

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: CS/SB 2448

SPONSOR: Regulated Industries Committee and Senator Casas

SUBJECT: Regulation of Professionals

DATE: April 15, 1999 REVISED: 4/20/99 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Martin</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/5 amendments</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill requires the Legislature to evaluate proposals for new or increased regulation of professions or occupations to determine the impact of the regulation on job creation and retention and on employment opportunities in the state. It prohibits the Department of Business and Professional Regulation (DBPR) and the Department of Health (DOH) from creating regulations that unreasonably affect job creation or retention or unreasonably restrict ability to seek or find employment in the professions being regulated. The bill authorizes use of distance learning to satisfy continuing education requirements, and it provides that a board or the department may waive or prorate continuing education requirements, based upon the time remaining until the first renewal cycle of the license issued. The bill prohibits the issuance of renewal licenses to persons who have not paid fines or otherwise fully complied with final orders. The bill outlines procedures to be used when applicants submit fingerprint cards as part of the licensure process. It specifically provides for submission of fingerprint cards for licensure as an athletic agent, real estate broker and salesperson, or real estate appraiser. Finally, the bill defines “body wrapping” and “skin services” in the practice act for cosmetology.

This bill creates sections 455.2035, 455.2123, and 455.2124, Florida Statutes.

The bill amends sections 11.62, 455.201, 455.517, 455.564, 455.213, 455.227, 468.453, 475.175, 475.615, 477.013, 477.0132, 477.019, 477.026, 477.0265, and 477.029, Florida Statutes.

II. Present Situation:

Section 11.62, F.S., is commonly referred to as the “Sunrise Act.” The act provides a mechanism for reviewing proposals for the regulation of previously unregulated professions or occupations to determine if the need to protect the public through regulation outweighs the attendant restrictions on competition and costs of regulation.

The Sunrise Act contains criteria for evaluating new regulatory proposals, including:

- whether there is a substantial threat of harm to the public from the unregulated practice of the profession or occupation,
- whether the practice of the profession or occupation requires specialized skill or training and whether this skill or training is readily measurable,
- whether any means other than regulation exists to effectively protect the public, and
- whether the overall cost and competitive impact of a regulatory scheme are favorable.

Proponents of new regulation may be required to submit information regarding a proposal to the Legislature and to the state agency that would be charged with implementing the regulation. The state agency that would be charged with implementing the regulation provides the Legislature with information about the costs of the regulation and suggestions of any less restrictive or more cost-effective regulatory alternatives.

Section 455.201, F.S., provides legislative intent regarding the regulation of professions and occupations by the DBPR and the regulatory boards under the DBPR's jurisdiction. Section 455.517, F.S., provides identical language for the DOH and its regulatory boards. The sections provide that professions should be regulated only to the extent necessary to protect the public health, safety and welfare and when the potential for harm from no regulation outweighs any anti-competitive impact of the regulation. The sections further state that the DBPR, the DOH, and the boards may not create "unreasonably restrictive and extraordinary standards" that will deter entry into a profession. Because ss. 455.201 and 455.517, F.S., are couched as legislative intent, they have been interpreted as advisory only, and have not been formally applied to the analysis of proposed legislation or proposed administrative rules by the departments or boards.

Certain medical professionals licensed by the Boards of Medicine, Osteopathic Medicine, Chiropractic Medicine, and Podiatric Medicine are presently required to periodically demonstrate professional competency by completing at least 40 hours of continuing education every two years.¹ The 40 hours may include up to one hour of risk management or cost containment and up to two hours of other topics related to the applicable medical specialty, if required by board rule. The boards may approve alternate methods of obtaining continuing education credits in risk management, such as serving as a volunteer expert witness for the DOH in a disciplinary case, attending a meeting where another licensee is disciplined, or serving as a member of a probable cause panel as a former board member. The Joint Administrative Procedures Committee (JAPC) has questioned the ability of the DOH and its boards to promulgate rules that allow any medical licensee to receive more than one hour of continuing education credit in the area of risk management.

Some professional regulation is assigned to a board under the department, with the board having rulemaking authority to implement the regulation. In other instances, the regulation is directly under the department. In such instances, the department must have rulemaking authority. The

¹Section 455.564(6), F.S.

department has indicated that it currently lacks necessary rulemaking authority for regulating some professions assigned to it.

Both the department and the boards have broad discretion in selecting and approving types of training for licensees to use in fulfilling continuing education requirements. Distance learning (the provision of instruction or education by using telecommunication) is a relatively new phenomenon, however, and some boards may not be aware that such methods could be acceptable.

Generally, license renewals are required every two years, with renewal cycles often taking place at the same time for all licensees in a particular profession. Some new licensees who have only recently obtained their licenses are required to complete the same amount of continuing education as those who have held their licenses for the entire two-year period.

The department recommends revising ch. 455, F.S., because of difficulties in getting the Federal Bureau of Investigation (FBI) to process fingerprint cards. The FBI demands very specific language in the enabling statutes that requires background checks, submission of fingerprint cards and processing of the fingerprints by the FBI. In particular, the FBI has stated concerns with the state's enabling statutes for FBI processing of fingerprint cards for athletic agents and real estate appraisers. Similar language also is used for real estate brokers.

There is no prohibition in current law against renewing a licensee if the licensee has an unpaid delinquent fine or costs, or has otherwise failed to comply with the terms of a final order.

Section 477.013, F.S., defines cosmetology to include mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes. In 1998, the Legislature removed an exemption for body wrapping, scrubbing, and waxing from the Massage Therapy Act. This action has been interpreted to act as a prohibition of such activities without licensure.

III. Effect of Proposed Changes:

Section 1 amends s. 11.62, F.S., to add the impact of the regulation on job creation or retention and the ability of practitioners to obtain employment as criteria for evaluating proposals for new professional or occupational regulation. In addition, s. 11.62, F.S., is amended to require proponents of new regulation to include the cost, availability, and appropriateness of training and examination requirements and the cost the regulation imposes on practitioners or employers with the information they provide to the Legislature.

Sections 2 and 3 amend ss. 455.201 and 455.517, F.S., to prohibit increased regulation of already regulated professions and occupations if the regulation will have an unreasonable effect on job creation or retention or will place unreasonable restrictions on the ability of practitioners to find employment. In addition, the sections are amended to require the Legislature to evaluate proposals that increase regulation of already regulated professions or occupations to determine their effect on job creation or retention and employment opportunities.

Section 4 amends s. 455.564(6), F.S., to provide the DOH and its boards with the discretion to establish rules to allow licensees to earn more than one hour of continuing education credit in the

area of risk management and prescribe alternative methods of obtaining continuing education credits in the area of risk management.

Section 5 creates s. 455.2035, F.S., to delegate to the DBPR rulemaking authority in any instance where the regulation is directly within its jurisdiction and no board exists.

Section 6 creates s. 455.2123, F.S., to allow the DBPR or the appropriate board to establish by rule that distance learning may be used by licensees to satisfy continuing education requirements.

Section 7 creates s. 455.2124, F.S., to allow the regulatory boards, or the DBPR when there is no board for a particular profession, to require no continuing education until the first full renewal cycle of a new licensee or to prorate continuing education for such licensees by requiring half of the required continuing education for any applicant who becomes licensed with more than half of the renewal period remaining and no continuing education for those who become licensed with half or less than half of the renewal period remaining.

Section 8 amends s. 455.213, F.S., to direct that, for any profession requiring the submission of fingerprints as part of the licensing process or for any profession requiring proof of good moral character, a fingerprint card must accompany all applications for registration, licensure, and certification. The card must be forwarded to the Florida Department of Law Enforcement (FDLE) and to the FBI in order to determine whether the applicant has a criminal history record. The information received is to be used to determine whether the applicant is statutorily qualified for registration, licensure, or certification.

Section 9 amends s. 455.227, F.S., to prohibit the DBPR from issuing or renewing a license to any person against whom or business against which the board has assessed a fine, interest or costs associated with investigation and prosecution until the person or business has paid in full such fine, interest or costs, or until the person or business complies with all terms and conditions of the final order.

Section 10 requires applicants for licensure as an athletic agent, pursuant to s. 468.453, F.S., to submit a fingerprint card to the DBPR as a prerequisite to qualifying for such a license and directs the department to forward the fingerprint card to the FDLE and the FBI as described in Section 6 of the bill.

Section 11 requires applicants for licensure as a real estate broker, salesperson or school, pursuant to s. 475.175, F.S., to submit a fingerprint card to the DBPR as a prerequisite to qualifying for such a license and directs the DBPR to forward the fingerprint card to the FDLE and the FBI as described in Section 6 of the bill.

Section 12 requires applicants for licensure as a real estate appraiser, pursuant to s. 475.615 F.S., to submit a fingerprint card to the DBPR as a prerequisite to qualifying for such a license and directs the DBPR to forward the fingerprint card to the FDLE and the FBI as described in Section 6 of the bill.

Section 13 amends s. 477.013, F.S., to bring wax treatments for the removal of hair and skin care services under the definition of cosmetology, and to create definitions for “body wrapping” and

“skin care services.” The definition of “specialty” is expanded to include skin care services in the facial specialty. “Body wrapping” is defined to mean treatments using herbal wraps for weight loss and for the purpose of cleansing and beautifying the skin, not including application of oils or lotions or manipulation of the body’s superficial tissue. “Skin care services” are defined to mean the treatment of the skin of the body, other than the head, face, and scalp, by the use of a sponge, brush, cloth, or similar device to apply or remove a chemical preparation or other substances. Skin care services must be performed by a licensed cosmetologist or facial specialist within a licensed cosmetology or specialty salon.

Sections 14-18 amend ss. 477.0132, 477.019, 477.026, 477.0265, and 477.029, F.S., to make conforming changes in the cosmetology statutes for body wrapping. A person who conducts the activity of body wrapping would be required to register with the department, pay a registration fee not to exceed \$25 and participate in a two-day, 12-hour HIV/AIDS training course approved by the DBPR. The bill provides that it is unlawful to advertise or imply that skin care services or body wrapping have any relationship to the practice of massage therapy.

Section 19 of the bill provides an effective date of July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who practice body wrapping will be required to register with the DBPR, unless otherwise licensed or exempted, pay the applicable registration fee, and take a two-day, 12-hour course. The registration fee may not exceed \$25.

C. Government Sector Impact:

The department has indicated that it will cost \$50,000 as a non-recurring cost to establish a system to track unpaid fines in order to ensure that the prohibitions in Section 12 of the bill are imposed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Sunrise Act and those portions of the bill that amend it require the Legislature to perform specific functions, such as to evaluate proposals that would increase regulation. No session of the Legislature, however, may bind another session of the Legislature. As a result, these types of provisions are, in effect, advisory only.

VIII. Amendments:

#1 by Governmental Oversight and Productivity:

Redefines "health care practitioner" to include, for credentialing purposes only, any person applying for licensure under chs.458, 459, 460, 461, F.S., or any person licensed or applying for licensure under a chapter subsequently made subject to the section, except a person registered or applying for registration pursuant to ss. 458.345 or 459.021, F.S.

(WITH TITLE AMENDMENT)

#2 by Governmental Oversight and Productivity:

Creates a rebuttable presumption that certain licensees or employees of a health care facility who contract blood-borne infections have contracted the illness in the course of employment.

(WITH TITLE AMENDMENT)

#3 by Governmental Oversight and Productivity:

Removes a requirement that the Department of Legal Affairs provide counsel to certain boards.

(WITH TITLE AMENDMENT)

#4 by Governmental Oversight and Productivity:

Provides that certain minor violations of a licensee may be classified as inactive if 2 years have elapsed since the issuance of the final order imposing discipline and the licensee has not been disciplined for any subsequent minor violation of the same nature.

(WITH TITLE AMENDMENT)

#5 by Governmental Oversight and Productivity:

Provides that a person who is eligible to take the USMLE who has previously passed part 1 or part 2 of the previously administered FLEX is not required to retake or pass the equivalent parts of the USMLE up to the year 2002. Additionally, the department is to charge examinees a fee not to exceed 25 percent of the cost of the actual costs of the first examination administered pursuant

to s. 458.3115, F.S., (1998 Supp.), and a fee not to exceed 75 percent of the actual costs for any subsequent examination under that section.

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