

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 Health Regulation Committee

BILL: SB 1586

INTRODUCER: Senator Hays

SUBJECT: Authority of Certain Professionals to Practice in this State

DATE: March 21, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	Favorable
2.	_____	_____	RI	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill removes the authority for business professionals and health care professionals (veterinarians) who are licensed out-of-state or in a foreign jurisdiction, who are in Florida for a specific sporting event, and who are employed or designated by the sport's team, to practice on animals used in the sport.

This bill substantially amends the following sections of the Florida Statutes: 455.2185 and 456.023, F.S.

II. Present Situation:

General Provisions for Business Professionals and Health Professionals

Chapter 455, F.S.

The Department of Business and Professional Regulation (DBPR) was established in 1993 with the merger of the Department of Business Regulation and the Department of Professional Regulation.¹ The DBPR is created in s. 20.165, F.S. Section 20.165(2), F.S., creates the following eleven divisions within the department:

- Division of Administration.
- Division of Alcoholic Beverages and Tobacco.
- Division of Certified Public Accounting.
- Division of Florida Condominiums, Timeshares, and Mobile Homes.
- Division of Hotels and Restaurants.

¹ Chapter 93-220, L.O.F.

- Division of Pari-mutuel Wagering.
- Division of Professions.
- Division of Real Estate.
- Division of Regulation.
- Division of Technology.
- Division of Service Operations.

In addition to administering the professional boards, the DBPR processes applications for licensure and license renewal. The DBPR also receives and investigates complaints made against licensees and, if necessary, brings administrative charges.

Chapter 455, F.S., provides the general powers of the DBPR and sets forth the procedural and administrative frame-work for all of the professional boards housed under the DBPR, specifically the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

Section 20.165(4)(a), F.S., establishes the following professional boards within the Division of Professions:

- Board of Architecture and Interior Design, created under part I of ch. 481, F.S.
- Florida Board of Auctioneers, created under part VI of ch. 468, F.S.
- Barbers' Board, created under ch. 476, F.S.
- Florida Building Code Administrators and Inspectors Board, created under part XII of ch. 468, F.S.
- Construction Industry Licensing Board, created under part I of ch. 489, F.S.
- Board of Cosmetology, created under ch. 477, F.S.
- Electrical Contractors' Licensing Board, created under part II of ch. 489, F.S.
- Board of Employee Leasing Companies, created under part XI of ch. 468, F.S.
- Board of Landscape Architecture, created under part II of ch. 481, F.S.
- Board of Pilot Commissioners, created under ch. 310, F.S.
- Board of Professional Engineers, created under ch. 471, F.S.
- Board of Professional Geologists, created under ch. 492, F.S.
- Board of Veterinary Medicine, created under ch. 474, F.S.

Chapter 456, F.S.

Section 20.43, F.S., creates the DOH. The DOH is responsible for the state's public health system, which is designed to promote, protect, and improve the health of all people in the state. The mission of the state's public health system is to foster the conditions in which people can be healthy, by assessing state and community health needs and priorities through data collection, epidemiologic studies, and community participation; by developing comprehensive public health policies and objectives aimed at improving the health status of people in the state; and by ensuring essential health care and an environment which enhances the health of the individual and the community.² The State Surgeon General is the State Health Officer and the head of the DOH.

² Section 381.001, F.S.

Section 20.43, F.S., creates several divisions under the DOH, including the Division of Medical Quality Assurance, which is responsible for the following boards and professions established within the division:

- The Board of Acupuncture, created under ch. 457, F.S.
- The Board of Medicine, created under ch. 458, F.S.
- The Board of Osteopathic Medicine, created under ch. 459, F.S.
- The Board of Chiropractic Medicine, created under ch. 460, F.S.
- The Board of Podiatric Medicine, created under ch. 461, F.S.
- The Board of Optometry, created under ch. 463, F.S.
- The Board of Nursing, created under part I of ch. 464, F.S.
- The Board of Pharmacy, created under ch.465, F.S.
- The Board of Dentistry, created under ch. 466, F.S.
- The Board of Speech-Language Pathology and Audiology, created under part I of ch. 468 F.S.
- The Board of Nursing Home Administrators, created under part II of ch. 468, F.S.
- The Board of Occupational Therapy, created under part III of ch. 468, F.S.
- The Board of Athletic Training, created under part XIII of ch. 468, F.S.
- The Board of Orthotists and Prosthetists, created under part XIV of ch. 468, F.S.
- The Board of Massage Therapy, created under ch. 480, F.S.
- The Board of Clinical Laboratory Personnel, created under part III of ch. 483, F.S.
- The Board of Opticianry, created under part I of ch.484, F.S.
- The Board of Hearing Aid Specialists, created under part II of ch. 484, F.S.
- The Board of Physical Therapy Practice, created under ch. 486, F.S.
- The Board of Psychology, created under ch. 490, F.S.
- The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under ch. 491, F.S.

In addition to the professions regulated by the various aforementioned boards, the DOH also regulates the following professions: naturopathy, as provided under ch. 462, F.S.; nursing assistants, as provided under part II of ch. 464, F.S.; midwifery, as provided under ch. 467, F.S.; respiratory therapy, as provided under part V of ch. 468, F.S.; dietetics and nutrition practice, as provided under part X of ch. 468, F.S.; electrolysis, as provided under ch. 478, F.S.; medical physicists, as provided under part IV of ch. 483, F.S.; and school psychologists, as provided under ch. 490, F.S..

Among other things, the general provisions for licensure, certification, education, examination, and penalties for the above-mentioned professionals are provided for under ch. 456, F.S. In addition, ch. 456, F.S., sets forth the authority of the above-referenced boards to regulate their respective professions.

Veterinary Medical Practice

Veterinarians are regulated under ch. 474, F.S., the Veterinary Medical Practice Act (act). The legislative purpose for the act is to ensure that every veterinarian practicing in Florida meets minimum requirements for safe practice and veterinarians who are not normally competent or

who otherwise present a danger to the public are disciplined or prohibited from practicing in Florida.³

The DBPR is the state agency responsible for the licensing of veterinarians, while the Board of Veterinary Medicine (board)⁴ within the DBPR is responsible for adopting rules to establish fees and implement the provisions of ch. 474, F.S.

For a person to be licensed as a veterinarian he or she must apply to the DBPR to take a licensure examination. The DBPR must license each applicant who the board certifies has:

- Completed the application form and remitted an examination fee set by the board.⁵
- Graduated from a college of veterinary medicine accredited by the American Veterinary Medical Association Council on Education or graduated from a college of veterinary medicine listed in the American Veterinary Medical Association Roster of Veterinary Colleges of the World and obtained a certificate from the Education Commission for Foreign Veterinary Graduates.
- Successfully completed the examination provided by the department for this purpose, or an examination determined by the board to be equivalent.
- Demonstrated knowledge of the laws and rules governing the practice of veterinary medicine in Florida in a manner designated by rules of the board.⁶

The DBPR is prohibited from issuing a license to any applicant who is under investigation in any state or territory of the United States or in the District of Columbia for an act which would constitute a violation of ch. 474, F.S., until the investigation is complete and disciplinary proceedings have been terminated.⁷

An unlicensed doctor of veterinary medicine who has graduated from an approved college or school of veterinary medicine and has completed all parts of the examination for licensure is permitted, while awaiting the results of the examination for licensure or while awaiting issuance of the license, to practice under the immediate supervision of a licensed veterinarian. A person who fails any part of the examination may not continue to practice, except in the same capacity as other nonlicensed veterinary employees, until the person passes the examination and is eligible for licensure.⁸

³ Section 474.201, F.S.

⁴ The board consists of seven members, who are appointed by the Governor, and are subject to confirmation by the Senate. Five members of the board must be licensed veterinarians and two members of the board must be laypersons who are not and have never been veterinarians or members of any closely related profession or occupation. Section 474.204, F.S.

⁵ For applicants taking the Laws and Rules examination that is not conducted by a professional testing service, the examination fee is \$165.00, payable to the DBPR. For applicants taking the Laws and Rules examination that is conducted by a professional testing service, the examination fee is \$151.50 payable to the DBPR plus \$13.50 payable to the testing service. Rule 61G18-12.002, F.A.C. The applicant for licensure must also pay an initial licensure fee of \$200, if the person is licensed in the first 12 months of the biennium, or \$100, if the person is licensed in the second 12 months of the biennium. Rule 61G18-12.007, F.A.C.

⁶ Section 474.207, F.S.

⁷ *Id.*

⁸ *Id.*

An applicant may be eligible for temporary licensure if certain requirements are met. In order for the board to certify an applicant to the DBPR for issuance of a temporary license to practice veterinary medicine, an applicant must demonstrate to the board that the applicant:

- Has filed an application for temporary licensure identifying the name and address of the owner of the animals to be treated, the type of animals to be treated and their injury or disease, the location the treatment is to be performed, and the names, addresses, and titles of all persons entering the state with the applicant to perform the treatment; or
- Has filed an application and is responding to an emergency for the treatment of animals of multiple owners.
- Has paid the temporary licensure fee.
- Holds an active license to practice veterinary medicine in another state of the United States and that any license to practice veterinary medicine that the person has ever held has never been revoked, suspended or otherwise acted against by the licensing authority.
- Is neither the subject of any pending prosecution nor has ever been convicted of any offense which is related to the practice of veterinary medicine; and
- Satisfies the qualifications for licensure by endorsement.⁹

A temporary license is valid for a period of 30 days from its issuance. A temporary license does not cover more than the treatment of the animals of the owner identified in the application. Upon expiration of the license, a new license is required.¹⁰

An applicant may also be eligible for licensure by endorsement if specific requirements are met. The DBPR must issue a license by endorsement to any applicant who, upon applying to the DBPR and remitting the requisite fee,¹¹ demonstrates to the board that she or he:

- Has demonstrated, in a manner designated by rule of the board, knowledge of the laws and rules governing the practice of veterinary medicine in Florida; and
- Either holds, and has held for the 3 years immediately preceding the application for licensure, a valid, active license to practice veterinary medicine in another state of the United States, the District of Columbia, or a territory of the United States, provided that the requirements for licensure in the issuing state, district, or territory are equivalent to or more stringent than the requirements of ch. 474, F.S.; or meets the application and examination requirements under Florida law and has successfully completed a state, regional, national, or other examination which is equivalent to or more stringent than the examination given by the DBPR.¹²

The department is prohibited from issuing a license by endorsement to any applicant who is under investigation in any state, territory, or the District of Columbia for an act which would constitute a violation of ch. 474, F.S., until the investigation is complete and disciplinary proceedings have been terminated.

⁹ Rule 61G18-25.001, F.A.C.

¹⁰ *Id.*

¹¹ The fee for licensure by endorsement is \$500. Rule 61G18-12.011, F.A.C.

¹² Section 474.217, F.S.

Under s. 474.213, F.S., a person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S. (maximum imprisonment of 5 years, maximum fine of \$5,000, or penalties applicable for a habitual offender) if the person:

- Leads the public to believe that such person is licensed as a veterinarian, or is engaged in the licensed practice of veterinary medicine, without such person holding a valid, active license pursuant to ch. 474, F.S.;
- Uses the name or title “veterinarian” when the person has not been licensed pursuant to ch. 474, F.S.;
- Presents as her or his own the license of another;
- Gives false or forged evidence to the board or a member thereof for the purpose of obtaining a license;
- Uses or attempts to use a veterinarian’s license which has been suspended or revoked;
- Knowingly employs unlicensed persons in the practice of veterinary medicine;
- Knowingly concealing information relative to violations of ch. 474, F.S.;
- Obtains or attempts to obtain a license to practice veterinary medicine by fraudulent representation;
- Practices veterinary medicine in Florida, unless the person holds a valid, active license to practice veterinary medicine pursuant to ch. 474, F.S.;
- Sells or offers to sell a diploma conferring a degree from a veterinary school or college, or a license issued pursuant to ch. 474, F.S., or procures such diploma or license with the intent that it shall be used as evidence of that which the document stands for by a person other than the one upon whom it was conferred or to whom it was granted; or
- Knowingly operates a veterinary establishment or premises without having a premise permit issued under s. 474.215, F.S.

A veterinarian, or applicant for veterinary licensure, may be disciplined for several different types of violations under s. 474.214, F.S. When the board finds any applicant or veterinarian has committed a violation under s. 474.214, F.S., regardless of whether the violation occurred prior to licensure, it may enter an order imposing one or more of the following penalties:

- Denying certification for examination or licensure.
- Revoking or suspending a license.
- Imposing an administrative fine not to exceed \$5,000 for each count or separate offense.
- Issuing a reprimand.
- Placing the veterinarian on probation for a period of time and subject to such conditions as the board may specify, including requiring the veterinarian to attend continuing education courses or to work under the supervision of another veterinarian.
- Restricting the authorized scope of practice.
- Imposing costs of the investigation and prosecution.
- Requiring the veterinarian to undergo remedial education.

In determining appropriate disciplinary action, the board must first consider those sanctions necessary to protect the public. Only after those sanctions have been imposed may the disciplining authority consider and include in its order requirements designed to rehabilitate the veterinarian. All costs associated with compliance with any order issued under this subsection are the obligation of the veterinarian. The DBPR must reissue the license of a disciplined veterinarian upon certification by the board that the disciplined veterinarian has complied with

all of the terms and conditions set forth in the final order and is capable of competently and safely engaging in the practice of veterinary medicine.¹³

III. Effect of Proposed Changes:

This bill removes from s. 455.2185, F.S., the authority of a business professional, who is licensed out-of-state or in a foreign jurisdiction, who is in Florida for a specific sporting event, and who is employed or designated by the sport's team, to practice on animals used in the sport. This bill removes from s. 456.023, F.S., the authority of a health care professional, who is licensed out-of-state or in a foreign jurisdiction, who is in Florida for a specific sporting event, and who is employed or designated by the sport's team, to practice on animals used in the sport.

The bill also deletes the language in ss. 455.2185 and 456.023, F.S. that prohibits these professionals from practicing in veterinary facilities without the approval of the facility, which is consistent with the above changes that prohibit the professionals from practicing at all on animals used by the sporting teams while in Florida.

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, Section 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Sports teams from out-of-state or from foreign jurisdictions that participate in events in Florida may incur additional costs associated with hiring a Florida licensed veterinarian for veterinary services.

¹³ *Id.*

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.