

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1378

SPONSOR: Senator Saunders and others

SUBJECT: Dentistry

DATE: April 1, 1999

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill revises the conditions of appointment to the Board of Dentistry to require each member of the board who is a licensed dentist in Florida to be actively engaged in the clinical practice of dentistry in Florida, to obtain his or her primary source of income from direct patient care, and to have been actively engaged in the practice of dentistry primarily as a clinical practitioner for at least 5 years immediately preceding the date of her or his appointment to the board. The bill provides that any person who is connected in any way with a dental college or community college may be appointed to the board so long as that connection does not result in a relationship wherein such college provides more than 5 percent of the person's income. The bill's revisions to the conditions of appointment to the Board of Dentistry apply to appointments to that board made on or after July 1, 1999.

The bill authorizes the Board of Dentistry to prescribe by rule the form of written work orders dentists are required to use when they use the services of any unlicensed person for certain services. The bill deletes the requirement that the work order forms be provided to dentists, at cost, by the Department of Health.

The bill revises the requirements for dentists to hold themselves out as specialists or advertise as specialists. The bill requires any dentist who lacks membership in or certification, diplomate status, or other similar credentials from an accrediting organization approved as bona fide by either the American Dental Association or the Florida Board of Dentistry or whose area of practice is officially recognized by an organization that the dentist wants to acknowledge or otherwise reference in an announcement, solicitation, or advertisement that is not approved as bona fide by either the American Dental Association or the Florida Board of Dentistry to provide a disclaimer. The bill revises legislative intent and provides legislative findings with respect to dental specialty advertising.

This bill substantially amends ss. 466.021 and 466.0282, Florida Statutes, and s. 466.004, Florida Statutes, 1998 Supplement, and creates one undesignated section of law.

II. Present Situation:

The Board of Dentistry within the Department of Health, pursuant to chapter 466, Florida Statutes, has regulatory jurisdiction over the practice of dentistry. The Board of Dentistry consists of 11 members who must be appointed by the Governor for four year terms and who are subject to confirmation by the Senate. Seven members of the board must be licensed dentists actively engaged in the practice of dentistry in Florida, two members must be licensed dental hygienists actively engaged in the practice of dental hygiene in Florida, and the remaining two members must be laypersons who are not, and have never been, dentists, dental hygienists, or members of any closely related profession or occupation. Each member of the board who is a dentist must have been actively engaged in the practice of his or her profession for at least 5 years preceding the date of her or his appointment to the board. At least one member of the board must be 60 years of age or older.

Section 466.021, F.S., requires every licensed dentist who uses the services of any unlicensed person for the purpose of constructing, altering, repairing, or duplicating any denture, partial denture, bridge splint, or orthodontic or prosthetic appliance to furnish the unlicensed person with a written work order on a form approved by the Department of Health. This form must be supplied to the dentist by the Department of Health at a cost that does not exceed the cost of printing and handling the form. The work order blanks must be assigned to individual dentists and are not transferable. The form must be dated and signed by the dentist and must include the patient's name or number with sufficient descriptive information to clearly identify the case for each separate and individual piece of work. The work order must be made in duplicate form and the duplicate copy must be retained by the dentist for 2 years, and the original must be maintained for 2 years by the unlicensed person who does dental laboratory work. The work orders must be open to inspection at any reasonable time by the Department of Health. Any dentist who fails to maintain the permanent records of the work orders is subject to suspension or revocation of her or his license. Any unlicensed person who fails to possess the required work order for dental laboratory work as required by s. 466.021, F.S., is liable for the violation of a second degree misdemeanor punishable by imprisonment of up to 60 days and a fine up to \$500.

Section 466.0282, F.S., prohibits dentists from advertising membership in, or specialty recognition by, an accrediting organization, or advertising that the dentist's practice is limited to a specific area of dentistry which is not recognized or accredited by the American Dental Association. The section provides legislative findings and intent, including intent that the findings of the American Dental Association's accreditation process for dental specialties be relied on by the Board of Dentistry to the exclusion of similarly situated entities. In 1998, a Florida licensed dentist and the American Academy of Implant Dentistry asked the federal court to declare s. 466.0282, F.S., unconstitutional and to enjoin the Agency for Health Care Administration and the Florida Board of Dentistry from enforcing the section. On July 16, 1998, the United States District Court for the Northern District of Florida, in an action for declaratory and injunctive relief, granted plaintiff-dentist's motion for summary judgment and declared s. 466.0282, F.S., unconstitutional as a violation of the commercial speech rights, protected under the First Amendment to the United States Constitution, of Florida licensed dentists who wish to advertise membership in, or specialty recognition by, an accrediting organization that is not recognized or accredited by the American Dental Association. *Borgner and The American Academy of Implant*

Dentistry v. Cook, Agency for Health Care Administration, and Members of the Board of Dentistry (1998 U.S. Dist. Ct. Northern Dist.) LEXIS 15432

III. Effect of Proposed Changes:

The bill revises the conditions of appointment to the Board of Dentistry. The bill requires each member of the board who is a licensed dentist in Florida to be actively engaged in the clinical practice of dentistry in Florida, to obtain his or her primary source of income from direct patient care, and to have been actively engaged in the practice of dentistry primarily as a clinical practitioner for at least 5 years immediately preceding the date of her or his appointment to the board. The bill requires any board member who is a licensed dentist to remain primarily in clinical practice during all subsequent periods of appointment to the board. Any person who is connected in any way with a dental college or community college may be appointed to the board so long as that connection does not result in a relationship wherein such college provides more than 5 percent of the person's income. The bill's revisions to the conditions of appointment to the Board of Dentistry apply to appointments to that board made on or after July 1, 1999.

The bill requires the format for a dentist's work orders for the services of unlicensed persons to construct, alter, repair, or duplicate dentures, partial dentures, bridge splints, or orthodontic or prosthetic appliances for delivery to a patient to be prescribed by rule of the Board of Dentistry. The bill deletes the requirement for the Department of Health to print and mail work order forms that are assigned to individual dentists and are not transferable. The bill authorizes individual dentists to produce the written work orders in a form that complies with the rule of the board.

The bill revises the requirements for dentists to hold themselves out as specialists or advertise as specialists. A dentist may not hold himself or herself out as a specialist, or advertise membership in or specialty recognition by an accrediting organization unless the dentist: has completed a specialty education program approved by the American Dental Association and the Commission on Dental Accreditation and is eligible for examination by a national specialty board recognized by the American Dental Association; is a diplomate of a national specialty board recognized by the American Dental Association; or has continuously held herself or himself out as a specialist since December 31, 1964, in a specialty recognized by the American Dental Association. The bill prohibits a dentist from representing to the public, without appropriate disclosure, that his or her practice is limited to a specific area of dentistry other than a specialty area of dentistry recognized by the American Dental Association unless the dentist has attained membership in or has otherwise been credentialed by an accrediting organization that is recognized by the Florida Board of Dentistry as a bona fide organization for such an area of dental practice.

The bill provides requirements for an organization which is not recognized by the American Dental Association to be recognized by the Florida Board of Dentistry as a bona fide organization for a specific area of dental practice. To be recognized by the board as a bona fide organization for a specific area of dental practice, the organization must condition membership or credentialing of its members upon all of the following: successful completion of a 12-month formal, full-time advanced education program that is affiliated with or sponsored by a university-based dental school and is beyond the dental degree, at the graduate or postgraduate level; completion of prior didactic training and clinical experience in the specific area of dentistry which is greater than that

of other dentists; and successful completion of oral and written examinations based on psychometric principles.

The bill permits any dentist who lacks membership in or certification, diplomate status, or other similar credentials from an accrediting organization approved as bona fide by either the American Dental Association or the Florida Board of Dentistry to announce a practice emphasis in any other area of dental practice, if the dentist incorporates in his or her announcement, solicitation, or advertisement the following statement: “... (NAME OF ANNOUNCED AREA OF DENTAL PRACTICE)... IS NOT RECOGNIZED AS A SPECIALTY AREA BY THE AMERICAN DENTAL ASSOCIATION OR THE FLORIDA BOARD OF DENTISTRY.” The bill requires any dentist who lacks membership in or certification, diplomate status, or other similar credentials from an accrediting organization approved as bona fide by either the American Dental Association or the Florida Board of Dentistry and whose area of practice is officially recognized by an organization that the dentist wants to acknowledge or otherwise reference in an announcement, solicitation, or advertisement to also state prominently “...(NAME OF REFERENCED ORGANIZATION)... IS NOT RECOGNIZED AS A BONA FIDE SPECIALTY ACCREDITING ORGANIZATION BY THE AMERICAN DENTAL ASSOCIATION OR THE FLORIDA BOARD OF DENTISTRY.”

The bill revises legislative intent and provides legislative findings with respect to dental specialty advertising. The purpose of the section is to prevent a dentist from advertising a specialty or other area of dental practice without appropriate disclosure unless the special competencies held by the dentist meet certain statutory requirements. Under the bill, the Legislature finds that dental consumers can reasonably rely on these requirements as satisfactory evidence of a dentist’s attainment of meaningful competencies in the specialty or other bona fide area of dental practice advertised. The bill provides legislative findings that this process for the recognition of dental specialties and other bona fide areas of dental practice is the least restrictive means available to ensure that consumers are not misled about a dentist’s unique credentials.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Subsections 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

D. Other Constitutional Issues:

Applicable case law has held that, as long as commercial speech describes lawful activity and is truthful and not fraudulent or misleading, it is entitled to the protections of the First Amendment of the United States Constitution. To regulate or ban commercial speech, the government must have substantial governmental interest which is directly advanced by the restriction, and must demonstrate that there is a reasonable fit between the legislature's ends and narrowly tailored means chosen to accomplish those ends. In enacting or enforcing a restriction on commercial speech, the government need not select the least restrictive means, but rather must tailor its restriction to meet the desired objective. Applicable caselaw describes various regulatory safeguards which the state may impose in place of the total ban on commercial speech, such as requiring a disclaimer to ensure that the consumer is not misled. See *Abramson v. Gonzalez* 949 F.2d 1567 (11th Cir. 1992) and *Parker v. Commonwealth of Ky.* 818 F.2d 504 (6th Cir.1987).

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Any dentist who lacks membership in or certification, diplomate status, or other similar credentials from an accrediting organization approved as bona fide by either the American Dental Association or the Florida Board of Dentistry or whose area of practice is officially recognized by an organization that the dentist wants to acknowledge or otherwise reference in an announcement, solicitation, or advertisement that is not approved as bona fide by either the American Dental Association or the Florida Board of Dentistry will incur costs to provide a disclaimer required under the bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
