

STORAGE NAME: h1593.hcr

DATE: April 5, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH CARE STANDARDS & REGULATORY REFORM
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1593

RELATING TO: Dentistry

SPONSOR(S): Representatives Thrasher and others

STATUTE(S) AFFECTED: Amends ss. 466.01, 466.003, 466.026, 466.028, 466.0285, F.S.

COMPANION BILL(S): SB 1112(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) HEALTH CARE STANDARDS & REGULATORY REFORM

(2)

(3)

(4)

(5)

I. SUMMARY:

Specific language is included as it relates to ownership of a dental practice. New language is added to the disciplinary section to provide that a dentist may be retained as an independent contractor by a corporation, managed care organization, or group for purposes of providing services to the employees and members of such entities, provided the dentist does not delegate the responsibility for rendering clinical judgment to a person not licensed pursuant to ch. 466, F.S.

The unlicensed practice of dentistry is declared a public nuisance in order to allow persons or entities residing in the county where the activity is occurring, to file an action in circuit court to enjoin the unlicensed practice.

Language is added to clarify wording concerning certain schedule II drugs which are prohibited in the dental act. This language conforms the dental practice act with the medical practice act.

Proprietors who are non-dentists are prohibited from directing, controlling, or interfering with a dentist's clinical judgement. Clarifying language is added that this section does not prevent an insurer of dental care from retaining a dentist to render independent advice concerning the application of the insurer's contractual scope of coverage in comparison with a dentist's prescribed treatment. Further, it provides that any contract or arrangement that is undertaken in violation of this section is declared void as contrary to public policy.

This bill does not have a fiscal impact on the state, local government, or the private sector.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Chapter 466, F.S. provides for the regulation of the practice of dentistry by the Board of Dentistry within the Agency for Health Care Administration. However, effective July 1, 1997, the Board of Dentistry along with various other medical professions will be transferred to the Department of Health. The chapter provides legislative intent relating to the practice of dentistry and for a definition of the term "dentistry" for purposes of regulating the practice. The chapter provides prohibitions and penalties. The grounds for which a dentist may be disciplined for professional misconduct include being employed by any corporation, organization, group, or person other than a dentist or a professional association composed of dentists. However, a dentist may be employed by a corporation or group for purposes of providing services to the employees and members of such corporation, or group and to the members of their immediate families. The chapter makes a dentist subject to disciplinary action for delegating professional responsibilities to a person who is not qualified by training, experience, or licensure to perform them.

Current language in ch. 466, F.S., is specific that only a Florida licensed dentist can own a dental practice. Corporations have attempted to buy dental practices; however, current statutory language prohibits said ownership on the principle that dental practices by non-dentists could influence the dentist's judgment.

Current language requires those persons practicing without a valid license must be prosecuted by the State Attorney; they do not fall within the jurisdiction of the Board of Dentistry.

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act. It classifies controlled substances into five schedules in order to regulate the manufacture, distribution, preparation, and dispensing of the substances. It authorizes licensed physicians, veterinarians, and dentists to prescribe controlled substances. The dental practice act provides that a dentist is subject to discipline for prescribing, procuring, ordering, dispensing, administering, supplying, selling, or giving any drug which is a certain type drug or compound designated as a schedule II controlled substance, except under very limited conditions approved by the board. The Board of Dentistry's legal counsel has noted that this technically prohibits dentist from prescribing schedule II drugs, although the board has not persecuted a licensed dentist for prescribing schedule II drugs. There is language in s. 466.028(1)(r), F.S., which addresses the prohibition on the use of Schedule II controlled substances; however the language is unclear.

The dental practice act prohibits any person other than a licensed dentist from employing a dentist or dental hygienist in the operation of a dental office. The act prohibits any person who is not a licensed dentist from entering into a relationship with a dentist under which the unlicensed person exercises control over the dentist's practice. Any person who violates these prohibitions is subject to a third degree felony punishable by the imposition of imprisonment of up to 5 years and a fine up to \$5,000.

Chapter 455, F.S., provides the general regulatory provisions for professions regulated by the Department of Business and Professional Regulation and the Agency for Health

Care Administration. It authorizes the department or the agency to issue a notice of cease and desist to any unlicensed person that it has probable cause to believe has violated any regulation that relates to the practice of a profession regulated by the department or agency. For the purpose of enforcing a cease and desist order, the department or the agency may file a proceeding in the name of the state seeking the issuance of an injunction against any person who violates any provision of the order. The department or agency is authorized to impose an administrative penalty of up to \$5,000 per incident or issue a citation for the unlicensed practice of a profession and may seek imposition of a civil penalty through circuit court in addition to or in lieu of any other remedy.

B. EFFECT OF PROPOSED CHANGES:

The bill is primarily clarification language. Specific language is included as it relates to ownership of a dental practice. New language is added to the disciplinary section to provide that a dentist may be retained as an independent contractor by a corporation, managed care organization, or group for purposes of providing services to the employees and members of such entities, provided the dentist does not delegate the responsibility for rendering clinical judgment to a person not licensed pursuant to ch. 466, F.S.

The unlicensed practice of dentistry is declared a public nuisance in order to allow persons or entities residing in the county where the activity is occurring, to file an action in circuit court to enjoin the unlicensed practice.

Language is added to clarify wording concerning certain schedule II drugs which are prohibited in the dental act. This language conforms the dental practice act with the medical practice act.

Proprietors who are non-dentists are prohibited from directing, controlling, or interfering with a dentist's clinical judgement. Clarifying language is added that this section does not prevent an insurer of dental care from retaining a dentist to render independent advice concerning the application of the insurer's contractual scope of coverage in comparison with a dentist's prescribed treatment. Further, it provides that any contract or arrangement that is undertaken in violation of this section is declared void as contrary to public policy.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. It would allow persons or entities to file actions in circuit court to enjoin unlicensed persons who practice dentistry. This could effect the court's workload.

- (3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not Applicable.

- (2) what is the cost of such responsibility at the new level/agency?

Not Applicable.

- (3) how is the new agency accountable to the people governed?

Not Applicable.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

Not Applicable.

- b. Does the bill require or authorize an increase in any fees?

Not Applicable.

- c. Does the bill reduce total taxes, both rates and revenues?

Not Applicable.

- d. Does the bill reduce total fees, both rates and revenues?

Not Applicable.

- e. Does the bill authorize any fee or tax increase by any local government?

Not Applicable.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

Not Applicable.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Not Applicable.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Not Applicable.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Not Applicable.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

Not Applicable.

- (2) Who makes the decisions?

Not Applicable.

- (3) Are private alternatives permitted?

Not Applicable.

- (4) Are families required to participate in a program?

Not Applicable.

(5) Are families penalized for not participating in a program?

Not Applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

Not Applicable.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not Applicable.

(2) service providers?

Not Applicable.

(3) government employees/agencies?

Not Applicable.

D. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 466.001, F.S., relating to purpose to expand it to prohibit undue clinical interference by persons not licensed as a dentist pursuant to this chapter and dental services not be delegated to unauthorized persons.

Section 2. Amends s. 466.003, F.S., relating to definitions to prohibit directing, controlling, or interfering with a dentist's clinical judgment.

Section 3. Amends s. 466.026, F.S., relating to prohibitions and penalties to provide for injunctive relief. The unlicensed practice of dentistry is declared a public nuisance in order to allow persons or entities residing in the county where the activity is occurring, to file an action in circuit court to enjoin the unlicensed practice.

Section 4. Amends s. 466.028, F.S., relating to disciplinary action to provide that a dentist may be retained as an independent contractor by a corporation, managed care organization, or group for purposes of providing services to the employees and members of such entities, provided the dentist does not delegate the responsibility for rendering clinical judgment to a person not licensed pursuant to ch. 466, F.S. Language is added to clarify wording concerning certain schedule II drugs which are prohibited in the dental act. This language conforms the dental practice act with the medical practice act.

Section 5. Amends s. 466.0285, F.S., relating to proprietorship by non-dentists to provide that proprietors who are non-dentists are prohibited from directing, controlling, or interfering with a dentist's clinical judgement.

Clarifying language is added that this section does not prevent an insurer of dental care from retaining a dentist to render independent advice concerning the application of the insurer's contractual scope of coverage in comparison with a dentist's prescribed treatment. Further, it provides that any contract or arrangement that is undertaken in violation of this section is declared void as contrary to public policy.

Section 6. Provides an effective date of October 1, 1997.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. **FISCAL COMMENTS:**

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None. However, the agency recommended deleting lines 19-20 on page 3. This is the definitions section, and the language added is a prohibition against anyone directing, controlling, or interfering with a dentist's clinical judgement.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE STANDARDS & REGULATORY REFORM:

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Prepared by:

Legislative Research Director:

Robert W. Coggins

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