

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Pursuant to the State Constitution, the Supreme Court has exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted.¹ The Florida Bar, as an official arm of the court, is charged with the duty of considering, investigating, and seeking the prohibition of the unlicensed practice of law and the prosecution of alleged offenders.² The court rules governing the unlicensed practice of law define the unlicensed practice of law as, "the practice of law, as prohibited by statute, court rule, and case law of the State of Florida."³ As a civil matter, the Florida Bar may petition the Supreme Court of Florida for injunctive relief,⁴ or for indirect criminal contempt punishable by a fine not to exceed \$2,500, imprisonment of up to 5 months, or both.⁵ The court may also award costs.⁶ The board of governors of The Florida Bar acts as an arm of the Supreme Court of Florida for the purpose of seeking to prohibit the unlicensed practice of law by investigating, prosecuting, and reporting to this court and to appropriate authorities incidents involving the unlicensed practice of law.⁷ The Florida Bar reports that they have opened 520 cases in 2003; 640 cases in 2002; and 638 cases in 2001. Of the cases opened by The Florida Bar in 2002, 21 were referred to the State Attorney for prosecution.

Criminal sanctions for the unlicensed practice of law may be imposed pursuant to statute. Any person not licensed or otherwise authorized by the Supreme Court of Florida who practices law or holds themselves out to the public as qualified to practice in this state, or who willfully pretends to act as a lawyer, and any person entitled to practice who violates the provisions of chapter 454, F.S.,⁸ is guilty of a first degree misdemeanor.⁹

The Florida Statutes also prohibit sheriffs and clerks of court, or any deputies thereof, from the practice of law; however, the restriction does not apply in a case where the person is representing the office or

¹ See Article V, section 15 of the State Constitution.

² See Rule 10-1.2 of the Rules Governing the Unlicensed Practice of Law, which also require the court to establish a standing committee and at least one circuit committee in each judicial circuit.

³ See Rule 10-2.1(a) of the Rules Governing the Unlicensed Practice of Law.

⁴ See Rule 10-7.1 of the Rules Governing the Unlicensed Practice of Law.

⁵ See Rule 10-7.2 of the Rules Governing the Unlicensed Practice of Law.

⁶ See Rule 10-7.2(f) of the Rules Governing the Unlicensed Practice of Law.

⁷ See Rule 1-8.2 of the Rules Regulating the Florida Bar.

⁸ Chapter 454 relates to attorneys at law and prohibits sheriff and clerks from practicing law (see s. 454.18, F.S.); prohibits judges permitted to practice law from forming a partnership with the prosecuting attorney (see s. 454.19, F.S.); prohibits attorneys from becoming sureties on official bonds (see s. 454.23, F.S.); and prohibits the practice of law by any person who has been disbarred or suspended (see s. 454.31, F.S.).

⁹ See s. 454.23, F.S., which provides punishment of a definite term of imprisonment not exceeding 1 year or a fine not to exceed \$1000.

agency in the course of duties as an attorney.¹⁰ The Florida Sheriff's Association reports that there are 5 acting sheriffs that are also attorneys.¹¹

In 1925, when the law prohibiting sheriffs from practicing law was originally created, the Legislature addressed the issue of governance over the admission of lawyers and practice of law in this State.¹² This legislation provided for a State Board of Law Examiners and prescribed their duties and responsibilities. Those already admitted to practice under the provisions of law or rules of court existing at the time of such admission were grandfathered in and subsequent to the act, those wishing to practice law in this State had to first obtain a certificate of authority from the State Board of Law Examiners. In addition to establishing the process for admitting attorneys, the legislation also created s. 454.18, F.S., which prohibits a sheriff, deputy sheriff, clerk of court, or deputy clerk of court from the practice of law.¹³ Recognizing that these functions belonged with the judicial branch pursuant to Article V, section 15 of the Florida Constitution,¹⁴ the Legislature in 1955 codified the Supreme Court's authority 'to govern and regulate admissions of attorneys and counselors to practice law...' ¹⁵ Initially, the Legislature expressly reserved some authority over the admittance to and practice of law,¹⁶ which was later repealed in 1961.¹⁷ This repeal, however, did not effect the statutory prohibition against sheriffs or deputy sheriffs from practicing law that is the subject of this bill.

This bill does two things:

1. Increases the criminal penalty for the unlicensed practice of law from a first degree misdemeanor to a third degree felony, which is punishable by a term of imprisonment not to exceed 5 years, a fine not to exceed \$5000, and enhanced penalties for habitual felony offenders.
2. Removes the prohibition against sheriffs and deputy sheriffs from practicing law.

C. SECTION DIRECTORY:

Section 1 amends s. 454.23, F.S., to increase the penalty for the unlicensed practice of law.

Section 2 amends s. 454.18, F.S., to remove the prohibition against the practice of law by sheriffs and deputy sheriffs.

Section 3 provides an effective date upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

¹⁰ See s. 454.18, F.S. See also Rule 3-7.14 of the Rules Regulating the Florida Bar, which provides that the rules shall supercede such parts of s. 454.18, F.S., as are in conflict with the rules. It doesn't appear that the parts of s. 454.18, F.S., which are amended by this bill are in conflict with the rules. See also State v. Palmer, 791 So.2d 1181 (Fla. 1st DCA 2001) which held that s. 454.31, F.S., (which criminalizes the unlicensed practice of law by disbarred attorneys) was not superseded by the Rules Regulating the Florida Bar.

¹¹ Sheriff Dean in Marion County; Sheriff Williams in Brevard County; Sheriff Jenne in Broward County; Sheriff Rice in Pinellas County; and Sheriff Manfre in Flagler County.

¹² See ch. 10175 LOF (1925).

¹³ See ch. 10175, s. 18, LOF (1925).

¹⁴ Formerly Art. V, s. 23, Fla. Const. (1968).

¹⁵ See ch. 29796, ss. 1,2, and 7, LOF (1955).

¹⁶ See s. 454.021, F.S.

¹⁷ See ch. 61-530, s. 10, LOF.

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

Separation of powers: Article II, Section 3 of the State Constitution provides that "No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." A branch of government is prohibited from exercising a power only when that power has been constitutionally assigned exclusively to another branch.¹⁸ Article V, section 15 of the State Constitution vests exclusive jurisdiction in the Supreme Court of Florida to regulate the admission of persons to the practice of law and the discipline of persons admitted. It can be argued that the legislative imposition of criminal penalties for the unlicensed practice of law, and the legislative removal of the prohibition against sheriffs practicing law does not infringe on the court's exclusive power to regulate admission and discipline of admitted persons.¹⁹ Arguably, removing the prohibition against sheriffs practicing law does not deal with admission to practice, and criminalizing the unlicensed practice of law does not discipline admitted persons, it disciplines persons not admitted. The Florida Supreme Court has explained that "simply because certain conduct is subject to professional discipline is no reason why the legislature may not proscribe the conduct."²⁰

B. RULE-MAKING AUTHORITY:

¹⁸ See State v. Johnson, 345 So.2d 1069 (Fla. 1977).

¹⁹ See State v. Palmer, 791 So.2d 1181 (Fla. 1st DCA 2001) in which the First District Court of Appeal held that s. 454.31, F.S., which criminalizes the unlicensed practice of law by a disbarred attorney, does not violate the separation of powers doctrine. See also Pace v. State, 368 So.2d 340 (Fla. 1979), in which the Florida Supreme Court recognized that pursuant to its police powers, the legislature can enact penal statutes that affect the legal profession. There the Court held that the anti-solicitation statute (s. 877.02(1), F.S. (1973)) as applied to lawyers did not violate the State Constitution by intruding upon the Supreme Court's exclusive jurisdiction over the discipline of members of the bar.

²⁰ See Pace v. State, 368 So.2d 340 at 345 (Fla. 1979).

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

HB 1889 was originally filed as PCB 03-07 by the Judiciary Committee.