the surrendered newborn infant are
 252 pending. A claim of parental rights of the surrendered newborn
 253 infant may not be made after the judgment to terminate parental
 254 rights is entered, except as otherwise provided by subsection
 255 (9).

256 (7) If a claim of parental rights of a surrendered newborn
 257 infant is made before the judgment to terminate parental rights
 258 is entered, the circuit court may hold the action for
 259 termination of parental rights in abeyance for a period of time
 260 not to exceed 60 days.

261 (a) The court may order scientific testing to determine

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262 maternity or paternity at the expense of the parent claiming
 263 parental rights.

264 (b) The court shall appoint a guardian ad litem for the
 265 surrendered newborn infant and order whatever investigation,
 266 home evaluation, and psychological evaluation are necessary to
 267 determine what is in the best interests of the surrendered
 268 newborn infant.

269 (c) The court may not terminate parental rights solely on
 270 the basis that the parent left the newborn infant at a hospital,
 271 an emergency medical services station, or a fire station in
 272 accordance with s. 383.50.

273 (d) The court shall enter a judgment with written findings
 274 of fact and conclusions of law.

275 (8) Within 7 business days after recording the judgment,
 276 the clerk of the court shall mail a copy of the judgment to the
 277 department, the petitioner, and any person whose consent was
 278 required, if known. The clerk shall execute a certificate of
 279 each mailing.

280 (9) (a) A judgment terminating parental rights of a
 281 surrendered newborn infant pending adoption is voidable, and any
 282 later judgment of adoption of that child ~~minor~~ is voidable, if,
 283 upon the motion of a parent, the court finds that a person
 284 knowingly gave false information that prevented the parent from
 285 timely making known his or her desire to assume parental
 286 responsibilities toward the child ~~minor~~ or from exercising his
 287 or her parental rights. A motion under this subsection must be
 288 filed with the court originally entering the judgment. The
 289 motion must be filed within a reasonable time but not later than
 290 1 year after the entry of the judgment terminating parental

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291 rights.

292 (b) No later than 30 days after the filing of a motion
 293 under this subsection, the court shall conduct a preliminary
 294 hearing to determine what contact, if any, will be allowed
 295 ~~permitted~~ between a parent and the child pending resolution of
 296 the motion. Such contact may be allowed only if it is requested
 297 by a parent who has appeared at the hearing and the court
 298 determines that it is in the best interests of the child. If the
 299 court orders contact between a parent and the child, the order
 300 must be issued in writing as expeditiously as possible and must
 301 state with specificity any provisions regarding contact with
 302 persons other than those with whom the child resides.

303 (c) The court may not order scientific testing to determine
 304 the paternity or maternity of the child ~~minor~~ until such time as
 305 the court determines that a previously entered judgment
 306 terminating the parental rights of that parent is voidable
 307 pursuant to paragraph (a), unless all parties agree that such
 308 testing is in the best interests of the child. Upon the filing
 309 of test results establishing that person's maternity or
 310 paternity of the surrendered newborn infant, the court may order
 311 visitation only if it appears to be in the best interests of the
 312 child.

313 (d) Within 45 days after the preliminary hearing, the court
 314 shall conduct a final hearing on the motion to set aside the
 315 judgment and shall enter its written order as expeditiously as
 316 possible thereafter.

317 (10) Except to the extent expressly provided in this
 318 section, proceedings initiated by a licensed child-placing
 319 agency for the termination of parental rights and subsequent

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320 adoption of a newborn infant left at a hospital, an emergency
 321 medical services station, or a fire station in accordance with
 322 s. 383.50 shall be conducted pursuant to this chapter.

323 Section 3. This act shall take effect July 1, 2023.

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March 6, 2023

Meeting Date

Health Policy

Committee

The Florida Senate
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SB 870

Bill Number or Topic

Amendment Barcode (if applicable)

Name Andrew Shirvell

Phone 850-404-3414

Address PO Box 12152

Email andrew@floridavoicefortheunborn.com

Street

Tallahassee

Florida

32317

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

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The Florida Senate

APPEARANCE RECORD

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March 6, 2023

Meeting Date

Senate Health Policy

Committee

SB 870

Bill Number or Topic

Amendment Barcode (if applicable)

Name Fabrizio Gowdy

Phone 904-400-3018

Address 1712 Osceola Street

intern@ floridavoicefortheunborn.com

Street

Jacksonville

FL

32204

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

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S-001 (08/10/2021)

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: CS/SB 558

INTRODUCER: Health Policy Committee and Senator Burton

SUBJECT: Certified Nursing Assistants

DATE: March 7, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Brown	HP	Fav/CS
2.			AHS	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 558 creates a new designation of “qualified medication aide” (QMA) for certified nursing assistants (CNA) who work in a nursing home and meet specified licensure and training requirements. The bill allows a nursing home to authorize a registered nurse (RN) working in the nursing home to delegate medication administration to a QMA who is working under the direct supervision¹ of the RN.

In order to be designated as a QMA, a CNA must hold a clear and active certification as CNA for at least one year preceding the delegation; complete 40 hours of training that consists of the six-hour training course currently required for a CNA to administer medication in a home health setting and a 34-hour course developed by the Board of Nursing (BON) specific to QMAs; and successfully complete a supervised clinical practice in medication administration conducted in the nursing home.

The bill amends several sections of law related to the delegation of tasks to CNAs to conform to the changes made in the bill. The bill also specifies that CNAs performing the duties of a QMA may not be counted toward staffing requirements for nursing homes.

The bill provides and effective date of July 1, 2023.

¹ “Direct supervision” is defined in Rule 64B9-15.001, F.A.C., to mean “the physical presence within the patient care unit of a healthcare facility or physical presence within a healthcare agency of a program instructor who assumes responsibility for the practice of the certified nursing assistant.”

II. Present Situation:

Nursing Homes

Nursing homes in Florida are licensed under Part II of ch. 400, F.S., and provide 24 hour a day nursing care, case management, health monitoring, personal care, nutritional meals and special diets, physical, occupational, and speech therapy, social activities and respite care for those who are ill or physically infirm.² Nursing homes are regulated by the Agency for Health Care Administration (AHCA). Currently there are 708 nursing homes licensed in Florida.³

Certified Nursing Assistants

Florida's regulations of CNAs is found in Part II of ch. 464, F.S. Section 464.201(5), F.S., defines the practice of a CNA as providing care and assisting persons with tasks relating to the activities of daily living. Activities of daily living include tasks associated with: personal care, maintaining mobility, nutrition and hydration, toileting and elimination, assistive devices, safety and cleanliness, data gathering, reporting abnormal signs and symptoms, postmortem care, patient socialization and reality orientation, end-of-life care, cardiopulmonary resuscitation (CPR) and emergency care, patients' rights, documentation of nursing-assistant services, and other tasks that a CNA may perform after training.⁴

A CNA can work in a nursing home, an assisted living facility, other community-based settings, a hospital, or a private home under general supervision.⁵ The BON, within the Department of Health (DOH), certifies CNAs, who must, among other qualifications, hold a high school diploma or equivalent, complete a 120-hour BON-approved training program, and pass a nursing assistant competency exam, which includes written and practical portions.⁶ A CNA must biennially complete 24 hours of in-service training to maintain certification.⁷

The BON establishes the general scope of practice for CNAs. A CNA performs services under the general supervision⁸ of a RN or licensed practical nurse (LPN).⁹ A CNA may perform the following:

- Personal care services, such as bathing, dressing grooming, and light housekeeping;
- Tasks associated with maintaining mobility, such as ambulating, transferring, positioning, lifting, and performing range of motion exercises;

² AHCA webpage, nursing homes, available at https://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Long_Term_Care/Nursing_Homes.shtml (last visited March 7, 2023).

³ Florida Health Finder Report, available at <https://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx> (last visited March 7, 2023).

⁴ Section 464.201, F.S.

⁵ Paraprofessional Healthcare Institute, *Who Are Direct-Care Workers?*, (Feb. 2011), available at <https://phinational.org/wp-content/uploads/legacy/clearinghouse/NCDCW%20Fact%20Sheet-1.pdf> (last visited March 7, 2023).

⁶ Section 464.203, F.S., and Fla. Admin. code r. 64B9-15.006. Eighty hours must be classroom instruction and 40 hours must be clinical instruction, 20 of which must be in long term care clinical instruction in a licensed nursing home. 42 C.F.R. § 483.95 requires 75 hours of training; Florida training requirements exceed the federal minimum training requirements.

⁷ Section 464.203(7), F.S.

⁸ Under general supervision, the registered nurse or licensed practical nurse does not need to be present but must be available for consultation and advice, either in person or by a communication device. Fla. Admin. Code R. 64B9-15.001(5).

⁹ Fla. Admin. Code R. 64B9-15.002.

- Nutrition and hydration tasks, such as feeding or assisting with eating and drinking;
- Tasks associated with elimination, such as toileting, providing catheter care, and emptying or changing ostomy bags;
- Tasks associated with using assistive devices;
- Maintaining the environment and resident safety;
- Taking measurements and gathering data, i.e. pulse, blood, pressure, height, and weight;
- Recognition and reporting abnormal resident findings, signs, and symptoms;
- Post mortem care;
- Tasks associated with resident socialization, leisure activities, reality orientation, and validation techniques;
- Tasks associated with end of life care;
- Performing basic first aid, CPR, and emergency care;
- Tasks associated with compliance with resident's rights; and
- Documentation of CNA services provided to the resident.

A CNA may not work independently and may not perform any tasks that require specialized nursing knowledge, judgment, or skills.

Medication Administration by a CNA

Current law allows a RN to delegate medication administration duties to a CNA but only in a home health care setting or in a local county detention facility.¹⁰ Specifically, a CNA may administer oral, transdermal, ophthalmic, otic, rectal, inhaled, enteral, or topical prescriptions if the CNA has completed a six-hour initial training course approved by the BON and has been found competent to administer medication to a patient in a safe and sanitary manner.¹¹ Both the training and the competency determination must be conducted by a RN.¹² Additionally, a CNA must satisfactorily complete two hours of annual in-service training to maintain his or her authorization to administer medications. BON rules require the six-hour course to include:

- A glossary of common terminology for labeling of legend medications.
- Safe administration of oral, transdermal, ophthalmic, otic, rectal, inhaled, enteral, and topical prescription and over-the-counter medications.
- Record keeping and documentation of medication administration.
- Safe storage and proper disposal of medications.
- Prevention of medication errors.
- Home health care agency policies and procedures regarding medications.
- Recognizing, documenting and reporting adverse reactions to medications.¹³

Additionally, the BON has determined some medications to be outside the scope of practice for a CNA and has prohibited a CNA from performing the following:

- Administration of controlled substances listed in Schedule II, Schedule III, or Schedule IV of Section 893.03, F.S., or 21 U.S.C. s. 812;

¹⁰ s. 464.0156, F.S.

¹¹ s. 464.2035, F.S.

¹² *Id.*

¹³ Rule 64B9-15.0025, F.A.C.

- Administration by subcutaneous, intramuscular, or intravenous injection;
- Administration of legend drugs without original labeling identifying the patient, medication, dose, route and frequency of administration, prescriber, and expiration date.
- Administration of over-the-counter, non-prescription, medications without an order from a physician licensed under ch. 458, F.S., an osteopathic physician licensed under ch. 459, F.S., a podiatric physician licensed under ch. 461, F.S., or an advanced practice registered nurse licensed under s. 464.012 or 464.0123, F.S.
- Administration of over-the-counter, non-prescription medications not in the original packaging from the manufacturer.¹⁴

III. Effect of Proposed Changes:

CS/SB 558 amends s. 400.211, F.S., to allow a nursing home to authorize a RN to delegate tasks, including medication administration, to a CNA who has:

- Completed the six hour training course and found to be competent to administer medications pursuant to s. 464.2035, F.S.
- Completed a 34-hour training course approved by the BON in medication administration and associated tasks. The training must include, but is not limited to:
 - Blood glucose level checks;
 - Dialing oxygen flow meters to prescribed settings; and
 - Assisting with continuous positive airway pressure devices.
- Has held a clear and active certification from the DOH for a minimum of one year immediately preceding the delegation.
- Has demonstrated clinical competency by successfully completing a supervised clinical practice in medication administration and associated tasks conducted in the nursing home.

Upon completing the requirements above, the bill provides that the CNA is designated as a QMA. The bill specifies that a QMA may only administer medication under the direct supervision¹⁵ of a nurse licensed under part I of ch. 464, F.S.; that a QMA must annually complete two hours of in-service training and validation required in s. 464.2035, F.S.; and that a nursing home must include medication administration by a QMA when complying with the federal requirement to track, analyze, and improve medical errors and adverse events.¹⁶ The bill also specifies that a CNA performing the duties of a QMA may not be included in computing the hours of direct care or the staffing ratios that a nursing home is required to maintain pursuant to s. 400.23, F.S.

The bill requires the BON, in consultation with the AHCA, to adopt rules to implement these provisions.

The bill also amends the nurse practice act in s. 464.0156, F.S., to allow a RN to delegate the administration of medications to a resident in a nursing home to a CNA who meets the requirements above and in s. 464.2035, F.S., to allow a CNA to administer medications in a nursing home as well as in a home health setting.

¹⁴ Rule 64B9-15.0026, F.A.C.

¹⁵ *Supra n. 1*

¹⁶ The federal requirement is in C.F.R. s. 483.75(e)(2).

The bill makes additional technical and conforming changes.

The bill provides an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 558 may have a positive fiscal impact on nursing homes that are able to utilize QMAs to administer medication rather than be required to utilize an RN to perform the task.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 400.211, 400.23, 464.0156, and 464.2035.

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 6, 2023:

The CS requires nursing homes when complying with the federal requirement to track, analyze, and improve medical errors and adverse events, to include medication administration performed by qualified medication aides.

- B. **Amendments:**

None.



119882

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/07/2023	.	
	.	
	.	
	.	

The Committee on Health Policy (Burton) recommended the following:

Senate Amendment (with title amendment)

Between lines 74 and 75
insert:

(e) Medication administration must be included in the performance improvement activities tracked in accordance with 42 C.F.R. s. 483.75(e)(2).

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:



119882

11 Delete line 13
12 and insert:
13 licensed nurse; requiring that medication
14 administration be included in certain performance
15 improvement activities tracked by nursing homes in
16 accordance with federal regulations; requiring the
17 Board of Nursing, in

By Senator Burton

12-00409B-23

2023558__

1 A bill to be entitled
 2 An act relating to certified nursing assistants;
 3 amending s. 400.211, F.S.; authorizing nursing home
 4 facilities to allow their registered nurses to
 5 delegate certain tasks to certified nursing assistants
 6 who meet specified criteria; providing for the
 7 designation of such certified nursing assistants as
 8 qualified medication aides; requiring qualified
 9 medication aides to complete annual validation and
 10 inservice training requirements; providing that
 11 qualified medication aides may administer medication
 12 to residents only under the direct supervision of a
 13 licensed nurse; requiring the Board of Nursing, in
 14 consultation with the Agency for Health Care
 15 Administration, to adopt rules; amending s. 400.23,
 16 F.S.; providing that the time spent by certified
 17 nursing assistants performing the duties of a
 18 qualified medication aide may not be included in the
 19 computing of certain minimum staffing ratio
 20 requirements for direct care provided to residents;
 21 amending s. 464.0156, F.S.; authorizing registered
 22 nurses to delegate to certified nursing assistants the
 23 administration of medication to residents in nursing
 24 home facilities if the certified nursing assistants
 25 meet specified criteria; amending s. 464.2035, F.S.;
 26 authorizing certified nursing assistants to administer
 27 certain medications to residents of nursing home
 28 facilities if they have been delegated such task by a
 29 registered nurse and they meet specified criteria;

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30 requiring the board, in consultation with the agency,
 31 to establish standards and procedures that a certified
 32 nursing assistant must follow when administering
 33 medication to a resident of a nursing home facility;
 34 providing an effective date.
 35

36 Be It Enacted by the Legislature of the State of Florida:
 37

38 Section 1. Subsection (5) is added to section 400.211,
 39 Florida Statutes, to read:

40 400.211 Persons employed as nursing assistants;
 41 certification requirement.—

42 (5) A nursing home, in accordance with chapter 464 and
 43 rules adopted pursuant to this section, may authorize a
 44 registered nurse to delegate tasks, including medication
 45 administration, to a certified nursing assistant who meets the
 46 requirements of this subsection.

47 (a) In addition to the initial 6-hour training course and
 48 determination of competency required under s. 464.2035, to be
 49 eligible to administer medication to a resident of a nursing
 50 home facility, a certified nursing assistant must:

51 1. Hold a clear and active certification from the
 52 Department of Health for a minimum of 1 year immediately
 53 preceding the delegation;

54 2. Complete an additional 34-hour training course approved
 55 by the Board of Nursing in medication administration and
 56 associated tasks, including, but not limited to, blood glucose
 57 level checks, dialing oxygen flow meters to prescribed settings,
 58 and assisting with continuous positive airway pressure devices;

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59 and

60 3. Demonstrate clinical competency by successfully
 61 completing a supervised clinical practice in medication
 62 administration and associated tasks conducted in the facility.

63 (b) Upon completion of the training, competency, and
 64 initial validation requirements under s. 464.2035 and this
 65 subsection, a certified nursing assistant whose delegated tasks
 66 include medication administration is designated as a qualified
 67 medication aide.

68 (c) A qualified medication aide must satisfactorily
 69 complete the annual validation and 2 hours of inservice training
 70 in medication administration and medication error prevention in
 71 accordance with s. 464.2035.

72 (d) A qualified medication aide may administer medication
 73 only under the direct supervision of a nurse licensed under part
 74 I of chapter 464.

75 (e) The Board of Nursing, in consultation with the agency,
 76 shall adopt rules to implement this subsection.

77 Section 2. Paragraph (b) of subsection (3) of section
 78 400.23, Florida Statutes, is amended to read:

79 400.23 Rules; evaluation and deficiencies; licensure
 80 status.—

81 (3)

82 (b)1. Each facility must determine its direct care staffing
 83 needs based on the facility assessment and the individual needs
 84 of a resident based on the resident's care plan. At a minimum,
 85 staffing must include, for each facility, the following
 86 requirements:

87 a. A minimum weekly average of 3.6 hours of care by direct

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88 care staff per resident per day. As used in this sub-
 89 subparagraph, a week is defined as Sunday through Saturday.

90 b. A minimum of 2.0 hours of direct care by a certified
 91 nursing assistant per resident per day. A facility may not staff
 92 below one certified nursing assistant per 20 residents.

93 c. A minimum of 1.0 hour of direct care by a licensed nurse
 94 per resident per day. A facility may not staff below one
 95 licensed nurse per 40 residents.

96 2. Nursing assistants employed under s. 400.211(2) may be
 97 included in computing the hours of direct care provided by
 98 certified nursing assistants and may be included in computing
 99 the staffing ratio for certified nursing assistants if their job
 100 responsibilities include only nursing-assistant-related duties.

101 3. Certified nursing assistants performing the duties of a
 102 qualified medication aide under s. 400.211(5) may not be
 103 included in computing the hours of direct care provided by, or
 104 the staffing ratios for, certified nursing assistants or
 105 licensed nurses under sub-subparagraph 1.b. or sub-subparagraph
 106 1.c., respectively.

107 ~~4.3-~~ Each nursing home facility must document compliance
 108 with staffing standards as required under this paragraph and
 109 post daily the names of licensed nurses and certified nursing
 110 assistants on duty for the benefit of facility residents and the
 111 public. Facilities must maintain the records documenting
 112 compliance with minimum staffing standards for a period of 5
 113 years and must report staffing in accordance with 42 C.F.R. s.
 114 483.70(q).

115 ~~5.4-~~ The agency must recognize the use of licensed nurses
 116 for compliance with minimum staffing requirements for certified

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117 nursing assistants if the nursing home facility otherwise meets
 118 the minimum staffing requirements for licensed nurses and the
 119 licensed nurses are performing the duties of a certified nursing
 120 assistant. Unless otherwise approved by the agency, licensed
 121 nurses counted toward the minimum staffing requirements for
 122 certified nursing assistants must exclusively perform the duties
 123 of a certified nursing assistant for the entire shift and not
 124 also be counted toward the minimum staffing requirements for
 125 licensed nurses. If the agency approved a facility's request to
 126 use a licensed nurse to perform both licensed nursing and
 127 certified nursing assistant duties, the facility must allocate
 128 the amount of staff time specifically spent on certified nursing
 129 assistant duties for the purpose of documenting compliance with
 130 minimum staffing requirements for certified and licensed nursing
 131 staff. The hours of a licensed nurse with dual job
 132 responsibilities may not be counted twice.

133 ~~6.5-~~ Evidence that a facility complied with the minimum
 134 direct care staffing requirements under subparagraph 1. is not
 135 admissible as evidence of compliance with the nursing services
 136 requirements under 42 C.F.R. s. 483.35 or s. 483.70.

137 Section 3. Subsection (2) of section 464.0156, Florida
 138 Statutes, is amended to read:

139 464.0156 Delegation of duties.—

140 (2) (a) A registered nurse may delegate to a certified
 141 nursing assistant the administration of oral, transdermal,
 142 ophthalmic, otic, inhaled, or topical prescription medication to
 143 a resident of a nursing home facility as defined in s. 400.021
 144 if the certified nursing assistant meets the requirements of s.
 145 400.211(5) and s. 464.2035.

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146 (b) A registered nurse may delegate to a certified nursing
 147 assistant or a home health aide the administration of oral,
 148 transdermal, ophthalmic, otic, rectal, inhaled, enteral, or
 149 topical prescription medications to a patient of a home health
 150 agency licensed under part III of chapter 400 or to a patient in
 151 a local county detention facility as defined in s. 951.23(1), if
 152 the certified nursing assistant or home health aide meets the
 153 requirements of s. 464.2035 or s. 400.489, respectively.

154 (c) A registered nurse may not delegate the administration
 155 of any controlled substance listed in Schedule II, Schedule III,
 156 or Schedule IV of s. 893.03 or 21 U.S.C. s. 812, except for the
 157 administration of an insulin syringe that is prefilled with the
 158 proper dosage by a pharmacist or an insulin pen that is
 159 prefilled by the manufacturer.

160 Section 4. Subsections (1) and (3) of section 464.2035,
 161 Florida Statutes, are amended to read:

162 464.2035 Administration of medication.—

163 (1) A certified nursing assistant may administer oral,
 164 transdermal, ophthalmic, otic, ~~rectal~~, inhaled, ~~enteral~~, or
 165 topical prescription medication to a resident of a nursing home
 166 facility as defined in s. 400.021 or may administer oral,
 167 transdermal, ophthalmic, otic, rectal, inhaled, enteral, or
 168 topical prescription medication to a patient of a home health
 169 agency licensed under part III of chapter 400 or to a patient in
 170 a county detention facility as defined in s. 951.23(1) if the
 171 certified nursing assistant has been delegated such task by a
 172 registered nurse licensed under part I of this chapter, has
 173 satisfactorily completed an initial 6-hour training course
 174 approved by the board, and has been found competent to

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175 administer medication to a patient in a safe and sanitary
176 manner. The training, determination of competency, and initial
177 and annual validation required under this section must be
178 conducted by a registered nurse licensed under this chapter or a
179 physician licensed under chapter 458 or chapter 459.

180 (3) The board, in consultation with the Agency for Health
181 Care Administration, shall establish by rule standards and
182 procedures that a certified nursing assistant must follow when
183 administering medication to a resident of a nursing home
184 facility or to a patient of a home health agency. Such rules
185 must, at a minimum, address qualification requirements for
186 trainers, requirements for labeling medication, documentation
187 and recordkeeping, the storage and disposal of medication,
188 instructions concerning the safe administration of medication,
189 informed-consent requirements and records, and the training
190 curriculum and validation procedures.

191 Section 5. This act shall take effect July 1, 2023.

3-6-23

Meeting Date

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558

Bill Number or Topic

Committee

Name Rey Contreras

Amendment Barcode (if applicable)

Phone 352-665-7357

Address 4 Palm Ln

Email Rey@miamitrial.com

Street

Ponte Vedra FL 32082

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

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March 6, 2023

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558

Bill Number or Topic

Health Policy

Committee

Name Jennifer Lawrence

Phone 352-400-8570

Address 10150 Highland Manor Drive

Email jen.lawrence@astonhealth.com

Street

Tampa FL 33610

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

Florida Health Care Association

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

This form is part of the public record for this meeting.

S-001 (08/10/2021)

3/6/2023

Meeting Date

Health Policy

Committee

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

SB 558

Bill Number or Topic

Name **Zayne Smith**

Phone **(850) 228-4243**

Address **215 South Monroe Suite 603**

Email **zsmith@aarp.org**

Amendment Barcode (if applicable)

Street

Tallahassee

Florida

32301

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

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AARP

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This form is part of the public record for this meeting.

S-001 (08/10/202)

March 6, 2023

Meeting Date

Health Policy

Committee

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
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558

Bill Number or Topic

Name **Deborah Franklin**

Phone **850-224-3907**

Address **307 W. Park Avenue**

Email **dfranklin@fhca.org**

Amendment Barcode (if applicable)

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

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This form is part of the public record for this meeting.

S-001 (08/10/2021)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Committee on Agriculture,
Environment, and General Government
Environment and Natural Resources
Finance and Tax
Fiscal Policy
Governmental Oversight and Accountability
Health Policy
Judiciary

SELECT COMMITTEE:

Select Committee on Resiliency, *Chair*

JOINT COMMITTEE:

Joint Legislative Budget Commission

SENATOR BEN ALBRITTON

Majority Leader
27th District

March 2, 2023

Senator Burton,

Please let this letter serve as my request to be excused from the Health Policy Committee meeting on March 6th. Please feel free to contact me with any additional questions. Thank you for your consideration.

Best regards,

A handwritten signature in blue ink, appearing to read "Ben Albritton".

Sen. Ben Albritton

REPLY TO:

- 150 North Central Avenue, Bartow, Florida 33830 (863) 534-0073
- 410 Taylor Street, Suite 106, Punta Gorda, Florida 33950 (941) 575-5717
- 330 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

CourtSmart Tag Report

Room: KB 412

Case No.: -

Type:

Caption: Senate Committee on Health Policy

Judge:

Started: 3/6/2023 3:32:12 PM

Ends: 3/6/2023 5:27:20 PM Length: 01:55:09

3:32:11 PM Chair Burton calls meeting to order
3:32:26 PM Roll Call
3:32:41 PM Quorum is present
3:32:48 PM Chair Burton recognizes Sen Albritton as excused
3:33:10 PM Take up Tab 2 SB 380 Protection from Surgical Smoke
3:33:25 PM Chair Burton recognizes Senator Garcia to explain bill
3:34:28 PM Chair Burton asks for questions
3:34:33 PM Question by Senator Davis
3:35:23 PM Answer by Senator Garcia
3:38:54 PM Public Testimony by Janice Adams of Florida Nursing Association
3:38:59 PM Public Testimony by Meghan Moroney of Florida Nursing Association
3:39:59 PM Public Testimony by Kathleen Faith Holussen of Florida Nursing Association
3:43:20 PM Public Testimony by Kristin Minskey of Florida Nursing Association
3:45:23 PM Public Testimony by Jennifer Rohleder of Florida Nursing Association
3:49:58 PM Public Testimony by Eva Lim of Florida Nursing Association
3:52:36 PM Public Appearance by Jack Cory of Florida Nursing Association
3:52:41 PM Chair Burton calls for debate
3:52:51 PM Chair Burton recognizes Senator Garcia to close
3:53:17 PM Roll Call SB 380
3:53:33 PM Vote Recorded
3:53:43 PM Take up Tab 1 SB 356 Practice of Denistry
3:53:58 PM Chair Burton recognizes Senator Boyd to explain bill
3:56:14 PM Chair Burton asks for questions
3:57:14 PM Question by Senator Davis
3:57:47 PM Answer by Senator Boyd
3:58:09 PM Question by Senator Davis
3:58:45 PM Answer by Senator Boyd
3:59:25 PM Question by Senator Davis
4:00:33 PM Answer by Senator Boyd
4:00:59 PM Question by Senator Davis
4:01:29 PM Answer by Senator Boyd
4:02:24 PM Question by Senator Davis
4:02:56 PM Answer by Senator Boyd
4:03:35 PM Question by Senator Davis
4:03:50 PM Answer by Senator Boyd
4:04:14 PM Public Testimony by Walter Colon
4:10:00 PM Question by Senator Brodeur
4:10:20 PM Answer by Walter Colon
4:10:56 PM Question by Senator Brodeur
4:11:34 PM Public Appearance by Jeffery Sulitzer DMD
4:17:15 PM Question by Senator Brodeur
4:18:15 PM Answer by Jeffery Sulitzer DMD
4:18:31 PM Question by Senator Davis
4:18:46 PM Answer by Jeffery Sulitzer DMD
4:20:18 PM Public Testimony by Gianna Nawrocki
4:24:39 PM Public Testimony by Andrew Brown DDS
4:30:07 PM Public Testimony by Joe Anne Hart of Florida Dental Association
4:30:37 PM Question by Senator Book
4:31:53 PM Answer by Joe Anne Hart
4:32:05 PM Public Appearance by Zayne Smith
4:32:14 PM Chair Burton calls for debate
4:32:32 PM Comment by Senator Brodeur

4:32:46 PM Chair Burton recognizes Senator Boyd to close
4:35:44 PM Roll Call SB 356
4:36:07 PM Vote Recorded
4:36:17 PM Take up Tab 3 SB 614 Mammography Reports
4:36:49 PM Chair Burton Recognizes Senator Harrell to explain bill
4:38:12 PM Public Appearance by Alison Dudley of Florida Radiological Society
4:38:32 PM Chair Burton recognizes Senator Harrell to close on bill
4:38:33 PM Roll Call SB 614
4:38:40 PM Vote Recorded
4:39:08 PM Chair Burton passes the gavel to Vice Chair Brodeur
4:39:26 PM Chair Brodeur recognizes Senator Burton to explain Bill
4:39:52 PM Take up Tab 4 SB 870 Surrendered Newborn Infants
4:42:18 PM Question by Senator Book
4:42:27 PM Answer by Senator Burton
4:42:56 PM Question by Senator Book
4:43:45 PM Answer by Senator Burton
4:43:52 PM Question by Senator Book
4:44:17 PM Answer by Senator Burton
4:44:29 PM Question by Senator Book
4:45:01 PM Answer by Senator Burton
4:45:34 PM Question by Senator Book
4:45:40 PM Answer by Senator Burton
4:46:35 PM Question by Senator Book
4:46:46 PM Answer by Senator Burton
4:47:48 PM Question by Senator Book
4:48:52 PM Answer by Senator Burton
4:50:00 PM Question by Senator Book
4:50:09 PM Answer by Senator Burton
4:52:14 PM Question by Senator Book
4:52:21 PM Answer by Senator Burton
4:52:28 PM Question by Senator Book
4:52:55 PM Answer by Senator Burton
4:53:35 PM Question by Senator Book
4:53:54 PM Answer by Senator Burton
4:54:35 PM Question by Senator Davis
4:55:28 PM Answer by Senator Burton
4:56:12 PM Question by Senator Garcia
4:56:39 PM Answer by Senator Burton
4:57:30 PM Question by Senator Harrell
4:59:36 PM Answer by Senator Burton
5:00:31 PM Question by Senator Book
5:00:43 PM Answer by Senator Burton
5:01:15 PM Question by Senator Book
5:01:23 PM Answer by Senator Burton
5:02:06 PM Public Testimony by Andrew Shirvell by Florida Voice for the Unborn
5:05:49 PM Question by Senator Book
5:05:57 PM Answer by Andrew Shirvell
5:06:31 PM Question by Senator Book
5:06:41 PM Answer by Andrew Shirvell
5:06:51 PM Question by Senator Book
5:06:59 PM Answer by Andrew Shirvell
5:07:26 PM Chair Brodeur asks for debate
5:07:50 PM Comment by Senator Book
5:08:35 PM Comment by Senator Harrell
5:10:10 PM Comment by Senator Davis
5:12:00 PM Chair Brodeur recognizes Senator Burton to close
5:13:02 PM Roll Call SB 870
5:13:26 PM Vote Recorded
5:13:59 PM Take up Tab 5 SB 558
5:14:14 PM Chair Brodeur Recognizes Senator Burton to explain bill
5:15:28 PM Take up Amendment Barcode 119882
5:15:42 PM Action recorded on amendment, back on the bill

5:16:00 PM Question by Senator Davis
5:16:17 PM Answer by Senator Burton
5:16:35 PM Question by Senator Davis
5:16:51 PM Answer by Senator Burton
5:17:06 PM Question by Senator Davis
5:17:23 PM Answer by Senator Burton
5:17:32 PM Question by Senator Davis
5:17:50 PM Answer by Senator Burton
5:18:14 PM Public Testimony by Jennifer Lawrence of Florida Health Care Association
5:21:55 PM Public Testimony by Rey Contreras
5:24:41 PM Public Appearance by Debroah Franklin
5:25:45 PM Public Testimony by Zayne Smith of AARP
5:26:00 PM Chair Brodeur calls for debate
5:26:08 PM Roll Call SB 558
5:26:26 PM Vote Recorded
5:26:42 PM Senator Burton moves to adjourn
5:27:09 PM Meeting Adjourned