

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 Committee on Health Policy

BILL: SB 612

INTRODUCER: Senator Galvano

SUBJECT: Health Care Practitioners

DATE: March 4, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	Pre-meeting
2.	_____	_____	CJ	_____
3.	_____	_____	ACJ	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 612 prohibits a person licensed under the Nurse Practice Act from presenting himself or herself, either orally or in writing, while rendering or advertising health care services, as a “Doctor” or “Dr.” unless the practitioner discloses that he or she is not a medical doctor or an osteopathic physician. Violating this prohibition is grounds for administrative discipline and is also a criminal offense classified as a felony of the third degree if the nurse intended to mislead.

This bill amends section 456.072 of the Florida Statutes.

The bill creates section 456.0675 of the Florida Statutes.

II. Present Situation:

Chapter 464, F.S., is the Nurse Practice Act. The Board of Nursing, (board) created within the Department of Health is responsible for licensing and regulating nurses within the state. The board is under the Division of Medical Quality Assurance.

The following chart reflects the number of in-state active licenses by credential issued under the Nurse Practice Act as of June 30, 2012:¹

¹ Medical Quality Assurance 2011-2012 Annual Report, page 38, available at: <http://www.doh.state.fl.us/mqa/mqa2011-2012annualreport/> (Last visited Mar. 2, 2013).

Credential	In-State Active
Advanced Registered Nurse Practitioner (ARNP)	14,440
Advanced Registered Nurse Practitioner / Certified Nurse Specialist (ARNP/CNS)	21
Clinical Nurse Specialist (CNS)	87
Licensed Practical Nurse (LPN)	63,951
Registered Nurse (RN)	198,748
Certified Nursing Assistant (CNA) (part II of the Act)	<u>155,843</u>
Total in-state active licenses	433,090

Acts which constitute grounds for disciplinary sanctions specific to nurses are found in s. 464.018, F.S., for all nursing professions except for certified nursing assistants, which are found in s. 464.204, F.S. One of the grounds for disciplinary action in s. 464.018(g), F.S., is false, misleading, or deceptive advertising.²

The Nurse Practice Act also prohibits a person who does not hold a specific licensing credential referenced in the chart above from using the corresponding title or abbreviation.³ A violation of this law is classified as a misdemeanor of the first degree, punishable by a term of imprisonment not exceeding 1 year and / or a fine not to exceed \$1,000.

In addition to the regulation of nurses under the Nurse Practice Act, all health care practitioners in the state that are regulated under the Division of Medical Quality Assurance are subject to the general provisions under ch. 456, F.S. Acts which constitute grounds for disciplinary sanctions for all health care practitioners are found in s. 456.072, F.S. Two relevant grounds for disciplinary action under this section are:⁴

Making misleading, deceptive, or fraudulent representation in or related to the practice of the licensee's profession.

Failing to identify through written notice, which may include the wearing of a name tag, or orally to a patient the type of license under which the practitioner is practicing. Any advertisement for health care services naming the practitioner must identify the type of license the practitioner holds. However, this paragraph does not apply to a practitioner while the practitioner is providing services in a facility providing mental health or substance abuse services, hospitals and ambulatory surgical centers, nursing homes, or assisted living facilities.⁵

Administrative discipline may include letters of concern, reprimands, fines up to \$10,000, probation, and suspension or permanent revocation of a license. If the violation is for fraud or

² Disciplinary sanctions are administrative as provided in s. 456.072, F.S.

³ See s. 464.015, F.S.

⁴ s. 456.072(a) and (t), F.S.

⁵ Specifically excluded are facilities licensed under chapters 394, 395, 400, or 429, F.S.

making a false or fraudulent representation, the board, or the department if there is no board, must impose a fine of \$10,000 per count or offense.⁶

Under the Medical Practice Act, leading the public to believe that one is licensed as a medical doctor, or is engaged in the licensed practice of medicine, without holding a valid, active license is a misdemeanor of the first degree, punishable by a term of imprisonment not exceeding 1 year and / or a fine not to exceed \$1,000.⁷ A similar provision is not found under the Osteopathic Medical Practice Act.

Currently, nurses licensed under ch. 464, F.S., who have obtained a doctorate degree are not required to disclose that they are not a medical doctor or an osteopathic physician when rendering or advertising health care services.⁸

III. Effect of Proposed Changes:

The bill amends s. 456.072, F.S., pertaining to grounds for disciplinary action applicable to all health care practitioners regulated by the Division of Medical Quality Assurance. Another ground for disciplinary action is added if a nurse presents himself or herself with the title of “Doctor” or “Dr.” while rendering or advertising health care services, without disclosing that he or she is not a medical doctor or an osteopathic physician. A nurse may not use this designation either orally or in writing. This prohibition applies to any nurse licensed under ch. 464, F.S., such as a registered nurse, licensed practical nurse, clinical nurse specialist, certified registered nurse anesthetist, certified nurse midwife, advanced registered nurse practitioner, or certified nursing assistant.

Additionally, a new section of law, s. 456.0675, F.S., creates a criminal violation for the action described in the previous paragraph if the nurse has the intent to mislead. This violation is classified as a felony of the third degree which can result in a term of imprisonment not exceeding 5 years and / or a fine of up to \$5,000.

The effective date of this act is October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁶ s. 456.072(2)(d), F.S.

⁷ s. 458.327(2)(d), F.S.

⁸ Department of Health Bill Analysis for SB 612, dated February 18, 2013, on file with the Senate Health Policy Committee.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Persons who violate the prohibition by referring to himself or herself as a “Doctor” or using the abbreviation of “Dr.” without disclosure may be subject to administrative penalties and criminal fines and / or imprisonment.

C. Government Sector Impact:

The bill creates a new felony offense but the impact of this bill has not been assessed by the Criminal Justice Impact Conference.

The Department of Health indicates the bill will require the board to adopt rules for disciplinary action and may also cause an increase in complaints and disciplinary actions; however these costs can be absorbed within current budget authority and resources.⁹

VI. Technical Deficiencies:

A person may be a medical doctor or an osteopathic physician and also licensed under ch. 464, F.S., which is not excepted in the bill.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

⁹ *Ibid.*